



18 June 2018

Virginie Rozière MEP  
Rapporteur, JURI Committee  
European Parliament  
Brussels

***In respect of the proposal for a Directive of the European Parliament and of the Council on the protection of persons reporting on breaches of Union law***

Dear Ms Rozière

While we strongly welcome an EU initiative to ensure a firm foundation of whistleblower protection across all Member States, we are very concerned by two major structural flaws in the current proposal that threatens to undermine the aspects of the directive that meets international best practice.

- The first problem is restricting existing legal audiences for disclosures in such a way that it further obscures the capacity to scrutinise the conduct of organisations and thus increases the risk of harm to individual whistleblowers who, in good faith, rely on the law to make a disclosure, even internally within their organisations
- The second is creating a vulnerability by including an implied invitation for retaliatory legal actions far worse than job reprisal through liability for “malicious” disclosures.

These are not only problematic from the perspective of protecting individuals, but should be deeply worrying to anyone who relies on information to act to protect the public interest. It effectively lowers the temperature of the existing chilling effect, to one that will freeze anyone from taking any action when they come across wrongdoing or matters of public concern. This clearly would undermine the intentions of the European Parliament when it called for stronger whistleblower protection, and is against current legal standards in the protection of whistleblowers as found in existing national laws and international best practices. We have identified the problems and negative consequences of these structural problems and have included potential solutions in the attached WIN legal expert briefing.

We also have highlighted other important issues that need to be addressed in order to ensure the directive fulfils the very clear public policy goals it eloquently sets out in the preamble namely to facilitate the prevention of harm and regulation of misconduct; address the magnitude of underreporting by whistleblowers; better “feed national and EU enforcement

systems with information leading to effective detection, investigation and prosecution of breaches of Union law”; strengthen the right to freedom of expression and protection of the media by ensuring greater capacity to protect whistleblowers who inform the public and as sources of information for journalists.

We have therefore included a number of other important issues that need to be addressed in order to make the rights real and effective. Some of these include:

- Protection for “any” lawful disclosure of illegality or abuse of trust
- Ensuring disclosures can be made directly to competent authorities, including those in another jurisdiction
- Clear reverse burden of proof
- Confirming that nothing in the directive removes freedom of expression protection rights for all citizens, including for those who report to competent authorities
- Ensuring anonymous disclosures are not a bar to protection

It must be remembered that whistleblower protection is about strengthening democratic **accountability** within what has been clearly recognised in the directive a human rights framework of freedom of speech and the public right to information. While whistleblower protection is only one of the measures necessary to ensure greater accountability across the EU, it must be calibrated carefully to actually increase the responsible flow of information and ensure individual whistleblowers have a fighting chance to survive against what can be indomitable foes with far access to far greater resources.

We, like you, want the clearest and most coherent minimum standards to exist across Europe so that there is an even, less fragmented ground for citizens to stand on and to allow Member States to further develop improved accountability mechanisms that work for all.

Please do not hesitate to get in touch if you have any questions or wish to explore any of these issues in more detail. We remain at your disposal.

Yours sincerely,

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