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#### COVER NOTE

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From: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

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To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of  
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PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND  
SOCIAL COMMITTEE  
Strengthening whistleblower protection at EU level

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Delegations will find attached document COM(2018) 214 final.

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Brussels, 23.4.2018  
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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL  
COMMITTEE**

**Strengthening whistleblower protection at EU level**

## 1. Introduction

The major scandals of recent years and months, from LuxLeaks to Panama and Paradise Papers, Dieselgate or Cambridge Analytica, have focused our attention on how wrongdoing inside organisations or companies both in the public and private sector can seriously harm the public interest. In many cases, these scandals, and the damage done to the environment, public health and safety, and to national or EU public finances, have come to light thanks to people speaking up when they encounter wrongdoing in the context of their work. These ‘whistleblowers’ often risk their career and their livelihood and, in some cases, suffer severe and long-lasting financial, health, reputational and personal repercussions. Making sure that those who speak out are properly protected is a key element in preventing wrongdoings and defending the public interest.

Whistleblowers are also a crucial source for investigative journalism. Whistleblowers often turn to journalists when their concerns about a wrongdoing go unaddressed and their only option is to go public. Safeguarding investigative journalism’s watchdog role in democratic society requires not only protecting the confidentiality of its sources, but also protecting whistleblowers from retaliation, if their identity is exposed.

In this context, the Commission is setting a policy framework to strengthen whistleblower protection at EU level and is proposing a ‘Directive on the protection of persons reporting on breaches of Union law’<sup>1</sup>. To this effect, it is drawing upon the European Court of Human Rights case-law on the right to freedom of expression and the Council of Europe 2014 Recommendation on Protection of Whistleblowers<sup>2</sup> setting out principles to guide States when introducing or reviewing rules for whistleblowers who report or disclose information on threats or harm to the public interest<sup>3</sup>. These principles include essential components for effective and balanced rules that protect genuine whistleblowers while providing safeguards and remedies for those harmed by inaccurate or malicious reports<sup>4</sup>.

Some of these standards have been taken up by a number of EU Member States in recent years. Some Member States have comprehensive legislation in place<sup>5</sup>. Other Member States offer only sectoral protection, e.g. in the fight against corruption or for the public sector only. Some Member States are considering new legislation to introduce or strengthen whistleblower protection.

Elements of whistleblower protection have already been introduced in specific EU instruments in areas like financial services, transport safety and environmental protection, where there was an urgent need to ensure that Union law is implemented properly. The Trade

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<sup>1</sup> COM(2018) 218.

<sup>2</sup> [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016805c5ea5](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805c5ea5)

<sup>3</sup> See also PACE Resolution 2170 (2017) ‘Promoting integrity in governance to tackle political corruption’ <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=23930&lang=en> and Resolution 2060 (2015) ‘Improving the protection of whistle-blowers’ <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=21931&lang=en>

<sup>4</sup> Whistleblower protection standards are further set out in international instruments such as the 2004 UN Convention against Corruption, to which the EU and all its Member States are parties, and the 1999 Council of Europe Civil and Criminal Law Conventions on Corruption.

<sup>5</sup> France, Hungary, Ireland, Italy, Lithuania, Malta, the Netherlands, Sweden, Slovakia and the UK.

Secrets Directive<sup>6</sup> protects whistleblowers who disclose a trade secret to protect the public interest by exempting them from liability.

Overall, the whistleblower protection currently available in the EU is fragmented across Member States and uneven across policy areas. Recent scandals with cross-border impact uncovered by whistleblowers illustrate how insufficient protection in one country can not only negatively impact on the functioning of EU policies there, but also spill over into other countries and the EU as a whole.

According to the 2017 Special Eurobarometer on Corruption<sup>7</sup> around one in three of all Europeans (29 %) think that people may not report corruption because there is no protection for those reporting it. In the Commission's 2017 public consultation<sup>8</sup>, fear of legal and financial consequences was the reason most widely cited for why workers do not report wrongdoing.

The fear of retaliation is often well-founded. The 2016 Global Business Ethics Survey<sup>9</sup> of more than 10 000 workers in the private, public and not-for-profit sectors in 13 countries showed that 33 % of the workers observed misconduct; 59 % reported it, with 36 % of them experiencing retaliation.

Lack of confidence in the utility of reporting comes through in the findings of Special Eurobarometer 470: the two most common reasons for not reporting corruption were: (i) difficulty in proving anything (45 %); and (ii) even if proof was available those responsible would not be punished (32 %).

Also, potential whistleblowers who witness illegal activities and who feel safe to report them may not do so simply because they do not know where and how to report. 49 % of respondents to the 2017 Special Eurobarometer on Corruption would not know where to report corruption if they were to experience or witness it. Only 15 % of all respondents to the Commission consultation knew about existing rules on whistleblower protection in their country.

Socio-cultural factors, particularly deep-rooted negative social perceptions of whistleblowers, also contribute to underreporting<sup>10</sup>. Fear of bad reputation was the third most important reason cited in the Commission consultation as to why workers do not report wrongdoing.

EU institutions and many stakeholders have been calling for stronger whistleblower protection at EU level. In January and in October 2017, the European Parliament<sup>11</sup> called on the Commission to present by end-2017 a horizontal legislative proposal to guarantee a high level of protection for whistleblowers in the EU, in both the public and private sectors, and in

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<sup>6</sup> Directive (EU) 2016/943 of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure, OJ L 157, p. 1.

<sup>7</sup> [https://data.europa.eu/euodp/data/dataset/S2176\\_88\\_2\\_470\\_ENG](https://data.europa.eu/euodp/data/dataset/S2176_88_2_470_ENG)

<sup>8</sup> [http://ec.europa.eu/newsroom/just/item-detail.cfm?item\\_id=54254](http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=54254)

<sup>9</sup> ECI (2016), Global Business Ethic Survey, Measuring Risk and Promoting Workplace Integrity [http://www.boeingssuppliers.com/2016\\_Global\\_Ethics\\_Survey\\_Report.pdf](http://www.boeingssuppliers.com/2016_Global_Ethics_Survey_Report.pdf). The Global Business Ethic Survey is industry-financed.

<sup>10</sup> Transparency International (2013), Whistleblowing in Europe: Legal protections for whistleblowers in the EU.

<sup>11</sup> Respectively, European Parliament resolution of 24 October 2017 on legitimate measures to protect whistleblowers acting in the public interest when disclosing the confidential information of companies and public bodies (2016/2224(INI)) and European Parliament resolution of 20 January 2017 on the role of whistle-blowers in the protection of EU's financial interests (2016/2055(INI)).

national and EU institutions. The Council encouraged the Commission to explore the possibility of future EU action in its Conclusions on tax transparency of 11 October 2016<sup>12</sup>. Civil society organisations and trade unions have consistently called for EU-wide legislation to protect whistleblowers acting in the public interest<sup>13</sup>.

## **2. The added value of whistleblower protection at EU level**

In line with President Juncker's commitment in the Letter of Intent complementing his 2016 State of the Union speech<sup>14</sup>, the Commission has assessed the scope for further action to strengthen whistleblower protection at EU level.

### *Strengthening enforcement of EU law and protecting freedom of expression*

The Commission's assessment shows that existing gaps and the uneven nature of whistleblower protection detract from the enforcement of EU rules. In areas where breaches of Union law are often difficult to uncover, whistleblowers can be crucial. Ensuring that whistleblowers feel safe to report can lead to effective detection, investigation and prosecution of breaches of Union law that would otherwise have the potential to cause serious harm to the public interest.

Existing EU rules on whistleblower protection were developed reactively in the aftermath of scandals and to respond to emerging enforcement weaknesses in specific sectors. For instance, the EU moved to protect whistleblowers in financial services after the financial crisis, which exposed serious shortcomings in the enforcement of EU rules<sup>15</sup>. The Commission assessment shows that it is now time to act proactively and use whistleblower protection as a systemic part of enforcement of Union law not only in areas where serious harm to the public interest has already occurred, but also preventively.

Strengthening whistleblower protection gives effect to the Commission's commitment to put stronger focus on enforcement to serve the general interest, as set out in its 2016 Communication on 'EU Law: Better Results through Better Application'<sup>16</sup>. Better whistleblower protection can benefit the daily lives and the welfare of all Europeans by helping prevent serious risks to the public interest which can also spread beyond national borders. Moreover, the Commission consultation showed very strong support for legally binding minimum standards on whistleblower protection in Union law, particularly in the fight against fraud, corruption, tax evasion and tax avoidance, and in environmental protection and public health and safety.

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<sup>12</sup> <http://www.consilium.europa.eu/en/press/press-releases/2016/10/11-ecofin-conclusions-tax-transparency/>

<sup>13</sup> Such as Transparency International, the European Public Service Union and the European Federation of Journalists. A Eurocadres petition gathered over 81 000 signatures and support from over 80 relevant organisations <https://act.wemove.eu/campaigns/whistleblowers>.

<sup>14</sup> [https://ec.europa.eu/commission/state-union-2016\\_en](https://ec.europa.eu/commission/state-union-2016_en). This commitment was reaffirmed in the 2017 and 2018 Commission work programmes [https://ec.europa.eu/info/test-strategy/strategy-documents\\_en](https://ec.europa.eu/info/test-strategy/strategy-documents_en), [https://ec.europa.eu/info/sites/info/files/cwp\\_2018\\_en.pdf](https://ec.europa.eu/info/sites/info/files/cwp_2018_en.pdf)

<sup>15</sup> Communication of 8.12.2010 Reinforcing sanctioning regimes in the financial services sector, COM(2010) 716 final.

<sup>16</sup> 2017/C 18/02.

Furthermore, strong whistleblower protection at EU level safeguards the right to freedom of expression and media freedom, enshrined in Article 11 of the Charter of Fundamental Rights of the European Union. It gives effect to the Commission's commitments following up on the second Annual Colloquium on Fundamental Rights on 'Media pluralism and Democracy' of November 2016<sup>17</sup>. Whistleblowers will be more willing to speak to investigative journalists if they are protected from retaliation and are given the legal certainty they need to make an informed decision, fully aware of their rights and responsibilities.

#### *Better protection of the EU's financial interests*

Providing for strong whistleblower protection beyond the protection already granted to EU Staff can make it easier to detect, prevent and deter fraud, corruption, malpractices and other illegal activities affecting the EU's financial interests, thus strengthening the relevant enforcement system. This system is currently built around the work of national authorities and the European Anti-Fraud Office (OLAF). It will in future be boosted by the European Public Prosecutor's Office (EPPO), which will investigate and prosecute crimes affecting the EU budget.

As regards EU institutions and bodies, EU staff enjoys whistleblower protection under the Staff Regulations and the Conditions of Employment of Other Servants of the European Union. Since 2004, Council Regulation (EC, Euratom) No 723/2004<sup>18</sup> amended the Staff Regulations, *i.a.*, to put in place procedures for reporting any fraud, corruption or serious irregularity, and provide protection to EU staff reporting on breaches from adverse consequences.

#### *Contributing to a fair and well-functioning single market*

Robust whistleblower protection can contribute to the functioning of the single market in a number of ways.

Whistleblowers can help tackle insufficient enforcement of public procurement rules by national authorities and public utility operators<sup>19</sup>. This in turn can increase organisational integrity and accountability in the public and private sector and help prevent and detect corruption and other wrongdoings. In particular, undisclosed corruption depletes revenues and budgets, leading to inefficient provision of public services, distorts public investment and acts as a drag on economic growth, by creating business uncertainty, slowing processes and imposing additional costs<sup>20</sup>.

Protecting whistleblowers will also contribute to ensuring the level-playing field needed for the single market to properly function and for businesses to operate in a healthy competitive environment. Introducing strong whistleblower protection rules can improve businesses'

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<sup>17</sup> [http://ec.europa.eu/information\\_society/newsroom/image/document/2016-50/2016-fundamental-colloquium-conclusions\\_40602.pdf](http://ec.europa.eu/information_society/newsroom/image/document/2016-50/2016-fundamental-colloquium-conclusions_40602.pdf)

<sup>18</sup> Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004 amending the Staff Regulations of officials of the European Communities and the Conditions of Employment of other servants of the European Communities, OJ L 124, 27.4.2004, p. 1 (see Article 22 *bis*, *ter et quater*).

<sup>19</sup> A 2017 study for the Commission estimated lost potential benefits of EUR 5.8 to EUR 9.6 billion each year for the EU as a whole due to a lack of whistleblower protection, Milieu (2017), 'Estimating the economic benefits of whistleblower protection in public procurement' <https://publications.europa.eu/en/publication-detail/-/publication/8d5955bd-9378-11e7-b92d-01aa75ed71a1/language-en>

<sup>20</sup> [https://ec.europa.eu/info/sites/info/files/file\\_import/european-semester\\_thematic-factsheet\\_fight-against-corruption\\_en.pdf](https://ec.europa.eu/info/sites/info/files/file_import/european-semester_thematic-factsheet_fight-against-corruption_en.pdf)

capacity to detect and denounce malpractice early and prevent further economic and reputational damage.

Inside information is essential to bring to light infringements of Union competition law, including the State aid rules. It would serve to protect the efficient functioning of markets in the Union, allow a level playing field for business and deliver benefits to consumers. On competition rules applying to undertakings, whistleblower protection will add to the EU leniency policy, which offers companies involved in a cartel — which self-report and hand over evidence — total immunity from or a reduction in fines. This policy was strengthened in 2017 through: (i) a proposed directive to empower national competition authorities to be more effective enforcers, which envisages a certain form of protection for the employees of the first company that cooperates in investigations<sup>21</sup>; and (ii) an online tool that can be used to anonymously alert the Commission of breaches of antitrust law<sup>22</sup>. Reporting violations of the State aid rules reduces the risk of subsidies distorting competition in the single market. Whistleblowers can, in particular, play a significant role in reporting unlawfully granted aid and informing when aid is misused, both at national, regional and local levels.

By boosting corporate transparency, social responsibility and financial and non-financial performance, whistleblower protection can complement measures to increase business transparency on social and environmental matters<sup>23</sup> and contribute to the Commission's goal to develop an overarching and comprehensive EU strategy on sustainable finance, as outlined in its Action Plan for a greener and cleaner economy<sup>24</sup>.

Effective whistleblower protection can support the Commission's agenda to ensure fairer taxation in the EU, as outlined in the Communication responding to the Panama Papers scandal<sup>25</sup>. Whistleblowers can play a vital role in helping public authorities identify tax schemes that amount to evasion or avoidance, giving rise to unfair tax competition and resulting in lost tax revenues for Member States and for the overall EU budget. This complements recent EU initiatives to improve transparency in various policy areas and the exchange of tax information, such as: (i) the new rules on tax rulings<sup>26</sup>, (ii) the proposal requiring tax intermediaries like tax advisers, accountants, banks and lawyers to disclose tax planning schemes to tax administrations<sup>27</sup>, and (iii) the new rules requiring large multinationals to report to tax administrations information on where they make profits and where they pay their tax<sup>28</sup>. It also complements: (i) the proposed strengthening of anti-money

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<sup>21</sup> Proposal of 22 March 2017 for a Directive of the European Parliament and of the Council to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, COM(2017) 142 final -2017/0063 (COD).

<sup>22</sup> [http://europa.eu/rapid/press-release\\_IP-17-591\\_en.htm](http://europa.eu/rapid/press-release_IP-17-591_en.htm)

<sup>23</sup> Directive 2013/34/EU of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings (OJ L 182, p. 19), and Communication on Guidelines on non-financial reporting (2017/C 215/01).

<sup>24</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018DC0097>

<sup>25</sup> Communication of 5 July 2016 on further measures to enhance transparency and the fight against tax evasion and avoidance, COM(2016) 451.

<sup>26</sup> Council Directive (EU) 2015/2376 of 8 December 2015 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation, OJ L 332/1.

<sup>27</sup> Proposal for a Directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements COM(2017) 335 final 2017/0138 (CNS), on which political agreement has been reached on 13 March 2018.

<sup>28</sup> Proposal for a Directive of 12 April 2016 amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches, COM/2016/0198 final - 2016/0107 (COD).

laundering rules ensuring that tax authorities have access to vital information allowing them to clamp down on tax evasion and avoidance through offshore funds<sup>29</sup> and (ii) wider efforts to create a fairer corporate tax environment within the EU<sup>30</sup>.

Strong whistleblower protection in areas like product safety, public health and consumer protection, transport safety, environmental protection, nuclear safety, food and feed safety, animal health and welfare, protection of privacy and personal data and security of network and information systems, will contribute to the effective implementation of a range of further policies with direct impact on the completion of the single market and which directly affect the daily lives and the welfare of all Europeans.

A common high level of protection for people who report breaches of EU rules in the context of their work will raise the protection of workers, including workers' health and safety, in line with the Commission's aims, pursued in particular through the European Pillar of Social Rights<sup>31</sup>. Protection will extend to all those who are at risk of work-related retaliation when they speak up, including employees, self-employed people, freelancers, contractors, and suppliers, as well as volunteers and unpaid trainees. Protection will also be ensured for whistleblowers in cross-border situations, who, due to current differences between national rules, risk 'falling through the cracks' and suffering retaliation for seeking to protect the public interest.

Workplace culture in general should benefit from having effective channels for whistleblowing reports and from potential whistleblowers being reassured that it is safe and acceptable for them to speak up. Rules on whistleblower protection would run parallel to existing EU rules: (i) on equal treatment, which protect against victimisation in response to a complaint or to proceedings to enforce compliance with this principle<sup>32</sup> and (ii) on protection against harassment and safety and health at work<sup>33</sup>, where workers are entitled to raise issues with the competent national authorities if they consider that measures taken are inadequate to ensure safety and health and may not be placed at a disadvantage for it.

### **3. A framework for effective protection of whistleblowers in the EU**

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<sup>29</sup> Proposal for a Directive amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directive 2009/101/EC, COM(2016) 450 final 2016/0208 (COD).

<sup>30</sup> Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (as amended); Proposal for a Directive on a Common Consolidated Corporate Tax Base, COM/2016/0683 final — 2016/0336; Proposal for a Directive on a Common Corporate Tax Base, COM/2016/0685 final — 2016/0337.

<sup>31</sup> Particularly principles 5 (fair working conditions) and 7b (protection in case of dismissals) [https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights/european-pillar-social-rights-20-principles\\_en](https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights/european-pillar-social-rights-20-principles_en).

<sup>32</sup> Directive 2006/54/EC of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast); Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services; Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation; Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

<sup>33</sup> Directive 89/391/EC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work OJ L 183, 29.6.1989, p. 1; Autonomous framework agreements signed by the European social partners on 26 April 2007 on harassment and violence at work and on 8 October 2004 on work-related stress.



The Commission's proposal for a Directive sets out minimum standards for whistleblower protection in areas with a clear EU dimension and where the impact on enforcement is the strongest. Effective whistleblower protection is needed to improve enforcement of Union law in areas where:

- breaches of EU law may cause serious harm to the public interest;
- a need to strengthen enforcement has been identified; and
- whistleblowers are in a privileged position to disclose breaches.

The proposal therefore focuses on whistleblowers reporting on unlawful activities or breaches of Union law in the areas of: (i) public procurement; (ii) financial services, prevention of money laundering and terrorist financing; (iii) product safety; (iv) transport safety; (v) environmental protection; (vi) nuclear safety; (vii) food and feed safety, animal health and welfare; (viii) public health; (ix) consumer protection; (x) protection of privacy and personal data and security of network and information systems. It also applies to breaches relating to Union competition rules, breaches harming the EU's financial interests and, in view of their negative impact on the proper functioning of the internal market, to breaches of corporate tax rules or arrangements whose purpose is to obtain a tax advantage that defeats the object or purpose of the applicable corporate tax law.

To ensure that the scope of the Directive remains up to date, the Commission will pay special attention to the possible need, in any future Union act where whistleblower protection is relevant and can contribute to more effective enforcement, to extend its scope to further areas or Union acts. This will also be given consideration when the Commission reports on implementation of the Directive.

The minimum standards in the proposed Directive aim for consistently high whistleblower protection across the EU. They aim to ensure that:

- potential whistleblowers have clear reporting channels available to report both internally (within an organisation) and externally (to an outside authority);
- when such channels are not available or cannot reasonably be expected to work properly, potential whistleblowers can resort to public disclosure;
- competent authorities are obliged to follow up diligently on reports received and give feedback to whistleblowers;
- retaliation in its various forms is prohibited and punished;
- if whistleblowers do suffer retaliation, they have easily accessible advice free of charge, they have adequate remedies at their disposal e.g. interim remedies to halt ongoing retaliation such as workplace harassment or to prevent dismissal pending the resolution of potentially protracted legal proceedings; reversal of the burden of proof, so that it is up to the person taking action against a whistleblower to prove that it is not retaliating against the act of whistleblowing;

These minimum standards also provide for safeguards to:

- protect responsible whistleblowing genuinely intended to safeguard the public interest;
- proactively discourage malicious whistleblowing and prevent unjustified reputational damage;
- fully respect the rights of defence of those concerned by the reports.

In particular:

- whistleblowers qualify for protection if they had reasonable grounds to believe that the information reported was true at the time of reporting;
- whistleblowers are generally required to use internal channels first; if these channels do not work or could not reasonably be expected to work, for instance where the use of internal channels could jeopardise the effectiveness of the investigative actions by the competent authorities, they may report to these authorities, and then to the public/media, if no appropriate action is taken or in particular circumstances, such as imminent or manifest danger for the public interest;
- Member States shall provide for proportionate sanctions to dissuade malicious or abusive reports or disclosures;
- those concerned by the reports fully enjoy the presumption of innocence, the right to an effective remedy and to a fair trial, and the rights of defence.

### *Supporting and other measures at EU level*

In addition to the minimum standards in the proposed Directive, the Commission is supporting effective whistleblower protection through other measures.

As part of its action to defend journalists and media freedom, and at the initiative of the European Parliament, the Commission is currently co-funding projects run by the European Centre for Press and Media Freedom. The projects provide practical and legal help to journalists under threat and training in digital self-defence for journalists. Since February 2018, they include a funding scheme for cross-border investigative journalists<sup>34</sup>. The Commission also funds the Media Pluralism Monitor, a project measuring risks to media pluralism in the EU, using indicators such as protection of freedom of expression, journalistic standards and protection of journalists<sup>35</sup>.

Through its anti-corruption experience-sharing programme<sup>36</sup>, the Commission has also been facilitating exchanges of best practice across the EU and funding projects enabling whistleblowers to benefit from better information about their legal rights and obligations, gain access to safe and reliable channels to report wrongdoing, and receive adequate organisational support. For example, one of the priorities of the current call for proposals under the ‘Internal Security Fund Police’ on preventing corruption is to promote tools for civil oversight and investigative journalism and for assisting whistleblowers with technical and legal aid<sup>37</sup>. The Commission will also continue to monitor Member States’ efforts to fight corruption, including whistleblower protection, as part of the European Semester.

As part of its strategy for effective enforcement of EU rules<sup>38</sup>, the Commission considers that the European Network of Ombudsmen plays an important role. This network is coordinated by the European Ombudsman and brings together national and regional Ombudsmen to

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<sup>34</sup> Under a Parliament preparatory action on cross-border investigative journalism, EUR 1 million was allocated to the European Centre for Press and Media Freedom to carry out these activities. The project started on 1 February 2018.

<sup>35</sup> <http://cmpf.eui.eu/media-pluralism-monitor/>

<sup>36</sup> [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/experience-sharing-programme/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/experience-sharing-programme/index_en.htm)

<sup>37</sup> <https://ec.europa.eu/research/participants/portal/desktop/en/opportunities/isfp/topics/isfp-2017-ag-corrupt.html>

<sup>38</sup> Communication ‘EU Law: Better Results through Better Application’, cited above.

promote good administration in the national application of EU law. The members of this Network could handle, according to their competence, complaints in cases of maladministration for failure to act upon whistleblower reports, namely in cases where reports by whistleblowers did not trigger a proper investigation and follow-up at national level. The European Ombudsman could draw a report on the information that Network's members may provide to it regarding activities and inquiries on whistleblower protection and forward that report to the Commission and the Parliament.

The Commission will also support Member States in transposing the Directive, so as to ensure as much consistency as possible. The Commission will meet bilaterally with Member State authorities to discuss issues arising at national level and provide a platform where they can exchange information on transposition and share experiences and expertise.

#### **4. Member State measures**

##### *Towards comprehensive whistleblower protection in Member States*

Whistleblower protection brings value added when it comes to better enforcement of EU law in certain areas, but its benefits for protecting the public interest are wider and also extend beyond the realm of EU law. This is why many Member States have introduced national frameworks for whistleblower protection. An effective, comprehensive approach to whistleblower protection requires legal certainty and a consistent approach to, for instance, combat fraud, corruption and other unlawful activities affecting public budgets, including national funds. In the lead-up to the adoption of the proposed Directive, the Commission encourages Member States to apply the Council of Europe's principles in its Recommendation cited above and the European Court of Human Rights case-law on the right to freedom of expression. These, together with the principles set out in the proposed Directive, can serve as a common framework for those Member States who intend to ensure, in a broadly consistent way, the effective protection of whistleblowers also beyond the areas covered by the proposal.

Comprehensive and consistent national rules on whistleblower protection bring a number of benefits:

- They enhance accountability, transparency and good governance, and aid the fight against corruption.
- They benefit the investment climate and increase trust in public institutions.
- They give citizens the necessary clarity and legal certainty on the protection available, reassuring potential whistleblowers and encouraging them to come forward.

##### *Awareness raising*

Experience at national level and available evidence show that rules on whistleblower protection also need to raise awareness effectively. In addition to adopting the proposed Directive, the Commission encourages Member States to consider further measures including practical ones, such as raising awareness and general public information. The aim would be to:

- promote a positive perception of whistleblowers as people acting for the public good and out of loyalty to their organisation and society; and
- provide general information about available reporting channels and protection<sup>39</sup>.

Effective whistleblower protection on the ground may also benefit from more targeted, tailor-made measures. Inspiration may be drawn from existing international standards and recommendations<sup>40</sup> and from measures taken in different national contexts.

#### *Guidance for the work context*

Employees of public and private organisations and all other categories of people who come in contact with such organisations in their work need user-friendly information on the rules so that they understand their meaning and practical implications<sup>41</sup>. A public and easily accessible list of authorities indicating which authority is best placed to handle a specific issue in view of its role and mandate may also increase the legal certainty of potential whistleblowers<sup>42</sup>.

Guidance to employers in both public and private organisations can help them understand their rights and responsibilities when setting up and running reporting procedures, handling and investigating reports and preventing and addressing retaliation<sup>43</sup>.

Even where law, policies and guidelines exist, potential whistleblowers may have questions about how these might apply to their specific case. Advisory and support services to whistleblowers may be provided by independent public authorities<sup>44</sup> or by civil society<sup>45</sup> and trade unions, possibly for free or with public support.

#### *Support to business, in particular small and medium-sized companies*

Guidance for business and industry can make the business case for whistleblowing in terms of preventing and addressing damage to reputation and performance. Codes of good practices can help instil a consistent level of best practice across organisations and help businesses

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<sup>40</sup> E.g., in addition to the Council of Europe Recommendation on Protection of Whistleblowers, the OECD (2016) Report Committing to Effective Whistleblowers Protection <http://www.oecd.org/corporate/committing-to-effective-whistleblower-protection-9789264252639-en.htm>, the UN Resource guide on good practices in the protection of reporting persons [https://www.unodc.org/documents/corruption/Publications/2015/15-04741\\_Person\\_Guide\\_eBook.pdf](https://www.unodc.org/documents/corruption/Publications/2015/15-04741_Person_Guide_eBook.pdf); the G20 Compendium of best practices and guiding principles for legislation on the protection of whistleblowers <https://www.oecd.org/g20/topics/anti-corruption/publicationsdocuments/2/>; the Transparency International ‘International Principles for Whistleblower Legislation’ (2013), the 2003 OECD Recommendation on Guidelines for Managing Conflict of Interest in the Public Service <http://www.oecd.org/development/governance-development/33967052.pdf> and the ‘Best practice guide for whistleblowing legislation (2018) [https://www.transparency.org/whatwedo/publication/international\\_principles\\_for\\_whistleblower\\_legislation](https://www.transparency.org/whatwedo/publication/international_principles_for_whistleblower_legislation).

<sup>41</sup> E.g. the UK Government Whistleblowing ‘Guidance for employees’ <https://www.gov.uk/whistleblowing>; Ireland’s Industrial Relations Act 1990 (Code of Practice on Protected Disclosures Act 2014) for employers, workers and their representatives <http://www.irishstatutebook.ie/eli/2015/si/464/made/en/print>.

<sup>42</sup> E.g. ‘Whistleblowing: list of prescribed people and bodies’ in the UK <https://www.gov.uk/whistleblowing>

<sup>43</sup> E.g. the Code of Practice on Protected Disclosures Act 2014 in Ireland, cited above, and the UK Government Whistleblowing ‘Guidance and code of practice for employers’ <https://www.gov.uk/whistleblowing>.

<sup>44</sup> Such as the Défenseur des Droits in France or the Whistleblowers Authority in the Netherlands.

<sup>45</sup> Examples include the whistleblowing charity Public Concern at Work in the UK and Transparency International, which operates Advocacy and Legal Advice Centres across the world.

create whistleblowing policies adapted to organisation size<sup>46</sup>. Such codes have been developed internationally<sup>47</sup> and in national contexts, by private<sup>48</sup> and public actors<sup>49</sup>.

SMEs setting up and/or managing reporting channels may need financial, technical or other practical support. Member States could, for instance, entrust a body with the task of providing reporting channels for such businesses<sup>50</sup>. SMEs may also be encouraged to pool their resources to share (external) confidential counsellors and investigative capacity. Employer organisations and trade unions, sector-specific associations, umbrella and professional organisations may also be encouraged to provide support by taking on and centralising the role of providing persons of confidence/legal experts to provide advice, receive reports and even carry out investigations.

#### *Guidance to staff of national authorities*

Guidance may also benefit staff at national authorities receiving and handling whistleblower reports. Such authorities may range from tax authorities to regulatory agencies on environmental protection and food safety. Guidance can help them understand their role and responsibilities in their specific fields, and provide them with good practice beyond the legislation<sup>51</sup>.

#### *Training*

Dedicated staff within competent authorities receiving and handling reports clearly need appropriate training<sup>52</sup>. Public officials may also benefit more generally from training as part of induction and on-the-job training courses on integrity standards<sup>53</sup>. Guidance for the private sector could also set minimum training standards for organisations and give employers a responsibility to properly promote the policy among employees<sup>54</sup>. Training for judges and

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<sup>46</sup> E.g. the practical guide to SMEs by the French Business Confederation MEDEF on how to meet obligations under French law on whistleblower protection, including on setting up internal reporting channels <http://www.medef.com/uploads/media/node/0001/13/7365147ef346ac642e4b03566a9b94306eee839f.pdf>.

<sup>47</sup> E.g. the Anti-corruption ethics and compliance handbook for business by OECD, UNODC and the World Bank (2013) <http://www.oecd.org/corruption/Anti-CorruptionEthicsComplianceHandbook.pdf> International Chamber of Commerce guidelines on whistleblowing. (2008) <https://iccwbo.org/publication/icc-guidelines-on-whistleblowing/> and the OECD Guidelines for Multinational Enterprises (2011) <https://www.oecd.org/daf/inv/mne/oecdguidelinesformultinationalenterprises.htm>.

<sup>48</sup> E.g. the Whistleblowing arrangements Code of practice developed by Public Concern at Work in collaboration with the British Standards Institution (2008) [https://uk.practicallaw.thomsonreuters.com/0-386-5339?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/0-386-5339?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1)

<sup>49</sup> E.g. the Practical guides related to Integrity in Practice by the Dutch Whistleblowers Authority, specifically 'The reporting procedure' and 'Towards an ethical culture' <https://huisvoorklokkenluiders.nl/whistleblowers-authority-huis-voor-klokkenluiders-english/>; and the UK Whistleblowing 'Guidance and code of practice for employers', cited above.

<sup>50</sup> Paragraph 62 of the 2014 Council of Europe Recommendation on Protection of Whistleblowers cited above.

<sup>51</sup> E.g. UK [Prescribed Persons guidance](#) and Ireland: [Guidance for the purpose of assisting public bodies in the performance of their functions](#).

<sup>52</sup> Ireland has made it possible for public bodies to get training on how to deal with protected disclosures <https://irl.eu-supply.com/app/rfq/publicpurchase.asp?PID=112518>

<sup>53</sup> See OECD Recommendation on Public Integrity (2017) <http://www.oecd.org/gov/ethics/Recommendation-Public-Integrity.pdf>

<sup>54</sup> See recommendation by Transparency International in the 2018 'Best practice guide for whistleblowing legislation' cited above.

legal practitioners may be particularly important to ensure effective implementation of the legislation.

## 5. Conclusion

Robust whistleblower protection would enrich the EU toolkit for strengthening the correct application of EU law and respect for transparency, good governance, accountability and freedom of expression, which are values and rights on which the EU is based.

The Commission is proposing a **balanced set of measures at EU level** in specific areas with a clear EU dimension and where the impact on enforcement is the strongest, whistleblower reports are infrequent and undetected violations of EU law may result in serious harm to the public interest. A balanced approach is also ensured in terms of limiting the burden for national authorities and business, particularly small and micro companies. Finally, the proposed Directive strikes a balance between the need to protect whistleblowers and those who are concerned by the reports, to avoid abuses.

The introduction of whistleblower protection rules at EU level would contribute to protecting the financial interests of the Union and to ensuring the level playing field needed for the single market to properly function and for businesses to operate in a fair competitive environment.

While at EU level, in line with the principle of subsidiarity, the proposed Directive establishes whistleblower protection measures targeted to the enforcement of Union law in specific areas, the Commission encourages the Member States, when transposing the Directive, to consider extending its scope of application to other areas, and more generally to ensure a comprehensive and coherent framework at national level.

A comprehensive approach is indispensable in order to recognise the whistleblowers' significant contribution to preventing and tackling unlawful conducts harming the public interest, and to ensure they are properly protected across the EU. Protecting whistleblowers merits the full commitment and joint efforts of all EU institutions, Member States and stakeholders.