

# ECA Issues Statement on Planned Whistleblower Directive

Thomas Wahl

## News

The European Court of Editors (ECA) examined the Commission proposal for a directive on the protection of whistleblowers (COM(2018) 218 final, see [eu crim 1/2018](#), p. 27). In [Opinion 4/2018](#), the ECA generally welcomes the legislative initiative, but believes that the Directive could become too complex and possibly ineffective in some points.

First, the ECA identifies several advantages of the proposed EU Directive on whistleblowing:

- Improved management of EU policies from the “bottom up” through the actions by employees and citizens;
- Support for the “top-down approach” when infringement procedures are initiated by the Commission against Member States;
- Increased awareness on the part of citizens, especially regarding their crucial role in applying EU law;
- Help when detecting systematic problems in Member States;
- Savings to the EU budget when reports of whistleblowers concern the EU’s financial interests;
- Support for the EU legislator to close loopholes/gaps in the financial management of EU funds;
- Feed audit works, such as those of the ECA.

The ECA opinion mainly criticises the material scope of the proposal. Although the proposed article (Art. 1) takes into account the division of powers between the Union and its Member States, the limitation of applicability of the whistleblower Directive puts a reporting person in a difficult situation. He/she needs to make a complex assessment as to whether his/her planned report is covered by EU rules or rules of national law. In this context, the opening clause giving Member States the possibility to extend the scope of the Directive to “other areas” is rather weak.

The opinion notes, however, that the complex scope is partly mitigated by various provisions that give whistleblowers information, advice, and assistance and by measures against retaliation.

The ECA further analyses the following elements of the Commission proposal in detail:

- Personal scope;
- Obligation to establish internal channels and procedures for reporting and follow-up of reports;
- Procedures for internal reporting and follow-up reports;
- Conditions for the protection of reporting persons;
- Measures against retaliation;
- Reporting, evaluation, and review.

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The Opinion concludes that the protection of whistleblowers can only be successful if a trustful corporate culture is established of which whistleblowing is an accepted part. Furthermore, public interest in the information revealed should guide the legal action. Member States should not be allowed to withhold protection based on the reporting person's subjective intentions or specific motivations.

The ECA opinion is not binding for the EU's legislative authorities (Council and European Parliament), but it enhances the legislative work.

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