

# EESC Opinion on Whistleblower Directive

Thomas Wahl

News

On 18 October 2018, the Economic and Social Committee (EESC) adopted an opinion on the Commission's plans to strengthen the protection of whistleblowers at the EU level.

The EESC mainly concludes that whistleblower protection is an important tool to help companies address unlawful and unethical acts. It calls on the Commission to review the legal basis for the planned directive (see COM(2018) 218 final and eucrim 1/2018, p. 27) so as to include workers' rights under Art. 153 TFEU.

The EESC made, *inter alia*, the following additional recommendations:

- Former employees, trade union representatives, and legal persons should be included and benefit from the same protection;
- The directive must also protect whistleblowers who initially reported anonymously but whose identity was subsequently revealed.
- In the interest of fairness and legal certainty, a two-stage reporting procedure should be put in place that initially gives the whistleblower a free choice to access internal channels or the competent authorities; and subsequently, if necessary, to access civil society/the media;
- At any stage in the reporting process, whistleblowers should have access to trade union representatives who should be empowered to represent them and to provide advice and support;
- The current proposal that the whistleblower must provide *prima facie* evidence that the retaliation is a consequence of the report should be eliminated since the burden of proof should fully be shifted to the employer;
- The directive must provide full compensation for damages, without any ceiling, and should not refer the matter of compensatory measures to the national law;
- An explicit non-regression clause should be included to clarify that implementation of the directive does not diminish more favourable rights granted to whistleblowers prior to this directive in the Member States.

To change the public perception of whistleblowers, the EESC ultimately calls on the Commission to introduce provisions for awareness-raising campaigns at the European and national levels, including campaigns aimed at young people.

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