

EP and Council Agree on Directive Protecting Whistleblowers



Thomas Wahl

News

The European Parliament and the Council [reached a compromise](#) on new EU legislation as regards the protection of whistleblowers. The initiative for a directive that aims to lay down uniform minimum standards for the protection of persons who report unlawful activities or abuse of EU legislation goes back to a Commission proposal of 23 April 2018 (see [eucrim 1/2018, 27](#); for the debate, see [eucrim 3/2018, 157-159](#)).

The directive applies to a wide range of areas, including:

- Public procurement;
- Financial services;
- Money laundering;
- Product and transport safety;
- Nuclear safety;
- Public health;
- Consumer and data protection.

Which rules should be established in view of the reporting channels was a main point of discussion up to the last moment. Although the majority of Member States favoured a strict three-tiered approach, which included the obligation for whistleblowers to use internal reporting channels first, the [European Parliament could push through](#) its flexible approach. Accordingly, whistleblowers are “encouraged” to use internal channels before resorting to external reporting. They are not obliged to do so, however, particularly if the offence cannot be effectively remedied internally or if the reporting person considers that there is a risk of retaliation. Whistleblowers who disclose information publicly are also protected if no appropriate action was taken in response to their initial report or if they believe there is an imminent danger to the public interest or a risk of retaliation.

To meet demands from lawyers’ organisations, it was clarified that the Directive does not affect the protection of confidentiality of communications between lawyers and their clients.

Compared to the Commission proposal, further important amendments relate to safeguards against retaliation. Accordingly, the scope of the Directive has been extended to facilitators and to third persons connected with reporting persons who may suffer retaliation in a work-related context, such as colleagues or relatives.

Member States will be obliged to guarantee whistleblowers access to comprehensive and independent information. Whistleblowers must also be able to obtain advice on available procedures and remedies free of charge as well as legal aid during proceedings. During legal proceedings, they may also receive financial and psychological support.

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The new EU legislation on the protection of whistleblowers must now be formally adopted in the Council and will undergo linguistic review before publication in the Official Journal. Once it enters into force, Member States will have two years to implement the Directive into their national legislation.

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