



Brussels, 18 September 2018  
(OR. en)

12191/18

---

---

**Interinstitutional File:  
2018/0106(COD)**

---

---

**LIMITE**

<b>FREMP 143</b>	<b>ENFOCUSTOM 185</b>
<b>JAI 884</b>	<b>AGRI 423</b>
<b>TELECOM 294</b>	<b>ETS 33</b>
<b>COMPET 603</b>	<b>SERVICES 58</b>
<b>RC 22</b>	<b>TRANS 388</b>
<b>CONSOM 254</b>	<b>FISC 362</b>
<b>DAPIX 281</b>	<b>SAN 270</b>
<b>DATAPROTECT 180</b>	<b>ENV 598</b>
<b>DROIPEN 128</b>	<b>GAF 43</b>
<b>FIN 670</b>	<b>ATO 60</b>
<b>EMPL 422</b>	<b>CYBER 197</b>
<b>MI 639</b>	<b>COPEN 298</b>
<b>PI 123</b>	<b>POLGEN 151</b>
<b>SOC 535</b>	<b>INF 169</b>
<b>CODEC 1472</b>	<b>ANIMAUX 13</b>

**NOTE**

---

From:	Presidency
On:	18 September 2018
To:	Delegations

---

No. Cion doc.:	8713/18
----------------	---------

---

Subject:	Proposal for a Directive of the European Parliament and of the Council on the protection of persons reporting on breaches of Union law - <i>Further proceedings</i>
----------	--

---

**I. INTRODUCTION**

The Presidency wishes to thank delegations for their active participation in the first reading of the draft Directive on the protection of persons reporting on breaches of Union law.

At this meeting, delegations are invited to give their general comments on the recitals. A more detailed examination will take place at a later stage.

To facilitate discussion in the Working Party and prepare for future proceedings, delegations will find all written comments received so far set out in WK 10535/18.

For the purpose of immediate further discussions, the Presidency considers that the issues under point II below are among the most important questions raised during the first reading.

## **II. SUMMARY OF THE PROCEEDINGS**

At its meetings on 12-13 July and 10-11 September 2018, FREMP started the examination of the operative articles of the proposal. Article 1 (material scope) was only considered preliminarily. The Presidency is aware that some delegations have various questions regarding the proposed material scope and suggests to tackle them at a later stage.

In general, a large majority of delegations welcomed the Commission's proposal and expressed support for the initiative. At this stage, several delegations maintain general scrutiny reservations and some have entered parliamentary reservations. The Presidency also notes that, in light of the broad material scope covered by this proposal and the relevant national legislation on this matter, some delegations have yet to agree on a position at national level.

In the view of the Presidency, the most important questions raised during the first reading of the articles are as follows:

1. Member States expressed doubts about the relation of this Directive, as *lex generalis*, with existing Union sectoral legislation and asked for clarifications in order to ensure legal certainty and clarity and avoid overlaps.
2. It was underlined the need to ensure that protection is granted to persons whose reports are made in the public interest and that a balance between the interests of whistleblowers and those of concerned persons and entities is achieved. Furthermore it was stressed that only those acting in good faith should benefit from protection.
3. Several delegations expressed the need to explicitly safeguard defence secrets or national security information as well as trade secrets, professional and medical secrecy.

4. On the personal scope (Article 2), questions were raised regarding the definition of 'worker'. Some delegations disagree with the inclusion of shareholders. Objections have also been raised on the provisions on the inclusion of candidates for employment, unpaid trainees and volunteers, since enforcement would be difficult due to the lack of an employment relationship.
5. The definition of 'breach' in Article 3 seemed imprecise, in particular the concept of 'abuse of law', which could be replaced by 'misconduct'<sup>1</sup>. Some delegations favoured the insertion of a seriousness criterion regarding the breach to be reported.
6. The definition of 'reporting person' also includes legal persons, which raised a number of questions and objections needing further clarification.
7. In relation to legal entities in the private sector which will be obliged to establish internal channels, some concerns were expressed about compliance with the principle of subsidiarity and the need to avoid excessive administrative burdens for the private sector.
8. On internal reporting, issues raised concerned the confidential treatment of the whistleblower and the report, the definition of 'feedback' and whether legal entities would be obliged to provide all of the reporting channels described in Article 5.
9. On external reporting, questions were raised regarding professionally trained dedicated staff, feedback mechanisms and time limits for record-keeping, among other matters.
10. Some delegations suggested introducing a general provision explaining the tiered system of reporting channels and public disclosure and possibly specifying forms of cooperation between internal and external channels, to ensure adequate follow-up. Several delegations asked for clarification as to how external channels should deal with reports that might lead to or be linked to criminal proceedings.

---

<sup>1</sup> This term is already used in the 'Trade secrets' Directive (Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure).

11. Articles 15 (protection measures for whistleblowers) gave rise to a number of objections and concerns about legal issues, in particular the reversal of the burden of proof and exemption from any liability in respect of the disclosure.
12. A number of delegations asked for more precisions on the type of sanctions to be provided for in national law (Article 17).

### **III. QUESTIONS**

The Presidency invites delegations to reply to the following two questions at the next Working Party:

- 1) With a view to future proceedings, in particular a second reading of Articles 2-23, is there any specific matter your delegation wishes to see dealt with by the Working Party as a priority?
- 2) Does your delegation have any views on the written comments submitted, as set out in WK10535/18?

---