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OPINION OF THE LEGAL SERVICE¹

From:	Legal Service
To:	Working Party on Fundamental Rights, Citizens Rights and Free Movement of Persons (FREMP)
Subject:	Commission proposal for a Directive of the European Parliament and of the Council on the protection of persons reporting on breaches of Union law ("whistleblowers" proposal) - legal basis

¹ This document contains legal advice protected under Article 4(2) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, and not released by the Council of the European Union to the public. The Council reserves all its rights in law as regards any unauthorised publication.

In ST 14620/18 INIT

- In paragraph 12, on page 6, the first sentence should read:

'...the proposal does not **contain any reference in its operational part to secondary legislation related to the policy field** described in **Article 1(1) (d).**'
- Footnote 13, on page 6, should read:

'OJ L 193, 19.7.2016, p. 1–14; special legislative procedure...'
- In paragraph 19, on page 9, the first sentence should read:

'...investigation and prosecution **of breaches** of Union law in specific policy areas.'
- In paragraph 22, on page 10, the fourth line should read:

'... external reporting channels and procedures for receiving and following up **on reports.**
This Chapter sets out the minimum standards...'
- In paragraph 27, on page 12, the third line should read:

'...and hence **the subject matters corresponding to these legal bases** will need to be adopted...'
- Footnote 26, on page 13, should read:

'Case C-270/12, United Kingdom v European Parliament and Council, EU:C:2014:18, paragraph **100.**'
- In footnote 27, on page 13, the first sentence should read:

'Case C-491/01, R v Secretary of State for Health, ex parte British American Tobacco, EU:C:2002:741, **paragraphs 60-61.**'

- In paragraph 35, on page 15, the last sentence should read:

'It follows that Decision No 1082/2013/EU listed under **Part I H (3)**...'

- Footnote 36, on page 16, should read:

'See Article 58(1), 91 and 207(5) TFEU; Case C-97/78, Schumalla, EU:C:1978:211, paragraph 4; Joined Cases C-248/95 and C-249/95, SAM Schiffahrt and Stapf, EU:C:1997:377, paragraph 23; Case C-176/09, Luxembourg v Parliament and Council, EU:C:2011:290, paragraph 34; Case C-344/04, IATA and ELFAA, EU:C:2006:10, paragraph 80; Joined Cases C- 27/00 and C-122/00, Omega Air and Others, EU:C:2002:161, paragraph 63; Case C-440/05, Commission v Council, EU:C:2007:625, paragraph 58; Case C-338/09, Yellow Cab Verkehrsbetrieb, EU:C:2010:814, paragraph 30; Joined cases C-184/02 and C-223/02, Kingdom of Spain and Republic of Finland v. European Parliament and Council, EU:C:2004:497, paragraphs 29 et seq.'

- In point 2(a) of paragraph 49, on page 23, the first line should read:

'for the Union acts relating to Nuclear Safety, referred to in Article 1(1) (a) (**vi**) of the Commission's proposal...'

- Point 2(c) of paragraph 49, on page 23, should read:

'... referred to in Article 1(1) (**d**), as a separate act will need to be based on the special legislative procedure set out in Article 115 TFEU.'
