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

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**LIMITE**

<b>FREMP 38</b>	<b>ENFOCUSTOM 47</b>
<b>JAI 253</b>	<b>AGRI 127</b>
<b>TELECOM 113</b>	<b>ETS 10</b>
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<b>EMPL 159</b>	<b>CYBER 76</b>
<b>MI 238</b>	<b>COPEN 94</b>
<b>PI 53</b>	<b>POLGEN 47</b>
<b>SOC 205</b>	<b>INF 49</b>
<b>CODEC 636</b>	<b>ANIMAUX 11</b>

**NOTE**

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From:	Presidency
To:	Permanent Representatives Committee
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the protection of persons reporting on breaches of Union law : Confirmation of the final compromise text with a view to agreement

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**INTRODUCTION**

1. On 25 January 2019 Coreper agreed on a mandate<sup>1</sup> for negotiations with the European Parliament on the text of the draft Directive on the protection of persons reporting on breaches of Union law ("Whistleblowers Directive") - 2018/0106 (COD).
2. Negotiations with the European Parliament started on 29 January 2019 with a view to reaching a first reading agreement on this file before the European Parliament elections next May. In order to achieve this goal, the European Parliament should vote the text as agreed at its last Plenary on 15-18 April 2019.

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<sup>1</sup> 5747/19

3. At its meeting on 6 March 2019, Coreper agreed on additional flexibility for the Presidency as regards the use of reporting channels, as presented in doc. 7005/19.
4. After four trilogues and intensive sessions of work at technical level, a final trilogue was held on 11 March 2019: all outstanding political issues could be settled, in the framework of an overall package agreement.

## **MAIN ELEMENTS OF THE FINAL COMPROMISE TEXT**

### *A. Material Scope*

5. The protection of workers (Articles 153 and 157 TFEU) is not included in the scope; however, this area is mentioned in the review clause (Article 21 paragraph 3) and the Commission will carefully assess in the future whether to extend the scope of the Directive.
6. The Annex contains an exhaustive list of areas/legal acts covered by the Directive; a specific paragraph has been added to Article 1 to clarify that, when transposing the Directive, Member States may introduce national provisions to extend the protection to persons reporting on matters not covered by the Directive.

### *B. Personal scope*

7. The Directive grants protection, in a work-related context, also to natural persons assisting the reporting persons ('facilitators') and to third persons connected with the reporting persons and who may suffer retaliation (Article 2 paragraph 2a).

### *C. Use of reporting channels*

8. The compromise text includes the obligation to establish internal reporting channels in all companies of 50 employees or more and municipalities of more than 10 000 inhabitants (Article 4 paragraph 3). However, provisions have been introduced to ease the burden on SMEs: such an obligation will have to be transposed into national law only four years after the entry into force of the Directive (Article 20 paragraph 1bis) and it will be possible for companies with less than 250 employees to share resources as regards the receipt and possible investigations of reports (Article .4 paragraph 3ter).

9. The compromise text provides that Member States are to encourage whistleblowers to use first internal reporting channels since internal reporting contributes to the early and effective resolution of risks for the public interest as well as to preventing unjustified reputational damage, which may result from public disclosure (Article 2bis and recital 37). At the same time, it is necessary to allow the reporting person to be able to choose the most appropriate channel, depending on the individual circumstances of the case. In any event, whistleblowers would not lose the protection granted by the Directive if they decide to report directly through external channels.

#### *D. National Security*

10. Article 1bis paragraph 1bis clearly sets out that the Directive will not affect the responsibility of Member States to ensure national security and their power to protect their essential security interests. Moreover, specific reference is made to procurement rules involving defense or security aspects, which are out of the scope of the Directive, unless they are covered by the relevant instruments of the Union.

#### *E. Cooperation between Member States*

11. As regards cooperation between Member States, neither have additional obligations been introduced nor have new mechanisms been established. A recital recalls the multiple mechanisms already in place in many of the areas under the scope of the Directive and the review clause (Article 21 paragraph 3) includes the obligation for the Commission to assess the functioning of those mechanisms and report to the Council and the European Parliament.
12. In view of the above, and when compared to the Council negotiating mandate, the compromise text appears to be well balanced.

## CONCLUSION

13. The Permanent Representatives Committee is invited to approve the final compromise text as set out in Annex to this document and to agree to send a letter to the EP accordingly, with a view to securing an agreement on this legislative file.
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2018/0106 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on the protection of persons reporting on breaches of Union law**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 16, 43(2), 50, 53(1), 91, 100, 114, 168 (4), 169, 192(1) and 325(4) thereof and to the Treaty establishing the European Atomic Energy Community, and in particular Article 31 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Having regard to the opinion of the Committee of the Regions<sup>3</sup>

Having regard to the opinion of the Court of Auditors<sup>4</sup>,

Having regard to the opinion of a group of persons appointed by the Scientific and Technical Committee from among scientific experts in the Member States, in accordance with Article 31 of the Treaty establishing the European Atomic Energy Community,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Persons who work for a public or private organisation or are in contact with it in the context of their work-related activities are often the first to know about threats or harm to the public interest which arise in this context. By ‘blowing the whistle’ they play a key role in exposing and preventing breaches of the law that are harmful to the public interest and in safeguarding the welfare of society. However, potential whistleblowers are often discouraged from reporting their concerns or suspicions for fear of retaliation. In this context, the importance of providing balanced and effective whistleblower protection is increasingly acknowledged both at European and international level.
- (2) At Union level, reports and public disclosures by whistleblowers are one upstream component of enforcement of Union law and policies: they feed national and Union enforcement systems with information, leading to effective detection, investigation and prosecution of breaches of Union law, thus enhancing transparency and accountability.
- (3) In certain policy areas, breaches of Union law – regardless their qualification under national law as administrative, criminal or other types of breaches - may cause serious harm to the public interest, in the sense of creating significant risks for the welfare of society. Where weaknesses of enforcement have been identified in those areas, and whistleblowers are usually in a privileged position to disclose breaches, it is necessary to enhance enforcement by introducing effective, confidential and secure reporting channels and by ensuring effective protection of whistleblowers from retaliation.
- (4) Whistleblower protection currently provided in the European Union is fragmented across Member States and uneven across policy areas. The consequences of breaches of Union law with cross-border dimension uncovered by whistleblowers illustrate how insufficient protection in one Member State not only negatively impacts on the functioning of EU policies in that Member State but can also spill over into other Member States and into the Union as a whole.
- (5) Accordingly, common minimum standards ensuring effective whistleblower protection should apply in those acts and policy areas where i) there is a need to strengthen enforcement, ii) under-reporting by whistleblowers is a key factor affecting enforcement, and iii) breaches of Union law cause serious harm to the public interest. Member States

may extend the application of the national provisions to other areas with a view to ensuring a comprehensive and coherent framework at national level.

- (6) Whistleblower protection is necessary to enhance the enforcement of Union law on public procurement. In addition to the need of preventing and detecting fraud and corruption in the context of the implementation of the EU budget, including procurement, it is necessary to tackle insufficient enforcement of rules on public procurement by national public authorities and certain public utility operators when purchasing goods, works and services. Breaches of such rules create distortions of competition, increase costs for doing business, violate the interests of investors and shareholders and, overall, lower attractiveness for investment and create an uneven level playing field for all businesses across Europe, thus affecting the proper functioning of the internal market.
- (7) In the area of financial services, the added value of whistleblower protection was already acknowledged by the Union legislator. In the aftermath of the financial crisis, which exposed serious shortcomings in the enforcement of the relevant rules, measures for the protection of whistleblowers, including internal and external reporting channels as well as an explicit prohibition of retaliation, were introduced in a significant number of legislative instruments in this area<sup>5</sup>. In particular, in the context of the prudential framework applicable to credit institutions and investment firms, Directive 2013/36/EU provides for protection of whistleblowers, which extends also to Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms.
- (8) As regards the safety of products placed into the internal market, the primary source of evidence gathering are businesses involved in the manufacturing and distribution chain, so that reporting by whistleblowers has a high added value, since they are much closer to the source of possible unfair and illicit manufacturing, import or distribution practices of unsafe products. This warrants the introduction of whistleblower protection in relation to the safety requirements applicable both to ‘harmonised products’<sup>6</sup> and to ‘non-harmonised products’<sup>7</sup>. Whistleblower protection is also instrumental in avoiding diversion of firearms,

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<sup>5</sup>Communication of 8.12.2010 "Reinforcing sanctioning regimes in the financial services sector".

<sup>6</sup> The body of relevant ‘Union harmonisation legislation’ is circumscribed and listed in Regulation [XXX] laying down rules and procedures for compliance with and enforcement of Union harmonisation legislation, 2017/0353 (COD).

<sup>7</sup> Regulated by Directive (EC) 2001/95 of the European Parliament and of the Council, of 3 December 2001, on general product safety (OJ L 11, p. 4).

their parts and components and ammunition, as well as defence-related products, by encouraging the reporting of breaches, such as document fraud, altered marking and fraudulent intra-communitarian acquisition of firearms where violations often imply a diversion from the legal to the illegal market. Whistleblower protection will also help prevent the illicit manufacture of homemade explosives by contributing to the correct application of restrictions and controls regarding explosives precursors.

- (9) The importance of whistleblower protection in terms of preventing and deterring breaches of Union rules on transport safety which can endanger human lives has been already acknowledged in sectorial Union instruments on aviation safety<sup>8</sup> and maritime transport safety<sup>9</sup>, which provide for tailored measures of protection to whistleblowers as well as specific reporting channels. These instruments also include the protection from retaliation of the workers reporting on their own honest mistakes (so called ‘just culture’). It is necessary to complement and expand upon the existing elements of whistleblower protection in these two sectors as well as to provide such protection to enhance the enforcement of safety standards for other transport modes, namely inland waterway, road and railway transport.
- (10) Evidence-gathering, preventing, detecting and addressing environmental crimes and unlawful conduct or omissions as well as potential breaches concerning the protection of the environment remain a challenge and need to be reinforced as acknowledged in the Commission Communication "EU actions to improve environmental compliance and governance" of 18 January 2018<sup>10</sup>. Whilst whistleblower protection rules exist at present only in one sectorial instrument on environmental protection<sup>11</sup>, the introduction of such protection is necessary to ensure effective enforcement of the Union environmental acquis, whose breaches can cause harm to the public interest with possible spill-over impacts across national borders. This is also relevant in cases where unsafe products can cause environmental harm.

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<sup>8</sup> Regulation (EU) No 376/2014 of the European Parliament and of the Council, of 3 April 2014, on the reporting, analysis and follow-up of occurrences in civil aviation (OJ L 122, p. 18).

<sup>9</sup> Directive 2013/54/EU, of the European Parliament and of the Council, of 20 November 2013, concerning certain flag State responsibilities for compliance with and enforcement of the Maritime Labour Convention (OJ L 329, p. 1), Directive 2009/16/EC of the European Parliament and of the Council, of 23 April 2009, on port State control (OJ L 131, p. 57).

<sup>10</sup> COM (2018) 10 final.

<sup>11</sup> Directive 2013/30/EU of the European Parliament and of the Council, of 12 June 2013, on safety of offshore oil and gas operations (OJ L 178, p. 66).



- (10bis) Enhancing the protection of whistleblowers would also contribute to preventing and deterring breaches of Euratom rules on nuclear safety, radiation protection and responsible and safe management of spent fuel and radioactive waste. It would also strengthen the enforcement of existing provisions of the revised Nuclear Safety Directive <sup>12</sup> on the effective nuclear safety culture and, in particular, Article 8b(2)(a), which requires, inter alia, that the competent regulatory authority establishes management systems which give due priority to nuclear safety and promote, at all levels of staff and management, the ability to question the effective delivery of relevant safety principles and practices and to report in a timely manner on safety issues.
- (11) Similar considerations warrant the introduction of whistleblower protection to build upon existing provisions and prevent breaches of EU rules in the area of food chain and in particular on food and feed safety as well as on animal health, protection and welfare. The different Union rules developed in these areas are closely interlinked. Regulation (EC) No 178/2002<sup>13</sup> sets out the general principles and requirements which underpin all Union and national measures relating to food and feed, with a particular focus on food safety, in order to ensure a high level of protection of human health and consumers' interests in relation to food as well as the effective functioning of the internal market. This Regulation provides, amongst others, that food and feed business operators are prevented from discouraging their employees and others from cooperating with competent authorities where this may prevent, reduce or eliminate a risk arising from food. The Union legislator has taken a similar approach in the area of 'Animal Health Law' through Regulation (EU) 2016/429 establishing the rules for the prevention and control of animal diseases which are transmissible to animals or to humans<sup>14</sup>. Council Directive 98/58/EC and Directive 2010/63/EU of the European Parliament and of the Council, as well as Council Regulation (EC) No 1/2005 and Council Regulation (EC) No 1099/2009 lay down rules on the protection and welfare of animals kept for farming purposes, during transport, at the time of killing.

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<sup>12</sup> Council Directive 2014/87/Euratom of 8 July 2014 amending Directive 2009/71/Euratom establishing a Community framework for the nuclear safety of nuclear installations (OJ L 219, 25.7.2014, p. 42).

<sup>13</sup> Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ L 31, p. 1).

<sup>14</sup> OJ L 84, p. 1.

- (13) In the same vein, whistleblowers' reports can be key to detecting and preventing, reducing or eliminating risks to public health and to consumer protection resulting from breaches of Union rules which might otherwise remain hidden. In particular, consumer protection is also strongly linked to cases where unsafe products can cause considerable harm to consumers.
- (14) The protection of privacy and personal data, enshrined in Articles 7 and 8 of the Charter of Fundamental Rights, is another area where whistleblowers can help to disclose breaches of Union law which can harm the public interest. Similar considerations apply for breaches of the Directive on the security of network and information systems<sup>15</sup>, which introduces notification of incidents (including those that do not compromise personal data) and security requirements for entities providing essential services across many sectors (e.g. energy, health, transport, banking, etc.) for providers of key digital services (e.g. cloud computing services) and for suppliers of basic utilities, such as water, electricity and gas. Whistleblowers' reporting in this area is particularly valuable in order to prevent security incidents that would affect key economic and social activities and widely used digital services, as well as to prevent any infringement of Union data protection legislation. It helps ensuring the continuity of services which are essential for the functioning of the internal market and the wellbeing of society.
- 14(bis) Furthermore, the protection of the financial interests of the Union, which relates to the fight against fraud, corruption and any other illegal activity affecting the use of Union expenditures, the collection of Union revenues and funds or Union assets, is a core area in which enforcement of Union law needs to be strengthened. The strengthening of the protection of the financial interests of the Union also encompasses implementation of the Union budget related to expenditures made on the basis of the Treaty establishing the European Atomic Energy Community. Lack of effective enforcement in the area of the financial interests of the Union, including fraud and corruption at national level, causes a decrease of the Union revenues and a misuse of EU funds, which can distort public investments and growth and undermine citizens' trust in EU action. Article 325 TFEU requires the Union and the Member States to counter such activities. Relevant Union measures in this respect include, in particular, Council Regulation (EC, Euratom) No

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<sup>15</sup> Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union.

2988/95 , which is complemented, for the most serious types of fraud-related conduct, by Directive (EU) 2017/1371 and by the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests of 26 July 1995, including the Protocols thereto of 27 September 1996,<sup>16</sup> of 29 November 1996<sup>17</sup> and of 19 June 1997 (Convention and Protocols which remain in force for the Member States not bound by Directive (EU) 2017/1372), as well as Regulation (EU, Euratom) No 883/2013 (OLAF) .

- (14ter) Common minimum standards for the protection of whistleblowers should also be laid down for breaches relating to the internal market as referred to in Article 26(2) TFEU. In addition, in accordance with the case law of the Court of Justice, Union measures aimed at establishing or ensuring the functioning of the internal market are intended to contribute to the elimination of existing or emerging obstacles to the free movement of goods or to the freedom to provide services, or to the removal of distortions of competition.
- (15) Specifically, the protection of whistleblowers to enhance the enforcement of Union competition law, including State aid would serve to safeguard the efficient functioning of markets in the Union, allow a level playing field for business and deliver benefits to consumers. As regards competition rules applying to undertakings, the importance of insider reporting in detecting competition law infringements has already been recognised in the EU leniency policy as well as with the recent introduction of an anonymous whistleblower tool by the European Commission. Breaches relating to competition and State aid concern Articles 101, 102, 106, 107 and 108 TFEU and rules of secondary law adopted for their application.
- (17) Acts which breach the rules of corporate tax and arrangements whose purpose is to obtain a tax advantage and to evade legal obligations, defeating the object or purpose of the applicable corporate tax law, negatively affect the proper functioning of the internal market. They can give rise to unfair tax competition and extensive tax evasion, distorting the level-playing field for companies and resulting in loss of tax revenues for Member States and for the Union budget as a whole. This Directive provides for protection against retaliation for those who report on evasive and/or abusive arrangements that could otherwise go undetected, with a view to strengthening the ability of competent authorities

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<sup>16</sup> OJ C 313, 23.10.1996, p. 1.

<sup>17</sup> OJ C 151, 20.5.1997, p. 1.

to safeguard the proper functioning of the internal market and remove distortions and barriers to trade that affect the competitiveness of the companies in the internal market, directly linked to the free movement rules and also relevant for the application of the State aid rules. Whistleblower protection adds to recent Commission initiatives aimed at improving transparency and the exchange of information in the field of taxation and creating a fairer corporate tax environment within the Union , with a view to increasing Member States' effectiveness in identifying evasive and/or abusive arrangements that could otherwise go undetected and will help deter such arrangements even though this Directive does not harmonise provisions relating to taxes, whether substantive or procedural.

- (17bis) Article 1(1)(a) defines the material scope of this Directive by reference to a list of Union acts set out in the Annex (Parts I and II). This entails that where these Union acts, in turn, define their material scope by reference to Union acts listed in their annexes, these acts too form part of the material scope of the present Directive. In addition, the reference to the acts in the Annex should be understood as including all national and Union implementing or delegated measures adopted pursuant to those acts. Moreover, the reference to the Union acts in the Annex to this Directive is to be understood as a dynamic reference, i.e. if the Union act in the Annex has been or will be amended, the reference relates to the act as amended; if the Union act in the Annex has been or will be replaced, the reference relates to the new act.
- (18) Certain Union acts, in particular in the area of financial services, such as Regulation (EU) No 596/2014 on market abuse <sup>18</sup>, and Commission Implementing Directive 2015/2392, adopted on the basis of that Regulation <sup>19</sup>, already contain detailed rules on whistleblower protection. Such existing Union legislation, including the list of Part II of the Annex, should maintain any specificities they provide for, tailored to the relevant sectors. This is of particular importance to ascertain which legal entities in the area of financial services, the prevention of money laundering and terrorist financing are currently obliged to establish internal reporting channels. At the same time, in order to ensure consistency and legal certainty across Member States, this Directive should be applicable in all those matters not regulated under the sector-specific instruments, which should be complemented by the present Directive, insofar as matters are not regulated in them, so that they are fully aligned with minimum standards. In particular, this Directive should further specify the design of the internal and external channels, the obligations of competent authorities, and the specific forms of protection to be provided at national level against retaliation. In this regard, Article 28(4) of Regulation (EU) No 1286/2014 establishes the possibility for Member States to provide for an internal reporting channel in the area covered by that Regulation. For reasons of consistency with the minimum standards laid down by this Directive, the obligation to establish internal reporting

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<sup>18</sup> OJ L 173, p. 1.

<sup>19</sup> Commission Implementing Directive (EU) 2015/2392 of 17 December 2015 on Regulation (EU) No 596/2014 of the European Parliament and of the Council as regards reporting to competent authorities of actual or potential infringements of that Regulation (OJ L 332, p. 126).

channels provided for in Article 4(1) of this Directive should also apply in respect of Regulation (EU) No 1286/2014.

- (20) This Directive should be without prejudice to the protection afforded to employees when reporting on breaches of Union employment law. In particular, in the area of occupational safety and health, Article 11 of Framework Directive 89/391/EEC already requires Member States to ensure that workers or workers' representatives shall not be placed at a disadvantage because of their requests or proposals to employers to take appropriate measures to mitigate hazards for workers and/or to remove sources of danger. Workers and their representatives are entitled to raise issues with the competent national authorities if they consider that the measures taken and the means employed by the employer are inadequate for the purposes of ensuring safety and health.
- (20a) Member States may provide that reports concerning interpersonal grievances exclusively affecting the reporting person, i.e. grievances about interpersonal conflicts between the reporting person and another employee, may be channelled to other available procedures.
- (20bis) This Directive is without prejudice to the protection afforded by the procedures for reporting possible illegal activities, including fraud or corruption, detrimental to the interests of the Union, or of conduct relating to the discharge of professional duties which may constitute a serious failure to comply with the obligations of officials of the established under Articles 22a, 22b and 22c of the Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community. The Directive applies where EU officials report in a work-related context outside their employment relationship with the EU institutions.
- (21) National security remains the sole responsibility of each Member State. This Directive should not apply to reports on breaches related to procurement involving defence or security aspects if those are covered by Article 346 TFEU, in accordance with the case law of the Court of Justice of the European Union. If Member States decide to extend the protection provided by the Directive to further areas or acts, which are not within the scope, those Member States may adopt specific provisions to protect essential interests of national security in that regard.

- (21b) This Directive should also be without prejudice to the protection of classified information which Union law or the laws, regulations or administrative provisions in force in the Member State concerned require, for security reasons, to be protected from unauthorised access. In particular, Moreover, the provisions of this Directive should not affect the obligations arising from Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information, or Council Decision of 23 September 2013 on the security rules for protecting EU classified information.
- (21bis) This Directive should not affect the protection of confidentiality of communications between lawyers and their clients ('legal professional privilege') as provided for under national and, where applicable, Union law, in accordance with the case law of the Court of Justice of the European Union. Moreover, the Directive should not affect the obligation of maintaining confidentiality of communications of health care providers, including therapists, with their patients and of patient records ('medical privacy') as provided for under national and Union law.
- (21ter) Members of other professions may qualify for protection under this Directive when they report information protected by the applicable professional rules, provided that reporting that information is necessary for revealing a breach within the scope of this Directive.
- (21quater) While this Directive provides under certain conditions for a limited exemption from liability, including criminal liability, in case of breach of confidentiality, it does not affect national rules on criminal procedure, particularly those aiming at safeguarding the integrity of the investigations and proceedings or the rights of defence of concerned persons. This is without prejudice to the introduction of measures of protection into other types of national procedural law, in particular, the reversal of the burden of proof in national administrative, civil or labour proceedings.
- (21 quarter bis) This Directive should not affect national rules on the exercise of the rights of workers' representatives to information, consultation, and participation in collective bargaining and their defence of workers' employment rights. This should be without prejudice to the level of protection granted by the Directive.
- (21quinquies) This Directive should not apply to cases in which persons who, based on their informed consent, have been identified as informants or registered as such in databases managed by appointed authorities at the national level, such as customs authorities, report

breaches to enforcement authorities, against reward or compensation. Such reports are made pursuant to specific procedures that aim at guaranteeing their anonymity in order to protect their physical integrity, and which are distinct from the reporting channels provided for under this Directive.

- (22) Persons who report information about threats or harm to the public interest obtained in the context of their work-related activities make use of their right to freedom of expression. The right to freedom of expression and information, enshrined in Article 11 of the Charter of Fundamental Rights of the European Union ('the Charter') and in Article 10 of the European Convention on Human Rights (ECHR), encompasses the right to receive and impart information as well as media freedom and pluralism.
- (23) Accordingly, this Directive draws upon the case law of the European Court of Human Rights on the right to freedom of expression, and the principles developed on this basis by the Council of Europe in its 2014 Recommendation on Protection of Whistleblowers<sup>20</sup>.
- (23bis) To enjoy protection, the reporting persons should reasonably believe, in light of the circumstances and the information available to them at the time of the reporting, that the matters reported by them are true. This is an essential safeguard against malicious and frivolous or abusive reports, ensuring that those who, at the time of the reporting, deliberately and knowingly reported wrong or misleading information do not enjoy protection. At the same time, it ensures that protection is not lost where the reporting person made an inaccurate report in honest error. In a similar vein, reporting persons should be entitled to protection under this Directive if they have reasonable grounds to believe that the information reported falls within its scope. The motives of the reporting person in making the report should be irrelevant as to whether or not they should receive protection.
- (23ter) Reporting persons normally feel more at ease to report internally, unless they have reasons to report externally. Empirical studies show that the majority of whistleblowers tend to report internally, within their organisation with which they work. Internal reporting is also the best way to get information to the persons who can contribute to the to the persons who can contribute to the early and effective resolution of risks to the public interest.. At the same time, the reporting person should be able to choose the most appropriate reporting channel depending on the individual circumstances of the case. Moreover, it is necessary to

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<sup>20</sup> CM/Rec (2014)7.



protect public disclosures taking into account democratic principles such as transparency and accountability, and fundamental rights such as freedom of expression and media freedom, whilst balancing the interest of employers to manage their organisations and to protect their interests with the interest of the public to be protected from harm, in line with the criteria developed in the case-law of the European Court of Human Rights.

- (23quater) Without prejudice to existing obligations to provide for anonymous reporting by virtue of Union law, Member States may decide whether private and public entities and competent authorities accept and follow-up on anonymous reports of breaches falling within the scope of this Directive. However, persons who anonymously reported or made public disclosures falling within the scope of this Directive and meet its conditions should enjoy protection under this Directive if they are subsequently identified and suffer retaliation.
- (23quinquies) Protection is to be granted in cases where persons report pursuant to Union legislation to institutions, bodies, offices or agencies of the Union, for example in the context of fraud against the Union budget.
- (24) Persons need specific legal protection where they acquire the information they report through their work-related activities and therefore run the risk of work-related retaliation (for instance, for breaching the duty of confidentiality or loyalty). The underlying reason for providing them with protection is their position of economic vulnerability vis-à-vis the person on whom they de facto depend for work. When there is no such work related power imbalance (for instance in the case of ordinary complainants or citizen bystanders) there is no need for protection against retaliation.
- (25) Effective enforcement of Union law requires that protection is granted to the broadest possible range of categories of persons, who, irrespective of whether they are EU citizens or third-country nationals, by virtue of their work-related activities (irrespective of the nature of these activities, whether they are paid or not), have privileged access to information about breaches that would be in the public's interest to report and who may suffer retaliation if they report them. Member States should ensure that the need for protection is determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship, so as to cover the whole range of persons connected in a broad sense to the organisation where the breach has occurred.

- (26) Protection should, firstly, apply to persons having the status of 'workers', within the meaning of Article 45(1) TFEU, as interpreted by the Court of Justice of the European Union<sup>21</sup>, *i.e.* persons who, for a certain period of time, perform services for and under the direction of another person, in return of which they receive remuneration. This notion also includes civil servants. Protection should thus also be granted to workers in non-standard employment relationships, including part-time workers and fixed-term contract workers, as well as persons with a contract of employment or employment relationship with a temporary agency, precarious types of relationships where standard protections against unfair treatment are often difficult to apply.
- (27) Protection should also extend to further categories of natural persons, who, whilst not being 'workers' within the meaning of Article 45(1) TFEU, can play a key role in exposing breaches of the law and may find themselves in a position of economic vulnerability in the context of their work-related activities. For instance, in areas such as product safety, suppliers are much closer to the source of possible unfair and illicit manufacturing, import or distribution practices of unsafe products; in the implementation of Union funds, consultants providing their services are in a privileged position to draw attention to breaches they witness. Such categories of persons, including self-employed persons providing services, freelance, contractors, subcontractors and suppliers, are typically subject to retaliation, which may take the form, for instance, of early termination or cancellation of contract of services, licence or permit, loss of business, loss of income, coercion, intimidation or harassment, blacklisting/business boycotting or damage to their reputation. Shareholders and persons in managerial bodies, may also suffer retaliation, for instance in financial terms or in the form of intimidation or harassment, blacklisting or damage to their reputation. Protection should also be granted to persons whose work-based relationship ended and to candidates for employment or for providing services to an organisation who acquired the information on breaches of law during the recruitment process or other pre-contractual negotiation stage, and may suffer retaliation for instance in the form of negative employment references or blacklisting/business boycotting.
- (28) Effective whistleblower protection implies protecting also further categories of persons who, whilst not relying on their work related activities economically, may nevertheless suffer retaliation for exposing breaches. Retaliation against volunteers and paid or unpaid

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<sup>21</sup> Judgments of 3 July 1986, *Lawrie-Blum*, Case 66/85; 14 October 2010, *Union Syndicale Solidaires Isère*, Case C-428/09; 9 July 2015, *Balkaya*, Case C-229/14; 4 December 2014, *FNV Kunsten*, Case C-413/13; and 17 November 2016, *Ruhrlandklinik*, Case C-216/15.

trainees may take the form of no longer making use of their services, or of giving a negative reference for future employment or otherwise damaging their reputation or career prospects.

- (29) Effective detection and prevention of serious harm to the public interest requires that the notion of breach also includes abusive practices, as determined by the case law of the European Court of Justice, namely acts or omissions which do not appear to be unlawful in formal terms but defeat the object or the purpose of the law.
- (30) Effective prevention of breaches of Union law requires that protection is granted to persons who provide information necessary to reveal breaches which have already taken place, breaches which have not yet materialised, but are very likely to be committed, acts or omissions which the reporting person has reasonable grounds to consider as breaches of Union law as well as attempts to conceal breaches. For the same reasons, protection is warranted also for persons who do not provide positive evidence but raise reasonable concerns or suspicions. At the same time, protection should not apply to the reporting of information which is already fully available in the public domain or of unsubstantiated rumours and hearsay.
- (31) Retaliation expresses the close (cause and effect) relationship that must exist between the report and the adverse treatment suffered, directly or indirectly, by the reporting person, so that this person can enjoy legal protection. Effective protection of reporting persons as a means of enhancing the enforcement of Union law requires a broad definition of retaliation, encompassing any act or omission occurring in the work-related context which causes them detriment. This Directive does not prevent employers from taking employment-related decisions which are not prompted by the reporting or public disclosure.
- (32) Protection from retaliation as a means of safeguarding freedom of expression and media freedom should be provided both to persons who report information about acts or omissions within an organisation (internal reporting) or to an outside authority (external reporting) and to persons who disclose such information to the public domain (for instance, directly to the public via web platforms or social media, or to the media, elected officials, civil society organisations, trade unions or professional/business organisations).

- (33) Whistleblowers are, in particular, important sources for investigative journalists. Providing effective protection to whistleblowers from retaliation increases the legal certainty of (potential) whistleblowers and thereby encourages and facilitates whistleblowing also to the media. In this respect, protection of whistleblowers as journalistic sources is crucial for safeguarding the ‘watchdog’ role of investigative journalism in democratic societies.
- (37) For the effective detection and prevention of breaches of Union law it is vital that the relevant information reaches swiftly those closest to the source of the problem, most able to investigate and with powers to remedy it, where possible. As a principle, therefore, reporting persons should be encouraged to first use the internal channels and report to their employer, if such channels are available to them and can reasonably be expected to work. This is the case, in particular, where the reporting persons believe that the breach can be effectively addressed within the relevant organisation, and that there is no risk of retaliation. This also warrants that legal entities in the private and the public sector establish appropriate internal procedures for receiving and following-up on reports. This encouragement concerns also cases where these channels were established without it being required by Union or national law. This principle should help foster a culture of good communication and corporate social responsibility in organisations, whereby reporting persons are considered as significantly contributing to self-correction and excellence.
- (38) For legal entities in the private sector, the obligation to establish internal channels is commensurate with their size and the level of risk their activities pose to the public interest. It should apply to all companies with 50 or more employees irrespective of the nature of their activities, based on their obligation to collect VAT. Following an appropriate risk assessment, Member States may require also other undertakings to establish internal reporting channels in specific cases (e.g. due to the significant risks that may result from their activities).
- (38a) This Directive is without prejudice to the possibility for Member States to encourage private entities with less than 50 employees to establish internal channels for reporting and follow-up, including by laying down less prescriptive requirements for those channels than those laid down under Article 5, provided that those requirements guarantee confidentiality and diligent follow-up of the report.
- (39) The exemption of small and micro undertakings from the obligation to establish internal reporting channels should not apply to private undertakings which are currently obliged to

establish internal reporting channels by virtue of Union acts referred to in Part I.B and Part II of the Annex.

- (40) It should be clear that, in the case of private legal entities which do not provide for internal reporting channels, reporting persons should be able to report directly externally to the competent authorities and such persons should enjoy the protection against retaliation provided by this Directive.
- (41) To ensure in particular, the respect of the public procurement rules in the public sector, the obligation to put in place internal reporting channels should apply to all public legal entities, at local, regional and national level, whilst being commensurate with their size.
- (42) Provided the confidentiality of the identity of the reporting person is ensured, it is up to each individual private and public legal entity to define the kind of reporting channels to set up. More specifically, they should allow for written reports that may be submitted by post, by physical complaint box(es), or through an online platform (intranet or internet) and/or for oral reports that may be submitted by telephone hotline or other voice messaging system. Upon request by the reporting person, such channels should also allow for physical meetings, within a reasonable time frame.
- (43) Third parties may also be authorised to receive reports on behalf of private and public entities, provided they offer appropriate guarantees of respect for independence, confidentiality, data protection and secrecy. These can be external reporting platform providers, external counsel, auditors, trade union representatives or workers' representatives.
- (43ter) Without prejudice to the protection that trade union representatives or workers' representatives enjoy in their capacity as such under other Union and national rules, they should enjoy the protection provided for under this Directive both where they report in their capacity as workers and where they have provided advice and support to the reporting person.
- (44) Internal reporting procedures should enable private legal entities to receive and investigate in full confidentiality reports by the employees of the entity and of its subsidiaries or affiliates (the group), but also, to any extent possible, by any of the group's agents and suppliers and by any person who acquires information through his/her work-related activities with the entity and the group.

- (45) The most appropriate persons or departments within a private legal entity to be designated as competent to receive and follow up on reports depend on the structure of the entity, but, in any case, their function should ensure absence of conflict of independence. In smaller entities, this function could be a dual function held by a company officer well placed to report directly to the organisational head, such as a chief compliance or human resources officer, an integrity officer, a legal or privacy officer, a chief financial officer, a chief audit executive or a member of the board.
- (46) In the context of internal reporting, informing, as far as legally possible and in the most comprehensive way possible, the reporting person about the follow up to the report is crucial to build trust in the effectiveness of the overall system of whistleblower protection and reduces the likelihood of further unnecessary reports or public disclosures. The reporting person should be informed within a reasonable timeframe about the action envisaged or taken as follow-up to the report and the grounds for this follow-up (for instance, referral to other channels or procedures in cases of reports exclusively affecting individual rights of the reporting person, closure based on lack of sufficient evidence or other grounds, launch of an internal enquiry, and possibly its findings and/or measures taken to address the issue raised, referral to a competent authority for further investigation) in as far as such information would not prejudice the enquiry or investigation or affect the rights of the concerned person. In all cases, the reporting person should be informed of the investigation's progress and outcome. He or she may ask for further information, during the course of the investigation, albeit with no obligation to do so.
- (46bis) Such reasonable timeframe should not exceed in total three months. Where the appropriate follow-up is still being determined, the reporting person should be informed about this and about any further feedback he or she should expect.
- (47) Persons who are considering reporting breaches of Union law should be able to make an informed decision on whether, how and when to report. Private and public entities having in place internal reporting procedures shall provide information on these procedures as well as on procedures to report externally to relevant competent authorities. Such information must be easily understandable and easily accessible, including, to any extent possible, also to other persons, beyond employees, who come in contact with the entity through their work-related activities, such as service-providers, distributors, suppliers and business partners. For instance, such information may be posted at a visible location

accessible to all these persons and on the web of the entity and may also be included in courses and trainings on ethics and integrity.

- (48) Effective detection and prevention of breaches of Union law requires ensuring that potential whistleblowers can easily and in full confidentiality bring the information they possess to the attention of the relevant competent authorities which are able to investigate and to remedy the problem, where possible.
- (48bis) It may be the case that internal channels do not exist or that they were used but did not function properly (for instance the report was not dealt with diligently or within a reasonable timeframe, or no appropriate action was taken to address the breach of law despite the positive results of the enquiry).
- (48ter) In other cases, the use of internal channels could not reasonably be expected to function properly. This is most notably the case where the reporting persons have valid reasons to believe i) that they would suffer retaliation in connection with the reporting, including as a result of a breach of their confidentiality, and ii) that the competent authorities would be better placed to take effective action to address the breach because, for example, the ultimate responsibility holder within the work-related context is involved in the breach, or there is a risk that the breach or related evidence may be concealed or destroyed, or, more in general, because the effectiveness of investigative actions by competent authorities might otherwise be jeopardised (examples may be reports on cartel arrangements and other breaches of competition rules), or because the breach requires urgent action for instance to safeguard the life, health and safety of persons or to protect the environment. In all cases, persons reporting externally to the competent authorities and, where relevant, to institutions, bodies, offices or agencies of the Union shall be protected. This Directive also grants protection where Union or national law requires the reporting persons to report to the competent national authorities for instance as part of their job duties and responsibilities or because the breach is a criminal offence.
- (49) Lack of confidence in the effectiveness of reporting is one of the main factors discouraging potential whistleblowers. These warrants imposing a clear obligation on competent authorities to set up appropriate external reporting channels, to diligently follow-up on the reports received, and, within a reasonable timeframe, give feedback to the reporting persons.

- (49bis) It is for the Member States to designate the authorities competent to receive and give appropriate follow-up to the reports falling within the scope of this Directive. Such competent authorities may be judicial authorities, regulatory or supervisory bodies competent in the specific areas concerned, or authorities of a more general competence at a central State level, law enforcement agencies, anticorruption bodies or ombudsmen.
- (49ter) As recipients of reports, the authorities designated as competent should have the necessary capacities and powers to ensure appropriate follow-up - including assessing the accuracy of the allegations made in the report and addressing the breaches reported by launching an internal enquiry, investigation, prosecution or action for recovery of funds, or other appropriate remedial action, in accordance with their mandate, or should have the necessary powers to refer the report to another authority that should investigate the breach reported, ensuring an appropriate follow-up by such authority. In particular, where Member States wish to establish external channels in the framework of their central State level, for instance in the State aid area, Member States should put in place adequate safeguards in order to ensure that the requirements of independence and autonomy laid down in the Directive are respected. The establishment of such external channels does not affect the powers of the Member States or of the Commission concerning supervision in the field of State aid, nor does this Directive affect the exclusive power of the Commission as regards the declaration of compatibility of State aid measures in particular pursuant to Article 107(3) TFEU. With regard to breaches of Articles 101 and 102 of the TFEU, Member States should designate as competent authorities those referred to in Article 35 of Regulation (EC) 1/2003 without prejudice to the powers of the Commission in this area.
- (49quater) Competent authorities should also give feedback to the reporting persons about the action envisaged or taken as follow-up (for instance, referral to another authority, closure based on lack of sufficient evidence or other grounds or launch of an investigation and possibly its findings and/or measures taken to address the issue raised), as well as about the grounds justifying the follow-up. Communications on the final outcome of the investigations should not affect the applicable Union rules which include possible restrictions on the publication of decisions in the area of financial regulation. This should apply *mutatis mutandis* in the field of corporate taxation, if similar restrictions are provided for by the applicable national law.



- (50) Follow up and feedback should take place within a reasonable timeframe; this is warranted by the need to promptly address the problem that may be the subject of the report, as well as to avoid unnecessary public disclosures. Such timeframe should not exceed three months, but could be extended to six months, where necessary due to the specific circumstances of the case, in particular the nature and complexity of the subject of the report, which may require a lengthy investigation.
- (50bis) Union law in specific areas, such as market abuse<sup>22</sup>, civil aviation<sup>23</sup> or safety of offshore oil and gas operations<sup>24</sup> already provides for the establishment of internal and external reporting channels. The obligations to establish such channels laid down in this Directive should build as far as possible on the existing channels provided by specific Union acts.
- (50ter) The European Commission, as well as some bodies, offices and agencies of the Union, such as the European Anti-Fraud Office (OLAF), the European Maritime Safety Agency (EMSA), the European Aviation Safety Agency (EASA), the European Security and Markets Authority (ESMA) and the European Medicines Agency (EMA), have in place external channels and procedures for receiving reports on breaches falling within the scope of this Directive, which mainly provide for confidentiality of the identity of the reporting persons. This Directive does not affect such external reporting channels and procedures, where they exist, but will ensure that persons reporting to those institutions, bodies, offices or agencies of the Union benefit from common minimum standards of protection throughout the Union.
- (50quater) To ensure the effectiveness of the procedures for following-up on reports and addressing breaches of the Union rules concerned, Member States should have the possibility to take measures to alleviate burdens for competent authorities resulting from reports on minor breaches of provisions falling within the scope of this Directive, repetitive reports or reports on breaches of ancillary provisions (for instance provisions on documentation or notification obligations). Such measures may consist in allowing competent authorities, after a due review of the matter, to decide that a reported breach is clearly minor and does not require further follow-up measures pursuant to this Directive. Member States may also allow competent authorities to close the procedure regarding repetitive reports whose

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<sup>22</sup> Cited above.

<sup>23</sup> Regulation (EU) No 376/2014 of the European Parliament and of the Council of 3 April 2014 on the reporting, analysis and follow-up of occurrences in civil aviation, (OJ L 122, p. 18).

<sup>24</sup> Directive 2013/30/EU of the European Parliament and of the Council of 12 June 2013 on safety of offshore oil and gas operations and amending Directive 2004/35/EC (OJ L 178, 28.6.2013, p. 66).

substance does not include any new meaningful information to a past report that was already closed, unless new legal or factual circumstances justify a different follow-up. Furthermore, Member States may allow competent authorities to prioritise the treatment of reports on serious breaches or breaches of essential provisions falling within the scope of this Directive in case of high inflows of the reports.

- (51) Where provided for under national or Union law, the competent authorities should refer cases or relevant information to institutions, bodies, offices or agencies of the Union, including, for the purposes of this Directive, the European Anti-Fraud Office (OLAF) and the European Public Prosecutor Office (EPPO), without prejudice to the possibility for the reporting person to refer directly to such bodies, offices or agencies of the Union.
- (51bis) In many policy areas falling within the scope of this Directive there are cooperation mechanisms through which national competent authorities exchange information and carry out follow-up activities in relation to breaches of Union rules with a cross-border dimension. Examples range from the Administrative Assistance and Cooperation Mechanism in cases of cross-border violations of the Union agri-food chain legislation and the Food Fraud Network, the Rapid Alert System for dangerous non-food products, the Consumer Protection Cooperation Network to the Environmental Compliance Network, the European Network of Competition Authorities, and the administrative cooperation in the field of taxation. Member States' competent authorities should make full use of such existing cooperation mechanisms where relevant as part of their obligation to follow-up on reports regarding breaches falling within the scope of this Directive. In addition, Member States' authorities may cooperate also beyond the existing cooperation mechanisms in cases of breaches with a cross-border dimension in areas where such cooperation mechanisms do not exist.
- (52) In order to allow for effective communication with staff who are responsible for handling reports, it is necessary that the competent authorities have in place and use user-friendly channels, which are secure, ensure confidentiality for receiving and handling information provided by the reporting person and enable the storage of durable information to allow for further investigations. This may require that they are separated from the general channels through which the competent authorities communicate with the public, such as normal public complaints systems or channels through which the competent authority communicates internally and with third parties in its ordinary course of business.

- (53) Staff members of the competent authorities, who are responsible for handling reports should be professionally trained, including on applicable data protection rules, in order to handle reports and to ensure communication with the reporting person, to follow up on the report in a suitable manner.
- (54) Persons intending to report should be able to make an informed decision on whether, how and when to report. Competent authorities should therefore publicly disclose and make easily accessible information about the available reporting channels with competent authorities, about the applicable procedures and about the specialised staff members responsible for handling reports within these authorities. All information regarding reports should be transparent, easily understandable and reliable in order to promote and not deter reporting.
- (55) Member States should ensure that competent authorities have in place adequate protection procedures for the processing of reports of infringements and for the protection of the personal data of the persons referred to in the report. Such procedures should ensure that the identity of every reporting person, concerned person, and third persons referred to in the report (e.g. witnesses or colleagues) is protected at all stages of the procedure.
- (56) It is necessary that staff of the competent authority who is responsible for handling reports and staff members of the competent authority who have the right to access to the information provided by a reporting person comply with the duty of professional secrecy and confidentiality when transmitting the data both inside and outside of the competent authority, including where a competent authority opens an investigation or an inquiry or engage in enforcement activities in connection with the report of infringements.
- (59) The regular review of the procedures of competent authorities and the exchange of good practices between them should guarantee that those procedures are adequate and thus serving their purpose.
- (64) Persons making a public disclosure should qualify for protection in cases where, despite the internal and/or external report made, the breach remains unaddressed, for instance in cases where such persons have valid reasons to believe that the breach was not (appropriately) assessed or investigated or no appropriate remedial action was taken. The appropriateness of the follow-up should be assessed according to objective criteria, linked to the obligation of the competent authorities to assess the accuracy of the allegations and

put an end to any possible breach of Union law. It will thus depend on the circumstances of each case and of the nature of the rules that have been breached. In particular, a decision by the authorities that a breach was clearly minor and no follow up was required may constitute an appropriate follow up pursuant to this Directive.

- (64bis) Persons making a public disclosure directly should also qualify for protection in cases where they have reasonable grounds to believe that there is an imminent or manifest danger for the public interest, or a risk of irreversible damage, including harm to physical integrity.
- (64ter) Similarly, such persons should qualify for protection where they have reasonable grounds to believe that in case of external reporting there is a risk of retaliation or there is a low prospect of the breach being effectively addressed, due to the particular circumstances of the case, such as that evidence may be concealed or destroyed or that an authority is in collusion with the perpetrator of the breach or involved in the breach.
- (64quater) Safeguarding the confidentiality of the identity of the reporting person during the reporting process and follow-up investigations is an essential ex-ante measure to prevent retaliation. The identity of the reporting person may be disclosed only where this is a necessary and proportionate obligation required by Union or national law in the context of investigations by authorities or judicial proceedings, in particular to safeguard the rights of defence of the concerned persons. Such an obligation may derive, in particular, from Directive 2012/13 of the European Parliament and of the Council of 22 May 2012, on the right to information in criminal proceedings. The protection of confidentiality should not apply where the reporting person has intentionally revealed his or her identity in the context of a public disclosure.
- (64quinquies) Any processing of personal data carried out pursuant to this Directive, including the exchange or transmission of personal data by the competent authorities, should be undertaken in accordance with Regulation (EU) 2016/679, and with Directive (EU) 2016/680<sup>25</sup>, and any exchange or transmission of information by Union level competent

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<sup>25</sup> Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

authorities should be undertaken in accordance with Regulation (EC) No 45/2001.<sup>26</sup>. Particular regard should be had to the principles relating to processing of personal data set out in Article 5 of the GDPR, Article 4 of Directive (EU) 2016/680 and Article 4 of Regulation (EC) No 45/2001, and to the principle of data protection by design and by default laid down in Article 25 of the GDPR, Article 20 of Directive (EU) 2016/680 and Article XX of Regulation (EU) No 2018/XX repealing Regulation No 45/2001 and Decision No 1247/2002/EC.

(64sexies) The effectiveness of the procedures set out in the present Directive related to follow-up on reports on breaches of Union law in the areas falling within its scope serves an important objective of general public interest of the Union and of the Member States, within the meaning of Article 23(1)(e) GDPR, as it aims at enhancing the enforcement of Union law and policies in specific areas where breaches can cause serious harm to the public interest. The effective protection of the confidentiality of the identity of the reporting persons is necessary for the protection of the rights and freedoms of others, in particular those of the reporting persons, provided for under Article 23(1)(i) GDPR. Member States should ensure the effectiveness of this Directive, including, where necessary, by restricting, by legislative measures, the exercise of certain data protection rights of the concerned persons in line with Article 23(1)(e) and (i) and 23(2) GDPR to the extent and as long as necessary to prevent and address attempts to hinder reporting, to impede, frustrate or slow down follow-up to reports, in particular investigations, or attempts to find out the identity of the reporting persons.

(64septies) The effective protection of the confidentiality of the identity of the reporting persons is equally necessary for the protection of the rights and freedoms of others, in particular those of the reporting persons, where reports are handled by by authorities as defined in Article 3(7) of Directive (EU) 2016/680. Member States should ensure the effectiveness of this Directive, including, where necessary, by restricting, by legislative measures, the exercise of certain data protection rights of the concerned persons in line with Articles 13(3)(a) and (e), 15(1)(a) and (e), 16(4)(a) and (e) and Article 31(5) of Directive (EU) 2016/680 to the extent that, and for as long as necessary to prevent and address attempts to hinder

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<sup>26</sup> [Regulation \(EC\) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data \(OJ L 8, 12.1.2001, p. 1\).](#)

reporting, to impede, frustrate or slow down follow-up to reports, in particular investigations, or attempts to find out the identity of the reporting persons.

- (64octies) Member States should ensure the adequate record-keeping of all reports of breaches, and that every report is retrievable and that information received through reports could be used as evidence in enforcement actions where appropriate
- (65) Reporting persons should be protected against any form of retaliation, whether direct or indirect, taken, recommended or tolerated by their employer or customer/recipient of services and by persons working for or acting on behalf of the latter, including co-workers and managers in the same organisation or in other organisations with which the reporting person is in contact in the context of his/her work-related activities. Protection should be provided against retaliatory measures taken vis-à-vis the reporting person him/herself but also those that may be taken vis-à vis the legal entity that the reporting person owns, works for or is otherwise connected with in a work related context such as denial of provision of services, blacklisting or business boycotting. Indirect retaliation also includes actions taken against facilitators or co-workers or relatives of the reporting person who are also in a work-related connection with the latter's employer or customer/recipient of services.
- (66) Where retaliation occurs undeterred and unpunished, it has a chilling effect on potential whistleblowers. A clear prohibition of retaliation in law has an important dissuasive effect, further strengthened by provisions for personal liability and penalties for the perpetrators of retaliation.
- (67a) Individual advice and accurate information may be provided by an independent single authority or an information centre.
- (67) Potential whistleblowers who are not sure about how to report or whether they will be protected in the end may be discouraged from reporting. Member States should ensure that relevant information is provided in a way that is easily understandable and easily accessible to the general public. Individual, impartial and confidential advice, free of charge, should be available on, for example, whether the information in question is covered by the applicable rules on whistleblower protection, which reporting channel may best be used and which alternative procedures are available in case the information is not covered by the applicable rules ('signposting'). Access to such advice can help ensure that reports are made through the appropriate channels, in a responsible manner and that breaches and

wrongdoings are detected in a timely manner or even prevented. Member States may choose to extend such advice to legal counselling. Where such advice is given to reporting persons by civil society organisations which are bound by a duty of maintaining the confidentiality of the information received, Member States should ensure that such organisations do not suffer retaliation, for instance in the form of economic prejudice through a restriction on their access to funding or blacklisting that could impede the proper functioning of the organisation.

- (68) Competent authorities should provide reporting persons with the support necessary for them to effectively access protection. In particular, they should provide proof or other documentation required to confirm before other authorities or courts that external reporting had taken place. Under certain national frameworks and in certain cases, reporting persons may benefit from forms of certification of the fact that they meet the conditions of the applicable rules. Notwithstanding such possibilities, they should have effective access to judicial review, whereby it falls upon the courts to decide, based on all the individual circumstances of the case, whether they meet the conditions of the applicable rules.
- (69) Individuals' legal or contractual obligations, such as loyalty clauses in contracts or confidentiality/non-disclosure agreements, cannot be relied on to preclude reporting, to deny protection or to penalise reporting persons for having done so where providing the information falling within the scope of such clauses and agreements is necessary for revealing the breach. Where these conditions are met, reporting persons should not incur any kind of liability, be it civil, criminal, administrative or employment-related. Protection from liability for the reporting or disclosure of information under this Directive is warranted for information for which the reporting person had reasonable grounds to believe that its reporting or disclosure was necessary for revealing a breach pursuant to this Directive. This protection should not extend to superfluous information that the person revealed without having such reasonable grounds.
- (69a) In cases where the reporting persons lawfully acquired or obtained access to the information reported or the documents containing this information, they should enjoy immunity from liability. This applies both in cases where they reveal the content of documents to which they have lawful access as well as in cases where they make copies of such documents or remove them from the premises of the organisation where they are employed, in breach of contractual or other clauses providing that the relevant documents

are the property of the organisation. The reporting persons should also enjoy immunity from liability in cases where the acquisition of or access to the relevant information or documents raises an issue of civil, administrative or labour-related liability. Examples would be cases where the reporting persons acquired the information by accessing the emails of a co-worker or files which they normally do not use within the scope of their work, take pictures of the premises of the organisation or access to location they do not usually access to. Where the reporting persons acquired or obtained access to the relevant information or documents by committing a criminal offence, such as physical trespassing or hacking, their criminal liability should remain governed by applicable national law without prejudice to Article 15 (7). Similarly, any other possible liability of the reporting persons arising from acts or omissions which are unrelated to the reporting or are not necessary for revealing a breach pursuant to this Directive should remain governed by applicable Union or national law. In these cases, it should be for the national courts to assess the liability of the reporting persons in the light of all relevant factual information and taking into account the individual circumstances of the case, including the necessity and proportionality of the act or omission in relation to the report or disclosure.

- (70) Retaliatory measures are likely to be presented as being justified on grounds other than the reporting and it can be very difficult for reporting persons to prove the link between the two, whilst the perpetrators of retaliation may have greater power and resources to document the action taken and the reasoning. Therefore, once the reporting person demonstrates prima facie that he or she made a report or public disclosure in line with this Directive and suffered a detriment, the burden of proof should shift to the person who took the detrimental action, who should then demonstrate that the action taken was not linked in any way to the reporting or the public disclosure.
- (71) Beyond an explicit prohibition of retaliation provided in law, it is crucial that reporting persons who do suffer retaliation have access to legal remedies and compensation. The appropriate remedy in each case will be determined by the kind of retaliation suffered, and damage suffered should be compensated in full in accordance with national law. It may take the form of actions for reinstatement (for instance, in case of dismissal, transfer or demotion, or of withholding of training or promotion) or for restoration of a cancelled permit, licence or contract; compensation for actual and future financial losses (for lost past wages, but also for future loss of income, costs linked to a change of occupation);



compensation for other economic damages such as legal expenses and costs of medical treatment, and for intangible damage (pain and suffering).

- (72) The types of legal action may vary between legal systems but they should ensure a real and effective compensation or reparation, in a way which is dissuasive and proportionate to the detriment suffered. Of relevance in this context are the Principles of the European Pillar of Social Rights, in particular Principle 7 according to which “(p)rior to any dismissal, workers have the right to be informed of the reasons and be granted a reasonable period of notice. They have the right to access to effective and impartial dispute resolution and, in case of unjustified dismissal, a right to redress, including adequate compensation. The remedies established at national level should not discourage potential future whistleblowers. For instance, allowing for compensation as an alternative to reinstatement in case of dismissal might give rise to a systematic practice in particular by larger organisations, thus having a dissuasive effect on future whistleblowers.
- (73) Of particular importance for reporting persons are interim remedies pending the resolution of legal proceedings that can be protracted. Particularly, actions of interim relief, as provided for under national law, should also be available to reporting persons in order to stop threats, attempts or continuing acts of retaliation, such as harassment or to prevent forms of retaliation, such as dismissal, which might be difficult to reverse after the lapse of lengthy periods and which can ruin financially the individual — a perspective which can seriously discourage potential whistleblowers.
- (74) Action taken against reporting persons outside the work-related context, through proceedings, for instance, related to defamation, breach of copyright, trade secrets, confidentiality and personal data protection, can also pose a serious deterrent to whistleblowing. In such proceedings, reporting persons should be able to rely on having made a report or disclosure in accordance with this Directive as a defence, provided that the information reported or disclosed was necessary to reveal the breach. In such cases, the person initiating the proceedings should carry the burden to prove that the reporting person does not meet the conditions of the Directive.
- (74bis) Directive (EU) 2016/943 of the European Parliament and of the Council lays down rules to ensure a sufficient and consistent level of civil redress in the event of unlawful acquisition, use or disclosure of a trade secret. However, it also provides that the acquisition, use or disclosure of a trade secret shall be considered lawful to the extent that it is allowed by

Union law (Article 3(2)). Persons who disclose trade secrets acquired in a work-related context should only benefit from the protection granted by the present Directive (including in terms of not incurring civil liability), provided that they meet the conditions of this Directive, including that the disclosure was necessary to reveal a breach falling within the substantive scope of this Directive. Where these conditions are met, disclosures of trade secrets are to be considered as "allowed" by Union law within the meaning of Article 3(2) of Directive (EU) 2016/943. Moreover, both Directives should be considered as being complementary and the civil redress measures, procedures and remedies as well as exemptions provided for in Directive (EU) 2016/943 should remain applicable for all disclosures of trade secrets falling outside the scope of the present Directive. Competent authorities receiving reports including trade secrets should ensure that these are not used or disclosed for other purposes beyond what is necessary for the proper follow up of the reports.

- (75) A significant cost for reporting persons contesting retaliation measures taken against them in legal proceedings can be the relevant legal fees. Although they could recover these fees at the end of the proceedings, they might not be able to cover them up front, especially if they are unemployed and blacklisted. Assistance for criminal legal proceedings, particularly where the reporting persons meet the conditions of Directive (EU) 2016/1919 of the European Parliament and of the Council<sup>27</sup> and more generally support to those who are in serious financial need might be key, in certain cases, for the effective enforcement of their rights to protection.
- (76) The rights of the concerned person should be protected in order to avoid reputational damages or other negative consequences. Furthermore, the rights of defence and access to remedies of the concerned person should be fully respected at every stage of the procedure following the report, in accordance with Articles 47 and 48 of the Charter of Fundamental Rights of the European Union. Member States should protect the confidentiality of the identity of the person concerned and ensure the rights of defence, including the right to access to the file, the right to be heard and the right to seek effective remedy against a decision concerning the concerned person under the applicable procedures set out in national law in the context of investigations or subsequent judicial proceedings.

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<sup>27</sup> Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L 297 4.11.2016, p. 1).

- (77) Any person who suffers prejudice, whether directly or indirectly, as a consequence of the reporting or public disclosure of inaccurate or misleading information should retain the protection and the remedies available to him or her under the rules of general law. Where such inaccurate or misleading report or public disclosure was made deliberately and knowingly, the concerned persons should be entitled to compensation in accordance with national law.
- (78) Criminal, civil or administrative penalties are necessary to ensure the effectiveness of the rules on whistleblower protection. Penalties against those who take retaliatory or other adverse actions against reporting persons can discourage further such actions. Penalties against persons who make a report or public disclosure demonstrated to be knowingly false are also necessary to deter further malicious reporting and preserve the credibility of the system. The proportionality of such penalties should ensure that they do not have a dissuasive effect on potential whistleblowers.
- (79) Any processing of personal data carried out pursuant to this Directive, including the exchange or transmission of personal data by the competent authorities, should be undertaken in accordance with Regulation (EU) 2016/679, and with Directive (EU) 2016/680<sup>28</sup>, and any exchange or transmission of information by Union level competent authorities should be undertaken in accordance with Regulation (EC) No 45/2001<sup>29</sup>. Particular regard should be had to the principles relating to processing of personal data set out in Article 5 of the GDPR, Article 4 of Directive (EU) 2016/680 and Article 4 of Regulation (EC) No 45/2001, and to the principle of data protection by design and by default laid down in Article 25 of the GDPR, Article 20 of Directive (EU) 2016/680 and Article XX of Regulation (EU) No 2018/XX repealing Regulation No 45/2001 and Decision No 1247/2002/EC.

79(quarter) Any decision taken by authorities adversely affecting the rights granted by this Directive, in particular decisions adopted pursuant to Article 6, shall be subject to judicial

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<sup>28</sup> Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

<sup>29</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

review in accordance with Article 47 of the Charter of Fundamental Rights of the European Union.

- (80) This Directive introduces minimum standards and Member States should have the power to introduce or maintain more favourable provisions to the reporting person, provided that such provisions do not interfere with the measures for the protection of concerned persons. The transposition of this Directive shall under no circumstances provide grounds for reducing the level of protection already afforded to reporting persons under national law in the areas to which it applies.
- (81) In accordance with Article 26(2) TFEU, the internal market needs to comprise an area without internal frontiers in which the free and safe movement of goods and services is ensured. The internal market should provide Union citizens with added value in the form of better quality and safety of goods and services, ensuring high standards of public health and environmental protection as well as free movement of personal data. Thus, Article 114 TFEU is the appropriate legal basis to adopt the measures necessary for the establishment and functioning of the internal market. In addition to Article 114 TFEU, this Directive should have additional specific legal bases in order to cover the fields that rely on Articles 16, 43(2), 50, 53(1), 91, 100, 168 (4), 169, 192(1) and 325(4) TFEU and Article 31 of the Treaty establishing the Euratom for the adoption of Union measures.
- (82) The material scope of this Directive is based on the identification of areas where the introduction of whistleblower protection appears justified and necessary on the basis of currently available evidence. Such material scope may be extended to further areas or Union acts, if this proves necessary as a means of strengthening their enforcement in the light of evidence that may come to the fore in the future, or on the basis of the evaluation of the way in which this Directive has operated.
- (83) Whenever subsequent legislation relevant for this Directive is adopted, it should specify where appropriate that this Directive will apply. Where necessary, Article 1 and the Annex should be amended.
- (84) The objective of this Directive, namely to strengthen enforcement in certain policy areas and acts where breaches of Union law can cause serious harm to the public interest through effective whistleblower protection, cannot be sufficiently achieved by the Member States acting alone or in an uncoordinated manner, but can rather be better achieved by Union

action providing minimum standards of harmonisation on whistleblower protection. Moreover, only Union action can provide coherence and align the existing Union rules on whistleblower protection. Therefore, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve this objective.

- (85) This Directive respects fundamental rights and the principles recognised in particular by the Charter of Fundamental Rights of the European Union, in particular Article 11 thereof. Accordingly, this Directive must be implemented in accordance with those rights and principles by ensuring full respect for, *inter alia*, freedom of expression and information, the right to protection of personal data, the freedom to conduct a business, the right to a high level of consumer protection, the right to a high level of human health protection, the right to a high level of environmental protection, the right to good administration, the right to an effective remedy and the rights of defence.
- (86) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001.

HAVE ADOPTED THIS DIRECTIVE:

## CHAPTER I

### SCOPE, CONDITIONS FOR PROTECTION AND DEFINITIONS

#### *Article -1*

##### **Purpose**

The purpose of this Directive is to enhance the enforcement of Union law and policies in specific areas by laying down common minimum standards providing for a high level of protection of persons reporting on breaches.

#### *Article 1*

##### **Material scope**

1. This Directive lays down common minimum standards for the protection of persons reporting on the following breaches of Union law:
  - a) breaches falling within the scope of the Union acts set out in the Annex (Part I and Part II) to this directive as regards the following areas:
    - (i) public procurement;
    - (ii) financial services, products and markets and prevention of money laundering and terrorist financing
    - (iii) product safety;
    - (iv) transport safety;
    - (v) protection of the environment;
    - (vi) radiation protection and nuclear safety;
    - (vii) food and feed safety, animal health and welfare;

- (viii) public health;
  - (ix) consumer protection;
  - (x) protection of privacy and personal data, and security of network and information systems.
- c) breaches affecting the financial interests of the Union as defined by Article 325 TFEU and as further specified in relevant Union measures;
  - d) breaches relating to the internal market, as referred to in Article 26(2) TFEU, including breaches of the competition and State aid rules, and as regards acts which breach the rules of corporate tax or arrangements whose purpose is to obtain a tax advantage that defeats the object or purpose of the applicable corporate tax law

This Directive is without prejudice to the possibility for Member States to extend protection under national law as regards areas or acts not covered by paragraph 1.

#### *Article 1bis*

##### **Relationship with other Union acts and national provisions**

- 1. Where specific rules on the reporting of breaches are provided for in sector-specific Union acts listed in Part II of the Annex, those rules shall apply. The provisions of this Directive shall be applicable to the extent that a matter is not mandatorily regulated in those sector-specific Union acts.
- 1bis. This Directive shall not affect the responsibility of Member States to ensure national security and their power to protect their essential security interests. In particular, it shall not apply to reports on breaches of the procurement rules involving defence or security aspects unless they are covered by the relevant instruments of the Union.
- 2. This Directive shall not affect the application of Union or national law on:
  - a) the protection of classified information;

- b) the protection of legal and medical professional privilege;
  - c) the secrecy of judicial deliberations; and
  - d) rules on criminal procedure.
3. This Directive shall not affect national rules on the exercise of the workers' right to consult their representatives or trade unions and on the protection against any unjustified detrimental measure prompted by such consultations as well as on the autonomy of the social partners and their right to enter into collective agreements. This is without prejudice to the level of protection granted by this Directive.

## *Article 2*

### **Personal scope**

1. This Directive shall apply to reporting persons working in the private or public sector who acquired information on breaches in a work-related context including, at least, the following:
- a) persons having the status of worker, within the meaning of Article 45(1) TFEU, including civil servants;
  - b) persons having the status of self-employed, within the meaning of Article 49 TFEU;
  - c) shareholders and persons belonging to the administrative, management or supervisory body of an undertaking, including non-executive members, as well as volunteers and paid or unpaid trainees;
  - d) any persons working under the supervision and direction of contractors, subcontractors and suppliers.
- 1bis. This Directive shall apply to reporting persons also where they report or disclose information acquired in a work-based relationship which has since ended.



2. This Directive shall also apply to reporting persons whose work-based relationship is yet to begin in cases where information concerning a breach has been acquired during the recruitment process or other precontractual negotiation.
- 2.a The measures for the protection of reporting persons set out in Chapter IV shall also apply, where relevant, to
  - a) facilitators,
  - b) third persons connected with the reporting persons and who may suffer retaliation in a work-related context, such as colleagues or relatives of the reporting person, and
  - c) legal entities that the reporting persons own, work for or are otherwise connected with in a work related context.

*Article 2bis*

**Conditions for protection of reporting persons**

1. Persons reporting information on breaches falling within the areas covered by this Directive shall qualify for protection provided that:
  - a) they had reasonable grounds to believe that the information reported was true at the time of reporting and that the information fell within the scope of this Directive;
  - b) they reported internally in accordance with Article 3bis and externally in accordance with Article 5bis, or directly externally or publicly disclosed information in accordance with Article 12bis of this Directive.
3. Without prejudice to existing obligations to provide for anonymous reporting by virtue of Union law, this Directive does not affect the power of Member States to decide whether private or public entities and competent authorities shall or shall not accept and follow-up on anonymous reports of breaches.
4. Persons who reported or publicly disclosed information anonymously but were subsequently identified shall nonetheless qualify for protection in case they suffer retaliation, provided that they meet the conditions laid down in paragraph 1.

5. A person reporting to relevant institutions, bodies, offices or agencies of the Union on breaches falling within the scope of this Directive shall qualify for protection as laid down in this Directive under the same conditions as a person who reported externally.

### *Article 3*

#### **Definitions**

For the purposes of this Directive, the following definitions shall apply:

- (1) 'breaches' means acts or omissions:
- i) that are unlawful and relate to the Union acts and areas falling within the scope referred to in Article 1 and in the Annex or ;
  - ii) that defeat the object or the purpose of the rules in these Union acts and areas;
- (4) 'information on breaches' means information or reasonable suspicions about actual or potential breaches, and about attempts to conceal breaches which occurred or are very likely to occur in the organisation at which the reporting person works or has worked or in another organisation with which he or she is or was in contact through his or her work
- (5) 'report' means the provision of information on breaches;
- (6) 'internal reporting' means provision of information on breaches within a public or private legal entity;
- (7) 'external reporting' means provision of information on breaches to the competent authorities;
- (8) 'public disclosure' means making information on breaches available to the public domain;
- (9) 'reporting person' means a natural person who reports or discloses information on breaches acquired in the context of his or her work-related activities;

- (9a) ‘facilitator’ means a natural person who assists the reporting person in the reporting process in a work-related context, the assistance of which should be confidential
- (10) ‘work-related context’ means current or past work activities in the public or private sector through which, irrespective of their nature, persons may acquire information on breaches and within which these persons may suffer retaliation if they report them.
- (11) ‘concerned person’ means a natural or legal person who is referred to in the report or disclosure as a person to whom the breach is attributed or with which he or she is associated;
- (12) ‘retaliation’ means any direct or indirect act or omission which occurs in a work-related context prompted by the internal or external reporting, or by public disclosure, and which causes or may cause unjustified detriment to the reporting person;
- (13) ‘follow-up’ means any action taken by the recipient of the report or any competent authority, to assess the accuracy of the allegations made in the report and, where relevant, to address the breach reported, including through actions such as internal enquiry, investigation, prosecution, action for recovery of funds and closure
- (13 bis) ‘feedback’ means the provision to the reporting persons of information on the action envisaged or taken as follow-up to their report and on the grounds for such follow up.
- (14) ‘competent authority’ means any national authority entitled to receive reports in accordance with Chapter III and give feedback to the reporting persons and/or designated to carry out the duties provided for in this Directive, in particular as regards the follow -up of reports.;

**CHAPTER II**  
**INTERNAL REPORTING AND FOLLOW-UP OF REPORTS**

*Article 3bis*

**Reporting through internal channels**

1. As a general principle and without prejudice to articles 5 bis and 12 bis, information on breaches falling within the scope of this directive may be reported through the internal channels and procedures provided for in Chapter II.
2. Member States shall encourage the use of internal channels before external reporting, where the breach can be effectively addressed internally and where the reporting person considers that there is no risk of retaliation.
3. Appropriate information relating to such use of internal channels shall be provided in the context of the information given by legal entities in the public and private sector pursuant to article 5(1)(e), and by competent authorities pursuant to article 7(4)(a) and to article 10.

*Article 4*

**Obligation to establish internal channels**

1. Member States shall ensure that legal entities in the private and in the public sector establish internal channels and procedures for reporting and following up on reports, following consultation and in agreement with the social partners, where provided for by national law.
2. Such channels and procedures shall allow for reporting employees of the entity. They may allow for reporting by other persons who are in contact with the entity in the context of their work-related activities, referred to in Article 2(1)(b),(c) and (d);
3. The legal entities in the private sector referred to in paragraph 1 shall be those with 50 or more employees;

- 3bis. The threshold under paragraph 3 shall not apply to the entities falling within the scope of Union acts referred to in Part I.B and Part II of the Annex
- 3ter. Reporting channels may be operated internally by a person or department designated for that purpose or provided externally by a third party. The safeguards and requirements referred to in Article 5(1) have to be respected equally by entrusted third parties operating the reporting channel for a private entity.
- 3quater. Legal entities in the private sector with 50 to 249 employees may share resources as regards the receipt and, possibly also the investigations of reports. This is without prejudice to their obligations to maintain confidentiality and to give feedback and to address the reported breach.
4. Following an appropriate risk assessment taking into account the nature of activities of the entities and the ensuing level of risk *for, in particular, the environment and public health*, Member States may require private legal entities with less than 50 employees to establish internal reporting channels and procedures
5. Any decision taken by a Member State to require the private legal entities to establish internal reporting channels pursuant to paragraph 4 shall be notified to the Commission, together with a justification and the criteria used in the risk assessment. The Commission shall communicate that decision to the other Member States..
6. The legal entities in the public sector referred to in paragraph 1 shall be all public legal entities, including any entity owned or controlled by a public legal entities.

Member States may exempt from the obligation referred to in paragraph 1 municipalities with less than 10 000 inhabitants; or less than 50 employees, or other entities with less than 50 employees.

Member States may provide that internal reporting channels are shared between municipalities, or operated by joint municipal authorities in accordance with national law, provided that the shared internal channels are distinct and autonomous from the external channels.

*Article 5*

**Procedures for internal reporting and follow-up of reports**

1. The procedures for reporting and following-up of reports referred to in Article 4 shall include the following:
  - a) channels for receiving the reports which are designed, set up and operated in a secure manner that ensures the confidentiality of the identity of the reporting person and any third party mentioned in the report, and prevents access to non authorised staff members;
  - (aa) an acknowledgment of receipt of the report to the reporting person within no more than seven days of that receipt;
  - b) the designation of an impartial person or department competent for following up on the reports which may be the same person or department as the one receiving the reports and which will maintain communication with, where necessary ask for further information and provide feedback to the reporting person;
  - c) diligent follow-up to the report by the designated person or department;
  - (ca) diligent follow up where provided for in national law as regards anonymous reporting;
  - d) a reasonable timeframe to provide feedback to the reporting person about the follow-up to the report, not exceeding three months from the acknowledgment of receipt of or if no acknowledgement was sent, from the expiry of the seven-day period after the report was made.
  - e) clear and easily accessible information regarding the conditions and procedures for reporting externally to competent authorities pursuant to Article–5bis and, where relevant, to institutions, bodies, offices or agencies of the Union..
  
2. The channels provided for in point (a) of paragraph 1 shall allow for reporting in writing and/or orally, through telephone lines or other voice messaging systems, and upon

request of the reporting person, by means of a physical meeting within a reasonable timeframe.

### **CHAPTER III**

#### **EXTERNAL REPORTING AND FOLLOW-UP OF REPORTS**

##### *Article 5bis*

##### **Reporting through external channels**

Without prejudice to Article 12bis, reporting persons shall provide information on breaches falling within the scope of this directive using the channels and procedures referred to in articles 6 and 7, after having used the internal channel or by directly reporting to competent authorities.

##### *Article 6*

##### **Obligation to establish external reporting channels and to follow -up on reports**

1. Member States shall designate the authorities competent to receive, give feedback /or followup on the reports and shall provide them with adequate resources.
2. Member States shall ensure that the competent authorities:
  - a) establish independent and autonomous external reporting channels, for receiving and handling information provided by the reporting person;
  - abis) promptly acknowledge, within seven days the receipt of the reports unless the reporting person explicitly requested otherwise or the competent authority reasonably believes that acknowledging the report would jeopardise the protection of the reporting person's identity;
  - ater) diligently follow-up on the reports;
- b) give feedback to the reporting person about the follow-up of the report within a reasonable timeframe not exceeding three months, or six months in duly justified cases. The competent authorities shall communicate to the reporting person the

final outcome of the investigations, in accordance with the procedures provided for under national law;

c) transmit in due time the information contained in the report to competent institutions, bodies, offices or agencies of the Union, as appropriate, for further investigation, where provided for under national or Union law.

3. Member States may provide that competent authorities, after having duly reviewed the matter, may decide that a reported breach is clearly minor and does not require further follow-up measures pursuant to this Directive. This shall not affect other obligations or other applicable procedures to address the reported breach, or protection granted by this Directive in relation to reporting through the internal and/or external channels. In such a case, the competent authorities shall notify their decision and its grounds to the reporting person.

3bis. Member States may provide that competent authorities may decide that repetitive reports whose substance does not include any new meaningful information compared to a past report that was already closed, do not require follow-up, unless new legal or factual circumstances justify a different follow-up. In such a case, they shall inform the reporting person about the grounds for their decision.

3ter. Member States may provide that, in the event of high inflows of reports, competent authorities may deal with reports on serious breaches or breaches of essential provisions falling within the scope of this Directive as a matter of priority, without prejudice to the timeline as set out in article 6(2)(b).

4. Member States shall ensure that any authority which has received a report but does not have the competence to address the breach reported transmits it to the competent authority, within a reasonable time, in a secure manner and that the reporting person is informed, without delay, of such a transmission.

#### *Article 7*

#### **Design of external reporting channels**



1. External reporting channels shall be considered independent and autonomous, if they meet all of the following criteria:
  - b) they are designed, set up and operated in a manner that ensures the completeness, integrity and confidentiality of the information and prevents access to nonauthorised staff members of the competent authority
  - c) they enable the storage of durable information in accordance with Article 11 to allow for further investigations.
2. The external reporting channels shall allow for reporting in writing and orally through telephone or other voice messaging systems and, upon request by the reporting person, by means of a physical meeting within a reasonable timeframe.
3. Competent authorities shall ensure that, where a report is received through other channels than the reporting channels referred to in paragraphs 1 and 2 or by other staff members than those responsible for handling reports, the staff members who received it are refrained from disclosing any information that might identify the reporting or the concerned person and promptly forward the report without modification to the staff members responsible for handling reports..
4. Member States shall ensure that competent authorities have staff members responsible for handling reports, and in particular for:
  - a) providing any interested person with information on the procedures for reporting;
  - b) receiving and following-up reports;
  - c) maintaining contact with the reporting person for the purpose of providing feedback and ask for further information where necessary.
5. These staff members shall receive specific training for the purposes of handling reports.

#### *Article 10*

#### **Information regarding the receipt of reports and their follow-up**

Member States shall ensure that competent authorities publish on their websites in a separate, easily identifiable and accessible section at least the following information:

- a) the conditions under which reporting persons qualify for protection under this Directive;
  - b) the contact details for using the external reporting channels as provided for under Article 7 in particular the electronic and postal addresses, and the phone numbers, indicating whether the phone conversations are recorded;
  - c) the procedures applicable to the reporting of breaches referred, including the manner in which the competent authority may request the reporting person to clarify the information reported or to provide additional information, the timeframe for giving feedback to the reporting person and the type and content of this feedback;
  - d) the confidentiality regime applicable to reports, and in particular the information in relation to the processing of personal data in accordance with this Directive, Article 13 bis of Articles 5 and 13 of Regulation (EU) 2016/679, Article 13 of Directive (EU) 2016/680 and Article 11 of Regulation (EU) 2018/1725, as applicable;
  - e) the nature of the follow-up to be given to reports;
  - f) the remedies and procedures available against retaliation and possibilities to receive confidential advice for persons contemplating making a report;
  - g) a statement clearly explaining the conditions under which persons reporting to the competent authority would not incur liability due to a breach of confidentiality as provided for in Article 15(4).
- (gb) contact information of the single independent administrative authority as provided for in Article 14a where applicable.

## *Article 12*

### **Review of the procedures by competent authorities**

Member States shall ensure that competent authorities review their procedures for receiving reports and their follow-up regularly, and at least once every three years. In reviewing such procedures competent authorities shall take account of their experience and that of other competent authorities and adapt their procedures accordingly.

**CHAPTER IIIBIS**  
**PUBLIC DISCLOSURES**

*Article 12bis*

**Public disclosures**

1. A person who publicly discloses information on breaches falling within the scope of this Directive shall qualify for protection under this Directive if one of the following conditions is fulfilled:
  - a) he or she first reported internally and externally, or directly externally in accordance with Chapters II and III, but no appropriate action was taken in response to the report within the timeframe referred to in Articles 6(2)(b) and 9(1)(b); or
  - b) he or she had reasonable grounds to believe that:
    - (i) the breach may constitute an imminent or manifest danger for the public interest, such as where there is a situation of emergency or a risk of irreversible damage; or
    - (ii) in case of external reporting, there is a risk of retaliation or there is a low prospect of the breach being effectively addressed, due to the particular circumstances of the case, such as that evidence may be concealed or destroyed or that an authority is in collusion with the perpetrator of the breach or involved in the breach.
2. This Article shall not apply to cases where a person directly discloses information to the press pursuant to specific national provisions establishing a system of protection relating to the freedom of expression and information.

**CHAPTER III TER**  
**RULES APPLICABLE TO INTERNAL AND EXTERNAL REPORTING**

*Article 13bis*

**Duty of confidentiality**

1. Member States shall ensure that the identity of the reporting person is not disclosed without the explicit consent of this person to anyone beyond the authorised staff members competent to receive and/or follow-up on reports. This shall also apply to any other information from which the identity of the reporting person may be directly or indirectly deduced
2. By derogation to paragraph 1, the identity of the reporting person and any other information referred to in paragraph 1 may be disclosed only where this is a necessary and proportionate obligation imposed by Union or national law in the context of investigations by national authorities or judicial proceedings, including with a view to safeguarding the rights of defence of the concerned person.
3. Such disclosures shall be subject to appropriate safeguards under the applicable rules. In particular, the reporting person shall be informed before his or her identity is disclosed, unless such information would jeopardise the investigations or judicial proceedings. When informing the reporting person, the competent authority shall send him or her a written justification explaining the reasons for the disclosure of the confidential data concerned.
4. Member States shall ensure that competent authorities receiving reports including trade secrets do not use or disclose them for other purposes beyond what is necessary for the proper follow-up of the reports.

*Article 13ter*

**Processing of personal data**

Any processing of personal data carried out pursuant to this Directive, including the exchange or transmission of personal data by the competent authorities, shall be made in accordance with

Regulation (EU) 2016/679 and Directive (EU) 2016/680. Any exchange or transmission of information by Union institutions, bodies, offices and agencies should be undertaken in accordance with Regulation (EU) 2018/1725.

Personal data which are manifestly not relevant for the handling of a specific case shall not be collected or, if accidentally collected, shall be deleted without undue delay.

*Ex Article 11*

*New article 13 quarter*

**Record keeping of the reports**

1. Member States shall ensure that competent authorities and the private and public legal entities keep records of every report received, in compliance with the confidentiality requirements provided for in article 13bis of this Directive. The reports shall be stored for no longer than it is necessary and proportionate in view of the requirement imposed on competent authorities and on the private and public legal entities pursuant to this directive.
2. Where a recorded telephone line or another voice messaging system is used for reporting, subject to the consent of the reporting person, the competent authorities and the private and public legal entities shall have the right to document the oral reporting in one of the following ways:
  - a) a recording of the conversation in a durable and retrievable form;
  - b) a complete and accurate transcript of the conversation prepared by the staff members of the competent authority responsible for handling reports.

The competent authorities and the public and private legal entities shall offer the possibility to the reporting person to check, rectify and agree the transcript of the call by signing it.

3. Where an unrecorded telephone line or another voice messaging system is used for reporting, the competent authorities and the private and public legal entities shall have the right to document the oral reporting in the form of accurate minutes of the conversation prepared by the staff members responsible for handling the report. The competent

authorities and the public and private legal entities shall offer the possibility to the reporting person to check, rectify and agree with minutes of the call by signing them.

4. Where a person requests a meeting with the staff members of the competent authorities or the private and public legal entities for reporting according to Articles 5(2) and 7(2), competent authorities and the private and public legal entities shall ensure, subject to the consent of the reporting person, that complete and accurate records of the meeting are kept in a durable and retrievable form.

Competent authorities and private and public legal entities shall have the right to document the records of the meeting in one of the following ways shall have the right to document the records of the meeting in one of the following ways:

- a) a recording of the conversation in a durable and retrievable form;
- b) accurate minutes of the meeting prepared by the dedicated staff members responsible for handling the report.

The competent authorities and the public and private legal entities shall offer the possibility to the reporting person to check, rectify and agree with the minutes of the meeting by signing them.

## **CHAPTER IV PROTECTION MEASURES**

### *Article 14*

#### **Prohibition of retaliation**

Member States shall take the necessary measures to prohibit any form of retaliation, including threats and attempts of retaliation, whether direct or indirect, including in particular in the form of:

- a) suspension, lay-off, dismissal or equivalent measures;
- b) demotion or withholding of promotion;

- c) transfer of duties, change of location of place of work, reduction in wages, change in working hours;
- d) withholding of training;
- e) negative performance assessment or employment reference;
- e) negative performance assessment or employment reference;
- f) imposition or administering of any discipline, reprimand or other penalty, including a financial penalty;
- g) coercion, intimidation, harassment or ostracism;
- h) discrimination, disadvantage or unfair treatment;
- i) failure to convert a temporary employment contract into a permanent one, where the worker had legitimate expectations that he or she would be offered permanent employment;
- j) failure to renew or early termination of the temporary employment contract;
- k) damage, including to the person's reputation, particularly in social media, or financial loss, including loss of business and loss of income;
- l) blacklisting on the basis of a sector or industry-wide informal or formal agreement, which entails that the person will not, in the future, find employment in the sector or industry;
- m) early termination or cancellation of contract for goods or services;
- n) cancellation of a licence or permit.
- na) psychiatric or medical referrals.

*Article 14a*

***Measures of support***

1. Member States shall ensure that persons referred to in Article 2 have access, as appropriate, to support measures, in particular, the following:
  - (i) access to comprehensive and independent information and advice, which shall be easily accessible to the public and free of charge, on procedures and remedies available on protection against retaliation and the rights of the concerned person.
  - ii) access to effective assistance from competent authorities before any relevant authority involved in their protection where provided for under national law, certification of the fact that they qualify for protection under the Directive.
  - (iii) access to legal aid in criminal and in cross-border civil proceedings in accordance with Directive (EU) 2016/1919 and Directive 2008/52/EC of the European Parliament and of the Council, and access to legal aid in further proceedings and legal counselling or other legal assistance in accordance with national law.
2. Member States may provide for financial assistance and support, including psychological support, for reporting persons in the framework of legal proceedings.

The support measures referred to in this Article may be provided, as appropriate, by an information centre or a single and clearly identified independent administrative authority.



## *Article 15*

### **Measures for the protection against retaliation**

1. Member States shall take the necessary measures to ensure the protection of reporting persons meeting the conditions set out in Article 2bis against retaliation. Such measures shall include, in particular, those set out in paragraphs 2 to 8.
  
4. Without prejudice to Article 1bis (1bis) and (2), persons making a report or a public disclosure in accordance with this Directive shall not be considered to have breached any restriction on disclosure of information—and shall not incur liability of any kind in respect of such reporting or disclosure provided that they had reasonable grounds to believe that the reporting or disclosure of such information was necessary for revealing a breach pursuant to this Directive.
  
- 4bis. Reporting persons shall not incur liability in respect of the acquisition of or access to the relevant information, provided that such acquisition or access did not constitute a self-standing criminal offence. In the latter case, the criminal liability shall remain governed by applicable national law.
  
- 4ter. Any other possible liability of the reporting persons arising from acts or omissions which are unrelated to the reporting or are not necessary for revealing a breach pursuant to this Directive shall remain governed by applicable Union or national law.
  
5. In proceedings before a court or other authority relating to a detriment suffered by the reporting person, and subject to him or her establishing that he or she made a report or public disclosure and suffered a detriment, it shall be presumed that the detriment was made in retaliation for the report or disclosure. In such cases, it shall be for the person who has taken the detrimental measure to prove that this measure was based on duly justified grounds.
  
6. Reporting persons and facilitators shall have access to remedial measures against retaliation as appropriate, including interim relief pending the resolution of legal proceedings, in accordance with the national framework.

7. In judicial proceedings, including for defamation, breach of copyright, breach of secrecy data protection rules, disclosure of trade secrets, or for compensation requests based on private, public, or on collective labour law, reporting persons shall not incur liability of any kind for having made a report or public disclosure in accordance with this Directive and shall have the right to rely on that reporting or disclosure to seek dismissal of the case, provided that they had reasonable grounds to believe that the reporting or disclosure was necessary for revealing a breach pursuant to this Directive. Where a person reports or publicly discloses information on breaches falling within the scope of this Directive, which include trade secrets and meet the conditions of this Directive, such reporting or public disclosure shall be considered lawful under the conditions of Article 3(2) of the Directive (EU) 2016/943.
  
9. Member States shall take the necessary measures to ensure remedies and full compensation for damages suffered by reporting persons meeting the conditions set out in Article 2bis in accordance with national law.

## *Article 16*

### **Measures for the protection of concerned persons**

4. Member States shall ensure in accordance with the Charter of Fundamental Rights of the European Union that the concerned persons fully enjoy the right to an effective remedy and to a fair trial as well as the presumption of innocence and the rights of defence, including the right to be heard and the right to access their file.
5. Competent authorities shall ensure that the identity of the concerned persons is protected for as long as the investigation is ongoing, in accordance with national law.
6. The procedures set out in Articles 7 and 13ter shall also apply for the protection of the identity of the concerned persons.

## *Article 17*

### **Penalties**

7. Member States shall provide for effective, proportionate and dissuasive penalties applicable to natural or legal persons that:
  - a) hinder or attempt to hinder reporting;
  - b) take retaliatory measures against persons referred to in Article 2;
  - c) bring vexatious proceedings against persons referred to in Article 2;
  - d) breach the duty of maintaining the confidentiality as referred to in Article 13 of the identity of reporting persons.
8. Member States shall provide for effective, proportionate and dissuasive penalties applicable to persons where it is established that they knowingly made false reports or false public disclosures. Member States shall also provide for measures for compensating damages resulting from such reports or disclosures in accordance with national law.

*Article 17a*

**No Waiver of Rights and Remedies**

Member States should ensure that the rights and remedies provided for under this Directive may not be waived or limited by any agreement, policy, form or condition of employment, including a pre-dispute arbitration agreement.

**CHAPTER V**  
**FINAL PROVISIONS**

*Article 19*

**More favourable treatment and non-regression clause**

1. Member States may introduce or retain provisions more favourable to the rights of the reporting persons than those set out in this Directive, without prejudice to Article 16 and Article 17(2).
2. The implementation of this Directive shall under no circumstances constitute grounds for a reduction in the level of protection already afforded by Member States in the fields covered by the Directive.

*Article 20*

**Transposition and transitional period**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive [2 years after adoption], at the latest..
- 1bis. In derogation of paragraph 1, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with the obligation to set up an internal channel set out Article 4 (3) as regards legal entities with more than 50 and less than 250 employees by two years after transposition at the latest.
2. When Member States adopt the provisions referred in paragraphs 1 and 2, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made. They shall forthwith communicate to the Commission the text of those provisions.

**Reporting, evaluation and review**

3. Member States shall provide the Commission with all relevant information regarding the implementation and application of this Directive. On the basis of the information provided, the Commission shall, by [2 years after transposition], submit a report to the European Parliament and the Council on the implementation and application of this Directive.
4. Without prejudice to reporting obligations laid down in other Union legal acts, Member States shall, on an annual basis, submit the following statistics on the reports referred to in Chapter III to the Commission, preferably in an aggregated form if they are available at a central level in the Member State concerned:
  - a) the number of reports received by the competent authorities;
  - b) the number of investigations and proceedings initiated as a result of such reports and their outcome.
  - c) if ascertained, the estimated financial damage and the amounts recovered following investigations and proceedings related to the breaches reported.
5. The Commission shall, by [4 years after transposition], taking into account its report submitted pursuant to paragraph 1 and the Member States' statistics submitted pursuant to paragraph 2, submit a report to the European Parliament and to the Council assessing the impact of national law transposing this Directive. The report shall evaluate the way in which this Directive has operated and consider the need for additional measures, including, where appropriate, amendments with a view to extending the scope of this Directive to further Union acts or areas, in particular the improvement of the working environment to protect workers' health and safety and working conditions.

In addition, the report shall evaluate how Member States made use of existing cooperation mechanisms as part of their obligations to follow up reports regarding breaches falling within the scope of this Directive and more generally how they cooperate in cases of breaches with a cross border dimension.
- 3a. The Commission shall make the reports mentioned in paragraph 1 and 3 public and easily accessible.

*Article 22*

**Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 23*

**Addressees**

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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## ANNEX to the Proposal

### Part I

#### **A. Article 1(a)(i) – public procurement:**

1. Rules of procedure for public procurement and the award of concessions, for the award of contracts in the fields of defence and security, and for the award of contracts by entities operating in the fields of water, energy, transport and postal services sectors and any other contract or service as regulated by:
  - (i) Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.3.2014, p. 1);
  - (ii) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65);
  - (iii) Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243);
  - (iv) Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC (OJ L 216, 20.8.2009, p. 76).
1. Review procedures regulated by:
  - (i) Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ L 76, 23.3.1992, p. 14);
  - (ii) Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ L 395, 30.12.1989, p. 33).

#### **B. Article 1(a)(ii) – financial services, products and markets and, prevention of money laundering and terrorist financing:**

Rules establishing a regulatory and supervisory framework and consumer and investor protection in the Union's financial services and capital markets, banking, credit, investment, insurance and re-insurance, occupational or personal pensions products, securities, investment funds, payment services and the activities listed in Annex I to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending



Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338), as regulated by:

- (i) Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p. 7);
- (ii) Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1);
- (iii) Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps (OJ L 86, 24.3.2012, p. 1);
- (iv) Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds (OJ L 115, 25.4.2013, p. 1);
- (v) Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship fund (OJ L 115, 25.4.2013, p. 18);
- (vi) Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ L 60, 28.2.2014, p. 34);
- (vii) Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC (OJ L 158, 27.5.2014, p. 77);
- (viii) Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84);
- (ix) Directive 2015/2366/EU of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35);
- (x) Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids (OJ L 142, 30.4.2004, p. 12);
- (xi) Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies (OJ L 184, 14.7.2007, p. 17).
- (xii) Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38);

- (xiii) Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).
- (xiv) Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (OJ L 171, 29.6.2016, p. 1);
- (xv) Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1)
- (xvi) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190);
- (xvii) Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1);
- (xviii) Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (recast) (OJ L 173, 12.6.2014, p. 149);
- (xix) Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes (OJ L 84, 26.3.1997, p. 22);
- (xx) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

**C. Article 1(a)(iii) – product safety and compliance:**

1. Safety and compliance requirements of products placed in the Union market as defined and regulated by:
  - (i) Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety (OJ L 11, 15.1.2002, p. 4);
  - (ii) Union harmonisation legislation concerning manufactured products, including labelling requirements, other than food, feed, medicinal products for human and veterinary use, living plants and animals, products of human origin and products of plants and animals

relating directly to their future reproduction as listed in the Annexes of Regulation XX on market surveillance and compliance of products<sup>30</sup>;

- (iii) Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) (OJ L 263, 9.10.2007, p. 1).

2. Marketing and use of sensitive and dangerous products, as regulated by:

- (i) Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community (OJ L 146, 10.06.2009, p. 1);
- (ii) Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons (OJ L 256, 13.9.1991, p. 51);
- (iv) Regulation (EU) No 98/2013 of 15 January 2013 on the marketing and use of explosives precursors (OJ L 39, 9.2.2013, p. 1).

**D. Article 1(a)(iv) – transport safety:**

- 1. Safety requirements in the railway sector as regulated by Directive (EU) 2016/798 of the European Parliament and of the Council of 11 May 2016 on railway safety (OJ L 138, 26.5.2016, p. 102).
- 3. Safety requirements in the civil aviation sector as regulated by Regulation (EU) No 996/2010 of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC (OJ L 295, 12.11.2010, p. 35).
- 4. Safety requirements in the road sector as regulated by:
  - (i) Directive 2008/96/EC of the European Parliament and of the Council of 19 November 2008 on road infrastructure safety management (OJ L 319, 29.11.2008, p. 59);
  - (ii) Directive 2004/54/EC of the European Parliament and of the Council of 29 April 2004 on minimum safety requirements for tunnels in the Trans-European Road Network (OJ L 167, 30.4.2004, p. 39);
  - (iii) Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to

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30 2017/0353 (COD) - This is currently a Proposal for a REGULATION (EU) 2019/... OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of ... on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011 amending amending Council Directive 2004/42/EC, Regulations (EC) No 765/2008 and (EU) No 305/2011 listing in the Annex all the harmonised legislation containing requirements on the design and labelling of a product.

pursue the occupation of road transport operator and repealing Council Directive 96/26/EC (OJ L 300, 14.11.2009, p. 51).

5. Safety requirements in the maritime sector as regulated by:

- (i) Regulation (EC) No 391/2009 of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations (Recast) (OJ L 131, 28.5.2009, p. 11);
- (ii) Regulation (EC) 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents (OJ L 131, 28.5.2009, p. 24);
- (iii) Directive 2014/90/EU of the European Parliament and of the Council of 23 July 2014 on marine equipment and repealing Council Directive 96/98/EC (OJ L 257, 28.8.2014, p. 146);
- (iv) Directive 2009/18/EC of the European Parliament and of the Council of 23 April 2009 establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Council Directive 1999/35/EC and Directive 2002/59/EC (OJ L 131, 28.5.2009, p. 114);
- (v) Directive 2008/106/EC of the European Parliament and of the Council of 19 November 2008 on the minimum level of training of seafarers (OJ L 323, 3.12.2008, p. 33);
- (vi) Directive 98/41/EC of 18 June 1998 on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community (OJ L 188, 2.7.1998, p.35);
- (vii) Directive 2001/96/EC of the European Parliament and of the Council of 4 December 2001 establishing harmonised requirements and procedures for the safe loading and unloading of bulk carriers (OJ L 13, 16.1.2002, p. 9).

6. Safety requirements as regulated by Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods (OJ L 260, 30.9.2008, p. 13).

**E. Article 1(a)(v) – protection of the environment:**

- 1. Any criminal offence against the protection of the environment as regulated by Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (OJ L 328, 6.12.2008, p. 28) or any unlawful conduct infringing the legislation set out in the Annexes of the Directive 2008/99/EC;
- 2. Provisions on the environment and the climate, as regulated by:
  - (i) Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32)

- (ii) Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ L 140, 5.6.2009, p. 16);(iii) Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJ L 315, 14.11.2012, p. 1).
  - (iv) Regulation (EU) No 525/2013 of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No 280/2004/EC (OJ L 165, 18.6.2013, p. 13);
  - (v) Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ L 328, 21.12.2018, p. 82)
3. Provisions on sustainable development and waste management, as regulated by:
- (i) Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3);
  - (ii) Regulation (EU) No 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC (OJ L 330, 10.12.2013, p. 1);
  - (iii) Regulation (EU) No 649/2012 of the European Parliament and of the Council of 4 July 2012 concerning the export and import of hazardous chemicals (OJ L 201, 27.7.2012, p. 60);
4. Provisions on marine, air and noise pollution, as regulated by:
- (i) Directive 1999/94/EC relating to the availability of consumer information on fuel economy and CO2 emissions in respect of the marketing of new passenger cars (OJ L 12, 18.1.2000, p. 16);
  - (ii) Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants (OJ L 309, 27.11.2001, p. 22);
  - (iii) Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise (OJ L 189, 18.7.2002, p. 12);
  - (iv) Regulation (EC) No 782/2003 of the European Parliament and of the Council of 14 April 2003 on the prohibition of organotin compounds on ships (OJ EU L 115, 9.5.2003, p. 1);
  - (v) Directive (EC) 2004/35 of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ L 143, 30.4.2004, p. 56); (vi) Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements (OJ L 255, 30.9.2005, p. 11–21);

- (vii) Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006 concerning the establishment of a European Pollutant Release and Transfer Register and amending Council Directives 91/689/EEC and 96/61/EC (OJ L 33, 4.2.2006, p. 1);
  - (viii) Directive 2009/33/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of clean and energy-efficient road transport vehicles (OJ L 120, 15.5.2009, p. 12);
  - (ix) Regulation (EC) No 443/2009 of the European Parliament and of the Council of 23 April 2009 setting emission performance standards for new passenger cars as part of the Community's integrated approach to reduce CO<sub>2</sub> emissions from light-duty vehicles (OJ L 140, 5.6.2009, p. 1);
  - (x) Regulation (EC) No 1005/2009 of the European Parliament and of the Council of 16 September 2009 on substances that deplete the ozone layer (OJ L 286, 31.10.2009, p. 1);
  - (xi) Directive 2009/126/EC of the European Parliament and of the Council of 21 October 2009 on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations (OJ L 285, 31.10.2009, p. 36);
  - (xii) Regulation (EU) No 510/2011 of the European Parliament and of the Council of 11 May 2011 setting emission performance standards for new light commercial vehicles as part of the Union's integrated approach to reduce CO<sub>2</sub> emissions from light-duty vehicles (OJ L 145, 31.5.2011, p. 1);
  - (xiii) Directive 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the deployment of alternative fuels infrastructure (OJ L 307, 28.10.2014, p. 1);(xv) Regulation (EU) 2015/757 of the European Parliament and of the Council of 29 April 2015 on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport, and amending Directive 2009/16/EC (OJ L 123, 19.5.2015, p. 55);
  - (xvi) Directive (EU) 2015/2193 of the European Parliament and of the Council of 25 November 2015 on the limitation of emissions of certain pollutants into the air from medium combustion plants (OJ L 313, 28.11.2015, p. 1);
5. Provisions on the protection and management of water and soils, as regulated by:
- (i) Directive 2007/60/EC of the European Parliament and of the Council of 23 October 2007 on the assessment and management of flood risks (OJ L 288, 6.11.2007, p. 27);
  - (ii) Directive 2008/105/EC of the European Parliament and of the Council of 16 December 2008 on environmental quality standards in the field of water policy, amending and subsequently repealing Council Directives 82/176/EEC, 83/513/EEC, 84/156/EEC, 84/491/EEC, 86/280/EEC and amending Directive 2000/60/EC of the European Parliament and of the Council (OJ L 348, 24.12.2008, p. 84);(iii) Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (OJ L 26, 18.1.2012, p. 1).6. Provisions relating to the protection of nature and biodiversity, as regulated by:

- (i) Council Regulation (EC) No 1936/2001 of 27 September 2001 laying down control measures applicable to fishing for certain stocks of highly migratory fish (OJ L 263, 3.10.2001, p. 1);
  - (ii) Council Regulation (EC) No 812/2004 of 26 April 2004 laying down measures concerning bycatches of cetaceans in fisheries and amending Regulation (EC) No 88/98 (OJ L 150, 30.4.2004, p. 12);
  - (iii) Regulation (EC) No 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade in seal products (OJ L 286, 31.10.2009, p. 36);
  - (iii) Council Regulation (EC) No 734/2008 of 15 July 2008 on the protection of vulnerable marine ecosystems in the high seas from the adverse impacts of bottom fishing gears (OJ L 201, 30.7.2008, p. 8);
  - (iv) Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ L 20, 26.1.2010, p. 7);
  - (v) Regulation of (EU) 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (OJ L 295, 12.11.2010, p. 23);
  - (vi) Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species (OJ L 317, 4.11.2014, p. 35);
7. Provisions on chemicals, as regulated under Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p.1);
8. Provisions relating to organic products, as regulated under Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007 (OJ L 150, 14.6.2018, p. 1).

#### **F. Article 1(a)(vi) – radiation protection and nuclear safety**

Rules on nuclear safety as regulated by:

- (i) Council Directive 2009/71/Euratom of 25 June 2009 establishing a Community framework for the nuclear safety of nuclear installations (OJ L 172, 2.7.2009, p. 18);
- (ii) Council Directive 2013/51/Euratom of 22 October 2013 laying down requirements for the protection of the health of the general public with regard to radioactive substances in water intended for human consumption (OJ L 296, 7.11.2013, p. 12);

- (iii) Council Directive 2013/59/Euratom of 5 December 2013 laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation, and repealing Directives 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom and 2003/122/Euratom (OJ L 13, 17.1.2014, p. 1);
- (iv) Council Directive 2011/70/Euratom of 19 July 2011 establishing a Community framework for the responsible and safe management of spent fuel and radioactive waste (OJ L 199, 2.8.2011, p. 48);
- (v) Council Directive 2006/117/Euratom of 20 November 2006 on the supervision and control of shipments of radioactive waste and spent fuel (OJ L 337, 5.12.2006, p. 21).
- (vi) Council Regulation (Euratom) 2016/52 of 15 January 2016 laying down maximum permitted levels of radioactive contamination of food and feed following a nuclear accident or any other case of radiological emergency, and repealing Regulation (Euratom) No 3954/87 and Commission Regulations (Euratom) No 944/89 and (Euratom) No 770/90 (OJ L 13, 20.1.2016, p. 2);
- (vii) Council Regulation (Euratom) No 1493/93 of 8 June 1993 on shipments of radioactive substances between Member States.

**G. Article 1(a)(vii) – food and feed safety, animal health and animal welfare:**

1. Union food and feed law governed by the general principles and requirements as defined by Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ L 31, 1.2.2002, p. 1).

2. Animal health as regulated by:

(i) Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health ('Animal Health Law') (OJ L 84, 31.3.2016, p. 1).

(ii) Regulation (EC) No 1069/2009 of the European Parliament and of the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption (OJ L 300, 14.11.2009, p. 1); 3. Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC (Official Controls Regulation) (OJ L 95, 7.4.2017, p. 1).4. Provisions and standards on the protection and well-being of animals, as regulated by:



- (i) Council Directive 98/58/EC of 20 July 1998 concerning the protection of animals kept for farming purposes (OJ L 221, 8.8.1998, p. 23);
- (ii) Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97 (OJ L 3, 5.1.2005, p. 1);
- (iii) Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing (OJ L 303, 18.11.2009, p. 1);
- (iv) Council Directive 1999/22/EC of 29 March 1999 relating to the keeping of wild animals in zoos (OJ L 94, 9.4.1999, p. 24)

#### **H. Article 1(a)(viii) – public health:**

1. Measures setting high standards of quality and safety of organs and substances of human origin, as regulated by:
  - (i) Directive 2002/98/EC of the European Parliament and of the Council of 27 January 2003 setting standards of quality and safety for the collection, testing, processing, storage and distribution of human blood and blood components and amending Directive 2001/83/EC (OJ L 33, 8.2.2003, p. 30);
  - (ii) Directive 2004/23/EC of the European Parliament and of the Council of 31 March 2004 on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells (OJ L 102, 7.4.2004, p. 48);
  - (iii) Directive 2010/53/EU of the European Parliament and of the Council of 7 July 2010 on standards of quality and safety of human organs intended for transplantation (OJ L 207, 6.8.2010, p. 14).
6. Measures setting high standards of quality and safety for medicinal products and devices of medical use as regulated by:
  - (i) Regulation (EC) No 141/2000 of the European Parliament and of the Council of 16 December 1999 on orphan medicinal products (OJ L 18, 22.1.2000, p. 1);
  - (ii) Directive 2001/83/EC of 6 November 2001 on the Community code relating to medicinal products for human use (OJ L 311, 28.11.2001, p. 67);
  - (iii) Regulation (EU) 2019/6 of the European Parliament and of the Council of 11 December 2018 on veterinary medicinal products and repealing Directive 2001/82/EC (OJ L 4, 7.1.2019 p.43);
  - (iv) Regulation (EC) 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ L 136, 30.4.2004, p. 1);
  - (v) Regulation (EC) No 1901/2006 of the European Parliament and of the Council of 12 December 2006 on medicinal products for paediatric use and amending Regulation (EEC)

No 1768/92, Directive 2001/20/EC, Directive 2001/83/EC and Regulation (EC) No 726/2004 (OJ L 378, 27.12.2006, p. 1);

- (vi) Regulation (EC) 1394/2007 of the European Parliament and of the Council of 13 November 2007 on advanced therapy medicinal products and amending Directive 2001/83/EC and Regulation (EC) No 726/2004 (OJ L 324, 10.12.2007, p. 121);
  - (vii) Regulation (EU) 536/2014 of the European Parliament and of the Council of 16 April 2014 on clinical trials on medicinal products for human use, and repealing Directive 2001/20/EC (OJ L 158, 27.5.2014, p. 1).
7. Patients' rights as regulated by Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare (OJ L 88, 4.4.2011, p. 45).
8. Manufacture, presentation and sale of tobacco and related products regulated by Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC (OJ L 127, 29.4.2014, p. 1).

#### **I. Article 1(a)(ix) – consumer protection:**

Consumer rights and consumer protection as regulated by:

- (i) Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers (OJ L 80, 18.3.1998, p. 27);
- (ii) Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ L 171, 7.7.1999, p. 12);
- (iii) Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC (OJ L 271, 9.10.2002, p. 16);
- (iv) Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ L 149, 11.6.2005, p. 22);
- (v) Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ L 133, 22.5.2008, p. 66);
- (vi) Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC

and Directive 97/7/EC of the European Parliament and of the Council (OJ L 304, 22.11.2011, p. 64);

- (vii) Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (OJ L 257, 28.8.2014, p. 214).

**J. Article 1(a)(x) –protection of privacy and personal data, and security of network and information systems:**

- (i) Directive 2002/58/EC of the European Parliament and of the Council concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37);
- (ii) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1);
- (iii) Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union (OJ L 194, 19.7.2016, p. 1).

## **Part II**

Article 1bis(1) of the Directive refers to the following Union legislation:

**A. Article 1(a)(ii) – financial services, products and markets and, prevention of money laundering and terrorist financing:**

**1. Financial services:**

- (i) Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32);
- (ii) Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (OJ L 354, 23.12.2016, p. 37);
- (iii) Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157, 9.6.2006, p. 87);
- (iv) Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1);

- (v) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338);
- (vi) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349);
- (vii) Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1);
- (viii) Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (OJ L 352, 9.12.2014, p. 1);
- (ix) Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (OJ L 337, 23.12.2015, p. 1);
- (x) Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast) (OJ L 26, 2.2.2016, p. 19);
- (xi) Regulation (EU) No 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market (OJ L 168, 30.6.2017, p. 12).

## **9. Prevention of money laundering and terrorist financing:**

- (i) Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73);
- (ii) Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 (OJ L 141, 5.6.2015, p. 1).

## **B. Article 1(a)(iv) – transport safety:**

- (i) Regulation (EU) No 376/2014 of the European Parliament and of the Council of 3 April 2014 on the reporting, analysis and follow-up of occurrences in civil aviation amending Regulation (EU) No 996/2010 of the European Parliament and of the Council and repealing Directive 2003/42/EC of the European Parliament and of the Council and Commission Regulations (EC) No 1321/2007 and (EC) No 1330/2007 (OJ L 122, 24.4.2014, p. 18);

(ii) Directive 2013/54/EU of the European Parliament and of the Council of 20 November 2013 concerning certain flag State responsibilities for compliance with and enforcement of the Maritime Labour Convention, 2006 (OJ L 329, 10.12.2013, p. 1);

(iii) Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control (OJ L 131, 28.5.2009, p. 57).

**C. Article 1(a)(v) – protection of the environment:**

(i) Directive 2013/30/EU of the European Parliament and of the Council of 12 June 2013 on safety of offshore oil and gas operations and amending Directive 2004/35/EC (OJ L 178, 28.6.2013, p. 66).