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WORKING PAPER

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WORKING DOCUMENT

From:	Presidency
To:	Working Party on Fundamental Rights, Citizens' Rights and Free Movement of Persons
Subject:	Proposal for a Directive of the European Parliament and of the Council on the protection of persons reporting on breaches of Union law (Whistleblowers Directive)

Delegations will find in Annex the 4 column table which already includes some news compromise texts on the following articles: -1, 2 (2a), 3 (9), 4, 5, 6, 7, 8, 9, 10, 13ter, 14, 14bis, 15, 15a, 16, 17 and 17a.

The Presidency invites delegations to examine those compromise texts, with a view to make progress at the FREMP Working Party on 13 February 2019.

**Proposal for a
DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on the protection of persons reporting on breaches of Union law
2018/0106 (COD)**

Cell in green: The text can be deemed as already agreed

Cell in yellow: The issue needs further discussion at technical level

Cell in red: The issue needs further discussion in depth at the trilogue meetings

Note:

Differences between the EP's position and the Commission's proposal are highlighted in ***bold /italic*** . Deletions are marked with ~~strikethrough~~.

Differences between the Council's position and the Commission's proposal are highlighted in **bold/underlined**.

Deletions are marked with ~~strikethrough~~.

<i>Row</i>	COMMISSION PROPOSAL COM(2018) 218 FINAL	EP TEXT	COUNCIL TEXT	CONSOLIDATED TEXT / COMPROMISE PROPOSALS / COMMENTS
1	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	
2	Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 16, 33, 43, 50, 53(1), 62, 91, 100, 103, 109, 114, 168, 169, 192, 207 and 325(4) thereof and to the Treaty establishing the European Atomic Energy Community, and in particular Article 31 thereof,	Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 16, 33, 43, 50, 53(1), 62, 91, 100, 103, 109, 114, 153 (1), (a), (b), and (e), 157(3) , 168, 169, 192, 207 and 325(4) thereof and to the Treaty establishing the European Atomic Energy Community, and in particular Article 31 thereof,	Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 16, 33, 43, (2) , 50, 53(1), 62, 91, 100, 103, 109, 114, 168, (4) , 169, 192, 207(1) and 325(4) thereof and to the Treaty establishing the European Atomic Energy Community, and in particular Article 31 thereof,	<p>EP wishes to include 153, 157 TFEU. EP is of opinion that the obligation to consult social partners is incumbent to COM only.</p> <p>Preliminary doubts expressed by PRES, Council Legal Service (CLS) and COM. PRES mentioned the review clause (art.21 par.3).</p> <p>At the request of the EP, PRES and CLS explained the reasons behind deleting some of the articles of the Treaty (in line with CLS opinion).</p> <p>EP took note and will come back after internal consultations.</p>
3	Having regard to the proposal from the European Commission, After transmission of the draft legislative act to the national	Having regard to the proposal from the European Commission, After transmission of the draft legislative act to the national parliaments,	Having regard to the proposal from the European Commission, After transmission of the draft legislative act to the national	

Row	COMMISSION PROPOSAL COM(2018) 218 FINAL	EP TEXT	COUNCIL TEXT	CONSOLIDATED TEXT / COMPROMISE PROPOSALS / COMMENTS
	parliaments,		parliaments,	
4	Having regard to the opinion of the European Economic and Social Committee,	Having regard to the opinion of the European Economic and Social Committee,	Having regard to the opinion of the European Economic and Social Committee ¹ ,	
5	Having regard to the opinion of the Committee of the Regions	Having regard to the opinion of the Committee of the Regions	Having regard to the opinion of the Committee of the Regions ²	
6	Having regard to the opinion of the Court of Auditors,	Having regard to the opinion of the Court of Auditors,	Having regard to the opinion of the Court of Auditors ³ ,	
7	Acting in accordance with the ordinary legislative procedure,	Acting in accordance with the ordinary legislative procedure,	Acting in accordance with the ordinary legislative procedure,	
	Whereas:	Whereas:	Whereas:	
	(1) Persons who work for an 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 and in safeguarding the welfare of society. However, potential whistleblowers are often discouraged from reporting their concerns or suspicions for fear of	(1) Persons who work for <i>a public or private</i> 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 <i>that are harmful to the public interest</i> and in safeguarding the welfare of society. However, potential whistleblowers are often discouraged from reporting their concerns or suspicions for fear of retaliation. <i>In</i>	(1) Persons who work for an 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 <u>harmful to the public interest</u> and in safeguarding the welfare of society. However, potential whistleblowers are often discouraged from reporting their concerns or suspicions for fear of	

¹— OJ C [...], [...], p. [...].

²— OJ C [...], [...], p. [...].

³— OJ C [...], [...], p. [...].

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	retaliation.	<i>this context, the importance of providing balanced and effective whistleblower protection is increasingly acknowledged both at European and international level. The purpose of this Directive is therefore to create a climate of trust that enables whistleblowers to report observed or suspected breaches of law and threats to the public interest and to enhance the exercise of freedom of expression and the freedom of the media enshrined in Article 11 of the Charter of Fundamental Rights of the European Union. It is important to highlight that those freedoms are the cornerstone of investigative journalism and the principle of the confidentiality of sources of information.</i>	retaliation.	
	(2) At Union level, reports by whistleblowers are one upstream component of enforcement of Union law: they feed national and Union enforcement systems with information leading to effective detection, investigation and prosecution of breaches of Union	(2) At Union level, reports <i>and public disclosures</i> by whistleblowers <i>and investigative journalists</i> are one upstream component of enforcement of Union law <i>and policies</i> : they feed national and Union enforcement systems with information, <i>often</i> leading to effective detection, investigation and prosecution of	(2) At Union level, reports by whistleblowers are one upstream component of enforcement of Union law: they feed national and Union enforcement systems with information leading to effective detection, investigation and prosecution of breaches of Union law.	

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	law.	breaches of Union law, <i>thus enhancing transparency and accountability.</i>		
		<i>(2a) All major scandals in the public eye since 2014, such as 'LuxLeaks' and 'the Panama Papers', came to light thanks to the actions of whistleblowers.</i>		
	(3) In certain policy areas, breaches of Union law 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 in a privileged position to disclose breaches, it is necessary to enhance enforcement by ensuring effective protection of whistleblowers from retaliation and introducing effective reporting channels.	(3) In certain policy areas, Breaches of Union law may cause serious harm to the public interest, in the sense of creating significant risks for the welfare of society, <i>and undermine citizens' trust in the Union's action.</i> Where weaknesses of enforcement have been identified in those areas, and As whistleblowers are <i>usually</i> in a privileged position to disclose <i>such</i> breaches, <i>and have the courage to report or disclose information in defence of the public interest, notwithstanding any personal and professional risk,</i> it is necessary to enhance enforcement <i>of Union law</i> by ensuring effective protection of whistleblowers from retaliation and introducing effective, <i>independent, confidential and safe</i> reporting	(3) In certain policy areas, breaches of Union law = <u>notwithstanding their qualification under national law as administrative, criminal or other types of offences</u> - 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 in a privileged position to disclose breaches, it is necessary to enhance enforcement <u>by introducing effective reporting channels and</u> by ensuring effective protection of whistleblowers from retaliation and introducing effective reporting channels.	

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		channels.		
	(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 the Union as a whole.	(4) Whistleblower protection currently provided in the European Union is fragmented across Member States and <i>Union institutions, bodies, offices and agencies and is also</i> 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 the Union as a whole.	(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 <i>into</i> the Union as a whole.	
		<i>(4 a) Article 33 of the United Nations Convention against Corruption, to which the Union and its Member States are parties, clearly stipulates the need for appropriate legal measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in</i>		

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		<i>accordance with that Convention.</i>		
		<i>(4b) In order to facilitate public disclosures and establish an open culture of reporting, the conditions for public disclosures should be in line with the Council of Europe Recommendation CM/Rec(2014)7 on the protection of whistleblowers. The media should by no means be hindered in exposing any wrongdoing and thereby fulfilling their democratic role.</i>		
	(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.	(5) Accordingly, common minimum legal standards ensuring effective whistleblower protection with a general and comprehensive approach should apply in those all Union and national 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 or national law cause serious harm to the public interest.	(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; ² ii) under-reporting by whistleblowers is a key factor affecting enforcement, and iii) breaches of Union law cause serious harm to the public interest. <u>When transposing this Directive, Member States may extend the application of the national provisions to other areas with a view to ensuring a comprehensive and coherent</u>	

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			<u>framework at national level.</u>	
		<i>(5a) Whistleblower protection should be enforced to foster an environment conducive to freedom of information and of the media; this requires firstly that journalists and their sources, including whistleblowers, be given effective protection against any violation of their safety and their mental and physical integrity, and that any attempt to intimidate them or to undermine their independence be prevented.</i>		
	(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	(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	(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	

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	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.	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. <i>In most of the cases, such breaches place the trust of citizens in public institutions under a serious threat, thus jeopardising the proper functioning of democracy. Every effort should be made to protect those reporting misuse or misconduct regarding the Union budget and Union institutions.</i>	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.	
		<i>(6a) A regime for the protection of persons reporting on breaches of Union law does not obviate the need to strengthen the means of supervision of each Member State and their public structures, which should be increasingly capable of fighting tax fraud and money laundering, nor the need to participate in international cooperation in those areas.</i>		
	(7) In the area of financial services, the added value of	(7) In the area of financial services, the added value of <i>sectoral</i>	(7) In the area of financial services, the added value of	

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	<p>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 were introduced in a significant number of legislative instruments in this area. In particular, in the context of the prudential framework applicable to credit institutions and investment firms, Directive 2013/36/EU⁵ provides for protection of whistleblowers, which extends also to Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms.</p>	<p>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 were introduced in a significant number of legislative instruments in this area⁴. In particular, in the context of the prudential framework applicable to credit institutions and investment firms, Directive 2013/36/EU⁵ provides for protection of whistleblowers, which extends also to Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms. <i>However, a number of high profile cases involving European financial institutions have proven that protection of whistleblowers within such financial institutions still remains unsatisfactory and that</i></p>	<p>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, <u>including internal and external reporting channels as well as an explicit prohibition of retaliation</u>, were introduced in a significant number of legislative instruments in this area⁴. In particular, in the context of the prudential framework applicable to credit institutions and investment firms, Directive 2013/36/EU⁵ provides for protection of whistleblowers, which extends also to Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms.</p>	

⁴ Communication of 8.12.2010 "Reinforcing sanctioning regimes in the financial services sector".

⁵ 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).

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		<i>fears of reprisals from both employers and authorities still prevent whistleblowers from coming forward with information on breaches of law.</i>		
	(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’ and to ‘non-harmonised products’. Whistleblower protection is also instrumental in avoiding diversion	(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’ and to ‘non-harmonised products’. Whistleblower protection is also instrumental in avoiding diversion of firearms, their parts and components	(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’ ⁶ -and to ‘non-harmonised products’ ⁷ . Whistleblower protection is also instrumental in avoiding diversion	

⁶ 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).

⁷ 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).

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	<p>of firearms, their parts and components and ammunition, as well as defence-related products, by encouraging the reporting of breaches, such as document fraud, altered marking or false declarations of import or export and fraudulent intra-communitarian acquisition of firearms where violations often imply a diversion from the legal to the illegal market.</p> <p>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.</p>	<p>and ammunition, as well as defence-related products, by encouraging the reporting of breaches, such as document fraud, altered marking or false declarations of import or export 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.</p>	<p>of firearms, their parts and components and ammunition, as well as defence-related products, by encouraging the reporting of breaches, such as document fraud, altered marking or false declarations of import or export 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.</p>	
	<p>(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</p>	<p>(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 safety³⁸ and maritime transport safety³⁹, which</p>	<p>(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 safety⁸ and maritime transport</p>	

⁸ 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

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	safety ³⁸ and maritime transport safety ³⁹ , 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 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 road and railway transport.	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, <i>inter alia</i> , to complement <i>and expand upon</i> the existing elements of whistleblower protection in these two sectors as well as to provide such protection to enhance <i>immediately</i> the enforcement of safety standards for other transport modes, namely <i>special, inland waterway</i> , road and railway transport.	safety ⁹ , 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 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 road and railway transport.	
	(10) Evidence-gathering, detecting and addressing environmental crimes and unlawful conduct against the protection of the environment remain a challenge and need to be reinforced as acknowledged in the	(10) Evidence-gathering, <i>preventing</i> , detecting and addressing environmental crimes and unlawful conduct against <i>or omissions as well as potential breaches concerning</i> the protection of the environment <i>unfortunately</i> remain a challenge	(10) Evidence-gathering, detecting and addressing environmental crimes and unlawful conduct against the protection of the environment remain a challenge and need to be reinforced as acknowledged in the Commission	

occurrences in civil aviation (OJ L 122, p. 18).

⁹ 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).

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	Commission Communication "EU actions to improve environmental compliance and governance" of 18 January 2018 ⁴⁰ . Whilst whistleblower protection rules exist at present only in one sectorial instrument on environmental protection ⁴¹ , the introduction of such protection appears necessary to ensure effective enforcement of the Union environmental acquis, whose breaches can cause serious 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.	and need to be reinforced as acknowledged in the Commission Communication "EU actions to improve environmental compliance and governance" of 18 January 2018 ⁴⁰ . Whilst whistleblower protection rules exist at present only in one sectorial instrument on environmental protection ⁴¹ , the introduction of such protection appears is necessary to ensure effective enforcement of the Union environmental acquis, whose breaches can cause serious 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.	Communication "EU actions to improve environmental compliance and governance" of 18 January 2018 ¹⁰ . Whilst whistleblower protection rules exist at present only in one sectorial instrument on environmental protection ¹¹ , the introduction of such protection appears necessary to ensure effective enforcement of the Union environmental <i>acquis</i> , whose breaches can cause serious 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.	
			<u>(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</u>	

¹⁰ COM_(2018) 10 final.

¹¹ 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).

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			<u>management of spent fuel and radioactive waste. It would also strengthen the enforcement of existing provisions of the revised Nuclear Safety Directive ¹² 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.</u>	
	(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 and welfare. The different Union rules	(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	(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 and welfare. The different Union rules	

¹² 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).

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	developed in these areas are closely interlinked. Regulation (EC) No 178/2002 ⁴² 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	are closely interlinked. Regulation (EC) No 178/2002 ⁴² 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. <i>Council Directive</i>	developed in these areas are closely interlinked. Regulation (EC) No 178/2002 ¹³ 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	

¹³ 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).

Row	COMMISSION PROPOSAL COM(2018) 218 FINAL	EP TEXT	COUNCIL TEXT	CONSOLIDATED TEXT / COMPROMISE PROPOSALS / COMMENTS
	control of animal diseases which are transmissible to animals or to humans.	<i>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, and when they are used for animal experimentation.</i>	are transmissible to animals or to humans ¹⁴ .	
	(12) Enhancing the protection of whistleblowers would also favour preventing and deterring breaches of Euratom rules on nuclear safety, radiation protection and responsible and safe management of spent fuel and radioactive and would be reinforce the enforcement of existing provisions of the revised Nuclear Safety Directive on the effective nuclear safety culture and, in particular, Article 8 b (2) (a), which requires, inter alia, that the competent regulatory authority	(12) Enhancing the protection of whistleblowers would also favour preventing and deterring breaches of Euratom rules on nuclear safety, radiation protection and responsible and safe management of spent fuel and radioactive <i>waste</i> and would be reinforce the enforcement of existing provisions of the revised Nuclear Safety Directive on the effective nuclear safety culture and, in particular, Article 8 b (2) (a), which requires, inter alia, that the competent regulatory authority establishes management systems	(12) Enhancing the protection of whistleblowers would also favour preventing and deterring breaches of Euratom rules on nuclear safety, radiation protection and responsible and safe management of spent fuel and radioactive and would be reinforce the enforcement of existing provisions of the revised Nuclear Safety Directive¹⁵ on the effective nuclear safety culture and, in particular, Article 8 b (2) (a), which requires, inter alia, that the competent regulatory authority establishes	

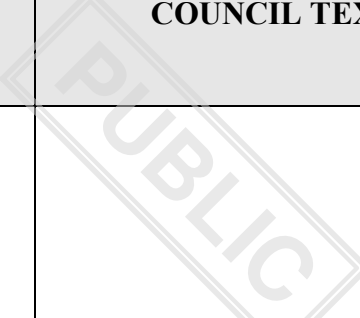
¹⁴ OJ L 84, p. 1.

¹⁵ ~~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. 42–52).~~

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	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.	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.	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.	
	(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. Whistleblower protection should therefore be introduced in relation to relevant Union rules adopted pursuant to Articles 114, 168 and 169 TFEU.	(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. Whistleblower protection should therefore be introduced in relation to relevant Union rules adopted pursuant to Articles 114, 168 and 169 TFEU.	(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. Whistleblower protection should therefore be introduced in relation to relevant Union rules adopted pursuant to Articles 114, 168 and 169 TFEU.	
	(14) The protection of privacy and personal data is another area where whistleblowers are in a privileged position to disclose	(14) The protection of privacy and personal data, <i>enshrined in Articles 7 and 8 of the Charter of Fundamental Rights and Article 8</i>	(14) The protection of privacy and personal data is another area where whistleblowers are in a privileged position to disclose	

Row	COMMISSION PROPOSAL COM(2018) 218 FINAL	EP TEXT	COUNCIL TEXT	CONSOLIDATED TEXT / COMPROMISE PROPOSALS / COMMENTS
	<p>breaches of Union law which can seriously harm the public interest. Similar considerations apply for breaches of the Directive on the security of network and information systems, 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.) and providers of key digital services (e.g. cloud computing services). Whistleblowers' reporting in this area is particularly valuable to prevent security incidents that would affect key economic and social activities and widely used digital services. It helps ensuring the continuity of services which are essential for the functioning of the internal market and the wellbeing of society.</p>	<p><i>of the European Convention on Human Rights (ECHR)</i>, is another area where whistleblowers are in a privileged position <i>can help</i> to disclose breaches of Union law which can seriously harm the public interest. Similar considerations apply for breaches of the Directive on the security of network and information systems⁴⁵, 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, <i>tourism</i>, health, transport, banking, <i>construction</i>, etc.) and for providers of key digital services (e.g. cloud computing services) <i>and for suppliers of basic utilities, such as water, electricity and gas</i>. Whistleblowers' reporting in this area is particularly valuable <i>in order</i> to prevent security incidents that would affect key economic and social activities and widely used digital services, <i>as well as to prevent</i></p>	<p>breaches of Union law which can seriously harm the public interest. Similar considerations apply for breaches of the Directive on the security of network and information systems¹⁶, 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.) and providers of key digital services (e.g. cloud computing services). Whistleblowers' reporting in this area is particularly valuable to prevent security incidents that would affect key economic and social activities and widely used digital services. It helps ensuring the continuity of services which are essential for the functioning of the internal market and the wellbeing of society.</p>	

¹⁶ 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.

Row	COMMISSION PROPOSAL COM(2018) 218 FINAL	EP TEXT	COUNCIL TEXT	CONSOLIDATED TEXT / COMPROMISE PROPOSALS / COMMENTS
		<p><i>any infringement of Union data protection legislation.</i> It helps ensuring the continuity of services which are essential for the functioning of the internal market and the wellbeing of society.</p>		
			<p><u>(14bis) 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</u></p>	

Row	COMMISSION PROPOSAL COM(2018) 218 FINAL	EP TEXT	COUNCIL TEXT	CONSOLIDATED TEXT / COMPROMISE PROPOSALS / COMMENTS
			<u>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. Whistleblower protection is necessary to facilitate the detection, prevention and deterrence of relevant fraud and illegal activities. 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 2988/95¹⁷, which is complemented, for the most serious types of fraud-related conduct, by Directive (EU) 2017/1371¹⁸ and by the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the</u>	

¹⁷ Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ L 312, 23.12.1995, p. 1).

¹⁸ Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29).

<i>Row</i>	COMMISSION PROPOSAL COM(2018) 218 FINAL	EP TEXT	COUNCIL TEXT	CONSOLIDATED TEXT / COMPROMISE PROPOSALS / COMMENTS
			<u>protection of the European Communities' financial interests of 26 July 1995,¹⁹ including the Protocols thereto of 27 September 1996,²⁰ of 29 November 1996²¹ and of 19 June 1997²² (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)²³.</u>	
			<u>(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</u>	

¹⁹ OJ C 316, 27.11.1995, p. 48.

²⁰ OJ C 313, 23.10.1996, p. 1.

²¹ OJ C 151, 20.5.1997, p. 1.

²² OJ C 221, 19.7.1997, p. 11.

²³ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

<i>Row</i>	COMMISSION PROPOSAL COM(2018) 218 FINAL	EP TEXT	COUNCIL TEXT	CONSOLIDATED TEXT / COMPROMISE PROPOSALS / COMMENTS
			<u>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.</u>	
	(15) Reporting by whistleblowers is necessary to enhance the detection and prevention of infringements of Union competition law. This would serve to protect the efficient functioning of markets in the Union, allow a level playing field for business and deliver benefits to consumers. The protection of whistleblowers would enhance Union competition law enforcement, including State aid. 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	(15) Reporting by whistleblowers is necessary to enhance the detection and prevention of infringements of Union competition law. This would serve to protect the efficient functioning of markets in the Union, allow a level playing field for business and deliver benefits to consumers. The protection of whistleblowers would enhance Union competition law enforcement, including State aid. 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 ⁴⁶ . The introduction of	(15) Reporting by whistleblowers is necessary to enhance the detection and prevention of infringements of Union competition law. <u>Specifically, the protection of whistleblowers to enhance the enforcement of Union competition law, including State aid</u> This would serve to <u>safeguard</u> protect the efficient functioning of markets in the Union, allow a level playing field for business and deliver benefits to consumers. The protection of whistleblowers would enhance Union competition law enforcement, including State aid. 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	

Row	COMMISSION PROPOSAL COM(2018) 218 FINAL	EP TEXT	COUNCIL TEXT	CONSOLIDATED TEXT / COMPROMISE PROPOSALS / COMMENTS
	whistleblower tool by the European Commission ⁴⁶ . The introduction of whistleblower protection at Member State level would increase the ability of the European Commission as well as the competent authorities in the Member States to detect and bring to an end infringements of Union competition law. With respect to State aid, whistleblowers can play a significant role in reporting unlawfully granted aid and informing when aid is misused, both at national, regional and local levels.	whistleblower protection at Member State level would increase the ability of the European Commission as well as the competent authorities in the Member States to detect and bring to an end infringements of Union competition law. With respect to State aid, whistleblowers can play a significant role in reporting unlawfully granted aid and informing when aid is misused, both at national, regional and local levels.	Commission. <u>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. The introduction of whistleblower protection at Member State level would increase the ability of the European Commission as well as the competent authorities in the Member States to detect and bring to an end infringements of Union competition law. With respect to State aid, whistleblowers can play a significant role in reporting unlawfully granted aid and informing when aid is misused, both at national, regional and local levels</u>	
	(16) 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	(16) The protection of the financial interests of the Union, which relates to the fight against fraud, corruption, <i>breaches of legal requirements, abuse of power</i> 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	(16) 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	

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	<p>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. Whistleblower protection <i>is</i> necessary to facilitate the detection, prevention and deterrence of relevant fraud and illegal activities.</p>	<p>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. <i>Investigative journalists also play a crucial role in revealing wrongdoing connected to all those areas. Such journalists represent a very exposed group of professionals, often paying with their jobs, freedom and even with their lives for disclosure of massive irregularities and corruption schemes. Special measures to protect investigative journalists should, therefore, be included in a horizontal legislative proposal for the protection of whistleblowers. Investigative journalism and whistleblower protection are</i></p>	<p>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. Whistleblower protection is necessary to facilitate the detection, prevention and deterrence of relevant fraud and illegal activities.</p>	

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		necessary to facilitate the detection, prevention and deterrence of relevant fraud and illegal activities.		
	(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. Whistleblower protection adds to recent Commission initiatives aimed at improving transparency and the exchange of information in the field of taxation ⁴⁷ and creating a fairer corporate tax environment within	(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. Whistleblower protection adds to recent Commission initiatives aimed at improving transparency and the exchange of information in the field of taxation ⁴⁷ and creating a fairer corporate tax environment within the Union ⁴⁸ , with a view to increasing Member	(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. Whistleblower protection adds to recent Commission initiatives aimed at improving transparency and the exchange of information in the field of taxation²⁴ and creating a fairer corporate tax environment within the Union²⁵, with a view to	

²⁴ ~~Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (as amended).~~

²⁵ ~~Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the~~

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	the Union ⁴⁸ , 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.	States' effectiveness in identifying evasive and/or abusive arrangements that could otherwise go undetected and will help deter such arrangements.	increasing Member States' effectiveness in identifying evasive and/or abusive arrangements that could otherwise go undetected and will help deter such arrangements <u>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 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. This Directive does not harmonise provisions relating to taxes, whether substantive or procedural, and it does not seek</u>	

internal market (as amended); Proposal for a Council Directive on a Common Consolidated Corporate Tax Base, COM/2016/0683 final — 2016/0336; Proposal for a Council Directive on a Common Corporate Tax Base, COM/2016/0685 final — 2016/0337.

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			<u>to strengthen the enforcement of national corporate tax rules, without prejudice to the possibility of Member States to use reported information for that purpose.</u>	
			<u>(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</u>	

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			<u>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.</u>	
	(18) Certain Union acts, in particular in the area of financial services, such as Regulation (EU) No 596/2014 on market abuse, and Commission Implementing Directive 2015/2392, adopted on the basis of that Regulation , already contain detailed rules on whistleblower protection. Such existing Union legislation, including the list of Part II of the Annex, should be complemented by the present Directive, so that these instruments are fully aligned with its minimum standards whilst maintaining 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	(18) Certain Union acts, in particular in the area of financial services, such as Regulation (EU) No 596/2014 on market abuse, and Commission Implementing Directive 2015/2392, adopted on the basis of that Regulation, already contain detailed rules on whistleblower protection. Such existing Union legislation, including the list of Part II of the Annex, should be complemented by the present Directive, so that these instruments are fully aligned with its minimum standards whilst maintaining 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 <i>and the fight against</i> money laundering and, the proper	(18) Certain Union acts, in particular in the area of financial services, such as Regulation (EU) No 596/2014 on market abuse ²⁶ , and Commission Implementing Directive 2015/2392, adopted on the basis of that Regulation ²⁷ , already contain detailed rules on whistleblower protection. Such existing Union legislation, including the list of Part II of the Annex, should be complemented by the present Directive, so that these instruments are fully aligned with its minimum standards whilst maintaining <u>maintain</u> 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	

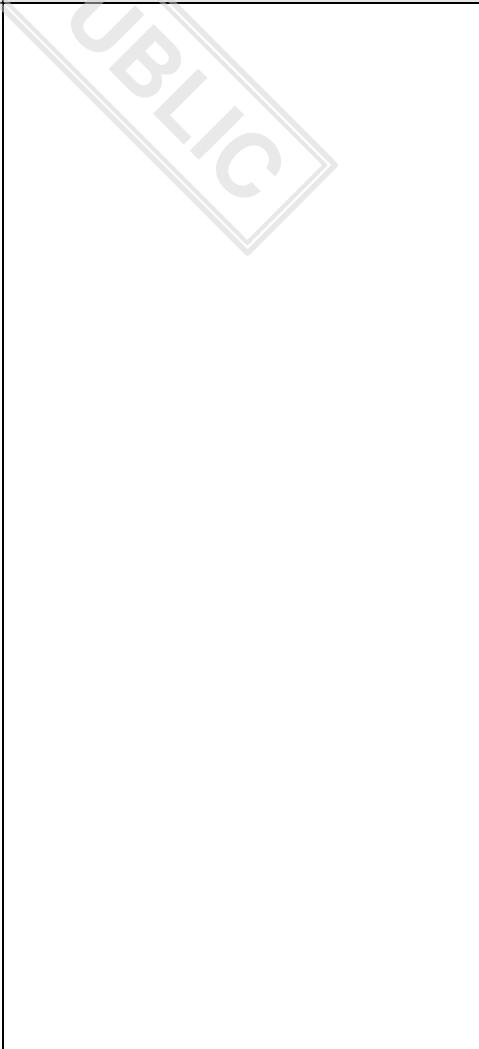
²⁶ OJ L 173, p. 1.

²⁷ 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).

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	and terrorist financing are currently obliged to establish internal reporting channels.	<i>implementation of Directive 2011/7/EU of the European Parliament and of the Council, terrorist financing and cyber-crime are currently obliged to establish internal reporting channels. As such cases often involve highly complex international corporate and financial arrangements, which are likely to be within the remit of differing jurisdictions, provisions for a unified point of contact for whistleblowers should be adopted.</i>	and terrorist financing are currently obliged to establish internal reporting channels. <u>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 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</u>	

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			<u>the minimum standards laid down by this Directive, the obligation to establish internal reporting channels provided for in Article 4(1) of this Directive should also apply in respect of Regulation (EU) No 1286/2014.</u>	
		<i>(18a) The Union is founded on a set of common values and principles. It guarantees respect for human rights and fundamental freedoms, as enshrined in the Charter of Fundamental Rights of the European Union ('the Charter'). Since those are the rights and principles on which the Union is founded, their protection is of paramount importance and persons uncovering violations of such rights and principles deserve to benefit from the protection provided for under this Directive.</i>		
	(19) Each time a new Union act for which whistleblower protection is relevant and can contribute to more effective enforcement is adopted, consideration should be given to whether to amend the Annex to the present Directive in order to	(19) <i>In order to take account of any</i> new Union act for which whistleblower protection is relevant and can contribute to <i>which could have an impact in terms of</i> more effective enforcement is adopted, consideration should be given to whether, <i>the power to adopt acts in</i>	(19) Each time a new Union act for which whistleblower protection is relevant and can contribute to more effective enforcement is adopted, consideration should be given to whether to amend the Annex to the present Directive in order to	

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	place it under its scope.	<p><i>accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in order to amend this Directive by updating the Annex to the present Directive thereto each time such a new Union act is adopted in order to place it under the scope of this Directive. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.</i></p>	<p>place it under its scope.</p>	

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		<p><i>(19a) In certain situations, infringements of Union law regarding workers' protection, employment and working conditions, social, individual and collective workers' rights can be the subject of effective individual procedures to secure redress. On the other hand, where such infringements are systematic, they undermine the public interest and there is therefore a need to provide for the protection of those who report such infringements. In certain fields, difficulties with the implementation of Union legislation have been observed, such as having to resort unacceptably to precarious employment. Effective enforcement of Union law is also required and improving the protection of whistleblowers in the field of labour law would thus improve the application of the law and ensure a high level of protection of workers in the internal market while ensuring fair competition between economic operators.</i></p>		
	(20) This Directive should be without prejudice to the	(20) This Directive should be without prejudice to the complement the	(20) This Directive should be without prejudice to the protection	

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	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.	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 <i>or Union</i> 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.	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	
			<u>(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</u>	

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			<u>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 reporting in a work-related context outside their employment relationship with the EU institutions.</u>	
	(21) This Directive should be without prejudice to the protection of national security and other 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,	(21) This Directive should be without prejudice to the protection of national security and other 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 provision of this	(21) <u>National security remains the sole responsibility of each Member State, in the fields of both defence and security.</u> This Directive should be without prejudice to the protection of national security and other classified information which Union law or the laws, regulations or administrative provisions in	

Row	COMMISSION PROPOSAL COM(2018) 218 FINAL	EP TEXT	COUNCIL TEXT	CONSOLIDATED TEXT / COMPROMISE PROPOSALS / COMMENTS
	Moreover, the provision 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.	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.	force in the Member State concerned require, for security reasons, to be protected from unauthorised access. In particular, Moreover, the provision 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.	
			<u>(21a) 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.</u>	
			<u>(21b) This Directive should also be without prejudice to the protection of</u> classified information which Union law or the laws, regulations or administrative provisions in force	

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			in the Member State concerned require, for security reasons, to be protected from unauthorised access. In particular, Moreover, the provision 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.	
			<u>(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</u>	

<i>Row</i>	COMMISSION PROPOSAL COM(2018) 218 FINAL	EP TEXT	COUNCIL TEXT	CONSOLIDATED TEXT / COMPROMISE PROPOSALS / COMMENTS
			<u>providers, including therapists, with their patients and of patient records ('medical privacy') as provided for under national and Union law.</u>	
			<u>(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.</u>	
			<u>(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</u>	

<i>Row</i>	COMMISSION PROPOSAL COM(2018) 218 FINAL	EP TEXT	COUNCIL TEXT	CONSOLIDATED TEXT / COMPROMISE PROPOSALS / COMMENTS
			<u>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.</u>	
			<u>(21quinquies) This Directive should not apply to cases in which persons registered as informants in databases managed by appointed authorities at the national level, such as customs authorities, or identified as such by the latter, 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.</u>	
	(22) Persons who report information about threats or harm to the public interest obtained in	(22) Persons who report information about threats or harm to the public interest obtained in the context of	(22) Persons who report information about threats or harm to the public interest obtained in	

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	the context of their work-related activities make use of their right to freedom of expression. The right to freedom of expression, 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 media freedom and pluralism.	their work-related activities make use of their <i>act on the strength of the</i> right to freedom of expression The right to freedom of expression <i>and information</i> , 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), <i>which</i> encompasses <i>the right to receive and impart information, as well as</i> media freedom and pluralism.	the context of their work-related activities make use of their right to freedom of expression. The right to freedom of expression, 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 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.	(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.	(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 ²⁸ .	
			<u>(23bis) To enjoy protection, the reporting persons should reasonably believe, in light of the circumstances and the information available to them at</u>	

²⁸ CM/Rec_(2014)7.

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			<p><u>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, as well as those who, after the reporting, became aware that the information reported was false but did not seek to withdraw or update the report, 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.</u></p>	

<i>Row</i>	COMMISSION PROPOSAL COM(2018) 218 FINAL	EP TEXT	COUNCIL TEXT	CONSOLIDATED TEXT / COMPROMISE PROPOSALS / COMMENTS
			<p><u>(23ter) The requirement of a tiered use of reporting channels, as a general rule, is necessary to ensure that the information gets to the persons who can contribute to the early and effective resolution of risks to the public interest as well as to prevent unjustified reputational damage from public disclosure. At the same time, some exceptions to its application are necessary, allowing the reporting person to choose the most appropriate channel depending on the individual circumstances of the case. Moreover, it is necessary to 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</u></p>	

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			<u>with the criteria developed in the case-law of the European Court of Human Rights.</u>	
			<u>(23quater) Without prejudice to existing obligations to provide for anonymous reporting by virtue of Union law, Member States may decide whether public entities and competent authorities accept and follow-up on anonymous reports of breaches falling within the scope of this Directive. However, persons who reported or made public disclosures falling within the scope of this Directive and meet its conditions should enjoy protection under this Directive if they suffer retaliation.</u>	
			<u>(23quinquies) In order to limit the burden on internal and external channels, and to allow them to concentrate on important breaches, Member States may provide that information on breaches exclusively affecting the individual rights of the reporting person is not reported</u>	

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			<u>under the procedures of this Directive, but under other available procedures, unless that information reveals a wider pattern of breaches.</u>	
	(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.	(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.	(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 <i>de facto</i> 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	(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	(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	

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	are EU citizens or third-country nationals, by virtue of 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.	citizens or third-country nationals, by virtue of 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.	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 TFEU, as interpreted by the Court of Justice of the European Union, i.e. persons who, for a certain period of time,	(26) Protection should, firstly, apply to persons having the status of 'workers', within the meaning of Article 45 TFEU, as interpreted by the Court of Justice of the European Union, i.e. persons who, for a certain period of time, perform services for	(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 ²⁹ , i.e. persons who, for a certain period of time,	


29 — 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.

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	perform services for and under the direction of another person, in return of which they receive remuneration. 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, which are types of relationships where standard protections against unfair treatment are often difficult to apply.	and under the direction of another person, in return of which they receive remuneration. <i>In accordance with the Court's case law, the notion of "worker" should be interpreted broadly, namely in a manner such that public and civil servants are included.</i> Protection should thus also be granted to workers in non-standard <i>other</i> employment relationships, including part-time workers and fixed-term contract workers, <i>interns, paid and unpaid trainees,</i> as well as persons with a contract of employment or employment relationship with a temporary agency <i>and those in precarious employment or with cross-border status,</i> which are types of relationships where standard protections against unfair treatment are often difficult to apply. <i>Finally, protection should also be granted to persons whose employment contract has ended.</i>	perform services for and under the direction of another person, in return of which they receive remuneration. <u>This notion also includes civil servants.</u> 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, which are types of relationships where standard protections against unfair treatment are often difficult to apply.	
	(27) Protection should also extend to further categories of natural or legal persons, who, whilst not being 'workers' within the meaning of Article 45 TFEU,	(27) Protection should also extend to further categories of natural or legal persons, who, whilst not being 'workers' within the meaning of <i>national law or in accordance with</i>	(27) Protection should also extend to further categories of natural or legal persons, who, whilst not being 'workers' within the meaning of Article 45 <u>(1)</u> TFEU,	

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	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, sub-contractors and suppliers, are typically subject to retaliation in the form 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,	Article 45 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, sub-contractors 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	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, sub-contractors and suppliers, are typically subject to retaliation in the form 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	

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	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 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.	financial terms or in the form of intimidation or harassment, blacklisting or damage to their reputation. Protection should also be granted 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.	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 <u>to persons whose work-based relationship ended and</u> 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.	
		<i>(27 a) In accordance with Articles 22a, 22b and 22c of the Staff Regulations of Officials of the European Union and Article 11 of the Conditions of Employment of Other Servants of the European Union, laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68, all Union institutions are required to adopt and implement internal rules protecting whistleblowers.</i>		

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	(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 unpaid 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.	(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 <i>or for directly or indirectly supporting reporting by whistleblowers</i> . Retaliation against volunteers and <i>paid or</i> unpaid 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 <i>or career prospects</i> .	(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 <u>paid or</u> unpaid 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.	
		<i>(28a) Similarly, it is important to ensure protection for persons, such as work colleagues who assist the whistleblower in the workplace, inter alia by providing advice on how to proceed, the proper channels for reporting, the protections available, or the wording to use in the report. Such persons could be made privy to the information uncovered and could therefore also be victims of retaliation. They should, as such, benefit from the protection provided for by this</i>		

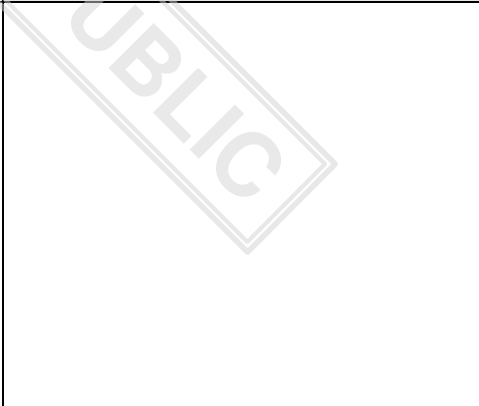
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		<i>Directive. Investigative journalists also play a crucial role in exposing breaches of Union law and can suffer from retaliation measures, such as strategic litigation suits, for example regarding libel or defamation. They should therefore also be entitled to enjoy the protection measures provided for in this Directive, so as to safeguard freedom of expression to the extent that national law does not provide for greater protection.</i>		
		<i>(28b) Effective whistleblower protection should also include protecting any individual who has evidence of such acts in the public or private sector but who has not necessarily witnessed such acts first hand.</i>		
		<i>(28c) Effective protection implies adequate training and an information centre available to inform whistleblowers about their rights, the disclosure options, and the limitations in the protection so they are aware of their rights and responsibilities. This should not be considered a substitute for access to</i>		

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		<i>independent legal advice which should also be available.</i>		
	(29) Effective detection and prevention of serious harm to the public interest requires that the information reported which qualifies for protection covers not only unlawful activities but also abuse of law, namely acts or omissions which do not appear to be unlawful in formal terms but defeat the object or the purpose of the law.	(29) Effective detection and prevention of serious harm to the public interest requires that the information reported which qualifies for protection covers not only unlawful activities but also abuse of law, namely acts or omissions which do not appear to be unlawful in formal terms but defeat the object or the purpose of the law <i>or constitute a danger or potential threat to the public interest.</i>	(29) Effective detection and prevention of serious harm to the public interest requires that the information reported which qualifies for protection covers not only unlawful activities but <u>notion of breach</u> also abuse of <u>includes abusive practices, as determined by the case law of the European Court of Justice</u> , 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 also granted to persons who provide information about potential breaches, which have not yet materialised, but are likely to be committed. 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	(30) Effective prevention of breaches of Union law requires that protection is also granted to persons who provide information about potential breaches which have not yet materialised, but are <i>very</i> likely to be committed. For the same reasons, protection is warranted also for persons who do not provide positive evidence but raise <i>well-founded</i> , reasonable concerns or suspicions <i>as well as to persons who add to information about issues</i>	(30) Effective prevention of breaches of Union law requires that protection is also granted to persons who provide information about potential <u>necessary to reveal</u> breaches, <u>which have already taken place, breaches</u> which have not yet materialised, but are <i>very</i> likely to be committed, <u>acts or omissions which the reporting person has reasonable grounds to consider as breaches of Union law as well</u>	

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	reporting of information which is already in the public domain or of unsubstantiated rumours and hearsay.	<i>already in the public domain.</i> At the same time, protection should not apply to the reporting of information which is already in the public domain or of unsubstantiated rumours and hearsay.	<u>as attempts to conceal breaches.</u> 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 <u>fully available</u> in the public domain or of unsubstantiated rumours and hearsay.	
		<i>(30a) However, in order to prevent unjustified reputational damages a clear distinction should also be made between deliberate false accusations, intended to harm the person or entity concerned, and the reporting of information for which the reporting person had reasonable grounds to believe that it was true. This Directive should be without prejudice to national laws applicable in the case of false accusations, such as defamation.</i>		
	(31) Retaliation expresses the <i>close</i> (cause and effect) relationship that must exist between the report and the adverse treatment suffered,	(31) Retaliation expresses the (cause and effect) relationship that must exist between the report and the adverse treatment suffered, directly or indirectly, by the reporting person,	(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	

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	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.	<i>or by persons considering reporting or by persons who assist the reporting person in the reporting process</i> , so that this person <i>such persons</i> can enjoy legal protection. <i>Since forms of retaliation are limited only by the imagination of the perpetrators of such acts</i> , effective protection of reporting persons, <i>or of persons considering reporting or of persons who assist the reporting person in the reporting process</i> , 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.	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. <u>This Directive does not prevent employers from taking employment-related decisions which are not prompted by the reporting or public disclosure.</u>	
	(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	(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	(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,	

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	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).	media, or to the media, elected officials, civil society organisations, trade unions or professional/business organisations).	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.	(33) Whistleblowers are, in particular, important sources for investigative journalists. Providing effective protection to whistleblowers <i>as well as to investigative journalists</i> from retaliation <i>and any form of harassment</i> increases the legal certainty of (potential) whistleblowers and thereby encourages and facilitates whistleblowing also to the media <i>when it is justified</i> . In this respect, protection of whistleblowers as journalistic sources is crucial for safeguarding the ‘watchdog’ role of investigative journalism in democratic societies. <i>In this context also, investigative journalists who use whistleblower sources should themselves be given the same protection as their whistleblower</i>	(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.	

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		<p><i>sources. Furthermore, whistleblowers and journalists are often involved in unfounded lawsuits brought against them by law firms engaged in defamation and extortion in order to frighten the reporting persons and force them to resort to costly legal defences. Those practices should be strongly condemned and therefore should be covered by this Directive.</i></p>		
	<p>(34) It is for the Member States to identify the authorities competent to receive and give appropriate follow up to the reports on breaches falling within the scope of this Directive. These may be regulatory or supervisory bodies in the areas concerned, law enforcement agencies, anti-corruption bodies and ombudsmen. The authorities designated as competent shall have the necessary capacities and powers to assess the accuracy of the allegations made in the report and to address the breaches reported, including by launching an investigation, prosecution or action for recovery of funds, or</p>	<p>(34) It is for the Member States to identify the authorities <i>that are</i> competent to receive and give appropriate follow up to the reports on breaches falling within the scope of this Directive, <i>and that have the highest possible degree of independence and impartiality.</i> These may be <i>judicial authorities,</i> regulatory or supervisory bodies in the areas concerned, law enforcement agencies, anti-corruption bodies and ombudsmen. The authorities designated as competent <i>shall should be independent and</i> have the necessary capacities and powers to <i>impartially and objectively</i> assess the accuracy of the allegations made in the report</p>	<p>(34) It is for the Member States to identify the authorities competent to receive and give appropriate follow up to the reports on breaches falling within the scope of this Directive. These may be regulatory or supervisory bodies in the areas concerned, law enforcement agencies, anti-corruption bodies and ombudsmen. The authorities designated as competent shall have the necessary capacities and powers to assess the accuracy of the allegations made in the report and to address the breaches reported, including by launching an investigation, prosecution or action for recovery of funds, or</p>	

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	other appropriate remedial action, in accordance with their mandate.	and to address the breaches reported, including by launching <i>or requesting</i> an investigation, prosecution or action for recovery of funds, or other appropriate remedial action, in accordance with their mandate. <i>The staff serving in those bodies shall be specialised and have received proper training.</i>	other appropriate remedial action, in accordance with their mandate.	
	(35) Union law in specific areas, such as market abuse, civil aviation or safety of offshore oil and gas operations 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.	(35) Union law in specific areas, such as market abuse, civil aviation or safety of offshore oil and gas operations 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. <i>In the absence of such provisions and where the rules laid down in this Directive afford greater protection, the latter rules should apply.</i>	(35) Union law in specific areas, such as market abuse, civil aviation or safety of offshore oil and gas operations 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. (recital 35 becomes 50bis)	
		<i>(35a) In cases of high level corruption, additional safeguards are necessary to ensure that reporting persons are not prevented from receiving protection by the</i>		

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		<i>concerned persons whom the information in their possession will incriminate.</i>		
		<i>(35b) Reporting persons in possession of information related to high-level corruption should have recourse to a judicial body that is independent from other branches of government with the powers to grant reporting persons effective protection and to address the breaches that they expose.</i>		
	(36) 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) 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	(36) 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) 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	(36) 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) 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	

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	they exist, but will ensure that persons reporting to those bodies, offices or agencies of the Union benefit from common minimum standards of protection throughout the Union.	persons reporting to those bodies, offices or agencies of the Union benefit from common minimum standards of protection throughout the Union.	they exist, but will ensure that persons reporting to those bodies, offices or agencies of the Union benefit from common minimum standards of protection throughout the Union. (Recital 36 becomes 50ter).	
	(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. This requires that legal entities in the private and the public sector establish appropriate internal procedures for receiving and following-up on reports.	(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. This requires that legal entities in the private and the public sector establish appropriate <i>and proportionate</i> internal procedures <i>that are governed by the principles of independence and impartiality</i> for receiving, <i>analysing</i> and following-up on reports. <i>Measures taken in accordance with such internal procedures should provide for adequate guarantees regarding confidentiality, data protection and privacy.</i>	(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. This requires that legal entities in the private and the public sector establish appropriate internal procedures for receiving and following-up on reports. <u>This requires that reporting persons should first use the internal channels where such channels are available to them and report to their employer.</u> It is also <u>requires that legal entities in the private and the public sector establish appropriate internal procedures for receiving and following-up on reports. The obligation to first use the</u>	

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			<u>existing internal channels applies also where these channels were established without being required by Union or national law.</u>	
	(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 medium-sized and large entities irrespective of the nature of their activities, based on their obligation to collect VAT. As a general rule small and micro undertakings, as defined in Article 2 of the Annex <i>of</i> the Commission Recommendation of 6 May 2003, as amended, should be exempted from the obligation to establish internal channels. However, following an appropriate risk assessment, Member States may require small undertakings to establish internal reporting channels in specific cases (e.g. due to the significant risks that may result from their	(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 medium-sized and large entities irrespective of the nature of their activities, based on their obligation to collect VAT. <i>However, by way of derogation, Member States should be free to exempt medium-sized entities, as defined in Article 2 of the Annex to the Commission Recommendation of 6 May 2003, as amended, from that obligation.</i> As a general rule small and micro undertakings, as defined in Article 2 of the Annex <i>to</i> the Commission Recommendation of 6 May 2003, as amended, should be exempted from the obligation to establish internal channels. However, following an appropriate risk assessment, Member States may require small	(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 medium-sized and large entities irrespective of the nature of their activities, based on their obligation to collect VAT. As a general rule small and micro undertakings, as defined in Article 2 of the Annex of the Commission Recommendation of 6 May 2003, as amended, should be exempted from the obligation to establish internal channels. However, following an appropriate risk assessment, Member States may require small undertakings to establish internal reporting channels in specific cases the <u>It should apply to all companies with 50 or more employees irrespective of the nature of</u>	

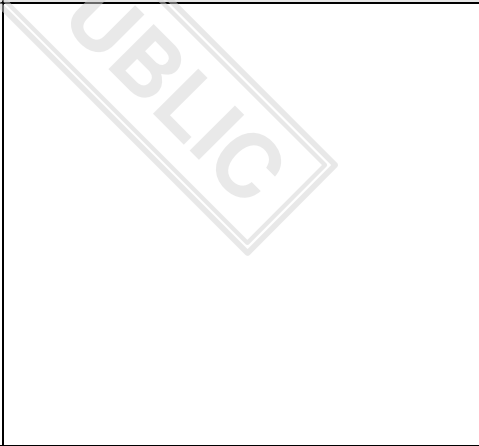
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	activities).	undertakings to establish internal reporting channels in specific cases (e.g. due to the significant risks that may result from their activities).	<u>their activities, based on their obligation to collect VAT. Following an appropriate risk assessment, Member States may require also other undertakings to establish internal reporting channels in specific cases</u> (e.g. due to the significant risks that may result from their activities).	
	(39) The exemption of small and micro undertakings from the obligation to establish internal reporting channels should not apply to private undertakings active in the area of financial services. Such undertakings should remain obliged to establish internal reporting channels, in line with the current obligations set forth in the Union acquis on financial services.	(39) The exemption of small and micro undertakings from the obligation to establish internal reporting channels should not apply to private undertakings active in <i>or closely linked to</i> the area of financial services. Such undertakings should remain obliged to establish internal reporting channels, in line with the current obligations set forth in the Union acquis on financial services.	(39) The exemption of small and micro undertakings from the obligation to establish internal reporting channels should not apply to private undertakings <u>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.</u>	
	(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	(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	(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	

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	protection against retaliation provided by this Directive.	Directive.	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. In cases where internal channels are not provided in small public entities, Member States may provide for internal reporting within a higher level in the administration (that is to say at regional or central level).	(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. In cases where internal channels are not provided in small public entities, Member States may provide for internal reporting within a higher level in the administration (that is to say at regional or central level).	(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. In cases where internal channels are not provided in small public entities, Member States may provide for internal reporting within a higher level in the administration (that is to say at regional or central level).	
	(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, such as in person, by post, by physical complaint box(es), by telephone hotline or through an online platform (intranet or internet). However, reporting channels should not be limited to those	(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, such as in person, by post, by physical complaint box(es), by telephone hotline or through an online platform (intranet or internet). However, reporting channels should not be limited to those amongst the tools, such as in-person reporting	(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, such as in person, by post, by physical complaint box(es), by telephone hotline or through an online platform (intranet or internet). However, reporting channels should not be limited to those	

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	amongst the tools, such as in-person reporting and complaint box(es), which do not guarantee confidentiality of the identity of the reporting person.	and complaint box(es), which do not guarantee confidentiality of the identity of the reporting person.	amongst the tools, such as in-person reporting and complaint box(es), which do not guarantee confidentiality of the identity of the reporting person. <u>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. Upon request by the reporting person, such channels should also allow for physical meetings, within a reasonable time frame.</u>	
	(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 or auditors or trade union representatives.	(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 or auditors or trade union representatives.	(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 or , auditors, or trade union representatives <u>or workers' representatives.</u>	

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			<p><u>(43bis) Private and public legal entities which have in place internal reporting channels may designate confidential advisors, such as trade union representatives or workers' representatives who have been chosen to represent the employees of the entity according to national law and collective agreements. When providing advice to reporting persons and those considering reporting, such confidential advisors should be made subject to the obligation to maintain the confidentiality of their communications with the aforementioned persons.</u></p>	
			<p><u>(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</u></p>	

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			<u>and support to the reporting person. This Directive should be without prejudice to workers' right to consult their representatives or trade unions in accordance with national law or practices, and to the protection against any unjustified detrimental measure prompted by such consultations.</u>	
	(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.	(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.	(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.	
		<i>(44a) While the intention of this Directive is not to regulate the arrangements for anonymous reporting or anonymous public disclosure, such kinds of reports may occur. Anonymous reports</i>		

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		<p><i>received through internal channels should therefore be diligently followed-up. As regards anonymous reports made using external channels, competent authorities should be allowed to disregard such reports in accordance with national law. Moreover, in cases where the identity of reporting persons happens to be revealed, such persons should be eligible for protection under this Directive.</i></p>		
		<p><i>(44b) It has been proven that keeping a reporting person's identity confidential is an essential element in avoiding backsliding and self-censorship. The duty of confidentiality should, therefore, only be waived in exceptional circumstances in which disclosure of information relating to the reporting person's personal data is a necessary and proportionate obligation required under Union or national law in the context of subsequent investigations or judicial proceedings or to safeguard the freedoms of others including the right of defence of the concerned person, and in each case subject to</i></p>		

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		<i>appropriate safeguards under such laws. Appropriate sanctions should be provided for in the event of breaches of the duty of confidentiality concerning the reporting person's identity.</i>		
		<i>(44c) It is crucial that the confidentiality of the identity of the reporting person and anyone involved be ensured so that the reporting process runs as smoothly as possible and without any impediment, and so that self-censorship is avoided. Indeed, the importance of protecting personal data is laid down in Union law and in national law, and such data requires all the more protection in the event of reporting.</i>		
	(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 interest and independence. In smaller entities, this function could be a dual	(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 interest, <i>proper know-how</i> and independence. In smaller entities, this function could be a dual function held by a company officer well	(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 interest and independence. In smaller entities, this function could be a dual function held by a	

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	function held by a company officer well placed to report directly to the organisational head, such as a chief compliance or human resources officer, a legal or privacy officer, a chief financial officer, a chief audit executive or a member of the board.	placed to report directly to the organisational head, such as a chief compliance or human resources officer, a legal or privacy officer, a chief financial officer, a chief audit executive or a member of the board.	company officer well placed to report directly to the organisational head, such as a chief compliance or human resources officer, <u>an integrity officer</u> , 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, the quality and transparency of information provided on the follow up procedure 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 (for instance, 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	(46) In the context of internal reporting, the quality and transparency of information provided on the follow up procedure 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 (for instance, 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	(46) In the context of internal reporting, the quality and transparency of information provided on the follow up procedure 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 (for instance, 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	

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	<p>the issue raised, referral to a competent authority for further investigation) as far as such information would not prejudice the enquiry or investigation or affect the rights of the concerned person. 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/she should expect.</p>	<p>enquiry or investigation or affect the rights of the concerned person. Such reasonable timeframe should not exceed in total three four months. Where the appropriate follow up is still being determined, the reporting person should be informed about this and about any further feedback he/she should expect. <i>In all cases, the reporting person should be informed of the investigation's progress and outcome. He or she should be given the opportunity to be consulted and to make comments, during the course of the investigation, albeit with no obligation to do so. Such comments should be taken into account where deemed relevant by the person or department in charge with the follow-up of the reports.</i></p>	<p>competent authority for further investigation) as far as such information would not prejudice the enquiry or investigation or affect the rights of the concerned person. 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/she should expect. <u>informing, as far as legally 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</u></p>	

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			<u>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.</u>	
			<u>(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.</u>	
	(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	(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	(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	

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	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 to the web of the entity and may also be included in courses and trainings on ethics and integrity.	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 to the web of the entity and may also be included in courses and trainings on ethics and integrity.	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 to-on the web of the entity and may also be included in courses and trainings on ethics and integrity.	
		<i>(47a) Recipients of disclosed information within the workplace should include, inter alia: line-managers, superiors or representatives of the organisation; human resources officers, ethics officers, work councils or other bodies in charge of mediating conflicts at work including conflicts of interest; internal financial</i>		

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		<i>oversight bodies within the organisation; disciplinary bodies within the organisation.</i>		
	(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.	(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.	(48) Effective detection and prevention of breaches of Union law requires ensuring that, <u>where internal reporting channels do not exist, do not function properly or cannot be reasonably expected to function properly,</u> 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.	
			<u>(48bis) It may be the case that internal channels do not exist or that their use is not mandatory (which may be the case for persons who are not in an employment relationship), 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</u>	

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			<u>breach of law despite the positive results of the enquiry).</u>	
			(48ter) <u>In other cases, internal channels could not reasonably be expected to function. Examples include cases 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; ii) that the ultimate responsibility holder within the work-related context is involved in the breach, that the breach or related evidence may be concealed or destroyed; or that the effectiveness of investigative actions by competent authorities might be jeopardised (examples may be reports on cartel arrangements and other breaches of competition rules) and iii) that urgent action is required for instance because of an imminent risk of a substantial and specific danger to the life, health and safety of persons, or to the environment.</u>	

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			<p><u>In all such cases, persons reporting externally to the competent authorities and, where relevant, to institutions, bodies, offices or agencies of the Union shall be protected. Moreover, protection is also to be granted in cases where Union legislation allows for the reporting person to report directly to the competent national authorities or institutions, bodies, offices or agencies of the Union, for example in the context of fraud against the Union budget, prevention and detection of money laundering and terrorist financing or in the area of financial services. This Directive does not create additional reporting obligations. Rather, it grants protection where Union or national law requires the reporting person to report directly to the competent national authorities for instance as part of their job duties and responsibilities or because the breach is a criminal offence.</u></p>	

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	(49) Lack of confidence in the usefulness of reporting is one of the main factors discouraging potential whistleblowers. This warrants imposing a clear obligation on competent authorities to diligently follow-up on the reports received, and, within a reasonable timeframe, give feedback to the reporting persons about the action envisaged or taken as follow-up (for instance, closure based on lack of sufficient evidence or other grounds, launch of an investigation and possibly its findings and/or measures taken to address the issue raised; referral to another authority competent to give follow-up) to the extent that such information would not prejudice the investigation or the rights of the concerned persons.	(49) <i>Along with the very real and very reasonable fear of retaliation,</i> lack of confidence in the usefulness <i>effectiveness</i> of reporting is one of the main factors discouraging potential whistleblowers. This warrants imposing a clear obligation on competent authorities to diligently follow-up on the reports received, and, within a reasonable timeframe, give feedback to the reporting persons about the action envisaged or taken as follow-up (for instance, closure based on lack of sufficient evidence or other grounds, launch of an investigation and possibly its findings and/or measures taken to address the issue raised; referral to another authority competent to give follow-up) to the extent that such information would not prejudice the investigation or the rights of the concerned persons.	(49) Lack of confidence in the usefulness of reporting is one of the main factors discouraging potential whistleblowers. This These warrants imposing a clear obligation on competent authorities <u>to set up appropriate external reporting channels, to</u> diligently follow-up on the reports received, and, within a reasonable timeframe, give feedback to the reporting persons. about the action envisaged or taken as follow-up (for instance, closure based on lack of sufficient evidence or other grounds, launch of an investigation and possibly its findings and/or measures taken to address the issue raised; referral to another authority competent to give follow-up) to the extent that such information would not prejudice the investigation or the rights of the concerned persons.	
			<u>(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</u>	

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			<u>competent authorities may be 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, anti-corruption bodies or ombudsmen.</u>	
			<u>(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</u>	

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			<p><u>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</u></p>	

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			<p><u>(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 <i>mutatis mutandis</i> in the field of corporate taxation, if similar restrictions are provided for by the applicable national law.</u></p>	
	(50) Follow up and feedback should take place within a reasonable timeframe; this is warranted by the need to promptly	(50) Follow up and feedback should take place within a reasonable timeframe; this is warranted by the need to promptly address the	(50) Follow up and feedback should take place within a reasonable timeframe; this is warranted by the need to promptly	

Row	COMMISSION PROPOSAL COM(2018) 218 FINAL	EP TEXT	COUNCIL TEXT	CONSOLIDATED TEXT / COMPROMISE PROPOSALS / COMMENTS
	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.	problem that may be the subject of the report, as well as to avoid unnecessary public disclosures. Such timeframe should not exceed three two months, but could be extended to six four 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.	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.	
			(ex-recital 35) <u>(50bis) Union law in specific areas, such as market abuse³⁰, civil aviation³¹ or safety of offshore oil and gas operations³² 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</u>	

³⁰ _____ Cited above.

³¹ _____ 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. 18-21).

³² _____ 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).**

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			<u>provided by specific Union acts.</u>	
			<u>(ex-recital 36)</u> <u>(50ter) The European</u> <u>Commission, as well as some</u> <u>bodies, offices and agencies of</u> <u>the Union, such as the European</u> <u>Anti-Fraud Office (OLAF), the</u> <u>European Maritime Safety</u> <u>Agency (EMSA), the European</u> <u>Aviation Safety Agency (EASA),</u> <u>the European Security and</u> <u>Markets Authority (ESMA) and</u> <u>the European Medicines Agency</u> <u>(EMA), have in place external</u> <u>channels and procedures for</u> <u>receiving reports on breaches</u> <u>falling within the scope of this</u> <u>Directive, which mainly provide</u> <u>for confidentiality of the identity</u> <u>of the reporting persons. This</u> <u>Directive does not affect such</u> <u>external reporting channels and</u> <u>procedures, where they exist,</u> <u>but will ensure that persons</u> <u>reporting to those institutions,</u> <u>bodies, offices or agencies of the</u> <u>Union benefit from common</u> <u>minimum standards of</u> <u>protection throughout the</u> <u>Union.</u>	

<i>Row</i>	COMMISSION PROPOSAL COM(2018) 218 FINAL	EP TEXT	COUNCIL TEXT	CONSOLIDATED TEXT / COMPROMISE PROPOSALS / COMMENTS
			<p><u>(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 follow-up measures pursuant to this Directive. Member States may also allow competent authorities to close the procedure regarding repetitive reports whose substance does not include any new meaningful information to a past report that was already</u></p>	

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			<p><u>closed, unless new legal or factual circumstances justify a different follow-up.</u> <u>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.</u></p>	
	<p>(51) Where provided for under national or Union law, the competent authorities should refer cases or relevant information to relevant 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.</p>	<p>(51) Where provided for under national or Union law, the competent authorities should refer cases or relevant information to relevant 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.</p>	<p>(51) Where provided for under national or Union law, the competent authorities should refer cases or relevant information to relevant<u>institutions</u>, 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.</p>	
	<p>(52) In order to allow for effective communication with their dedicated staff, it is</p>	<p>(52) In order to allow for effective communication with their dedicated staff, it is necessary that the</p>	<p>(52) In order to allow for effective communication with their dedicated staff <u>who are</u></p>	

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	necessary that the competent authorities have in place and use specific channels, separate from their normal public complaints systems, that should be user-friendly and allow for written and oral, as well as electronic and non-electronic reporting.	competent authorities have in place and use specific channels, separate from their normal public complaints systems, that should be user-friendly, confidential and allow for written and oral, as well as electronic and non-electronic reporting.	<u>responsible for handling reports,</u> it is necessary that the competent authorities have in place and use specific <u>user-friendly</u> channels, separate <u>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</u> from their the general channels <u>through which the competent authorities communicate with the public, such as</u> normal public complaints systems, that should be user friendly and allow for written and oral, as well as electronic <u>or channels through which the competent authority communicates internally</u> and non-electronic reporting. with <u>third parties in its ordinary course of business.</u>	
	(53) Dedicated staff members of the competent authorities, who are professionally trained, including on applicable data protection rules, would be necessary in order	(53) Dedicated staff members of the competent authorities, who are professionally trained on a regular basis , including on applicable data protection rules, would should be	(53) Dedicated staff Staff members of the competent authorities; who are <u>responsible for handling reports should be</u> professionally trained, including on applicable	

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	to handle reports and to ensure communication with the reporting person, as well as following up on the report in a suitable manner.	necessary in order to <i>receive and</i> handle reports and to ensure communication with the reporting person, as well as following to <i>follow</i> up on the report in a suitable manner, <i>as well as to provide information and advice to any interested person.</i>	data protection rules, would be necessary in order to handle reports and to ensure communication with the reporting person, as well as following to <i>follow</i> 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 dedicated staff members within these authorities. All information regarding reports should be transparent, easily understandable and reliable in order to promote and not deter reporting.	(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, <i>in cases where external reporting is possible</i> , with competent authorities, about the applicable procedures and about the dedicated staff members within these authorities. All information regarding reports should be transparent, easily understandable and reliable in order to promote and not deter reporting.	(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 dedicated <i>specialised</i> staff members <i>responsible for handling reports</i> 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	(55) Member States should ensure that competent authorities have in place adequate protection procedures	(55) Member States should ensure that competent authorities have in place adequate protection	

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	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. This obligation should be without prejudice to the necessity and proportionality of the obligation to disclose information when this is required by Union or national law and subject to appropriate safeguards under such laws, including in the context of investigations or judicial proceedings or to safeguard the freedoms of others, including the rights of defence of the concerned person.	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. This obligation should be without prejudice to the necessity and proportionality of the obligation to disclose information when this is required by Union or national law and subject to appropriate safeguards under such laws, including in the context of investigations or judicial proceedings or to safeguard the freedoms of others, including the rights of defence of the concerned person.	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. This obligation should be without prejudice to the necessity and proportionality of the obligation to disclose information when this is required by Union or national law and subject to appropriate safeguards under such laws, including in the context of investigations or judicial proceedings or to safeguard the freedoms of others, including the rights of defence of the concerned person.	
	(56) It is necessary that dedicated staff of the competent authority and staff members of the competent authority who receive access to the information	(56) It is necessary that dedicated staff of the competent authority and staff members of the competent authority who receive access to the information provided by a reporting	(56) It is necessary that dedicated staff of the competent authority <u>who is responsible for handling reports</u> and staff members of the competent authority who receive <u>have the right to</u> access to	

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	provided by a reporting person to the competent authority comply with the duty of professional secrecy and the 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 subsequent enforcement activities in connection with the report of infringements.	person to the competent authority comply with the duty of professional secrecy and the 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 subsequent enforcement activities in connection with the report of infringements.	the information provided by a reporting person to the competent authority comply with the duty of professional secrecy and the 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 subsequent <u>engage in</u> enforcement activities in connection with the report of infringements.	
	(57) Member States should ensure the adequate record-keeping of all reports of infringement and that every report is retrievable within the competent authority and that information received through reports could be used as evidence in enforcement actions where appropriate.	(57) Member States should ensure the adequate record-keeping of all reports of infringement and that every report is retrievable within the competent authority and that information received through reports could be used as evidence in enforcement actions where appropriate, <i>while protecting the identity and privacy of the reporting person wherever possible, and, where relevant, made available to other Member States' or Union authorities respecting, where possible, the confidentiality of the identity of the reporting person. It remains the responsibility of both</i>	(57) Member States should ensure the adequate record-keeping of all reports of infringement <u>infringements</u> , and that every report is retrievable within the competent authority and that information received through reports could be used as evidence in enforcement actions where appropriate.	

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		<i>the transmitting and receiving authorities to ensure full protection of the identity of the reporting person and to ensure, where possible, his or her privacy.</i>		
	(58) Protection of personal data of the reporting and concerned person <i>is</i> crucial in order to avoid unfair treatment or reputational damages due to disclosure of personal data, in particular data revealing the identity of a person concerned. Hence, in line with the requirements of Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation, hereinafter also referred to as 'GDPR'), competent authorities should establish adequate data protection procedures specifically geared to the protection of the reporting person, the concerned person and any third person referred to in the	(58) Protection of personal data of the reporting and concerned person, <i>as well as confidentiality of information, are</i> crucial in order to avoid unfair treatment, <i>any harassment or intimidation</i> , or reputational damages due to disclosure of personal data, in particular data revealing the identity of a person concerned. Hence, in line with the requirements of Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation, hereinafter also referred to as 'GDPR'), competent authorities should establish adequate data protection procedures specifically geared to the protection of the reporting person, the concerned	(58) Protection of personal data of the reporting and concerned person is crucial in order to avoid unfair treatment or reputational damages due to disclosure of personal data, in particular data revealing the identity of a person concerned. Hence, in line with the requirements of Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation, hereinafter also referred to as 'GDPR'), ³³ competent authorities should establish adequate data protection procedures specifically geared to the protection of the reporting person, the concerned person and any third person referred to in the	

³³ 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).

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	report that should include a secure system within the competent authority with restricted access rights for authorised staff only.	person and any third person referred to in the report that should include a secure system within the competent authority with restricted access rights for authorised staff only.	report that, which should include a secure system within the competent authority with restricted access rights for authorised staff only.	
	(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.	(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.	(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.	
	(60) 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 reasonable belief should be presumed unless and until proven otherwise. This is an essential safeguard against malicious and frivolous or abusive reports, ensuring that those who deliberately and knowingly report wrong or misleading information do not enjoy protection. At the same time, it ensures that	(60) <i>Reporting persons should enjoy the protection of this Directive whether they turn to internal or external reporting channels or use both, and without special conditions or order of preference. Reporting persons who exercise their right to public disclosure should enjoy protection under this Directive in the same way. Such protection should apply throughout the reporting procedure, including once the procedure has been concluded, unless it can be shown that there is no threat of retaliation.</i> To enjoy protection, the reporting persons should <i>be acting in good faith in the</i>	(60) 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 reasonable belief should be presumed unless and until proven otherwise. This is an essential safeguard against malicious and frivolous or abusive reports, ensuring that those who deliberately and knowingly report wrong or misleading information do not enjoy protection. At the same time, it ensures that protection is not lost where the	

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	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.	<i>sense that they should</i> 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 reasonable belief should be presumed unless and until proven otherwise. This is an essential safeguard against malicious and frivolous or abusive reports, ensuring that those who deliberately and knowingly report wrong or misleading information do not enjoy protection <i>and can be held accountable under the national laws of the Member States.</i> 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.	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.	
	(61) The requirement of a tiered use of reporting channels, as a general rule, is necessary to ensure that the information gets to the persons who can contribute to	(61) <i>It is necessary to ensure that all reporting channels, internal and external, are open to the reporting person and that the reporting person is free to choose the most</i>	(61) The requirement of a tiered use of reporting channels, as a general rule, is necessary to ensure that the information gets to the persons who can contribute to the	

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	the early and effective resolution of risks to the public interest as well as to prevent unjustified reputational damage from public disclosure. At the same time, some exceptions to its application are necessary, allowing the reporting person to choose the most appropriate channel depending on the individual circumstances of the case. Moreover, it is necessary to 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 ⁵⁷ .	<i>appropriate channel depending on the individual circumstances of the case, so as</i> to ensure that the information gets to the persons <i>or entities</i> who can contribute to the early and effective resolution of risks to the public interest. Moreover, it is necessary to protect public disclosures taking into account democratic principles such as transparency and accountability, and fundamental rights such as freedom of expression, media freedom <i>and the right to information</i> , whilst balancing the <i>legitimate</i> interest of employers to manage their organisations and to protect their <i>reputation and</i> 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 ⁵⁷ .	early and effective resolution of risks to the public interest as well as to prevent unjustified reputational damage from public disclosure. At the same time, some exceptions to its application are necessary, allowing the reporting person to choose the most appropriate channel depending on the individual circumstances of the case. Moreover, it is necessary to 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 Rights⁵⁷.	
	(62) As a rule, reporting persons should first use the internal channels at their disposal and report to their employer.	(62) As a rule, reporting persons should first use the internal <i>or external</i> channels at their disposal and report to their employer <i>or to the</i>	(62)As a rule, reporting persons should first use the internal channels at their disposal and report to their employer. However,	

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	However, it may be the case that internal channels do not exist (in case of entities which are not under an obligation to establish such channels by virtue of this Directive or applicable national law) or that their use is not mandatory (which may be the case for persons who are not in an employment relationship), 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 action was taken to address the breach of law despite the positive results of the enquiry).	<i>competent authority. Moreover, protection is also to be granted in cases where Union law allows the reporting person to report directly to the bodies, offices or agencies of the Union, for example in the context of fraud concerning the Union budget, prevention and detection of money laundering and terrorist financing or in the area of financial services.</i>	it may be the case that internal channels do not exist (in case of entities which are not under an obligation to establish such channels by virtue of this Directive or applicable national law) or that their use is not mandatory (which may be the case for persons who are not in an employment relationship), 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 action was taken to address the breach of law despite the positive results of the enquiry).	
	(63) In other cases, internal channels could not reasonably be expected to function properly, for instance, where the reporting persons have valid reasons to believe that they would suffer retaliation in connection with the reporting; that their confidentiality would not be protected; that the ultimate	(63) In other cases, internal channels could not reasonably be expected to function properly, for instance, where the reporting persons have valid reasons to believe that they would suffer retaliation in connection with the reporting; that their confidentiality would not be protected; that the ultimate responsibility holder within the	(63) In other cases, internal channels could not reasonably be expected to function properly, for instance, where the reporting persons have valid reasons to believe that they would suffer retaliation in connection with the reporting; that their confidentiality would not be protected; that the ultimate responsibility holder	

<i>Row</i>	COMMISSION PROPOSAL COM(2018) 218 FINAL	EP TEXT	COUNCIL TEXT	CONSOLIDATED TEXT / COMPROMISE PROPOSALS / COMMENTS
	responsibility holder within the work-related context is involved in the breach; that the breach might be concealed; that evidence may be concealed or destroyed; that the effectiveness of investigative actions by competent authorities might be jeopardised or that urgent action is required (for instance because of an imminent risk of a substantial and specific danger to the life, health and safety of persons, or to the environment. In all such cases, persons reporting externally to the competent authorities and, where relevant, to bodies, offices or agencies of the Union shall be protected. Moreover, protection is also to be granted in cases where Union legislation allows for the reporting person to report directly to the competent national authorities or bodies, offices or agencies of the Union, for example in the context of fraud against the Union budget, prevention and detection of money laundering and terrorist	work-related context is involved in the breach; that the breach might be concealed; that evidence may be concealed or destroyed; that the effectiveness of investigative actions by competent authorities might be jeopardised or that urgent action is required (for instance because of an imminent risk of a substantial and specific danger to the life, health and safety of persons, or to the environment. In all such cases, persons reporting externally to the competent authorities and, where relevant, to bodies, offices or agencies of the Union shall be protected. Moreover, protection is also to be granted in cases where Union legislation allows for the reporting person to report directly to the competent national authorities or bodies, offices or agencies of the Union, for example in the context of fraud against the Union budget, prevention and detection of money laundering and terrorist financing or in the area of financial services.	within the work-related context is involved in the breach; that the breach might be concealed; that evidence may be concealed or destroyed; that the effectiveness of investigative actions by competent authorities might be jeopardised or that urgent action is required (for instance because of an imminent risk of a substantial and specific danger to the life, health and safety of persons, or to the environment. In all such cases, persons reporting externally to the competent authorities and, where relevant, to bodies, offices or agencies of the Union shall be protected. Moreover, protection is also to be granted in cases where Union legislation allows for the reporting person to report directly to the competent national authorities or bodies, offices or agencies of the Union, for example in the context of fraud against the Union budget, prevention and detection of money laundering and terrorist financing or in the area of financial services.	

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	financing or in the area of financial services.			
	(64) Persons making a public disclosure directly should also qualify for protection in cases where a breach remains unaddressed (for example, it was not properly assessed or investigated or no remedial action was taken) despite having been reported internally and/or externally following a tiered use of available channels; or in cases where reporting persons have valid reasons to believe that there is collusion between the perpetrator of the breach and the competent authority is reasonably suspected, that evidence may be concealed or destroyed, or that the effectiveness of investigative actions by competent authorities might be jeopardised; or in cases of imminent and manifest danger for the public interest, or where there is a risk of irreversible damage, including, inter alia, harm to physical integrity.	(64) Persons making a public disclosure directly should also qualify for protection in cases where a breach remains unaddressed (for example, it was not properly assessed or investigated or no remedial action was taken) despite having been reported internally and/or or externally following a tiered use of available channels; or in both forms ; or in cases where reporting persons have valid reasons reasonable grounds to believe that there is collusion between the perpetrator of the breach and the competent authority is reasonably suspected, or that relevant external authorities have directly or indirectly participated in the alleged misconduct , that evidence may could be concealed or destroyed, or that the effectiveness of investigative actions by competent authorities might be jeopardised; or in cases of imminent and manifest danger for or harm to the public interest, or where there is a risk of irreversible damage, including, inter alia, harm to physical	(64) Persons making a public disclosure directly should also qualify for protection in cases where, <u>despite the internal and/or external report made, the</u> a breach remains unaddressed (for example, it was not properly assessed or investigated or no remedial action was taken) despite having been reported internally and/or externally following a tiered use of available channels; or in cases where reporting persons, <u>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</u>	

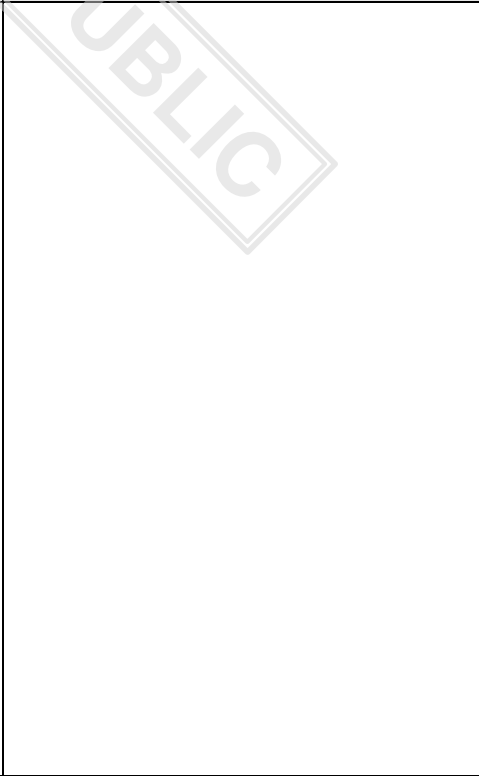
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		integrity <i>or where there is a situation of urgency.</i>	<u>depend on the circumstances of each case and of the nature of the rules that have been breached.</u>	
		<i>(64a) Protecting whistleblowers helps prevent and remedy acts prejudicial to the public interest. While it is important to define a coherent and robust system for reporting infringements under this Directive, the system should fundamentally be based on the relevance and usefulness of the information reported to the organisation concerned, the competent authorities or the public. It is therefore imperative to ensure that the protection provided for in this Directive is afforded to any persons reporting or making a public disclosure as defined in this Directive, and that no argument can be used to deny them such protection.</i>	<u>(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, which would not be addressed through internal and/or external reporting.</u>	
			<u>(64ter) Similarly, such persons should qualify for protection where they have reasonable grounds to believe that there is collusion between the</u>	

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			<u>perpetrator of the breach and the competent authority or that the competent authority has been directly or indirectly involved in the breach disclosed, as, in such cases, there is a high risk of retaliation or that evidence may be concealed or destroyed by the competent authority.</u>	
			<u>(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 with a view to addressing an imminent or irreversible danger for the public interest, or in the context of investigations by authorities or judicial proceedings, in particular to safeguard the rights of defence of the concerned persons. Such an</u>	

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			<u>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.</u>	
	(65) Reporting persons should be protected against any form of retaliation, whether direct or indirect, taken 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, where retaliation is recommended or tolerated by the concerned person. Protection should be provided against retaliatory measures taken	(65) Reporting persons should be protected against any form of retaliation, whether direct or indirect, taken 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, where retaliation is recommended or tolerated by the concerned person. Protection should be provided against retaliatory measures taken vis-à-vis the reporting person him/herself but also those that may	(65) Reporting persons should be protected against any form of retaliation, whether direct or indirect, taken, <u>recommended or tolerated</u> 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, where retaliation is recommended or tolerated by the concerned person. Protection should be provided against retaliatory measures taken vis-à-	

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	vis-à-vis the reporting person him/herself but also those that may be taken vis-à-vis the legal entity he/she represents, such as denial of provision of services, blacklisting or business boycotting. Indirect retaliation also includes actions taken against relatives of the reporting person who are also in a work-related connection with the latter's employer or customer/recipient of services and workers' representatives who have provided support to the reporting person.	be taken vis-à-vis the legal entity he/she represents, such as denial of provision of services, blacklisting or business boycotting. Indirect retaliation also includes actions taken against <i>facilitators or</i> relatives of the reporting person who are also in a work-related connection with the latter's employer or customer/recipient of services and workers' representatives who have provided support to the reporting person.	vis the reporting person him/herself but also those that may be taken vis-à-vis the legal entity he/ or she represents is connected to , such as denial of provision of services, blacklisting or business boycotting. Indirect retaliation also includes actions taken against relatives of the reporting person who are also in a work-related connection with the latter's employer or customer/recipient of services and workers' representatives who have provided support to the reporting person.	
	(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.	(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 and it should be strengthened by provisions for personal liability and penalties for the perpetrators of retaliation, and for those in management positions who facilitate or ignore such retaliation;	(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.	
	(67) Potential whistleblowers	(67) Potential whistleblowers who are not sure about how to report or	(67) Potential whistleblowers who are not sure about how to report or	

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	<p>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 user-friendly way and is 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.</p>	<p>whether they will be protected in the end may be discouraged from reporting. Member States should ensure that relevant information is provided in a user-friendly way and <i>that is easily understandable and</i> 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, <i>in particular through the competent authorities</i>, 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.</p>	<p>whether they will be protected in the end may be discouraged from reporting. Member States should ensure that relevant information is provided in a user-friendly way and is 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. <u>Member States may choose to extend such advice to legal counselling.</u></p>	
		<i>(67a) In Member States which provide extensive protection for</i>		

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		<p><i>reporting persons, there are a variety of mechanisms in place to accompany and support reporting persons. Based on the existing best practices and the varying circumstances in Member States, it should be possible that individual advice and accurate information be provided by an independent single and clearly identified authority or an information centre established by the Member State provided that sufficient guarantees are supplied. That advice or information should be provided to any person who so requests. The information or advice could concern matters such as the protection measures, the appropriateness of the reporting channels or the scope of the Directive.</i></p>		
	<p>(68) Under certain national frameworks and in certain cases, reporting persons suffering retaliation may benefit from forms of certification of the fact that they meet the conditions of the applicable rules. Notwithstanding such possibilities, they should have</p>	<p>(68) Under certain national frameworks and in certain cases, reporting persons suffering retaliation 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,</p>	<p>(68) <u>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</u></p>	

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	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.	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.	had taken place. Under certain national frameworks and in certain cases, reporting persons suffering retaliation 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) It should not be possible to waive the rights and obligations established by this Directive by contractual means. Individuals' legal or contractual obligations, such as loyalty clauses in contracts or confidentiality/non-disclosure agreements, cannot be relied on to preclude workers from reporting, to deny protection or to penalise them for having done so. At the same time, this Directive should not affect the protection of legal and other professional privilege as provided	(69) It should not be possible to waive the rights and obligations established by this Directive by contractual means. Individuals' legal or contractual obligations, such as loyalty clauses in contracts or confidentiality/non-disclosure agreements, cannot be relied on to preclude workers from reporting, to deny protection or to penalise them for having done so. At the same time, this Directive should not affect the protection of legal and other professional privilege, <i>such as medical secrecy and client-lawyer privilege</i> , as provided for under	(69) It should not be possible to waive the rights and obligations established by this Directive by contractual means. Individuals' legal or contractual obligations, such as loyalty clauses in contracts or confidentiality/non-disclosure agreements, cannot be relied on to preclude workers from reporting, to deny protection or to penalise them <u>reporting persons</u> for having done so. At the same time, this Directive should not affect <u>where providing the same information falling within the scope of legal such clauses</u> and other	

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	for under national law.	national law, <i>or of the confidentiality required to protect national security where provided for under national law.</i>	professional privilege as provided <u>agreements is necessary</u> for under national law <u>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.</u>	
	(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/she made a report or 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 their the action taken was not linked in any way to the reporting or the	(70) Retaliatory measures are likely to be presented as being justified on grounds other than the reporting <i>or public disclosure</i> 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/she made a report or 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 their the action taken was not linked in any way to the reporting or the 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 <u>or</u> /she made a report or <u>public</u> 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 their the action taken was not linked in any way to the reporting or the <u>public</u>	

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	disclosure.		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. The appropriate remedy in each case will be determined by the kind of retaliation suffered. 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 restauration 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 damage such as legal expenses and costs of medical treatment, and for intangible damage (pain and suffering).	(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 . 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 restauration 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 damage such as legal expenses and costs of medical and psychological treatment, and for intangible damage (pain and suffering).	(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. The appropriate remedy in each case will be determined by the kind of retaliation suffered. 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 restauration 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 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	(72) The types of legal action may vary between legal systems but they should ensure as full and effective a	(72) The types of legal action may vary between legal systems but they should ensure as full and	

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	<p>but they should ensure as full <i>and effective a remedy as possible. Remedies 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.</i></p>	<p>remedy as possible. Remedies 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 <i>compensation for the damage suffered.</i></p>	<p>effective a remedy as possible. Remedies <u>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</u> 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</p>	

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			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. Interim relief can be in particular necessary in order to stop threats, attempts or continuing acts of retaliation, such as harassment at the workplace, 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.	(73) Of particular importance for reporting persons are interim remedies pending the resolution of legal proceedings that can be protracted. Interim relief can be in particular necessary in order to stop threats, attempts or continuing acts of retaliation, such as harassment <i>outside and</i> at the workplace, or to prevent forms of retaliation such as <i>verbal abuse or physical violence, or</i> 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.	(73) Of particular importance for reporting persons are interim remedies pending the resolution of legal proceedings that can be protracted. Interim relief can be in particular necessary <u>Particularly, actions of interim relief, as provided for under national law, should also be available to reporting persons</u> in order to stop threats, attempts or continuing acts of retaliation, such as harassment at the workplace, or to prevent <u>all</u> 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	(74) Action taken against reporting persons outside the work-related context, through proceedings, for instance, related to defamation, breach of copyright, trade secrets,	(74) Action taken against reporting persons outside the work-related context, through proceedings, for instance, related to defamation, breach of	

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	copyright, trade secrets, confidentiality and personal data protection, can also pose a serious deterrent to whistleblowing. Directive (EU) 2016/943 of the European Parliament and of the Council ⁵⁸ exempts reporting persons from the civil redress measures, procedures and remedies it provides for, in case the alleged acquisition, use or disclosure of the trade secret was carried out for revealing misconduct, wrongdoing or illegal activity, provided that the respondent acted for the purpose of protecting the general public interest. Also in other proceedings, reporting persons should be able to rely on having made a report or disclosure in accordance with this Directive as a defence. In such cases, the person initiating the proceedings should carry the burden to prove any intent on the part of the reporting person to violate the	confidentiality and personal data protection, can also pose a serious deterrent to whistleblowing. Directive (EU) 2016/943 of the European Parliament and of the Council ⁵⁸ exempts reporting persons from the civil redress measures, procedures and remedies it provides for, in case the alleged acquisition, use or disclosure of the trade secret was carried out for revealing misconduct, wrongdoing or illegal activity, provided that the respondent acted for the purpose of protecting the general public interest. <i>This Directive should therefore be without prejudice to the provisions laid down in Directive (EU) 2016/943 of the European Parliament and of the Council and both acts should be considered as being complementary. Therefore, the protection, procedures and conditions provided for in this Directive should be applicable to cases covered by its material scope even if the reported information</i>	copyright, trade secrets, confidentiality and personal data protection, can also pose a serious deterrent to whistleblowing. Directive (EU) 2016/943 of the European Parliament and of the Council³⁴ exempts reporting persons from the civil redress measures, procedures and remedies it provides for, in case the alleged acquisition, use or disclosure of the trade secret was carried out for revealing misconduct, wrongdoing or illegal activity, provided that the respondent acted for the purpose of protecting the general public interest. Also in other <u>Also, in such</u> proceedings, reporting persons should be able to rely on having made a report or disclosure in accordance with this Directive as a defence-, <u>provided that the information reported or disclosed was necessary to reveal the breach.</u> In such cases, the person initiating the proceedings	

³⁴ ~~Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (OJ L 157, 15.6.2016, p. 1).~~

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	law.	<i>could be qualified as a trade secret. Directive (EU) 2016/943 should apply in other cases.</i> Also in other proceedings, reporting persons should be able to rely on having made a report or disclosure in accordance with this Directive as a defence. In such cases, the person initiating the proceedings should carry the burden to prove any intent on the part of the reporting person to violate the law.	should carry the burden to prove any intent on the part of that the reporting person to violate the law. <u>does not meet the conditions of the Directive.</u>	
			<u>(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 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</u>	

<i>Row</i>	COMMISSION PROPOSAL COM(2018) 218 FINAL	EP TEXT	COUNCIL TEXT	CONSOLIDATED TEXT / COMPROMISE PROPOSALS / COMMENTS
			<p><u>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. Thus, before reporting to the competent authorities or publicly disclosing a trade secret, reporting persons should carefully weigh the value of the trade secret and consider whether there is a more appropriate and adequate alternative, taking into account in particular whether the reporting or disclosure of a trade secret brings to light new information relating to a breach that otherwise would not be accessible. 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. The present Directive does not widen the protection of whistleblowers in case of</u></p>	

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			<u>disclosures of trade secrets, as currently regulated by Directive (EU) 2016/943. In addition, 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.</u>	
	<p>(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 in accordance with the provisions of Directive (EU) 2016/1919 of the European Parliament and of the Council⁵⁹ and more generally</p>	<p>(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 in accordance with the provisions of Directive (EU) 2016/1919 of the European Parliament and of the Council⁵⁹ and more generally support to those who are in serious financial</p>	<p>(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 in accordance with the provisions <u>where the reporting persons meet the conditions</u> of Directive (EU) 2016/1919 of the</p>	

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	support to those who are in serious financial need <i>might be key, in certain cases</i> , for the effective enforcement of their rights to protection.	need <i>is key</i> for the effective enforcement of their rights to protection. <i>Whistleblowers should also be able to claim compensation for any harassment suffered or for the loss of their current or future livelihood, if the damage occurred in retaliation.</i>	European Parliament and of the Council ³⁵ 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.	
			<u>(75bis) In view of the key role that designated confidential advisors, including trade unions and workers' representatives, play in terms of providing advice and support to those who report or consider reporting and of the need to prevent attempts to hinder reporting, Member States may provide protection against retaliation prompted by the fact that the latter consulted such confidential advisors in connection to reporting. As such consultations do not constitute internal or external reporting or public disclosures, protection against retaliatory measures solely prompted by such</u>	

³⁵ 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).

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			<u>consultations should not be dependent on the conditions of Article 2bis.</u>	
	(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 ensure the right of defence of the concerned person, 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.	(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 ensure the right of defence of the concerned person 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. To that end suitable measures should be taken to make individuals and civil society more	(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 ensure the right of defence of the concerned person, 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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		<i>aware of such rights.</i>		
	(77) Any person who suffers prejudice, whether directly or indirectly, as a consequence of the reporting or 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 disclosure was made deliberately and knowingly, the concerned persons should be entitled to compensation in accordance with national law.	(77) Any person who suffers prejudice, whether directly or indirectly, as a consequence of the reporting or 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 disclosure was made deliberately and knowingly, <i>whistleblowers should not be entitled to enjoy protection and</i> the concerned persons should be entitled to compensation in accordance with national law.	(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) 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 disclosure demonstrated to be knowingly false are necessary to deter further malicious reporting and preserve the credibility of the system. The	(78) 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 disclosure demonstrated to be knowingly false are <i>also</i> necessary to deter further malicious reporting and preserve the credibility of the system. <i>Where Member States</i>	(78) Penalties <u>Criminal, civil or administrative penalties</u> 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 necessary to deter further	

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	proportionality of such penalties should ensure that they do not have a dissuasive effect on potential whistleblowers.	<i>provide for penalties in cases such as defamation or dissemination of false information, those penalties could also be applicable to reports or disclosures that have been demonstrated to be knowingly false.</i> The proportionality of such penalties should ensure that they do not have a dissuasive effect on potential whistleblowers.	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 of the European Parliament and of the Council, and any exchange or transmission of information by Union level competent authorities should be undertaken in accordance with Regulation (EC) No 45/2001 of	(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 of the European Parliament and of the Council, and any exchange or transmission of information by Union level competent authorities should be undertaken in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the	(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 of the European Parliament and of the Council ³⁶ , and any exchange or transmission of information by Union level competent authorities should be undertaken in accordance with Regulation (EC) No 45/2001 of	

³⁶ 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).

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	the European Parliament and of the Council. 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.	Council. 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.	the European Parliament and of the Council ^{37, 38} . 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.	
			<u>(79bis) The effectiveness of the procedures set out in the present Directive related to following-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</u>	

³⁷ ~~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).~~

³⁸ 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).

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			<p><u>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</u></p>	

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			reporting persons.	
			<p><u>79(ter) 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 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.</u></p>	

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			<u>79(quarter) Any decision taken by authorities adversely affecting the rights granted by this Directive, in particular decisions adopted pursuant to Article 6 and 12 bis, shall be subject to judicial review in accordance with Article 47 of the Charter of Fundamental Rights of the European Union.</u>	
	(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.	(80) This Directive introduces minimum standards and Member States should have the power <i>and be encouraged</i> 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. <i>The transposition of this Directive shall under no circumstances provide grounds for reducing the general level of protection already afforded to reporting persons under national law in the areas to which it applies.</i>	(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.	
	(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	(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	(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	

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	<p>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, 33, 43, 50, 53(1), 62, 91, 100, 103, 109, 168, 169 and 207 TFEU and Article 31 of the Euratom Treaty for the adoption of Union measures. Since this Directive also aims at better protecting the financial interests of the Union, Article 325(4) TFEU should be included as a legal basis.</p>	<p>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, 33, 43, 50, 53(1), 62, 91, 100, 103, 109, 168, 169 and 207 TFEU and Article 31 of the Euratom Treaty for the adoption of Union measures. Since this Directive also aims at better protecting the financial interests of the Union, Article 325(4) TFEU should be included as a legal basis.</p>	<p>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, 33, 43, (2), 50, 53(1), 62, 91, 100, 103, 109, 168, (4), 169, <u>192(1)</u> and 207<u>325(4)</u> TFEU and Article 31 of the <u>Treaty establishing the</u> Euratom Treaty for the adoption of Union measures. Since this Directive also aims at better protecting the financial interests of the Union, Article 325(4) TFEU should be included as a legal basis.</p>	
	(82) The material scope of this	(82) The material scope of this	(82) The material <u>substantive</u>	

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	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.	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 <i>the Commission should continue to gather and that</i> may come to the fore in the future or on the basis of the evaluation of the way in which this Directive has operated.	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 substantive 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.	(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.	(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	(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	(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	

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	<p>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.</p>	<p>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.</p>	<p>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.</p>	
	<p>(85) This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. Accordingly,</p>	<p>(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</p>	<p>(85) This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. Accordingly, this Directive must be</p>	

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	this Directive must be implemented in accordance with those rights and principles. In particular, this Directive seeks to ensure full respect for 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 an effective remedy and the rights of defence.	accordance with those rights and principles. In particular, this Directive seeks to ensure by ensuring full respect for, <i>inter alia</i> , 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 <i>fair and just working conditions, 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 the defence. Particular consideration should also be given to the European Convention on Human Rights, in particular Article 10 thereof.</i>	implemented in accordance with those rights and principles. In particular, this Directive seeks to ensure full respect for 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 an effective remedy and the rights of defence.	
		<i>(85a) This Directive should be without prejudice to Member States' freedom to introduce the same or similar rules for breaches of national law, thereby providing a coherent and comprehensive framework for the protection of persons reporting on breaches.</i>		

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		<i>(85b) Particular regard should be had to the European Parliament resolution of 14 February 2017 on the role of whistleblowers in the protection of EU's financial interests, and to the European Parliament resolution of 24 October 2017 on legitimate measures to protect whistle-blowers acting in the public interest when disclosing the confidential information of companies and public bodies.</i>		
	(86) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 and delivered an opinion on [...]	(86) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 and delivered an opinion on [...]	(86) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 and delivered an opinion on [...] ³⁹ .	
	HAVE ADOPTED THIS DIRECTIVE:	HAVE ADOPTED THIS DIRECTIVE:	HAVE ADOPTED THIS DIRECTIVE:	
	CHAPTER I SCOPE AND DEFINITIONS	CHAPTER I SCOPE AND DEFINITIONS	CHAPTER I SCOPE, <u>CONDITIONS FOR PROTECTION</u> AND DEFINITIONS	

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		<i>Article -1</i> <i>Purpose</i>		
		<i>The purpose of this Directive is to enhance the protection of persons reporting breaches of Union law and to enhance the enforcement of the latter in order to safeguard the public interest, by laying down common minimum standards for the protection of persons reporting on unlawful activities or abuses of law in the areas specified in Article 1.</i>		<p>COM and CLS underlined the need to ensure preeminence to the objective of enhancement of the enforcement of the Union law, in line with the legal bases of the instrument.</p> <p>New compromise text: Article -1 Purpose</p> <p>This Directive lays down common minimum standards for the protection of persons reporting on breaches <u>of rules in specific areas of Union law [and policies]</u>, in order to enhance the enforcement of rules in these areas and to safeguard the public interest.</p>
	Article 1 Material scope	Article 1 Material scope	Article 1 Material scope	
	1. With a view to enhancing the enforcement of Union law and	1. With a view to enhancing the enforcement of Union law and	1. With a view to enhancing the enforcement of Union law and	Compromise text:

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	policies in specific areas, this Directive lays down common minimum standards for the protection of persons reporting on the following unlawful activities or abuse of law:	policies in specific areas , This Directive lays down common minimum standards for the protection of persons reporting on the following unlawful activities or abuse of law.	policies in specific areas, this Directive lays down common minimum standards for the protection of persons reporting on the following unlawful activities or abuse of <u>breaches of Union</u> law:	1. <u>This Directive shall apply to reports and public disclosures</u> on the following breaches of Union law:
	(a) breaches <i>falling within the scope of the Union acts set out in the Annex (Part I and Part II) as regards</i> the following areas:	(a) breaches of Union acts, which include, <u>inter alia</u> , the acts set out in the Annex (Part I and Part II) <u>and the acts implementing them, that relate</u> to the following areas:	a)- breaches falling within the scope of the Union acts set out in the Annex (Part I and Part II) <u>to this directive</u> as regards the following areas:	EP wishes to have an indicative list in the Annex. PRES underlined the need for legal certainty, an exhaustive list would be more suitable. COM strongly supports an exhaustive list, in order to have a precise scope
	(i) public procurement;	(i) public procurement;	(i) public procurement;	
	(ii) financial services, prevention of money laundering and terrorist financing;	(ii) financial services, prevention of money laundering and terrorist financing;	(ii) financial services, prevention of money laundering and terrorist financing;	Technical alignment to the heading in the annex : <u>(ii) financial services, products and markets and prevention of money laundering and terrorist financing</u>
	(iii) product safety;	(iii) product safety;	(iii) product safety;	
	(iv) transport safety;	(iv) transport safety;	(iv) transport safety;	
	(v) protection of the environment;	(v) protection of the environment;	(v) protection of the environment;	

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	(vi) nuclear safety;	(vi) nuclear safety;	(vi) <u>radiation protection and</u> nuclear safety;	
	(vii) food and feed safety, animal health and welfare;	(vii) food and feed safety, animal health and welfare;	(vii) food and feed safety, animal health and welfare;	
	(viii) public health;	(viii) public health;	(viii) public health;	
	(ix) consumer protection;	(ix) consumer protection;	(ix) consumer protection;	
	(x) protection of privacy and personal data, and security of network and information systems	(x) protection of privacy and personal data, and security of network and information systems; and	(x) protection of privacy and personal data, and security of network and information systems	
		<i>(xa) employment, working conditions, workers' rights and the principle of equal opportunities and treatment between men and women at work.</i>		See above (legal basis)
	b) breaches of Articles 101, 102, 106, 107 and 108 TFEU and breaches falling within the scope of Council Regulation (EC) No 1/2003 and Council Regulation (EU) No 2015/1589;	b) breaches of Articles 101, 102, 106, 107 and 108 TFEU and breaches falling within the scope of Council Regulation (EC) No 1/2003 and Council Regulation (EU) No 2015/1589;	b) — breaches of Articles 101, 102, 106, 107 and 108 TFEU and breaches falling within the scope of Council Regulation (EC) No 1/2003 and Council Regulation (EU) No 2015/1589;	PRES explained the rationale behind deletion of lit.b PE will consult Legal Service and come back on the issue.

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	c) breaches affecting the financial interests of the Union as defined by Article 325 TFEU and as further specified, in particular, in Directive (EU) 2017/1371 and Regulation (EU, Euratom) No 883/2013;	c) breaches affecting the financial interests of the Union as defined by Article 325 TFEU and as further specified, in particular, in Directive (EU) 2017/1371 and Regulation (EU, Euratom) No 883/2013;	c) breaches affecting the financial interests of the Union as defined by Article 325 TFEU and as further specified <u>in relevant Union measures</u> ; in particular, Directive (EU) 2017/1371 and Regulation (EU, Euratom) No 883/2013;	PRES explained the changes. Could be acceptable for EP, subject to confirmation. COM showed openness to accepting the Council text and corresponding recital 14bis.
	d) breaches relating to the internal market, as referred to in Article 26(2) TFEU, 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.	d) breaches relating to the internal market, as referred to in Article 26(2) TFEU, 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.	d) breaches relating to the internal market, as referred to in Article 26(2) TFEU, <u>including breaches of the competition and State aid rules, and</u> 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.	PRES explained the changes. EP will consult internally, including Legal Service.
				In relation with subsequent acts, a new paragraph could be proposed: 2. This Directive shall also apply as regards reports and public disclosures on breaches of national or Union measures adopted pursuant to the acts falling within the scope of

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				paragraph 1. To be read in conjunction with recital 17bis which explains which measures are “ <i>adopted pursuant...</i> ”
			<u>Article 1bis</u> <u>Relationship with other Union acts and national provisions</u>	
	2. Where specific rules on the reporting of breaches are provided for in sector-specific Union acts listed in Part 2 of the Annex, those rules shall apply. The provisions of this Directive shall be applicable for all matters relating to the protection of reporting persons not regulated in those sector-specific Union acts.	2. Where specific rules on the reporting of breaches are provided for in sector-specific Union acts listed in Part 2 of the Annex, those rules shall apply. The provisions of this Directive shall be applicable for all matters relating to the protection of reporting persons not regulated in those sector-specific Union acts.	1. Where specific rules on the reporting of breaches are provided for in sector-specific Union acts listed in Part 2 <u>II</u> of the Annex, those rules shall apply. The provisions of this Directive shall be applicable for all matters relating to the protection of reporting persons not <u>extent that a matter is not mandatorily</u> regulated in those sector-specific Union acts.	PRES and CLS explained the changes. Could be acceptable for EP, subject to confirmation.
			<u>1bis. This Directive shall not affect the responsibility of Member States to ensure national security.</u>	PRES and CLS explained the additions. EP took note and will come back.
			<u>2. This Directive shall not affect the application of Union or</u>	PRES explained the additions in para.2.

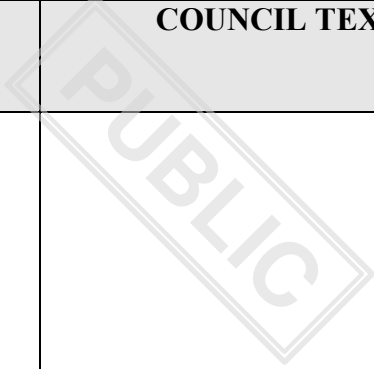
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			<u>national law on:</u>	
			<u>a) the protection of classified information;</u>	
			<u>b) the protection of legal and medical professional privilege;</u>	EP would prefer further clarifications.
			<u>c) the secrecy of judicial deliberations; and</u>	Could be acceptable for EP, subject to confirmation
			<u>d) rules on criminal procedure.</u>	Could be acceptable for EP, subject to confirmation
			<u>3. This Directive shall not apply to cases in which persons registered as informants in national databases or identified as such by relevant authorities report breaches to enforcement authorities, against reward or compensation, pursuant to procedures that aim at ensuring their anonymity and physical integrity.</u>	EP would like to move the text into a recital. PRES will test this with MS.
	Article 2 Personal scope	Article 2 Personal scope	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	1. This Directive shall apply to reporting persons <i>and facilitators, acting in good faith</i> , working in the private or public sector <i>and</i> who acquired information on breaches in a work-related context including, at	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:	

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	including, at least, the following:	least, the following:		
	(a) persons having the status of worker, with the meaning of Article 45 TFEU;	(a) persons having the status of worker, with <i>within the meaning of national law and national practice or within</i> the meaning of Article 45 TFEU, <i>including civil servants</i> ;	(a) persons having the status of worker, with <u>within</u> the meaning of Article 45 (1) TFEU, <u>including civil servants</u> ;	PRES strongly argued in favor of the Council text. COM explained the reasons why allowing for national definitions would lead to inconsistencies and exclusion of protection for persons in precarious types of employment Could be acceptable for EP, subject to confirmation
	(b) persons having the status of self-employed, with the meaning of Article 49 TFEU;	(b) persons having the status of self-employed, with the meaning of Article 49 TFEU;	(b) persons having the status of self-employed, with <u>within</u> the meaning of Article 49 TFEU;	
	(c) shareholders and persons belonging to the management body of an undertaking, including non-executive members, as well as volunteers and unpaid trainees;	(c) shareholders and persons belonging to the management body of an undertaking, including non-executive members, as well as volunteers and <i>paid or</i> unpaid trainees;	c) shareholders and persons belonging to the <u>administrative,</u> management <u>or supervisory</u> body of an undertaking, including non-executive members, as well as volunteers and <u>paid or</u> unpaid trainees;	
	(d) any persons working under the supervision and direction of contractors, subcontractors and suppliers.	(d) any persons working under the supervision and direction of contractors, subcontractors, <i>service providers</i> and suppliers.	(d) any persons working under the supervision and direction of contractors, subcontractors and suppliers.	COM explained that service providers are covered by the notion of self-employed and underlined the need to avoid loopholes (e.g. service recipients). EP took note.

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			<u>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.</u>	
	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 pre-contractual negotiation.	2. This Directive shall also apply to reporting persons <i>acting in good faith</i> whose work-based relationship is yet to begin in cases where information concerning a breach has been acquired during the recruitment process or other pre-contractual negotiation, <i>as well as to reporting persons whose work-based relationship has ceased.</i>	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 pre-contractual negotiation.	See below art.3 pct.(14a)
		<i>2a. This Directive shall apply to individuals facilitating the reporting on breaches such as journalists or intermediaries between the reporting person and the person distributing the information.</i>		Notions as facilitators, intermediaries (including journalists, NGOs), confidential advisors to be further analyzed at technical level, as well as relation with the notion of indirect retaliation. <u>New compromise text:</u> (2a)The measures for the protection <u>against retaliation</u> of reporting persons set out in

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				<p>Chapter IV shall also apply, as appropriate, <u>where relevant</u>, to:</p> <p>a) third persons having supported the reporting persons <u>in the work related context</u>, such as confidential advisors,</p> <p>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</p> <p>c) legal entities that the reporting persons own, work for or are otherwise connected with.</p> <p>Corresponding new recital 28bis, based on recital (65) of the COM and CONS text and 28a of the EP text:</p> <p><u>(65) Similarly, protection should be provided against retaliatory measures taken vis-à-vis the reporting persons themselves, but also vis-a-vis third persons who have provided them with support and advice in a work-related</u></p>

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				<p><u>context, for instance on how to proceed, the proper channels for reporting, or the protections available, such as trade union representatives, workers' representatives and co-workers. Moreover, protection from retaliation should also be granted to relatives of the reporting persons who are also in a work-related connection with the latter's employer or customer/recipient of services and co-workers. Finally, protection should also be granted to legal entities the reporting persons are connected with, where they suffer retaliation, for instance in the form of denial of provision of services, blacklisting or business boycotting.</u></p> <p>New recital (65) aligned with new recital 28bis</p> <p>(65) Reporting persons should be protected against any form of</p>

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				<p>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, <u>where retaliation is recommended or tolerated by the concerned person. 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 he/ or she representsis connected to, such as denial of provision of services, blacklisting or business boycotting. Indirect retaliation also includes actions taken against relatives of the reporting person who are also in a work-related connection</u></p>

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				with the latter's employer or customer/recipient of services and workers' representatives who have provided support to the reporting person.
			<i><u>Article 2bis</u></i> <i><u>Conditions for protection of reporting persons</u></i>	
			<u>1. Persons reporting information on breaches falling within the scope of this Directive shall qualify for protection provided that:</u>	
			<u>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; and</u>	A drafting suggestion to address concerns about legal uncertainty could be the following <u>Compromise text :</u> 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 <u>areas covered by</u> this Directive; and

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				PRES will test this with the Member States
			<u>b) they reported internally in accordance with Article 3bis and/or externally in accordance with Article 5bis or publicly disclosed information in accordance with Article 12bis of this Directive.</u>	
			<u>(2. Reporting persons who later cease to have a reasonable belief that the information reported was true may not qualify for protection from subsequent retaliation unless they report this new information in due time.)</u>	EP asked for the deletion of this provision. PRES will test this with the Member States
			<u>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 public entities and competent authorities shall or shall not accept and follow-up on anonymous reports of breaches. Persons who reported or publicly disclosed information</u>	Could be acceptable for EP with further slight redrafting (separation of the two phrases).

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			<u>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.</u>	
			<i>Article 2ter</i> <u>Breaches exclusively affecting individual rights</u>	
			<u>Member States may provide that information on breaches exclusively affecting the individual rights of the reporting person shall not be reported under the procedures of this Directive, but under other available procedures, unless that information reveals a wider pattern of breaches.</u>	EP suggested deletion of the whole article and specifically expressed concerns i) about the fact that its application could result in excluding a priori reporting persons from the protection of the Directive and ii) about the difficulty to establish in the light of one single report whether it reveals a “ <i>wider pattern of breaches</i> ”. PRES will test with MS deletion of art.2ter.
	Article 3 Definitions	Article 3 Definitions	Article 3 Definitions	

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	For the purposes of this Directive, the following definitions shall apply:	For the purposes of this Directive, the following definitions shall apply:	For the purposes of this Directive, the following definitions shall apply:	
	(1) ‘breaches’ means actual or potential unlawful activities or abuse of law relating to the Union acts and areas falling within the scope referred to in Article 1 and in the Annex;	(1) ‘breaches’ means actual or potential unlawful activities or abuse of law relating to the Union acts and areas falling within the scope referred to in Article 1 and in the Annex;	(1) ‘breaches’ means actual or potential unlawful activities or <u>acts or omissions</u> activities that relate relating to the Union acts and areas falling within the scope referred to in Article 1 and in the Annex or <u>that defeat the object or the purpose of the rules in these Union acts and areas</u> abuse of law relating to the Union acts and areas falling within the scope referred to in Article 1 and in the Annex;	Proposed compromise text: (1) ‘breaches’ means unlawful acts or omissions that relate to the Union acts and areas falling within the scope referred to in Article 1 and in the Annex or <u>acts or omissions</u> that defeat the object or the purpose of the rules in these Union acts and areas
	(2) ‘unlawful activities’ means acts or omissions contrary to Union law;	(2) ‘unlawful activities’ means acts or omissions contrary to Union law;	(2) ‘unlawful activities’ means acts or omissions contrary to Union law;	
	(3) ‘abuse of law’ means acts or omissions falling within the scope of Union law which do not appear to be unlawful in formal terms but defeat the object or the purpose pursued by the applicable rules;	(3) ‘abuse of law’ means acts or omissions falling within the scope of Union law which do not appear to be unlawful in formal terms but defeat the object or the purpose pursued by the applicable rules;	(3) ‘abuse of law’ means acts or omissions falling within the scope of Union law which do not appear to be unlawful in formal terms but defeat the object or the purpose pursued by the applicable rules;	

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	(4) 'information on breaches' means evidence about actual breaches as well as reasonable suspicions about potential breaches which have not yet materialised;	(4) 'information on breaches' means evidence about actual breaches as well as reasonable suspicions about potential breaches which have not yet materialised;	(4) 'information on breaches' means <u>information or</u> reasonable suspicions about actual <u>or</u> potential breaches, <u>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</u>	
	(5) 'report' means the provision of information relating to a breach which has occurred or is 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 relating to a breach which has occurred or is 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;	(added to (4) and replaced by (5) <u>'report' means the provision of information on breaches;</u>	
	(6) 'internal reporting' means provision of information on breaches within a public or private legal entity;	(6) 'internal reporting' means provision of information on breaches within a public or private legal entity;	(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	(7) 'external reporting' means provision of information on breaches	(7) 'external reporting' means provision of information on breaches to the competent	

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	authorities;	to the competent authorities;	authorities;	
	(8) ‘disclosure’ means making information on breaches acquired within the work-related context available to the public domain;	(8) ‘disclosure’ means making information on breaches acquired within the work-related context available to the public domain;	(8) ‘ <u>public</u> disclosure’ means making information on breaches acquired within the work-related context available to the public domain;	
	(9) ‘reporting person’ means a natural or legal person who reports or discloses information on breaches acquired in the context of his or her work-related activities;	(9) ‘reporting person’ means a natural or legal person who reports or discloses information on breaches acquired in the context of his or her work-related activities;	(9) ‘reporting person’ means a natural or legal person who reports or discloses information on breaches <u>lawfully</u> acquired in the context of his or her work-related activities;	<p>EP concerned that the addition of <u>lawful</u> acquisition introduces an additional condition for protection under the proposal and would like to delete “<i>lawfully</i>”.</p> <p>PRES will test deletion of <u>lawfully</u> with MS.</p> <p>New compromise text:</p> <p>(9) ‘reporting person’ means a natural or legal person who reports or discloses information on breaches [lawfully] acquired in the context of his or her work-related activities;</p> <p>In order to accomodate EP concerns related to the <u>deletion of legal persons</u>, the following change in recital (67) is</p>

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				<p>proposed :</p> <p>(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 user-friendly way and is 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</p>

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			PUBLIC	even prevented. Member States may choose to extend such advice to legal counselling. <u>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.</u>
		<i>(9a) ‘facilitator’ means a natural person who assists or aids the reporting person in the reporting process in a work-related context;</i>		See above art.2 para.(2a)
	(10) ‘work-related context’ means current or past work activities in the public or private sector through which, irrespective of	(10) ‘work-related context’ means current or past work activities in the public or private sector through which, irrespective of their nature,	(10)‘work-related context’ means current or past work activities in the public or private sector through which, irrespective of	

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	their nature, persons may acquire information on breaches and within which these persons may suffer retaliation if they report them.	persons may acquire information on breaches and within which these persons may suffer retaliation if they report them.	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;	(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;	(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;	
			<u>(11bis) ‘confidential advisors’ means persons such as trade union or workers’ representatives designated by private or public entities with a view to providing confidential advice to reporting persons and those considering reporting;</u>	See above art.2 para.(2a)
	(12) ‘retaliation’ means any threatened or actual act or omission prompted by the internal or external reporting which occurs in a work-related context and causes or may cause unjustified detriment to the reporting person;	(12) ‘retaliation’ means any threatened or actual, <i>direct or indirect,</i> act or omission prompted by the internal or external reporting <i>or public disclosure</i> which occurs in a work-related context and causes or may cause unjustified detriment to the reporting person;	(12) ‘retaliation’ means any threatened or actual act or omission <u>which occurs in a work-related context</u> prompted by the internal or external reporting; <u>or by public disclosure, and</u> which occurs in a work-related context and causes or may cause unjustified detriment to the reporting person or to a third	PRES explained that some of the “facilitators” referred to in the EP text are covered by the persons that benefit from protection against indirect retaliation. EP considers that this should be reflected in the personal scope. PRES will redraft this recital accordingly and present redrafting to the Member States

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			person connected with or having supported the reporting person, in particular a relative or a confidential advisor, or to a legal entity connected with the reporting person;	Redrafted to reflect the new Article 2 paragraph 2a Compromise text: (12) ‘retaliation’ means any threatened or actual act or omission <u>which occurs in a work-related context</u> prompted by the internal or external reporting, <u>or by public disclosure, and</u> which occurs in a work-related context and causes or may cause unjustified detriment to the reporting person; <u>or to a third person connected with or having supported the reporting person, in particular a relative or a confidential advisor, or to a legal entity connected with the reporting person; or to the persons referred to in Article 2(2a);</u>
	(13) ‘follow-up’ means any action taken by the recipient of the report, made internally or externally, to assess the accuracy of the allegations made in the report and, where relevant, to address the breach reported, including actions such as internal	(13) ‘follow-up’ means any action taken by the recipient of the report, made internally or externally, to assess the accuracy of the allegations made in the report and, where relevant, to address the breach reported, including actions such as internal enquiry, investigation,	(13) ‘follow-up’ means any action taken by the recipient of the report, made internally or externally <u>any competent authority</u> , to assess the accuracy of the allegations made in the report and, where relevant, to address the breach reported,	

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	enquiry, investigation, prosecution, action for recovery of funds and closure;	prosecution, action for recovery of funds and closure;	including <u>through</u> actions such as internal enquiry, investigation, prosecution, action for recovery of funds and closure	
			<u>(13 bis) ‘feedback’ means providing to the reporting persons information on the action envisaged or taken as follow-up to their report and on the grounds for such follow-up.</u>	(13 bis) ‘feedback’ means <u>provision</u> to the reporting persons <u>of</u> 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 designated to carry out the duties provided for in this Directive, in particular as regards the follow up of reports.	(14) ‘competent authority’ means any national authority entitled to receive reports in accordance with Chapter III and designated to carry out the duties provided for in this Directive, in particular as regards the follow up of reports.	(14) ‘competent authority’ means any national authority entitled to receive reports in accordance with Chapter III and <u>give feedback to the reporting persons and/or</u> designated to carry out the duties provided for in this Directive, in particular as regards the follow-up of reports;	
		<i>(14a) ‘good faith’ means the reasonable belief of a reporting person, in the light of the circumstances and the information available to that person at the time of the reporting, that the information reported by that person is true and that it falls within the scope of this Directive.</i>		COM explained that using this notion, which is known in all national legal orders with a very specific meaning, carries the risk of misinterpretation by actors at the national level (legislators, national courts) EP could provisionally accept to only refer to the content of the

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				condition, without using the term “good faith”, subject to confirmation.
	CHAPTER II INTERNAL REPORTING AND FOLLOW UP OF REPORTS	CHAPTER II INTERNAL REPORTING AND FOLLOW UP OF REPORTS	CHAPTER II INTERNAL REPORTING AND FOLLOW-UP OF REPORTS	
			<u>Article 3bis</u> <u>Reporting through internal channels</u>	It should be further discussed at political level.
			<u>Without prejudice to Articles 5bis and 12bis, reporting persons shall first provide information on breaches falling within the scope of this Directive using the channels and procedures provided for in Chapter II.</u>	
	Article 4 Obligation to establish internal channels and procedures for reporting and follow-up of reports	Article 4 Obligation to establish internal channels and procedures for reporting and follow-up of reports	Article 4 Obligation to establish internal channels and procedures for reporting and follow-up of reports	The title is provisionally agreed.
	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	1. Member States shall ensure, <i>in accordance with national practices</i> , that <i>employers and other</i> legal entities in the private and in the public sector establish internal channels and procedures for	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 consultations	New compromise text: 1. Member States shall ensure that, <u>in accordance with national law and practices</u> , legal entities in the private and in the public sector establish

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	reports, following consultations with social partners, if appropriate.	reporting and following up on reports, following consultations <i>consultation and in agreement</i> with the social partners, if appropriate.	with social partners, if appropriate	internal channels and procedures for reporting and following up on reports, following consultations with social partners, if appropriate.
	2. Such channels and procedures shall allow for reporting by 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), but the use of internal channels for reporting shall not be mandatory for these categories of persons.	2. Such channels and procedures shall allow for reporting by employees of the entity. They may <i>shall</i> 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), but the use of internal channels for reporting shall not be mandatory for these categories of persons. <i>Those reporting channels shall be clearly defined by the entity and easily accessible both within and from outside the entity.</i>	2. Such channels and procedures shall allow for reporting by 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), but the use of internal channels for reporting shall not be mandatory for these categories of persons.	EP can be flexible, subject to confirmation.
	3. The legal entities in the private sector referred to in paragraph 1 are the following:	3. The legal entities in the private sector referred to in paragraph 1 are the following:	3. The legal entities in the private sector referred to in paragraph 1 are the following:	
	a) private legal entities with 50 or more employees;	a) private legal entities with 50 or more employees;	a) private legal entities <u>shall be those</u> with 50 or more employees.	
	b) private legal entities with an annual business turnover or annual balance sheet total of EUR	b) private legal entities with an annual business turnover or annual balance sheet total of EUR 10	b) private legal entities with an annual business turnover or annual balance sheet total of EUR 10	

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	10 million or more;	million or more;	million or more	
	c) private legal entities of any size operating in the area of financial services or vulnerable to money laundering or terrorist financing, as regulated under the Union acts referred to in the Annex.	c) private legal entities of any size operating in the area of financial services or vulnerable to money laundering or terrorist financing, as regulated under the Union acts referred to in the Annex.	e) private legal entities of any size operating in the area of financial services or vulnerable to money laundering or terrorist financing, as regulate	
		<i>3a. By way of derogation from points (a) and (b) of paragraph 3, Member States may exclude from the legal entities in the private sector referred to in paragraph 1 the following private legal entities:</i>	3bis. The threshold under the <u>paragraph 3 shall not apply to the entities falling within the scope of</u> Union acts referred to in <u>Part I.B and Part II of</u> the Annex.	EP internal consultations are needed for para.(3bis) and (3ter). PRES emphasized that para. 3bis should be read in conjunction with art. 20(1bis).
		<i>(a) private legal entities with fewer than 250 employees;</i>	3ter. Reporting channels may <u>be operated internally by a person or department designated for that purpose or provided externally by a third party, provided that the safeguards and requirements referred to in Article 5(1) are respected.</u>	EP proposed to delete “internally” and externally” from the text in order to get clearer. New compromise text: 3ter. Reporting channels may be operated internally by a person or department designated for that purpose or provided externally by a third party, provided that the safeguards and requirements referred to in Article 5(1) are respected.
		<i>(b) private legal entities with an annual turnover not exceeding EUR 50 million, and/or an annual</i>		

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		<i>balance sheet total not exceeding EUR 43 million</i>		
	4. Following an appropriate risk assessment taking into account the nature of activities of the entities and the ensuing level of risk, Member States may require small private legal entities, as defined in Commission Recommendation of 6 May 2003 ⁶² , other than those referred to in paragraph 3(c) to establish internal reporting channels and procedures.	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 small private legal entities, as defined in Commission Recommendation of 6 May 2003 ⁶² , other than those referred to in paragraph 3(c) to establish internal reporting channels and procedures.	4. Following an appropriate risk assessment taking into account the nature of activities of the entities and the ensuing level of risk, Member States may require small private legal entities, as defined in Commission Recommendation of 6 May 2003⁴⁰ , <u>other with less than those referred to in paragraph 3(e) 50 employees</u> to establish internal reporting channels and procedures.	This para. (4) should be also part of discussions of political level.
	5. Any decision taken by a Member State 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.	5. Any decision taken by a Member State 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.	5. Any decision taken by a Member State <u>to require the private legal entities to establish internal reporting channels</u> 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.	EP provisionally agrees with the language, subject to final confirmation.
	6. The legal entities in the public	6. The legal entities in the public	6. The legal entities in the public	Para. (6) should be also decided at political level.

⁴⁰ ~~Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises OJ L 124, 20.5.2003, p. 36.~~

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	sector referred to in paragraph 1 shall be the following:	sector referred to in paragraph 1 shall be the following:	sector referred to in paragraph 1 shall be the following: <u>all the branches of State power at all territorial levels, including entities owned or controlled by the State.</u> <u>Member States may exempt from the obligation referred to in paragraph 1 municipalities with moreless than 10 000 inhabitants;</u> <u>d) — or less than 50 employees, or other entities governed by public law entities with less than 50 employees.</u> <u>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.</u>	
	a) state administration;	a) state administration;	a) state administration;	
	b) regional administration and departments;	b) regional administration and departments;	b) regional administration and departments;	

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	c) municipalities with more than 10 000 inhabitants;	c) municipalities with more than 10 000 inhabitants;	e) municipalities with more than 10 000 inhabitants;	
	d) other entities governed by public law.	d) other entities governed by public law.	d) other entities governed by public law.	
	Article 5 Procedures for internal reporting and follow-up of reports	Article 5 Procedures for internal reporting and follow-up of reports	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:	1. The procedures for reporting and following-up of reports referred to in Article 4 shall include the following:	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 manner that ensures the confidentiality of the identity of the reporting person and prevents access to non-authorised staff members;	(a) channels for receiving the reports which are designed, set up and operated in a <i>secure</i> manner that ensures the confidentiality of the identity of the reporting person <i>and of the facilitators as well as of the concerned person</i> , and prevents access to non-authorised staff members;	(a) channels for receiving the reports which are designed, set up and operated in a manner that ensures the confidentiality of the identity of the reporting person and prevents access to non-authorised staff members;	The notion of facilitators should be further discussed together with the notion of confidential advisors. New compromise text: (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 of the facilitators], as well as of the concerned person and prevents access to non-authorised staff members;

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		<i>(aa) a confidential acknowledgment of receipt of the report to the reporting person within no more than seven days of that receipt;</i>		<i>(aa) a confidential acknowledgment of receipt of the reports to the reporting person, within no more than seven days of that receipt, which also indicates the registered date of receipt;</i>
	(b) the designation of a person or department competent for following up on the reports;	(b) the designation of <i>an impartial</i> person or <i>independent</i> department competent for following up on the reports.	(b) the designation of a person or department competent for following up on the reports; <u>which may be the same person or department as the one receiving the reports;</u>	New compromise text: (b) the designation of a person or department competent for following up on the reports, <u>whose function ensures impartiality [and independence]</u> may be the same person or department as the one receiving the reports <u>and which will maintain communication with and provide feedback to the reporting person;</u>
			<u>b-bis) additional persons such as trade union or workers' representatives may be designated as confidential advisors</u>	b-bis) additional persons such as trade union or workers' representatives may be designated as confidential advisors
	(c) diligent follow up to the report by the designated person or department;	(c) diligent follow up to the report by the designated person or department <i>and, where necessary, appropriate and timely action.</i>	(c) diligent follow-up to the report by the designated person or department;	Comment: The concept of "appropriate action" is in the definition of "follow up" in Article 3(11) – "timely" would

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				seem to overlap with “diligent”
		<i>(ca) diligent follow up as regards anonymous reporting;</i>		New compromise text: (ca) diligent follow up as regards anonymous reporting, <u>where provided for under national law;</u>
	(d) a reasonable timeframe, not exceeding three months following the report, to provide feedback to the reporting person about the follow-up to the report;	(d) a reasonable timeframe, not exceeding three two months <u>following from the acknowledgment of receipt of</u> the report, to provide feedback to the reporting person about the follow-up to the report. <i>That timeframe may be extended to four months, where necessary due to the specific circumstances of the case, in particular where the subject of the report is of a nature and complexity such that a lengthy investigation may be required;</i>	(d) a reasonable timeframe, not exceeding three months following the report, to provide feedback to the reporting person about the follow-up to the report;	New compromise text: (d) a reasonable timeframe, <u>to provide feedback to the reporting person about the follow-up to the report,</u> not exceeding three two months <u>following the report either from the acknowledgment of the receipt of the report or, if no acknowledgement was sent, from the expiry of the seven day period after the report was made., to provide feedback to the reporting person about the follow-up to the report;</u> That timeframe <u>may be extended to four months, where necessary due to the specific circumstances of the case, in particular where the subject of the report is of a nature and complexity such that a lengthy investigation may be required;</u>

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		<i>(da) the possibility for the reporting person to be consulted and to present comments during the course of the investigation and the possibility for those comments to be taken into account where deemed relevant by the person or department referred to in point (b); and</i>		See amendments under b) above.
	(e) clear and easily accessible information regarding the procedures and information on how and under what conditions reports can be made externally to competent authorities pursuant to Article 13(2) and, where relevant, to bodies, offices or agencies of the Union.	(e) clear and easily accessible information regarding the procedures and information on how and under what conditions reports can be made externally to competent authorities pursuant to Article 13(2) and, where relevant, to bodies, offices or agencies of the Union.	(e) clear and easily accessible information regarding the procedures and information on how and under what conditions reports can be made externally to competent authorities pursuant to Article 13(2) 5bis and, where relevant, to <u>institutions</u> , bodies, offices or agencies of the Union.	
			<u>1bis. Member States may provide that, in the event of high inflows of reports, the designated persons or departments may deal with reports on serious breaches or on breaches of essential provisions falling within the scope of this Directive as a matter of priority.</u>	Compromise proposal: To be moved in a recital.

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	2. The channels provided for in point (a) of paragraph 1 shall allow for reporting in all of the following ways:	2. The channels provided for in point (a) of paragraph 1 shall allow for reporting in all any of the following ways:	2. The channels provided for in point (a) of paragraph 1 shall allow for reporting in all of the following ways:	New compromise text: 2. The channels provided for in point (a) of paragraph 1 shall allow for reporting <u>in writing and/ or orally</u> through telephone lines <u>or other voice messaging systems</u> and upon request <u>of the reporting person, by means of a physical meeting within a reasonable timeframe.</u>
	(a) written reports in electronic or paper format and/or oral report through telephone lines, whether recorded or unrecorded;	(a) written reports in electronic or paper format and/or oral report through telephone lines, <i>or other voice messaging systems</i> , whether recorded, <i>with the prior consent of the reporting person</i> or unrecorded;	(a) written reports in electronic or paper format <u>writing</u> and/or oral report <u>orally</u> , through telephone lines, whether recorded or unrecorded;	Merged, see above
	(b) physical meetings with the person or department designated to receive reports.	(b) physical meetings with the person or department designated to receive reports.	(b) <u>and, upon request, by means of a physical meeting with the person or department designated to receive reports.</u>	Merged, see above
	Reporting channels may be operated internally by a person or department designated for that purpose or provided externally by a third party, provided that the safeguards and requirements referred to in point (a) of	Reporting channels may be operated internally by a person or department designated for that purpose or provided externally by a third party, provided that the safeguards and requirements referred to in point (a) of paragraph 1 are respected.	<u>2.</u> Reporting channels may be operated internally by a person or department designated for that purpose or provided externally by <u>meeting within</u> a third party, provided that the safeguards and requirements referred to in point	Moved under article 4 par.3ter 2. Reporting channels may be operated internally by a person or department designated for that purpose or provided externally by meeting within a third party,

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	paragraph 1 are respected.		(a) of paragraph 1 are respected <u>within the reasonable timeframe.</u>	provided that the safeguards and requirements referred to in point (a) of paragraph 1 are respected within the reasonable timeframe.
	3. The person or department referred to in point (b) of paragraph 1 may be the same person who is competent for receiving the reports. Additional persons may be designated as “trusted persons” from whom reporting persons and those considering reporting may seek confidential advice.	3. The person or department referred to in point (b) of paragraph 1 may be the same person who is competent for receiving the reports, <i>provided that the confidentiality and impartiality safeguards referred to in points (a) and (b) of paragraph 1 are complied with.</i> Additional persons may be designated as “trusted persons” from whom reporting persons and those considering reporting may seek confidential advice.	3. The person or department referred to in point (b) of paragraph 1 may be the same person who is competent for receiving the reports. Additional persons may be designated as “trusted persons” from whom reporting persons and those considering reporting may seek confidential advice.	
		<i>3a. The procedures for reporting and following up of reports referred to in Article 4 shall ensure that the reporting person or any person considering reporting has the right to be accompanied by a workers’ representative at all stages of the procedure, including during physical meetings as provided for under this Article.</i>		<u>New compromise text:</u> EP text <i>3a. The procedures for reporting and following up of reports referred to in Article 4 shall ensure that the reporting person or any person considering reporting has the right to be accompanied by a workers’ representative at all stages of the procedure, including during physical meetings as provided for under</i>

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				<i>this Article.</i>
	CHAPTER III EXTERNAL REPORTING AND FOLLOW UP OF REPORTS	CHAPTER III EXTERNAL REPORTING AND FOLLOW UP OF REPORTS	CHAPTER III EXTERNAL REPORTING AND FOLLOW UP OF REPORTS	
			<u>Article 5bis</u> <u>Reporting through external channels</u>	Part of the political agreement (to be further discussed at political level).
			<u>1. A person who reports externally information on breaches shall qualify for protection if one of the following conditions is fulfilled:</u>	
			<u>a) he or she first reported internally but no appropriate action was taken in response to the report within the reasonable timeframe referred in Article 5</u>	
			<u>b) internal reporting channels were not available for the reporting person or the reporting person could not reasonably be expected to be aware of the availability of such channels;</u>	
			<u>c) the use of internal reporting channels was not mandatory for the reporting person, in accordance with Article 4(2);</u>	

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			d) <u>he or she had reasonable grounds to believe that there is a high risk of retaliation or a low prospect of the breach being effectively addressed through the use of internal channels, including because of the risk that the effectiveness of investigative actions by the authorities could be jeopardised;</u>	
			e) <u>he or she was entitled to report directly through the external reporting channels to a competent authority by virtue of Union law;</u>	
			f) <u>he or she was under an obligation to report directly through the external reporting channels to a competent authority by virtue of Union or national law</u>	PRES explained that this is a red line for the MS.
			2. <u>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</u>	

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			<u>reported externally in accordance with the conditions set out in paragraph 1</u>	
	Article 6 Obligation to establish external reporting channels and to follow up on reports	Article 6 Obligation to establish external reporting channels and to follow up on reports	Article 6 Obligation to establish external reporting channels and to follow-up on reports	
	1. Member States shall designate the authorities competent to receive and handle reports.	1. Member States shall designate the authorities competent to receive and handle reports.	1. Member States shall designate the authorities competent to receive, <u>give feedback</u> and handle reports. <u>or follow-up on the reports and shall provide them with adequate resources.</u>	EP can be flexible, subject to final confirmation.
	2. Member States shall ensure that the competent authorities:	2. Member States shall ensure that the competent authorities:	2. Member States shall ensure that the competent authorities:	
	a) establish independent and autonomous external reporting channels, which are both secure and ensure confidentiality, for receiving and handling information provided by the reporting person;	a) establish independent and autonomous external reporting channels, which are both secure and ensure confidentiality, for receiving and handling information provided by the reporting person;	a) establish independent and autonomous external reporting channels, which are both secure and ensure confidentiality, for receiving and handling information provided by the reporting person;	Comment Duty of confidentiality now detailed in art.13bis of CONS text and 14bis of EP text.
			<u>abis) promptly acknowledge, as provided for in national procedural rules, the receipt of written reports to the postal or electronic address indicated by</u>	New compromise text: abis) promptly acknowledge, as provided for in national procedural rules, the receipt of

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			<u>the reporting person, unless the reporting person explicitly requested otherwise or the competent authority reasonably believes that acknowledging receipt of a written report would jeopardise the protection of the reporting person's identity</u>	<u>the written reports to the postal or electronic address indicated by the reporting person,</u> unless the reporting person explicitly requested otherwise or the competent authority reasonably believes that acknowledging receipt <u>of a written</u> report would jeopardise the protection of the reporting person's identity
			<u>ater) follow-up on the reports by taking the necessary measures and investigate, to the extent appropriate, the subject-matter of the reports;</u>	New compromise text: ater) <u>diligently</u> follow-up on the reports <u>by taking the necessary measures and investigate, to the extent appropriate, the subject-matter of the reports;</u>
	(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;	(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;	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; <u>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;</u>	The text is acceptable for the EP, subject to final confirmation.
	(c) transmit the information	(c) transmit the information	c) transmit the information	New compromise text: c) transmit <u>in due time</u> the

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	contained in the report to competent bodies, offices or agencies of the Union, as appropriate, for further investigation, where provided for under national or Union law.	contained in the report to competent bodies, offices or agencies of the Union, as appropriate, for further investigation, where provided for under national or Union law.	contained in the report to competent <u>institutions</u> , bodies, offices or agencies of the Union, as appropriate, for further investigation, where provided for under national or Union law.	information contained in the report to competent <u>institutions</u> , bodies, offices or agencies of the Union, as appropriate, for further investigation, where provided for under national or Union law. The text is acceptable for the EP, subject to final confirmation.
				New text: <i><u>This addition translates part of “the obligation to cooperate” under Article 17b, paragraph 1, of the text of the EP</u></i> <u>d) transmit, in due time, in cases where the breach reported has a cross-border dimension, the information contained in the report to other Member State authorities and cooperate with these in a loyal, effective and timely manner.</u>
	3. Member States shall ensure that competent authorities follow up on the reports by taking the necessary measures and investigate, to the extent appropriate, the subject-matter of	3. Member States shall ensure that competent authorities follow up on the reports by taking the necessary measures and investigate, to the extent appropriate, the subject-matter of the reports <i>and are entitled to</i>	3. Member States shall ensure <u>may provide</u> that competent authorities follow up on, <u>after having duly reviewed</u> the reports by taking the necessary <u>matter, may decide that a reported breach is clearly</u>	Political issue to be further discussed internally by the EP.

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	the reports. The competent authorities shall communicate to the reporting person the final outcome of the investigations.	<i>take adequate remedial action if necessary.</i> The competent authorities shall communicate to the reporting person the final outcome of the investigations.	<u>minor and does not require follow-up measures and investigate, pursuant to this Directive. This shall not affect other obligations or other applicable procedures to address the reported breach, or the extent appropriate, protection granted by this Directive in relation to reporting through the subject matter of internal and/or external channels. In such a case,</u> the reports. The competent authorities shall communicate <u>notify their decision and its grounds</u> to the reporting person.	
			<u>3bis. Member States may provide that competent authorities may close procedure regarding repetitive reports whose substance does not include any new meaningful information compared to a past report that was already closed, 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</u>	

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			<u>their decision.</u>	
			<u>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.</u>	
	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 and that the reporting person is informed.	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 and that <i>within a reasonable time, in a secure manner and with due regard to relevant data protection and confidentiality law and rules.</i> The reporting person is <i>shall be</i> informed, <i>without delay, of such a transmission.</i>	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 and that the reporting person is informed.	New compromise text: 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, <u>within a reasonable time, in a secured manner,</u> and that the reporting person is informed, <u>without delay of such a transmission.</u>
	Article 7 Design of external reporting channels	Article 7 Design of external reporting channels	Article 7 Design of external reporting channels	
	1. Dedicated external reporting channels shall be considered independent and autonomous, if	1. Dedicated external reporting channels shall be considered independent and autonomous, if they	1. Dedicated external External reporting channels shall be considered independent and	

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	they meet all of the following criteria:	meet all of the following criteria:	autonomous, if they meet all of the following criteria:	
	a) they are separated from general communication channels of the competent authority, including those through which the competent authority communicates internally and with third parties in its ordinary course of business;	a) they are separated from general communication channels of the competent authority, including those through which the competent authority communicates internally and with third parties in its ordinary course of business;	a) they are separated from general communication channels of the competent authority, including those through which the competent authority communicates internally and with third parties in its ordinary course of business;	The deletion can be acceptable for the EP, subject to final confirmation.
	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 non-authorised staff members of the competent authority;	b) they are designed, set up and operated in a manner that ensures the completeness, integrity and confidentiality of the information, <i>including the identity of the reporting person and of the concerned person</i> , and prevents access to non-authorised staff members of the competent authority;	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 non-authorised staff members of the competent authority;	The text can be acceptable for the EP, subject to final confirmation.
	c) they enable the storage of durable information in accordance with Article 11 to allow for further investigations.	c) they enable the storage of durable information in accordance with Article 11 to allow for further investigations.	c) they enable the storage of durable information in accordance with Article 11 to allow for further investigations.	The text can be acceptable for the EP, subject to final confirmation.

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	2. The dedicated reporting channels shall allow for reporting in at least all of the following ways:	2. The dedicated reporting channels shall allow for reporting in at least all of the following ways:	2. The dedicated dedicated external reporting channels shall allow for reporting in at least all of the following ways:	New compromise text: 2. The external reporting channels shall allow for reporting in <u>writing and orally through telephone, or other voice messaging systems and, upon request of the reporting person, by means of a physical meeting, within a reasonable timeframe.</u>
	a) written report in electronic or paper format;	a) written report in electronic or paper format;	a) written report in electronic or paper format;	Merged, see above
	b) oral report through telephone lines, whether recorded or unrecorded;	b) oral report through telephone lines, whether recorded or unrecorded;	b) oral report <u>writing and orally</u> through telephone lines, whether recorded or unrecorded	Merged, see above
	(c) physical meeting with dedicated staff members of the competent authority.	c) physical meeting with dedicated staff members of the competent authority <i>accompanied, if the reporting person requests it, by a workers' representative.</i>	e) <u>and, upon request by the reporting person, by means of a physical meeting with dedicated staff members of the competent authority within a reasonable timeframe.</u>	
	3. Competent authorities shall ensure that a report received by means other than dedicated reporting channels referred to in paragraphs 1 and 2 is promptly forwarded without modification to the dedicated staff members of the competent authority by using	3. Competent authorities shall ensure that a report received by means other than dedicated reporting channels referred to in paragraphs 1 and 2 is promptly forwarded without modification to the dedicated staff members of the competent authority by using dedicated communication	3. Competent authorities shall ensure that, <u>where</u> a report <u>is</u> received by means <u>through</u> other <u>channels</u> than dedicated the reporting channels referred to in paragraphs 1 and 2 is promptly forwarded without modification to the dedicated <u>or by other staff</u>	The text can be acceptable for the EP, subject to final confirmation.

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	dedicated communication channels.	channels.	<u>members than those responsible for handling reports, the</u> staff members of the competent authority by using dedicated communication channels.	
	4. Member States shall establish procedures to ensure that, where a report being initially addressed to a person who has not been designated as responsible handler for reports that person is refrained from disclosing any information that might identify the reporting or the concerned person.	4. Member States shall establish procedures to ensure that, where a report being initially addressed to a person who has not been designated as responsible handler for reports that person is refrained from disclosing any information that might identify the reporting or the concerned person.	4. Member States shall establish procedures to ensure that, where a report being initially addressed to a person who has not been designated as responsible handler for reports that person is <u>received</u> <u>it are</u> refrained from disclosing any information that might identify the reporting or the concerned person- <u>and promptly forward the report without modification to the</u> staff members <u>responsible for handling reports.</u>	The text can be acceptable for the EP, subject to final confirmation.
	Article 8 Dedicated staff members	Article 8 Dedicated staff members	Article 8 Dedicated staff members	
	1. Member States shall ensure that competent authorities have staff members dedicated to handling reports. Dedicated staff members shall receive specific training for the purposes of handling reports.	1. Member States shall ensure that competent authorities have <i>an adequate number of competent</i> staff members dedicated to handling reports. Dedicated staff members shall receive specific training for the purposes of handling reports, <i>and shall comply with the confidentiality requirements provided for under</i>	1. 4. Member States shall ensure that competent authorities have staff members dedicated to handling reports. Dedicated staff members shall receive specific training for the purposes of <u>responsible for</u> handling reports- <u>2</u> , <u>and in particular for:</u>	

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		<i>this Directive.</i>		
	2. Dedicated staff members shall exercise the following functions:	2. Dedicated staff members shall exercise the following functions:	2. Dedicated staff members shall exercise the following functions:	
	a) providing any interested person with information on the procedures for reporting;	a) providing any interested person with information on the procedures for reporting;	a) providing any interested person with information on the procedures for reporting;	
	b) receiving and following-up reports;	b) receiving and following-up reports. <i>They shall determine whether the report falls under the scope of this Directive.</i>	b) receiving and following-up reports;	
	c) maintaining contact with the reporting person for the purpose of informing the reporting person of the progress and the outcome of the investigation.	c) maintaining contact with the reporting person for the purpose of informing the reporting person of the progress and the outcome of the investigation.	c) maintaining contact with the reporting person for the purpose of informing the reporting person of the progress and the outcome of the investigation <u>providing feedback</u>	
	Article 9 Procedures applicable to external reporting	Article 9 Procedures applicable to external reporting	Article 9 Procedures applicable to external reporting	
	1. The procedures applicable to external reporting shall provide for the following:	1. The procedures applicable to external reporting shall provide for the following:	1. The procedures applicable to external reporting 5. <u>These staff members</u> shall provide <u>receive specific training</u> for the following: <u>purposes of handling reports</u>	
	a) the manner in which the competent authority may require the reporting person to clarify the	a) the manner in which the competent authority may require the reporting person to clarify the	a) the manner in which the competent authority may require the reporting person to clarify the	

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	information reported or to provide additional information that is available to the reporting person;	information reported or to provide additional information that is available to the reporting person;	information reported or to provide additional information that is available to the reporting person;	
		<i>(aa) a confidential acknowledgment of receipt of the report to the reporting person within no more than seven days of that receipt;</i>		Discussion to continue subsequently to agree upon letter b).
	(b) a reasonable timeframe, not exceeding three months or six months in duly justified cases, for giving feed-back to the reporting person about the follow-up of the report and the type and content of this feed-back;	(b) a reasonable timeframe, not exceeding <i>two</i> months <i>from the acknowledgment of receipt of the report, for diligently following-up on the report, including where necessary taking appropriate action as well as conducting investigations into the subject of the report, and for</i> giving feed-back to the reporting person about the follow-up of the report and the type and content of this feed-back. <i>That timeframe may be extended to four months in duly justified cases;</i>	(b) a reasonable timeframe, not exceeding three months or six months in duly justified cases, for giving feed-back to the reporting person about the follow-up of the report and the type and content of this feed-back;	Part of the political discussions on the tiered channels.
		<i>(ba) follow-up as regards anonymous reporting in accordance with any provisions provided for in that regard under national law.</i>		New compromise text: (ca) diligent follow up as regards anonymous reporting, <u>where provided under national law;</u>
	(c) the confidentiality regime applicable to reports, including a	(c) the confidentiality regime applicable to reports, including a	(c) the confidentiality regime applicable to reports, including a	

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	detailed description of the circumstances under which the confidential data of a reporting person may be disclosed.	detailed description of the circumstances under which the confidential data of a reporting person <i>and of a concerned person</i> may be disclosed.	detailed description of the circumstances under which the confidential data of a reporting person may be disclosed.	
		<i>(ca) the possibility for the reporting person to be consulted and to present comments during the course of the investigation and the possibility for those comments to be taken into account where deemed relevant by the competent authority.</i>		New compromise text: <u>(ca) the possibility for the reporting person to be consulted and to present comments during the course of the investigation and the possibility for those comments to be taken into account where deemed relevant by the competent authority.</u>
	2. The detailed description referred to in point (c) of paragraph 1 shall include the exceptional cases in which confidentiality of personal data may not be ensured, including where the disclosure of data is a necessary and proportionate obligation required under Union or national law in the context of investigations or subsequent judicial proceedings or to safeguard the freedoms of others including the right of defence of the concerned person, and in each	2. The detailed description referred to in point (c) of paragraph 1 shall include the exceptional cases in which confidentiality of personal data may not be ensured, including where the disclosure of data is a necessary and proportionate obligation required under Union or national law in the context of investigations or subsequent judicial proceedings or to safeguard the freedoms of others including the right of defence of the concerned person, and in each case subject to appropriate safeguards under such	2. The detailed description referred to in point (c) of paragraph 1 shall include the exceptional cases in which confidentiality of personal data may not be ensured, including where the disclosure of data is a necessary and proportionate obligation required under Union or national law in the context of investigations or subsequent judicial proceedings or to safeguard the freedoms of others including the right of defence of the concerned person, and in each	

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	case subject to appropriate safeguards under such laws.	laws.	case subject to appropriate safeguards under such laws.	
	3. The detailed description referred to in point (c) of paragraph 1 must be written in clear and easy to understand language and be easily accessible to the reporting persons.	3. The detailed description referred to in point (c) of paragraph 1 must be written in clear and easy to understand language and be easily accessible to the reporting persons.	3. The detailed description referred to in point (c) of paragraph 1 must be written in clear and easy to understand language and be easily accessible to the reporting persons.	
	Article 10 Information regarding the receipt of reports and their follow-up	Article 10 Information regarding the receipt of reports and their follow-up	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:	Member States shall ensure that competent authorities publish on their websites in a separate, easily identifiable and accessible section at least the following information:	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;	a) the conditions under which reporting persons qualify for protection under this Directive;	a) the conditions under which reporting persons qualify for protection under this Directive;	
	b) the communication channels for receiving and following-up the reporting:	b) the communication channels for receiving and following-up the reporting:	b) the communication channels contact details for receiving and following-up using the external reporting:	New compromise text:
	i) the phone numbers, indicating whether conversations are recorded or unrecorded when	i) the phone numbers, indicating whether conversations are recorded or unrecorded when using those	i) channels as provided for under Article 7(2), in the electronic and postal addresses,	b) the contact details for using the external reporting channels as provided for under Article 7(2), in particular the electronic and postal addresses, and, where

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	using those phone lines;	phone lines;	<u>and, where applicable</u> , the phone numbers, indicating whether conversations are recorded or unrecorded when using those phone lines	<u>applicable</u> , the phone numbers, indicating whether <u>the phone</u> conversations are recorded or unrecorded <u>when using those phone lines</u>
	ii) dedicated electronic and postal addresses, which are secure and ensure confidentiality, to contact the dedicated staff members;	ii) dedicated electronic and postal addresses, which are secure and ensure confidentiality, to contact the dedicated staff members;	ii) — dedicated electronic and postal addresses, which are secure and ensure confidentiality, to contact the dedicated staff members;	
	c) the procedures applicable to the reporting of breaches referred to in Article 9;	c) the procedures applicable to the reporting of breaches referred to in Article 9;	c) the procedures applicable to the reporting of breaches referred, <u>including the manner in which the competent authority may request the reporting person to clarify the information reported or to in Article 9 provide additional information, the timeframe for giving feedback to the reporting person and the type and content of this feedback</u>	Text acceptable for the EP, subject to final confirmation.
	d) the confidentiality regime applicable to reports, and in particular the information in relation to the processing of personal data in accordance with Article 13 of Regulation (EU) 2016/679, Article 13 of Directive (EU) 2016/680 and Article 11 of	(d) the confidentiality regime applicable to reports, and in particular the information in relation to the processing of personal data in accordance with Articles 5 and 13 of Regulation (EU) 2016/679, Article 13 of Directive (EU) 2016/680 and Article 11 of Regulation (EC)	d) the confidentiality regime applicable to reports, and in particular the information in relation to the processing of personal data in accordance with Article 13 of Regulation (EU) 2016/679, Article 13 of Directive (EU) 2016/680 and Article 11 of	New compromise text: d) the confidentiality regime applicable to reports, and in particular the information in relation to the processing of personal data in accordance with Article 5 and 13 of Regulation

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	Regulation (EC) 45/2001, as applicable.	45/2001, as applicable.	Regulation (EC) 45/2001, as applicable.	(EU) 2016/679, Article 13 of Directive (EU) 2016/680 and Article 11 of Regulation (EC) 45/2001, as applicable.
	e) the nature of the follow-up to be given to reports;	e) the nature of the follow-up to be given to reports;	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;	f) the remedies and procedures available against retaliation and possibilities to receive confidential advice for persons contemplating making a report;	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 that persons making information available to the competent authority in accordance with this Directive are not considered to be infringing any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and are not to be involved in liability of any kind related to such disclosure.	g) a statement clearly explaining that persons making information available to the competent authorities in accordance with this Directive are not considered to be infringing any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and are not to be involved in liability of any kind related to such disclosure.	g) a statement clearly explaining that the conditions under which persons making information available reporting to the competent authority in accordance with this Directive are would not considered to be infringing any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and are not to be involved in incur liability of any kind related to such disclosure due to a breach of confidentiality as provided for in Article 15(4).	To be discussed in conjunction of article 15.(4)
		<i>(ga) an annual report on the alerts received and their treatment, while respecting the confidentiality of on-</i>		EP explained the reasons: the need for transparency and the already existing obligation to keep the records (art.11 para1).

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		<i>going investigations;</i>		To be tested with the MS.
		<i>(gb) contact information of the single independent administrative authority as provided for in Article 14a.</i>		To be discussed in conjunction with art.14a (2) – may provisions.
	Article 11 Record-keeping of reports received	Article 11 Record-keeping of reports received	Article 11 Record-keeping of reports received	
	1. Member States shall ensure that competent authorities keep records of every report received.	1. Member States shall ensure that competent authorities keep records of every report received, <i>in compliance with the confidentiality requirements provided for in this Directive. The reports shall be stored for no longer than is necessary and proportionate in view of the reporting procedure and shall be deleted as soon as the reporting procedure has been completed. The personal data contained in those reports shall be processed in accordance with Union data protection law.</i>	1. Member States shall ensure that competent authorities keep records of every report received.	
	2. Competent authorities shall promptly acknowledge the receipt of written reports to the postal or electronic address indicated by the reporting person, unless the reporting person explicitly	2. Competent authorities <i>and the private and public legal entities</i> shall promptly acknowledge the receipt of written reports to the postal or electronic address indicated by the reporting person, unless the	2. Competent authorities shall promptly acknowledge the receipt of written reports to the postal or electronic address indicated by the reporting person, unless the reporting person explicitly	To be assed internally by the EP if the text is still needed.

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	requested otherwise or the competent authority reasonably believes that acknowledging receipt of a written report would jeopardise the protection of the reporting person's identity.	reporting person explicitly requested otherwise or the competent authority believes reasonably believed that acknowledging receipt of a written report would jeopardise the protection of the reporting person's identity.	requested otherwise or the competent authority reasonably believes that acknowledging receipt of a written report would jeopardise the protection of the reporting person's identity.	
	3. Where a recorded telephone line is used for reporting, subject to the consent of the reporting person, the competent authority shall have the right to document the oral reporting in one of the following ways:	3. Where a recorded telephone line is used for reporting, subject to the consent of the reporting person, and provided that the confidentiality requirements under this Directive are complied with , the competent authority authorities and the private and public legal entities shall have the right to document the oral reporting in one of the following ways:	3.-Where a recorded telephone line is used for reporting, subject to the consent of the reporting person, the competent authority 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;	a) a recording of the conversation in a durable and retrievable form;	a) a recording of the conversation in a durable and retrievable form;	The text can be acceptable for the EP, subject to final confirmation.
	b) a complete and accurate transcript of the conversation prepared by the dedicated staff members of the competent authority.	b) a complete and accurate transcript of the conversation prepared by the dedicated staff members of the competent authority.	b) a complete and accurate transcript of the conversation prepared by the dedicated staff members of the competent authority responsible for handling reports .	The text can be acceptable for the EP, subject to final confirmation.
	The competent authority shall offer the possibility to the reporting person to check, rectify and agree the transcript of the call	The competent authority authorities and the public and private legal entities shall offer the possibility to the reporting person to check, rectify	The competent authority shall offer the possibility to the reporting person to check, rectify and agree the transcript of the call	The text can be acceptable for the EP, subject to final confirmation.

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	by signing it.	and agree the transcript of the call by signing it.	by signing it.	
	4. Where an unrecorded telephone line is used for reporting, the competent authority shall have the right to document the oral reporting in the form of accurate minutes of the conversation prepared by the dedicated staff members. The competent authority shall offer the possibility to the reporting person to check, rectify and agree with the minutes of the call by signing them.	4. Where an unrecorded telephone line is used for reporting, the competent authority 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 dedicated staff members. 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 transcript of the call by signing them.	4. Where an unrecorded telephone line is used for reporting, the competent authority shall have the right to document the oral reporting in the form of accurate minutes of the conversation prepared by the dedicated staff members responsible for handling reports . The competent authority shall offer the possibility to the reporting person to check, rectify and agree with the minutes of the call by signing them.	The text can be acceptable for the EP, subject to final confirmation.
	5. Where a person requests a meeting with the dedicated staff members of the competent authority for reporting according to Article 7(2)(c), competent authorities 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. A competent authority shall have the right to document the records of the meeting in one of the following	5. Where a person requests a meeting with the dedicated staff members of the competent authority authorities or the private and public legal entities for reporting according to Article 7(2)(c), 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 authority authorities and private and public	5. Where a person requests a meeting with the dedicated staff members of the competent authority for reporting according to Article 7(2)(c), competent authorities 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. A competent authority shall have the right to document the records of the meeting in one of the following ways:	The text can be acceptable for the EP, subject to final confirmation.

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	ways:	<i>legal entities</i> 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;	(a) a recording of the conversation in a durable and retrievable form;	(a) a recording of the conversation in a durable and retrievable form;	The text can be acceptable for the EP, subject to final confirmation.
	(b) accurate minutes of the meeting prepared by the dedicated staff members of the competent authority.	(b) accurate minutes of the meeting prepared by the dedicated staff members of the competent authority and the private and public legal entities .	(b) accurate minutes of the meeting prepared by the dedicated staff members of the competent authority <u>responsible for handling reports</u> .	The text can be acceptable for the EP, subject to final confirmation.
	The competent authority shall offer the possibility to the reporting person to check, rectify and agree with the minutes of the meeting by signing them.	The competent authority authorities and the public and private legal entities shall offer the possibility to the reporting person to check, rectify and agree with the minutes transcript of the meeting by signing them it .	The competent authority shall offer the possibility to the reporting person to check, rectify and agree with the minutes of the meeting by signing them.	The text can be acceptable for the EP, subject to final confirmation.
		<i>5a. Where the question of a disclosure referred to in point (c) of Article 9(1) arises, the competent authorities shall inform the reporting person thereof and shall send him or her a written justification explaining the reasons for the disclosure of the confidential data concerned. The reporting person shall be offered the possibility to check and rectify the justification and agree that the</i>		

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		<i>reasons for disclosure are a hand.</i>		
	Article 12 Review of the procedures by competent authorities	Article 12 Review of the procedures by competent authorities	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 two years. In reviewing such procedures competent authorities shall take account of their experience and that of other competent authorities and adapt their procedures accordingly.	Member States shall ensure that competent authorities review their procedures for receiving reports and their follow-up regularly, and at least once every two years. In reviewing such procedures competent authorities shall take account of their experience and that of other competent authorities and adapt their procedures accordingly.	Member States shall ensure that competent authorities review their procedures for receiving reports and their follow-up regularly, and at least once every two 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	The deadline of three years to be discussed together with the statistics issue.
	CHAPTER IV PROTECTION OF REPORTING AND CONCERNED PERSONS	CHAPTER IV PROTECTION OF REPORTING AND CONCERNED PERSONS	<u>CHAPTER IIIBIS</u> <u>PUBLIC DISCLOSURES</u>	
	Article 13 Conditions for the protection of reporting persons	Article 13 Conditions for the protection of reporting persons	<i>Article 13</i> <u>12bis</u> <u>Conditions for the protection of</u> <u>reporting persons</u> <u>Public disclosures</u>	<u>Issue to be decide at political level.</u>
	1. A reporting person shall qualify for protection under this Directive provided he or she has reasonable grounds to believe that the information reported was true	1. A reporting person <i>person reporting internally or externally or both</i> shall qualify for protection under this Directive provided he or she has reasonable grounds to	1. A reporting person shall qualify for protection under this Directive provided he or she has reasonable grounds to believe that <u>the person who publicly discloses</u>	

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	at the time of reporting and that this information falls within the scope of this Directive.	believe that the information reported was true at the time of reporting and that this information falls within the scope of this Directive.	information reported was true at the time of reporting and that this information falls within the scope of this Directive.	
	2. A person reporting externally shall qualify for protection under this Directive where one of the following conditions is fulfilled :	2. A person reporting externally shall qualify for protection under this Directive where one of the following conditions is fulfilled :	2. A person reporting externally shall qualify for protection under this Directive where one of the following conditions is fulfilled :	
	(a) he or she first reported internally but no appropriate action was taken in response to the report within the reasonable timeframe referred in Article 5;	(a) he or she first reported internally but no appropriate action was taken in response to the report within the reasonable timeframe referred in Article 5;	(a) he or she first reported internally but no appropriate action was taken in response to the report within the reasonable timeframe referred in Article 5;	
	(b) internal reporting channels were not available for the reporting person or the reporting person could not reasonably be expected to be aware of the availability of such channels;	(b) internal reporting channels were not available for the reporting person or the reporting person could not reasonably be expected to be aware of the availability of such channels;	(b) internal reporting channels were not available for the reporting person or the reporting person could not reasonably be expected to be aware of the availability of such channels;	
	(c) the use of internal reporting channels was not mandatory for the reporting person, in accordance with Article 4(2);	(c) the use of internal reporting channels was not mandatory for the reporting person, in accordance with Article 4(2);	(c) the use of internal reporting channels was not mandatory for the reporting person, in accordance with Article 4(2);	
	(d) he or she could not reasonably be expected to use internal reporting channels in light of the subject-matter of the report;	(d) he or she could not reasonably be expected to use internal reporting channels in light of the subject-matter of the report;	(d) he or she could not reasonably be expected to use internal reporting channels in light of the subject-matter of the report;	
	(e) he or she had reasonable grounds to believe that the use of	(e) he or she had reasonable grounds to believe that the use of internal	(e) he or she had reasonable grounds to believe that the use of	

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	internal reporting channels could jeopardise the effectiveness of investigative actions by competent authorities;	reporting channels could jeopardise the effectiveness of investigative actions by competent authorities;	internal reporting channels could jeopardise the effectiveness of investigative actions by competent authorities;	
	(f) he or she was entitled to report directly through the external reporting channels to a competent authority by virtue of Union law.	(f) he or she was entitled to report directly through the external reporting channels to a competent authority by virtue of Union law.	(f) he or she was entitled to report directly through the external reporting channels to a competent authority by virtue of Union law.	
	3. A person reporting to relevant 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 in accordance with the conditions set out in paragraph 2.	3. A person reporting to relevant 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 in accordance with the conditions set out in paragraph 2 <i>I</i> .	3. A person reporting to relevant bodies, offices or agencies of the Union on breaches falling within the scope of this Directive shall qualify for protection as laid down in <u>under</u> this Directive under <u>if one of the same following</u> conditions as a person who reported externally in accordance with the conditions set out in paragraph 2. <u>is fulfilled;</u>	
	4. A person publicly disclosing information on breaches falling within the scope of this Directive shall qualify for protection under this Directive where:	4. A person publicly disclosing information on breaches falling within the scope of this Directive shall qualify for protection under this Directive where:	4. A person publicly disclosing information on breaches falling within the scope of this Directive shall qualify for protection under this Directive where:	
	(a) he or she first reported internally and/or externally in accordance with Chapters II and III and paragraph 2 of this Article, but no appropriate action was	(a) he or she first reported internally and/or externally in accordance with Chapters II and III and paragraph 2 of this Article, but no appropriate action was taken in response to the	(a) he or she first reported internally and/or externally in accordance with Chapters II and III and paragraph 2 of this Article, but no appropriate action was	

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	taken in response to the report within the timeframe referred to in Articles 6(2)(b) and 9(1)(b); or	report within the timeframe referred to in Articles 6(2)(b) and 9(1)(b); or	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 could not reasonably be expected to use internal and/or external reporting channels due to imminent or manifest danger for the public interest, or to the particular circumstances of the case, or where there is a risk of irreversible damage.	(b) <i>he or she has reasonable grounds to believe that</i> he or she could not be expected to use internal and/or external reporting channels due, <i>for instance</i> , to imminent or manifest danger for <i>or harm to</i> the public interest, or to the particular circumstances of the case, <i>such as cases where reporting persons have reasonable grounds to believe that there is collusion between the perpetrator of the breach and the competent authority, or that there is direct or indirect participation in the alleged misconduct on the part of the relevant external authorities, or that evidence may be concealed or destroyed</i> , or where there is <i>a situation of urgency</i> or a risk of irreversible damage.	(b) he or she could not reasonably be expected <u>had reasonable grounds to believe that:</u>	
			<u>(i) there is a low prospect of the breach being effectively addressed through the use of internal and/or external reporting channels due to and the breach may constitute an</u> imminent or manifest danger for the public	

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			interest, or to the particular circumstances of the case, or where there is a <u>a</u> risk of irreversible damage; <u>or</u>	
			<u>(ii) there is a high risk of retaliation or that evidence may be concealed or destroyed because an authority is in collusion with the perpetrator of the breach or involved in the breach.</u>	
			<u>2. Paragraph 1(a) shall not apply to public disclosures made after a competent authority has taken a decision pursuant to Article 6(3). This shall not affect the protection granted by this Directive against retaliation occurring prior to the public disclosure.</u>	
			<u>3. This Article shall not apply to public disclosures of information where competent authorities establish that this threatens essential national security interests.</u>	
			<u>4. This Article shall not apply to cases where a person directly discloses information to the press pursuant to specific</u>	

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			<u>national provisions establishing a system of protection relating to the freedom of expression and information.</u>	
		<i>4a. If the identity of the author of an anonymous report is revealed at a later stage, he or she shall enjoy the protection provided for by this Directive on the same conditions as reporting persons whose identity was public knowledge when the report or public disclosure was first made.</i>		
			CHAPTER IV PROTECTION OF REPORTING AND CONCERNED PERSONS	
			<u>Article 13bis</u> <u>Duty of confidentiality</u>	
			<u>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</u>	EP emphasized that trade secrets directive is a sensitive topic. To be further discussed internally in the EP. This article should be merged with some provisions from article 14 bis (EP amendment), while keeping the substance.

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			<u>also apply to any other information from which the identity of the reporting person may be directly or indirectly deduced.</u>	
			<u>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, or for the purposes of addressing an imminent or irreversible damage to the public interest. 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</u>	The hypotheses “or for the purposes of addressing an imminent or irreversible damage to the public interest” should be further clarified. MS should further provide some practical examples to be presented to the EP.

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			<u>the investigations or judicial proceedings.</u>	
			<u>3. 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.</u>	
			<u>Article 13ter</u> Processing of personal data	
			<u>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.</u>	New compromise text: 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. <u>Personal data which are not relevant for the handling of a specific case shall not be collected or, if accidentally collected, shall be immediately deleted.</u> See art. 18 EP amendment.

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	Article 14 Prohibition of retaliation against reporting persons	Article 14 Prohibition of retaliation against reporting persons	Article 14 Prohibition of retaliation against reporting persons	
	Member States shall take the necessary measures to prohibit any form of retaliation, whether direct or indirect, against reporting persons meeting the conditions set out in Article 13, including in particular in the form of:	Member States shall take the necessary measures to prohibit any form of retaliation, whether direct or indirect, taken against reporting persons meeting the conditions set out in Article 13, against persons who intend to report or against facilitators , including, in particular, in the form of:	Member States shall take the necessary measures to prohibit any form of retaliation, including threats and attempts of retaliation , whether direct or indirect, against reporting persons meeting the conditions set out in Article 13, including in particular in the form of:	Text acceptable for the EP subject to final confirmation. The hypotheses “against persons who intend to report” should be further clarified and included in the operative part.
	a) suspension, lay-off, dismissal or equivalent measures;	a) suspension, lay-off, dismissal or equivalent measures;	a) suspension, lay-off, dismissal or equivalent measures;	
	b) demotion or withholding of promotion;	b) demotion or withholding of promotion;	b) demotion or withholding of promotion;	
	c) transfer of duties, change of location of place of work, reduction in wages, change in working hours;	c) transfer of duties, change of location of place of work, reduction in wages, change in working hours;	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;	d) withholding of training; e) negative performance assessment or employment reference;	d) withholding of training; e) negative performance assessment or employment reference;	
	f) imposition or administering of any discipline, reprimand or other penalty, including a financial penalty;	f) imposition or administering of any discipline, reprimand or other penalty, including a financial penalty;	f) imposition or administering of any discipline, reprimand or other penalty, including a financial penalty;	
	(g) coercion, intimidation,	(g) coercion, intimidation,	(g) coercion, intimidation,	New compromise text:

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	harassment or ostracism at the workplace;	harassment or ostracism at the workplace;	harassment or ostracism at the workplace;	(g) coercion, intimidation, harassment or ostracism at the workplace;
	h) discrimination, disadvantage or unfair treatment;	h) discrimination, disadvantage or unfair treatment;	h) discrimination, disadvantage or unfair treatment;	
	i) failure to convert a temporary employment contract into a permanent one;	i) failure to convert a temporary employment contract into a permanent one;	i) failure to convert a temporary employment contract into a permanent one; <u>where the worker had legitimate expectations that he or she would be offered permanent employment;</u>	To be checked internally by the EP.
	j) failure to renew or early termination of the temporary employment contract;	j) failure to renew or early termination of the temporary employment contract;	j) failure to renew or early termination of the temporary employment contract;	
	k) damage, including to the person's reputation, or financial loss, including loss of business and loss of income;	(k) damage, including to the person's reputation, <i>particularly in social media</i> , or financial loss, including loss of business and loss of income;	k) damage, including to the person's reputation, or financial loss, including loss of business and loss of income;	New compromise text: (k) damage, including to the person's reputation, <u>particularly in social media</u> , 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;	(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;	(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;	(m) early termination or cancellation of a contract for goods or services <i>due to the reporting under this</i>	(m) early termination or cancellation of contract for goods or services;	

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		<i>Directive;</i>		
	(n) cancellation of a licence or permit.	(n) cancellation of a licence or permit.	(n) cancellation of a licence or permit.	
		<i>(na) mandatory psychiatric or medical referrals;</i>		New compromise text: (na) mandatory ad hoc psychiatric or medical referrals;
		<i>(nb) suspension or revocation of security clearance.</i>		Compromise proposal (nb) suspension or revocation of security clearance.
		<i>Article 14a</i> <i>Support for the reporting person from an independent third party</i>		
		<i>1. Member States shall provide for the reporting person or the person intending to report or to make a public disclosure to be given support in the procedure. Such support shall ensure that the identity of the persons referred to in this paragraph remains confidential and may, in particular, take the form of:</i>		Overlaps with Article 15 (Council text)
		<i>(a) free, impartial and confidential advice, especially on the scope of this Directive, the reporting channels and the protection granted to the reporting person and the rights of the concerned person;</i>		

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		<i>(b) legal advice in the event of a legal dispute, in accordance with Article 15(8);</i>		
		<i>(c) psychological support, in accordance with Article 15(8).</i>		
		<i>2. This support may be provided by an information centre, or a single and clearly identified independent administrative authority.</i>		Para. 2 to be moved to the Article 15 (Council text)
		<i>Article 14 b</i> <i>Duty of maintaining the confidentiality of the identity of reporting persons</i>		To be merged with Article 13 bis while avoiding overlaps.
		<i>1. The identity of a reporting person may not be disclosed without the reporting person's explicit consent. This confidentiality requirement shall also apply to information that may be used to discover the identity of the reporting person.</i>		
		<i>2. Any person who comes into the possession of data referred to in paragraph 1 of this Article shall be required to protect such data.</i>		
		<i>3. Under no circumstances shall the</i>		

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		<i>person concerned be entitled to obtain information about the identity of the reporting person.</i>		
		<i>4. Circumstances under which the confidential data of a reporting person may be disclosed shall be limited to cases where the disclosure of data is a necessary and proportionate obligation required under Union or national law in the context of investigations or subsequent judicial proceedings or to safeguard the freedoms of others including the rights of defence of the concerned person, and in each case subject to appropriate safeguards under such laws.</i>		
		<i>5. In the cases referred to in paragraph 3, the person designated to receive and follow-upon reports shall be required to notify the reporting person before disclosing his or her confidential data.</i>		
		<i>6. The internal and external reporting channels shall be designed, set up and operated in a</i>		

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		<i>manner that ensures the confidentiality of the identity of the reporting person, and prevents access to non-authorised staff members.</i>		
				<p>New compromise text:</p> <p><i>[New Article 14bis on the measures of support draws upon current paragraphs 2, 3 and 8 of Article 15 – which would then regroup only the remedial legal actions]</i></p> <p><u>Article 14bis – Measures of support</u></p> <p><u>1. Member States shall ensure that persons referred to in Article 2 have access, as appropriate, to support measures, in particular, the following:</u></p> <p><u>(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</u></p>

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				<p><u>the concerned person.</u></p> <p><u>(ii) access to effective assistance from competent authorities before any relevant authority involved in their protection against retaliation, including, where provided for under national law, certification of the fact that they qualify for protection under this Directive;</u></p> <p><u>(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,</u></p> <p><u>2. Member States may provide for financial assistance and support, including psychological support, for reporting persons in the framework of legal proceedings.</u></p>

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			PUBLIC	<p><u>3. 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 [OR: by the authority referred to in Article xxx].</u></p> <p><i>Of relevance here is also the clarification in the recital 67 relating to the provision of advice</i></p> <p>Recital (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 user-friendly way and is 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</p>

<i>Row</i>	COMMISSION PROPOSAL COM(2018) 218 FINAL	EP TEXT	COUNCIL TEXT	CONSOLIDATED TEXT / COMPROMISE PROPOSALS / COMMENTS
				<p>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.</p> <p>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</p>

Row	COMMISSION PROPOSAL COM(2018) 218 FINAL	EP TEXT	COUNCIL TEXT	CONSOLIDATED TEXT / COMPROMISE PROPOSALS / COMMENTS
				organisation.
	Article 15 Measures for the protection of reporting persons against retaliation	Article 15 Measures for the protection of reporting persons <i>and facilitators</i> against retaliation	Article 15 Measures for the protection of reporting persons against retaliation	Article 15 Measures for the protection of reporting persons against retaliation
	1. Member States shall take the necessary measures to ensure the protection of reporting persons meeting the conditions set out in Article 13 against retaliation. Such measures shall include, in particular, those set out in paragraphs 2 to 8.	1. Member States shall take the necessary measures to ensure the protection of reporting persons meeting the conditions set out in Article 13 against retaliation. Such measures shall include, in particular, those set out in paragraphs 2 to 8.	1. Member States shall take the necessary measures to ensure the protection of reporting persons meeting the conditions set out in Article 13 2bis against retaliation. Such measures shall include, in particular, those set out in paragraphs 2 to 8.	New compromise text: 1. Member States shall take the necessary measures to ensure the protection of reporting persons against retaliation meeting the conditions set out in Article 13 2bis against retaliation. Such measures shall include, in particular, those set out in paragraphs 2 to 8.
	2. Comprehensive and independent information and advice shall be easily accessible to the public, free of charge, on procedures and remedies available on protection against retaliation.	2. Comprehensive and independent information and advice shall be easily accessible to the public, free of charge, on procedures and remedies available on protection against retaliation.	2. Comprehensive and independent information and advice shall be easily accessible to the public, free of charge, on procedures and remedies available on protection against retaliation. <u>Member States may decide to extend such advice to legal counselling.</u>	<u>2. Comprehensive and independent information and advice shall be easily accessible to the public, free of charge, on procedures and remedies available on protection against retaliation. Member States may decide to extend such advice to legal counselling.</u>
	3. Reporting persons shall have access to effective assistance from competent authorities before any	3. Reporting persons <i>and facilitators</i> shall have access to effective assistance from competent	3. Reporting persons shall have access to effective assistance from competent authorities before any	<u>3. Reporting persons shall have access to effective assistance from competent</u>

Row	COMMISSION PROPOSAL COM(2018) 218 FINAL	EP TEXT	COUNCIL TEXT	CONSOLIDATED TEXT / COMPROMISE PROPOSALS / COMMENTS
	relevant authority involved in their protection against retaliation, including, where provided for under national law, certification of the fact that they qualify for protection under this Directive.	authorities before any relevant authority involved in their protection against retaliation, including, where provided for under national law, certification of the fact that they qualify for protection under this Directive.	relevant authority involved in their protection against retaliation, including, where provided for under national law, certification of the fact that they qualify for protection under this Directive.	authorities before any relevant authority involved in their protection against retaliation, including, where provided for under national law, certification of the fact that they qualify for protection under this Directive.
	4. Persons reporting externally to competent authorities or making a public disclosure in accordance with this Directive shall not be considered to have breached any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and incur liability of any kind in respect of such disclosure.	4. Persons reporting externally to competent authorities or making a public disclosure in accordance with this Directive shall not be considered to have breached any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and incur liability of any kind in respect of such disclosure.	4. Persons reporting externally <u>Without prejudice to competent authorities or making</u> 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 imposed by contract or by any legislative, regulatory or administrative provision, and, 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.	The addition of the Council raises EP concerns related to the burden put on the whistleblowers to assess on the necessity to report /disclose.
			Any other possible liability of	

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			<u>the reporting person arising from the unlawful access to information related to the reporting or 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.</u>	
	5. In judicial proceedings relating to a detriment suffered by the reporting person, and subject to him or her providing reasonable grounds to believe that the detriment was in retaliation for having made the report or disclosure, it shall be for the person who has taken the retaliatory measure to prove that the detriment was not a consequence of the report but was exclusively based on duly justified grounds.	5. In judicial proceedings relating to a detriment suffered by the reporting person, and subject to him or her providing reasonable grounds to believe that the detriment was in retaliation for having made the report or disclosure, it shall be for the person who has taken the retaliatory measure to prove that the detriment was not a consequence of the report or public disclosure , but was exclusively based on duly justified grounds.	5. In judicial proceedings before a court or other authority relating to a detriment suffered by the reporting person, and subject to him or her providing reasonable grounds to believe that the establishing that he or she made a report or public disclosure and suffered a detriment was , it shall be presumed that the detriment was made in retaliation for having made the report or disclosure. In such cases , it shall be for the person who has taken the retaliatory detrimental measure to prove that the detriment was not a consequence of the report but this measure was exclusively based on duly justified grounds.	EP fears that too much burden will be put on the whistleblowers related to the fact that he/she should prove the report and the retaliation.
	6. Reporting persons shall have	6. Reporting persons and	6. Reporting persons shall have	

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	access to remedial measures against retaliation as appropriate, including interim relief pending the resolution of legal proceedings, in accordance with the national framework.	<i>facilitators</i> 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.	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 addition to the exemption from measures, procedures and remedies provided for in Directive (EU) 2016/943, in judicial proceedings, including for defamation, breach of copyright, breach of secrecy or for compensation requests based on private, public, or on collective labour law, reporting persons shall have the right to rely on having made a report or disclosure in accordance with this Directive to seek dismissal.	7. In addition to the exemption from measures, procedures and remedies provided for in Directive (EU) 2016/943, in judicial proceedings, including for defamation, breach of copyright, breach of secrecy or for compensation requests based on private, public, or on collective labour law, reporting persons shall have the right to rely on having made a report or disclosure in accordance with this Directive to seek dismissal. <i>Member States shall also take the necessary measures to extend such right to seek dismissal to individual members of civil society organisations when they are related to an act of reporting.</i>	7. In addition to the exemption from measures, procedures and remedies provided for in Directive (EU) 2016/943, in <u>In judicial proceedings, including for defamation, breach of copyright, breach of secrecy</u> <u>data protection rules, disclosure of trade secrets,</u> or for compensation requests based on private, public, or on collective labour law, <u>persons</u> reporting persons shall have the right to rely on having made <u>or making a report or public disclosure in accordance with this Directive to seek dismissal</u> <u>shall not incur liability of any kind for that reporting or disclosure, 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</u>	To be further discussed internally by the EP.

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			<u>reports or publicly discloses information on breaches falling within the scope of this Directive which includes trade secrets and meets 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</u>	
	8. In addition to providing legal aid to reporting persons 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 ⁶³ , and in accordance with national law, Member States may provide for further measures of legal and financial assistance and support for reporting persons in the framework of legal proceedings.	8. In addition to providing legal aid to reporting persons 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 ⁶³ , and in accordance with national law, Member States may provide for further measures of legal and financial assistance and support, <i>including psychological support</i> , for reporting persons in the framework of legal proceedings.	8. In addition to providing legal aid to reporting persons 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 ⁴¹ , and in accordance with national law, Member States may provide for further measures of legal and financial assistance and support for reporting persons in the framework of legal proceedings.	<u>8. In addition to providing legal aid to reporting persons 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 Council⁴², and in accordance with national law, Member States may provide for further measures of legal and financial assistance and support for reporting persons in the</u>

⁴¹ Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (OJ L 136, 24.5.2008, p. 3).

⁴² Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (OJ L 136, 24.5.2008, p. 3).

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				<u>framework of legal proceedings.</u>
		<i>Article 15 a</i> <i>Remedial measures</i>		<u>Article 15 a</u> <u>Remedial measures</u>
		<i>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 13. Such remedial measures may take the following forms:</i>		New compromise text: <u>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 13.</u>
		<i>a) reintegration</i>		
		<i>b) restoration of a cancelled permit, licence or contract;</i>		
		<i>c) compensation for actual or future financial losses;</i>		
		<i>d) compensation for other economic damages or non-material damages.</i>		
	Article 16 Measures for the protection of concerned persons	Article 16 Measures for the protection of concerned persons	Article 16 Measures for the protection of concerned persons	
	1. Member States shall ensure 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	1. Member States shall ensure 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	1. Member States shall ensure <u>in accordance with the Charter of Fundamental Rights of the European Union</u> that the concerned persons fully enjoy the right to an effective remedy and to	1. 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,

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	right to be heard and the right to access their file, in accordance with the Charter of Fundamental Rights of the European Union.	heard and the right to access their file, in accordance with the Charter of Fundamental Rights of the European Union.	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, in accordance with the Charter of Fundamental Rights of the European Union.	<u>in particular against any unfair prejudice, whether direct or indirect, prompted by the findings resulting from an assessment or an investigation of by the reports or public disclosures under this directive</u> 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
	2. Where the identity of the concerned persons is not known to the public, competent authorities shall ensure that their identity is protected for as long as the investigation is ongoing.	2. Where the identity of the concerned persons is not known to the public, Competent authorities shall ensure that <i>the identity of the concerned persons</i> is protected for as long as the investigation is ongoing, <i>but in no case after the start of the criminal trial.</i>	2. Where the identity of the concerned persons is not known to the public, competent authorities shall ensure that their identity is protected for as long as the investigation is ongoing <u>in accordance with national law.</u>	Compromise proposal 2. Where the identity of the concerned persons is not known to the public, competent authorities shall ensure that the identity <u>of the concerned persons</u> is protected for as long as the investigation is ongoing in accordance with national law.
	3. The procedures set out in Articles 9 and 11 shall also apply for the protection of the identity of the concerned persons.	3. The procedures set out in Articles 9 and 11 shall also apply for the protection of the identity of the concerned persons.	3. The procedures set out in Articles 9 7 and 11 shall also apply for the protection of the identity of the concerned persons.	
		<i>Article 16 a</i> <i>Rights of Persons involved</i>		
		<i>Member States shall ensure that any findings or reports resulting</i>		<u>New compromise text:</u> To assess the possibility to merge

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		<i>from an assessment or an investigation of, or prompted by, reports or public disclosures under this Directive do not unfairly prejudice any individual, whether directly or indirectly. The right to a fair hearing or trial shall also be fully respected.</i>		this provision with the art. 16(1)
	Article 17 Penalties	Article 17 Penalties	Article 17 Penalties	
	1. Member States shall provide for effective, proportionate and dissuasive penalties applicable to natural or legal persons that:	1. Member States shall provide for effective, proportionate and dissuasive penalties applicable to natural or legal persons that:	1. Member States shall provide for effective, proportionate and dissuasive penalties applicable to natural or legal persons that:	
	a) hinder or attempt to hinder reporting;	a) hinder or attempt to hinder reporting;	a) hinder or attempt to hinder reporting;	
	b) take retaliatory measures against reporting persons;	b) take retaliatory measures against reporting persons <i>and facilitators</i> ;	b) take retaliatory measures against reporting persons;	New compromise text: b) take retaliatory measures against reporting persons;
	(c) bring vexatious proceedings against reporting persons;	(c) bring vexatious proceedings against reporting persons;	(c) bring vexatious proceedings against reporting persons;	
	(d) breach the duty of maintaining the confidentiality of the identity of reporting persons.	d) breach the duty of maintaining the confidentiality of the identity of reporting persons <i>and of concerned persons</i> .	(d) breach the duty of maintaining the confidentiality of the identity of reporting persons.	New compromise text: d) breach the duty of maintaining the confidentiality of the identity of reporting persons and of concerned persons .
	2. Member States shall provide for effective, proportionate and	2. Member States shall provide for <i>ensure that</i> effective, proportionate	2. Member States shall provide for effective, proportionate and	New compromise text: 2. Member States shall provide

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	dissuasive penalties applicable to persons making malicious or abusive reports or disclosures, including measures for compensating persons who have suffered damage from malicious or abusive reports or disclosures.	and dissuasive penalties <i>are</i> applicable to reporting persons making malicious or abusive reports or disclosures including demonstrated to be knowingly false , and that measures are in place for compensating persons who have suffered damage from such false reports or disclosures	dissuasive penalties applicable to persons knowingly making malicious or abusive false reports or false public disclosures; including . Member States shall also provide for measures for compensating persons who have suffered damage damages resulting from malicious or abusive such reports or disclosures.	for effective, proportionate and dissuasive penalties applicable to persons <u>when it is established that being</u> knowingly making false reports or false public disclosures. Member States shall also provide for measures for compensating damages resulting from such reports or disclosures.
		<i>Article 17 a</i> <i>No Waiver of Rights and Remedies</i>		<u>Article 17 a</u> <u>No Waiver of Rights and Remedies</u>
		<i>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. Any attempt to waive or limit these rights and remedies shall be considered void and unenforceable and may be subject to penalty or sanction.</i>		New compromise text: Member States shall 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. Recital 68bis slightly redrafted: It should not be possible to waive or limit the rights and obligations established by this Directive by contractual means. Individuals' legal or contractual obligations, such as loyalty

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				<p>clauses in contracts or confidentiality/non-disclosure agreements, <u>policies, forms or conditions of employment, including pre-dispute arbitration agreements,</u> cannot be relied <u>upon</u> to preclude <u>workers from</u> reporting, to deny protection or to penalise <u>them</u> <u>reporting persons</u> for having done so. <u>Such clauses or agreements shall be considered void and unenforceable and should be subject to penalties as forms of hindering or attempting to hinder reporting.</u></p>
		<p><i>Article 17b</i></p> <p><i>Obligation to cooperate</i></p>		
		<p><i>1. Member State authorities that are made aware of breaches of Union law, as covered by this Directive, shall expeditiously inform all other relevant Member State authorities and/or Union bodies, offices and agencies, and shall cooperate with these in a loyal, effective and expeditious manner.</i></p>		<p>New compromise text: Member State authorities that are made aware of breaches of Union law, as covered by this Directive, shall <u>expeditiously in due time</u> inform all other relevant Member State authorities and/or Union bodies, offices and agencies, and shall cooperate with these in a loyal, effective and <u>expeditious</u></p>

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				<p><u>timely</u> manner.</p> <p>To be assessed if could be placed to art. 6 (2) c).</p>
		<p><i>2. Member States authorities that are notified by other Member States' authorities of potential breaches of Union law covered by this directive shall provide a substantive response to actions taken in connection with said notification as well as an official acknowledgment of receipt and a point of contact for further cooperation.</i></p>		
		<p><i>3. Member States' authorities shall safeguard confidential information received, in particular the information related to the identity and other personal information of reporting persons.</i></p>		
		<p><i>4. Member States' authorities shall provide confidential access to the information received from reporting persons and facilitate requests for further information in a timely manner.</i></p>		
		<p><i>5. Member States' authorities shall share all relevant information with other competent Member States</i></p>		

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		<i>authorities pertaining to breaches of Union or national law in international cases and shall do so in a timely manner.</i>		
	Article 18 Processing of personal data	Article 18 Processing of personal data	Article 18 Processing of personal data <i>See new Article 13ter</i>	
	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 competent authorities at Union level should be undertaken in accordance with Regulation (EC) No 45/2001. Personal data which are not relevant for the handling of a specific case shall be immediately deleted.	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 competent authorities at Union level should be undertaken in accordance with Regulation (EC) No 45/2001. Personal data which are not relevant for the handling of a specific case shall <i>not be collected or, if accidentally collected, shall</i> be immediately deleted.	Any exchange or transmission of information by competent authorities at Union level should be undertaken in accordance with Regulation (EC) No 45/2001. Personal data which are not relevant for the handling of a specific case shall be immediately deleted.	
			CHAPTER V FINAL PROVISIONS	
	Article 19	Article 19 More favourable treatment <i>and non-</i>	Article 19	

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	More favourable treatment	<i>regression clause</i>	More favourable treatment	
	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).	<i>I. 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).</i>	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).	
		<i>1a. Transposition of this Directive shall not provide grounds for reducing the general level of protection already afforded to reporting persons under national law in the areas to which it applies.</i>		To be checked with the member States. See some standard clause in criminal procedural law instruments. Article 23 (directive 2016/800 procedural safeguards for children in criminal proceedings) Nothing in this directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that are ensured under (...) the law of any Member State that provides a higher level of protection.
		<i>Article 19 a</i> <i>Respect for social partners' autonomy</i>		
		<i>This Directive shall be without prejudice to the autonomy of the social partners and their right to enter into collective agreements in accordance with national law,</i>		To check with MS the possibility to move the text in the recital (43ter)

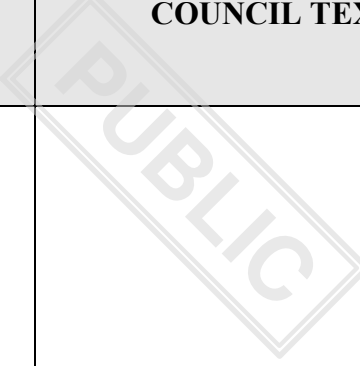
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		<i>traditions and practices while respecting the provisions of the Treaty.</i>		
	Article 20 Transposition	Article 20 Transposition	Article 20 Transposition and transitional period	
	1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 15 May 2021, at the latest. They shall forthwith communicate to the Commission the text of those provisions.	1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 15 May 2021, at the latest. They shall forthwith communicate to the Commission the text of those provisions.	1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 15 May 2021 , [2 years after adoption] , at the latest. They shall forthwith communicate to the Commission the text of those provisions.	
			<u>1bis. By derogation from paragraph 1, Member States may postpone the application of Article 4(3) and provide that the obligation therein shall only apply to legal entities in the private sector whose employees number between 50 and 249 from [2 years after transposition].</u>	
	2. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion	2. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official	2. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion	

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	of their official publication. Member States shall determine how such reference is to be made.	publication. Member States shall determine how such reference is to be made.	of their official publication. Member States shall determine how such reference is to be made.	
		<i>2a. When transposing this Directive Member States may consider establishing an independent whistleblower protection authority.</i>		See article 15 para. 8.
	Article 21 Reporting, evaluation and review	Article 21 Reporting, evaluation and review	Article 21 Reporting, evaluation and review	
	1. 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 15 May 2023, submit a report to the European Parliament and the Council on the implementation and application of this Directive.	1. 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 15 May 2023, submit a report to the European Parliament and the Council on the implementation and application of this Directive. <i>The report shall also include an initial assessment of whether it would be advisable to extend the scope of this Directive to cover further areas or Union acts.</i>	1. 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 15 May 2023 , <u>2 years after transposition</u> , submit a report to the European Parliament and the Council on the implementation and application of this Directive.	
	2. Without prejudice to reporting obligations laid down in other Union legal acts, Member States shall, on an annual basis, submit	2. Without prejudice to reporting obligations laid down in other Union legal acts, Member States shall, on an annual basis, submit the following	2. Without prejudice to reporting obligations laid down in other Union legal acts, Member States shall, on an annual basis, submit	

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	the following statistics on the reports referred to in Chapter III to the Commission, if they are available at a central level in the Member State concerned:	statistics on the reports referred to in Chapter III to the Commission, if they are available at a central level in the Member State concerned:	the following statistics on the reports referred to in Chapter III to the Commission, <u>preferably in an aggregated form</u> if they are available at a central level in the Member State concerned:	
	a) the number of reports received by the competent authorities;	a) the number of reports received by the competent authorities;	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 final outcome;	b) the number of investigations and proceedings initiated as a result of such reports and their final outcome;	b) the number of investigations and proceedings initiated as a result of such reports and their final outcome;	
	c) the estimated financial damage, if ascertained and the amounts recovered following investigations and proceedings related to the breaches reported.	c) the estimated financial damage, if ascertained and the amounts recovered following investigations and proceedings related to the breaches reported.	e) the estimated financial damage, if ascertained and the amounts recovered following investigations and proceedings related to the breaches reported.	To check with the MS the possibility to reinsert letter c)
		<i>(ca) the number of retaliatory measures against reporting persons ascertained.</i>		To check with the MS the possibility to introduce letter ca)
	3. The Commission shall, by 15 May 2027, 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	3. The Commission shall, by 15 May 2027 2025 , 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	3. The Commission shall, by 15 May 2027 , [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	

Row	COMMISSION PROPOSAL COM(2018) 218 FINAL	EP TEXT	COUNCIL TEXT	CONSOLIDATED TEXT / COMPROMISE PROPOSALS / COMMENTS
	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 areas or Union acts.	the way in which this Directive has operated, <i>the possible impact on fundamental rights such as privacy, the right to the presumption of innocence and the right to a fair trial</i> , and consider the need for additional measures, including, where appropriate, amendments with a view to extending the scope of this Directive to further areas or Union acts.	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 areas or Union acts. <u>Union acts or areas, in particular the improvement of the working environment to protect workers' health and safety and working conditions</u>	
		<i>3a. Such reports shall be made public and easily accessible.</i>		<u>To check with the MS the possibility to introduce para. (3a).</u> 3a. Such reports shall be made public and easily accessible <u>on the Commission site.</u>
		<i>Article 21 a</i> <i>Updating the Annex</i>		
		<i>The Commission is empowered to adopt delegated acts in accordance with Article 21b in order to update the Annex to this Directive whenever a new Union legal act falls under the material scope laid down in point (a) of Article 1 (1) or Article 1 (2).</i>		To be discussed in conjunction with the Annex.
		<i>Article 21b</i>		To be discussed in conjunction with the Annex.

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		<i>Exercise of the delegation</i>		
		<i>1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.</i>		
		<i>2. The power to adopt delegated acts referred to in Article 21a shall be conferred on the Commission for a period of five years from ... [OJ: please insert the date of entry into force of this Directive]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.</i>		
		<i>3. The delegation of power referred to in Article 21a may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power</i>		

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		<i>specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.</i>		
		<i>4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.</i>		
		<i>5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.</i>		
		<i>6. A delegated act adopted pursuant to Article 21a shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the</i>		

<i>Row</i>	COMMISSION PROPOSAL COM(2018) 218 FINAL	EP TEXT	COUNCIL TEXT	CONSOLIDATED TEXT / COMPROMISE PROPOSALS / COMMENTS
		<i>Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.</i>		
	Article 22 Entry into force	Article 22 Entry into force	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.	This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.	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	Article 23 Addressees	Article 23 Addressees	
	This Directive is addressed to the Member States.	This Directive is addressed to the Member States.	This Directive is addressed to the Member States.	