

Protection of persons reporting on breaches of Union law

2018/0106(COD) - 26/09/2018 - Court of Auditors: opinion, report

OPINION No 4/2018 concerning the proposal for a Directive of the European Parliament and of the Council on the protection of persons reporting on breaches of Union law.

The Court of Auditors welcomes the proposal because it considers that the introduction or extension of whistleblowing systems in all Member States would help improve the management of EU policies from the bottom up through the actions of citizens and employees, as a complement to top-down enforcement such as actions for infringement initiated by the Commission against Member States under Article 258 TFEU.

Material scope

The proposal purports to protect persons reporting breaches in four main categories: (i) breaches falling within the scope of Union acts in a limited number of areas; (ii) breaches of competition rules; (iii) breaches affecting the financial interests of the Union; (iv) breaches relating to the internal market, regarding acts which breach the rules of corporate tax or arrangements whose purpose is to obtain a tax advantage defeating the purpose or object of the applicable corporate tax law.

While welcoming the Commission's intention to ensure the Directive covers many areas of Union activity, the Court of Auditors is concerned by the complexity of the material scope and the implications this might have in practice for the effective protection of whistleblowers. If there is no such voluntary scope extension in national law, end-users could be faced with making complex assessments requiring expert knowledge which they might not always possess.

Obligation to establish internal channels and procedures for reporting and follow-up of reports

The proposal would require Member States to ensure that legal entities in the private and public sectors established internal channels and procedures for whistleblowing. Public legal entities are defined as state and regional administrations, municipalities with more than 10 000 inhabitants and other entities governed by public law.

The Court considers that the exemption of certain municipalities from the obligation to establish internal reporting channels could significantly reduce the protection afforded to whistleblowers, since the average size of municipalities in the EU is 5 887 inhabitants, with wide variations between Member States. The Commission should provide its reasons for the threshold to the Parliament and the Council.

Procedures for internal reporting and follow-up of reports

The Court considers that the procedures and reporting procedures do not sufficiently cover awareness-raising or staff training in order to foster a corporate culture in which whistleblowing is well accepted.

Conditions for the protection of reporting persons

The Court considers that the determining factor should be the public interest of the information revealed by whistleblowing. It considers that the widely-drafted exceptions to this rule would require further interpretation (administrative and judicial) in order to avoid creating uncertainty for potential whistleblowers.

Measures for the protection of reporting persons against retaliation

While welcoming the proposal, the Court observes that the Directive does not address the issue of temporal limits, meaning that Member States cannot introduce or maintain such limits on whistleblower protection.

Reporting, evaluation and review

The Court considers that there is room for improvement. In particular, the fact that the sending of statistics would be optional for certain Member States and that the statistics would not be broken down by policy area would reduce the effectiveness of this provision. In addition, the statistics would only be made public after six years from the expiry of the transposition deadline, or eight years from the entry into force of the Directive. This period seems disproportionately long.

According to the Court, it is essential that the statistical information on whistleblowing in Member States needs to be of the highest possible quality, and in particular it should be available by country, by legal act and by subject area and should include the final outcomes of civil and criminal cases. Where appropriate, the Commission may explore possible options for allocating EU funds to Member States to help them collect the requested data.