

September 2018

On the proposal for a directive on protection of persons reporting on breaches of Union law

The European Federation of Journalists (EFJ) is the largest organisation of journalists in Europe, representing over 320,000 journalists in 70 journalists' trade unions and professional associations across 44 countries.

KEY MESSAGE

The European Federation of Journalists disagrees with the three-tiered approach which puts internal reporting as the very principal rule. We believe that it is essential that whistleblowers are able to go to the press while being protected. This is important as a recognition of their freedom of expression rights, which encompasses the fundamental right to seek, to receive and to impart information.

procedure provided in the Article 13, described as a prerequisite for granting the protection, are too subjective and does not give an adequate degree of certainty for the whistleblower who will have to determine what an “appropriate follow-up” means, what the “particular circumstances of the case” cover, whether he or she “could not reasonably be expected to use” the internal and/or external channel.

The EFJ welcomed the initiative from the European Commission to protect whistleblowers in the European Union. It is an important step in acknowledging the crucial role they play in our democratic societies. The EFJ has been intensifying its call for a strong legislation at the EU level during the LuxLeaks scandal, which judicially involved one journalist and two whistleblowers. The discussions around the trade secrets directive, adopted in June 2016, raised the need to balance the commercial interests and the trade secrecy with the public interest and the citizens' right to information. Considering that whistleblowers are essential watchdogs and that they are important sources of information for journalists, media and citizens, the level of their protection should be equivalent to their acknowledged importance. This position paper proposes some recommendations for improvement to the proposal for a directive “on the protection of persons reporting on breaches of Union law”, published on 19 April 2018.

In addition, in some circumstances, a genuine public transparency is the only lasting remedy to the wrongdoings identified. The latest big scandals have shown the important role of the media in filtering and analysing the data received, as well as in informing the public and putting an end to the denounced wrongdoing or breach of the law.

In order to get around this legal uncertainty and for the good exercise of the right to information, the EFJ requests that employees be able to equally report internally, to a competent authorities or to the media, as it is admitted in the recommendation of the Council of Europe, which states that “the individual circumstances of each case shall determine the most appropriate channel”.

RECOMMENDATION FOR IMPROVEMENTS

No priority between reporting channels

The proposed directive opts for a “tier approach” establishing in principle the obligation for the whistleblower to report internally before being allowed to report to an external authority. The public reporting channel is only authorised in the last resort, when other channels have proven ineffective. The exceptions to the mandatory

Consultation of the workers' representatives and trade unions

The proposed directive fails to give the worker the right to be represented at any stage by a trade union in case of internal reporting. Yet trade union representatives are often best placed to support whistleblowers and provide information about their rights and obligations. As pointed out by the European Trade Union Confederation, trade union and workers' representatives must also play a role in the design of reporting channels.

The EFJ asks for a clear mention in the directive of the role of trade unions and workers' representatives in developing reporting channels and receiving information within the workplace in case of internal disclosure.