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*Committee on the Environment, Public Health and Food Safety*

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**2016/2224(INI)**

13.7.2017

## **OPINION**

of the Committee on the Environment, Public Health and Food Safety

for the Committee on Legal Affairs

on legitimate measures to protect whistle-blowers acting in the public interest  
when disclosing the confidential information of companies and public bodies  
(2016/2224(INI))

Rapporteur: Luke Ming Flanagan

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## SUGGESTIONS

The Committee on the Environment, Public Health and Food Safety calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

1. Believes that the lack of adequate whistle-blower protection has a negative impact on the development and implementation of EU policy on environmental protection, public health and food safety, while fears of retaliation can engender a chilling effect in whistle-blowers, thereby endangering the public interest;
2. Takes the view that, even though the importance and value of whistle-blowing in the areas of public health, the environment and food safety is now increasingly recognised in the Member States, information and promotional campaigns on whistle-blowing are needed at national and European level in order to change attitudes and mentalities;
3. Is convinced that whistle-blowers play an indispensable role in reducing risks to public health, the environment and food safety – areas in which certain risks are hard to control externally – and in deterring and preventing wrongdoing and corruption; considers that increased whistle-blower protection will further encourage public interest disclosure of risks and threats to public health and the environment and improve food safety, promote a culture of public accountability and integrity in both public and private institutions, and even save lives; examples include the publication of the study on SARS (Severe Acute Respiratory Syndrome) and other hazardous diseases that were threatening millions of people in China, and those which helped to avoid dangers to the environment in the US;
4. Recalls recent high-impact cases such as Dieselgate, Nestle and the horsemeat scandals, in which environmental, public health or food safety risks were uncovered, and in which either disclosures from whistle-blowers were instrumental in the detection of the risks involved, or stronger protection for whistle-blowers might have led to risks being detected earlier and more limited damage;
5. Stresses that key advances in public health, notably in tobacco control, can ultimately be traced back to the release of internal documents by whistle-blowers;
6. Draws attention to the fact that environmental, public health and food safety risks rarely stop at borders, meaning that weak or non-existent whistle-blower protection in one Member State, which may prevent such risks from being identified in a timely manner, puts the health and safety of all EU citizens, as well as their ability to protect the environment, in jeopardy;
7. Points out that wildlife trafficking has become one of the world's most profitable forms of organised crime and notes the key role played by whistle-blowers who report illegal trafficking, logging, fishing and other crimes against wildlife;
8. Stresses that evidence of violations of EU animal protection and food safety laws on farms and abattoirs relies almost exclusively on whistle-blowers, as these locations are not accessible to the general public and official controls are usually announced in advance;
9. Recognises that fishing boats are extremely isolated when in operation at sea and that

strong protection for whistle-blowers is essential to enable them to provide evidence of illegal fishing and other violations of EU law;

10. Deplores the fact that regulators, including those monitoring the food chain, are under-resourced and thus dependent on whistle-blowers for information; stresses, therefore, that both increased funding for regulators and effective protection for whistle-blowers are essential;
11. Stresses that swift and robust EU legislation to protect whistle-blowers, and a political consensus that will make it possible to implement efficient measures at both national and European levels, will also help to preserve and consolidate trust in democratic institutions, to facilitate scientific expertise, to debate, to expose conflicts of interest and to demonstrate the added value of EU action for citizens; points out that whistle-blower legislation especially encourages those with scientific and technical knowledge to assert the facts which might otherwise remain hidden;
12. Deplores the significant legal gaps and weaknesses of whistle-blower protection within the Member States and the fact that too few Member States have put protections for whistle-blowers in place; insists that protection is required at EU level with a view to ensuring full legal protection for whistle-blowers that is equal in all Member States, as well as the proper and independent continuation of this process following a referral, on condition that whistle-blowers have acted in good faith and with the sole aim of protecting the general public interest;
13. Notes that some provisions to protect whistle-blowers in EU law are already in place, but that they are often limited in scope or scattered across different laws, leaving loopholes and gaps;
14. Asks for the Commission's support in encouraging Member States to create efficient and effective whistle-blower protection mechanisms;
15. Urges the Commission to take stock of the results of its public consultation, to move forward to draft legislation in the coming months and to put forward a proposal without delay for a horizontal legal instrument, in line with the subsidiarity principle, that establishes robust common minimum standards in the EU for whistle-blower protection, and that builds on the Treaty provisions regarding environmental protection, public health and consumer protection; stresses the inadequacies and failings of sectoral approaches for that purpose, such as that taken in 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; encourages the Member States to develop legislative instruments that protect those who report breaches of conduct to public authorities; suggests that EU agencies adopt a written policy on protection from reprisals for people reporting irregularities, as well as for whistle-blowers;
16. Points out that in most cases the work of whistle-blowers is based on the principles of transparency and integrity; the protection of whistle-blowers should therefore be guaranteed by law and reinforced throughout the Union, but only if the purpose of their action is to protect the public interest by acting in good faith in accordance with the jurisprudence of the European Court of Human Rights;

17. Urges the Commission to monitor Member States' provisions on whistle-blowers with a view to facilitating the exchange of best practices, which will help to ensure more efficient protection for whistle-blowers at national level;
18. Stresses that the reporting or disclosure of information pertaining to risks, misconduct and crimes, as well as any attempts to conceal them, which may result in environmental damage, and health and food integrity and safety issues, including in relation to emerging technologies for which the long-term environmental and health effects are still unknown, as well as other forms of wrongdoing such as the mismanagement of public bodies, public land and property, should all fall within the scope of any EU instrument protecting whistle-blowers, irrespective of whether they amount to a breach of the law, further to a reasonable belief that the disclosure is made in the public interest; emphasises that whistle-blowers should benefit from protection instruments in these areas throughout the Union as environmental issues are by their nature transnational and as such legislation must reflect this; stresses that whistle-blower protection should be afforded across the Union irrespective of where the whistle-blower resides and of where crimes have been committed;
19. Emphasises the importance of open organisational cultures and of the existence of multiple, protected channels for voluntary reporting of information, internally and externally, in order to prevent harm to the environment, human health and the food chain, which is also in the best interests of the organisations themselves;
20. Highlights the fact that EU whistle-blower protection legislation must be comprehensive, broad in scope, fast-acting and must protect the whistle-blower, and where appropriate his or her affected colleagues and relatives, from any kind of retaliatory action, harassment, intimidation and exclusion from their place of work or private life, and from civil, criminal or administrative procedures arising from the disclosure; underlines the fact that effective whistle-blower protection is essential to guarantee the right to free speech and freedom of information, and that conflicting norms governing matters of secrecy and confidentiality should be reviewed in line with European human rights jurisprudence, so as to ensure that such exceptions are necessary and proportionate; emphasises that protection is needed not just for internal disclosures made through designated channels within the workplace or disclosures to public authorities or oversight bodies, but – taking into account the relevant case law of the European Court of Human Rights – also external disclosures made to the general public, via the media or otherwise; points out that the EU institutions, in cooperation with all relevant national authorities, should introduce and take all necessary measures to protect the confidentiality of information sources in order to prevent any discriminatory actions or threats; calls on the Commission to ensure that all whistle-blowers, including whistle-blowers who suffer retaliation further to a public interest report or disclosure and, as a consequence, pursue a valid claim in court, have access to independent legal advice, financial and psychological support, as well as relief measures, as appropriate;
21. Calls on the Member States and the Commission to draw up a strict legal framework which will enable businesses to establish internal whistle-blower systems, properly defining the concept of a reasonable period for a reply from the undertaking, and ensuring that these systems comply with social legislation and the law protecting personal data;

22. Highlights the need for legal certainty regarding the protective provisions afforded to whistle-blowers, as a continued lack of clarity and a fragmented approach deters potential whistle-blowers from coming forward, and is detrimental to their employers, especially in the case of businesses that operate in multiple jurisdictions or sectors;
23. Stresses the important role of investigative journalism and calls on the Commission to ensure that its proposal offers the same level of protection to both investigative journalists and whistle-blowers;
24. Stresses that the definition of a whistle-blower should not be narrow or restricted to certain fields, work contract status or the legal character of the acts or information reported or disclosed, and that whistle-blowers in the public and private sectors should be afforded equal protection and not bound by any contractual obligation preventing reports or disclosures when these are in the public interest, notwithstanding any necessary restrictions such as those framed by the Global Principles on National Security and the Right to Information;
25. Encourages the Member States to develop benchmarks and indicators on whistle-blower policies in both the public and private sector;
26. Points out that EU legislation should establish a clear procedure for handling disclosures from start to finish to ensure proper follow-through on the actions taken by whistle-blowers, from report submission and processing to ensuring effective whistle-blower protection, as well as more efficient whistle-blower protection mechanisms; stresses the importance of explicitly entrusting competent authorities and regulatory and law enforcement bodies with the responsibility of maintaining reporting channels, receiving, handling and investigating suspected malpractice, while safeguarding the confidentiality of the source, where applicable, and the rights of the affected parties; encourages the Commission and the Member States to provide access to confidential advice to persons who may be considering a public interest report or disclosure, and who will thus be seeking information such as that relating to the rights and responsibilities of whistle-blowers, adequate channels, and the possible consequences of their decision.

## INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

<b>Date adopted</b>	11.7.2017
<b>Result of final vote</b>	+: 67 -: 1 0: 0
<b>Members present for the final vote</b>	Margrete Auken, Pilar Ayuso, Zoltán Balczó, Catherine Bearder, Ivo Belet, Biljana Borzan, Lynn Boylan, Paul Brannen, Nessa Childers, Birgit Collin-Langen, Mireille D'Ornano, Miriam Dalli, Seb Dance, Angélique Delahaye, Stefan Eck, Bas Eickhout, José Inácio Faria, Karl-Heinz Florenz, Francesc Gambús, Elisabetta Gardini, Gerben-Jan Gerbrandy, Arne Gericke, Jens Gieseke, Julie Girling, Françoise Grossetête, Andrzej Grzyb, Jytte Guteland, Anneli Jäätteenmäki, Jean-François Jalkh, Benedek Jávor, Kateřina Konečná, Urszula Krupa, Giovanni La Via, Jo Leinen, Peter Liese, Norbert Lins, Rupert Matthews, Valentinas Mazuronis, Susanne Melior, Miroslav Mikolášik, Gilles Pargneaux, Piernicola Pedicini, Bolesław G. Piecha, Pavel Poc, Julia Reid, Frédérique Ries, Michèle Rivasi, Daciana Octavia Sârbu, Annie Schreijer-Pierik, Davor Škrlec, Renate Sommer, Claudiu Ciprian Tănăsescu, Ivica Tolić, Estefanía Torres Martínez, Adina-Ioana Vălean, Jadwiga Wiśniewska, Damiano Zoffoli
<b>Substitutes present for the final vote</b>	Luke Ming Flanagan, Elena Gentile, Esther Herranz García, Krzysztof Hetman, Ulrike Müller, James Nicholson, Christel Schaldemose, Bart Staes, Tiemo Wölken
<b>Substitutes under Rule 200(2) present for the final vote</b>	Siôn Simon, Derek Vaughan

## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

67	+
ALDE	Catherine Bearder, Gerben-Jan Gerbrandy, Anneli Jäätteenmäki, Valentinas Mazuronis, Ulrike Müller, Frédérique Ries
ECR	Arne Gericke, Julie Girling, Urszula Krupa, Rupert Matthews, James Nicholson, Bolesław G. Piecha, Jadwiga Wiśniewska
EFDD	Piernicola Pedicini
ENF	Mireille D'Ornano, Jean-François Jalkh
GUE/NGL	Lynn Boylan, Stefan Eck, Luke Ming Flanagan, Kateřina Konečná, Estefanía Torres Martínez
NI	Zoltán Balczó
PPE	Pilar Ayuso, Ivo Belet, Birgit Collin-Langen, Angélique Delahaye, José Inácio Faria, Karl-Heinz Florenz, Francesc Gambús, Elisabetta Gardini, Jens Gieseke, Françoise Grossetête, Andrzej Grzyb, Esther Herranz García, Krzysztof Hetman, Giovanni La Via, Peter Liese, Norbert Lins, Miroslav Mikolášik, Annie Schreijer-Pierik, Renate Sommer, Ivica Tolić, Adina-Ioana Vălean
S&D	Biljana Borzan, Paul Brannen, Nessa Childers, Miriam Dalli, Seb Dance, Elena Gentile, Jytte Guteland, Jo Leinen, Susanne Melior, Gilles Pargneaux, Pavel Poc, Christel Schaldemose, Peter Simon, Daciana Octavia Sârbu, Claudiu Ciprian Tănăsescu, Derek Vaughan, Tiemo Wölken, Damiano Zoffoli
VERTS/ALE	Margrete Auken, Bas Eickhout, Benedek Jávor, Michèle Rivasi, Davor Škrlec, Bart Staes

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EFDD	Julia Reid

0	0

Key to symbols:

+ : in favour

- : against

0 : abstention