



Euro Tax Flash from KPMG's EU Tax Centre



[Background](#)

[The European Commission's proposal](#)

[EU Tax Centre comment](#)

European Commission proposes new rules on the protection of whistleblowers

[Protection of whistleblowers – Enforcement of EU law – Retaliation – Fundamental Rights – Disclosure of Information – Reporting Channel](#)

On April 23, 2018, the European Commission unveiled its proposal to strengthen whistleblower protection across the EU. If adopted, the new rules would require certain companies and public authorities to establish safe channels for the reporting of breaches of EU law. The proposal also aims at guaranteeing legal protection against any form of retaliation, while preventing abusive reporting.

Background

In the wake of the recent scandals involving leaked documents (“LuxLeaks”, “Panama Papers”, “Paradise Papers”, etc.), both the European Commission and the European Parliament expressed on several occasions their support for harmonizing and strengthening the protection of whistleblowers acting in the public interest. The European Commission first stressed the importance of protecting whistleblowers in a 2016 [Communication](#), and the European Parliament has issued several resolutions calling for Member States and the European Commission to act on this file. On February 14, 2017, the European Parliament adopted a first [resolution](#) on the role of whistleblowers in the protection of the EU's financial interests, followed by a second [resolution](#) of October 24, 2017, on legitimate measures to protect whistleblowers acting in the public interest. Finally, on December 13, 2017, the PANA Committee reiterated its call for the implementation of effective protective measures for whistleblowers (see [ETF 346](#)).

The European Commission's proposal

The proposed [Directive](#) on the protection of persons reporting on breaches of Union law is primarily aimed at harmonizing and strengthening the legal framework for the protection of whistleblowers against retaliation, and therefore encourages the disclosure of illegal activities

that breach EU law and harm the public interest. The proposal sets a broad definition of “whistleblower”, covering any person who reports a violation of EU law in a work-related context, such as employees, self-employed persons, contractors, suppliers, volunteers, shareholders, etc. It also covers wide areas of EU law for which reporting is protected and explicitly includes breaches regarding EU competition rules, harmful practices against EU financial interests and breaches of corporate tax rules through tax avoidance schemes. In this respect, the new rules require Member States to prohibit any form of retaliation and to provide for effective and proportionate penalties against such retaliatory measures. In addition, whistleblowers should be given access to legal advice and recourse to remedial measures, as well as protection in case of judicial proceedings outside of the work-related context (for example, in case of defamation). Finally, whistleblowers should not be held liable for disclosing information, if they infringe confidentiality clauses.

Nevertheless, the proposal also provides for certain conditions for the reporting and the possible public disclosure of information. Thus, whistleblowers will only qualify for protection if they had reasonable grounds to believe that the information reported was true at the time of reporting and they should primarily report through internal channels. External reporting to state authorities or public disclosure is also subject to specific circumstances, such as the existence of an imminent or manifest danger for the public interest, or if primary reporting would jeopardize the effectiveness of a subsequent investigation. In addition to these limitations, the proposal also foresees the implementation of dissuasive penalties against abusive reports and Member States are obliged to also implement protective measures for the persons who have been the subject of the reporting, including the presumption of innocence.

In addition to these protective measures, reporting mechanisms should be implemented. All companies with more than fifty employees or with an annual turnover of more than EUR 10 million will have to set up internal procedures to handle the whistleblowers' reports, as will State and regional administrations, and municipalities with more than ten thousand inhabitants. Authorities and companies will have to respond and follow-up on reports within three months. In this respect, the proposed Directive provides for a three-tier reporting system, consisting of primary internal reporting channels, secondary external reporting to competent authorities and finally the potential public disclosure of the reported information. In the absence of a response within the given timeframe, the reporting person will be able to report externally, or move forward with media or public reporting. Finally, the proposed Directive requires Member States to ensure that information on the new rules is made easily accessible.

EU Tax Centre comment

Although closely linked to the European Commission's agenda on combating tax avoidance and aggressive tax planning, it is interesting to note that the new measures are proposed by the European Commission under the ordinary legislative procedure, under which the Member States and the European Parliament act as co-legislators and must agree on an identical text. Considering the strong stance adopted by the European Parliament in the past on this topic, it remains to be seen how the negotiations with the Council will evolve. The current scope of the proposal, which is limited to breaches of EU law, also raises some questions of its own. While the European Commission has already called on Member States to broaden the scope of the protective measures, if and once implemented, it is still unclear to what extent Member States will include breaches of national law in the scope of the transposed rules.

Should you have any queries, please do not hesitate to contact [KPMG's EU Tax Centre](#), or, as appropriate, your local KPMG tax advisor.



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