



Council of the
European Union

Brussels, 29 January 2019
(OR. en)

**Interinstitutional File:
2018/0106(COD)**

**5747/19
ADD 1**

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From: General Secretariat of the Council
On: 25 January 2019
To: Delegations

Subject: Proposal for a Directive of the European Parliament and of the Council on the protection of persons reporting on breaches of Union law : Mandate for negotiations with the European Parliament - Declarations from Members States

The statements made by the Austrian, Belgian, Bulgarian and Hungarian delegations are set out in this Addendum 1.

Austrian Statement

37. Directive on whistleblowers

Mandate for negotiations with the European Parliament



"Österreich unterstützt das Ziel der vorgeschlagenen Richtlinie zum Schutz von Personen, die Verstöße gegen das Unionsrecht melden. Nichtsdestotrotz betont Österreich, dass die vorgeschlagene Richtlinie gemäß ihrem Erwägungsgrund 74bis den Schutz von Geschäftsgeheimnissen gemäß Richtlinie 2016/943 nicht aushöhlen darf. Es ist daher bei der Prüfung, ob die Offenlegung eines Geschäftsgeheimnisses im Rahmen der Hinweisgeber-Richtlinie im Sinne des Art. 3 Abs. 2 der Richtlinie 2016/943 als durch Unionsrecht erlaubt zu erachten ist, ein strenger Maßstab anzulegen, insbesondere bei der Prüfung, ob eine Person hinreichende Gründe für die Annahme hatte, dass die Meldung oder Veröffentlichung zur Offenbarung eines Verstoßes gemäß der vorgeschlagenen Richtlinie notwendig war."

Courtesy translation:

"Austria fully supports the aim of the proposed Directive on the protection of persons reporting on breaches of Union law. Nevertheless Austria would like to emphasize that the proposed Directive according to its recital 74bis should not undermine the protection of trade secrets as regulated by Directive (EU) 2016/943. A strict standard must therefore be applied when assessing whether a disclosure of a trade secret falling in the scope of this Directive is to be considered allowed by Union law according to Article 3(2) of Directive (EU) 2016/943, especially when assessing whether a person had reasonable grounds to believe that the reporting or disclosure was necessary for revealing a breach pursuant to this Directive."

Belgian Statement:

Déclaration de la Belgique concernant la proposition de directive relative à la protection des personnes dénonçant les infractions au droit de l'Union

à joindre au procès-verbal du Coreper du 25 janvier 2019

La Belgique reconnaît l'importance de la proposition qui vise à assurer une protection aux lanceurs d'alerte qui dénoncent des infractions au droit de l'Union, et soutient ses objectifs.

La Belgique regrette toutefois certains éléments du mécanisme de protection mis en place, et souhaite que ces points puissent être améliorés en cours des futures négociations interinstitutionnelles avec le Parlement européen.

La Belgique soutient ainsi un libre choix du lanceur d'alerte entre le canal de rapportage interne et externe. Nous estimons que cette approche est plus protectrice du lanceur d'alerte, qui est souvent le mieux placé pour évaluer si son signalement devrait être traité au sein de l'entreprise ou par le biais de l'autorité compétente.

Concernant l'obligation pour les entreprises de mettre en place des canaux de rapportage internes, la Belgique regrette que le seuil minimal d'employés qui déclenche cette obligation n'ait pas été revu à la hausse. Nous craignons que cette obligation ne représente une charge trop lourde pour les entreprises de taille moyenne, et aurions préféré un seuil de 250 employés à la place du seuil de 50 employés qui a été retenu.

[Courtesy translation]

Statement of Belgium on the proposal for a Directive on the protection of persons reporting on breaches of Union law

for the minutes of Coreper of 25 January 2019

Belgium recognizes the importance of the proposal on the protection of whistleblowers who report on breaches of EU law, and supports its objectives.

Belgium however regrets some elements of the protection mechanism, and hopes that these points will be improved in the course of the future interinstitutional negotiations with the European Parliament.

Belgium supports a free choice of the whistleblower between the internal and external reporting channel. We believe this approach is more protective of the whistleblower, who is often in the best position to assess if his report should be treated within the company or through the competent authority.

Concerning the obligation for companies to set up internal reporting channels, Belgium regrets that the minimum threshold of employees that triggers the obligation has not been increased. We are concerned that this obligation might be too burdensome for medium-sized companies, and would have preferred a threshold of 250 employees instead of the threshold of 50 employees that has been retained.

Bulgarian Statement:

DECLARATION BY THE REPUBLIC OF BULGARIA

The Republic of Bulgaria supports the aim of the *Directive of the European Parliament and of the Council on the Protection of Persons Reporting on Breaches of Union Law* to improve the system in the areas of the EU sectoral legislation where violations can seriously harm the public interest.

At the same time, we maintain our concerns in view of the mandatory three-tiered reporting system, as we express our preference to provide the reporting persons with enough flexibility in choosing the most appropriate channels for reporting. With regard to the public disclosure we advise more balanced approach as far as the public interest is concerned, taking also into account the complementarity of this Directive to other existing EU instruments, in particular those in the area of financial services.

We hope that the above-stated position will be further accommodated during the negotiations with the European Parliament, thus strengthening the efficiency of the instrument.

Hungarian Statement:

Declaration of Hungary

Hungary considers that a *Directive on the protection of persons reporting on breaches of Union law*, with a broad material scope covering several areas with different legal bases in the Treaties, should properly reflect all legal bases in accordance with the applicable rules. In this regard, Hungary fully shares the analysis of the Council Legal Service as set out in doc. 14620/18.

Moreover, as regards the definition of “worker” in Article 2 (1) a) of the draft Directive, Hungary finds it necessary to follow a consistent approach by paying attention to the various definitions in other ongoing legislative files such as the Proposal for a Directive on transparent and predictable working conditions in the European Union as well as the Proposal for a Directive on work-life balance for parents and carers and repealing Council Directive 2010/18/EU.