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# **PLATFORM FOR TAX GOOD GOVERNANCE**

## **The Commission's Initiative on protecting Whistleblowers**

**Meeting of 15 June 2017**

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## **Introduction**

Whistleblowing may play a critical role in uncovering corporate and tax misconduct. It can be a key means of combating poor compliance cultures by ensuring that businesses and institutions are aware that misconduct may be reported. The opaque and complex nature of corporate and tax crime or wrongdoing often makes it difficult for tax authorities to detect illegitimate practices and whistleblowing may assist them. In many cases, such misconduct is only detected because individuals come forward, sometimes at significant personal and financial risk.

EU legislation does not provide specifically for the protection of whistleblowers in the tax field. Where individual States operate a system of protection domestically the legal framework remains overall insufficient as the existence of disparate national regimes in the EU undermine the effective protection of whistleblowers. This weakens the concept of a level-playing field in the internal market, which may negatively affect competition and investment flows as well as the financial interests of other Member States and the Union as a whole. For instance, a multinational group may be headquartered in a Member State which does not protect whistleblowers. In this way, employees in the headquarters would possibly feel discouraged to report cases of wrongdoing across the group. In contrast a competitor may be headquartered in a Member State with strong whistleblower protection where wrongdoing is more likely to be exposed.

The adequate protection of whistleblowers would contribute to preventing and tackling tax avoidance, fraud and corruption, enhancing corporate social responsibility and legal compliance, ensuring healthier competition and greater investor confidence in the internal market.

## **State of Play**

In line with its 2017 Work Programme, the Commission is currently preparing an Impact Assessment on possible actions to protect whistleblowing. As part of this work the Commission launched, on 3 March 2017, an online public consultation to gather empirical data and assess the impact of the rules regarding the protection of whistleblowers. This closed on 29 May 2017 and the several thousand responses are currently being analysed. The aim is to enable the Commission to take an informed decision on any policy or legislative initiatives that may be needed at EU level.

The Commission has also embarked on a series of targeted consultations with stakeholders for the same purpose. In this context, taxation constitutes one of the specific fields where the Commission has identified that it may be worth specifically protecting whistleblowing.

Any potential initiative at EU level would broadly aim to ensure an overall effective level of protection for whistleblowers across the EU, either horizontally or on a sector-specific basis. The aim would be to encourage individuals to report, without fear of retaliation, threats or

harm to the public interest which they have come across in the field of their work or even private life.

The Commission department in charge of coordinating this exercise is DG JUST. Other Services, including DG TAXUD, are also involved in order to determine whether existing sectorial legislation can effectively and efficiently address the current stakes in the relevant field or new instruments need to be enacted for the future.

### **TAXUD Action**

Although much information will be available from the public and other targeted consultations TAXUD has decided to supplement this work by addressing some specific questions to the tax experts who attend the Platform for Tax Good Governance. The aim is to measure the extent of support for action amongst experts and to identify how common rules could be structured in the EU and identify potential critical features of such a regime of protection. The questionnaire canvasses a possible way forward for introducing protection of whistleblowers in the EU and also seeks views on possible legal bases that could be used to legislate in this area.

**We will be asking you to respond within four weeks as from June 15 – i.e. please reply by Friday July 14.** The Platform members that represent organisations may consult internally and gather together contributions but should deliver a single consolidated response to the Commission.

All members of the Platform will receive the questionnaire by e-mail before the meeting.

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| Platform members are asked to share first general views on this topic and possible ways forward to improve the protection of whistle blowers in the area of taxation at EU level . |
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