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Sir William Cash
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Dear Bill

8713/18: Proposal for a Directive of the European Parliament and of the Council on the protection of persons reporting on breaches of Union law

I am writing to update you on negotiations on the EU proposal for a Directive on the protection of persons reporting on breaches of Union law and to respond to the questions you raised in your committee report of 17 July.

Progression of the Directive was postponed over the summer and I have been advised that it is scheduled to be presented for approval at the EU's Justice and Home Affairs Council on 7 October 2019.

Government still retains concerns with the Directive and its overall proportionality; but understands that there is sufficient support amongst Member States for the file to be approved. As a departing Member State, we will not be required to transpose the Directive into UK law, and as such the Government's view is that it would be inappropriate to vote against the file. Therefore, the UK will abstain from the vote on 7 October.

In response to the questions raised by the European Scrutiny Committee on 17 July:

You asked about the Government's plans to challenge the Directive due to concerns over the use of multiple legal bases on the inclusion of corporate tax issues

The Government opposes the inclusion of tax elements in proposals with a non-tax legal base and the issue of multiple legal bases, however, as the UK will be leaving the EU on 31 October, the Government does not plan to challenge the Directive before the Court of Justice of the EU before then. As a departing Member State, the Government's view is that concerns around EU legislation are for the EU27 to take forward.

You asked whether, in the event that the UK is not required to transpose the Directive, the Government remains committed to worker's rights and what plans it has for the UK whistleblowing framework

After the UK leaves the EU it will be for the UK to decide which rights and protections to introduce or enhance in law. UK already exceeds EU minimums in a number of areas of

worker rights, and we will continue to lead the way on these important issues. Future changes to labour standards and protections will be subject to the appropriate parliamentary scrutiny, with Parliament and the electorate continuing to hold the Government to account.

In relation to whistleblowing, I would like to assure the committee that this Government is not complacent. It is right and proper that Government reviews the whistleblowing framework and we have committed to carrying out a review once the recent reforms have built the necessary evidence of their impact. As part of this we will look at the protections offered in other countries.

You asked about the relationship between whistleblowing policy and non-disclosure agreements

The Government consulted on the misuse of confidentiality clauses (non-disclosure agreements) in March and April 2019, receiving over 500 responses. We responded on 21 July, and committed to:

- Legislate to ensure that a confidentiality clause cannot prevent an individual disclosing to the police, regulated health and care professionals or legal professionals;
- Legislate so that the limitations of a confidentiality clause are clear to those signing them;
- Legislate to improve independent legal advice available to an individual;
- Produce guidance on drafting requirements for confidentiality clauses; and,
- Introduce new enforcement measures for confidentiality clauses that do not comply with legal requirements.

This new legislation will make sure that those entering into non-disclosure agreements are more aware of their rights than before, including that the NDA cannot be used to prevent them from whistleblowing. If an NDA in a settlement agreement does not follow new legislative requirements, the confidentiality clause itself will be void. The Government will also be legislating to introduce a requirement to be clear on the limits of non-disclosure agreements within the written statement of employment particulars.

Given that under the terms of EU exit, the UK is not required to transpose the Directive into UK law, I hope that scrutiny can be lifted.

I am copying this letter to the Chair of the House of Lords European Union Committee, Lord Boswell of Aynho, Les Saunders, DExEU, and to Callum Gray, Departmental Scrutiny Coordinator for BEIS.

Yours sincerely



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Minister for Small Business, Consumers & Corporate Responsibility