



PROTECTION OF WHISTLEBLOWERS: A BRIEF GUIDE FOR IMPLEMENTING A NATIONAL FRAMEWORK

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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OF WHISTLEBLOWERS:
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A NATIONAL FRAMEWORK**

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INTRODUCTION

People working for companies or organisations are often the first to recognise malpractice, dishonest or illegal activity or other risks to the public interest in a wide range of areas. These include consumer safety, environmental damage, professional misconduct, child abuse, financial embezzlement and corruption. However, they can be discouraged from reporting their concerns by a perceived lack of follow-up and a failure to address their warnings, as well as by a fear of reprisals.

Responsible organisations and employers in all sectors, both public and private, should ensure that those who work for them are able to communicate a wide range of information about actual or potential problems as early and as openly as possible, as this allows action to be taken to prevent or remedy any threats or harm. Yet too many individuals face isolation and retaliation if they report a concern even when they raise the issue properly to their employer. This can include threats to their physical and emotional well-being as well as other detriments such as harassment, lack of promotion, demotion or dismissal. When the channels of communication within organisations are blocked, corrupted or not trusted, or the organisation itself is involved in the wrongdoing or malpractice or their cover-up, it is a matter of public interest that individuals can safely disclose information to a competent external authority and to the public where necessary.

Alerting an organisation, a competent authority or the public to concerns of malpractice, dishonest or illegal activity, or to other risks to the public interest is termed “whistleblowing”. Employers, governments and citizens increasingly recognise that it is in their own interest to encourage whistleblowers to speak up in order to avert harm or prevent damage, to improve public service or to strengthen organisational responsibility and public accountability.

Whistleblower protection is an important element of the Council of Europe's rule of law, democracy and human rights mandate. While laws to protect those who blow the whistle, especially in cases of corruption, are being developed more and more, most of them now cover a broader scope of information in the public interest. More attention is also being paid to the practical arrangements for facilitating responsible whistleblowing and ensuring that laws to protect whistleblowers are effectively enforced. Legal provisions that are largely symbolic can put whistleblowers and the public at even greater risk of harm as they invite individuals to make disclosures while offering no genuine protection. The consequences are potentially disastrous for the individual and for the system; it has a chilling effect on those who might otherwise speak up and fuels cynicism about the value of public engagement, thus effectively undermining any protective measures already in place.

This is why the Council of Europe recommendation on the protection of whistleblowers encourages member states to have in place a normative, institutional and judicial framework that protects, in law and in practice, individuals who blow the whistle. The responsibility for protecting whistleblowers devolves on member states. The systems they put in place should build on the democratic principles of access to information and freedom of speech. Institutional and practical arrangements which facilitate the disclosure of information must shift the burden of risk from the whistleblower, who is rarely in a position to investigate or take direct action to address malpractice, and place it on those who have the legal and institutional responsibility to address such issues and a duty of care to those who might be at risk of harm or damage if anything goes wrong.

The recommendation and its explanatory memorandum make it clear that member states need to be proactive in order to bring about a change of culture within the workplace, whether it be public or private. Experience shows that whistleblowers disclose information in order for a problem to be addressed, and in so doing they need to be able to enforce their rights in a meaningful way. Member states need to send a strong message to employers and the competent authorities to heed the information that is provided to them and to make it clear that retaliating against or victimising whistleblowers or those who support them, will not be tolerated in a democratic society. This means applying sanctions against those in a position of responsibility who fail to assess and promptly and adequately investigate material information provided by individuals who decide to speak up, and fail to take proper steps to protect them. Such measures, if put in place, will mean that individuals who witness

wrongdoing will have a real alternative to the silence that allows negligence and wrongdoing to take root. They will also offer a safe alternative to the anonymous “tip-off” or “leak” – which is an important form of self-preservation, but one that can compromise both the public interest and the whistleblower.

This brief guide is addressed primarily to policy makers. It explains some key concepts and outlines steps member states can take to meet the requirements of Recommendation CM/Rec(2014)7 on the protection of whistleblowers (review of existing law and practice, consultation of relevant parties, reform and evaluation). It also provides examples of good practice in Europe and a short list of resources that governments might consult as they consider their options and work to tailor solutions that will make a difference in their jurisdictions. Practitioners will also find this guide useful.

SOME KEY CONCEPTS EXPLAINED

Public interest

The concept of “public interest” is generally understood across Europe to refer to the welfare or well-being of the general public or society. The Council of Europe’s Recommendation CM/Rec(2014)7 on the protection of whistleblowers makes it clear that individuals should be protected if they disclose information about risks to public health and safety, the environment, or violations of law and human rights. A simple purposive definition such as that used in Norway (see below) is worth considering. In other countries, the law sets out categories to indicate the type of information that is covered. Member states should take a broad approach. Restricting legal protection to those who disclose only certain types of information, such as corruption offences for example, and only to certain bodies will risk confusing “whistleblowing in the public interest” with “informing” or “denouncing” and may increase opposition to the law and distrust in its purpose.

Norway

Norway's Working Environment Act (as amended in 2012) gives all employees in the public and private sectors the right to raise suspicions of misconduct in their organisations. The misconduct need not amount to a breach of the law, but includes "any censurable activity" otherwise translated to "conditions worthy of criticism."

Romania

In 2004, Romania passed a whistleblower protection law for public officials. Article 5 sets out 15 types of information covered by the law including, inter alia, corruption offences; offences against the financial interests of the European Union; conflicts of interest; infringements of the law on access to information and open decision making; incompetence or negligence in public office; the mismanagement of public land or property by public authorities; and infringements of any other legal provisions based on the principle of good administration and protecting the public interest.

United Kingdom

UK law defines a "qualifying disclosure" as any disclosure of information which "tends to show"¹ one or more of the following:

- (a) that a criminal offence has been committed, is being committed or is likely to be committed;
- (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he or she is subject;
- (c) that a miscarriage of justice has occurred, is occurring or is likely to occur;
- (d) that the health or safety of any individual has been, is being or is likely to be endangered;
- (e) that the environment has been, is being or is likely to be damaged;
- (f) that the information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

Sources: Norway: Working Environment Act; Romania: Law on the protection of public officials complaining about violations of the law (Law No. 571/2004); short name: Romanian Whistleblower's Law; United Kingdom: Public Interest Disclosure Act 1998 (PIDA). Please note that amendments to the UK law in 2013 removed "good faith" in determining whether a disclosure qualifies for protection and now states that it is "any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show [...]" (paragraph 43B(1), PIDA).

1. i.e. that there is a reasonable suspicion.

Openness, confidentiality, anonymity

The terms “confidentiality” and “anonymity” are often used interchangeably even though they have distinct meanings. Understanding the difference in meaning is important in practice in order to design effective laws that recognise serious and valid concerns whistleblowers may have about their own position, and to develop robust and fair arrangements for handling and investigating information whistleblowers provide, which include the secure and sensitive handling of a whistleblower’s personal details.

Open whistleblowing = where individuals openly disclose information without hiding their identity or requiring that their identity be kept secret.

Confidential whistleblowing = where the name of the individual who disclosed the information is known by the recipient but is not disclosed without the individual’s consent, unless required by law.

Anonymous whistleblowing = information is received but no one knows the source.

Anonymous disclosures, and systems set up to allow for anonymous disclosures, are recognised as valuable tools for conveying and receiving public interest information but do not lend themselves easily to legal protection, or to facilitating a change in culture. Stronger whistleblower protection and effective handling of reported information will better help ensure that those who come across malpractice or risks to the interests of others feel safe and able to speak up in the normal way.

Confidential advice

Whistleblowing laws and practical arrangements to facilitate disclosures will go a long way towards reassuring individuals that it is safe and acceptable to speak up in the public interest. However, questions can remain about how such rules apply in individual circumstances; individuals may be unsure as to the nature of what they have witnessed, how to communicate it clearly or how the information will be handled. Furthermore, they may be worried about their own position in the light of how others have been treated when they raised similar concerns. Many issues can be resolved if independent and confidential advice is available at an early stage to anyone who is considering disclosing information about wrongdoing or risk to the public interest. Internal contact points in the workplace, for example can be highly effective

if they are trusted, but they do not replace independent advisers who have another role to play with individuals who are uncertain, or want to know more, about the legal protection that is available to them. Independent advisers can separate personal grievances from public interest concerns and can assist those who might receive such information by ensuring that the information is disclosed responsibly to the right person or body and in a way that allows it to be assessed and properly investigated. Trade unions as well as legal advice centres can play a key role in this regard, and unions can also play a protective role by disclosing information on behalf of their members.

The Netherlands

The Dutch government, along with its social partners (employer and employee representative organisations, such as trade unions), agreed that it was important to establish an independent, confidential advice service to assist potential whistleblowers in making reports of malpractice or wrongdoing to their employers and other bodies. They decided to provide a free legal advice service along the lines of that provided by the independent British non-governmental organisation (NGO), Public Concern at Work. The Adviespunt Klokkenuiders (Advice Centre for Whistleblowers) was opened in October 2012 and was evaluated in mid-2014. The evaluation found that the centre had obtained a strong position in the field and a law to ensure its continued existence was recommended.

The centre is funded by the Ministry of Interior Relations and the Ministry for Social Affairs and Employment, but is independent of them. It consists of a three-member committee – representing the private sector, the public sector and the trade unions – and a small staff team including four senior legal counsels, a communication consultant, an office secretary and an administrative assistant.

The centre is a confidential and free of charge advice service available to anyone in work in the Netherlands that aims to advise and support individual whistleblowers in specific cases, to provide general information to whistleblowers and employers on whistleblowing and related procedures, and to report regularly on patterns and developments in the field of whistleblowing and integrity.

Source: Hannah de Jong, Director of Adviespunt Klokkenuiders:
www.adviespuntklokkenuiders.nl

STEP 1 – REVIEW

Governments should review their national laws, policies and institutional arrangements to ensure that a national and comprehensive framework to facilitate whistleblowing and protect whistleblowers not only builds on international good practice but can be properly embedded in the national system. Such a review should identify existing arrangements which support whistleblowing. Examples of good practice might include, for example, incident reporting in hospitals and civil aviation, legal principles such as the common law principle that there is “no confidence in iniquity” and constitutional rights to free speech and access to the media.

Sweden

Under Swedish constitutional rules, the principle of freedom of expression entails the right for everyone to provide information – even confidential information – to the media for publication. There are exceptions, notably to prevent the publication of properly classified secret documents and serious threats to national security. The same principle applies to employees of municipal companies and employees of certain bodies listed in the annex to the Official Secrets Act. Public bodies and authorities are not permitted to investigate the identity of the source of the information nor may they retaliate against anyone for providing information in this way. This means that a public employer cannot discipline an employee on the ground that he or she has provided information to the media (subject to the limited exceptions provided by law). Since January 2011, public sector employers can be fined or sentenced to prison if they retaliate against an employee who blew the whistle.

A review should also identify rules or practices which might contradict or undermine whistleblowing. These would include, for example: overly restrictive confidentiality rules or “gagging” clauses in contracts; data protection practices; laws on libel and defamation, particularly as they apply in the workplace; and secrecy laws that are vague and carry high criminal penalties (see in particular the Tshwane Principles on National Security and the Right to Information under “Selected resources” at the end of this guide). In reviewing

these laws and practices, member states will need to take account of relevant European human rights case law when determining how to ensure they strike the right balance in favour of the public interest. Experience shows that even good reporting systems and strong protection will not be used or relied upon if they appear to conflict with existing rules and obligations.

Ireland

When the Irish government announced in early 2012 that it would consult on a new bill to provide comprehensive whistleblower protection across all sectors, Minister Brendan Howlin acknowledged that the previous sectorial approach had not worked. He said: “This is a huge advancement from the previous piecemeal approach where the patchwork of protections resulted in ... fragmented and confusing standards of protection. A key element of the proposed legislation is that it treats all parties equally and fairly within an integrated legal framework that is open and transparent.”

The new Protected Disclosures Act was adopted on 8 July 2014 and includes four schedules. Schedule 4 lists the amendments made to 17 separate laws to ensure the compatibility and the legal aims of the act.

Sources: see Minister Brendan Howlin’s statement “Whistleblower Bill will protect those who speak out – Howlin” on the Labour Party’s website at: www.labour.ie/press/2012/02/27/whistleblower-bill-will-protect-those-who-speak-ou/; and see the Protected Disclosures Act 2014, No. 14: www.irishstatutebook.ie/pdf/2014/en.act.2014.0014.pdf

Enshrining whistleblower protection in law is important. Legislation clarifies what is expected of employers and competent authorities, informs individuals of their right to disclose information, particularly outside the workplace, and seeks a remedy if they suffer unfairly for doing so.

It should be remembered that whistleblower protection is not about imposing obligations on individuals to report wrongdoing, except in very limited specific cases where there may be a professional duty to do so (e.g. doctors and police officers). Instead, whistleblowing in the workplace needs to be understood as an act of good citizenship – from individuals who speak up in the interests of others or of the service the organisation is meant to provide – and protection should flow from the democratic principles of free speech and freedom of information. This means ensuring that where a disclosure is made in the public domain any interference with the right to disclose that information is only that which is necessary in a democratic society.

STEP 2 – CONSULTATION

Whistleblowing is essentially about public engagement for the common good. Laws designed to meet international obligations without proper national consultation, therefore, miss a vital step in the creation of public legitimacy. Consulting widely with those who have an interest in the system working effectively – including civil society – will help ensure that the measures taken are properly tailored to fit the national context. Member states should take into account the perspectives of relevant ministries and independent supervisory bodies and seek the active contribution of key stakeholders in and outside government.

Serbia

The first round-table talks on whistleblowers in Serbia were organised in 2010 by the independent NGO Pištaljka (“Whistle”), to highlight the value of public engagement in the fight against corruption. In 2012 the Information Commissioner and the Ombudsman’s Office set up a working group (including the Anti-Corruption Agency) to draft a bill to protect whistleblowers. They also organised a conference in 2013 to gather national and international experts, academics, lawyers, technologists, campaigners and advocates to explore good practice.

The Ministry of Justice began the formal process of drafting a law on workplace whistleblowing in 2013 and also took a multidisciplinary approach. It set up a working group of more than 20 key representatives from relevant ministries, judges from all court levels, including the Deputy President of the Supreme Court, representatives of the major unions and employers’ associations, including the Chambers of Commerce, as well as civil society representatives. Also included were two Serbian whistleblowers – a judge and a police inspector – and a small number of international experts were consulted too. The draft bill was published to allow for comments from any interested party.

Here is a list of some of those it would be helpful to consult on any new law or arrangements to promote and protect public interest whistleblowing.

- Relevant ministries, including justice, labour and other important public accountability bodies such as those responsible for national and local audits;
- Independent human and public rights bodies, including commissioners for information, privacy and data protection, and human rights and other types of ombudsperson;
- Trade unions and staff associations;
- Civil society organisations, including community and consumer rights groups, and independent legal and advocacy organisations;
- Judiciary and law enforcement, including police, prosecution, special prosecutors and judicial bodies;
- Sector regulators, including those in areas such as health and safety, education, social care, finance, anti-competition and fair trade;
- Professional bodies – medical, legal, auditing, etc.;
- Business – organisations and private sector associations.

Wide consultation can also be the first step in a public awareness campaign to tackle negative cultural perceptions of whistleblowers as traitors or informers rather than as people acting for the common good and out of loyalty to their organisation. Such perceptions are more difficult to shift in countries with a history of dictatorship where informers were paid or compelled to help the state control its citizens. It is critical, therefore, that whistleblowing is properly distinguished from these misconceptions by: a) providing strong protection for voluntary, open and confidential disclosures; b) legally recognising and protecting a plurality of channels for disclosing information, including in the public domain; and c) focusing on information that prevents harm and is in the public interest, rather than solely on reports of illegal or individual misconduct or criminal offences.

Getting the “right” term

The term whistleblower is thought to originate from the practice of English “bobbies” (officers in London’s first police force) of shaking a rattle – later replaced by blowing a whistle – when they saw a crime being committed, in order to alert and seek the assistance of other law-enforcement officers and the general public.

In an effort to counter some of the negative connotations that can be associated with whistleblowing, when it is not properly distinguished from informing, breaking ranks or being disloyal, new terms are being adopted and old terms resurrected which have a more neutral meaning.

The following are some examples of the terms adopted or being used in the countries mentioned:

Bosnia and Herzegovina	The Serbian term <i>uzbunjivač</i> has started to be used to some extent, although a draft law refers only to “corruption reporters”, <i>prijavitelji korupcije</i> .
Germany	The neutral <i>Hinweisgeber</i> (tipster) is now used interchangeably with the English word whistleblower. The word <i>Mitarbeiterhinweise</i> (employee tips) is also used.
India	In India there is the practice of adopting terms directly from other languages without translating them into any of the Indian languages or dialects. So far the term “whistleblower” in English is used.
Japan	The term for whistleblower in Japanese is <i>naibu kokuhatsu</i> , which means “exposure from within”.
The Netherlands	The term <i>klokkenluider</i> is used for whistleblower in Dutch and refers to someone who rings a bell.
Poland	There is no official term for whistleblower in Poland and the popular terms tend to have negative connotations. The word <i>sygnalista</i> – from the verb “to signal” – is now being used by civil society and in official government correspondence. <i>Sygnalista</i> was traditionally used in the navy or in aviation to refer to someone who sends and picks up signals.

Russian Federation	One Russian term for whistleblower is <i>osvedomitel</i> , which has negative connotations meaning “rat” or “snitch”. A more neutral term which is now being used more widely is <i>лицо сообщающее о правонарушении</i> (litso soobsheniya o pravonarusheniy in Latin script), which means “a person reporting a violation of the law”.
Serbia	The Serbian term for whistleblower is <i>узбуњивач</i> (uzbunjivač in Latin script), meaning “alarm-raiser”. The term was coined a few years ago and has a largely positive connotation. It is the word used in the law on protecting whistleblowers adopted in November 2014.
Slovenia	Slovenians use <i>žvižgač</i> – a literal translation of whistleblower.
South Africa	In Afrikaans, the word used is <i>bekendmaker</i> – which means a person who “makes things known” – and is used primarily by civil society.
“The former Yugoslav Republic of Macedonia”	For the purpose of amendments to their anti-corruption law Macedonians have coined the term <i>укажувач</i> (ukazhuvach in Latin script), meaning someone who points to irregularities.
Uruguay	Even though the term <i>informante</i> is used in Latin American legislation, it has deeply negative political connotations since it was largely used during the dictatorships that took place in the 1970s and 1980s. Because of this, there is a debate over the appropriate use of the term in new legislation – whether to use the more accurate term that is associated with that period, or a term that is potentially less precise.

Sources: With the exception of the Japanese term, the above terms have been identified by members of the Whistleblowing International Network’s expert group and are included for illustrative purposes (see www.whistleblowingnetwork.org). The Japanese term is found in Linda S. Spedding, *Due Diligence Handbook: Corporate Governance, Risk Management and Business Planning* (Elsevier, 2009).

STEP 3 – REFORM

United Kingdom

“All organisations face the risks of things going wrong or of unknowingly harbouring malpractice. Part of the duty of identifying such a situation and taking remedial action may lie with the regulatory or funding body. But the regulator is usually in the role of a detective, determining responsibility after the crime has been discovered. Encouraging a culture of openness within an organisation will help: prevention is better than cure. Yet it is striking that in the few cases where things have gone badly wrong in local public spending bodies, it has frequently been the tip-off to the press or the local member of parliament – sometimes anonymous, sometimes not – which has prompted the regulators into action. Placing staff in a position where they feel driven to approach the media to ventilate concerns is unsatisfactory both for the staff member and the organisation.”

Source: Committee on Standards in Public Life, Second Report of Local Public Spending Bodies, Cm 3270 -1, May 1996, p. 21.

Whistleblower protection enshrined in law is important but it is not the only element that will ensure that whistleblowers are able to speak up in the public interest. The role of employers and competent authorities, including regulatory bodies and independent supervisory bodies, is essential. Employers are in the strongest position to protect whistleblowers as they have the power to create safe and open working environments, to encourage communication on a broad range of issues and to act responsibly on the information provided. Competent authorities and independent supervisory bodies also play an important role in holding the organisations they regulate to account for how they handle whistleblowing, the information disclosed and the individuals providing it.

The Netherlands

The Ministry of Social Affairs and Employment in the Netherlands commissioned a study and found that both employers and employees wanted a code of conduct to help them put in place the necessary reporting arrangements. The Labour Foundation was asked to work on such a project and the result is a Statement on Dealing with Suspected Malpractices in Companies. The following is an excerpt from the Introduction.

“The Labour Foundation is happy to comply with this request. In its view, it is important to lay down conditions enabling employees to bring any malpractice within their companies to light without putting themselves at risk, giving their employers an opportunity to rectify it. Not only is this safer for the employees involved, but it is also in the interests of companies since management should be made aware of suspected malpractice as soon as possible so that it can take steps against [the malpractice]. In addition, it may be possible to resolve the situation before the employee is forced to resort to whistleblowing [i.e. outside the company.] The foundation’s statement is intended as an initial step towards creating company or industry-level guidelines for reporting suspected malpractice.”

Source: Stichting van de Arbeid (Labour Foundation), Statement on Dealing with Suspected Malpractices in Companies, updated version 3 March 2010, publication No. 1/10 (translation updated August 2012).

In order to properly facilitate whistleblowing in the public interest member states should consider the following areas for potential reform:

- amending and repealing laws or rules which create unnecessary barriers for whistleblowing in the public interest;
- enhancing the powers and mandate of competent authorities and regulatory bodies to ensure that:
 - individuals can report directly to them by law;
 - clear and robust arrangements (including staff training) for receiving and handling whistleblowing disclosures are provided;
 - any information provided is investigated properly;
 - the identity and identifying information of anyone providing information is secure;

- measures can be taken (or are required) to protect whistleblowers and any other individuals affected by a disclosure of information (e.g. protecting the confidentiality of third parties, and the rights of accused persons);
- providing independent and confidential advice services either free of charge or for a minimal fee;
- establishing an independent supervisory body for whistleblowing, or ensuring that supervision is within the remit of an existing independent supervisory body;
- developing legal protection that covers all sectors and holds companies or organisations to account when they fail to protect whistleblowers or to implement robust internal whistleblowing arrangements.

STEP 4 – EVALUATION

Member states that engage in a wide consultation exercise at the outset will be in a strong position to evaluate the effectiveness of the measures they implement. Those who help design and implement sensible arrangements are more likely to be committed to ensuring they are effective and to help monitor them over time. While some jurisdictions like Canada and Japan have included requirements to evaluate the effectiveness of their whistleblowing laws, how this is done is as important as when it is done.

A primary source of information about the effectiveness of the framework for the protection of whistleblowers will be competent authorities and independent supervisory bodies. Duties on competent authorities to report on their activities will also be very helpful in evaluating the effectiveness of any legal measures that have been put in place. These, along with the wider indicators listed in the paragraph below, should help member states to gain a fuller appreciation of how the system is working and any improvements or changes that are required.

Competent authorities and independent regulatory bodies should include information on whistleblowing as part of their annual reporting mechanisms, which should be publicly available and capable of being examined or questioned further in hearings before parliament.² Such information should include, but not be limited to:

- the number and type of concerns raised by whistleblowers;
- the number and type of enforcement actions that have been triggered or contributed to by whistleblowers;
- the number and type of measures that have been taken to protect individual whistleblowers, including actions taken against organisations for failing to protect whistleblowers;
- the number of whistleblower claims that have been taken to court;

2. Source: The Whistleblowing Commission, Report on the effectiveness of existing arrangements for workplace whistleblowing in the UK, Public Concern at Work (2013).

- the number of organisations which have failed to have in place effective whistleblowing arrangements, and details of the type of action that has been taken as a result.

Other information to indicate whether the measures taken have been effective can be sought from:

- cross-sectoral surveys of senior managers or others designated to receive and handle reports, as well as other key stakeholders who rely on such reports;
- public polls on attitudes towards whistleblowing and whether people generally feel able to speak out at work;
- independent and academic research studies on whistleblowing across workplaces at national level and in other jurisdictions.

SELECTED RESOURCES

- Council of Europe, Recommendation CM/Rec(2014)7 on the protection of whistleblowers and its explanatory memorandum (2014).
- Council of Europe, Parliamentary Assembly Recommendation 1916 (2010) on the protection of “whistle-blowers” (2010).
- Council of Europe, Parliamentary Assembly Resolution 1729 (2010) on the protection of “whistle-blowers” (2010).
- Organisation for Economic Co-operation and Development (OECD), G20 Anti-Corruption Action Plan – Protection of Whistleblowers, Study on Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation.
- United Nations Office on Drugs and Crime (UNODC), The United Nations Convention against Corruption, Resource Guide on Good Practices in the Protection of Reporting Persons (2015).
- Whistleblowing International Network (WIN)
WIN was founded by a number of leading independent civil society organisations on whistleblowing including: Public Concern at Work in the UK, the Whistleblower Network in Germany (Whistleblower Netzwerk e.v.), the Government Accountability Project in the USA, the Open Democracy Advice Centre in South Africa and the Federal Accountability Initiative for Reform in Canada. The website is regularly updated with current guidance, international and national legal instruments, news and articles.
- Government Accountability Project (GAP), International Best Practices for Whistleblower Policies (2013).
- British Standards Institute (BSI), Whistleblowing Arrangements Code of Practice (PAS 1998:2008).
- Stichting van de Arbeid (Labour Foundation), Statement on Dealing with Suspected Malpractices in Companies, updated version 3 March 2010, Publication No. 1/10 (translation updated August 2012).

- The Whistleblowing Commission, Report on the effectiveness of existing arrangements for workplace whistleblowing in the UK, Public Concern at Work (2013).
- Open Society Foundations, The Global Principles on National Security and the Right to Information (Tshwane Principles) (2013).

RECOMMENDATION CM/REC(2014)7

of the Committee of Ministers to member States on the protection of whistleblowers

*(Adopted by the Committee of Ministers on 30 April 2014,
at the 1198th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Recalling that the aim of the Council of Europe is to achieve a greater unity between its members, *inter alia*, for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Considering that promoting the adoption of common rules in legal matters can contribute to the achievement of the aforementioned aim;

Reaffirming that freedom of expression and the right to seek and receive information are fundamental for the functioning of a genuine democracy;

Recognising that individuals who report or disclose information on threats or harm to the public interest ("whistleblowers") can contribute to strengthening transparency and democratic accountability;

Considering that appropriate treatment by employers and the public authorities of public interest disclosures will facilitate the taking of action to remedy the exposed threats or harm;

Bearing in mind the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5) and the relevant case law of the European Court of Human Rights, in particular in relation to Article 8 (respect for private life) and Article 10 (freedom of expression), as well as the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108);

Bearing in mind the Council of Europe's Programme of Action Against Corruption, the Council of Europe Criminal Law Convention on Corruption (ETS No. 173) and the Council of Europe Civil Law Convention on Corruption (ETS No. 174) and, in particular, respectively Articles 22 and 9 thereof, as well as the work carried out by the Group of States against Corruption (GRECO);

Taking note of Resolution 1729 (2010) of the Parliamentary Assembly in which the Assembly invites member States to review their legislation concerning the protection of whistleblowers bearing in mind a series of guiding principles;

Taking note of the compendium of best practices and guiding principles for legislation on the protection of whistleblowers prepared by the OECD at the request of the G20 Leaders at their Seoul Summit in November 2010;

Considering that there is a need to encourage the adoption of national frameworks in the member States for the protection of whistleblowers based on a set of common principles,

Recommends that member States have in place a normative, institutional and judicial framework to protect individuals who, in the context of their work-based relationship, report or disclose information on threats or harm to the public interest. To this end, the appendix to this recommendation sets out a series of principles to guide member States when reviewing their national laws or when introducing legislation and regulations or making amendments as may be necessary and appropriate in the context of their legal systems.

To the extent that employment relations are regulated by collective labour agreements, member States may give effect to this recommendation and the principles contained in the appendix in the framework of such agreements.

Appendix to Recommendation CM/Rec(2014)7

Principles

Definitions

For the purposes of this recommendation and its principles:

- a. "whistleblower" means any person who reports or discloses information on a threat or harm to the public interest in the context of their work-based relationship, whether it be in the public or private sector;

- b. “public interest report or disclosure” means the reporting or disclosing of information on acts and omissions that represent a threat or harm to the public interest;
- c. “report” means reporting, either internally within an organisation or enterprise, or to an outside authority;
- d. “disclosure” means making information public.

I. Material scope

- 1. The national normative, institutional and judicial framework, including, as appropriate, collective labour agreements, should be designed and developed to facilitate public interest reports and disclosures by establishing rules to protect the rights and interests of whistleblowers.
- 2. Whilst it is for member States to determine what lies in the public interest for the purposes of implementing these principles, member States should explicitly specify the scope of the national framework, which should, at least, include violations of law and human rights, as well as risks to public health and safety and to the environment.

II. Personal scope

- 3. The personal scope of the national framework should cover all individuals working in either the public or private sectors, irrespective of the nature of their working relationship and whether they are paid or not.
- 4. The national framework should also include individuals whose work-based relationship has ended and, possibly, where it is yet to begin in cases where information concerning a threat or harm to the public interest has been acquired during the recruitment process or other pre-contractual negotiation stage.
- 5. A special scheme or rules, including modified rights and obligations, may apply to information relating to national security, defence, intelligence, public order or international relations of the State.
- 6. These principles are without prejudice to the well-established and recognised rules for the protection of legal and other professional privilege.

III. Normative framework

7. The normative framework should reflect a comprehensive and coherent approach to facilitating public interest reporting and disclosures.

8. Restrictions and exceptions to the rights and obligations of any person in relation to public interest reports and disclosures should be no more than necessary and, in any event, not be such as to defeat the objectives of the principles set out in this recommendation.

9. Member States should ensure that there is in place an effective mechanism or mechanisms for acting on public interest reports and disclosures.

10. Any person who is prejudiced, whether directly or indirectly, by the reporting or disclosure of inaccurate or misleading information should retain the protection and the remedies available to him or her under the rules of general law.

11. An employer should not be able to rely on a person's legal or contractual obligations in order to prevent that person from making a public interest report or disclosure or to penalise him or her for having done so.

IV. Channels for reporting and disclosures

12. The national framework should foster an environment that encourages reporting or disclosure in an open manner. Individuals should feel safe to freely raise public interest concerns.

13. Clear channels should be put in place for public interest reporting and disclosures and recourse to them should be facilitated through appropriate measures.

14. The channels for reporting and disclosures comprise:

- reports within an organisation or enterprise (including to persons designated to receive reports in confidence);
- reports to relevant public regulatory bodies, law enforcement agencies and supervisory bodies;
- disclosures to the public, for example to a journalist or a member of parliament.

The individual circumstances of each case will determine the most appropriate channel.

15. Employers should be encouraged to put in place internal reporting procedures.

16. Workers and their representatives should be consulted on proposals to set up internal reporting procedures, if appropriate.

17. As a general rule, internal reporting and reporting to relevant public regulatory bodies, law enforcement agencies and supervisory bodies should be encouraged.

V. Confidentiality

18. Whistleblowers should be entitled to have the confidentiality of their identity maintained, subject to fair trial guarantees.

VI. Acting on reporting and disclosure

19. Public interest reports and disclosures by whistleblowers should be investigated promptly and, where necessary, the results acted on by the employer and the appropriate public regulatory body, law enforcement agency or supervisory body in an efficient and effective manner.

20. A whistleblower who makes an internal report should, as a general rule, be informed, by the person to whom the report was made, of the action taken in response to the report.

VII. Protection against retaliation

21. Whistleblowers should be protected against retaliation of any form, whether directly or indirectly, by their employer and by persons working for or acting on behalf of the employer. Forms of such retaliation might include dismissal, suspension, demotion, loss of promotion opportunities, punitive transfers and reductions in or deductions of wages, harassment or other punitive or discriminatory treatment.

22. Protection should not be lost solely on the basis that the individual making the report or disclosure was mistaken as to its import or that the perceived threat to the public interest has not materialised, provided he or she had reasonable grounds to believe in its accuracy.

23. A whistleblower should be entitled to raise, in appropriate civil, criminal or administrative proceedings, the fact that the report or disclosure was made in accordance with the national framework.

24. Where an employer has put in place an internal reporting system, and the whistleblower has made a disclosure to the public without resorting to the system, this may be taken into consideration when deciding on the remedies or level of protection to afford to the whistleblower.

25. In legal proceedings relating to a detriment suffered by a whistleblower, and subject to him or her providing reasonable grounds to believe that the detriment was in retaliation for having made the report or disclosure, it should be for the employer to establish that the detriment was not so motivated.

26. Interim relief pending the outcome of civil proceedings should be available for persons who have been the victim of retaliation for having made a public interest report or disclosure, particularly in cases of loss of employment.

VIII. Advice, awareness and assessment

27. The national framework should be promoted widely in order to develop positive attitudes amongst the public and professions and to facilitate the disclosure of information in cases where the public interest is at stake.

28. Consideration should be given to making access to information and confidential advice free of charge for individuals contemplating making a public interest report or disclosure. Existing structures able to provide such information and advice should be identified and their details made available to the general public. If necessary, and where possible, other appropriate structures might be equipped in order to fulfil this role or new structures created.

29. Periodic assessments of the effectiveness of the national framework should be undertaken by the national authorities.

A framework to ensure that whistleblowers are protected by the law and that their public interest reports or disclosures are effectively acted upon will strengthen democratic societies based on human rights and the rule of law.

The Council of Europe Recommendation CM/Rec(2014)7, adopted by the Committee of Ministers on 30 April 2014, offers important policy advice to member states on the content of such a framework and this brief guide gives suggestions on how it might be put in place, drawing on existing international practice.

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The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, 28 of which are members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

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