

Steering Committee on Media and Information Society

COUNCIL OF EUROPE



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Comments of the Steering Committee on Media and Information Society on the Council of Europe Parliamentary Assembly Recommendation 2073 (2015) Improving the protection of whistle-blowers

1. Freedom of expression is a fundamental right that underpins an informed public opinion, public debate and transparency in public affairs. Whistle-blowers can contribute to public debate on issues of general interest. Freedom of expression cannot fulfill its pivotal role in a democratic society and the media cannot perform effectively its watchdog function without the exercise of the right to freedom of expression by all actors, including whistleblowers. In this light, the CDMSI considers the PACE recommendation a timely effort to enhance the protection of persons who report or disclose information on harms to the public interest.

2. The protection of whistle-blowers is rooted in the jurisprudence of the European Court of Human Rights on Article 10 of the European Convention on Human Rights. The Court has consistently held that in a democratic system the acts and omissions of government must be subject to close scrutiny not only of the legislative and judicial authorities but also of the media and public opinion. The public's interest to have access to information, can sometimes be so strong as to override even a legally imposed duty of confidence.

3. The CDMSI recalls Recommendation CM/Rec(2014)7 of the Committee of Ministers to member States on the protection of whistleblowers which sets out principles on the protection of whistle-blowers. Also, Recommendation CM/Rec(2015)5 of the Committee of Ministers on the processing of personal data in the context of employment provides that where employers implement internal reporting mechanisms the confidentiality of whistle-blowers should be ensured as well as the protection of personal data of all parties involved. In addition, the Committee of Ministers' Declaration on the protection of freedom of expression and freedom of assembly and association with regard to privately operated Internet platforms and online service providers (2011) draws attention to the need to protect a variety of contributors in the public debate within a digital context and of the public value of alternative voices in the digital environment.

4. The CDMSI is of the opinion that whistle-blowers' contribution to accomplishing greater transparency and justice in society is unevenly accepted and there is a need to ensure their effective protection in national frameworks in member States. The elaboration of a Council of Europe convention in the field may be considered as an option with regard to the establishment of national frameworks setting common principles building on the jurisprudence of the European Court of Human Rights and in particular Recommendation CM/Rec(2014)7. The CDMSI believes that the process of launching negotiations on a binding instrument should be preceded by a wide discussion among member States as well as relevant stakeholders in order for the instrument to become operative and efficient and it should be supported by a feasibility study. The feasibility study should include the state of implementation of the above-mentioned standards as well an evaluation of the protection of whistleblowers in national security and intelligence services. The CDMSI stands ready to contribute to such a feasibility study.

5. The CDMSI agrees that technical assistance is needed in this field preparing member states for the successful discharge of their positive obligations to protect all contributors to public debate. The CDMSI stands ready to contribute in future cross-cutting activities of the Organisation based on its expertise concerning particularly the relationships between whistle-

blowers, the media and investigative journalism in the new media environment and the appropriate implementation of the relevant standards if necessary.