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## **Committee on Legal Affairs and Human Rights**

# **Ensuring better protection of whistleblowers in Europe**

## **Introductory Memorandum**

Rapporteur: Ms Anna-Kristiina MIKKONEN, Finland, Socialists, Democrats and Greens Group

### **1. Introduction**

1. Whistleblowers are invaluable assets to our societies by sharing vital information which would otherwise remain hidden. Their actions can uncover corruption and misconduct within corporations and government bodies, and contribute to addressing actions and omissions that threaten public interest or safety. However, the courageous individuals who “blow the whistle” often endure severe retaliation, including losing their jobs, being blacklisted and devastating legal battles, and sometimes imprisonment or even murder.

2. The Parliamentary Assembly has been instrumental in championing protections for whistleblowers throughout Europe. In Resolution 1729 (2010), Resolution 2060 (2015) and Resolution 2300 (2019), along with Recommendation 1916 (2010), Recommendation 2073 (2015) and Recommendation 2162 (2019), the Assembly has underscored the vulnerability and significance of whistleblowers, advocated for member States to enact comprehensive protective measures, and called upon the Committee of Ministers to establish international legal standards to support them.

3. Following the Assembly's initiatives, the Committee of Ministers adopted a Recommendation on whistleblower protection in 2014 (“the Council of Europe Recommendation”),<sup>1</sup> and the European Union enacted the Directive on whistleblowing in 2019 (“the EU Directive”).<sup>2</sup> Meanwhile, numerous member States introduced legislation to implement these standards into their national laws and practices.

4. Despite these developments, the Assembly's General Rapporteur on the Situation of Human Rights Defenders and Whistleblowers, Emanuelis Zingeris (Lithuania, EPP), has received numerous reports of whistleblowers in Europe who have not received adequate protection. Worryingly, these were said to reflect wider problems in national systems. These reports led to a Motion for Resolution and the current report.<sup>3</sup>

5. In this Introductory Memorandum, I will first set out the European standards on the protection of whistleblowers contained in the Council of Europe Recommendation, the EU Directive, and the case law of the European Court of Human Rights (“the Court”). I will then summarise the reviews that have been carried out to date of the implementation of these standards in national law and practice (in particular, those carried out by the Council of Europe's European Committee on Legal Co-operation (CDCJ), the Commission of the European Union, and various civil society groups). I will conclude with an analysis of the findings and by setting out my proposals for further work.

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\* Document declassified by the Committee on 3 March 2025.

<sup>1</sup> Recommendation CM/Rec(2014)7 ‘on the protection of whistleblowers’.

<sup>2</sup> Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law, L 305/17, 26 November 2019.

<sup>3</sup> The Motion for Resolution was tabled by the Committee on Legal Affairs and Human Rights on 29 January 2024 (Doc. 15919). After the Bureau instructed the Committee to produce a report, the Committee appointed me as rapporteur on 21 May 2024.

## 2. European standards

6. There are two main European standards especially created for the protection of whistleblowers, which are applicable to member States of the Council of Europe: a Recommendation of the Committee of Ministers of the Council of Europe; and a Directive of the European Union. These contain similar minimum standards. In addition to these, there is also the case law of the Court.

### 2.1. *Recommendation CM/Rec(2014)7 'on the protection of whistleblowers'*<sup>4</sup>

7. The recommendation aims to create a comprehensive framework for whistleblower protections across Council of Europe member States, while allowing flexibility in how each country implements these principles within their national legal systems. The Appendix of the recommendation sets out the main aspects of whistleblower protection that should be put in place. Some of the main elements of this are as follows:

7.1. Definition: A whistleblower should be defined as any person who reports or discloses information on threats or harm to the public interest in the context of their work-based relationship, whether it be in the public or private sector;<sup>5</sup>

7.2. Material scope: 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. The scope of 'public interest' should be explicitly determined by member States in the national framework and should at least include violations of law and human rights, as well as risks to public health and safety and to the environment.<sup>6</sup>

7.3. Normative framework: The normative framework should reflect a comprehensive and coherent approach to facilitating public interest reporting and disclosures. Member States should ensure that there is an effective mechanism or mechanisms in place for acting on public interest reports and disclosures.<sup>7</sup>

7.4. Channels for reporting and disclosures: 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. Clear channels should be put in place for public interest reporting and disclosures and recourse to them should be facilitated through appropriate measures. The channels should comprise reports within an organisation or enterprise; reports to relevant public bodies; and disclosures to the public.<sup>8</sup>

7.5. Confidentiality: Whistleblowers should be entitled to have the confidentiality of their identity maintained, subject to fair trial guarantees.<sup>9</sup>

7.6. Acting on reporting and disclosure: 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.<sup>10</sup>

7.7. Protection against retaliation: 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.<sup>11</sup>

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<sup>4</sup> Recommendation CM/Rec(2014)7 'on the protection of whistleblowers', Appendix.

<sup>5</sup> *Ibid.*, a.

<sup>6</sup> *Ibid.*, paragraphs 1 and 2.

<sup>7</sup> *Ibid.*, paragraphs 7 to 9.

<sup>8</sup> *Ibid.*, paragraphs 12 to 14.

<sup>9</sup> *Ibid.*, paragraph 18.

<sup>10</sup> *Ibid.*, paragraph 19.

<sup>11</sup> *Ibid.*, paragraph 21.

7.8. Burden of proof: 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.<sup>12</sup>

7.9. Awareness and advice: The national framework should be promoted widely, and consideration should be given to providing free access to information and confidential advice for potential whistleblowers.<sup>13</sup>

7.10. Periodic assessment: The effectiveness of the national framework should be periodically assessed by national authorities.<sup>14</sup>

2.2. *Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law ("the Directive")*<sup>15</sup>

8. The directive aims to establish common minimum standards for whistleblower protection across EU Member States, enhancing the enforcement of EU law. Some of the main standards are as follows:

8.1. Definitions: the directive applies to "reporting persons", meaning a natural person who reports or publicly discloses information on breaches acquired in the context of his or her work-related activities. Protection extends to workers in both public and private sectors.<sup>16</sup>

8.2. Material scope: the directive lays down common minimum standards for the protection of persons reporting breaches of European Union law. In practice, the scope of the Directive remains very broad as breaches of EU law include the main regulatory areas that affect businesses and public entities, such as financial services, product and transport safety, environmental protection, public health, consumer protection, and data privacy.<sup>17</sup>

8.3. Internal and external reporting channels: internal reporting channels and procedures for whistleblowers must be established by public organisations and private sector organisations with 50 or more workers. Member States must also designate authorities as independent and autonomous external reporting channels, which must be effective.<sup>18</sup>

8.4. Confidentiality: EU member States shall ensure that the identity of the reporting person is not disclosed to anyone beyond the authorised staff members competent to receive or follow up on reports, without the explicit consent of that person, unless this is a necessary and proportionate obligation imposed by Union or national law in the context of investigations by national authorities or judicial proceedings.<sup>19</sup>

8.5. Acting on reports: internal and external reporting procedures must be diligently followed-up.<sup>20</sup>

8.6. Protection against retaliation: member States shall take the necessary measures to prohibit any form of retaliation against whistleblowers.<sup>21</sup>

8.7. Support measures: Member States must provide comprehensive and independent information and advice on available procedures and remedies to whistleblowers, effective assistance from competent authorities, and legal aid in criminal and cross-border civil proceedings.<sup>22</sup>

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<sup>12</sup> *Ibid.*, paragraph 25.

<sup>13</sup> *Ibid.*, paragraphs 27 and 28.

<sup>14</sup> *Ibid.*, paragraph 29.

<sup>15</sup> Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law, L 305/17, 26 November 2019.

<sup>16</sup> *Ibid.*, articles 4 and 5.

<sup>17</sup> *Ibid.*, article 2.

<sup>18</sup> *Ibid.*, articles 7, 8, 10, 11.

<sup>19</sup> *Ibid.*, article 16.

<sup>20</sup> *Ibid.*, articles 9 and 13.

<sup>21</sup> *Ibid.*, articles 19, 21 and 22.

<sup>22</sup> *Ibid.*, article 20.

8.8. Burden of proof: in legal proceedings, if a whistleblower demonstrates they made a report and suffered a detriment, the burden of proof shifts to the natural or legal person who took the detrimental action to prove that it was based on duly justified grounds.<sup>23</sup>

8.9. Penalties: Member States must provide effective, proportionate, and dissuasive penalties for natural or legal persons that hinder or attempt to hinder reporting, retaliate or bring vexatious proceedings against whistleblowers, or breach the duty of confidentiality.<sup>24</sup>

8.10. Non-regression clause: implementation of the Directive should not reduce existing protections for whistleblowers in Member States.<sup>25</sup>

8.11. Review of procedure by competent authorities: member States shall ensure that competent authorities review their procedures for receiving reports, and their follow-up, regularly, and at least once every three years.<sup>26</sup>

8.12. Transposition and transitional period: member States were required to bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 17 December 2021.<sup>27</sup>

### 2.3. Case law of the European Court of Human Rights

9. The Court has a rich case law concerning the protection of whistleblowers. In developing this, the Court explicitly referred to and drew upon Assembly Resolution 1729 (2010) and Committee of Ministers' Recommendation CM/Rec(2014)7.

10. The Court has refrained from establishing an abstract definition of whistleblowers, but it has stated that they can be working in the private or the public sector. When sanctions are carried out against whistleblowers that interfere with their freedom of expression under Article 10 of the Convention, these must be prescribed by law, pursue a legitimate aim, and be 'necessary in a democratic society'. The criteria for assessing whether a sanction is necessary in a democratic society were recently consolidated by the Grand Chamber in the case of *Halet v. Luxembourg*. The Court recognised the duty of loyalty and discretion in employment relationships, as well as the particular economic vulnerability and risk of retaliation that whistleblowers are exposed to. It did so by refining six non-hierarchical criteria which should be applied to assess the proportionality of interference with whistleblowers' freedom of speech. These are as follows:

10.1. Disclosure channels: internal reporting should be prioritised, with public disclosure as a last resort. However, certain circumstances could justify the direct use of "external reporting", where the internal reporting channel was unreliable or ineffective, where the whistle-blower was likely to be exposed to retaliation or where the information that he or she wished to disclose pertained to the very essence of the activity of the employer concerned.

10.2. The authenticity of the disclosed information: whistleblowers must seek to verify information before publication, but there is not absolute requirement to ensure authenticity.

10.3. Good faith: the Court verified whether the applicant had been motivated by a desire for personal advantage, held any personal grievance against his or her employer, or whether there was any other ulterior motive for the relevant actions.

10.4. The public interest in the disclosed information: this could include a broad range of information, although the mere fact that the public was interested in it was not sufficient to justify confidential information about these subjects being made public.

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<sup>23</sup> *Ibid.*, article 21(5).

<sup>24</sup> *Ibid.*, article 23.

<sup>25</sup> *Ibid.*, article 25.

<sup>26</sup> *Ibid.*, article 14.

<sup>27</sup> *Ibid.*, article 26.

10.5. The detriment caused: the damage to the employer must be weighed against the public interest in disclosure.

10.6. Severity of the sanction: the nature and severity of the cumulative professional, disciplinary, and criminal sanctions were factors to be taken into account when assessing the proportionality of an interference with the right to freedom of expression.

11. The Court applied these criteria to the facts of the case, to assess whether the sanctions imposed in response to such disclosures could interfere with the right to freedom of expression and amount to a violation of Article 10 of the Convention.<sup>28</sup>

### 3. Analysis of the implementation of European standards by Council of Europe member States

#### 3.1. *Evaluation report on Recommendation CM/Rec(2014)7 of the Committee of Ministers to member States on the Protection of Whistleblowers*<sup>29</sup>

12. In June 2022 a report was published by the Council of Europe's European Committee on Legal Co-operation, providing an overview of the protection of whistleblowers in Council of Europe member States in light of the adoption by the Committee of Ministers of Recommendation CM/Rec(2014)7 on the protection of whistleblowers. The report analysed feedback from 23 States to a survey of the European Committee on Legal Co-operation (CDCJ), identifying areas of progress and those requiring further attention. Most responding countries reported that they had enacted dedicated whistleblower protection measures, ranging from centralised reporting, investigation, and safeguarding systems, with others describing protections that remained specific to workplace whistleblowers which build on existing institutional, legal and normative frameworks. Other countries still depended on their prosecutorial or criminal law frameworks, which indirectly covered whistleblowers who qualify as crime victims or witnesses.

13. The report concluded that, while much progress had been made since Recommendation CM/Rec(2014)7 was adopted, member States had given it varying degrees of attention. Although the majority had implemented protections specifically designed to protect whistleblowers, some had done so more extensively than others. The report recommended continuous reviews and/or exchanges of good practices on this topic.<sup>30</sup>

#### 3.2. *Report from the European Commission on the implementation and application of Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law*<sup>31</sup>

14. In July 2024 the European Commission published an overview of the transposition of the Directive in the law of EU member States. The report stated that there had been a significant delay in the transposition. Although the transposition deadline had been 17 December 2021, only 3 EU member States had adopted and notified complete transposition measures by that date. 8 EU member States notified complete transposition in 2022 and 13 did so in 2023.<sup>32</sup>

15. In order to ensure transposition, in January 2022 the EU Commission opened infringement proceedings against 24 EU member States. In March 2023, the Commission referred 6 EU member States to the Court of Justice of the European Union ("CJEU") for failures to transpose the Directive and to notify transposition measures, asking the CJEU to impose financial sanctions.<sup>33</sup> The CJEU delivered its judgment in the case concerning Poland in April 2024, finding that the country had failed to transpose the Directive into national law within the required deadline, imposing a fine of 7 million euros and an ongoing daily fine of 40,000 euros until

<sup>28</sup> *Halet v. Luxembourg*, judgment of 14 February 2023, no. 21884/18; [Legal Summary](#) published by the European Court of Human Rights, February 2023.

<sup>29</sup> Myers, Anna (consultant), under the supervision of the Council of Europe's European Committee on Legal Co-Operation (CDCJ), 'Evaluation report on Recommendation CM/Rec(2014)7 of the Committee of Ministers to member States on the Protection of Whistleblowers', June 2022.

<sup>30</sup> *Ibid.*, pages 6, 46-47.

<sup>31</sup> European Commission, 'Report from the Commission to the European Parliament and the Council on the implementation and application of Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law', COM(2024) 269, 3 July 2024.

<sup>32</sup> *Ibid.*, pages 1-2.

<sup>33</sup> Czechia, Germany, Estonia, Luxembourg, Hungary and Poland.

the directive is transposed.<sup>34</sup> At the time of the publication of the Commission's report, further to the five cases still pending at the CJEU, infringement proceedings were ongoing for six other EU member States.<sup>35</sup>

16. The report welcomed the fact that EU member States had transposed many of the Directive's main provisions. However, the Commission regretted that there had been a lack of adoption of the provisions necessary to ensure complete transposition, including a lack of confidential reporting channels and appropriate protections. The Commission noted that these omissions would have a chilling effect on potential whistleblowers. The lack of transposition of the Directive was particularly serious, given its importance for protecting the public interest. The Commission also noted that transposition needed to be improved in certain key areas, including the material scope of national laws (for example, by ensuring that they cover whistleblowing about the application of corporate tax law), conditions for protection of whistleblowers (as several member states have not correctly transposed the conditions set out in the Directive), and measures of protection against retaliation for whistleblowers (particularly the need for exemptions from liability and penalties).<sup>36</sup>

### 3.3. *Civil society reports*

17. Several NGOs have published their own analyses of the protection of whistleblowers in European states, focusing on the transposition of the EU Directive. These include reports by: Transparency International (published in November 2023);<sup>37</sup> the Central and Eastern European Law Initiative (also in November 2023);<sup>38</sup> and the Whistleblowing International Network (whose 'EU Whistleblowing Monitor' website maintains regular online updates about transposition of the Directive).<sup>39</sup> All of these found that many EU member States had not fully met the requirements of the Directive, noting that significant changes were necessary to ensure full transposition and the effective protection of whistleblowers.

## 4. **Analysis and proposals for further work**

18. The reports of the European Committee on Legal Co-operation, the European Commission, and civil society all present a similar picture. There have been widespread improvements in the protection of whistleblowers in Europe since the adoption of the Council of Europe Recommendation in 2014 and the EU Directive in 2019. However, these minimum standards have not been fully implemented and significant gaps remain in many member States. In my view, these gaps are very significant. They expose whistleblowers to unnecessary risk and have a chilling effect on the reporting of serious issues whose disclosure would be very much in the public interest.

19. My future report will aim to pinpoint these gaps. I will draw on reporting from international and non-governmental organisations, as well as court judgments and expert evidence, to review the protection of whistleblowers in Council of Europe member States, highlight those where significant improvement is needed, and make recommendations for reforms. I will also present examples of good practice, such as the French "Loi Wasserman", in which the Assembly's most recent rapporteur on whistleblower protection, Sylvain Wasserman (France/ALDE) translated the Assembly's recommendations that he had himself further developed into national law.<sup>40</sup>

20. Given the work being undertaken by the European Commission and the initiation of infringement proceedings, I propose to carry out a fact-finding mission to Brussels to obtain further information on the protection of whistleblowers within the EU. Meanwhile, in regard to Council of Europe member States who are not members of the European Union, I propose to carry out an exchange of views with our former rapporteur Sylvain Wasserman and at least one hearing with experts who are able to report on the protection of whistleblowers in states outside of the EU.

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<sup>34</sup> *Commission v Poland*, Court of Justice of the European Union, C-147/23, 25 April 2024.

<sup>35</sup> *Ibid.*, page 2. The six additional countries with infringement proceedings ongoing were Austria, Belgium, Greece, Lithuania, the Netherlands and Slovakia.

<sup>36</sup> *Ibid.*, pages 9-10.

<sup>37</sup> Transparency International, 'How well do EU countries protect whistleblowers?', November 2023.

<sup>38</sup> Central and Eastern European Law Initiative, 'Beyond Paper Rights: Implementing Whistleblower Protections in Central and Eastern Europe', November 2023.

<sup>39</sup> Whistleblowing International Network, website of the [EU Whistleblowing Monitor](#).

<sup>40</sup> See France's [Law n° 2022-401 of 21 March 2022 aimed at improving the protection of whistleblowers](#).