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The protection of "whistle-blowers"

Reply to Recommendation[1]: Recommendation 1916 (2010)
Committee of Ministers

1. The Committee of Ministers notes with interest Parliamentary Assembly Recommendation 1916 (2010) on "The protection of "whistle-blowers"". It has brought it to the attention of their governments and has also communicated it to the Group of States against Corruption (GRECO), to the European Committee on Legal Co-operation (CDCJ) and to the European Committee on Crime Problems (CDPC), for information and possible comments. Comments were also received from the Steering Committee on the Media and New Communication Services (CDMC).

2. The Committee of Ministers shares the Assembly's view that whistle-blowers play an important role in increasing accountability and strengthening the fight against corruption and mismanagement, and it agrees that their protection must be secured. In this regard, the Committee of Ministers recalls the existing international legal framework that protects whistle-blowers from any form of retaliation, which includes, *inter alia*, the UN Convention Against Corruption, the 1992 ILO Convention No. 158 concerning Termination of Employment, the Council of Europe's Criminal Law and Civil Law Conventions on Corruption (ETS No. 173 and No. 174) and Article 10 of the European Convention on Human Rights concerning freedom of expression and information.

3. The Programme of Action against Corruption adopted in 1996 by the Committee of Ministers recognised the importance of measures to protect those who report in good faith suspicions of corruption in order to facilitate the detection of this form of criminality and to foster a culture of integrity within the public and the private sector. This matter was taken up in the Civil Law Convention on Corruption. The Committee of Ministers encourages those member states which have not yet ratified the convention to consider this matter with priority. It furthermore notes that in the context of GRECO's Second Evaluation Round, which dealt, *inter alia*, with anti-corruption measures in public administration, it appeared that more than half of the countries evaluated had not yet introduced adequate protection mechanisms for public officials who reported instances of suspected wrongdoing. Those in place in the remaining countries were often limited to very basic measures. GRECO thus addressed a number of recommendations for improvement to individual countries and included in its Seventh General Activity Report (2006) a special substantive part on whistle-blower protection. GRECO's recommendations for improvement have often led to the adoption of legal, institutional and practical measures of different kinds. However, usually these have been limited to the area of the fight against corruption and the protection of public employees.

4. Other texts of relevance in this context are the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities (2008) and Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe. Whistle blowing journalism related to human rights and fundamental freedoms and situations where whistle blowers are the victims of retaliation and reprisals from within or outside the organisation in question is a matter that has been addressed in several texts related to freedom of expression in the media, including on the Internet, such as the Committee of Ministers 2007 Declaration on the protection and promotion of investigative journalism, its Recommendation Rec(2000)7 on

1. adopted at the 1103rd meeting of the Ministers' Deputies (19-20 January 2011)

the right of journalists not to disclose their sources of information and its 2003 Declaration on freedom of communication on the Internet. The Committee of Ministers would stress, in particular, that the effective protection of journalistic sources is an essential tool for the protection of whistle-blowers and also for the protection of journalists themselves when acting as whistle-blowers.

5. The Parliamentary Assembly recommends the elaboration of a set of guidelines for the protection of whistle-blowers, taking into account the guiding principles stipulated in Assembly Resolution 1729 (2010) (paragraph 2.1). The Committee of Ministers notes that the protection of whistle-blowers concerns many areas of law, including criminal, civil and administrative law, data protection law and human rights law. It also notes that there is no comprehensive Council of Europe instrument covering this issue. Given the complexity of the subject, the Committee of Ministers will examine carefully the possibilities of elaborating such guidelines.

6. Concerning the Assembly's proposal for an invitation to member and observer states to examine national legislation and its implementation to see whether they are in conformity with the guidelines (paragraph 2.2), the Committee of Ministers will come back to this issue in due course.

7. The Parliamentary Assembly also proposes the drafting of a framework convention (paragraph 2.3) in this field. The Committee of Ministers may come back to this issue once it has taken a decision on the possible elaboration of guidelines.

8. The Committee of Ministers invites the Secretary General to make proposals for the organisation of a European conference on whistle-blowers (Assembly recommendation, paragraph 3.1). It considers that such a conference could provide a useful input to the reflection on the possible elaboration of guidelines.

9. The Committee of Ministers finally invites the Secretary General to examine the existing internal Council of Europe framework as regards whistle-blowing and to report back (Assembly recommendation, paragraph 3.2).