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Improving the protection of whistle-blowers

Reply to Recommendation¹: Recommendation 2073 (2015)

Committee of Ministers

1. The Committee of Ministers has carefully examined Parliamentary Assembly Recommendation 2073 (2015) on “Improving the protection of whistle-blowers”. It has brought it to the attention of the governments of member States and forwarded it to the Steering Committee on Media and Information Society (CDMSI), the European Committee on Legal Co-operation (CDCJ), the European Committee on Crime Problems (CDPC) and the Group of States against Corruption (GRECO), for information and possible comments.

2. The Committee of Ministers notes that 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 governments must be subject to close scrutiny, not only by the legislative and judicial authorities, but also by the media and public opinion.

3. In this regard, the Committee of Ministers recalls that the existing international legal framework that protects whistle-blowers from any form of retaliation, includes also, *inter alia*, the UN Convention Against Corruption, the ILO Convention No. 158 (1982) concerning termination of employment and the Council of Europe’s Criminal Law and Civil Law Conventions on Corruption (ETS No. 173 and No. 174). Furthermore, the Committee notes that GRECO has constantly held that laws and practices which encourage civil servants and private employees to challenge and signal corruption and other related wrongdoing they see or suspect in their workplace can be effective tools in the fight against corruption.

4. The Committee of Ministers recalls its Recommendation CM/Rec(2014)7 to member States on the protection of whistle-blowers which represents a major international advance in that it establishes a comprehensive set of principles to guide member States when reviewing relevant legislation and institutional set-ups aimed at protecting those who alert the public and/or competent authorities to potential threats or harm to the public interest. Furthermore, 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.

5. Regarding the Parliamentary Assembly’s recommendation to draft a framework convention, the Committee of Ministers notes that Recommendation CM/Rec(2014)7 was only adopted in 2014. It recalls that the recommendation includes a principle on information relating to national security, defence, intelligence, public order or international relations of the State. Without ruling out the possible preparation of a convention in the longer term, the Committee of Ministers considers it more appropriate, at this stage, for the Council of Europe to continue to support the promotion and implementation of Recommendation CM/Rec(2014)7.

6. The Committee of Ministers notes that the CDCJ has adopted an action plan for this purpose, that a series of actions have already been taken and that a guide to facilitate the implementation of the recommendation by member States is presently being elaborated. The CDCJ is also ready to provide legislative advice and offer training and awareness-raising to national authorities and other relevant bodies relating to public interest disclosures and the protection of whistle-blowers. The Committee of Ministers will

1. Adopted at the 1245th meeting of the Ministers’ Deputies (20 January 2016).



expect the CDCJ to indicate to it when it considers that a more formal review of the implementation of the recommendation should be undertaken. Meanwhile, it encourages GRECO, within the limits of its Statute, to follow developments regarding the recommendation's implementation in the area of corruption and other related misconduct.

7. Finally, bearing in mind the Assembly's concerns as regards the whistle-blowing rules applicable in the Council of Europe, the Committee of Ministers considers that the relevant internal rules of the Council of Europe concerning whistle-blowing should be in line with Recommendation CM/Rec(2014)7, in so far as it is relevant. The Committee recalls that in its reply to Parliamentary Assembly Recommendation 1916 (2010) on "The protection of whistle-blowers", it had invited the Secretary General to examine the existing internal Council of Europe framework as regards whistle-blowing. The Secretary General has accordingly put in place measures to encourage whistle-blowers to come forward and to protect them.