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Improving the protection of whistle-blowers all over Europe

Reply to Recommendation¹: Recommendation 2162 (2019)

Committee of Ministers

1. The Committee of Ministers has carefully examined Parliamentary Assembly [Recommendation 2162 \(2019\)](#) on “Improving the protection of whistle-blowers all over Europe”. It has forwarded it to the European Committee on Legal Co-operation (CDCJ), to the European Committee on Crime Problems (CDPC), to the European Committee on Democracy and Governance (CDDG), to the Steering Committee for Education Policy and Practice (CDPPE), to the Enlarged Partial Agreement on Sport (EPAS), to the Steering Committee for Human Rights (CDDH) and to the Group of States against Corruption (GRECO), for information and possible comments.

2. The Committee of Ministers agrees with the Assembly that whistle-blowers play an essential role in any open and transparent democracy and that the recognition they are given and the effectiveness of their protection in both law and practice against all forms of retaliation constitute a genuine democracy “indicator”. Whistleblowing is a fundamental aspect of freedom of expression and of the right to information, as protected by Article 10 of the European Convention on Human Rights and the relevant case law of the European Court of Human Rights.

3. The Committee of Ministers refers to Recommendation [CM/Rec\(2014\)7](#) to member States on the protection of whistle-blowers, which represented a major international advance in that it established 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. The recommendation also urged member States to make periodic assessments of the effectiveness of national frameworks for whistle-blower protection. A guide to facilitate implementation of the recommendation by member States was prepared by the CDCJ and published in 2016. The Committee points out that, in the pursuit of its terms of reference, the CDCJ is, in particular, responsible for providing legislative advice, training and awareness-raising to national authorities and other relevant bodies relating to public interest disclosures and the protection of whistle-blowers.

4. Whistle-blowers play a particularly crucial role in the area of combating corruption, in both the public and the private sector. Whistle-blower protection mechanisms help transform the culture of silence that corruption can breed and thus represent an invaluable corruption prevention and detection tool. For instance, in its evaluation reports, GRECO has consistently promoted the importance of building comprehensive systems to report corrupt conduct and to afford whistle-blowers appropriate protection against reprisal.² GRECO has issued recommendations addressing whistle-blower protection issues to a large majority of its member States. It will continue addressing this issue in the context of its evaluation rounds, as appropriate. In addition, the Committee of Ministers encourages member States which have not yet done so to sign and/or ratify the Civil Law Convention on Corruption (ETS No. 174), which, among other things, protects employees who report suspicions of corruption in good faith from unjustified sanctions.

1. Adopted at the 1374th meeting of the Ministers' Deputies (22 April 2020).

2. See, for instance, “Lessons learnt from the three Evaluation Rounds (2000-2010), Thematic Articles”, <https://rm.coe.int/16806cbfc6>.



5. Whistle-blower protection is the focus of work in several other Council of Europe areas of activity. In October 2019, for instance, the Committee of Ministers took note of the Guide to good and promising practices on reconciling freedom of expression with other rights and freedoms, in particular in culturally diverse societies,³ prepared by the CDDH, which gives details of recent developments in Council of Europe member States concerning existing practices and/or standards for whistle-blower protection.

6. In October 2019, the Committee of Ministers also adopted Recommendation [CM/Rec\(2019\)9](#) to member States on Fostering a culture of ethics in the teaching profession. In addition, it would draw attention to the work in progress at the Council of Europe Platform on Ethics, Transparency and Integrity in Education (ETINED) on a new policy framework document on education fraud, which seeks to foster ethics, transparency and integrity in education and will take account of the issue of the protection of whistle-blowers in cases of fraud and misconduct in the education sector. The Assembly's recommendation and the related [Resolution 2300 \(2019\)](#) have been forwarded to ETINED so that their content can be taken into account in this work.

7. The Committee would also inform the Assembly that its recommendation and [Resolution 2300 \(2019\)](#) have already been taken into account by the CDDG in the preparation of the draft Guidelines on public ethics⁴ and the draft guide "Steps to implementing public ethics in public organisations", which the CDDG approved in December 2019.

8. Lastly, with regard to the Assembly's recommendation that a legally binding instrument be drawn up, the Committee of Ministers reiterates the position set out in its reply to Assembly [Recommendation 2073 \(2015\)](#) on "Improving the protection of whistle-blowers".⁵ Given the complexity of the subject and the range of solutions adopted by the member States to protect whistle-blowers, it believes that the negotiation of a binding instrument, such as a convention, would be time consuming and there would be no certainty as to its outcome. At this stage, the Committee considers it more appropriate to encourage States fully to implement the recommendations which have been adopted by the Committee of Ministers or other bodies such as GRECO. In this connection, it points out that the relevant Council of Europe committees and bodies are ready to respond to any requests for technical assistance from member States.

3. [CM\(2019\)148](#), §361-373.

4. Guidelines adopted by the Ministers' Deputies on 11 March 2020.

5. [CM/AS\(2016\)Rec2073-final](#) of 22 January 2016.