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The protection of "whistleblowers"

Report
Committee on Legal Affairs and Human Rights
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Summary

The Committee on Legal Affairs and Human Rights stresses the importance of “whistleblowing”: concerned individuals sounding the alarm in order to stop wrongdoings that place fellow human beings at risk - as an opportunity to strengthen accountability, and bolster the fight against corruption and mismanagement, both in the public and private sectors.

All member states should be invited to review their legislation concerning the protection of “whistleblowers” , keeping in mind some guiding principles, including that:

- this legislation should protect anyone who, in good faith, makes use of existing internal whistleblowing channels from any form of retaliation (unfair dismissal, harassment, or any other punitive or discriminatory treatment);

- where internal channels either do not exist, or have not functioned properly, or could reasonably not be expected to function properly given the nature of the problem raised by the whistleblower, external whistleblowing, including through the media, should likewise be protected;

- any whistleblower shall be considered as acting in good faith provided he or she had reasonable grounds to believe that the information disclosed was true, even if it later turns out that this was not the case, and provided he or she did not pursue any unlawful or unethical objectives, and

- relevant legislation should afford *bona fide* “whistleblowers” reliable protection against any form of retaliation by an enforcement mechanism investigating the whistleblower’s complaint and seeking corrective action from the employer.

The Committee also proposes that the Council of Europe be invited to set a good example by establishing a strong internal whistleblowing mechanism within the organisation.

A. Draft resolution

1. The Parliamentary Assembly recognises the importance of “whistleblowing”: concerned individuals sounding the alarm in order to stop wrongdoings that place fellow human beings at risk – as an opportunity to strengthen accountability and bolster the fight against corruption and mismanagement, both in the public and private sectors.

2. Potential “whistleblowers” are often discouraged by the fear of reprisals, or of the lack of follow-up given to their warnings, to the detriment of the public interest in effective management and accountability of public affairs and private business.

3. A series of avoidable disasters has prompted the United Kingdom to enact forward-looking legislation to protect “whistleblowers” who speak up in the public interest. Similar legislation has been in force in the United States of America for many years, with globally satisfactory results.

4. Most member states of the Council of Europe have no comprehensive laws for the protection of “whistleblowers” , though many have rules covering different aspects of whistleblowing in their laws governing employment relations, criminal procedure, media, and specific anti-corruption measures.

5. Whistleblowing has always required courage and determination. But “whistleblowers” should at least be given a fighting chance to ensure that their warnings are heard without risking their livelihoods and those of their families. Relevant legislation must first and foremost provide a safe alternative to silence, whilst avoiding offering potential “whistleblowers” a “shield of cardboard” which would entrap them by giving them a false sense of security.

6. The Assembly invites all member states to review their legislation concerning the protection of “whistleblowers” , keeping in mind the following guiding principles:

6.1. Whistleblowing legislation should be comprehensive:

6.1.1. The definition of protected disclosures shall include all *bona fide* warnings against various types of unlawful acts, including all serious human rights violations which affect or threaten the life, health, liberty and any other legitimate interests of individuals as subjects of public administration or taxpayers, or as shareholders, employees or customers of private companies.

6.1.2. The legislation should therefore cover both public and private sector “whistleblowers” , including members of the armed forces and special services, and

6.1.3. It should codify relevant issues in the following areas of law:

6.1.3.1. Employment law – in particular protection against unfair dismissals and other forms of employment-related retaliation;

6.1.3.2. Criminal law and procedure – in particular protection against criminal prosecution for defamation, breach of official or business secrecy, and protection of witnesses;

6.1.3.3. Media law – in particular protection of journalistic sources; and

6.1.3.4. Specific anti-corruption measures such as those foreseen in the Council of Europe Civil Law Convention on Corruption (ETS No. 174).

6.2. Whistleblowing legislation should focus on providing a safe alternative to silence.

6.2.1. It should give appropriate incentives to government and corporate decision makers to put into place internal whistleblowing procedures that will ensure that:

6.2.1.1. disclosures pertaining to possible problems are properly investigated and relevant information reaches senior management in good time, bypassing the normal hierarchy, where necessary, and

6.2.1.2. the identity of the whistleblower is only disclosed with his or her consent, or in order to avert serious and imminent threats to the public interest.

6.2.2. This legislation should protect anyone who, in good faith, makes use of existing internal whistleblowing channels from any form of retaliation (unfair dismissal, harassment, or any other punitive or discriminatory treatment).

6.2.3. Where internal channels either do not exist or have not functioned properly, or could reasonably not be expected to function properly given the nature of the problem raised by the whistleblower, external whistleblowing, including through the media, should likewise be protected.

6.2.4. Any whistleblower shall be considered as acting in good faith provided he or she had reasonable grounds to believe that the information disclosed was true, even if it later turns out that this was not the case, and provided he or she did not pursue any unlawful or unethical objectives.

6.2.5. Relevant legislation should afford *bona fide* “whistleblowers” reliable protection against any form of retaliation by an enforcement mechanism investigating the whistleblower’s complaint and seeking corrective action from the employer, including interim relief pending a full hearing and appropriate financial compensation if the effects of the retaliatory measures cannot reasonably be undone.

6.2.6. It should also create a downside risk for those committing acts of retaliation by exposing them to counter-claims from the victimised whistleblower with the intention of having them removed from office or otherwise sanctioned.

6.2.7. Whistleblowing schemes shall also provide for appropriate protection against accusations made in bad faith.

6.3. As regards the burden of proof, it shall be up to the employer to establish beyond reasonable doubt that any measures taken to the detriment of a whistleblower were motivated by reasons other than the action of the whistleblower.

6.4. The implementation and impact of relevant legislation on the effective protection of “whistleblowers” should be monitored and evaluated at regular intervals by independent bodies.

7. The Assembly stresses that the necessary legislative improvements must be accompanied by a positive evolution of the general cultural attitude towards whistleblowing, which must be freed from its former association with disloyalty or betrayal.

8. It recognises the important role of non-governmental organisations in contributing to the positive evolution of the general attitude towards whistleblowing and in providing counselling to employers wishing to set up internal whistleblowing procedures, to potential “whistleblowers” and to victims of retaliation.

9. In order to set a good example, the Assembly invites the Council of Europe to put into place a strong internal whistleblowing procedure covering the Council itself and all its Partial Agreements.

B. Draft recommendation

1. The Parliamentary Assembly, referring to its Resolution (2009) …, stresses the importance of “whistleblowing” as a tool to increase accountability and strengthen the fight against corruption and mismanagement.

2. It recommends to the Committee of Ministers to:

2.1. draw up a set of guidelines for the protection of “whistleblowers” , taking into account the guiding principles stipulated by the Assembly in its Resolution … (2009);

2.2. invite member and observer states of the Council of Europe to examine their existing legislation and its implementation with a view to assessing whether it is in conformity with these guidelines;

2.3. consider drafting a framework convention on the protection of “whistleblowers” .

3. It further invites the Committee of Ministers to instruct the Secretary General of the Council of Europe to:

3.1. organise a European conference on the protection of “whistleblowers” ; and

3.2. draw up a proposal for a strong internal whistleblowing mechanism at the Council of Europe covering the Council itself and all its Partial Agreements.

B. Explanatory memorandum, by Mr Pieter Omtzigt

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"Only if the good intentions of any law are matched by a change in culture can a safe alternative to silence be created"[1]

I. Introduction

1. From the very outset I should like to make it clear that "whistleblowing" is a generous, positive act – someone putting his or her career on the line in order to stop a serious problem from causing preventable harm to others. "whistleblowers" are not "traitors", but people with courage who prefer to take action against abuses they come across rather than taking the easy route and remaining silent. To pass this message across Europe will be the most important contribution this report can make. It requires tackling deeply engrained cultural attitudes which date back to social and political circumstances such as dictatorship and/or foreign domination under which distrust towards "informers" of the despised authorities was only normal. Maybe the long-standing absence of such circumstances has helped the United States and the United Kingdom develop a much more whistleblower-friendly climate than most countries in Europe. Representative Derwinski[2] summed up the general attitude prior to the adoption of the US Whistleblower Protection Act (WPA) as follows: "The term 'whistleblower' is like 'motherhood', and we are all for whistleblowing apparently." In this climate, the WPA was adopted unanimously both in the House of Representatives and in the Senate – it would have been "political suicide" for any American politician to be caught voting against.[3] But we will see that there is still a gap between rhetoric and reality, also in the United States; and in Europe, with the possible exception of the United Kingdom, we have not even attained the American level of pro-whistleblowing rhetoric yet. It would be my wish that we may bypass the rhetoric stage and move straight on to concrete protection measures.

2. Two examples from the United States – one slightly amusing, one very worrying – demonstrate the value of whistleblowing for society as a whole, which should come to see whistleblowing as an opportunity and not as a threat.

3. The first concerns the fight against corruption, close to the heart of the US Department of Justice (DOJ). A whistleblower sparked the removal of top DOJ management staff after revealing systematic corruption in the DOJ's programme to train police forces of other nations on how to investigate and prosecute government corruption[4]. Hats off to the whistleblower, and to the DOJ for reacting in such a way that this case became a schoolbook example for stopping corruption by exposing it.

[1] Editors Guy Dehn and Richard Calland in "*Whistleblowing Around the World: Law, Culture and Practice*", IDASA publisher (2004).
[2] Cited by Tom Devine in "Whistleblowing in the United States: the gap between vision and lessons learned", in: Whistleblowing around the world, p. 74.
[3] Tom Devine, ibid (note 2), p. 84.
[4] Tom Devine, ibid (note 2), p. 82.

4. The second concerns the construction of a nuclear power plant in California. Instead of using costly "nuclear-grade" special steel, key parts of the reactor were built with cheap steel made from scrap metal, somebody pocketing the difference. Fortunately for millions of Californians, a whistleblower exposed the manipulation and the power plant, which was almost finished, was converted to coal-firing[5].

5. Famous European "whistleblowers" include the former Dutch EU civil servant Paul van Buitenen, whose disclosures on rampant corruption in the EU executive prompted the resignation of the entire Santer Commission. He suffered serious retaliation from his employers, which prompted him to resign from his job and return to the Netherlands, where he was finally elected as a member of the European Parliament – where he is continuing to act as an uncompromising anti-corruption watchdog.

6. I need not repeat here the cases of several courageous Russian "whistleblowers" , whose plight has already been covered in previous reports of the Parliamentary Assembly, including those of Mr Alexander Nikitin[6] and Mr Grigoriy Pasko[7], who were imprisoned for alleged violations of state secrets after warning against nuclear pollution caused by ageing submarines and reckless waste disposal in the Arctic and Japanese Seas, and Mr Mikhail Trepashkin, the former Federal Security Service (FSB) agent, who told the Committee his story on still uninvestigated criminal conspiracies involving his former employers at our Committee's hearing in Moscow on 11 November 2008[8].

7. In the United Kingdom, the adoption of the 1998 "Public Interest Disclosure Act" was prompted by a series of avoidable disasters, including the sinking of the ferry "Herald of Free Enterprise" and the destruction of an oil platform in the North Sea. If only the employees – who had been aware of the problems and had unsuccessfully tried to raise them within their hierarchies – had had at their disposal a safe channel to voice their concerns over the heads of their immediate superiors, hundreds of lives could have been saved. This is precisely what internal whistleblowing procedures are about.

8. According to research carried out in the United States, potential "whistleblowers" tend to remain silent for two main reasons: the primary reason is that they feel their warnings will not be followed up appropriately, and only the secondary reason is fear of reprisals[9]. In order for society or individual organisations to benefit fully from the early warning potential of "whistleblowers" , both issues need to be addressed, by ensuring that warnings are acted upon properly, and by providing credible protection for "whistleblowers" . The present report endeavours to make concrete proposals for this purpose.

II. Proceedings to date

9. This report stems from a motion for a recommendation (Assembly Doc. 11269) tabled by Mr Bartumeu Cassany and others on 23 April 2007, proposing to the Parliamentary Assembly of the Council of Europe (PACE) to consider the protection of "whistleblowers", bearing in mind their crucial role, not only in the context of corruption but also in the reporting of other illegal activities on the part of the authorities.

10. It should be recalled that the above-mentioned motion for a recommendation was itself motivated by Resolution 1507 (2006) on alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states, whereby the Parliamentary Assembly invited the member states to "ensure that the laws governing state secrecy protect .. ."Whistleblowers", that is persons who disclose illegal activities of state organs, from possible disciplinary or criminal sanctions".

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[5] Tom Devine, ibid (note 2).
[6] See motion for a resolution "Arrest of the Russian environmentalist Alexander Nikitin in Saint Petersburg", Doc. 7606 (at http://assembly.coe.int/main.asp?Link=/documents/workingdocs/doc96/edoc7609.htm)
[7] See Resolution 1354 (1993), and Doc. 9926 (Rapporteur: Rudolf Bindig), at: http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta03/eres1354.htm
[8] See Resolution 1551 (2007) and Doc. 11031 (Rapporteur: Christos Pourgourides), at: http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta07/eres1551.htm
[9] Surveys of federal employees by the US Merit Systems Protection Board quoted by Tom Devine, ibid (note 2), p. 81.

11. On 27 June 2007, as a member of the PACE Committee on Legal Affairs and Human Rights, I was appointed rapporteur and entrusted with the task of drafting a report on the protection of "whistleblowers".

12. During the January 2008 part-session of the Assembly, I presented an introductory memorandum[10] stating the objectives of this report, which aims at comparing relevant legislation and practice regarding "whistleblowers" in Council of Europe member and observer states with a view to presenting a recommendation calling on member states to undertake the necessary improvements in this area of law.

13. During its meeting, on 10-11 November 2008, in Moscow, the Committee on Legal Affairs and Human Rights held a hearing with the following five experts:

- Mikhail Trepashkin, a well-known Russian “whistleblower” who had spent four years in prison after accusing his former employers, the Russian Federal Security Service of serious wrongdoings;
- Martin Tillack (STERN magazine), a German investigative journalist who had disclosed serious corruption in the EU Commission with the help of “whistleblowers” and won a case before the European Court of Human Rights against Belgium for having tried to oblige him to divulge his sources;
- Elaine Kaplan, an American legal expert, former Special Counsel for the protection of “whistleblowers” in the United States;
- Anna Myers, a British legal expert representing “Public Concern at Work”, the leading non-governmental organisation in the United Kingdom in the field of the protection of “whistleblowers” ;
- Drago Kos, Chairman of the Council of Europe’s Group of States against Corruption (GRECO) (Croatia).

14. In order to have a sound overview of the existing legislation concerning the protection of "whistleblowers" in Council of Europe member states, a request, which took the shape of a questionnaire, was addressed by the Secretariat of the Parliamentary Assembly, in September 2007, through the European Centre for Parliamentary Research and Documentation (ECPRD), to the research services of the parliaments of most of the member states of the Council of Europe and to the Congress of the United States of America, the latter having recently drawn up interesting legislation in this field. The questions were the following:

1. *What are the relevant statutory provisions in your country’s legislation or draft legislation on the protection of "whistleblowers" (from, inter alia, criminal or civil liability, dismissal for breach of confidentiality, release of their identity, reprisals, etc)? Does such protection extend only to the "whistleblowers" themselves, or to the individuals or entities that either release the information publicly or have the power to take corrective action?*

2. *What is the definition of a "whistleblower" under the relevant legislation or draft legislation?*

3. *Is there uniform national legislation, or plans for uniform national legislation on the protection of "whistleblowers"?*

4. *Does the legislative (and draft legislative) protection extend to both the private and public sectors?*

15. The Secretariat received 26 replies from member states of the Council of Europe and one from the Congress of the United States of America. The 26 Council of Europe member states that sent a reply are the following: Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Denmark, Estonia, France, Georgia, Germany, Greece, Italy, Lithuania, “the former Yugoslav Republic of Macedonia”, The Netherlands, Norway, Poland, Romania, Serbia, Slovakia, Slovenia, Sweden, Switzerland, Turkey and the United Kingdom. For the remaining countries, no reply has been received so that we only have part of the European picture in that field. In addition, I have been able to collect information on relevant legislation in Hungary and Spain.

[10] AS/Jur (2008) 09.

III. Definition of concepts

16. The replies received show that the concept of whistleblowing is often not well-known: In most countries, “whistleblowing” (the English term even being used in non-English speaking countries) somehow connotes the action of an individual who reveals information, usually in the interest of the public and without a direct self-interest, to expose misconduct of varying sorts, including fraud, corruption, dangerous conduct, or the violation of laws and regulations.

17. As there are no generally accepted statutory definitions of “whistleblowing” in Council of Europe member states, as a starting point, we could make use of the following definition offered up by Mr Guy Dehn, Director of the British NGO “Public Concern at Work” and author of a key report for the EU Commission: "Alerting the authorities to information which reasonably suggests there is serious malpractice, where that information is not otherwise known or readily apparent and where the person who discloses the information owes a duty (such as an employee's) to keep the information secret, provided that wherever practicable he or she has raised the matter within the organisation first"[11].

18. The definition used by Transparency International (“the disclosure by organisation members (former or current) of illegal, immoral, or illegitimate practices under the control of their employers, to persons or organisations that may be able to effect action”) drops the requirement of the whistleblower first having to raise the matter within the organisation first.

19. In a number of situations, like in the secret services or in the military, special standards and procedures may need to apply. But in view of the fact that in these services abuses can and do occur, and that their exposure can very well be in the public interest, their members should not be excluded from whistleblower protection laws from the outset. Recent reports of the Parliamentary Assembly on abuses in the so-called war on terror are cases in point[12].

20. "Blowing the whistle" should be understood differently from making a (self-interested) complaint. Indeed, when people blow the whistle, they are raising a concern about a danger or illegality that affects others (for example, customers, members of the public, or their employer). The person blowing the whistle is usually not directly or personally affected. Consequently, the whistleblower rarely has a personal interest in the outcome of any investigation into their concern and should be seen "*as a messenger raising a concern for others to address it*"[13].

21. In the Whistleblower Protection Act (WPA)[14], which provides statutory protection for United States federal employees who engage in whistleblowing, whistleblowing is defined as *“making a disclosure evidencing illegal or improper government activities”*.

22. The theme of whistleblowing has been the subject of research and reports in different international organisations. For example, to name the most recent ones, the Council of Europe Group of States against Corruption (GRECO) has addressed the issue of the protection of "whistleblowers" in its Seventh General Activity report (2006)[15] and the European Parliament’s Committee on Budgetary Control has addressed whistleblowing in the context of risk management[16]. The protection of "whistleblowers" has also been addressed in international legal instruments such as in article 9 of the Council of Europe’s Civil Law Convention on Corruption (ETS 174), stating that each party is required to "provide in its internal law for appropriate protection against any unjustified sanction for employees who have reasonable grounds to suspect corruption and who report in good faith their suspicion to responsible persons or authorities"; in article 33 of the United Nations Convention against Corruption, stating: "each State party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any

[11] “*Whistleblowing fraud and the European Union”*. Report written for the European Union Commission (1996) by Mr Guy Dehn, currently Director of Public Concern at Work (www.pcaw.co.uk). PCaW is an independent authority on public interest whistleblowing, established as a charity in 1993. PCaW focuses on the responsibility of workers to raise concerns about malpractice and on the accountability of those in charge to investigate and remedy such issues.

[12] See report by Dick Marty (Switzerland/ALDE) on Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report (Doc. 11302 rev and addendum; Resolution 1562 (2007) and Recommendation 1801 (2007)).

[13] PCaW : www.pcaw.co.uk.

[14] The WPA was passed by the Congress of the United States of America in 1989.

[15] See GRECO’s Seventh General Activity Report (2006) adopted at GRECO’s 32nd Plenary Meeting, p. 10, www.coe.int/greco

[16] *"Whistleblowing Rules: Best Practice ; Assessment and Revision of Rules Existing in EU Institutions"*, European Parliament, Directorate General Internal Policies of the Union, Budgetary Support Unit, Budgetary Affairs; author: Björn Rohde-Liebenau.

unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention".

23. Despite the increased interest of international organisations in the protection of "whistleblowers", much still remains to be done at the level of national legislation in European countries. The analysis of the 26 replies received from Council of Europe member states reveals that there is still a legal vacuum in that respect in many countries, although in some of them, the courts, in their interpretation of legal duties of secrecy and discretion resulting from criminal or employment law, have addressed issues pertaining to the protection of “whistleblowers” through case law.

IV. Overview of national legislation regarding the protection of "whistleblowers"

24. Worldwide, legislation on the protection of "whistleblowers" is still in its infancy. However, a quick look at the list of countries having drafted to date comprehensive national laws on this topic reveals that this trend is more present in countries with a common law tradition. Indeed, countries such as Australia, Canada, New Zealand, South Africa, the United Kingdom or the United States have such legislation. In Europe, a majority of national legislation appears to require that this topic be addressed more comprehensively. The present chapter will look at the situation in Europe, based on the replies to the questionnaire received from 26 Council of Europe member states.

25. Before addressing in more detail the situation at national level, it is interesting to underline a few general aspects stemming from the 26 replies received.

26. First, one can immediately note a problem of terminology and definition. There is no common definition for the term "whistleblower" and some countries, like Estonia, Poland or Turkey, have no equivalent in their languages. The German Bundestag research service simply uses the English term. Even among the countries which have enacted specific legislation in that field, no definition *stricto sensu* appears in the legislation except for Romania which gives the following definition in its legislation: "A whistleblower (*avertizor*) is an individual who reveals violation of laws in public institutions made by persons with public powers or executive from these institutions"[17].

27. The problem in appropriately defining the term “whistleblower” leads to a wider problem in most countries under analysis to the extent that, when asked about their national legislation in the field of protection of "whistleblowers", many countries refer to their Witness Protection laws (Bulgaria, Estonia, Italy, Poland, Turkey, …), which cover some aspects of the protection of "whistleblowers" but which may not take the place of a broader law covering the protection of all different aspects of "whistleblowing". Witness Protection laws can indeed, and should extend to "whistleblowers" if and when they appear before a court to testify as witnesses. But the notion of whistleblower should not be confused with or limited to that of a witness. A whistleblower will not necessarily wish to, or need to appear in a court of law, considering that whistleblowing measures are designed in the first place to deter malpractices or remedy them at an early stage.

28. What also transpires from these 26 replies is that the question of whistleblowing is closely intertwined with the countries’ legal cultures in general. Political and administrative norms in most European countries do not value whistleblowing. In Poland or in France, for example, whistleblowing can be quite easily considered as a denunciation, which is strongly condemned in both cultures. In some countries, the cultural argument is put forward as a justification for not legislating on a specific law protecting "whistleblowers", often considering that the few provisions scattered among various other pieces of legislation are enough to ensure any protection needed.

[17] Law No 571 (2004).

29. The protection of personal data and the respect for private life are also other elements which add to this reluctance to enact specific legislation on this subject. In France, for instance, the CNIL[18], the body controlling the protection of personal data, refused to authorise the introduction of an internal whistleblowing mechanism in a fast food restaurant chain company arguing that it would neither respect the fundamental rights of the workers nor the legislation on the protection of private life.

30. In many European countries, because of the lack of a reporting culture with positive connotations, the "whistleblower" is all too often seen as a traitor or assimilated with a police informer. This approach is detrimental. Society is insufficiently aware that the whistleblower's action can prevent further wrongdoings which can jeopardise the health, safety or life of others. Hence the societal interest in legal protection of "whistleblowers" in Europe against dismissal or any form of retaliation. Another question is whether such protection should be laid down in a special law, or can be left to the courts applying general provisions of criminal and labour law in a progressive way.

31. Typical forms of retaliation, besides plain dismissal, can include taking away job duties so that the employee feels marginalised; blacklisting the employee so that he/she is unable to find gainful employment; conducting retaliatory investigations in order to divert attention from the waste, fraud or abuse the "whistleblower" is trying to expose; questioning a "whistleblower's" mental health, professional competence or honesty; reassigning an employee geographically[19]. A "whistleblower" is not an old-style informer or "snitch" in that he/she does not disclose information for his/her own personal gain, nor under the coercion of others. Mentalities have to evolve and the acceptance of "whistleblowers", and their protection, needs to be further addressed by European states.

32. When addressing the issue of the protection of "whistleblowers", we notice that relevant national laws closely intertwine other notions with it, such as denunciation, witness protection, or the protection of sources.

33. The protection of sources of journalists is linked to the protection of "whistleblowers", when a disclosure is made public. On the one hand, it is up to the "whistleblower" to disclose reliable and reasonable information to the media, especially when the matter has failed to be properly addressed after the use of appropriate internal channels. On the other hand, once the disclosure is made to the media, the journalist should have the right to protect his or her sources. If a "whistleblower" cannot make a disclosure internally because he/she reasonably fears that he/she would be sanctioned internally, or that the internal disclosure would not have the desired effect, and therefore decides to use the media as an external avenue to blow the whistle, he/she should benefit from an indirect protection in the form of the journalist's protection of sources. Whilst several examples across Europe tend to show that the protection of journalistic sources is still too fragile, the protection of journalistic sources must also not be exaggerated to the point where it becomes a cover for ill-intentioned or reckless libel and slander. The recent French legislation on the protection of journalistic sources may well offer elements of a middle-of-the road solution, involving the possibility of judicial scrutiny of the reasonableness of a divulgation.

34. With respect to the protection of journalistic sources, the judgment of 27 November 2007 of the European Court of Human Rights (ECHR) in the case of *Tillack against Belgium*[20] is of particular importance. The Court's ruling upheld the right of this German journalist, working for "Stern" magazine, to protect his sources concerning the articles he had published on alleged irregularities in Eurostat and in the European Union's anti-fraud office OLAF. The Court found Belgium in violation of ECHR Article 10 (freedom of expression) because of searches and seizures carried out at the home and office of the journalist by the Belgian police. The Court stressed that the right of journalists to protect their sources is not a "*mere privilege to be granted or taken away*" and that it is a fundamental component of the freedom of the press. This judgment should incite lawmakers throughout Europe also to reflect on the importance of the media as an external voice for "whistleblowers".

[18] Commission Nationale de l'Informatique et des Libertés : www.cnil.fr
[19] See Project On Government Oversight (POGO).
[20] See European Court of Human Rights' ruling *Tillack v. Belgium*, Application No 20477/05.

35. The 26 answers received to our questionnaire reveal that the majority of European countries do not have and are not planning to introduce specific legislation on the protection of "whistleblowers". In fact, three categories of countries can be distinguished: the ones that already have specific legislation on the protection of "whistleblowers" (Belgium[21], France, Norway, Romania, the Netherlands and the United Kingdom); the ones in which draft legislation on the protection of "whistleblowers" is pending in parliament or otherwise under preparation (Germany, Slovenia, Switzerland; in Lithuania, a far-reaching draft law on the matter has been rejected by parliament); and the ones that, to date, have no specific legislation on the matter but where some protection for "whistleblowers" is provided by various statutory provisions, in particular of labour and criminal law (Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Denmark, Estonia, Georgia, Greece, Italy, Poland, Serbia, Slovakia, Sweden, "the former Yugoslav Republic of Macedonia" and Turkey).

i. Countries having specific legislation on the protection of "whistleblowers"

36. The situation in the five countries with specific legislation on the protection of "whistleblowers" differs widely: in most cases, the protection of "whistleblowers" is only applicable in cases of corruption and does not cover other irregularities; not all provide a definition of what a "whistleblower" is; neither do all the laws cover both the private and public sectors. Most of the legislation in this field is quite recent, with the United Kingdom leading the way[22].

37. The **United Kingdom** appears indeed to be the model in this field of legislation as far as Europe is concerned. It was one of the first European states to legislate on the protection of "whistleblowers", its law was even described as "the most far-reaching whistleblower law in the world"[23]. The decision to legislate at the time came after a series of avoidable tragic accidents[24], following which inquiries revealed that staff had been aware of the danger but had not felt able to raise the matter internally. This gave rise to the **Public Interest Disclosure Act (PIDA)** in 1998.

38. The PIDA gives protection against victimisation or dismissal to "whistleblowers", covering both private and public sector employees[25], voluntary sector employees, as well as other workers including agency staff, home workers, trainees, contractors and all professionals in the National Health Service (NHS), who raise concerns about serious fraud or malpractice at their work place, provided they have acted in a responsible way in dealing with the concerns, that they make the disclosure in good faith, that they reasonably believe the information to be substantially true and provided they do not act for personal gain[26]. The PIDA does not directly define the word "whistleblower" but the provisions are directed at protected "disclosures" by "workers".

39. The PIDA defines the following categories of information as qualifying disclosures: past, present and future criminal offences, failure to comply with legal obligations, miscarriages of justice, health and safety dangers, environmental risks and an attempt to cover up any of these. The protection applies if the qualifying disclosure is made in good faith to the employer, in certain cases to a government minister. The worker must have a reasonable belief that the disclosed information tends to show a wrongdoing.

40. The PIDA makes the distinction between internal disclosures and wider disclosures, setting out clearly that a wider disclosure should be used only if internal disclosures have been unsuccessful or if there are reasonable grounds to believe that making an internal disclosure is too risky for the worker. Protection of wider disclosures is subject to a stricter number of conditions. Moreover, for these public disclosures to be protected, an employment tribunal must be satisfied that the particular disclosure was reasonable. In deciding the reasonableness of the disclosure, the employment tribunal will consider all the circumstances, including the identity of the person to whom it was made, the seriousness of the concern, whether the risk or danger remains, and whether the disclosure breached a duty of confidence which the employer owed a third party.

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[21] The law in question applies only to the Flemish community.
[22] Therefore also presented first; countries subsequently appearing in alphabetical order.
[23] *"Far-reaching new law will protect whistleblowers"* in *The Guardian,* 2 July1999.
[24] Accidents such as the sinking of the Herald of Free Enterprise, the Clapham rail crash or the collapse of the Bank of Credit and Commerce International. Source: PcaW.
[25] The PIDA does not cover intelligence services or the armed forces.
[26] See section 1, ERA s.43 K of the PIDA.

41. In terms of compensation, the Act provides that there is no limit on the amount of compensation paid to people unfairly dismissed for having blown the whistle. Moreover, if a "whistleblower" is dismissed, he/she can apply to an employment tribunal for an interim order to keep his/her job, pending a full hearing.

42. Whilst **Belgium** does not have uniform national legislation on the protection of "whistleblowers", the Community of Flanders has legislated on the matter by implementing a specific decree applicable to its civil servants specifically aimed at protecting "whistleblowers", called "*denunciators*". This decree was adopted on 7 May 2004, modifying the decree of the 7 July 1998 instituting a Flemish mediation service concerning the protection of civil servants denouncing irregularities. The decree states: "Any member of the staff attached to an administrative authority as foreseen under article 3, can denounce to the Flemish mediation body, in writing or orally, any negligence, abuse or irregularities (…) ". It further states: "The member of staff who denounces an irregularity as foreseen under article 3 § 2, is covered, at its request, by the protection of the Flemish mediator. …" .

43. Once under the protection of the Flemish mediator, any disciplinary procedures taken against the "whistleblower" are suspended until further investigations are made by a tribunal.

44. The above-mentioned decree, however, does not define as such the term of "whistleblower" and does not apply to the civil servants of the other Belgian communities.

45. Concerning the private sector, there are no specific dispositions aimed at protecting employees in case of denunciation. For civil servants, however, the duty to denounce criminal acts is the rule for public agents and is stated in the Code of Penal Instruction (Code d'Instruction Criminelle)[27].

46. On 13 November 2007, **France** promulgated a law on the protection of "whistleblowers", but it is only applicable in the context of corruption. It does, however, extend to both the private and public sectors.

47. This law foresees a number of protections for "whistleblowers" uncovering corruption-related offences at their workplace. The law aims at protecting the employee against any sanctions by the employer following a corruption-related disclosure made on sound grounds and in good faith.

48. Article L. 1161-1 of the law amending the French Labour Code states: "No one can be prohibited to access a recruiting procedure or an internship or a period of training in a company, no employee can be sanctioned, dismissed or be subject to, direct or indirect, discriminatory measures, especially concerning salary, training, reclassification, appointment, qualification, professional promotion, relocation or renewal of contract, if he or she has disclosed, in good faith, either to its employer, or to the judicial or administrative authorities, corruption-related offences that he or she would have discovered in exercising his/her functions. Any termination of contract which would be a result of this, any disposition or any contrary act would be void".

49. The law does not refer as such to the term "whistleblower", but it does refer to a person who would reveal information concerning corruption-related offences in the public interest.

50. **Norway** has also adopted specific legislation on the protection of "whistleblowers" (**"Act relating to working environment, working hours and employment protection, etc"**, last amended on 23 February 2007[28]). This Act gives all employees, in both the private and public sector, the right to notify suspicions of misconduct in their organisation on condition that the employee follows an "appropriate procedure" in connection with the notification. The employee's good faith with regard to the correctness of the information, form and content of the notification and the potential damage that can either be prevented or, possibly, caused by the notification will be relevant in establishing whether the procedure followed by the employee is justifiable. Under this act "retaliation", understood as any unfavourable treatment which is a direct consequence of and a reaction to the notification, against an employee who makes a notification, is prohibited. Any bad faith in the whistleblower's motives will not hinder lawful reporting as long as the disclosure is in the public interest[29].

[27] See Code of Penal Instruction, Article 29 paragraph 1.
[28] See the English version on http://www.arbeidstilsynet.no/binfil/download.php?tid=42156
[29] See GRECO's Seventh General Activity report.

51. Also, an employee who "signals" that he will notify, for example by copying documents or stating that he will notify unless the unlawful practice is changed, is also protected against retaliation.

52. As in the United Kingdom, if there is any kind of retaliation against the "whistleblower" following his/her disclosure, the compensation awarded can be unlimited.

53. Whilst the Act does not explicitly define the term of "whistleblower", the employee who discloses information is referred to in the law as "an employee who notifies concerning censurable conditions at the undertaking[30]".

54. In **Romania** the protection of "whistleblowers" is regulated by the **Act on the Protection of "whistleblowers" (Law n°571/2004**[31]). The law refers to the protection of "whistleblowers" against administrative measures by their superiors when they lodge official complaints based on good faith about suspected corrupt or unethical practices and violations of the law. The law respects the whistleblower's confidentiality.

55. The Romanian law is one of the rare European laws on the matter to propose a definition of the term of "whistleblower". The law states: "A whistleblower (avertizor) is an individual who reveals violation of laws in public institutions made by persons with public powers or executives from these institutions". This definition must be read in conjunction with that of "whistleblowing in the public interest", which is defined as reporting, in good faith, on any deed to infringe the law, the professional ethical standards or the principles of good administration, efficiency, efficacy, economy and transparency.

56. This law sets out a list of the persons or officials to whom 'whistleblowing reports' can be directed, and these include mass media and NGOs.

57. Whilst the Romanian legislation is fairly progressive, it only applies to employees of the public sector.

58. In the **Netherlands,** a 1999 Law using the term "klokkenluiders" ("bell ringers") for "whistleblowers" , provides some protection to public servants. Among public servants as well as among politicians at all levels of governance, doubts have arisen about the effectiveness of this Law, as the rules prescribe that the public servant must always first report to his/her supervisor, and that may well be where the problem is located.

59. As regards the private sector, a detailed report presented in 2006 to the Ministry of Labour and Social Affairs evaluates current self-regulated whistleblowing procedures in companies. Apart from a Bill presented in Parliament by a small opposition party there seems to be no progress on this neither in Government nor in Parliament. Discussions in the political sphere on this subject, and also on the effectiveness of the protection afforded to public servants acting as "bell ringers", are still ongoing.

ii. Countries where draft laws on the protection of "whistleblowers" have been submitted to parliament

60. In **Germany**, two separate drafts are under discussion for private sector employees and for civil servants. As regards the private sector, a "draft for discussion" of a law on labour contracts was published by the Bertelsmann Foundation in August 2006[32]. In addition, a draft of a new paragraph 612a of the German Civil Code (BGB) for the protection of "whistleblowers" from dismissal and other reprisals[33] was published in April 2008 and discussed during a hearing in the Bundestag's Committee on Food, Agriculture and Consumer Protection on 4 June 2008[34]. The draft has not progressed any further since then.

[30] See Section 2.4 of the "Act relating to working environment, working hours and employment protection, etc".
[31] See (in Romanian only): http://www.dreptonline.ro
[32] Available under http://www.bertelsmann-stiftung.de/best.de/media/xcms_bst_dms_22399_22400_2.pdf
[33] See http://www.bundestag.de/ausschuesse/a10/anhoerungen/a10_81/16_10_849.pdf
[34] http://www.bundestag.de/ausschuesse/a10/anhoerungen/a10_81/index.html

61. As regards the public sector, the new Civil Service Status Law[35] which came into force on 1 April 2009, includes a section (§ 37 II lit. 3.) dispensing public servants from their normal duty of official secrecy in order to allow them to expose suspected cases of corruption. This provision is intended to implement Article 9 of the Council of Europe Civil Law Convention against Corruption of 4 November 1999.

62. In **Slovenia,** a motion[36] to draft and adopt such a law was presented in 2006 to the Parliament, but has not yet produced any results. No further details concerning this motion have been provided to us to date.

63. In **Switzerland**, a motion[37] introduced simultaneously by Remo Gysin in the Lower House and our colleague Dick Marty in the Upper House, asked the Swiss government to present a draft law ensuring an "effective protection against unjustified dismissals and other discriminations against "whistleblowers" ". It was accepted by the two Houses of Parliament in 2005 and in 2007 respectively, and the Federal Council (Government) has begun working on draft legislation.

64. The motion underlines that the draft law on the protection of "whistleblowers" should include provisions regarding the prevention of abusive dismissal and other forms of discrimination against a "whistleblower" disclosing irregularities in a company; should allow "whistleblowers" to make a wider disclosure to the public opinion only as a last resort; should examine whether the existing sanction (payment by the employer to the dismissed employee of up to six months' salary) against employers abusively dismissing their employees is sufficient, and if not, consider strengthening the sanction.

65. Meanwhile, anonymous hotlines have been opened in Switzerland encouraging "whistleblowers" to learn about their rights and find out whom to contact with an allegation of corruption or fraud.

66. Among the 26 replies received, **Lithuania** is the only country where a draft law on the protection of "whistleblowers" was introduced in parliament in 2003, but rejected. In collaboration with British experts, a Law on Protected Disclosures[38] was drafted by the Special Investigation Service (SIS)[39], submitted to parliament for further deliberation, but rejected in 2004. The draft law aimed at providing for the uniform protection of employees or other persons who report corruption-related acts. The main guarantees included the prohibition of retaliatory measures against them and, in the event that such measures are applied or a person is threatened with their application, the right to appeal to the institution duly authorised by the government to examine such reports, or by another law enforcement institution. Moreover, the draft law prohibited the termination of a labour contract with an employee who reports a corruption-related violation without the consent of the authorised institution and set out measures to be applied to the employer violating these requirements.

67. The draft law also gave a definition of the "whistleblower" or "reporting person" defined as an "employee reporting corruption-related offences which became known to him in the course of his service or labour-related activities". It extended to both the private and public sectors.

68. Whilst GRECO's Seventh General Activity report indicates that Lithuania's draft Law on Protected Disclosures was rejected on the grounds that the Lithuanian authorities believed that there was no need for a separate law as it would repeat the effect of provisions in other laws[40], the Anti-Corruption Programme of the Lithuanian government still foresees the enactment of specific legislation for the protection of "whistleblowers" .

[35] BGBl. 2008 I, p. 1010 (http://217.160.60.235/BGBL/bgbl1f/bgbl108s1010.pdf).
[36] For information (in Slovenian only) concerning this motion see p. 32 of the document on http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/Varuh_LP_2006_SLO.pdf
[37] See the site of the Swiss section of Transparency International on the Gysin/Marty motion and its current state of progress
(http://www.transparency.ch/fr/korruption/Schweizerische_rechtliche_Situation/Whistleblowers/index.php)
[38] Draft law available only in Lithuanian on: http://www3.lrs.lt/cgi-bin/getfmt?Cl=e&C2=229608
[39] This independent agency accountable to the President and to the Parliament was established in 1997. Its task is to collect and use intelligence about criminal associations and corrupt public officials as well as to carry out prevention activities. http://www.stt.lt/?lang=en
[40] See GRECO's Seventh General Activity Report (2006) adopted at GRECO's 32nd Plenary Meeting, p. 11, www.coe.int/greco

iii. Countries having, to date, no specific legislation or draft legislation on the matter but providing varying degrees of protection for "whistleblowers" in different laws

69. Scattered provisions related to the protection of "whistleblowers" can be found in criminal codes, laws on the status of civil servants, on freedom of speech and expression or in anti-corruption laws. A common element to all the countries mentioned below is that none expressly defines the concept of whistleblowing.

70. In **Austria,** some laws permit or even demand disclosures and grant a certain level of protection, but there is no general regulation, let alone encouragement, of whistleblowing so far. However, academic and political debate on whistleblowing has begun in the last five years, following some initiatives at EU level, especially regarding public servants. But no proposals have been presented so far.

71. The theme of whistleblowing is seen through the prism of the principles and tradition of administrative secrecy. Austria is currently trying to explore ways of making administration more transparent and accountable[41]. Some legal reforms under discussion in this context also concern the protection of "whistleblowers" , such as the draft law to reform the penal code and criminal procedure to promote the fight against corruption introduced by the Federal Ministry of Justice in July 2007. Article II § 4 of the draft is aimed at encouraging whistleblowing in a public or private body faced with practices of corruption[42].

72. As for **Bulgaria**, there are no laws specifically protecting "whistleblowers" and it seems that Article 76 (3) of the Law of Encouragement of Employment would be the closest one can find in Bulgarian legislation regarding the protection of "whistleblowers", although no mention is made of this notion. The article states that: "The control bodies shall be obliged: to check up in due time the received warnings of offences; not to make public information representing state, official or trade secret which have become known to them in connection with exercising this control; not to use the obtained information for their own benefit or that of other persons; to keep confidential the source from which they have obtained the warning of an offence".

73. The Bulgarian reply also refers to the protection of witnesses under the Penal Procedure Code, but again, as we have seen earlier, the term "whistleblower" should not be confounded with that of "witness", considering that a whistleblower's protection needs to start from the very moment he/she makes a disclosure and not only when a court case is opened, especially if we consider that "whistleblowing" does not necessarily lead to litigation.

74. In **Croatia**, the only existing provision regarding the protection of what could be assimilated to a "whistleblower" is linked to corruption-related offences. In that respect, Article 115 of the Croatian Labour Act stipulates, under the "reasons not constituting just cause for dismissal": "the worker turning to responsible persons or competent state administration bodies or filing a bona fide application with these persons or bodies, regarding a reasonable suspicion about corruption, is not considered to be a just cause for dismissal".

75. Croatia is in the process of drafting a new Labour Act in line with European Union legislation in the field of labour relations and, according to the answer received to the questionnaire, Croatia is planning to address the question of the protection of "whistleblowers" in this new Labour Act.

76. In **Cyprus**[43], one can only find in the Civil Service Law an article stipulating that "any civil servant who while performing his duties, ascertains or believes that another civil servant has been involved in bribery or fraudulent actions must report these incidences to his/her supervisor in written form together with all relevant evidence to support his/her case"[44]. This provision makes no express mention of a subsequent protection after such a disclosure is made, but it is likely to be implied. The provision also does not deal with the situation when the supervisor in question either does not follow up the information, or is himself or herself part of the problem.

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[41] See Österreich Konvent: http://www.konvent.gv.at/portal/page?_pageid=905,643947&_dad=portal&_schema=PORTAL

[42] Draft law is available on : http://www.parlament.gv.at/

[43] The present explanatory memorandum does not cover the area which is administered by the Turkish Cypriot Community.

[44] Article 69A of the Civil Service Law.

77. Regarding **Estonia**, the reply provided informs us that in the Estonian language there is no equivalent for the word "whistleblower", the closest term being "tunnistaja", which means "witness". Hence, the Estonian Witness Protection Act of 2005 is the closest one can get to "whistleblower" protection, but as we have already seen a witness cannot be assimilated to a "whistleblower".

78. **Greece** has no specific legislation concerning the protection of "whistleblowers". However, Greek legal practice accepts that an employee's responsibility is not engaged if he/she reveals information aiming to protect the public interest.

79. A provision is included in Article 371 of the Greek Penal Code providing that the breach of professional confidentiality by a lawyer, priest, public notary, doctor, pharmacist and others is not punished if the person aims at preserving the public interest.

80. **Hungary** has no comprehensive set of laws protecting "whistleblowers" to date. Anyone may get redress for their complaints or "announcements of public concern" filed to state or local organs under Act XXIX of 2004, the only exceptions being complaints that fall under judicial or public administrative procedures. An "announcement of public concern" is one that draws attention to circumstances that need to be addressed for the sake of a community or society as a whole and may also contain recommendations for action. According to paragraph 257 of the Criminal Code anyone who takes detrimental action against a person who has made an announcement of public concern is guilty of misdemeanour and may be punished by imprisonment not to exceed two years. However, no other protection nor anonymity is afforded to "whistleblowers" , nor has the potential conflict of disclosing state or official secrets for the public good been settled. As the system has many loopholes, whistleblowing does not appear to be a widely used tool in the fight against corruption, Transparency International Hungary has recommended the adoption of more effective legislative rules to be complemented by adequate sectoral and organisational codes of conduct[45].

81. The Hungarian government is currently working on a new whistleblower protection policy and legislation package. According to the draft bill a new office would be set up to protect "whistleblowers" . It would coordinate the Government's anticorruption activities, provide training on ethics, receive reports of "whistleblowers" and intervene to protect "whistleblowers" . Furthermore this office would investigate cases, though any criminal cases would be forwarded to the police or prosecution. The office would be also able to impose fines in non-criminal cases.[46]

82. **Italy** has famously well-developed mechanisms for the protection of "informatori", based on Article 203 of the Code of Criminal Procedure and other measures foreseen in a Law of 13 February 2001 on "collaborators of justice" and "pentiti" ("repenting" former members of organised criminal groups). But this legislation does not appear to cover other types of "whistleblowers" denouncing abuses in the public or private sectors short of appearing in court as witnesses for the prosecution.

83. **Moldova** was the subject of the "leading case" of the European Court of Human Rights concerning whistleblower protection. In the 2008 Grand Chamber judgment of Guja v. Moldova[47], the Court unanimously found a violation of Article 10 ECHR (freedom of expression) of an employee of the Prosecutor General's office dismissed for having leaked to the press official letters documenting political interference in ongoing criminal investigations. It was precisely the absence of any legislation setting up designated channels for protected disclosures that allowed the whistleblower to go straight to the press.

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[45] For further details on that please see TI National Integrity Studies on the Hungarian public and private sectors (http://www.transparency.hu/nis_english)

[46] The Hungarian chapter of Transparency International welcomes the initiative whilst disagreeing with the idea of making the same office responsible for protecting "whistleblowers" and investigating the cases revealed by them. It would therefore prefer to leave all criminal investigations to the ordinary law enforcement bodies.

[47] Application No. 14277/04, judgment of 12 February 2008.

84. In **Poland,** the topic of whistleblowing is very seldom mentioned and it seems that there is no real translation into Polish of the term "whistleblowing". The most serious obstacles in introducing rules on the protection of “whistleblowers” are Polish cultural norms. Whistleblowing can be quite easily misunderstood as denunciation, which is strongly condemned in Polish culture – understandably so after Poland’s long history of foreign domination and dictatorship. However, a recently published article[48] finds that informing about reprehensible behaviour in an organisation is gradually becoming accepted by society, especially by younger people. But the law still fails to address the issue in any depth.

85. The term "whistleblower" is not in use in **Serbian** law either. But the Serbian reply refers to some provisions related to public concerns, to communication based on the disclosure of wrongdoings and penal and administrative sanctions against fraud scattered in laws such as those governing labour relations, public administration, company law, the Criminal Code, and others[49]; but these do not directly address the protection of "whistleblowers" as such.

86. In **Slovakia,** no specific legislation on the protection of whistleblowing exists or is being prepared. The concept of whistleblowing is rarely discussed in the country and the practice is not encouraged. However, a provision in the Slovakian Law on labour relations is interesting in this context: "The enforcement of rights and obligations arising from labour law relations must be in compliance with good morals. Nobody may abuse such rights and obligations to the damage of another participant to a labour law relation or of co-employees. In the workplace, nobody may be prosecuted or otherwise sanctioned in the performance of labour law relations for submitting a complaint, charge or proposal for the beginning of prosecution against another employee or the employer".

87. Under Slovakian law, employees who have a suspicion of misconduct, have in general four options: to ignore the suspicion and continue working; to raise the suspicion within the organisation; to draw attention to the suspicion publicly or to inform of the suspicion anonymously within the structure of the organisation, every option bearing different consequences.

88. In **Sweden**, there are no plans at this stage to legislate specifically on the protection of “whistleblowers” , neither is the concept of whistleblowing defined in Swedish legal texts. However, a number of provisions may be found in various pieces of legislation.

89. For example, journalists' sources of information are protected by law.

90. Whilst defamation is still a criminal offence in Sweden, a "whistleblower" publishing correct information on fraudulent activities within a company or who has at least reasonable grounds to believe in the truth of such information cannot be found guilty of defamation.

91. According to Swedish employment law, an employment contract can usually be terminated only for objective reasons. An employee has the right to criticise an employer as long as he/she addresses the information to the right authority. Factual information must be reasonably well-grounded and the employee must first contact the employer and try to achieve correction before making his/her criticism public. As long as those rules are followed, the employee does not risk losing his/her employment or other privileges at work.

92. In Sweden, some famous "whistleblower" cases have given rise to specific legislative interventions such as the Lex Sahra[50] amending the Social Services Act, which states that every person active in the care of elderly persons shall verify that these persons receive good care and have secure living conditions. Whoever observes or becomes apprised of a serious abuse in the care of any individual shall report the matter immediately to the social welfare committee.

[48] Research by Mr Arszułowicz, *Sygnalizowanie zachowań nieetycznych* (*Signalling unethical behaviours*), Business Ethics Centre, http://www.cebi.pl/texty/91whistleblowing.doc

[49] See http://www.lexadin.nl/wlg/legis/nofr/eur/lxweser.htm

[50] The regulation was named after a young assistant nurse who became known to the public by speaking in a television programme about serious neglect of patients that occurred in a home for elderly run by a private company. The person that the regulation is named after did not suffer any negative consequences in her relations towards subsequent employers.

93. Overall, the existing provisions in the various Swedish laws appear to give stronger protection to "whistleblowers" in the public sector than in the private sector.

94. The **Turkish** reply indicates that no specific legislation on the protection of "whistleblowers" exists and provides a link to the law on the protection of witnesses[51].

95. As for **Bosnia and Herzegovina**, **Denmark**, **Georgia** and the **"the former Yugoslav Republic of Macedonia"**, all four replies only briefly underlined the absence of any kind of specific legislation regarding the protection of "whistleblowers" in the respective national legislation.

96. As we have seen above, specific legislation on the protection of "whistleblowers" still remains the exception in Europe and more efforts are needed so that existing rules do not remain theoretical. As long as potential "whistleblowers" have reason to fear that speaking up against corruption and other abuses might jeopardise their employment, career or place them in danger, many of them will prefer to remain silent. Hence the importance of improving law and practice on the protection of “whistleblowers” in Europe.

iv. The United States as a positive example

97. I should like to say very clearly that in this field, Europe has much to learn from the **United States of America**. The contribution on the Whistleblower Protection Act (WPA) of 1989 which the Congressional research service sent us in reply to our questionnaire is inspiring, also in that it does not pretend that the present situation is perfect. Elaine Kaplan, former US Special Counsel, who testified before the Committee at its meeting in Moscow on 11 November 2008, provided additional valuable insight.

98. The United States were first to legislate in this field. Legislation in respect of whistleblowing dates back to the 19th Century when the False Claims Act was introduced during the Civil War when it was discovered that companies were selling faulty supplies to the army.

99. Whistleblowing also seems to be culturally better accepted in the United States than in most European countries. The American approach is based on an individual contract between the citizen and the state, which motivates citizens to counteract and control actions which are taken against the public interest. Denouncing abuses is thus considered as socially correct, irreproachable, even as a duty[52]. “Whistleblowers” are seen as public heroes, and whistleblower protection laws are generally adopted unanimously, as it would be “political suicide” if a Congressman or Senator were to be seen opposing such a measure. At the same time, “there is a gap between rhetoric and reality by political leaders”[53].

100. Today, the WPA is the main piece of legislation protecting "whistleblowers" in the United States. Unlike in the United Kingdom, this act only covers public sector employees, and only those working for federal bodies; but separate laws, in particular the Sarbanes Oxley Act of 2002[54] also include private companies, and a majority of states have enacted their own whistleblower protection legislation[55].

101. The WPA’s intent was to ‘strengthen and improve protection for the rights of the Federal employees, to prevent reprisals, and to help eliminate wrongdoing within the Government – by mandating that employees should not suffer adverse consequences as a result of prohibited personnel practices; and establishing that while disciplining those who commit prohibited personnel practices may be used as a means by which to help accomplish that goal, the protection of individuals who are the subject of prohibited personnel practices remains the paramount consideration’[56].

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[51] See (in Turkish only): http://www2.tbmm.gov.tr/d23/1/1-0346.pdf

[52] See *"Salariés, héros ou délateurs ? Du Whistleblowing à l'alerte éthique"*, Françoise de Bry, in Lettre du Management Responsable, 6 October 2006.

[53] Tom Devine, ibid (note 2), p. 85; he gives as an example the birth of the WPA itself, which was delayed by a change of heart of President Reagan.

[54] The Sarbanes Oxley Act of 2002 stipulates that international corporations that are either owned in part by US companies or traded on US stock exchange are required to adopt whistleblowing procedures.

[55] Interestingly, the Moldovan Government, in attempting to justify the dismissal of an employee who had blown the whistle, argued *inter alia* that 21 states in the United States of America did also not afford protection for external whistle-blowing (Guja v. Moldova, note 47 above, paragraph 66).

[56] WPA 5 U.S.C paragraph 1201 nt.

102. In order for the protection of the WPA to be triggered, a case must contain the following elements: a personnel action that was taken because of a protected disclosure made by a covered employee[57]. A covered employee is generally understood as a current employee, a former employee or an applicant for employment to a position in the executive branch of government.

103. Any disclosure of information is protected if an employee reasonably believes and evidences a violation of any law, rule, or regulation or evidences gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to health and safety. However, the WPA limits evidence of mismanagement to 'gross' mismanagement. This restriction thus allows a certain freedom of interpretation considering that the law does not define under what circumstances mismanagement is considered as 'gross'.

104. In comparison with other laws existing in Europe, the enforcement mechanism[58] set out in the WPA is more robust and easily accessible, even compared to the United Kingdom, where the "whistleblowers" themselves have to take their case to the employment tribunal. The WPA foresees that a whistleblower suffering a reprisal can file a complaint with an independent investigative and prosecutorial agency who will investigate the case and who will seek corrective action from the employer if the case is proved right[59].

105. However, according to the Government Accountability Project (GAP)[60] and other non-profit organisations, amendments to the WPA are urgently needed in order to restore the efficiency of the WPA which appears to be eroding, especially since the terrorist attacks of 11 September 2001. Threats to the protection of "whistleblowers" derive from provisions in the post 9/11 USA Patriot and Homeland Security Acts, which remove WPA coverage for the disclosure of any information pertaining to very broadly-defined "critical infrastructures".

106. Moreover, the protection afforded to members of the armed forces and of the intelligence services is extremely limited, the biggest loophole being the absence of independent due process rights for actions to deny or remove an employee's security clearance. Clearances are functional prerequisites for employment for three million US government employees, and their loss means not only individual termination of employment, but makes blacklisting inevitable, as it means the employee's loyalty to the nation cannot be trusted[61]. Against this background, the public disavowal of the accusations on ethical grounds by military prosecutors in charge of cases against terror suspects detained at Guantanamo[62] deserves particular respect.

107. Finally, it seems that the enforcement mechanism of the WPA, the Office for Special Counsel, which is tasked for intervening on behalf of "whistleblowers" and helping them throughout the procedure of the WPA is increasingly lagging behind in handling cases and its efficiency is currently being put into question by the public[63].

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[57] See *The Whistleblower Protection Act: An Overview*, by L. Paige Whitaker, March 2007.

[58] The WPA established the Office of Special Counsel (OSC) as an enforcement mechanism with the duty to "protect employees, former employees and applicants for employment from prohibited personnel practices and to receive allegations of prohibited personnel practices and to investigate such allegations, as well as to conduct an investigation on possible prohibited personnel practices on its own initiative, absent from any allegation". WPA 5 U.S.C § 1212 (a) (2).

[59] See GRECO's Seventh General Activity report.

[60] GAP is a non-profit interest group in the United States that promotes government and corporate accountability by advancing occupational free speech, defending "whistleblowers" and empowering citizen activists. www.whistleblower.org

[61] Tom Devine, ibid (note 2), p. 88.

[62] See BBC news 25 September 2008 on the resignation of Lt. Col. Darrel Vandeveld, who was the fourth military prosecutor to step down in these circumstances.

[63] See "The War on Whistleblowers" by James Sandler, published on 1 November 2007 at: http://centerforinvestigativereporting.org/articles/thewaronwhistleblowers

One of Elaine Kaplan's predecessors in the office of Special Counsel, Haldane Robert Mayer, had to resign from that position in 1982 after the Office of Special Counsel was accused of holding seminars for political appointees and agency managers to teach them how to fire "whistleblowers" effectively within the confines of the law. The scandal, which led Congress to strengthen the whistleblower law did not stop President Reagan from appointing Mayer as a judge of the Federal Circuit Court, which is competent to hear all federal whistleblower cases and whose notoriously whistleblower-unfriendly case law prompted Congress to intervene several times (see James Sandler, pp. 5-6).

Mrs Kaplan's successor is currently himself under investigation for allegedly retaliating against one of his own collaborators, who had blown the whistle on alleged abuses in the Office of Special Council.

108. Despite these criticisms, the United States Whistleblower Protection Act is still an excellent source of inspiration in order to identify good practices that have functioned in the real world without causing unacceptable damage to legitimate government or corporate interests.

109. The Whistleblower Protection Enhancement Act of 2007[64] aims at rectifying some of these shortcomings, in particular by including employees of the CIA and other security services in the protection of the WPA. The Act was adopted by a majority of 80% in the House of Representatives in March 2007, despite the veto threat by President Bush[65], but it failed in the later stages of the legislative process. President Obama has reportedly vowed to further improve whistleblower protection[66].

V. International instruments concerning the protection of "whistleblowers"

110. The **European Convention on Human Rights** protects whistleblowing as an aspect of the freedom of speech (Article 10 ECHR). The leading case of the European Court of Human Rights is that of Guja v. Moldova[67], in which the Court, in February 2008, found a violation of Article 10 because the applicant had been dismissed for divulging, without ulterior motives, information that was truthful and of legitimate interest to the public. The Court has taken a fairly progressive position, in line with its strong stand in favour of freedom of expression as one of the essential foundations of a democratic society[68], even in a case of a public servant divulging "internal" or even secret information:

> "In this respect the Court notes that a civil servant, in the course of his work, may become aware of in-house information, including secret information, whose divulgation or publication corresponds to a strong public interest. The Court thus considers that the signalling by a civil servant or an employee in the public sector of illegal conduct or wrongdoing in the workplace should, in certain circumstances, enjoy protection. This may be called for where the employee or civil servant concerned is the only person, or part of a small category of persons, aware of what is happening at work and is thus best placed to act in the public interest by alerting the employer or the public at large"[69].

111. Another instrument of the Council of Europe, which has a bearing on the protection of "whistleblowers" is the Criminal Law Convention on Corruption of 27 January 1999, which foresees in its Article 22 that

> "[E]ach Party shall adopt such measures as may be necessary to provide effective and appropriate protection for:
> a. those who report the criminal offences established in accordance with Articles 2 to 14 or otherwise co-operate with the investigating or prosecuting authorities;
> b. witnesses who give testimony concerning these offences."

The Explanatory Report to this Conventions states in its paragraph 111 that "the word 'witnesses' refers to persons who possess information relevant to criminal proceedings concerning corruption offences as contained in Articles 2-14 of the Convention and includes "whistleblowers" .

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64 H.R.985, 110th Congress

65 See "Statement of Administration Policy" of 13 March 2007 at: www.whitehouse.gov/omb/legislative/sap/110-1/hr985sap-h.pdf and the Liberty Coalition's "Informed responses to Statement of Administration Policy (SAP) on HR 985 (published on 19 August 2008)" at http://www.libertycoalition.net/informed-responses-to-statement-of-administraton-p)

66 On the latest political developments concerning whistleblower protection see Jesselyn Radack, Tom Devine and Adam Miles, Protecting Whistleblowers, 21 November 2008 at: http://whistleblower.org/doc/2008/TransitionMemo.pdf

67 See paragraph 83 above for a summary of the facts.

68 See paragraph 69 of the Guja v. Moldova judgment (paragraph 84 above), with references to earlier cases upholding this principle.

69 Guja v. Moldova (ibid), paragraph 72.

112. The Civil Law Convention on Corruption of 4 November 1999 provides in its Article 9 that “[E]ach Party shall provide in its internal law for appropriate protection against any unjustified sanction for employees who have reasonable grounds to suspect corruption and who report in good faith their suspicion to responsible persons or authorities”. Paragraph 66 of the Explanatory Report states that such employees shall be protected from “being victimised in any way”.

113. The UN Convention against Corruption[70] and the Convention of the International Labour Organisation on Termination of Employment[71] have similar provisions.

114. These instruments have in common that they are limited so specific issues (in particular, the fight against corruption) and constitute a “lowest common denominator” that leaves much room for interpretation. Their very existence, and their implementation in national law, represent as many steps in the right direction, but they do not provide the required robust protection of “whistleblowers” in all the cases in which this would serve the public interest.

VI. Best practices – to be identified and disseminated

115. We have noted that mentalities are opening up to the concept of whistleblowing and to the need to protect those who dare to expose abuses. International organisations and NGOs such as Transparency International and Public Concern at Work have made important contributions in this respect. Member states should continue to learn from one another and exchange best practices in that field. I would like the Assembly’s report on this topic to make a useful contribution to this effect.

116. Here are a few interesting existing practices in the countries we have looked at above:

a. **Specific legislation on the protection of "whistleblowers"** bringing together and further developing scattered provisions in different areas of law, such as the British Public Interest Disclosure Act, would be useful. Such legislation should not only apply to corruption-related offences but to any kind of malpractice, abuse, or violations of the law that could be detrimental for the public interest in the widest sense, including the interests of shareholders and customers of private companies. The respective laws in the United Kingdom and the United States, for example, cover all kinds of malpractices, from corruption-related offences to specific dangers to health or safety. From the Council of Europe's point of view, and in the light of the reports of the Assembly exposing a number of serious human rights violations that were made possible by the cooperation of “whistleblowers” [72], I submit that **the disclosure of serious human rights violations should always be covered by whistleblower protection laws**, including, and especially when they are committed under the cloak of official secrecy.

b. Legislation on the protection of "whistleblowers" should apply **to both the public and private sectors** as is the case of the ‘Act relating to working environment, working hours and employment protection, etc’ in Norway or of the PIDA in the United Kingdom.

c. Moreover, governments should understand that **witness protection laws are insufficient** to protect “whistleblowers” , the main reason being that “whistleblowers” need protection from possible retaliation from the very moment they make their disclosures and not only when a court case is opened – something an effective whistleblowing mechanism might be able to avoid in many instances.

d. Most existing whistleblowing legislations focus on protecting workers against reprisals by their employers. Legislators should consider **extending the scope of protection to other persons outside of an organisation** who might disclose information regarding serious irregularities, including immunity from prosecution for violation of state secrecy or the like.

[70] Adopted by the General Assembly by Resolution No. 58/4 of 31 October 2003 and in force since 14 December 2005 (Article 33).

[71] ILO Convention No. 158 of 14 February 1997.

[72] For example the reports by Dick Marty on renditions and secret detentions (Resolutions 1507 (2006) and 1562 (2007) and Docs. 10957 (2006) and 11302 (2007) or that of Christos Pourgourides on the high-profile disappearances in Belarus (Resolution 1371 (2004), Doc. 10062 (2004)).

e. Whistleblowing laws should include provisions to protect the identity of "whistleblowers" who fear retaliation after they disclose information. In the United States, the WPA stipulates that the **identity of the whistleblower may not be disclosed** without the individual's consent unless the Office of Special Counsel "determines that disclosure is necessary to avoid imminent danger to health and safety or an imminent criminal violation"[73].

f. While most existing legislation protecting "whistleblowers" allow the disclosures to be made either **anonymously or confidentially**, practice tends to show that confidentiality is preferred. A confidential disclosure[74] fuels less mistrust than an anonymous disclosure[75]. Moreover, it is easier for the "whistleblower" to be protected against possible retaliation or victimisation from his/her employer if his/her concern is expressed under his/her own name, albeit confidentially. The accent on confidentiality rather than anonymity also helps ensure the protection of any persons who are unjustifiably accused of wrongdoing.

g. All existing legislation protecting "whistleblowers" which we have discussed in this memorandum has underlined the importance of protecting **disclosures made in 'good faith'**, yet the legislation fails to define accurately what good faith entails. Sometimes it seems that the emphasis is rather put on the motives of the "whistleblower" rather than on the veracity of the information itself. In Norway, 'bad faith' or ulterior motives of the whistleblower will not make the disclosure unlawful as long as it is in the public interest. In my view, as a matter of ethics and of the credibility of the information divulged, "whistleblowers" should not be paid, and a disclosure should be considered as being made in good faith when the whistleblower had reasonable grounds to believe that the information disclosed is correct, even if it later turns out that he or she was honestly mistaken. If, however, the purported whistleblower has intentionally or recklessly made false accusations, he/she should not benefit from any special protection and be held to account in the usual way.

h. Where a whistleblower is victimised following a protected disclosure, he/she should be given the opportunity to have access to an **enforcement mechanism** investigating the case of the whistleblower's complaint and seeking corrective action from the employer if the case is proved, as under the WPA in the United States. The victimised whistleblower should be able to bring an action before an employment tribunal for compensation and, if dismissed, should be given the possibility to apply for an interim order to keep his/her job pending a full hearing, as foreseen under the PIDA in the United Kingdom. As in the United States, retaliation against a whistleblower should also carry a downside risk for those responsible: the whistleblower should be given the possibility to counter-attack and seek disciplinary action to punish the retaliatory acts. The most effective option to prevent retaliation may be personal liability of those found responsible for violating whistleblowing laws for any punitive damages awarded against the employer.[76]

i. The **burden of proof** should be apportioned in a whistleblower-friendly way, as is now the case in the United States, after several legislative interventions designed to overturn hostile case law. For corrective action to be ordered it is now sufficient that the employee has demonstrated that a disclosure was a "contributing factor" in the personnel action taken against him. After the worker establishes a *prima facie* case of retaliation, the employer must now prove by "clear and convincing evidence" – rather than by a mere "preponderance of evidence" as required by previous case law – that the same action against the employee would have been taken anyway for reasons independent of the whistleblowing.

j. **Whistleblowing** procedures should remain a **possibility** offered to employees and should **not give rise to an obligation to report**, with the possible exception of dangers to life and limb. Whistleblowing should generally be used for problems which cannot be solved in the usual hierarchical order, considering the risk of abuse, manipulation and wrongful denunciation. Employers should also bear in mind that, when implementing whistleblowing systems within their organisations they should treat any such information with due care, especially when it is related to persons.

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[73] WPA 5 U.S.C § 1213 (h).
[74] Where the recipient of the disclosure knows the identity of the person making the disclosure but agrees not to reveal the person's identity.
[75] Where the identity of the person making the disclosure is totally unknown.
[76] Tom Devine, ibid (note 2 above), p. 99.

k. The implementation and impact of relevant legislation on the effective protection of "whistleblowers" should also be **monitored and evaluated** at regular intervals by independent bodies. The United States Congress and the Dutch Ministry of Labour Relations have set good examples in this respect.

l. Organisations of the public sector and private companies should complement legislative efforts by **raising awareness** among their employees **about the positive effects of whistleblowing** and by setting up, on their own initiative, **safe internal procedures to draw attention to abuses**. In Norway and Romania, for example, the law obliges employers to set up internal whistleblowing procedures that employees are aware of and trust. Such internal procedures could take the form of confidential bodies tasked with receiving the information from potential "whistleblowers" whilst guaranteeing confidentiality and advising them on further steps (as foreseen in France and Belgium). Not only will such internal procedures benefit the organisation or the company by **demonstrating its ethical commitments**, but also by encouraging employees to raise matters internally, thereby **making disclosures to the "outside"** (to the media or the police for example) **less likely**. Most importantly, such procedures would further the efficient running of the organisation by **deterring** corruption, fraud or any other types of **mismanagement**.

m. Increased **civil society involvement** in counselling on whistleblowing should be encouraged in order to raise awareness in the society at large. Specialised "whistleblower" groups such as Public Concern at Work in the United Kingdom or the Government Accountability Project in the United States, together with international anti-corruption groups such as Transparency International contribute to popularising the concept of whistleblowing by explaining how whistleblowing helps deter and correct wrong-doings and promotes transparency and good governance. They can also assist and advise countries in adopting new laws in the field.

n. The Council of Europe itself should set an example by establishing a strong internal whistleblowing mechanism covering all sectors of the Council of Europe, including its partial agreements. The procedure, which should incorporate the best practices set forth in this report, should include the possibility to make protected disclosures on a confidential basis to a specially mandated body such as the service of the Internal Auditor, which should also be required to investigate such disclosures and ensure that appropriate follow-up is given to them. The mechanism should also provide the existing Administrative Tribunal responsible for adjudicating staff disputes with appropriate powers to review and correct, if necessary, the actions of senior management relating to the whistleblowing procedure.

VII. Conclusion

117. By way of conclusion, the Assembly should send a strong signal in the form of a resolution recognising the value of whistleblowing as an effective tool to prevent mismanagement, corruption and other abuses, including all human rights abuses, and to strengthen accountability. It should also make concrete proposals for legislative improvements for an ameliorated protection of “whistleblowers” both in the public and in the private sectors, laying down standards derived from the observation of good practices and lessons learned in those countries which have already moved in this direction.

118. The Assembly should also recommend to the Committee of Ministers to take further steps promoting whistleblowing and improving the protection of “whistleblowers” in Council of Europe’s member states.

119. The Committee of Ministers could begin by drawing up Guidelines for the protection of “whistleblowers” , based on the standards put forward by the Assembly, and reflect on the possibility of drafting a framework convention in this field.

120. To set a good example for its member states, the Council of Europe should establish, without delay, a strong internal whistleblowing mechanism covering all sectors of the organisation, including its partial agreements.

Reporting committee: Committee on Legal Affairs and Human Rights

Reference to committee: Doc 11269, Reference No 3358 of 25 June 2007

Draft resolution and draft recommendation unanimously adopted by the Committee on 23 June 2009

Members of the Committee: Mrs Herta **Däubler-Gmelin** (Chairperson), Mr Christos Pourgourides, Mr Pietro **Marcenaro**, Mr Rafael Huseynov (Vice-Chairpersons), Mr José Luis Arnaut, Mrs Meritxell Batet Lamaña, Mrs Marie-Louise **Bemelmans-Videc**, Mrs Anna **Benaki**, Mr Petru Călian, Mr Erol Aslan **Cebeci**, Mrs Ingrīda **Circene**, Mrs Ann Clwyd, Mrs Alma Čolo, Mr Joe Costello, Mrs Lydie Err, Mr Renato **Farina**, Mr Valeriy Fedorov, Mr Joseph **Fenech Adami**, Mrs Mirjana Ferić-Vac, Mr György Frunda, Mr Jean-Charles **Gardetto**, Mr Jószef Gedei, Mrs Svetlana Goryacheva, Mrs Carina **Hägg**, Mr Holger **Haibach**, Mrs Gultakin Hajibayli, Mr Serhiy **Holovaty**, Mr Johannes Hübner, Mr Michel Hunault (alternate: Mr Jean-Claude **Frécon**), Mrs Fatme Ilyaz, Mr Kastriot Islami, Mr Željko **Ivanji**, Mrs Iglica Ivanova, Mrs Kateřina Jacques, Mr András **Kelemen**, Mrs Kateřina **Konečná**, Mr Franz Eduard **Kühnel**, Mrs Darja **Lavtižar-Bebler**, Mrs Sabine **Leutheusser-Schnarrenberger**, Mr Aleksei **Lotman**, Mr Humfrey Malins, Mr Andrija Mandic, Mr Alberto Martins, Mr Dick **Marty**, Mrs Ermira Mehmeti, Mr Morten Messerschmidt (alternate: Mrs Pernille **Frahm**), Mr Akaki Minashvili, Mr Philippe Monfils, Mr Alejandro Muñoz Alonso, Mr Felix **Müri**, Mr Philippe Nachbar, Mr Adrian Năstase (alternate: Mr Tudor **Panțiru**), Ms Steinunn Valdís Óskarsdóttir, Mrs Elsa **Papadimitriou**, Mr Valery Parfenov (alternate: Mr Sergey **Markov**), Mr Peter **Pelegrini**, Mrs Maria Postoico, Mrs Marietta **de Pourbaix-Lundin**, Mr Valeriy Pysarenko (alternate: Mr Hryhoriy **Omelchenko**), Mr Janusz **Rachoń**, Mrs Marie-Line Reynaud (alternate: Mr René **Rouquet**), Mr François Rochebloine, Mr Paul Rowen, Mr Armen **Rustamyan**, Mr Kimmo **Sasi**, Mr Fiorenzo **Stolfi**, Mr Christoph Strässer (alternate: Mr Detlef **Dzembritzki**), Lord John Tomlinson, Mr Tuğrul **Türkeş**, Mrs Özlem Türköne, Mr Viktor Tykhonov (alternate: Mr Ivan **Popescu**), Mr Øyvind **Vaksdal**, Mr Giuseppe Valentino, Mr Hugo Vandenberghe, Mr Egidijus Vareikis, Mr Luigi VItali, Mr Klaas **de Vries**, Mrs Nataša Vučković, Mr Dimitry **Vyatkin**, Mrs Renate **Wohlwend**, Mr Jordi Xuclà i Costa

N.B.: The names of the members who took part in the meeting are printed in **bold**

Secretariat of the Committee: Mr Drzemczewski, Mr Schirmer, Ms Heurtin