



Greece - OECD Programme:
Provision of Technical Assistance
to Fight Corruption

Technical Guidelines for Reporting Misconduct in the Public Sector



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A key priority of the Greek government is the fight against corruption and bribery through the adoption of immediate measures and initiatives. The National Anticorruption Action Plan (NACAP) identifies the key areas for reform and sets out priorities to enhance integrity, transparency and the fight against corruption. The OECD, in collaboration with Greece and the European Commission, has devised a series of supporting measures to facilitate the implementation of the National Anti-Corruption Action Plan (NACAP). This project is scheduled for completion in 2018 and is co-funded by the European Commission and Greece. Further information can be found on the [project website](#).



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Conceptual framework

These guidelines are designed to assist senior public sector officials in establishing and operating a comprehensive framework for the protection of whistleblowers acting in the public interest. This framework is intended to enable the effective management and investigation of allegations of suspected misconduct in the public sector. The Guidelines are supplementary to the Report on the Protection of Whistleblowers Acting in the Public Interest prepared by the OECD (hereinafter "the Report") and are intended to provide guidance to the Legislative Committee established to strengthen the legislative framework for the protection of public interest witnesses. The Report and the Guidelines for the Protection of Whistleblowers Acting in the Public Interest were prepared under Axis 5.1 of the Greece-OECD Programme for the Provision of Technical Assistance in the Fight against Corruption.

The Guidelines set out a number of key outcomes that should be produced by the integrated legal framework for whistleblower protection as described in the Report, together with guidance for their implementation. Furthermore, they identify the key challenges that have arisen in the implementation of similar legislative frameworks in other OECD Member States. The Guidelines are applicable to all types of public bodies and can be adapted to suit the needs of smaller and larger public bodies.

However, as discussed in the report, the simultaneous implementation of all the proposed recommendations may prove to be an ambitious project for the Greek government. This is because it requires significant changes in the structures of the public administration, as well as a general change in the mindset of society regarding the importance of the role of whistleblowers acting in the public interest in the fight against corruption. It is therefore at the discretion of the Greek government to decide on a gradual implementation of the OECD recommendations, which may include the prioritisation of certain recommendations over others and the piloting of these in strategically selected government agencies.

1. Basic principles of a framework for the protection of whistleblowers acting in the public interest

This section sets out the fundamental principles and key objectives that should underpin the development of a robust framework for the protection of whistleblowers acting in the public interest.

1.1. Designing a comprehensive policy for the protection of whistleblowers acting in the public interest

While a written policy for the protection of whistleblowers acting in the public interest is not a guarantee that employees will disclose misconduct or that the relevant authorities will investigate such allegations, it is nevertheless an essential component of any protection system. It is an explicit declaration of the organisation's dedication to cultivating an environment of transparency and accountability regarding any moral concerns that may arise.

The specifics of whistleblower protection mechanisms vary depending on the size and function of public bodies. However, all such mechanisms should contain clear, simple, and understandable features. The management of public bodies should consider the following key features as the foundation of a comprehensive policy for the protection of whistleblowers acting in the public interest:

- i) The organisation's leadership should encourage employees to report workplace misconduct and assure them that appropriate action will be taken to address such reports in a fair and consistent manner,
- ii) The policy should provide a clear definition of the considerations that are expected to arise and clarify that these considerations do not need to constitute full evidence,
- iii) Specific officials should be designated to receive these complaints.
- iv) A commitment by the organisation to protect the identity of whistleblowers and to protect them from retaliatory measures, including examples of concrete measures that can be implemented,
- v) Establish a clear procedure for informants to be informed of the progress of their complaint and to establish timeframes for the examination and analysis of complaints.

Some of these features are described in more detail below.

1.2. Clear definition of the complaints procedure

It is important to clarify from the outset what is meant by the term "misconduct" in the context of a complaint under the whistleblowing policy. Such misconduct is typically (though not exclusively) perpetrated in the workplace. Furthermore, whistleblowing procedures are typically designed to address concerns that fall within the scope of protecting the public interest. They are not intended to address matters that are solely of a private benefit to the whistleblower or that can be resolved through human resources management and settlements.

As detailed in the Report, the misconduct complained of may include the following:

- Breaches of national law and duty by public officials,
- Failure to comply with legal obligations,
- Any action that results in disciplinary proceedings in accordance with the internal rules of procedure,
- Any form of miscarriage of justice that has happened, is happening or is about to happen,
- Any action that directly or indirectly endangers the health or safety of any individual,
- Any action that directly or indirectly damages the environment, or
- The withholding of information that indicates any of the above actions have been, are being, or will be deliberately concealed.

In general, a grievance policy should not be used to exercise constitutional rights or for allegations of harassment and other types of personal disputes that can be resolved by human resources or mediation services, unless those rights and allegations are the result of retaliation for filing the grievance.

1.3 Effective management of allegations of misconduct

The public officials responsible for handling allegations of misconduct must be able to extract the information and assess its reliability and its verifiability. The officials responsible should therefore be appropriately trained in case investigation, financial control and other technical procedures related to the actions of the organisation.

Complaints are prioritised in order to determine the next steps and the resources required to manage each case. Depending on the severity of each case, the appropriate response measures

may range from informal discussions with management to a formal investigation of the case by internal and/or external bodies.

It is the responsibility of every public body to ensure that its employees who have received sufficient training in investigating cases are made responsible for receiving and following up on complaints. It may be possible for other public bodies and authorities with the necessary experience and knowledge to provide the relevant training for public employees.

In the event that a case is particularly complex or that criminal issues arise which cannot be dealt with by the organisation itself, the case should be referred to the predefined competent authorities (e.g. Public Prosecutor's Office, Court of Auditors, Inspector General of Public Administration, General Secretariat for the Fight against Corruption, Greek Ombudsman). Indeed, some investigations may require the input of specialists with technical knowledge and skills in areas such as finance, accounting, IT or the examination of physical evidence.

It should be noted that an inaccurate report does not necessarily imply an intention to mislead. Consequently, in this case, the corresponding penalties should not be imposed on the whistleblower. Prior to imposing a penalty, it is necessary to ascertain whether the employee in question was aware of the untruthful or misleading nature of the content of their complaint at the time of its submission.

1.4 Establish alternative channels for filing complaints to encourage employees to go ahead with the complaint

The nature of the misconduct, the context of the circumstances, as well as the personality of the whistleblower, the alleged perpetrator of the misconduct, and the responsible complaint-handling officials all play a role in determining the degree of trust employees place in each other. This is dependent on whether they choose to direct their complaints to their supervisor, an integrity officer, or a third party outside the organisation's departments. In light of the above, civil servants are free to submit their complaints of potential misconduct to any of the aforementioned individuals, in accordance with the framework for the protection of whistleblowers acting in the public interest in Greece. It is essential that these individuals receive comprehensive training in the investigation of cases and the collection of information from whistleblowers. They must also be equipped with the skills to detect and avoid retaliatory measures, understand the rights and obligations set out in the framework for the protection of informants acting in the public interest in Greece, and learn how to communicate and interact with individuals experiencing emotional distress.

Furthermore, allegations of misconduct can be submitted directly to the relevant officials via a variety of channels, including independent telephone lines, online platforms, face-to-face meetings at an appropriate location, or email.

1.5 Implementing an integrated strategy to address retaliatory measures

Retaliatory measures can take place when management repeatedly fails to address issues reasonably raised by employees. Public organizations are required to demonstrate zero tolerance to any form of retaliation. For such a statement to be effective, it must be accompanied by the implementation of appropriate measures to protect whistleblowers and potential witnesses, investigators, and generally any natural person involved. The policy for the protection of whistleblowers acting in the public interest must include specific and clear measures and the conditions for their implementation, in order to reinforce the organisation's commitment to avoid retaliation. Such measures include the protection of the identity of the whistleblower, tailored investigation procedures, effective redress and compensation measures and specialised training for management on how to identify and deal with cases of retaliation.

One of the most effective ways to protect whistleblowers is to ensure their confidentiality or anonymity. The term 'confidentiality' refers to the disclosure of the identity of the whistleblower to a limited number of officials who are solely responsible for handling the complaint. In contrast, the term 'anonymity' denotes the complete concealment of the identity of the whistleblower at the time of filing the complaint. The confidentiality of the information provided by the whistleblower is further enhanced through the anonymisation of this data and its encryption in a database where the identities of the whistleblowers are recorded. Furthermore, in the event that the information provided leads to the prosecution of the complainant, the whistleblowers' testimony may be superseded if investigators are able to substantiate the complaint with independent evidence. Finally, modern technology now allows for communication while maintaining the anonymity of the informant. For instance, telephone hotlines operated by independent operators, web platforms, or mobile phone applications allow the whistleblower to be identified solely by means of identification numbers.

Nevertheless, in some instances, protecting the identity of the whistleblowers remains a challenge. For instance, there may be individuals with access to the information included in the complaint, or certain whistleblowers may raise suspicions due to the opinions they express or because they possess information directly related to the complaint's content. In some cases, the investigative procedures themselves may reveal the identity of the whistleblower. Public bodies should be aware of these risks and adapt their investigative techniques accordingly. Furthermore, public bodies have the possibility to suspend any action unfavourable to the whistleblowers until the end of the investigation of the case, so that

avoid false positive or negative evaluations as a retaliatory measure against the informant.

In case of unfair treatment of the whistleblower as a result of his/her complaint, and if all prevention efforts have failed, the individual in question may appeal to the competent disciplinary body or the competent court. Possible remedies may include compensation for the whistleblower's loss (e.g. loss of income, damage to his/her reputation and personality, or punitive damages), reinstatement to the employee's previous organisational position and continuation of his/her professional development, transfer to another public body, injunctive relief, and compensation for legal costs.

It is important to note that the management skills required to avoid retaliatory measures are not innate. Therefore, it is essential that all levels of civil servants receive proper training on the following topics: what constitutes retaliation, how to detect and deal with it, the legal protection available to the whistleblower depending on the circumstances, and effective methods of prevention.

1.6 Identification of the personal details of the whistleblower, witnesses and the complainant who are protected¹

The *Guidelines on processing personal information within a whistleblowing procedure* of the European Data Protection Supervisor (*Guidelines on processing personal information within a whistleblowing procedure*) stipulate that personal information that is confidential in the context of a public interest whistleblowing policy may include any information relating to an identified or identifiable person. It therefore includes information about an individual's private life and activities, such as their employment relationships and their economic and social behaviour. As such, the entire content of the complaint may be classified as confidential, as in some cases this relates to the behaviour of the whistleblower.

However, simply mentioning a name in a document does not automatically qualify all of the document's elements as 'data relating to that person'. It is therefore necessary to assess the data contained in each document on a case-by-case basis.

Personal data that are not relevant to the nature of the complaint should not be processed further and should be deleted.

1. For more information, see European Data Protection Supervisor (2016), Guidelines on processing personal information within a whistleblower procedure, accessed online 11 July 2017: https://edps.europa.eu/sites/edp/files/publication/16-07-18_whistleblowing_guidelines_en.pdf.

1.7 Taking adequate security measures to effectively protect confidentiality

It is the responsibility of the civil servants in charge of handling complaints to implement the technical and organisational measures required to ensure the level of security is adequate for the risks involved in processing personal data, taking into account the nature of the data and the processing operations. This also ensures the reliability of the procedures for lodging and managing complaints. It is therefore essential to implement suitable measures to prevent unauthorised access to personal data and to ensure its integrity.

Such measures may be identified following an assessment of existing risk mitigation measures and the identification of possible additional measures to be taken on the basis of a cost-benefit analysis. It is essential to conduct this analysis on an ongoing basis, as risks tend to evolve over time.

1.8 Implementation of corrective and preventive actions based on the results of the survey

The main reason why employees do not report misconduct that comes to their attention is a lack of confidence in the organisation that appropriate action will be taken. Therefore, when a substantiated complaint of certain misconduct is made, it is critical that the organisation takes the necessary action as soon as possible. Corrective action is usually aimed at stopping the misconduct and imposing appropriate penalties on the responsible party. A change in policy or procedure may also be required if significant deficiencies are identified to ensure that the misconduct is not repeated in the future. Such changes may be made even before the investigation is completed if it is considered that the gaps identified in internal control need to be addressed in order to limit the damage to the organisation immediately.

The various incidents of misconduct can be used as case studies and shared across the public sector (after anonymisation of the data) to enhance employee training on whistleblower protection policies and other integrity policies, and to improve communication of their content.

1.9 Ensuring transparency when decisions are made to terminate an investigation and to implement suitable procedures for reviewing such decisions

Once investigators have determined that an allegation of misconduct is unsubstantiated, the decision should be implemented and reviewed by officials other than those who initially made the decision. The reasons for the termination of the investigation should be comprehensive and communicated to the whistleblower, enabling them to assess the decision's accuracy and potentially appeal to another competent authority if they believe the decision is incorrect.

1.10 The effectiveness of the system for reporting and managing complaints in the public interest is to be subject to continuous evaluation.

The policy framework for whistleblowers acting in the public interest requires constant monitoring and evaluation to ensure that it meets its objectives and continuous to improve over time. To this end, specific indicators should be developed to assess performance, which may include the following:

- the number and types of complaints submitted concerning the public sector,
- the organisations that receive the most complaints,
- the outcome of each case (e.g. whether the complaint was upheld or rejected, whether it was investigated, whether it was upheld and on what grounds),
- whether the misconduct has ended as a result of the complaint,
- whether the organisation's policies have changed as a result of the complaint to the extent that gaps were identified by the whistleblower,
- whether penalties were imposed on the complainants,
- the scope, frequency and beneficiaries of the awareness-raising and training actions,
- the level of employee satisfaction with the policy framework for whistleblowers acting in the public interest (can be measured by a survey),
- the time needed to process cases,
- the resources spent on each case,
- the cases in which the whistleblowers claim to have been subject to retaliatory measures, including the following information:
 - by whom and how the retaliatory measures were taken,
 - whether and how the whistleblowers were compensated,

- the reasons for these decisions,
- the time taken to compensate the whistleblowers,
- if the whistleblowers were working at the time of the trial.

Monitoring and evaluation is achieved through periodic audits, which examine the data produced by the indicators. Such audits aim to monitor performance over time, identify strengths and weaknesses, and take appropriate corrective action where necessary.

2. Effective ways of implementing a complaint handling system

This section proposes concrete measures to implement the policy framework on whistleblowers acting in the public interest.

2.1 Commitment, leadership and " direction from the management"

A policy framework for whistleblowers acting in the public interest should have clear and transparent procedures that inspire confidence in employees and encourage them to report issues that could harm the organisation. To make this possible, the organisation's management should take the lead in developing and implementing the whistleblower policy framework for whistleblowers acting in the public interest, and commit to conducting investigations impartially and consistently, regardless of the identity of the individuals and the issues involved.

The implementation of a transparent policy framework for whistleblowers acting in the public interest can also be expressed through strong leadership and a commitment to encouraging employee behaviours characterised by integrity and excellence. This requires a move away from repressive approaches to integrity violations and a shift to proactive practices that include careful and objective consideration of issues raised, without fear of retaliation. This commitment is also expressed through the ongoing support of the organisation's management and the communication of the policy framework as a means of prevention.

2.2 Appropriate division of responsibilities

As discussed above in the sub-section on complaint channels, employees often choose to address their complaint to their immediate supervisor. These managers should therefore be equipped with the appropriate knowledge and skills to handle complaints properly. Supervisors should have full knowledge and responsibility for their duties in relation to the application of the framework for whistleblowers acting in the public interest.

In addition, senior managers should have direct responsibility for the implementation or not of the following actions:

- Design and implementation of the organisation's core values and ethics statement,

- Communication, training and scope of activity regarding policies and procedures concerning whistleblowers acting in the public interest,
- Allocate adequate resources to those responsible for implementing the policy framework for whistleblowers acting in the public interest,
- Ongoing oversight and monitoring of the policy framework for whistleblowers acting in the public interest and making improvements where necessary,
- Supporting the investigation of the case, taking decisions and imposing penalties,
- Ensuring the confidentiality of communication channels,
- Ensure that any retaliatory measures imposed on whistleblowers acting in the public interest are properly addressed and that the persons affected are compensated,
- Covering process or policy gaps and other deficiencies identified through complaints.

2.3 Independence and effective decision-making to take appropriate action

The information provided to those responsible through internal channels for reporting misconduct should remain as independent as possible from the influence of senior management in order to promote impartial decision-making and minimise the possibility of interference. Ensuring independence is particularly important in cases involving senior managers of the organisation who could easily influence the outcome of the investigation process. Appropriate institutional arrangements are needed to ensure that serious misconduct is dealt with appropriately. Protecting the interests of the organisation in the long term means taking difficult decisions that may appear to have a negative impact in the short term. Appropriate policies should be in place to ensure that the decisions taken are clear and predictable and are based on the public interest and the long-term interests of the public body.

A third party (e.g. the Court of Auditors, the Inspector General of Public Administration) could exercise an audit function in relation to the implementation of the policy framework and the certification of the achievement of its objectives. This practice promotes objective decision-making and accountability for the operation of the policy framework for whistleblowers acting in the public interest. These audits may be carried out both through the internal whistleblowing channels within each public body and through external channels, such as the Greek Ombudsman. The results of such reviews may be communicated in the form of

report to the special committee responsible for the periodic review of the policy framework.

2.4 Communication, training and promotion

The strengthening of awareness-raising activities and general support for the policy framework by the public body increases the chances of its proper functioning and contributes to the cultivation of a culture of transparency and accountability, the benefits of which, as well as the resulting rules of conduct, should be communicated by organising campaigns throughout the public sector and in each individual public body. Communication and awareness – raising activities are more effective when they are supported by the organisation's management.

Managers can provide explicit statements in addition to consultation sessions, during which employees can express their views on ways of addressing the issues that prevent misconduct from being reported. These sessions could also include the presentation of real-life examples of employees who have reported misconduct.

2.5 Rewarding civil servants who report misconduct

By acknowledging the ways in which public organisations benefit from whistleblowers acting in the public interest, public sector employees are encouraged to freely express their ethical concerns to the relevant officials, contributing to a culture of openness and accountability. There are various ways of rewarding whistleblowers who act in the public interest for complying with ethical rules and for the risks they take for the benefit of the organisation. For example, honorary awards can be given to individuals who have contributed to the disclosure of misconduct that has caused or is likely to cause significant harm to the organisation. Rewarding the reporting of misconduct can also take the form of praise in the employee's performance appraisal, just as integrity violations should be included in and have a negative impact on the appraisal.

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