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## ***Breaking the Silence:***

*Enhancing the whistleblowing policies  
and culture in Western Balkans and Moldova*



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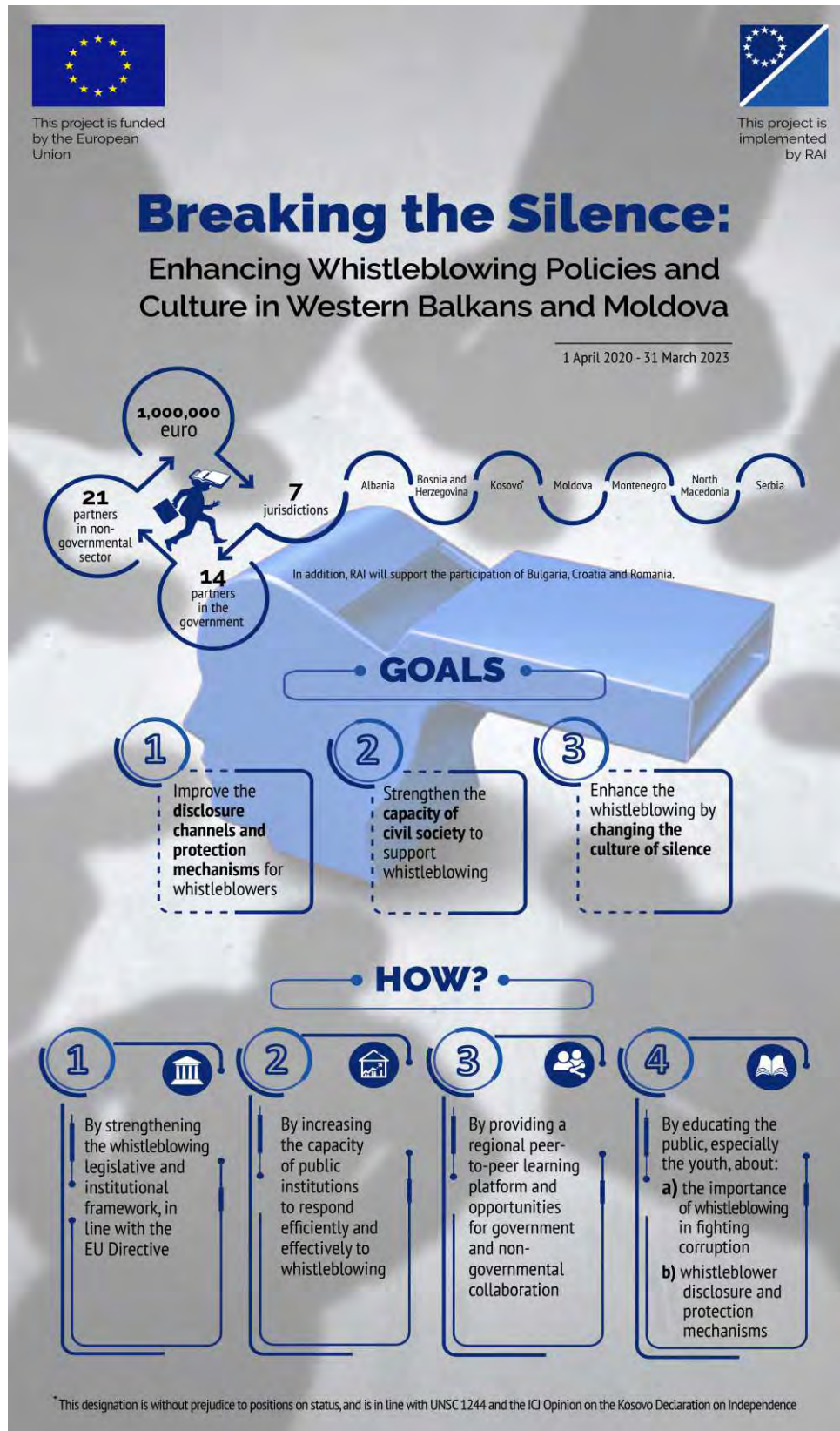


# ***First Annual Regional Multi-Beneficiary Training on Whistleblower Protection – Training Materials***

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## 1. About the Project (Project Infographic)



## **2. Training Concept Paper with Agenda**

### **CONCEPT PAPER and AGENDA**

***First Annual Regional Multi-Beneficiary Training on Whistleblower Protection  
(online)***

#### **Webinars:**

'Building Effective Whistleblower Protection for the Benefit of Citizens in line with the EU Whistleblowing Directive'  
and  
'Experiences of Public Institutions and Civil Society in Handling Whistleblower Reports: How to Enhance Mutual Cooperation and Coordination?'

**9 and 11 February, 2021**

**Organizer:**  
**Regional Anti-Corruption Initiative (RAI) Secretariat**

## Background

The RAI Secretariat regional project 'Breaking the Silence: Enhancing the Whistleblowing Policies and Culture in Western Balkans and Moldova' (hereinafter: the Project) is an EU-funded project which covers the following jurisdictions: Albania, Bosnia and Herzegovina (BiH), Kosovo , Moldova, Montenegro, North Macedonia and Serbia, with participation of Bulgaria, Croatia and Romania. The project implementation commenced on April 1, 2020 and will end on March 31, 2023.

The aim of the Project is to help its partners in the government and non-governmental sector to: 1. improve the disclosure channels and protection mechanisms for whistleblowers by strengthening the legislative framework and institutional arrangements; 2. strengthen the capacity of civil society to support whistleblowing through public policy advocacy, public education, legal aid and other support to whistleblowers; and 3. enhance the public awareness, especially of youth, about the importance of whistleblowing in the fight against corruption and educate the public about whistleblower protection mechanisms.

Under the Project *Output 1.3: Strengthened capacities, peer-to-peer and cross-sectoral exchanges with and among selected public institutions, free legal aid providers, and other identified CSOs*, RAI Secretariat is to engage with public institutions, CSOs and other stakeholders in knowledge building, knowledge sharing, outreach and advocacy. To that end, among other things, RAI Secretariat is to deliver three Annual Regional Multi-Beneficiary Trainings on Whistleblower Protection (hereinafter: the training), one per each year of the project. The first training will be delivered through the following webinars:

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\* This designation is without prejudice to positions on status, and is in line with UNSC 1244 and the ICJ Opinion on the Kosovo Declaration on Independence

- 1) 'Building Effective Whistleblower Protections for the Benefit of Citizens in line with the EU Whistleblowing Directive'<sup>1</sup> and
- 2) 'Experiences of Public Institutions and Civil Society in Handling Whistleblower Reports: How to Enhance Mutual Cooperation and Coordination?'

In defining the training topics, RAI Secretariat conducted stakeholder consultations, including on past whistleblower protection training undergone by the trainees. That said, it is the understanding of RAI Secretariat that this is the first such regional training to be provided to the Project's beneficiary jurisdictions.

## **Objectives of the First Annual Regional Multi-Beneficiary Training on Whistleblower Protection**

The training objectives, to be achieved through the two webinars, are as follows:

**Objective 1** – advance knowledge and skills of professional staff who participate in whistleblower protection policy making and enforcement, with the goal of properly protecting citizens from retaliation and investigating reports of misconduct;

**Objective 2** – contribute to the process of harmonization of whistleblower protection laws with the EU Whistleblowing Directive.

**Objective 3** – advance the knowledge and understanding of practical challenges in handling whistleblower reports effectively, based on the experience and lessons learned, by civil society and public institutions involved in the enforcement of whistleblowing; and

**Objective 4** – enable intersectoral exchange of experiences and lessons learned for purposes of identifying opportunities for mutual collaboration on effective whistleblower protection, with the goal of properly protecting citizens from retaliation and investigating reports of misconduct.

## **Training Format**

Due to COVID-19 restrictions, the training will be delivered on-line, through two webinars taking place one day apart to provide participants who will attend both webinars with time for retrospection, as well as time to attend to their other regular work commitments. The training will take place in a mixed environment of

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<sup>1</sup> Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, <https://eur-lex.europa.eu/eli/dir/2019/1937/oj>

representatives of public institutions responsible for policy making, legislative drafting or the enforcement of whistleblowing, and representatives of CSOs involved in whistleblowing enforcement and advocacy.

The training will be delivered by international and regional experts on whistleblowing, the project manager, and other RAI Secretariat experts. The training will combine trainer/expert presentations, *tour de table* trainee presentations, trainer/expert and trainee reflections, structured discussions, recommendations and conclusions. As such, the training will be interactive and will effectively enable learning from experiences and expertise of the entire region. It will be a unique gathering and the first event of this proportion on the topic of whistleblowing.

Participants will be provided in advance with relevant materials, including a list of questions to address in trainee presentations to enable structured discussion, and a Guide for Users of the webinars.

The training will be evaluated at the end, and it will be re-evaluated in six months to measure retention of training outcomes. Trainees will be asked to provide inputs for the next cycle of training.

## **Target audience / Participants**

The target audience are professionals from Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Kosovo\*, Moldova, Montenegro, North Macedonia, Romania and Serbia.

The training on *'Building Effective Whistleblower Protections for the Benefit of Citizens in line with the EU Whistleblowing Directive'* is intended for staff involved in policy making, legislative/regulatory drafting or the enforcement of whistleblowing from ministries of justice and anti-corruption agencies (or other whistleblowing oversight bodies). The maximum number of trainees per institution is two staff members, and priority should be given to middle management and staff who directly implement whistleblowing policies and procedures.

The training on *'Experiences of Public Institutions and Civil Society in Handling Whistleblower Reports: How to Enhance Mutual Cooperation and Coordination?'* is intended for civil society representatives involved in whistleblowing enforcement and

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\* This designation is without prejudice to positions on status, and is in line with UNSCR 1244(1999) and the ICJ Opinion on the Kosovo declaration of independence.

advocacy and staff of anti-corruption agencies (or other whistleblowing oversight bodies) involved in the enforcement of whistleblowing. The maximum number of trainees per organization or institution is two staff members, and priority should be given to staff who directly implement whistleblowing policies and procedures.

The training will be delivered in English language. The simultaneous interpretation in languages of participants was organized upon request.

### **Trainers and Speakers**

- Mr. Vladan Joksimovic, Head of RAI Secretariat
- Ms. Aneta Arnaudovska, Senior Anti-corruption Advisor, RAI Secretariat
- Ms. Elmerina Ahmetaj Hrelja, Project Manager - Anticorruption Expert, RAI Secretariat
- Mr. Mark Worth, Whistleblowing Expert, RAI Secretariat
- Mr. Tom Devine, Whistleblowing Expert, RAI Secretariat
- Mr. Stephen Kohn, Kohn, Kohn & Calapinto/National Whistleblower Centre
- Ms. Slagjana Taseva, Transparency International, North Macedonia
- Ms. Vanja Calovic Markovic, MANS, Montenegro
- Mr. Mevludin Dzindo, Assistant Director, Agency for the Prevention of Corruption and Coordination of the Fight against Corruption, Bosnia and Herzegovina
- Mr. Boris Vukasinovic, Senior Advisor, Agency for the Prevention of Corruption, Montenegro

### **Contacts**

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## **Programme of the First Annual Regional Multi-Beneficiary Training on Whistleblower Protection**

### **Webinar One: 'Building Effective Whistleblower Protection for the Benefit of Citizens in line with the EU Whistleblowing Directive'**

**Date:** Tuesday, 9 February, 2021

**Duration:** 12 - 16 h (CET)

**Objective:** The training aims at advancing trainee understanding of: 1) principles upon which whistleblower protection laws are premised as stipulated under EU Whistleblowing Directive (e.g. basic legal principles applicable to every whistleblower case, such as the scope of protected activity and who qualifies for protection, the reverse burden of proof, sanctions for retaliation and waiver of liability, i.e. the immunity of whistleblower from disciplinary, criminal or civil liability in connection with the disclosure) and 2) best practices in whistleblower protection.

#### **Trainers and Speakers:**

Mr. Vladan Joksimovic  
Ms. Aneta Arnaudovska  
Ms. Elmerina Ahmetaj Hrelja  
Mr. Mark Worth  
Mr. Tom Devine  
Mr. Stephen Kohn

**Moderated by:** Ms. Elmerina Ahmetaj Hrelja, Mr. Tom Devine and Mr. Mark Worth

## AGENDA

- 12:00 – 12:05      Opening Remarks**  
*Mr. Vladan Joksimovic, Head of RAI Secretariat*
- 12:05 – 12:15      EU Whistleblowing Directive: Purpose and Overview of Key Requirements**  
*Ms. Elmerina Ahmetaj Hrelja, Project Manager of RAI Secretariat*
- 12:15 – 12:35      Overview and Discussion of RAI Gap Analysis of Whistleblower Protection Laws in SEE: Key Legislative Strengths and Weaknesses**  
*Mr. Mark Worth, Whistleblowing Expert of RAI Secretariat*
- 12:35 – 12:55      The Practice of European Court of Human Rights on Key Concepts of the EU Whistleblowing Directive with a Focus on Reasonable Belief and Reversed Burden of Proof**  
*Ms. Aneta Arnaudovska, Senior Anticorruption Advisor of RAI Secretariat*
- 12:55 – 13:20      Free Speech in the Workplace: Employees as Crime Witnesses**  
*Mr. Tom Devine, Whistleblowing Expert of RAI Secretariat*
- 13:20 – 13:30      Break**
- 13:30 – 13:50      Protecting Whistleblowers in Practice: Best Approaches for the Best Outcomes**  
*Mr. Tom Devine, Whistleblowing Expert of RAI Secretariat*
- 13:50 – 14:50      Improving Whistleblower Protection: Challenges and Opportunities**  
Tour de table - Experiences of Public Institutions  
*Moderated by Mr. Tom Devine, Whistleblowing Expert of RAI Secretariat*
- 14:50 – 15:00      From Possibilities to Successes: How Good Policies Lead to Wins**  
*Mr. Stephen Kohn, Kohn, Kohn & Colapinto, National Whistleblower Centre*
- 15:00 – 15:45      Group Recommendations: Discussion**

*Moderated by Mr. Mark Worth, Whistleblowing Expert of RAI Secretariat*

**15:45 – 15:50 On-line Training Evaluation Questionnaire**

*To be filled out by all participants at: [Evaluation Questionnaire](#)*

**15:50 – 16:00 Conclusions: Strategies and Next Steps for Reform**

*Mr. Tom Devine, Whistleblowing Expert of RAI Secretariat*

*Ms. Elmerina Ahmetaj Hrelja, Project Manager*

**Methodology:** The moderator will take notes and look for opportunities to build out discussion points, demand explanation of less-than-familiar concepts, manage audience questions, manage the time and offer final remarks.

## Webinar Two: ‘Experiences of Public Institutions and Civil Society in Handling Whistleblower Reports: How to Enhance Mutual Cooperation and Coordination?’

**Date:** Thursday, 11 February, 2021

**Duration:** 12-16 h (CET)

**Objective:** The training aims at advancing trainee understanding of: 1) the lifecycle of a whistleblower case handled by a CSO and of that handled by a public institution (from disclosure and support to investigation and protection/corrective measure) and 2) opportunities for enhanced whistleblower protection through intersectoral collaboration.

### **Trainers and Speakers:**

Mr. Vladan Joksimovic  
Ms. Elmerina Ahmetaj Hrelja  
Mr. Mark Worth  
Mr. Tom Devine  
Mr. Mevludin Dzindo  
Mr. Boris Vukasinovic  
Ms. Vanja Calovic Markovic

**Moderated by:** Ms. Elmerina Ahmetaj Hrelja and Mr. Mark Worth

## AGENDA

- 12:00 – 12:10      Opening Remarks**  
*Mr. Vladan Joksimovic, Head of RAI Secretariat*  
*Ms. Kay Binder, Policy Officer, European Commission,*  
*Directorate-General for Neighbourhood and Enlargement*  
*Negotiations*
- 12:10 – 12:25      The Role of CSOs and Public Institutions in Whistleblower Protection: Opportunities for Mutual Collaboration**  
*Mr. Mark Worth, Whistleblowing Expert of RAI Secretariat*  
*Ms. Elmerina Ahmetaj Hrelja, Project Manager – Anticorruption*  
*Expert*
- 12:25 – 12:50      Lifecycle of a Whistleblower Case handled by a CSO: From Disclosure and Support to Investigation and Protection/Corrective Action – Challenges and Lessons Learned**  
*Ms. Vanja Calovic Markovic, MANS, Montenegro*
- 12:50 – 13:15      Lifecycle of a Whistleblower Case handled by a Public Institution: From Disclosure and Support to Investigation and Protection/Corrective Action – Challenges and Lessons Learned**  
*Mr. Mevludin Dzindo, Agency for the Prevention of Corruption and Coordination of the Fight against Corruption, Bosnia and Herzegovina*  
*Mr. Boris Vukasinovic, Agency for the Prevention of Corruption, Montenegro*
- 13:15 – 13:30      Break**
- 13:30 – 14:30      Tour de table: Civil Society and Public Institutions Experiences and Lessons Learned in Handling a Whistleblower Report**  
*Moderated by Mr. Mark Worth, Whistleblowing Expert of RAI Secretariat*
- 14:30 – 15:00      Reflections and Discussion on Public Institutions' Experiences**  
*Mr. Tom Devine, Whistleblowing Expert of RAI Secretariat*

**15:00 – 15:30 Reflections and Discussion on Civil Society's Experiences**

*Mr. Mark Worth, Whistleblowing Expert of RAI Secretariat*

**15:30 – 15:40 On-line Training Evaluation Questionnaire**

*To be filled out by all participants at: [Evaluation Questionnaire](#)*

**15:40 – 16:00 Final Remarks: Strategies for Better Outcomes**

*Mr. Tom Devine, Whistleblowing Expert of RAI Secretariat*

*Ms. Elmerina Ahmetaj Hrelja, Project Manager*

**Methodology:** The moderator will take notes and look for opportunities to build out discussion points, demand explanation of less-than-familiar concepts, manage audience questions, manage the time and offer final remarks.

### 3. Opening Remarks, Mr. Vladan Joksimovic, Head of RAI Secretariat

#### DAY 1

'Building Effective Whistleblower Protection for the Benefit of Citizens in line with the EU Whistleblowing Directive'  
9 February 2021

#### 12:00 – 12:05 Opening Remarks, Mr. Vladan Joksimovic, Head of RAI Secretariat

- Good afternoon and welcome to the First Annual Regional Multi-Beneficiary Training on Whistleblower Protection delivered by the RAI Secretariat under the EU funded project '*Breaking the Silence: Enhancing Whistleblowing Policies and Culture in Western Balkans and Moldova*';
- It is RAI Secretariat's true pleasure to be able to bring together representatives of ministries of justice, anticorruption agencies or other whistleblowing enforcement bodies (the judiciary in Serbia) and representatives of EU Delegations in the SEE around the topic of building effective whistleblower protection in SEE, in line with the EU Whistleblowing Directive.
- SEE countries passed their whistleblowing laws during the period 2014-2019, as one of the first steps in building an effective whistleblower protection in SEE.
- Since the adoption of these laws, the EU Whistleblowing Directive entered into force setting the minimum standards for whistleblower protection in EU member countries and those who wish to become one.
- With that in mind, RAI Secretariat analyzed the level of compliance of the whistleblowing legislative framework in SEE with the EU Directive. This gap analysis with findings and recommendations on how to improve the whistleblowing legislative framework in SEE will be published by the end of this month.
- Today's training will among other things be an opportunity to hear about key findings and recommendations of the gap analysis, as well as more generally about international standards upon which whistleblower protection laws are premised.
- More importantly, the training will provide an opportunity for discussion and the exchange of best practices in whistleblower protection in the region and more broadly (EU, USA). In addition to the EU Directive, lessons learned by SEE from the implementation of whistleblowing legislation can provide valuable guidance for the required legislative strengthening to enable and empower the whistleblower as the person who acts in public interest.
- Finally, we hope to be able to discuss and agree on the best way forward, i.e. next steps for reform and the assistance RAI Secretariat can provide through the Project on the alignment of whistleblowing legislative framework with the EU Whistleblowing Directive.
- I wish you a pleasant and productive training. Thank you for your participation.

## DAY 2

'Experiences of Public Institutions and Civil Society in Handling Whistleblower Reports:  
How to Enhance Mutual Cooperation and Coordination?'

11 February 2021

### 12:00 – 12:05 Opening Remarks, Mr. Vladan Joksimovic, Head of RAI Secretariat

- Good afternoon and welcome to the First Annual Regional Multi-Beneficiary Training on Whistleblower Protection delivered by the RAI Secretariat under the EU funded project '*Breaking the Silence: Enhancing Whistleblowing Policies and Culture in Western Balkans and Moldova*';
- It is RAI Secretariat's true pleasure to be able to bring together representatives of anticorruption agencies or other whistleblowing enforcement bodies (the judiciary in Serbia), representatives of civil society organizations and representatives of EU Delegations in the SEE around *the topic of practical challenges in handling whistleblower reports and how to overcome them through mutual collaboration and coordination.*
- Following the adoption of whistleblower protection laws in SEE, there has been an increase in media attention to whistleblowing cases. Media, but also reports of NGOs noted some progress in whistleblowing protection from retaliation, in some SEE countries more than in others.
- But they also speak about challenges in the enforcement of whistleblowing, such as:
  - a) *the absence of follow-up action within a reasonable time* - such as the resulting investigations and proceedings, the recovery of financial damages caused by the disclosed corruption, and related feedback to reporting persons.
  - b) *negative public perception about whistleblowing* - one of the main factors discouraging potential whistleblowers is the lack of confidence in the effectiveness of their reporting/disclosure.
  - c) *limited capacity and/or authority of whistleblowing oversight bodies to enforce whistleblowing.*
- Today's training will facilitate the exchange of experiences and lessons learned between public institutions and non-governmental organizations in handling whistleblower reports.
- Through this exchange, we encourage you to discuss opportunities for mutual collaboration in order to protect, enable and empower the whistleblower as the person who acts in public interest.
- We at RAI Secretariat, together with EU as our partner, remain committed to strengthening the whistleblower protection in its member states and beneficiaries, in full awareness that the collaboration of the government and non-governmental sector is key to achieving this goal.
- I wish you a pleasant and productive training. Thank you for your participation.



#### **4. TRAINING MATERIALS**

# **TRAINING MATERIALS**

4.1. EU Whistleblowing Directive: Purpose and Overview of Key Requirements,  
Ms. Elmerina Ahmetaj Hrelja, Project Manager



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**Directive (EU) 2019/1937 of the European Parliament and of the  
Council of 23 October 2019 on the protection of persons who report  
breaches of [European] Union law**

**Purpose and Overview of Key Requirements**

Elmerina Ahmetaj Hrelja, Project Manager-Anticorruption Expert, RAI Secretariat

**First Annual Regional Multi-Beneficiary Training on Whistleblower Protection**

Webinar '*Building Effective Whistleblower Protection for the Benefit of Citizens in line with the EU  
Whistleblowing Directive*'

Tuesday, 9 February 2021



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### **General Information about the Directive**

- it ***entered into force in December 2019*** and EU member countries have ***two years to transpose it*** into their legal system;
- it provides ***legally binding minimum standards on whistleblower protection*** in Union law;
- it draws upon the ***ECtHR case-law on the right to freedom of expression*** and the ***CoE 2014 Recommendation on the Protection of Whistleblowers***.



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### **What prompted the adoption of the Directive?**

- The adoption of the Directive was ***preceded by major scandals***, such as LuxLeaks (2014), Panama Papers (2016) and Cambridge Analytica (2018);
- ***whistleblower protection*** available in the EU is ***fragmented across member States and uneven across policy areas***;
- Estimated ***loss of potential benefits of up to 9.6 billion Euros each year*** for the EU as a whole, due to lack of whistleblower protection (2017 study 'Estimating the economic benefits of whistleblower protection in public procurement')



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### **Results of public opinion surveys/other forms of consultation :**

- a. only 15% of respondents knew about existing rules on whistleblower protection in their country;
- b. 49% of respondents would not know where to report corruption if they were to experience or witness it;
- c. ***fear of legal and financial consequences*** was the most widely cited reason for not reporting a wrongdoing;
- d. fear of retaliation is well founded – a survey showed that 33% of the workers observed misconduct, 59% reported it, with 36% of them experiencing retaliation.
- e. there is a ***lack of confidence in the utility of reporting*** – two most common reasons for not reporting corruption were: 1) difficulty in proving anything (45%), and 2) even if proof was available those responsible would not be punished (32%);
- f. ***fear of bad reputation*** was the third most important reason as to why workers do not report wrongdoing.



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### **What is the Directive designed to do?**

- ***Provide effective, confidential and secure reporting channels***, as well as ***protect whistleblowers from retaliation***, hence *encourage* whistleblower reports and ***strengthen the enforcement of the EU law***;
- protect ***freedom of expression*** by individuals;
- protect ***freedom of media*** (source of investigative journalism);
- contribute to a ***fair and well-functioning single market*** by:
  - a. helping tackle insufficient enforcement of public procurement rules by national authorities,
  - b. increasing business capacity to detect and denounce malpractice,
  - c. boosting corporate transparency on social and environmental matters,
  - d. ensuring fairer taxation in the EU, by helping identify tax schemes that amount to evasion
- contribute to the implementation of a range of policies with direct impact on the daily lives and welfare of Europeans: food safety, transport safety, public health, consumer protection, environmental protection, protection of privacy and similar.



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### **Standards – Scope of Application**

1. **Broad coverage of organizations** – the Directive applies to organizations in both the private and public sector;
2. **Broad definition of reportable wrongdoing** – the Directive applies to breaches of EU law in the areas of: (i) public procurement; (ii) financial services, prevention of money laundering and terrorist financing; (iii) product safety; (iv) transport safety; (v) environmental protection; (vi) nuclear safety; (vii) food and feed safety, animal health and welfare; (viii) public health; (ix) consumer protection; (x) protection of privacy and personal data and security of network and information systems; (xi) prevention of fraud and corruption; competition rules, corporate tax rules – relevant to the functioning of the internal market.
3. **Broad definition of a whistleblower** – the Directive applies to reporting persons who acquired information on breaches in a work-related context including: employees (applies to past and future ones), self-employed people, freelancers, contractors and suppliers, as well as shareholders, volunteers and unpaid trainees. The protection also applies to facilitators of WBers and third connected persons (colleague, relative).
  - **the notion of breaches includes abusive practices** – acts and omissions which do not appear to be unlawful in formal terms but defeat the object or purpose of the law.
  - **the time when the breach occurred** - protection is to be granted to persons who report: breaches that have taken place, those that have not yet materialized, but are very likely to take place, as well as attempts to conceal breaches.



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### **Standards - Thresholds for protection, waiver of liability and anonymous reporting**

- whistleblowers qualify for protection if they had ***reasonable grounds to believe that the information reported was true at the time of reporting*** (motives of the whistleblower are irrelevant and protection is not lost in case of an honest mistake);
- ***those who***, at the time of the reporting, ***deliberately and knowingly reported wrong or misleading information do not enjoy protection.***
- whistleblowers are ***immune from disciplinary, civil and criminal liability*** in connection with the disclosure (whistleblowing cannot be prevented or sanctioned based on contractual loyalty clauses, confidentiality or non-disclosure agreements);
- the Directive leaves it to Member countries to decide whether they will accept and follow up on ***anonymous whistleblower reports***, but points out that anonymous whistleblowers will enjoy protection if subsequently identified and suffer retaliation.





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## **Standards – Range of Reporting Mechanisms**

- 1. Internal reporting** – whistleblowers are required to use internal channels first and there is a compulsory requirement for the establishment of internal disclosure procedures (all legal entities in private sector with 50 or more employees)
  - 2. External reporting** – there is a compulsory requirement for the establishment of external disclosure procedures (reporting to authorities, such as: regulatory or supervisory bodies, law enforcement agencies, anticorruption bodies or ombudsmen)
  - 3. Public disclosure** – information on breaches is made available directly to the public through online platforms or social media, or to the media, elected officials, civil society organisations, trade unions, or professional and business organisations.
- If the internal channel does not work or could not be reasonably expected to work, the whistleblower can resort to the external reporting channel, but if the breach remains unaddressed even then or there is an imminent or manifest danger to the public interest, the whistleblower can disclose the breach publicly, i.e. to media.



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### **Standards – Confidentiality, retaliation protections and remedies, sanctions for retaliation**

1. safeguarding the ***confidentiality of the identity of the reporting person*** during the reporting process and investigations is an essential ex-ante measure to prevent retaliation;
2. ***retaliation*** in its various forms (suspension, dismissal, demotion, disciplinary measure, intimidation, discrimination, psychiatric or medical referrals etc.) is ***legally prohibited and punished*** (personal liability and dissuasive civil, administrative or criminal penalties for perpetrators of retaliation);
3. In case of retaliation:
  - a. ***easily accessible advice free of charge*** (Member States can extend the support to legal counselling),
  - b. ***adequate remedies*** e.g. interim remedies to halt ongoing retaliation such as workplace harassment or to prevent dismissal pending the resolution of potentially protracted legal proceedings;
  - c. ***reversal of the burden of proof***, so that it is up to the person taking action against a whistleblower to prove that it is not retaliating against the act of whistleblowing;
  - d. ***reinstatement and compensation of damages*** (the latter cannot replace the former).



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## **Breaking the Silence:**

**Enhancing the whistleblowing policies and culture in Western  
Balkans and Moldova**



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### **Standards – Proactiveness, fair trial and judicial review, transparent and effective use of legislation**

- provide ***clear and easily accessible information*** on both internal and external reporting procedures;
- ***follow up diligently*** on reports received and give feedback to whistleblowers within 3 months (it can be extended to 6 months in complex cases);
- secure adequate ***record keeping*** of all reports of breaches – to be used as evidence in enforcement actions;
- both the whistleblower and the alleged perpetrator of the breach are entitled to ***fair trial guarantees*** (access to court – one that is expedient and inexpensive, the right to appeal, the right to legal aid to address imbalances between parties)
- ***judicial review*** of the decision of the competent authority to close the procedure regarding a reported breach;
- ***reporting obligation*** - on annual basis, Member States are to submit the following statistics to the EC:
  - (a) the number of reports received by the competent authorities;
  - (b) the number of investigations and proceedings initiated as a result of such reports and their outcome; and
  - (c) if ascertained, the estimated financial damage, and the amounts recovered following investigations and proceedings, related to the breaches reported



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*“**Whistleblowers** are **brave people** willing to bring illegal activities to light - often at great risk to their career and livelihood – in order to protect the public from wrongdoing. They **deserve recognition and protection** for their brave actions. I call on Member States to transpose the new rules without delay.”*  
(Věra Jourová, Vice-President, Values and Transparency, European Commission)

**THANK YOU!**

**4.2. The Practice of European Court of Human Rights on Key Concepts of the EU Whistleblowing Directive with a Focus on Reasonable Belief and Reversed of Proof, Ms. Aneta Arnaudovska, Senior Anticorruption Advisor of RAI Secretariat**



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***Breaking the Silence:***

***Enhancing the whistleblowing policies and culture in Western Balkans  
and Moldova***

**Comparison of some aspects of the EU Directive on whistleblowing with the  
ECtHR case-law on protection of whistleblowers**

**Aneta Arnaudovska, Senior Anti-Corruption Advisor, RAI Secretariat**

**First Annual Regional Multi-Beneficiary Training on Whistleblower Protection**  
*Webinar 'Building Effective Whistleblower Protection for the Benefit of Citizens in  
line with the EU Whistleblowing Directive'*  
Tuesday, 9 February 2021

## Channels of reporting

### **EU Directive establishes:**

- (i) three tiers of reporting
- (ii) sets out time restrictions and
- (iii) establishes a hierarchy between internal and external reporting

Reporting persons shall qualify for protection under the Articles 7 (internally); Article 10 (externally, in line with the channels and procedures in Articles 11 and 12; (public disclosure) Article 15

Internal reporting is encouraged as the WB are the first to know about threats or harm to the public interest which arise in the work-related context.

## ECtHR reviewed the applications related to the WB under the scope of Article 10 of the Convention

“The Court has held that the signalling by an employee in the public sector of illegal conduct or wrongdoing in the workplace should, in certain circumstances, enjoy protection”. “In the light of balancing with this duty of loyalty and discretion, reserve whether the whistleblower had alternative channels to disclose the information before making it public”.

ECtHR maintains two tiers for disclosing information. In the ‘first place’ a whistleblower may disclose the information to her ‘superior or other competent authority or body’ at the same tier of reporting without invoking a hierarchy between them as the wording ‘or’ clearly shows. The second tier of disclosure, or what the ECtHR refers to as the ‘last resort’, is reporting to the public. The whistleblower may turn to the public, such as to a newspaper, when the first tier of reporting is ‘clearly impractical’.

## Case of Bucur and Toma v. Romania (Application 40238/02), Judgment 2013

- The first applicant worked in the telephone communications surveillance and recording department of a military unit of the Romanian Intelligence Service (RIS). In the course of his work, he came across, that the telephones of a large number of journalists, politicians and businessmen were tapped. The applicant affirmed that he reported the irregularities to his colleagues and the head of department, who allegedly reprimanded him. Then he contacted an MP who was a member of the RIS parliamentary supervisory commission who told him that reporting to the commission would serve no purpose in view of the ties between the chairman of the commission and the director of the RIS. The applicant then held a press-conference. He was accused of gathering and imparting secret information in the course of his duty and he was given a two-year suspended prison sentence.
- The Court stated that “No official procedure existed in the institution. The applicant could inform his superiors of his concerns, but as the irregularities he had discovered concerned them directly, it was therefore unlikely that any internal complaints the applicant made would have led to an investigation and put a stop to the unlawful practices concerned. The applicant had contacted an MP who had advised him that such a complaint would serve no useful purpose. The Court was not convinced, therefore, that a formal complaint to this commission would have been an effective means of tackling the irregularities. Consequently, divulging the information directly to the public had been justifiable”.



## Case of Heinisch v. Germany (Application No. 28274/08), Judgment 2011

- In this case the applicant worked in the nursing home for elder persons and many times reported to the superiors about the lack of staff, with no effect and at the end the applicant instigated a criminal procedure against the employer. The applicant was of the opinion that none of her previous complaints to her employer had contributed to an amelioration of the employment and care situation in the nursing home. She also indicated to her employer that one of her concerns was that failure to report the deficiencies in the care provided would render her liable to criminal prosecution.
- The Court therefore considers “that it has not been presented with sufficient evidence to counter the applicant’s submission that any further internal complaints would not have constituted an effective means of obtaining an investigation of and remedy for the shortcomings in the care provided”.

## Public interest/Detriment to the Employer

**EU Directive** does not provide a definition of ‘public interest’. Whilst public interest is mentioned in the Directive, such as in its Preamble or in Article 15, this notion is not included in the definitions list under Article 2. Public interest hence is a broad notion that should be applied as elaborated in the case law of the ECtHR in these enumerated fields of the Directive.

How the appropriate balance between safeguarding employer’s interest in avoiding reputational damages and the public’s right to know, is reached in practice would depend on the court’s interpretation of exceptions for external reporting.

**ECtHR case-law** does not provide a definition for ‘public interest’. Rather, determining whether an issue falls under public interest depends on the circumstances of each specific case. Recognising the importance of maintaining confidence in public authorities, the ECtHR evaluates whether such damage outweighs the public interest in disclosure.

## ECtHR case-law

### **Case of Guja v. Moldova (Application no. 14277/04), Judgment 2008**

- The Court found that “the letters disclosed by the applicant had a bearing on issues such as the separation of powers, improper conduct by a high-ranking politician and the Government's attitude towards police brutality. There was no doubt that those were very important matters in a democratic society which the public had a legitimate interest in being informed about and which fell within the scope of political debate.

### **Case of Bucur and Toma v. Romania (Application No. 40238/02), Judgment 2013**

- The interception of telephone communications took on a particular importance in a society which had been accustomed under the communist regime to a policy of close surveillance by the secret services. The information the applicant had disclosed related to abuses committed by high-ranking officials concerned very important issues for the political debate in a democratic society, in which public opinion had a legitimate interest.

### **Case of Heinisch v. Germany (Application No. 28274/08), Judgment 2011**

- In societies with an ever- growing part of their elderly population being subject to institutional care, and taking into account the particular vulnerability of the patients concerned, the dissemination of information about the quality or deficiencies of such care is of vital importance with a view to preventing abuse.
- “having information about the pressure and wrongdoings of the Prosecutor’s Office” (Guja v. Moldova)
- “information that reveals illegal activities within intelligence agencies” (Toma and Bucur v. Romania)
- “deficiencies in the healthcare for elderly people” ( in Case of Heinisch v. Germany).  
outweighed the interest in maintaining public confidence in the institution.

## Authenticity of the Disclosed Information

### **EU Directive**

- The Directive prescribes protection for those individuals who at the time of disclosure had reasonable grounds to believe that the information reported was true.

### **ECtHR case-law**

- “Freedom of expression comes with duties and responsibilities: any person who chooses to disclose information should carefully verify, to the extent permitted by the circumstances, that the information disclosed is accurate and reliable”.

## ECtHR case-law

### **Case of Guja v. Moldova (Application No. 14277/04), Judgment 2008**

- The Court further noted that “it was common ground that the letters disclosed by the applicant to the journal were genuine”.

### **Case of Bucur and Toma v. Romania (Application No. 40238/02, Judgment 2013**

- “The applicant had spotted a number of irregularities. All the evidence seemed to support his conviction that there were no signs of any threat to national security that could justify the interception of the telephone calls, and indeed that no authorisation for the phone tapping had been given by the public prosecutor. The Government had failed to explain why the information divulged by the applicant was classified “top secret”; instead, they had refused to produce the full criminal case file, which included the requests from the RIS and the authorisations of the public prosecutor. The first applicant had accordingly had reasonable grounds to believe that the information he divulged was true”.

### **Case of Heinisch v. Germany (Application No. 28274/08), Judgment 2011**

“The allegations made by the applicant were not devoid of factual background and there is nothing to establish that she had knowingly or frivolously reported incorrect information. A whistle-blower should be considered as having acted in good faith, provided he or she had reasonable grounds to believe that the information disclosed was true, even if it later turned out that this was not the case, and provided he or she did not pursue any unlawful or unethical objectives”.

## Good faith requirement

### **EU Directive**

- Directive does not require ‘good faith’ from the whistleblower for protection to be granted. Instead, the Directive requires that the individual has “reasonable grounds to believe”. If the legislation requires additional conditions to be met, it does not comply with the Directive.

### **ECHR case-law reasonable grounds to believe in combination with the good faith requirement**

- Closely linked with the good faith requirement is the motivation-what if a WB tells the truth, not because he wants to stop a wrongdoing, but to harm the perpetrator for personal reasons (envy or hate, personal gain, revenge)?

## ECtHR case-law

### **Case of Guja v. Moldova (Application no. 14277/04) Judgment 2008**

- “The Applicant alleged that his primary motivation was the fight against corruption and trading in influence. The Court found no reason to believe that the applicant was motivated by a desire for personal advantage, held any personal grievance against his employer or that there was any other ulterior motive for his actions. He had therefore acted in good faith”.
- The Court established that an “act motivated by a personal advantage, including pecuniary gain, would not justify a particularly strong level of protection”. A distinction here is relevant: the ECtHR does not as such preclude protection in cases where disclosure is motivated by personal grievance or pecuniary gain; it only notes that it would not justify ‘particularly strong level’ of protection. Thus far ECtHR has not refused protection to whistleblowers under Article 10 on the grounds of personal motivation.

## ECtHR case-law

### **Case of Bucur and Toma v. Romania - 40238/02 Judgment 8.1.2013**

- There was no reason to believe that the applicant was driven by any motive other than the desire to make a public institution abide by the laws of Romania and in particular the Constitution. This was supported by the fact that he had not chosen to go to the press directly, in order to reach the broadest possible audience, but had first turned to a member of the parliamentary commission responsible for supervising the RIS.

### **Case of Heinisch v. Germany (Application No. 28274/08), Judgment 2011**

- The Court further notes that “the applicant argued that her main motive for lodging the criminal complaint had been the potential threat to the health of the particularly vulnerable patients resulting from the unsatisfactory working conditions in the nursing home, whereas the Government maintained that she had aimed to denounce the alleged staffing shortage and put additional pressure on her employer by involving the public. On the basis of the materials, the Court does not have reason to doubt that the applicant acted in good faith and in the belief that it was in the public interest to disclose the alleged wrongdoing, her allegations were not entirely devoid of factual grounds and did not amount to a gratuitous personal attack on her employer”.



## Standards of proof EU Directive Reasonable ground to believe that the information on breaches reported was true at the time of reporting:

- reasonable suspicions of breaches, no strong evidence, but certainty is required, using objective facts, and not only personal belief that something has happened, having factual background/ factual information/ perceived from the aspect of a person in a similar situation and knowledge and not from the aspect of the person in a position of adjudicating (essential safeguard against malicious and frivolous or abusive reports);
- in light of the circumstances and the information available to them;
- protection should not apply to persons who report information which is already fully available in the public domain or unsubstantiated rumours and hearsay;
- no additional conditions are required- motives should be irrelevant in deciding whether the person should receive protection
- terms such as “abusive” and “malicious” – which could suggest that reporting persons could be held liable because of their motives – should not be used.
- reporting persons should qualify for protection regardless of whether any subsequent investigation finds proof of wrongdoing
- protection extends to reporting persons who report or disclosure inaccurate information in honest error (despite of the carefully verifying, to the extent permitted by the circumstances, that the information disclosed is accurate and reliable)

## These standards are required for

- qualifying for protection for all disclosure channels (under the certain conditions stipulated)
- waiving liability in a civil, administrative and criminal procedure, except in a case of a criminal act committed ( liability for defamation, breach of copyright, breach of secrecy, breach of data protection rules, disclosure of trade secrets, or for compensation claims based on private, public, or on collective labour law).
- legal protection in cases of legal or contractual obligations, such as loyalty clauses in contracts or confidentiality or non-disclosure agreements, providing the information falling within the scope of such clauses and agreements is necessary for revealing the breach.
- public disclosures: necessary for revealing the breach (should not extend to superfluous information)- limited to the amount of information reasonably necessary to bring to light the wrongdoing); if it did not constitute a self-standing criminal offence- understood as “wholly unrelated to the ability to make a report or disclosure”- criminal liability falls under the national law interpreted in the light of the Directive (taking into account the individual circumstances of the case, including the necessity and proportionality of the act or omission in relation to the report or public disclosure.
- provide reporting persons with the opportunity to clarify their report and provide additional information or evidence (albeit without the obligation for them to do so)

## Assumptions and shifting the burden of proof

**Assumption 1: the reporter enjoys a legal protection for having the reasonable grounds to believe in the correctness of the information**

/ if challenged the burden of proof is shifted to the challenger

/ the person initiating the proceedings and who is challenging the assumption of existing the reasonable ground to believe- should carry the burden of proving that the reporting person does not meet the conditions to waive their liability.

**Assumption 2: The whistleblower's threshold of proof is to show that she has made a disclosure following the Directive and that she faced retaliation without having an additional burden of demonstrating the causation between the reporting and the retaliation**

/ once the reporting person has established that they reported or made a public disclosure and suffered a detriment, it falls on the person who has taken the detrimental measure,

/"based on duly justified grounds" meaning to prove clearly and convincingly that the detrimental measure was in no way connected with or motivated by the report/ absence of causal link between the retaliation measure and reporting/disclosure/

## Assumptions and shifting the burden of proof

### **Assumption 3 – waiving liability in criminal, civil administrative procedure- in a case of defamation- presumption exists that the reporter had reasonable ground to believe**

/ if challenged in cases regarding knowingly false reports or disclosure/ the burden falls on the person making that claim to prove that the reporting person knew the information was false at the time of the report or disclosure.

/establishes that, in legal proceedings, the person initiating the proceedings should carry the burden of proving that the reporting person does not meet the conditions to waive their liability. (i.e. criterion (e) above).

/the whistleblower protection legislation itself does not need to include such provision, as in case of knowingly false report or disclosure, the reporting person does not qualify for protection and thus the existing national legislation regarding the making of false statements (such as defamation, libel and slander law) applies.

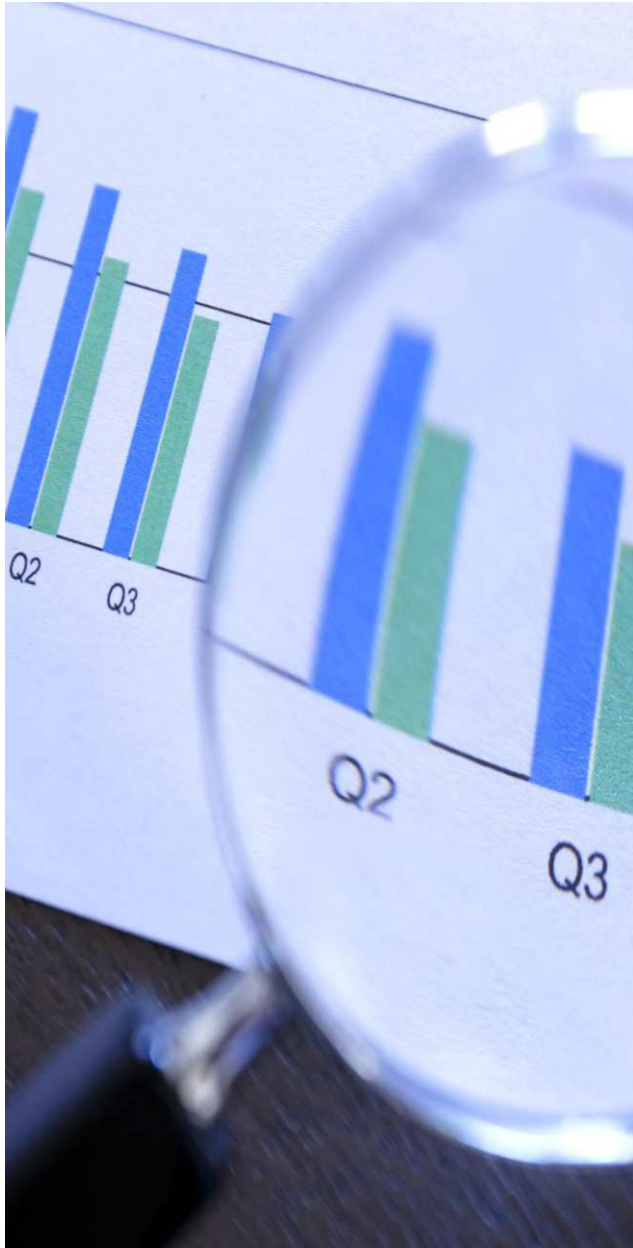
/ensures that penalties for making a report or disclosure demonstrated to be knowingly false (under the whistleblower protection legislation or other legislations such as defamation, libel and slander law) are proportionate and not so severe as to act as a deterrent to actual whistleblowing- (such as for the cases of defamation in front of the ECtHR

**4.3. From Possibilities to Successes: How Good Polices Lead to Wins,  
Mr. Stephen Kohn, Kohn, Kohn & Calapinto**



**WHISTLEBLOWERS:  
The Key Source for  
Detecting Fraud and  
Corruption**

**Stephen M. Kohn  
Partner | Kohn, Kohn  
and Colapinto  
Chairman of the  
Board of Directors |  
National  
Whistleblower Center**



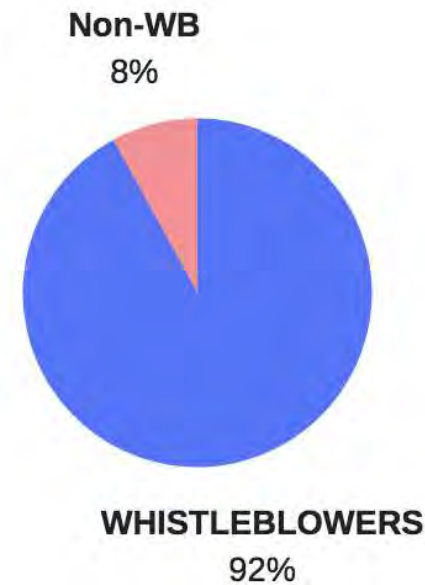
## Mr. Jay Clayton (Chairman SEC)

*“I want to note our appreciation to whistleblowers who, sometimes at great risk to their livelihood, report suspected securities laws violations to the SEC. Our whistleblower program has been a success because of their efforts. Working together, we have stopped frauds and prevented losses for countless investors.”*



## Protecting Whistleblowers Delivers Significant Benefits

- In FY 2017, the U.S government recovered over \$3.7 billion through its civil fraud program.
- Whistleblowers were directly responsible for reporting of over \$3.4 billion of these recoveries.
- Whistleblowers were the source of the detection of 91.8% of all civil fraud recovered in FY 2017.

Source: [U.S. Department of Justice](#)



In 2017, of the \$3.4 billion recovered through the FCA and as a result of whistleblower assistance, \$392 million (11.5%) was awarded to whistleblowers.

- 
- EMPLOYEES ARE LOOKING TOWARD THEIR GOVERNMENTS TO CREATE EFFECTIVE WHISTLEBLOWER PROGRAMS.
  - WHISTLEBLOWERS WILL USE LAWS THAT WORK IN PRACTICE TO REPORT FRAUD, CORRUPTION AND VIOLATION OF LAW
  - WITHOUT A STRONG WHISTLEBLOWER PROGRAM FRAUDS CANNOT BE EFFECTIVELY DETECTED OR PROSECUTED
- 



## MAKING A WHISTLEBLOWER PROGRAM WORK

Confidential and anonymous reporting  
Prohibition on NDAs

Independent and empowered Whistleblower Office with authority to investigate allegations, promote utilization of effective whistleblower law and protect employees

Strong civil, criminal and administrative sanctions punishing fraud, bribery and corruption.

Prohibition against retaliation, with independent remedy requiring a make-whole remedy. Financial Incentives to promote reporting of major frauds



“Because those who defraud the government often hide their misconduct from public view, whistleblowers are often essential to uncovering the truth.”

— Acting Assistant Attorney General Chad A. Readler, Department of Justice, Civil Division, Press Release: Justice Department Recovers Over \$3.7 Billion From False Claims Act Cases in Fiscal Year 2017 (December 21, 2017)

“[T]he False Claims Act has provided ordinary Americans with essential tools to combat fraud, to help recover damages, and to bring accountability to those who would take advantage of the United States government – and of American taxpayers.

— Former Attorney General Eric Holder, U.S. Department of Justice, Remarks at the 25<sup>th</sup> anniversary of the False Claims Act (January 31, 2012).



Over 4000  
International tips from  
120 countries Received  
by U.S. Securities and  
Exchange Commission,  
2011 – 2020.

Employees will report  
fraud if they are  
protected and  
incentivized!



## Example of Companies Sanctioned Under the Foreign Corrupt Practices Act and Eligible for Whistleblower Rewards

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- **Novartis** : Bribes paid Greece — \$340 million sanction
- **Fresenius Medical** : Bribes paid in Serbia, Bosnia and Turkey — \$231 million
- **Ericsson** : Swedish based company — \$1 billion sanction
- **Pfizer** : Bribes paid in Bulgaria, Croatia, Czech Republic, and Serbia — \$45 million
- **Deutsche Bank** : German based company—\$16 million sanction
- **Johnson and Johnson** : Bribes paid in Poland and Romania — \$70 million sanction
- **Biomet** : Polish based company — \$30 million sanction
- **Banca IMI Securities** : Italian based company — \$35 million sanction



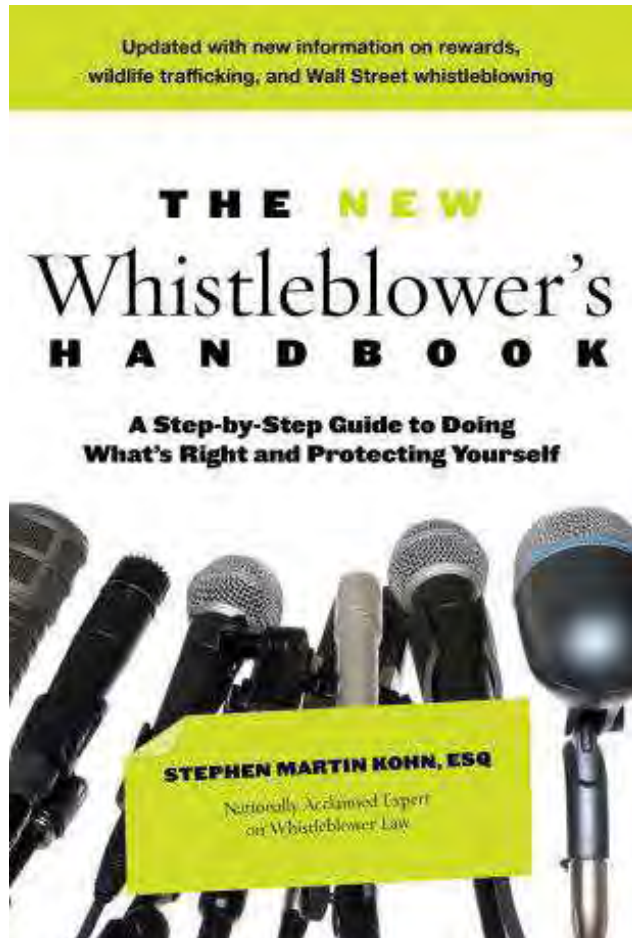
“[I]t makes no difference whether . . . the claimant was a foreign national, the claimant resides overseas, the information was submitted from overseas, or the misconduct comprising the U.S. securities law violation occurred entirely overseas.”

— Kevin M. O’Neill, Deputy Secretary,  
Securities and Exchange Commission,  
[Order](#) Determining Whistleblower Award  
Claim



Mr. Jay Clayton  
(Chairman of the SEC, Sept. 23, 2020)

*“Over the past ten years, the whistleblower program has been a critical component of the Commission’s efforts to detect wrongdoing . . . particularly where fraud is well-hidden or difficult to detect. Enforcement actions from whistleblower tips have resulted in more than \$2.5 billion in ordered financial remedies.”*



***“You may want to add this book to your... wish list. Just don’t let your boss catch you reading it.”***

***–Wall Street Journal***

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Links to the legal authorities including statutes, regulations, and cases relied upon in *The Handbook* can be found [online](#), including:

- New Legal Tools: [Rule 1](#)
- False Claims Act / Qui Tam: [Rule 6](#)
- Tax Whistleblowers: [Rule 7](#)
- Foreign Corrupt Practices Act: [Rule 9](#)
- Non-Disclosure Agreements: [Rule 28](#)
- International Whistleblowing: [International Toolkit](#)



[Stephen M. Kohn](#)

Chairman of the Board of Directors

National Whistleblower Center

Partner, [Kohn, Kohn & Colapinto, LLP](#)

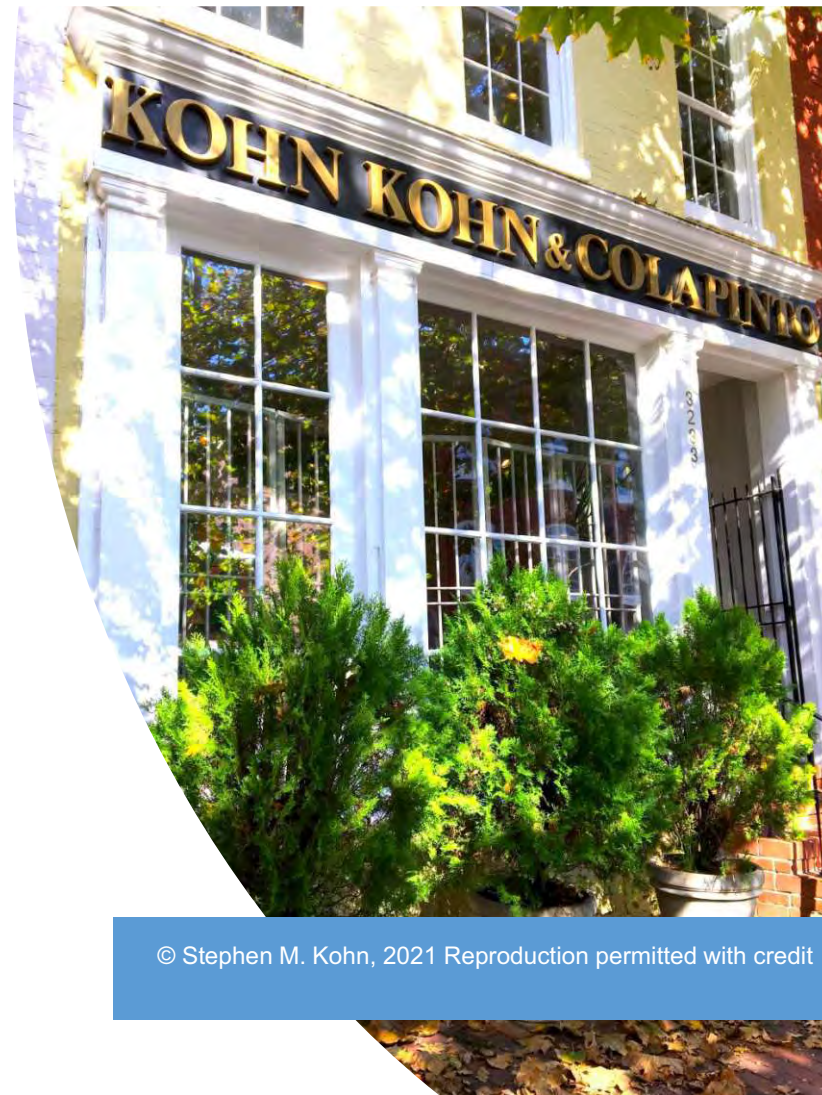
[Stephen M. Kohn](#), is widely recognized as the leading U.S. authority on whistleblower laws. He has exclusively represented whistleblowers since 1984, and currently represents whistleblowers who have exposed frauds and wildlife trafficking in Africa, Europe, Asia and South America, including the whistleblower who reported the largest money [laundering scheme](#) in history (\$240 billion laundered from Russia/former Soviet Union to New York banks). He obtained the [largest reward ever paid](#) to an individual whistleblower (\$104 million for exposing illegal offshore bank accounts). Mr. Kohn is the most published author on whistleblower law, including [The New Whistleblower's Handbook: A Step-by-Step Guide to Doing What's Right and Protecting Yourself](#).



## Contact

---

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**Website: [www.kkc.com](http://www.kkc.com)**  
**Email: [sk@kkc.com](mailto:sk@kkc.com) (private)**



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## FAQs and Resources

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[What is a Whistleblower](#)

[Confidentiality](#)

[Reward Laws](#)

[False Claims Act](#)

[Internal Revenue Code](#)

[Securities Exchange Act](#)

[Commodity Exchange Act](#)

[Foreign Corrupt Practices Act](#)

[Money Laundering](#)

[International Corruption](#)

[Offshore Tax Evasion](#)

[Whistleblower Network News](#)

[National Whistleblower Center](#)

[Kohn, Kohn and Colapinto](#)

[\*Qui Tam\* Blog](#)

[Rules for Whistleblowers](#)

[\*60 Minutes\* – AML](#)

[America's First Whistleblowers](#)

[COVID-19 Whistleblowers](#)

[Whistleblowing Works](#)

#### 4.4. Opportunities for Collaboration between CSOs and Public Institutions in Whistleblower Protection, Ms. Elmerina Ahmetaj Hrelja, Project Manager



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### **Opportunities for Collaboration between CSOs and Public Institutions in Whistleblower Protection**

Elmerina Ahmetaj Hrelja, Project Manager-Anticorruption Expert, RAI Secretariat

#### **First Annual Regional Multi-Beneficiary Training on Whistleblower Protection**

Webinar ‘*Experiences of Public Institutions and Civil Society in Handling Whistleblower Reports: How to Enhance Mutual Cooperation and Coordination*’

Tuesday, 11 February 2021



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### **Common mission of WBer reporting public authority and CSOs**

- provide clear and easily accessible information and advice on reporting procedures and protection mechanisms;
- provide effective, confidential and secure reporting channels for whistleblowers;
- follow up diligently and provide feedback to the whistleblower within a reasonable time (3-6 months)
- protect whistleblowers/seek corrective action;
- investigate whistleblower reports (i.e. refer the report for investigation to competent authorities);
- reporting obligation (transparency) and organizational learning (accountability);



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#### ***Enhancing the whistleblowing policies and culture in Western Balkans and Moldova***



### **Common concerns of WBer reporting public authority and CSOs**

- how to tackle misperceptions about whistleblowers (despite the negative perception whistleblowers act in public interest, often at great risk for their careers and livelihood)
- how to work with whistleblowers:
  - a. understanding the risk of retaliation and acting timely and properly to prevent it (retaliation discourages others from reporting in the future);
  - b. advising the whistleblower on best practices (e.g. keeping the evidence in safe place, securing the support of colleagues and similar)
  - c. appreciating the complexity of the legal system and securing professional legal advice;
  - d. earning the trust of the whistleblower;
  - e. securing the desired outcome – the wrongdoing is addressed (the enforcement of the law) and the whistleblower is effectively protected.



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### **Strengths of CSOs – they employ different strategies and tactics depending on the needs in the field:**

- Policy development and advocacy for policy and legislative solutions;
- Grassroots organizing (involving the constituency in the definition of problem and solution – engagement through negotiation, confrontation and pressure);
- Coalition building (forming partnerships to complement strengths);
- Media outreach;
- Research and investigations;
- Public education;
- Training of public institutions;
- Monitoring of the work of public institutions.



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### **Strengths of Public Institutions**

- The position and role defined in the law (predictability and clarity of function);
- Consistent and secure funding (continuity of work);
- Less vulnerable to retaliation than CSOs, which handle whistleblower reports (but more vulnerable to pressures and self-censorship);
- Part of a government apparatus – easier access to other public institutions (relevant both for effective WBer protection and investigation of wrongdoing, as well as policy and legislative change).



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### **Innovation (May, 2020, WIN webinar)**

- Whistleblower peer support program established by the Whistleblowers of America (<https://whistleblowersofamerica.org/>) to address the psychosocial impact of whistleblowing;
- Platform through which whistleblowers could raise money for legal fees, such as that provided by CrowdJustice (<https://www.crowdjustice.com/>);
- Instead of instituting rewards to encourage whistleblowing, an insurance mechanism should be set up to compensate for the loss incurred by whistleblowers (an idea shared at the webinar).
- Certification process provided by Whispli platform (<https://whispli.com/>) on the compliance of an organization with whistleblowing laws;





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**Thank you!**

*Experiences of public institutions and civil society  
in handling whistleblower reports*

## Shared Values – Shared Goals – Shared Work

- ◆ Officials and activists both work on behalf of taxpayers and the public interest – citizens' expectations
- ◆ Disclosing to NGOs adds another layer of protection: confidentiality / anonymity
- ◆ Role of NGOs increases accountability and integrity: protection, investigation and follow-up
- ◆ Officials and NGOs often cooperate: investigations, corrective actions and justice
- ◆ Can be on opposite sides in a case: democracy in action

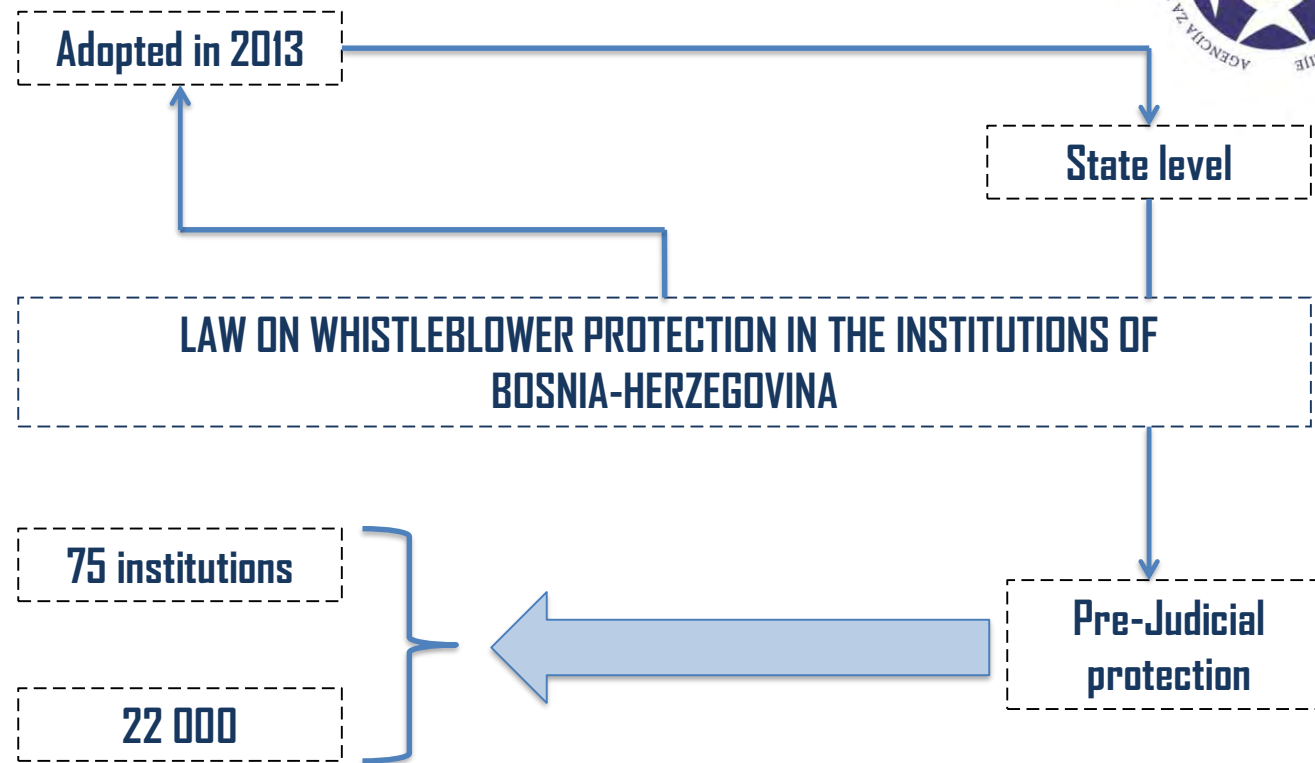
**4.6. Lifecycle of a Whistleblower Case under the BiH Whistleblowing Law, Mr. Mevludin Dzindo,  
Agency for Prevention of Corruption and Coordination of the Fight against Corruption**



Агенција за превенцију корупције и координацију борбе против корупције  
Agencija za prevenciju korupcije i koordinaciju borbe protiv korupcije  
Agency for the Prevention of Corruption and Coordination of the Fight against Corruption

**LAW ON WHISTLEBLOWER PROTECTION IN THE  
INSTITUTIONS OF BOSNIA-HERZEGOVINA**

*Sarajevo 11/2/21*





- *Corruption* shall mean any abuse of discercional power ...  
.... can include requesting directly or indirectly, offering, giving or accepting the bribe or any other undue advantage ....

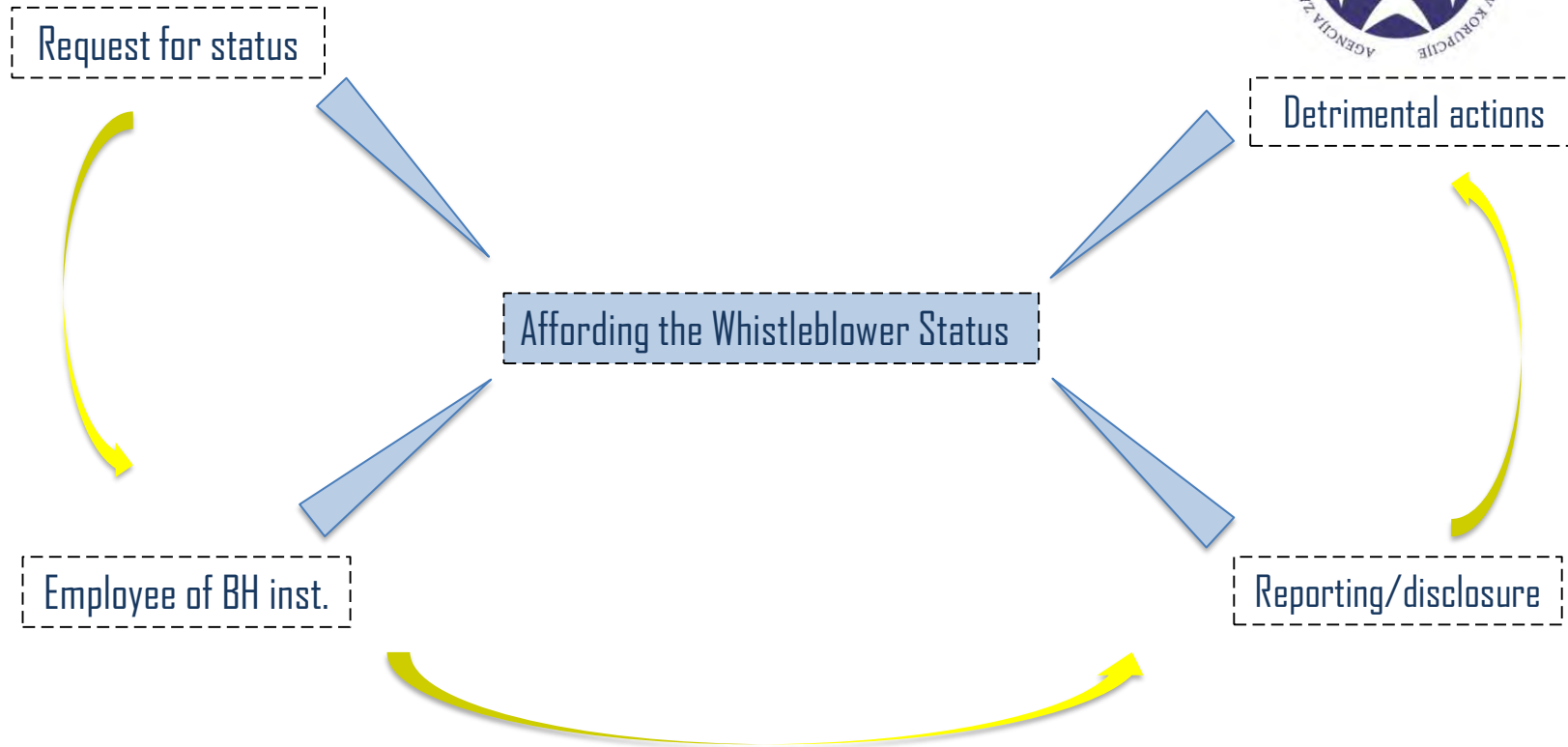
- *Whistleblower* shall mean a person employed in the institutions of Bosnia and Herzegovina and legal entities established by the institutions of BiH ....

## LAW ON WHISTLEBLOWER PROTECTION IN THE INSTITUTIONS OF BOSNIA-HERZEGOVINA

→ *Detrimental action* shall mean an action whereby the employer causes harm to the employee by issuing a decision to terminate his/her employment ...

✓ *Corrective measure* shall mean any action that forbids, alleviating or removing the causes or consequences of the detrimental actions against the whistleblower...

## LAW ON WHISTLEBLOWER PROTECTION IN THE INSTITUTIONS OF BOSNIA-HERZEGOVINA

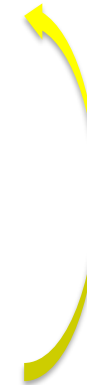


**LAW ON WHISTLEBLOWER PROTECTION IN THE INSTITUTIONS OF  
BOSNIA-HERZEGOVINA**



**Good faith – Bona fides**

Affording the Whistleblower Status



## LAW ON WHISTLEBLOWER PROTECTION IN THE INSTITUTIONS OF BOSNIA-HERZEGOVINA



Removing detrimental actions

Whistleblower informs the Agency

Agency requests all relevant documentation from the institution and/or requests from the Administrative inspectorate to investigate allegations, establish the fact, and to undertake measures set by the law, and to submit its minutes thereof to the Agency....

If the Agency establishes that any detrimental action has been taken against the whistleblower in relation to the reported case of corruption the **Agency shall issue an instruction** to the director of the institution as to remove the consequences of detrimental action that the whistleblower suffered.

The director of the institution shall be required to take corrective action in order to remove the detrimental action within three days following the receipt of the **instruction** from the Agency.



## LAW ON WHISTLEBLOWER PROTECTION IN THE INSTITUTIONS OF BOSNIA-HERZEGOVINA

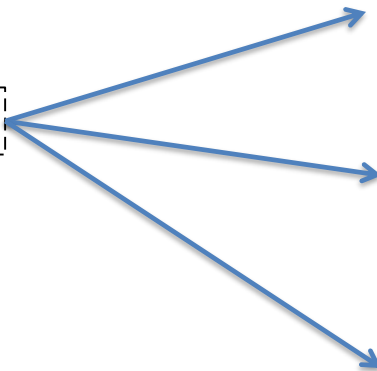


Issuing a misdemeanour warrant



In case any misdemeanour referred to in Article 12 of this Law is found during the inspection, the administrative inspector shall issue a misdemeanour warrant in accordance with the Law on Misdemeanours of Bosnia-Herzegovina.

Fines

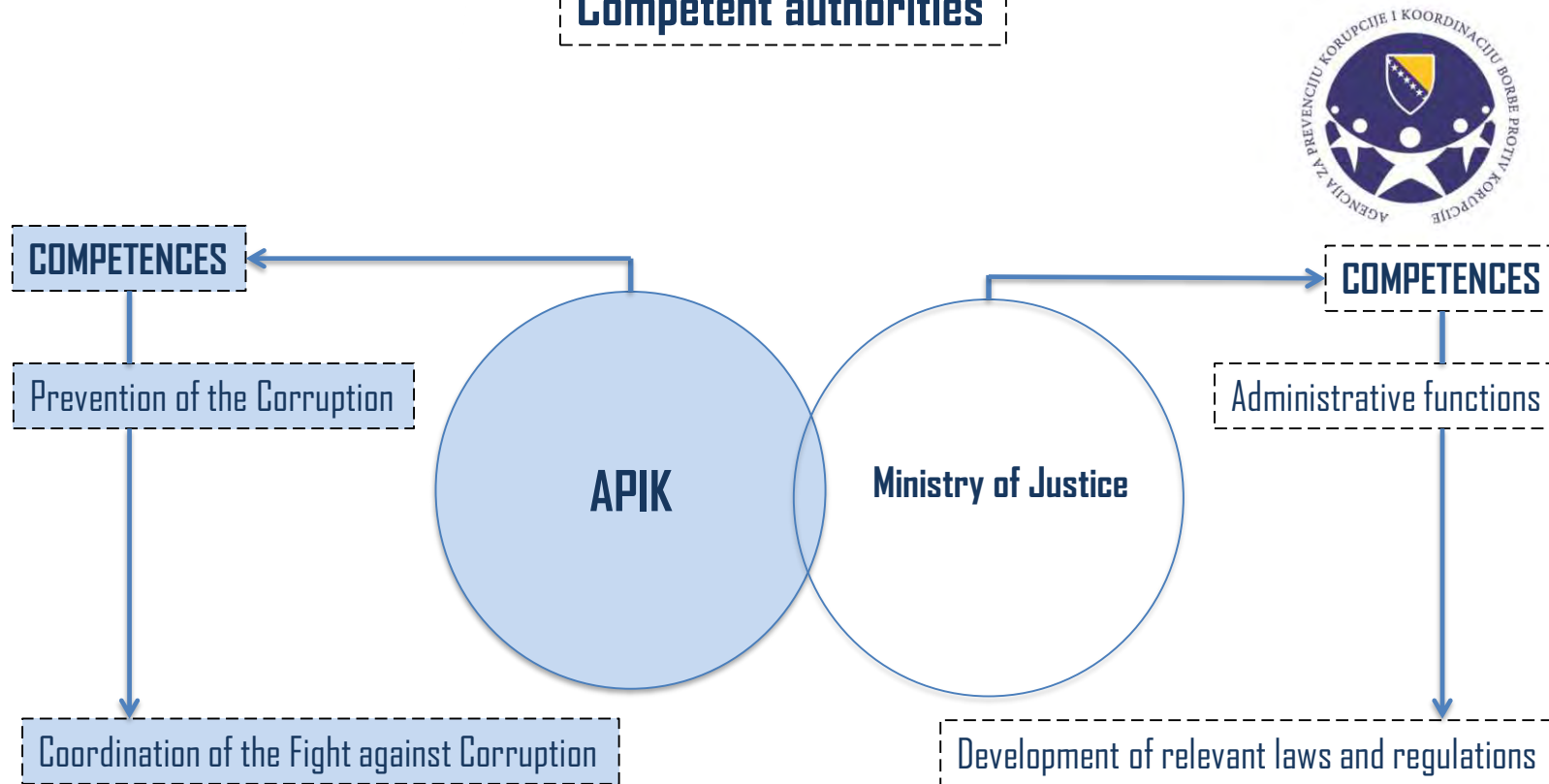


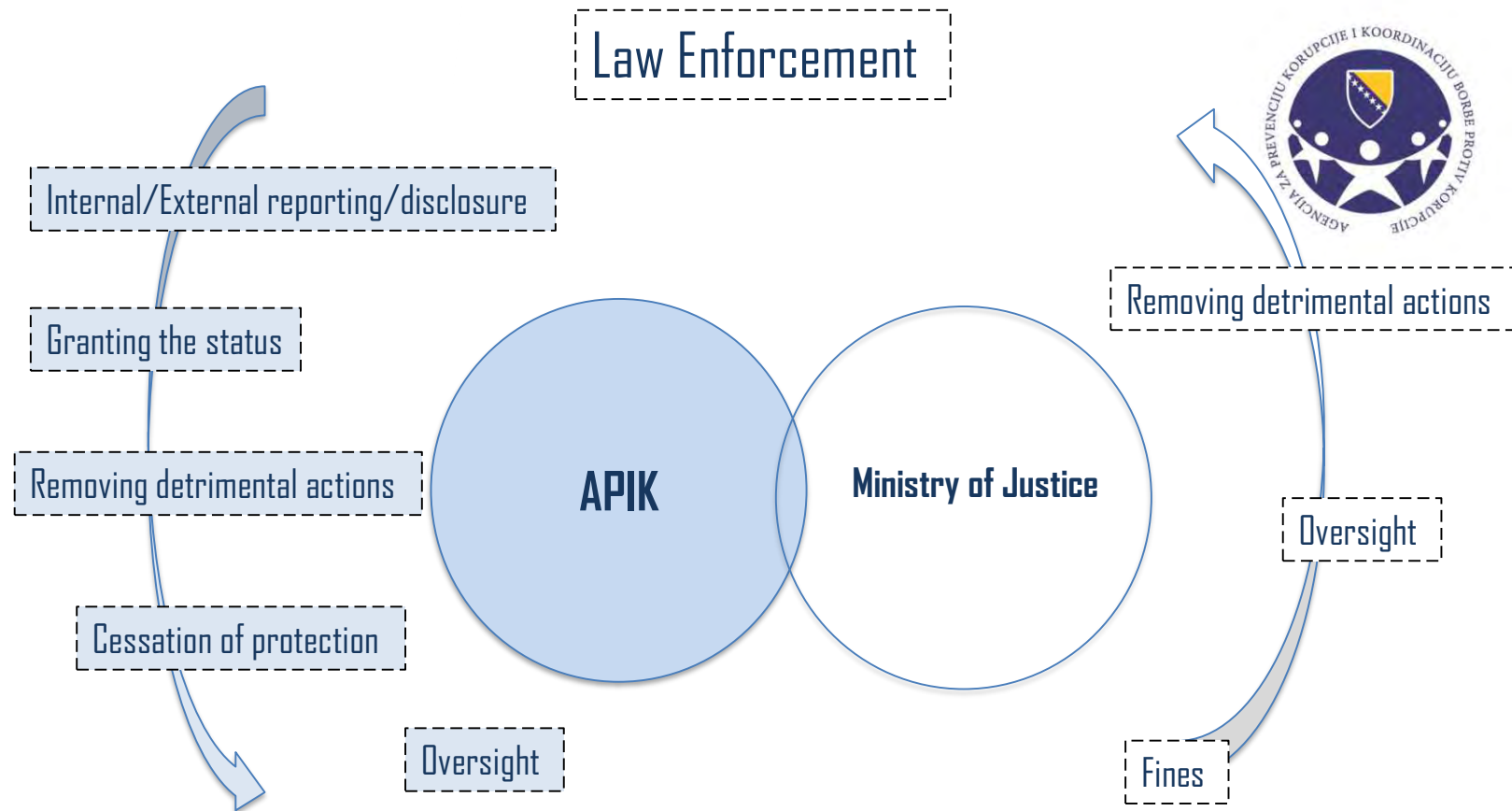
5, 000 EUR to 10, 000 EUR shall be imposed on a director of institution for failing to comply with the instruction by the Agency

A misdemeanor fine amounting from 5, 000 EUR to 10, 000 EUR shall be imposed on a director of institution for failing to issue by-laws prescribed by the Law

A misdemeanor fine amounting from 500 EUR to 5, 000 EUR shall be imposed to a person for knowingly submitting a false report on an act of corruption.

## Competent authorities





Figures and facts



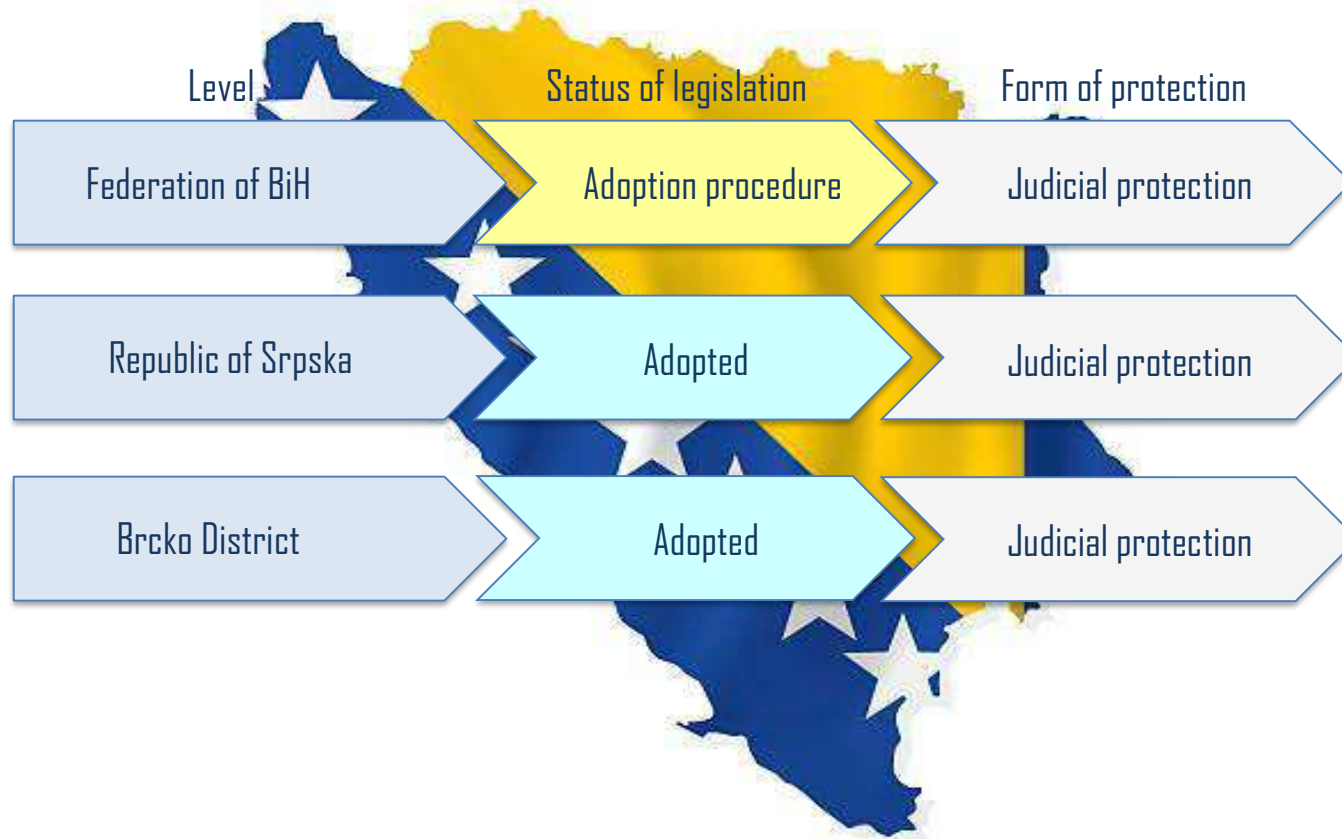
2014-2020

28 requests

21 rejected

7 granted

WB protection and other levels of authorities in the BiH



## LAW ON WHISTLEBLOWER PROTECTION IN THE INSTITUTIONS OF BOSNIA-HERZEGOVINA



Internal procedures in place

Visible infrastructure for the implementation

Mechanisms for the protection

System of sanctions



Bona fides

Abuse of status

Suspension mechanisms

Awareness / Support



## VISIBLE EFFORTS Vs. INVISIBLE RESULTS

# THANK YOU

**MEVLUDIN DZINDO**  
*Assistant Director*

**AGENCY FOR THE PREVENTION OF CORRUPTION AND COORDINATION  
OF THE FIGHT AGAINST CORRUPTION**

***BOSNIA AND HERZEGOVINA***



**4.7. Lifecycle of a Whistleblower Case: The Experience of Montenegro,  
Mr. Boris Vukasinovic, Agency for the Prevention of Corruption, Montenegro**



## **Lifecycle of a Whistleblower Case**

*First Annual Regional Multi-Beneficiary Training on  
Whistleblower Protection*

## AGENCY FOR PREVENTION OF CORRUPTION

APC is still young institution, established by the Parliament of Montenegro, on January 1, 2016 as a central, preventive and independent body.

Submission of the report is stipulated by the Law On Prevention of Corruption,

In addition to law, there is a bylaw which regulates WB procedure and APC internal procedure.

- *Law On Prevention of Corruption (Official Gazette MNE no. 53/14,42/17)*
- *Rulebook on detailed action upon whistleblower's report on threat to the public interest, indicating corruption (Official Gazette MNE, 77/2015)*
- *Internal procedure on the actions of the Agency upon report on threats to public interest that Indicate the existence of corruption.*

## WHO COULD REPORT TO THE APC?

Whistleblower is any natural person or legal entity filing in a report on a threat to public interest that indicates the existence of corruption

## APC JURISDICTION

- public &
- private sector

As you can see, this is the very broad definition.  
Anonymys reporting is also allowed.

APC has jurisdiction to deal with reports related to irregularities in both sector – public and private.

## SUBJECT OF REPORTING

- violation of regulations,
- ethical rules or the possibility of such a violation, which caused, causes or threatens to cause danger to life, health and safety of people and the environment,
- violation of human rights or
- material and non-material damage to the state or a legal entity or natural person,
- an action that is aimed at preventing such a violation from being discovered.

### There are two REPORTING CHANELLS

- Internal reporting
- External reporting - APC

So far, almost 900 public and private institutions disignated a person who is in charge of handling internal reports.

Awernes of the importance of internal reporting is still not developed enough.

## PROCEDURE UPON REPORT

- Administrative investigation
- Opinion with recommendation
- Jurisdiction of another competent authority
- Jurisdiction of the Prosecution

**APC** has jurisdiction to conduct the administrative investigation in private and public sector. Meaning, conduct a hearing, obtain data and all necessary information to carry out the procedure. The final act is opinion and when APC finds irregularities, we provide recommendation within opinion.

When we find that report is not under jurisdiction of APC, we forward it to the competent authorities. In case we find elements of criminal offense, we forward report to the prosecution.

On the other cases, we could send the reports to police, different inspection bodies, Custom Authority and cetera. And all other competent authorities are obliged to send us feedback.

**THANK YOU!**

***Boris Vukašinić***

***Agency for Prevention of Corruption -  
Montenegro***

***e-mail: [boris.vukasinovic@antikorupcija.me](mailto:boris.vukasinovic@antikorupcija.me)***

***[www.antikorupcija.me](http://www.antikorupcija.me)***

## 4.8. Free Speech under EU Directive

### Free speech rights in European Union Directive on Whistleblower Protection

The December 2019 European Union Whistleblower Directive introduced a new era of best practice free speech rights for the continent, and is setting the pace for freedom of expression globally. The index below summarizes the advances in key provisions, with references as necessary to the Recital which provides more detail to interpret more generalized language.

**Who is protected?** The Directive helps more people and institutions than most prior whistleblower laws or policies. In addition to employees, it protects unions, civil society organizations or persons assisting or associated with them, companies where they work, shareholders, suppliers, consultants and self-employed. It protects those who are associated with or assist whistleblowers. Although the directive encourages the use of formal institutional channels, there are no restrictions based on context. (Articles 4, 19) The Recital, at para. 62, clarifies that speech is protected when communicated as part of job responsibilities: “This Directive should also grant protection where Union or national law requires the reporting persons to report to the competent national authorities, for instance as part of their job duties and responsibilities or because the breach is a criminal offence.”

**No loopholes ban on any workplace harassment:** Except for national security actions primarily outside the EU’s authority, the Directive outlaws any act or omission that causes detriment, whether direct, indirect, threatened, taken, recommended or even tolerated (which adopts the principal of a management duty to prevent retaliation). (Article 19)

**Shield against civil and criminal liability:** The Directive provides an affirmative defence that defeats criminal or civil liability when the whistleblower has “reasonable grounds to believe that the reporting or public disclosure of information was necessary for revealing a breach of this directive.” The only exception is where the criminal misconduct was independent of the whistleblowing disclosure, such as breaking and entering an organization’s premises. [Articles 21(2-3), 21(7)]

**Standard for protected speech:** For entitlement to protection whistleblowers only need a reasonable belief that their disclosures are true and relevant. Many other laws require them to have a reasonable belief that the alleged wrongdoer was actually guilty, not just that they reasonably believe they are reporting mere evidence of misconduct. The EU Directive’s more realistic standard gives them a significant head start. [Article 6.1(a)]

**Mandatory channelled reporting sequence:** Before they can make a public disclosure, whistleblowers must report either internally to the institution where they work, or externally to a government authority. The delays for public freedom of expression have been shrunk to three months, because the whistleblower has the choice to make an external (government) disclosure without first reporting internally. However, the directive strongly encourages whistleblowers first to report within the organization where they work, so that institutions have the first opportunity to correct their own deficiencies. (Articles 7, 10, 15)



**Internal whistleblower channels:** These are the channels where a whistleblower is employed, or where the alleged misconduct occurred for non-employee whistleblowers such as shareholders or suppliers. The Recital explains that internal channels must be free from conflict of interest, staffed by trained personnel, and should be led by an official who reports directly to the organizational chief. This will increase legitimacy and prevent plausible deniability by leadership. (Articles 8, 9)

**External reporting channels:** These are the channels where a whistleblower can make a protected report to government authorities competent to investigate or order corrective action on the alleged misconduct, with equivalent structural requirements as for internal channels. (Articles 11-13)

**Action on disclosures:** Whistleblowers are entitled to receipt of their report, a follow-up meeting upon request, and follow-up guidance within three months which can be extended to six months if necessary. (Articles 8-9, 11-13)

**Confidentiality:** The Directive is flawless, protecting against release of identifying information without advance consent, and requiring advanced notification when exposure is non-discretionary. [Articles 16, 23.1(d)]

**Anonymous disclosures:** Although mandatory follow-up action is discretionary, these receive credit as disclosures that qualify for protection if the whistleblower is identified. This creates a subtle, but very powerful, weapon against the weakness of advance exposure to wrongdoers and vulnerability to retaliation that are inherent in tiered reporting. [Article 6(3)]

**Employee's burdens of proof – *prima facie* case:** Whistleblowers meet their burden and there is a presumption of retaliation if they prove that they engaged in protected activity, and that they then suffered a detriment. The burden of proof then shifts to the employer. Most laws require that the whistleblower also prove a nexus, or retaliatory connection, between protected activity and the detriment. This gives whistleblowers another significant head start. [Article 21(5)]

**Employer's reverse burden of proof:** If the employee establishes the *prima facie* case, the burden of proof shifts to the employer to demonstrate that the alleged retaliation was not based on whistleblowing. The Recital explaining how to implement this principle explains that the employer must prove that the alleged retaliatory act in a case is “not connected in any way” with the whistleblowing report or disclosure. [Article 21.5, Recital (93)]

**Due process:** Whistleblowers have access to court to enforce their rights. While informal remedies should be available for those who cannot afford court, this is best practice due process to enforce rights. As a rule, judicial forums are more independent from political pressure than administrative boards. (Article 21.7)

**Anti-gag:** The Directive is clear that the free speech rights cancel out any other restrictions and threats from Nondisclosure Agreements, contracts, asserted trade secrets, data protection laws, breach of copyright, or the widening menu of civil and criminal litigation for breach of contract or that the whistleblower obtained evidence through theft of organizational property, even if the evidence was not connected with the whistleblower's job duties. The only exceptions are for independent criminal offenses like breaking and entering. [Articles 21(2-7)]

**Affording rights:** The Directive provides for legal assistance. [Article 20(c)]

**Interim relief:** The Directive's Recital makes this an enforcement priority, which while generalized is the most significant principle for the law to make a difference. [Article 21(6), Recital (93)}

**Effective remedies:** Whistleblowers cannot "lose by winning" with the Directive's remedies. They are entitled to be made whole with guaranteed reinstatement and compensatory damages. [Article 21(8)]

**Accountability:** The Directive imposes criminal, civil or administrative penalties on those who engage in retaliation or violate the Directive's requirements to implement its provisions, protect confidentiality or prevent retaliation. Punishment for blowing the whistle is limited to knowingly false statements, with a ban on penalties that would create a chilling effect. (Article 23)

## 5. Group Discussion Instructions Day 1

### Discussion Points for Group Session

9 February 2021

#### **14:00 – 15:00 Improving Whistleblower Protection: Challenges and Opportunities**

*Tour de table* - Experiences from the SEE

*Moderated by Mr. Tom Devine, Whistleblowing Expert of RAI*

*Secretariat*

Please share your experiences in handling reports, retaliation complaints and other communications from employees and citizens, including:

1. Based on which factors have you granted or denied whistleblower protection? Please give some examples of cases and their outcomes. (Please withhold identifying information to maintain confidentiality.)
2. Do you investigate reports of alleged misconduct internally or forward them to other public institutions or agencies for follow-up? How do you ensure reports are thoroughly investigated and, if appropriate, prosecuted?
3. Please emphasize the best legislative solutions in responding to and investigating whistleblower reports and retaliation complaints.

#### **15:00 – 15:30 Group Recommendations and Conclusions**

*Moderated by Mr. Mark Worth, Whistleblowing Expert of RAI*

*Secretariat*

4. Please share ideas for ways to improve your whistleblower protection system

***NOTE: Each jurisdiction is expected to take active part in discussion. Please be mindful of the time limitation.***

## 6. Group Discussion Instructions Day 2

### Discussion Points for Group Sessions

11 February 2021

**13:30 – 14:30    Tour de table: Civil Society and Public Institutions  
Experiences and Lessons Learned in Handling a  
Whistleblower Report**

*Moderated by Mr. Mark Worth, Whistleblowing Expert of RAI  
Secretariat*

Please share your experiences with whistleblower cases in which you as a civil society representative collaborated with a public official, or vice versa.

1. How did you collaborate? What were the outcomes?
2. What opportunities or challenges arose?

Please also share your ideas for improving the positive impacts of whistleblower disclosures and the outcomes of whistleblower cases.

3. What barriers are there to better outcomes?
4. How can people better protect themselves from retaliation, without needing to depend on a whistleblower law?
5. Do you need any assistance with any ongoing cases or issues?

***NOTE: Each organisation is expected to take active part in discussion.  
Please be mindful of the time limitation.***

## 7. Training Handout

### **Whistleblowers: Witnesses in the Workplace** ***The Case of the Spoiled Milk in School***

#### **Scenario 1**

A mother learns that the expiration date on milk being served at her son's school has been changed to allow badly spoiled milk to be served to children. The mother calls the school, which confirms that the milk is badly spoiled and throws it away before any students drink it.

Public officials fine the milk company and order it to provide one year's worth of milk to the school for free. The mother is congratulated for what she did and is called a hero by the media

#### **Scenario 2**

A school cafeteria employee learns that the expiration date on milk has been changed to allow badly spoiled milk to be served to children. The employee tells the school director, who confirms that the milk is badly spoiled and throws it away before any students drink it. Public officials fine the milk company and order it to provide one year's worth of milk to the school for free. The school cafeteria employee is congratulated for what he did and is called a hero by the media

#### **Scenario 3**

A student learns that the expiration date on milk at her school has been changed to allow badly spoiled milk to be served to children. The student tells a teacher, who confirms that the milk is badly spoiled and throws it away before any students drink it. Public officials fine the milk company and order it to provide one year's worth of milk to the school for free. The student is congratulated for what she did and is called a hero by the media.

#### **Scenario 3**

A company employee learns that the expiration date on milk that the company sold to a school has been changed to allow badly spoiled milk to be served to children. The company employee tells his boss about the problem, who tells him to stay quiet and go back to work – or else face consequences. The employee is frightened for his job, but two days later he tells the school about the spoiled milk. By then, however, 200 children have drunk the spoiled milk and 15 children are hospitalized for food poisoning. The company employee is fired, sued for revealing company "secrets," and blacklisted in the food industry. The company destroys evidence of the misconduct and as a result cannot be fined or otherwise punished.

#### **Question for thought**

Why is Scenario 4 different from the other three?

- Why only in Scenario 4 did school children get sick?
- Why only in Scenario 4 was the whistleblower punished after he reported the spoiled milk?
- Why only in Scenario 4 was the whistleblower not called a hero by the media?

## **8. Recommended Readings**

Confidentiality and avoiding surveillance: <https://whistleblower.org/caught-between-conscience-career-expose-abuse-without-exposing-your-identity/>;

NGO-whistleblower working relationships: <https://whistleblower.org/wp-content/uploads/2020/01/WhistleblowingPublicInterestGuide.pdf>;

and

Media-whistleblower working relationships: <https://whistleblower.org/wp-content/uploads/2020/01/WhistleblowingJournalismGuide.pdf>

## 10. List of Attendees

| No.                             | Participating Jurisdiction | Name and Surname        | M/F | Institution   | Position  | Contact E-mail |
|---------------------------------|----------------------------|-------------------------|-----|---|---|----------------|
| <b>Anti-corruption Agencies</b> |                            |                         |     |   |   |                |
| 1.                              | Albania                    | Adela Tagani            | F   | High Inspectorate on Declaration and Audit of Assets and Conflict of Interest (HIDAACI)         | Inspector   |                |
| 2.                              | Albania                    | Gjergji Muzhaqi         | M   | High Inspectorate on Declaration and Audit of Assets and Conflict of Interest (HIDAACI)         | Inspector   |                |
| 3.                              | Albania                    | Majlinda Thomaj         | F   | High Inspectorate on Declaration and Audit of Assets and Conflict of Interest (HIDAACI)         | Inspector   |                |
| 4.                              | Bosnia and Herzegovina     | Mirela Tomić            | F   | Agency for the Prevention of Corruption and Coordination of the Fight against Corruption (APIK) | Expert Advisor                                    |                |
| 5.                              | Bosnia and Herzegovina     | Enisa Hrbat             | F   | Agency for the Prevention of Corruption and Coordination of the Fight against Corruption (APIK) | Senior Expert Associate                           |                |
| 6.                              | Bosnia and Herzegovina     | Dragan Bašević          | M   | Agency for the Prevention of Corruption and Coordination of the Fight against Corruption (APIK) | Expert Associate for Protection of Whistleblowers |                |
| 7.                              | Bosnia and Herzegovina     | Mevludin Dzindo         | M   | Agency for the Prevention of Corruption and Coordination of the Fight against Corruption (APIK) | Assistant Director                                |                |
| 8.                              | Bulgaria                   | Vyara Dimitrova-Botseva | F   | Commission for Combating Corruption and Confiscation of Illegally Acquired Property (CACIAF)    | Key Expert  |                |

|                              |                 |                    |   |   |   |  |
|------------------------------|-----------------|--------------------|---|---|---|--|
| 9.                           | Bulgaria        | Ilian Ilev         | M | Commission for Combating Corruption and Confiscation of Illegally Acquired Property | Chief Expert  |  |
| 10.                          | Kosovo*         | Blerim Kelmendi    | M | Anti-corruption Agency  | Director of the Department for Combating Corruption                           |  |
| 11.                          | Kosovo*         | Mimoza Limani      | F | Anti-corruption Agency  | Head of the Division for Investigation and Whistleblowing                     |  |
| 12.                          | Moldova         | Alin Bulbas        | F | National Anti-Corruption Center   | Main Officer  |  |
| 13.                          | Montenegro      | Boris Vukašinović  | M | Agency for Prevention of Corruption   | Senior Advisor  |  |
| 14.                          | North Macedonia | Irena Popovska     | F | State Commission for Prevention of Corruption                                       | Head of Anti-corruption Unit  |  |
| 15.                          | North Macedonia | Jasminka Cvetovska | F | State Commission for Prevention of Corruption                                       | Advisor   |  |
| <b>Ministries of Justice</b> |                 |                    |   |   |   |  |
| 16.                          | Albania         | Nino Strati        | M | Ministry of Justice   |   |  |
| 17.                          | Albania         | Klobeta Zylyfi     | F | Ministry of Justice   | Expert  |  |
| 18.                          | Albania         | Kristina Puci      | F | Ministry of Justice   | Expert  |  |
| 19.                          | Albania         | Enea Babameto      | F | Ministry of Justice   | Specialist of Projects and Monitoring the Anti-corruption Network Unit        |  |
| 20.                          | Bulgaria        | Ljubomir Talev     | M | Ministry of Justice   | Director of Directorate Council of Legislation                                |  |
| 21.                          | Bulgaria        | Florian Florov     | M | Ministry of Justice   | Chief Expert-International Legal Cooperation and European Affairs Directorate |  |

\* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.



|                              |                 |                              |   |  |  |  |
|------------------------------|-----------------|------------------------------|---|--|--|--|
| 22.                          | Croatia         | Mario Cupic                  | M | Ministry of Justice and Administration         | Senior Expert Advisor  |  |
| 23.                          | Croatia         | Jurica Grlić                 | M | Ministry of Justice and Administration         | Expert Advisor   |  |
| 24.                          | Kosovo*         | Feride Podvorica             | F | Ministry of Justice                            | Head of Division on Overseeing the Implementation of Legislation |  |
| 25.                          | Kosovo*         | Noliana Kusari               | F | Ministry of Justice                            | Senior Legal Officer   |  |
| 26.                          | Moldova         | Ciornii Daniela              | F | Ministry of Justice                            | Superior Consultant  |  |
| 27.                          | Moldova         | Radu Scripnic                | M | Ministry of Justice                            | Superior Consultant  |  |
| 28.                          | Montenegro      | Ivana Masanovic              | F | Ministry of Justice; Human and Minority Rights | Head of Division for Criminal Legislation                        |  |
| 29.                          | North Macedonia | Elena Dimovska               | F | Ministry of Justice                            | Advisor  |  |
| 30.                          | North Macedonia | Ljubica Karamandi Popchevski | F | Ministry of Justice                            | State Advisor for Civil Legislation                              |  |
| 31.                          | Romania         | Dumitru Adrian               | M | Ministry of Justice                            | Legal Counsellor   |  |
| 32.                          | Romania         | Sava Lorena                  | M | Ministry of Justice                            | Legal Counsellor   |  |
| 33.                          | Serbia          | Katarina Nikolić             | F | Ministry of Justice                            | Advisory Position on International Cooperation Matters           |  |
| <b>Court Representatives</b> |                 |                              |   |  |  |  |
| 34.                          | Serbia          | Vladimir Vinš                | M | Ministry of Justice                            | Senior Advisor   |  |
| 35.                          | Serbia          | Mirjana Martić               | F | Misdemeanor Court in Belgrade                  | Judge  |  |
| 36.                          | Serbia          | Olgica Milošević             | F | Court of Appeal in Novi Sad                    | Judge  |  |

|                                   |                        |                    |   |  |  |  |
|-----------------------------------|------------------------|--------------------|---|--|--|--|
| 37.                               | Serbia                 | Vesna Dušić        | F | Court of Appeal in Novi Sad  | Judge                                    |  |
| 38.                               | Serbia                 | Borivoje Gašić     | F | Court of Appeal in Novi Sad  | Judge                                    |  |
| <b>Other partner institutions</b> |                        |                    |   |  |  |  |
| 39.                               | North Macedonia        | Gjeorgji Pandeliev | M | Ministry of Education and Science of the Republic of North Macedonia | Lawyer                                   |  |
| <b>CSOs</b>                       |                        |                    |   |  |  |  |
| 40.                               | Albania                | Jonide Alite       | F | Partners Albania   | Director of Programs                     |  |
| 41.                               | Albania                | Klaudia Koxha      | F | Center for the Study of Democracy and Governance                     | Communication and Outreach Specialist    |  |
| 42.                               | Albania                | Rudina Shehu       | F | Albania Helsinki Committee   | Project Coordinator/<br>Admin. Assistant |  |
| 43.                               | Bulgaria               | Chris Rolland      | M | Center for the Study of Democracy                                    | Analyst                                  |  |
| 44.                               | Bosnia and Herzegovina | Alen Vejzagic      | M | Public Interest Advocacy Center                                      | IT Manager                               |  |
| 45.                               | Bosnia and Herzegovina | Zoran Ivancic      | M | Public Interest Advocacy Center                                      | President                                |  |
| 46.                               | Bosnia and Herzegovina | Sara Omerović      | F | Center for Development of Youth Activism (CROA)                      | Volunteer                                |  |
| 47.                               | Bosnia and Herzegovina | Lejla Dautbašić    | F | Center for Development of Youth Activism (CROA)                      | Volunteer                                |  |
| 48.                               | Croatia                | Klara Horvat       | F | Human Rights House Zagreb  | Legal Officer                            |  |
| 49.                               | Kosovo*                | Gzim Shala         | M | Kosovo Law Institute (KLI)   | Senior Legal Researcher                  |  |
| 50.                               | Kosovo*                | Mirvet Thaqi       | M | Kosovo Law Institute (KLI)   | Researcher                               |  |

|   |                        |                        |   |  |   |  |
|---|------------------------|------------------------|---|--|---|--|
| 51.   | Kosovo*                | Lavdim Bajraktari      | M | Kosovo Law Institute (KLI)                                       | Researcher                                    |  |
| 52.   | Moldova                | Angela Buliga          | F | CRDO-Resource Center for Human Rights                            | Monitor                                       |  |
| 53.   | Montenegro             | Zorana Markovic        | F | Centre for Development of Non-Governmental Organizations (CRNVO) | Program Coordinator                           |  |
| 54.   | Serbia                 | Djordje Nikolic        | M | EU Project Prevention and Fight against Corruption               | Expert for Prevention of Corruption           |  |
| 55.   | Slovakia               | Zuzana Grochalová      | F | Transparency International Slovakia                              | Project Coordinator for whistleblowing agenda |  |
| <b>Whistleblowing National Coordinators</b> |                        |                        |   |  |   |  |
| 56.   | Albania                | Arjan Dyrmishi         | M | Centre for the Study of Democracy and Governance                 | Executive Director and Founder                |  |
| 57.   | Kosovo*                | Flutura Kusari         | F | N/A  | N/A   |  |
| 58.   | Montenegro             | Dina Bajramspahic      | F | NGO Institute Alternative (IA)                                   | Research Director                             |  |
| 59.   | North Macedonia        | Aleksandar Bozhinovski | M | SCOOP Macedonia  | Co-director, Co-founder                       |  |
| 60.   | Serbia                 | Vladimir Radomirovic   | M | Pištaljka  | Editor-in-Chief                               |  |
| <b>EU Delegations</b>                       |                        |                        |   |  |   |  |
| 61.   | Bosnia and Herzegovina | Mirna Bresan           | F | EUSR   | Rule of Law Adviser                           |  |
| 62.   | Kosovo*                | Hugo Rasco             | M | EUSR   | Legal Adviser                                 |  |

## RAI conducted the First Annual Regional Multi-Beneficiary Training on Whistleblower Protection



From the web:

The EU Whistleblowing Directive<sup>[1]</sup> was passed in December 2019 to provide and promote a safe and secure way for persons to speak up about wrongdoings in their work environment. It also provides a high level of protection to whistleblowers against retaliation, and requires national authorities to adequately inform citizens and train public officials on how to deal with whistleblowing.

Following the Gap Analysis of Whistleblower Protection Laws in SEE jurisdictions, which assesses the level of compliance of these laws with the EU Whistleblowing Directive, the RAI Secretariat delivered a two-day Annual Regional Multi-Beneficiary Training on Whistleblower Protection on February 9 and 11, 2021.

Due to COVID-19 restrictions, this training was delivered on-line, through two webinars: 1. 'Building Effective Whistleblower Protections for the Benefit of Citizens in line with the EU Whistleblowing Directive' and 2. 'Experiences of Public Institutions and Civil Society in Handling Whistleblower Reports: How to Enhance Mutual Cooperation and Coordination?' taking place one day apart to provide participants who attended both webinars (e.g. professionals from anti-corruption agencies and other oversight bodies) with time for retrospection.

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<sup>1</sup> Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, <https://eur-lex.europa.eu/eli/dir/2019/1937/oj>

The training took place in a mixed environment of more than 50 participants representing ministries of justice, anti-corruption agencies or other whistleblowing enforcement bodies, representatives of EU delegations, and 22 representatives of 15 CSOs involved in whistleblowing support and advocacy from 10 SEE jurisdictions, including Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Kosovo\*, Moldova, Montenegro, North Macedonia, Romania, and Serbia.

The comprehensive agenda of the training covered, among other topics, the purpose and overview of key requirements of the EU Whistleblowing Directive; the practices of the European Court of Human Rights on key concepts of the EU Whistleblowing Directive; free speech in the workplace; best approaches in protecting whistleblowers in practice; how good whistleblowing programs lead to successful protection of whistleblowers; the opportunities for collaboration between CSOs and public institutions in whistleblowing protection; the lifecycle of a whistleblower case, from disclosure and support to investigation and protection/corrective actions and other issues as a result of reflections and discussions on experiences of public institutions and civil society.

The training was delivered by international and regional experts on whistleblowing, Mr. Tom Devine, Mr. Mark Worth, Mr. Stephan Kohn, Mr. Mevludin Dzindo, Mr. Boris Vukasinovic, and Ms. Vanja Calovic Markovic, the RAI Secretariat project manager – anti-corruption expert, Ms. Elmerina Ahmetaj Hrelja, and senior anti-corruption advisor Ms. Aneta Arnaudovska, combined with group discussions and recommendations.

The Head of the RAI Secretariat, Mr. Vladan Joksimovic, who provided the opening remarks, stressed the assistance of the RAI Secretariat in the improvements to whistleblowing legislative framework in SEE in line with the EU Whistleblowing Directive. „Today’s training will among other things be an opportunity to hear about key findings and recommendations of the RAI assessment of the compliance of whistleblower protection laws in SEE with the EU Whistleblowing Directive (Gap Analysis), and more importantly it will be an opportunity to discuss and exchange best practices in whistleblower protection in the region and more broadly (EU, USA) “.

Ms. Kay Binder, Policy Officer from the European Commission, Directorate-General for Neighborhood and Enlargement Negotiations, in her remarks, thanked RAI Secretariat for its continuing efforts to enhance whistleblower protection systems in SEE pointed out that good and functional laws and institutional arrangements, coupled with leadership commitment and public education are key to building effective whistleblower protection systems. Ms. Binder underlined the commitment of EU to support the building of such systems in line with the EU Whistleblowing Directive.

Ms. Elmerina Ahmetaj Hrelja, Project Manager and Anti-corruption Expert, who moderated the event, presented on the purpose, key requirements of the EU Whistleblowing Directive, and the importance of the transposition of the EU Whistleblowing Directive in SEE laws.

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\* This designation is without prejudice to positions on status, and is in line with UNSC 1244 and the ICJ Opinion on the Kosovo Declaration on Independence

Ms. Aneta Arnaudovska, Senior Anticorruption Adviser of RAI Secretariat, presented the practice of the European Court of Human Rights on key concepts of the EU Whistleblowing Directive with a focus on reasonable belief and reversed burden of proof.

Mr. Mark Worth, Whistleblowing Expert of RAI Secretariat, who spoke about RAI Gap Analysis in SEE laws, conveyed a clear message to the participants to be open when it comes to the implementation of laws. „We have laws, we have staff, we have international experts, let's minimize the number of factors which are frequently slowing down good governance reforms and the creation of fair societies”.

Mr. Stephan Kohn from National Whistleblower Center, who spoke about the key sources for detecting fraud and corruption, said that „Without a strong whistleblower program corruption cannot be effectively detected or prosecuted.”

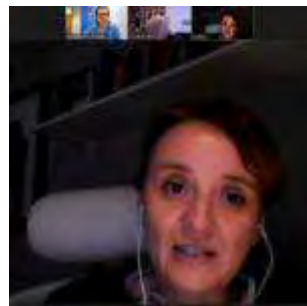
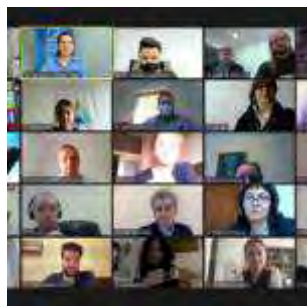
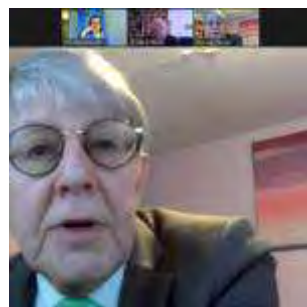
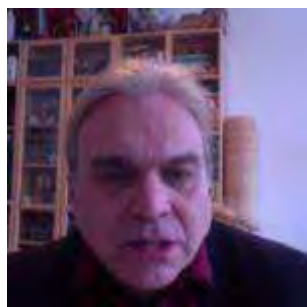
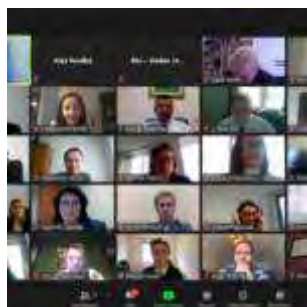
Mr. Mevludin Džindo, Assistant Director of the Agency for Prevention of Corruption and Coordination of the Fight against Corruption in Bosnia and Herzegovina, and Mr. Boris Vukasinovic, Agency for the Prevention of Corruption in Montenegro, who spoke about the lifecycle of a whistleblower case handled by public institutions, addressed practical experiences in disclosure and support to investigation and protection of a whistleblower.

On a lifecycle of a whistleblower case handled by a CSO, remarks were provided by Ms. Vanja Calovic Markovic from MANS in Montenegro, who spoke about alternative reporting channels made available to a whistleblower by NGOs, and stressed the importance of the confidentiality of the identity of a whistleblower and of collecting and providing evidence investigative/prosecuting bodies.

These presentations were accompanied by tour-de-table discussions of representatives of public institutions and civil society organizations on their experiences in improving whistleblower protection, the challenges they encountered and opportunities for improvements, and in strengthening channels of communication among representatives from governmental and non-governmental sectors in handling whistleblowing reports.

Concluding remarks included a call to turn the laws into a reality and use them to make a difference in the fight against corruption, for which the following is required: the commitment of the organizational leadership, strengthened capacity to implement the law through training, public education, and transparency in how the law is implemented.

The training was conducted under the framework of the regional project 'Breaking the Silence: Enhancing the whistleblowing policies and culture in Western Balkans and Moldova', which is funded by the European Union and implemented by the RAI Secretariat.



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*Views presented in the training materials do not necessarily reflect the views of the European Union,  
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