



Greece-OECD Project:
Technical Support on Anti-Corruption

Guidelines for Reporting Misconduct in the Public Sector in Greece



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About the Greece-OECD Project

The Greek government is prioritising the fight against corruption and bribery and, with the assistance of the European institutions, is committed to taking immediate action. Under the responsibility of the General Secretariat Against Corruption, Greece's National Anti-Corruption Action Plan (NACAP) identifies key areas of reform and provides for a detailed action plan towards strengthening integrity and fighting corruption and bribery. The OECD, together with Greece and the European Commission, has developed support activities for implementing the NACAP. This project is scheduled for completion in 2018 and is co-funded by the European Commission and Greece. For further information, please see [the project webpage](#).



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Context

These Guidelines aim at assisting senior public servants establishing and operationalising a comprehensive whistleblowing framework to effectively manage and follow-up on reports of suspected misconduct in the Greek public sector. The Guidelines complement the OECD Report on Whistleblower Protection in the Public Sector in Greece (the Report), which provides guidance to the legislative committee responsible for developing the upcoming whistleblower draft law. Both the Report and Guidelines on whistleblowing in the public sector have been produced under component 5.1 of the Greece – OECD Project for Technical Support on Anti-Corruption.

The Guidelines highlight key concrete outputs of the comprehensive whistleblower legislation outlined in the Report and provide guidance about how such guidelines may be implemented. They address the issues that are normally considered as critical according to OECD countries' experience in implementing their own whistleblower framework. The Guidelines are intended for all types of public organisations and can be adapted to the context of both larger and smaller public organisations.

However, as discussed in the Report, the implementation of all recommendations at the same time may constitute an ambitious agenda for the Greek government, as it would require comprehensive changes in the structures of the public administration, as well as changes in public perceptions regarding the importance of the role whistleblowers play in combatting corruption. As a result, the government may decide to take an incremental approach towards the implementation of the OECD recommendations, including the prioritisation of some of the recommendations over others and the use of pilots in strategic institutions.

1. Key elements of a whistleblowing system

This section suggests some key elements that play a central role in public sector whistleblowing frameworks as well as the main objectives that they seek to achieve.

1.1. Designing a comprehensive written whistleblowing policy

While a written whistleblowing policy is insufficient on its own to ensure that employees disclose misconduct and that organisations appropriately follow-up on such disclosures, it is still an essential component of any whistleblowing system. It enunciates the organisation's commitment to implement a culture of openness about raising and discussing ethical concerns arising within the organisation.

Whistleblowing mechanisms may vary due to the different size and nature of public organisations, but any such policy must be clear, simple, easy to understand and include essential features. Managers of public institutions may consider the following elements as the foundation of a comprehensive whistleblowing policy:

- a) Statements from the organisation that employees are encouraged to disclose misconduct and that such disclosures will be appropriately addressed in a consistent and fair manner;
- b) A clear definition of the concerns that are expected to be raised under the policy and clarification that such concerns do not necessarily need to be detailed enough to constitute fulsome evidence;
- c) Identification of the officers who are responsible for receiving disclosures;
- d) A commitment from the organisation to protect the identity of whistleblowers and to protect them from potential reprisals, including examples of specific measures that may be applied;
- e) Clarification of the follow-up whistleblowers will receive on their disclosure as well as applicable review and analysis timeframes.

Some of these key elements will be further discussed below.

1.2. Clearly specifying the purpose of the whistleblowing procedure

The scope of the “misconduct” that is expected to be reported under the whistleblowing policy must be made clear from the outset. Such misconduct usually occurs in the workplace (although not necessarily). In addition, whistleblower procedures usually cover disclosures that promote the public interest, as opposed to personal grievances and complaints which may be best reported through human resources and dispute resolution channels.

Moreover and as provided in the Report, the misconduct that may be reported under whistleblower systems may include the following:

- Any breach of national or regional laws, as well as of any legal obligation of public servants;
- A failure to comply with any legal obligation;
- Any action that would warrant disciplinary action according to internal policies;
- A miscarriage of justice that has occurred, is occurring or is likely to occur;
- the health or safety of any individual that has been, is being or is likely to be endangered;
- the environment that has been, is being or is likely to be damaged, or
- information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

Generally, a whistleblower policy should not be used to exercise statutory rights or harassment claims and personal disagreements that may be addressed to the human resources or mediation services, unless such rights and claims are derived from the exercise of reprisals for blowing the whistle.

1.3 Effectively handling disclosures of misconduct

Public officials responsible for handling disclosures of misconduct must capture the information communicated accurately and assess its credibility as well as whether it can be verified. Officials responsible for receiving disclosures should therefore be adequately trained in investigations, audits or other technical areas closely related to the activities of the organisation.

Disclosures are prioritised to determine how to proceed as well as the amount of resources that may be assigned to each specific disclosure. Depending on the gravity of the situation, appropriate actions may range from an informal discussion with a manager to a formal investigation by internal or even external investigators.

Each public organisation should ensure that public servants with investigation training are responsible to receive the disclosure and appropriately follow-up on the disclosure. Training of public officials may be conducted by other Greek public institutions with necessary investigation expertise.

If the complexity or the criminal nature of the disclosure requires expertise that the organisation does not possess, public organisations may have pre-established relationships with other public organisation (e.g. the prosecutorial authorities, the Court of Auditors, the General Inspector of Public Administration, the General Secretariat Against Corruption, the National Ombudsman) to whom they can turn to in order to carry out the investigations. Indeed, some investigations may require specific technical skills such as forensic audit and accounting, software analysis, or examination of physical evidence.

Finally, if a disclosure that turns out to be inaccurate does not necessarily mean that it was made with the intention to mislead and that it should involve sanctions against the whistleblower. An assessment will be made as to whether the employee should

reasonably have known the disclosure was false or misleading at the time of disclosure before seeking disciplinary sanctions against the whistleblower.

1.4 Allowing for alternative reporting channels to encourage disclosures

The nature of the misconduct and its context, as well as the personality of the whistleblower, the wrongdoer and of designated officials responsible for handling disclosures will determine whether public servants will feel more comfortable to speak with their line manager, a senior ethics official or with a third party outside the organisation. This is why public servants have the option to disclose misconduct to these three categories of individuals under the public service whistleblowing framework in Greece. These officials are required to receive appropriate training on investigations and information gathering from whistleblowers, detecting and avoiding reprisals, the rights and obligations arising from the public sector whistleblowing framework in Greece, and how to effectively interact with individuals under emotional distress.

Moreover, disclosures of misconduct may be made directly to responsible officials through various communication channels, such as independent telephone lines, internet platforms, in-person meetings in appropriate location or regular mail addresses.

1.5 Implementing a comprehensive strategic approach against reprisals

Retaliation may occur when management repeatedly fails to address issues legitimately raised by employees. It is imperative that each public organisation emphasises strongly that reprisals will not be tolerated. To be effective, such a statement may be backed by the implementation of effective measures to protect those who report misconduct as well as potential witnesses, investigators, as well as any other individual who may be retaliated against. Concrete measures to avoid reprisals are clearly outlined in the policy, as well as the circumstances when they may apply, to enhance the credibility of the organisation's commitment to avoid reprisals. Such measures include protection of identity, adapted investigative processes, effective remedies for compensation and specific training for managers on how to detect and address cases of reprisals.

A first set of measures that effectively protect whistleblowers is ensuring an appropriate level of confidentiality or anonymity for whistleblowers. "Confidentiality" will require that only a limited number of designated officials will be made aware of the identity of the whistleblower, while "anonymity" implies that the whistleblower's identity has never been disclosed at the time of the disclosure. Confidentiality may be enhanced by anonymising the information provided by the whistleblower and encrypting the database where the identity of whistleblowers is recorded. Moreover, in cases where the information provided leads to prosecution, a testimony from the whistleblower may not be necessary if investigators were able to corroborate the disclosure with independent evidence. Finally, modern technology has made it possible to establish a two-way communication channel while maintaining a whistleblower's anonymity. These include hotlines operated by an independent third party, internet platforms or smartphone applications where whistleblowers are identified only through tracking numbers.

However, protecting the identity of whistleblowers may still constitute a challenge in some circumstances. For example, there may be few people with access to the information being disclosed by whistleblowers, or some whistleblowers may raise suspicion by expressing their views or repeatedly accessing information that is specifically linked with matters related to the disclosure. Investigative processes may also incidentally point to the identity of whistleblowers. Public organisations must be aware of these risks and adapt their investigation techniques accordingly. Moreover, public organisations may suspend any adverse actions against whistleblowers until the end of the investigation to ensure false complaints or performance appraisals are not being fabricated to exercise reprisals against the whistleblower.

If whistleblowers have been unfairly treated as a result of their disclosure, they may seek redress from a disciplinary commission within the public service, or a competent court, when all preventive efforts have failed. Remedies that may be ordered to compensate whistleblowers include damages (e.g. loss of revenue, loss of reputation, or punitive or exemplary damages), reinstatement and continuity of career progression, transfer to another public institution, interim relief, and compensation for legal fees and costs.

Management skills to avoid reprisals are not intuitive and therefore, all levels of public servants are entitled to receive training on what is considered retaliation, how to detect and address reprisals, the legal protections that may be available to whistleblowers depending on the context, and effective preventive approaches.

1.6 Define what personal information about the whistleblower, witnesses and potential wrongdoer will be protected¹

The European Data Protection Supervisor's *Guidelines on processing personal information within a whistleblowing procedure* provide that the personal information that may be protected by confidentiality under a whistleblower policy may include any information that relates to an identified or an identifiable person. This may include information about an individual's private life in general, including information on an individual's activities, such as working relations and economic and social behaviour. As a result, the entire whistleblower report may be kept confidential, as in some cases it may relate to the behaviour of the whistleblower.

However, the mere fact that a name is mentioned in a document does not necessarily qualify all the information contained in the document as "data relating to that person". An assessment of the information contained in the document must therefore be done on a case-by-case basis.

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

Personal information that is not relevant to the nature of the disclosure should not be further processed and deleted from the file.

1.7 Implementing adequate security measures to effectively protect confidentiality²

Public officials responsible for handling disclosures are responsible for implementing appropriate technical and organisational measures to ensure a level of security proportionate to the risks represented by the processing and the nature of the personal information to be processed. This is essential to ensure the credibility of the whistleblowing procedures. Appropriate measures to effectively prevent personal information from being accessed by non-authorised persons and to guarantee its integrity must be implemented.

Such measures should be determined by an appropriate risk assessment of the existing risk mitigation measures and identify potential additional measures on a cost-benefit analysis. This analysis needs to be conducted on an ongoing basis as risks evolve over time.

1.8 Implementing corrective and preventive actions based on the results of the investigation

The main reason employees do not report misconduct is that they lack confidence the organisation will appropriately act to address reported issues. Therefore, it is paramount that when misconduct is reported and substantiated, appropriate action is taken as soon as practicable. Corrective action will normally aim at ending the misconduct and proportionately sanctioning the wrongdoer to make him or her accountable for the misconduct. In addition, a change in policy or procedure may be appropriate to ensure the misconduct does not happen in the future, if meaningful gaps in policy and procedure are identified. Such change may even happen before the conclusion of the investigation if it is clear that loopholes in the internal controls need to be addressed immediately to limit potential harm to the organisation.

Occurrences of misconduct may also be used as case studies and disseminated across the public service (after being anonymised) to enhance the training and communication about whistleblower and integrity policies.

1.9 Ensuring transparency of decisions to drop an investigation and allowing for appropriate review

When investigators come to the decision that the disclosure of misconduct is not substantiated, such decisions should be sufficiently motivated and reviewed by other public officials than those who have taken the decision to abandon the investigation.

². Id.

The motives to drop the investigation should be communicated in full to the whistleblower. This may allow the whistleblower to assess the decision, and possibly bring the matter to another authority if such decision is, in the opinion of the whistleblower, not appropriately motivated.

1.10 Ongoing assessment of the whistleblowing system's effectiveness

The whistleblower framework will require ongoing monitoring and evaluation to ensure it meets the intended objectives and that it is improved over time. As a result, specific performance indicators may be developed for this purpose. These may include:

- the number and types of public sector disclosures received;
- the entities receiving most disclosures;
- the outcomes of cases (i.e. if the disclosure was dismissed, accepted, investigated, and validated, and on what grounds);
- whether the misconduct came to an end as a result of the disclosure;
- whether the organisation's policies were changed as a result of the disclosure if gaps were identified;
- whether sanctions were exercised against wrongdoers;
- the scope, frequency and target audience of awareness-raising and training activities;
- the degree of employee satisfaction about the whistleblower framework (measured by survey);
- the time it takes to process cases;
- resources expended per case;
- the cases where whistleblowers claimed experiencing reprisals including:
 - by whom and how reprisals were exercised;
 - whether and how whistleblowers were compensated;
 - the grounds for these decisions;
 - the time it takes to compensate whistleblowers;
 - whether whistleblowers were employed during the judicial process.

Monitoring and evaluation can be accomplished through periodic audits reviewing the data generated by the indicators. Such audits will seek to monitor performance over time, identify strengths and weaknesses, and take appropriate corrective action when required.

2. How to effectively implement a whistleblowing system

This section of the Guidelines suggests concrete measures that will facilitate the implementation of the whistleblowing framework in the Greek public service.

2.1 Commitment, leadership and “tone at the top”

A whistleblower framework for public organisations require clear and transparent procedures that will yield trust from employees and encourage them to report matters that could potentially harm the organisation. To achieve this, leaders of the organisation must lead the development and implementation of the whistleblowing framework, and demonstrate unconditional commitment to a fair and consistent application of rules and policies. Such commitment includes fair and consistent investigations regardless of the identity of the individuals and of the issues that may be involved.

The implementation of a transparent whistleblower framework may also express strong leadership and commitment to encourage employee behaviours based on integrity and excellence. This requires moving away from a reactive approach to integrity breaches (i.e. sanctions) to a proactive approach that involves hearing and objectively analysing potential issues without fear of retaliation. Such commitment is also expressed by ongoing support from the organisation’s leaders and proactive communications.

2.2 Appropriate delegation of responsibilities

As previously discussed in the reporting channels subsection above, employees may often decide to disclose misconduct to their direct manager and as a result, these should be equipped with the required knowledge and expertise on how to follow-up on such disclosures. Middle managers have to be made fully aware and accountable about how they exercise their responsibilities in relation with the implementation of the whistleblowing framework.

In addition, a senior manager may be made accountable for implementing each of the following responsibilities within each public organisation:

- Designing and implementing the organisation’s core values and ethics statement;
- Communicating and providing education and outreach about the whistleblowing policies and procedures;
- Allocating adequate resources to those responsible for implementing the whistleblowing framework;

- Providing ongoing oversight and monitoring of the whistleblowing framework, and proceeding to changes as necessary for the improvement of the framework;
- Supporting the investigation process, related decision-making and sanctioning processes;
- Guaranteeing the confidentiality of the communication channels;
- Overseeing that reprisals against whistleblowers are effectively addressed and compensated as appropriate;
- Closing procedural or policy gaps and loopholes that have been reported through whistleblowing procedures.

2.3 Independence and effective decision-making on appropriate action

The information reported through internal channels to report misconduct should be independent from senior management as much as possible in order to promote objective decision making and to minimise the possibility for interference. This is particularly important in cases where alleged misconduct may involve senior members of the organisation who could easily interfere with the findings of the investigation process. Such institutional arrangements are important in order to ensure that serious misconduct is appropriately being dealt with. Indeed, protecting the interests of the organisation from a long term perspective may involve difficult decisions leading to a negative impact on the organisation from a shorter-term perspective. Guidance should be established to ensure that clear and predictable decision-making is being made in accordance with the public interest and that of the public institution in the long term.

To promote objective decision-making and accountability as to the operation of the whistleblowing framework, a third party (e.g. the Greek Court of Audit, the General Inspector of the Public Administration), could exercise an audit role over the performance of the framework and attest on the fulfilment of the framework's objectives over time. Such audits may be accomplished on both internal reporting mechanisms in each public institution as well as to the external channels to report misconduct, for instance to the National Ombudsman. The third party responsible for conducting audits on the whistleblowing framework could report to the expert committee that is responsible for reviewing the whistleblowing framework on a periodic basis.

2.4 Communication, education and outreach

Increasing awareness and reinforcing the overall public organisation's support of the whistleblowing framework increases the likelihood that it functions as intended and contributes to the establishment of a culture of openness. The benefits arising from the establishment of a culture of openness as well as inherent behavioural requirements may be communicated through continuous campaigns across government as well as in each public institution. Communications and training activities have more impact when they are endorsed by the leaders of the organisation.

Top-down messages from the organisation's managers may be complemented by bottom-up consultations on the whistleblowing framework, including incorporating public servants' input on removing perceived barriers with respect to reporting misconduct as well as using real-life examples of public servants who have successfully disclosed misconduct within the public service.

2.5 Rewarding public servants who disclose misconduct

Acknowledging the benefits provided to the organisation by whistleblowers can encourage public servants to raise ethical concerns with designated officials and contribute to instil a culture of openness and accountability in the Greek public service. There are several means that may be used to reward whistleblowers for good conduct and the risks they are willing to take for their organisation. For example, honorific rewards may be granted to those who have contributed to uncover misconduct that has severely harmed the organisation, or that has the potential to do so. The disclosure of misconduct may also reflect positively on public servants performance appraisals, very much the same way that integrity breaches should affect performance appraisals within the public service.

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