

WHISTLEBLOWING TOOLKIT

EUROCADRES BEST PRACTICE GUIDE



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FOREWORD

WHISTLEBLOWING IS A TRADE UNION ISSUE

BY MARTIN JEFFLÉN

Corruption, embezzlement of public funds, environmental pollution, danger to life and public health, patient and caretaker neglect, threats to the health and safety of workers. When whistleblowers speak up, it is to right wrongdoings. Professionals and managers, which make up the Eurocadres membership, are often the ones to first come across these wrongdoings in companies, public services and organisations. Taking up the role as manager or professional should never corrupt one's possibility to behave ethically on the job. For that reason, it is essential that there are ways to safely speak up about wrongdoings, both in the workplace and directly to regulators.

When whistleblowing can be such a vital tool for professionals and managers, it of course also makes it our responsibility to work to improve the protection of whistleblowers. For a good reason, working for a legal protection of whistleblowers has therefore been on the Eurocadres agenda since 2013 and we have worked most actively on it since 2015/2016, when we started [WhistleblowerProtection.EU](https://www.whistleblowerprotection.eu).

After several years of hard work there is now an EU Directive in place to protect whistleblowers. The Whistleblowing Directive offers both an opportunity and a responsibility for trade unions, and not only for trade unions representing professionals and managers. The first step after the adoption of a directive is its transposition. The Directive has flaws, as most laws do,

and most of these flaws could be fixed if addressed properly in the transposition. This is where one part of the opportunity for trade unions really comes in. If trade unions would be successful in influencing the national laws which are made on basis of the directive it could improve the protections for whistleblowers by a lot.

A second opportunity is that whistleblowing is also about culture change. It is good for our members when companies live up to high standards of ethics and social responsibility. It is also good for society at large. We therefore want to promote a culture of transparency and accountability in European companies and organisations. The aim is of course that wrongdoings don't occur in the first place, or that they are fixed before anyone needs to blow the whistle. But until this can be the case, we will need people who take their responsibility to speak up.

Trade unions which are not yet ready to support members who blow the whistle must work to improve their capacity to do so. This guide which is the outcome of our very fruitful cooperation with Protect, which was also part of WhistleblowerProtection.EU, is one of Eurocadres' main contributions to this important work.

Martin Jeřfllén

President of Eurocadres

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PART ONE

THE WHISTLEBLOWING LANDSCAPE

1 | How did we get here – a brief history of the EU Directive

In 2016 Eurocadres established WhistleblowerProtection.EU, a platform which brought together 90 trade unions and NGOs calling for EU legislation on whistleblower protection. The EU Commission continued to argue that there was no legal basis to introduce EU whistleblowing laws. It took a combination of successful lobbying and the timing of high-profile whistleblowing cases – such as LuxLeaks and Panama Papers – to shift the political thinking, before the emergence of the first Commission Proposal in 2018.

With the help of intensive advocacy efforts by many NGOs and trade unions in the platform, the Commission proposal was changed. Many improvements were made, for example, removing a requirement to report to an employer before taking a concern to a regulator.

Since the Whistleblowing Directive was introduced in 2019, advocacy will continue on a national level to determine what is transposed from the directive into domestic law. Individual trade unions and NGOs need to maintain this pressure to ensure national laws exceed the minimum standards set by the Directive.

As we look forward to a new era of whistleblowing protection across the EU, this guide aims to help trade unions navigate the new landscape. Best

practice whistleblowing is explained, and how organisations should develop their internal arrangements is set out, with an overview for managers on handling whistleblowing concerns.

This guide has been written as part of Eurocadres Whistleblowing in European Workplaces project, with thanks to the expertise of Protect (formerly Public Concern at Work), the UK's whistleblowing charity.

2 | What is whistleblowing and why does it matter?

Whistleblowers are people speaking up when they encounter, in the context of their work, wrongdoing that can harm the public interest, for instance by damaging the environment, public health and consumer safety and EU public finances.

Source: European Commission

All too often inquiries into public disasters and scandals have shown that staff knew of the dangers before any damage was done but:

- were too scared to speak up
- spoke to the wrong people
- raised the matter only to be ignored.

Research¹ has found that 81% of respondents said they did not report corruption they had experienced or witnessed. The European Commission² estimates that the financial losses due to lack of whistleblower protection across the EU in public procurement alone is between €6 and €10 billion a year.

¹ Special Eurobarometer on corruption 2017

² Estimating the economic benefits of whistleblower protection in public procurement, EU Commission, July 2017; <https://op.europa.eu/en/publication-detail/-/publication/8d5955bd-9378-11e7-b92d-01aa75ed71a1/language-en>

The cost of wrongdoing can be far reaching. Workers may lose their jobs, health or in extreme cases, their lives, when no one speaks up. Organisations may suffer financial and reputational losses. Public confidence in institutions or whole sectors can be destroyed.

In contrast, good whistleblowing practice encourages people to speak up early, before harm is done. Benefits are wide ranging – preventing corruption and harm, promoting transparency and good governance, and giving workers a sense of safety and security of work.

Recent cases exposed by whistleblowers include illegal mass surveillance, industrial scale tax avoidance, and the abuse of environmental protections. These cases show how effective whistleblowing can be in combating wrongdoing that affects the whole of society.

Trade unions advising members, and managers receiving reports, will need to be able to distinguish between a **whistleblowing concern** and a **grievance**.

A whistleblower is often a **witness to wrongdoing**, while a worker raises a grievance about something that has happened to them personally. A whistleblower is looking to **stop harm in the public interest**, while a worker raises a grievance in the hope of personal redress. How whistleblowing concerns are raised and dealt with may be very different from a grievance process.

Both those raising concerns and those with individual grievances are entitled to be treated fairly and with respect. Both should be given feedback at the end of the process, although there may be limitations on what employers can disclose about outcomes, particularly where this may include confidential information about another employee.

Limits to the public interest

The scope of the EU Directive doesn't include raising concerns about working conditions, or occupational health and safety, although individual member states may choose to widen the scope. However, where occupational health and safety has a wider impact on customers or clients, it may fit under other

prescribed categories of wrongdoing. It may be difficult for an individual who has been bullied, or subject to harassment at work, to identify the public interest in raising the matter, and trade unions can advise where a grievance may be more appropriate or help the worker articulate a whistleblowing report.

3 | The legal framework: principles of the new EU Directive

The Directive on the protection of persons reporting on breaches of Union Law (“the Directive”) establishes a comprehensive legal framework of whistleblower protection for safeguarding the public interest. It aims to establish easily accessible reporting channels for whistleblowers, and effective protection from retaliation for those who speak up to stop harm.

It is important to remember that the Directive sets minimum or floor standards, and Member States can go further than these.

3.1 The scope of the Directive

The Directive protects whistleblowers who raise breaches of EU law in the areas in which the EU has regulatory competency, for example public procurement, financial services, product safety, public health, consumer protection, privacy and protection of the environment. The Directive does not cover workers’ rights, equality matters or health and safety in the workplace. International best practices would include any breach of national law and regulations and anything that affects the public interest. Trade unions may want to negotiate individual employer policies to allow, for example, the raising of concerns about workplace health and safety.

3.2 A wide range of individuals should be protected

The Directive brings a wide range of individuals who witness wrongdoing in a “work-related context” into scope. The list of those protected includes workers, self-employed individuals, volunteers, job applicants, those who assist whistleblowers “facilitators” and third parties connected with the whistleblower (such as family members).

3.3 The test for the whistleblower

To be protected, the Directive uses the test that the reporting person must have **reasonable grounds** for believing that the information they report is true at the time of reporting, and falls **within the scope of the Directive**. International best practice would ensure that those who have suspicions of wrongdoing are also covered – using language such as “tends to show” wrongdoing or risk of harm.

Employer policies should reflect the type of concerns relevant to the business, rather than focus on the narrow scope of what is included in the Directive. Trade unions may want to negotiate for health and safety concerns to be included.

There is no need to consider the whistleblower’s motive in raising the concern – and it should not matter if the whistleblower is mistaken. However, it may not be easy for a worker to know if their concerns fall within the scope of EU law.

3.4 How whistleblowers are protected

Whistleblowers should be protected against any retaliation or threats such as suspension, lay-offs, demotion, transfer of duties, denial of training, harassment or dismissal. A whistleblower’s identity should be kept confidential.

If a whistleblower suffers detriment, the burden of proof should lie with the retaliator to prove that there were justified grounds for their behaviour.

Whistleblowers should not incur liability for how they acquired the information they have disclosed, provided they did not commit a criminal offence in doing so.

The Directive requires that whistleblowers have access to information and advice, access to legal aid in certain areas, and financial and psychological support.

Trade unions will want to consider what role they may play in providing advice, information and other support to whistleblowers.

3.5 Reporting wrongdoing – internal, external and wider disclosures

a) Internal reporting

All organisations with 50 or more employees have to set up internal reporting channels and procedures which must include: clear information on how whistleblowers should report, an acknowledgment of a report within 7 days, a designated person to follow up the report, diligent follow up and feedback to the whistleblower within 3 months.

Other than regulated sectors (such as Civil Aviation or Financial Services), this is a very new requirement and there will be many employers who currently have no processes in place.

Working with employers to develop effective internal policies and ensuring that information is widely shared with staff will be one of the key roles trade unions can play.

b) External reporting

The whistleblower is encouraged to raise matters internally with their employer, but does not have to do so – they may go straight to a competent external body. For shorthand, we use the word “regulator” throughout this guide to describe these bodies. All Member States must establish or nominate independent regulators to receive reports made directly to them, or after a whistleblower has used an internal reporting channel. Regulators also need to maintain confidentiality, provide feedback (within three to six months) and follow up on any disclosure made.

Nothing in the Directive tells employers or regulators how to measure the effectiveness of their processes for protecting people against retaliation

– this may be useful information for trade unions to capture about their members' experience.

c) Wider disclosures

A whistleblower should also be protected if they make a wider disclosure to the public if there is an imminent danger to the public interest, or they have reported internally or externally and no appropriate action was taken, or if there is risk of retaliation.

4 | The role of regulators

Many industries and professions are overseen by regulators, who have a responsibility for upholding proper practice and standards in their sector.

Ideally, most whistleblowing disclosures should be settled through internal reporting. However, if a whistleblower is concerned about reporting internally, or has done so only to be ignored, they may want to approach a regulator. Trade union representatives may help identify external channels for raising concerns.

4.1 Reasons to involve a regulator:

A whistleblower may want to involve a regulator for a number of reasons:

- There is a professional obligation to do so, for example a personal duty to report misconduct.
- If the whistleblower has already raised the concern with the employer, but there has not been a satisfactory outcome.
- If the whistleblower feels unable to raise the concern with their employer, due to fear of retaliation, or belief that the employer does not have the intention or ability to resolve the issue.
- The concern is of a serious nature or poses a high risk, meaning that a regulatory response is required.

The EU Directive makes clear that national legislation should not require a whistleblower to raise a matter internally first – they may go straight to the regulator.

4.2 How to contact a regulator and what to expect

The first step is to look on the relevant website, where contact details for the range of reporting channels must be published. Regulators must establish secure reporting channels to ensure the identity of reporting persons is protected. Each regulator must publish information online regarding their processes for handling reports, confidentiality regime, what remedies for protection against retaliation are available and the nature of follow up to be expected.

Trade unions can support workers in identifying the appropriate regulator and explain how the regulator will deal with the concerns.

4.3 Duties to report

If workers are members of professional bodies or associations, there may be an expectation on them to report their own and others' misconduct. Unions can encourage members to check and seek guidance from their professional body. Managers and those with a higher level of expertise may be held to higher standards in their responses to malpractice and misconduct.

5 | The role of trade unions

Some concerns can be raised collectively to remove the risk of retaliation to any one individual who witnesses wrongdoing. Unions can play a key role in co-ordinating members with shared concerns. As employers implement new internal reporting arrangements, trade unions are ideally placed to negotiate best practice and hold organisations to account.

5.1 Representing whistleblowers

Trade union representatives are often the first place a worker will turn to find out their legal rights. Whistleblowers may feel isolated or fearful about making a disclosure, and will want reassurance that they have the protection of the law, and the support of their union, if retaliation happens.

Trade union representatives will need to be trained in the law, aware of their employer's policies, and able to assure workers that there is a safe alternative to remaining silent.

Trade union representatives who advise staff on raising concerns should also be protected from detriment. The EU Directive requires similar protections for those in the role of “facilitators” or colleagues who support a whistleblower in getting their concerns addressed. Trade union representatives should also be aware of the need to protect a whistleblower's confidentiality.

5.2 Collectively raising concerns

There may be occasions where only the trade union can bring forward concerns, on behalf of a group of workers. This may occur when there is a genuine fear of reprisal if an individual's identity is disclosed, or where the concerns are at an early stage, and individuals have approached the trade union representative who can see the bigger picture.

5.3 Encouraging best practice and holding employers to account

Trade unions will be well placed to ensure company policies and practices are effective. Good policies should encourage workers to seek advice and support from trade union representatives before, during and after the raising of concerns. Trade unions are ideally placed to hold employers to account where organisational structures fail, and to ensure the best possible protection for whistleblowers.

5.4 Tricky issues

a) Managing conflict

There may be occasions where trade unions have to identify and manage conflicts of interest. For example, both the whistleblower and the person accused of wrongdoing may be members of the same trade union. It is good practice to have processes in place for dealing with potential conflicts – for example a process may require each member to be supported by a different union representative, with no contact between the two representatives.

b) Managers and professional conduct

Professionals and managers are those who are most likely to come in contact with information about wrongdoing, and will have an important role in handling concerns, from the first contact with the whistleblower through the investigation, to determining the outcome and next steps. Managers play an important role in setting the tone from the top, communicating with their team to encourage staff to speak up, and ensuring action is taken if retaliation occurs. They are both part of the process, and those who can see whether the procedure is working.

Managers are also employees themselves, with their own need for protection when they detect wrongdoing in their companies. They may find there are occasions when they are personally obliged to disclose matters which are brought to their attention, for example, because they are under a professional duty to report, or are members of professional bodies (see 4.3 above).

PART TWO

A STEP BY STEP GUIDE TO ENCOURAGING BEST PRACTICE WHISTLEBLOWING ARRANGEMENTS

1 | Internal arrangements and a speak up culture

This part of the guide steers you through what good internal arrangements look like, for negotiating with senior leaders. While the EU Directive requires employers of 50 or more staff to have whistleblowing arrangements in place, the principles apply to organisations of any size.

In persuading boards and executives of the importance of a “speak up” culture, trade unions can explore:

- the benefits to the organisation of good internal processes such as the protection of reputation and avoidance of regulatory intervention, and the role that whistleblowers play in risk management.
- the link³ between higher volumes of internal whistleblowing and fewer and lower fines and lawsuits for organisations.

³ “Evidence on the Use and Efficacy of Internal Whistleblowing Systems”, February 2020, Stubben, Stephen and Welch, Kyle; https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3273589

- evidence ⁴that the most likely person to report occupational fraud is an employee (53% of reports, in contrast with the next largest group, ‘customers’ at 21%).
- good governance and accountability – the business case for corporate transparency includes increased trust from consumers, investors, employees and other businesses, and may provide a competitive advantage⁵.
- the importance of free speech in a democracy.

2 | Leadership

Commitment from the top is vital to the success of any policy. Senior leaders and board managers need to take overall responsibility for the policy and trade unions may want to recommend:

- a named board level non-executive director acts as a whistleblowing “champion” with oversight of the effectiveness of whistleblowing arrangements. This person may also be an accessible contact for those seeking to blow the whistle internally
- an identified internal team to support the champion’s role and to lead on investigating and recording internal reports
- whistleblowing reports (anonymised numbers and themes) are considered regularly at Board level – for example at audit and risk committees
- key messages are conveyed from the top, regularly and consistently
- policies are regularly reviewed for effectiveness.

⁴ Report to the Nations, 2018 Global study on Occupational Fraud and Abuse, Association of Certified Fraud Examiners; 2018: <https://s3-us-west-2.amazonaws.com/acfe-public/2018-report-to-the-nations.pdf>

⁵ “Open Business”, March 2020, Transparency International; <https://www.transparency.org.uk/publications/open-business-anticorruption-governance-disclosure-guidance/>

3 | Policies and procedures

Getting the language right is important. Policies should clearly explain what is meant by whistleblowing – that it is a constructive way of raising a concern with someone who can do something about it – and refer to other relevant policies (e.g. grievance, anti-money laundering etc).

A good policy will include:

- Written procedures for handling concerns by managers
- Commitment to training for managers and staff
- Procedures for identifying how and when concerns should be recorded and escalated
- Designated contacts
- Multiple channels for raising concerns and external advice options (including trade unions)
- Assurances on confidentiality and how anonymous concerns will be considered
- Clear statements about what constitutes victimisation and reprisal, how a worker might raise concerns if they are victimised, and what sanctions will be taken against those who victimise whistleblowers
- Clear information on how staff can bypass line management and raise concerns internally (e.g. with a Board level champion), or externally with an appropriate regulator.

Trade unions can test draft policies with staff to check that the wording is clear and understood, that the language is seen as positive, that the policy is easily accessible (e.g. on the staff intranet and in relevant languages) and to gauge the level of confidence that staff have should they consider raising a concern.

4 | Briefing and training managers

Training of all staff for awareness of the policy is important – but for managers who receive concerns, training is vital so that roles and responsibilities are clear. It may be useful to have different training for all staff, for managers receiving concerns, and for those who will investigate whistleblowing reports.

Many concerns will be raised as part of “business as usual” with a line manager who will take appropriate action and prevent wrongdoing. Good whistleblowing arrangements should not undermine good day to day practice. But it is important that managers know when to escalate and record concerns, and how to meet their legal obligations to protect whistleblowers from reprisal and confidentiality breaches.

5 | Guidance for staff

Policies and procedures need to be backed by excellent communication of the arrangements taking into account different staff groups, cultures and jurisdictions.

Examples of effective communications may include:

- Messages from the Chief Executive or Board to all staff
- Information included in staff inductions
- Posters/flyers
- Staff newsletters and intranet stories.
- Team briefings where managers can encourage concerns to be raised with them
- Staff surveys to test awareness and confidence in arrangements

Training of all staff is necessary, both as part of any induction to a new organisation, and on a regular basis so that every member of staff knows how to raise concerns about workplace wrongdoing. Trade union repre-

sentatives will also need particular training on whistleblowing processes including key contacts, so that they can effectively support colleagues raising concerns.

6 | Audit and review – how do you know it is working?

Boards should receive regular reports about whistleblowing, but numbers alone may not tell the whole story. A small number of concerns reported may not indicate that risks are low – they may indicate a lack of trust in the whistleblowing arrangements. Conversely, large numbers may not indicate a problem – but may show there is a good speak-up culture. A range of data may help create a more accurate picture.

For example, as well as the number and type of concerns raised, an audit might consider:

- Are themes emerging or is there evidence of recurring concerns?
- Were there reports about breaches of whistleblowers' confidentiality?
- Were complaints made about reprisals against whistleblowers? If so, what action was taken?
- Is there any correlation with other reporting mechanisms (e.g. fraud reports)
- How many concerns are raised openly/confidentially/anonymously
- Were issues raised by customers/clients/suppliers that should have been raised by staff – what is stopping speaking up?

PART 3

IN PRACTICE – HANDLING THE WHISTLEBLOWER

In this section of the guide, we aim to help managers and senior staff who may be the recipient of a concern with some practical advice on how to handle a whistleblower. It is important to remember that a concern may be raised orally or in writing. Reporting persons may not identify themselves as whistleblowers, so managers and those in a position of receiving concerns should respond to the nature of the issues raised, rather than the manner in which the report is made.

1 | Best practice – five questions managers should ask

1.1 Is this a whistleblowing concern?

The first step is to determine whether the worker has come to you with a grievance or a whistleblowing concern, as they require different routes to resolution. Whether a concern is raised orally or in writing, you should acknowledge it and then explain if you are going to treat it as a whistleblowing concern.

Generally, a whistleblowing concern is about a risk or wrongdoing that affects others. A grievance is a personal complaint about an individual's

own employment situation. The whistleblower is a witness and wants the wrongdoing to stop. A person raising a grievance is seeking personal redress. However, there are grey areas, for example widespread bullying (particularly if this has an impact on customers or clients) or misconduct (e.g. sexual misconduct) by a senior member of staff may be better dealt with through whistleblowing.

| GRIEVANCE | WHISTLEBLOWING |
|---------------------------------|--|
| Personal concern | Others are affected |
| Remedy for self | Witness to wrongdoing |
| Open, transparent process | There may be limited sharing of information to protect confidentiality |
| Investigation into facts | May be suspicion only |
| Full feedback | Feedback as appropriate |
| Internal appeal usually allowed | External routes of resolution available |

1.2 What assurances can you give about confidentiality?

Some whistleblowers may be willing to raise concerns openly but many will seek confidentiality – and want to provide their name only on a need to know only basis. Openness makes it easier to investigate the matter, gather information and reassure and protect the whistleblower. However, you should always assume that the whistleblower wants confidentiality. You should not disclose their names without their explicit consent, or you may be in breach of the law. You may also need to advise the whistleblower that they should not speak more widely about their concerns if this may prejudice any investigation.

Some whistleblowers will want to remain anonymous so that no one, not even the recipient of the concern knows their name. Online reporting platforms can make it possible for the recipient of a concern to ask further questions of the anonymous whistleblower, but there are clearly limits to how far a matter can be investigated if there is insufficient information or a

lack of further engagement. It is also difficult to ensure that an anonymous whistleblower is protected, for example, if another member of staff guesses their identity and victimises them. Nevertheless, under the EU Directive anonymous whistleblowers who are subsequently identified still qualify for protection, if they reported in the right way.

CONFIDENTIALITY IN PRACTICE

Best practice would be to protect the confidentiality of all those who raise concerns with someone senior to them in the workplace, via any reasonable route, rather than insisting that particular whistleblowing channels are used. There may be occasions where the requirement to protect confidentiality clashes with other obligations – for example if the concerns relate to safeguarding vulnerable people, criminal proceedings or money laundering. In these circumstances, you should explain in writing the limits of confidentiality to the whistleblower, and let them know (unless to do so would jeopardise any investigation) when you will be passing their name to other authorities and why.

1.3 Can I investigate this myself, or do I need to escalate?

The nature and seriousness of the concern may dictate whether the first manager receiving the concern can deal with the issue themselves, or escalate it to someone more senior, or to the designated whistleblowing team. You may need to seek expert advice, for example if there is a complex fraud, and you should consider whether other policies may also be engaged (e.g. money laundering, anti-bribery). You may need to involve the police or outside agencies.

1.4 What feedback should I give the whistleblower?

Where possible, keep in touch with the whistleblower on a regular basis as you investigate the matter. At the end of your investigation, provide as much feedback as you can so that the whistleblower knows that you have taken their concerns seriously and explain why you consider any of the concerns are unfounded. Feedback about a whistleblowing concern may be limited, if the outcome is that disciplinary action has been taken against another member of staff – you may only be able to tell the whistleblower

that you have investigated, and that appropriate action has been taken. Any feedback you do provide should be within 3 months from acknowledging receipt of the concern. When providing feedback, you should also make the whistleblower aware of other avenues for reporting concerns externally (e.g. regulators) if they remain dissatisfied with your investigation.

1.5 What assurances can I give about victimisation?

Many whistleblowers will fear retaliation. Examples include bullying, performance management, failure to offer promotion, withdrawing responsibilities, suspension, dismissal or damage to a whistleblower's reputation (e.g. on social media). A failure to investigate concerns or a breach of confidentiality may also cause detriment.

As a manager, you should assure a whistleblower that you will take seriously any victimisation that results from them speaking up. You may want to consider a risk assessment at the outset and identify options to minimise the risk of reprisal. Your policy and processes should commit to action being taken against anyone who treats a whistleblower badly. Where possible, the investigation team should be informed and the whistleblower should be offered assistance through employee assistance programmes or psycho-social support, if available.

Remember that asking a whistleblower to raise a grievance if they suffer victimisation may not be appropriate if they want matters to remain confidential.

If a whistleblower is treated badly, and no sanctions are taken against a perpetrator this may undermine confidence in your whistleblowing arrangements and may deter others from speaking up in the future.

2 | Tricky issues

2.1 What if there is an agenda?

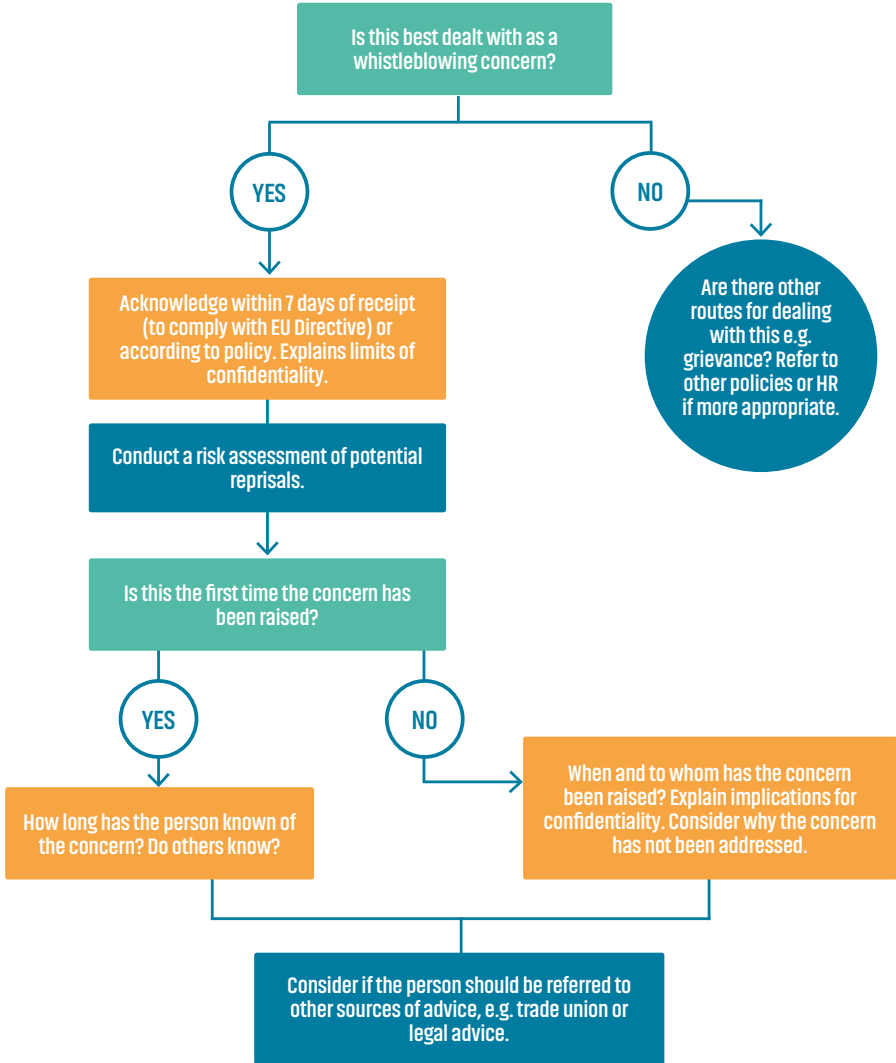
Sometimes a concern is raised maliciously. However, the first action on receiving a concern is to consider if there is any substance to it, and investigate if necessary. If a whistleblower raises a concern knowing it to be untrue, appropriate sanctions can be taken. These situations need careful handling to avoid a chilling effect. In general, whether or not the whistleblower has an agenda or a motive should not matter. You should focus on the substance of the concern and whether action is required to address it.

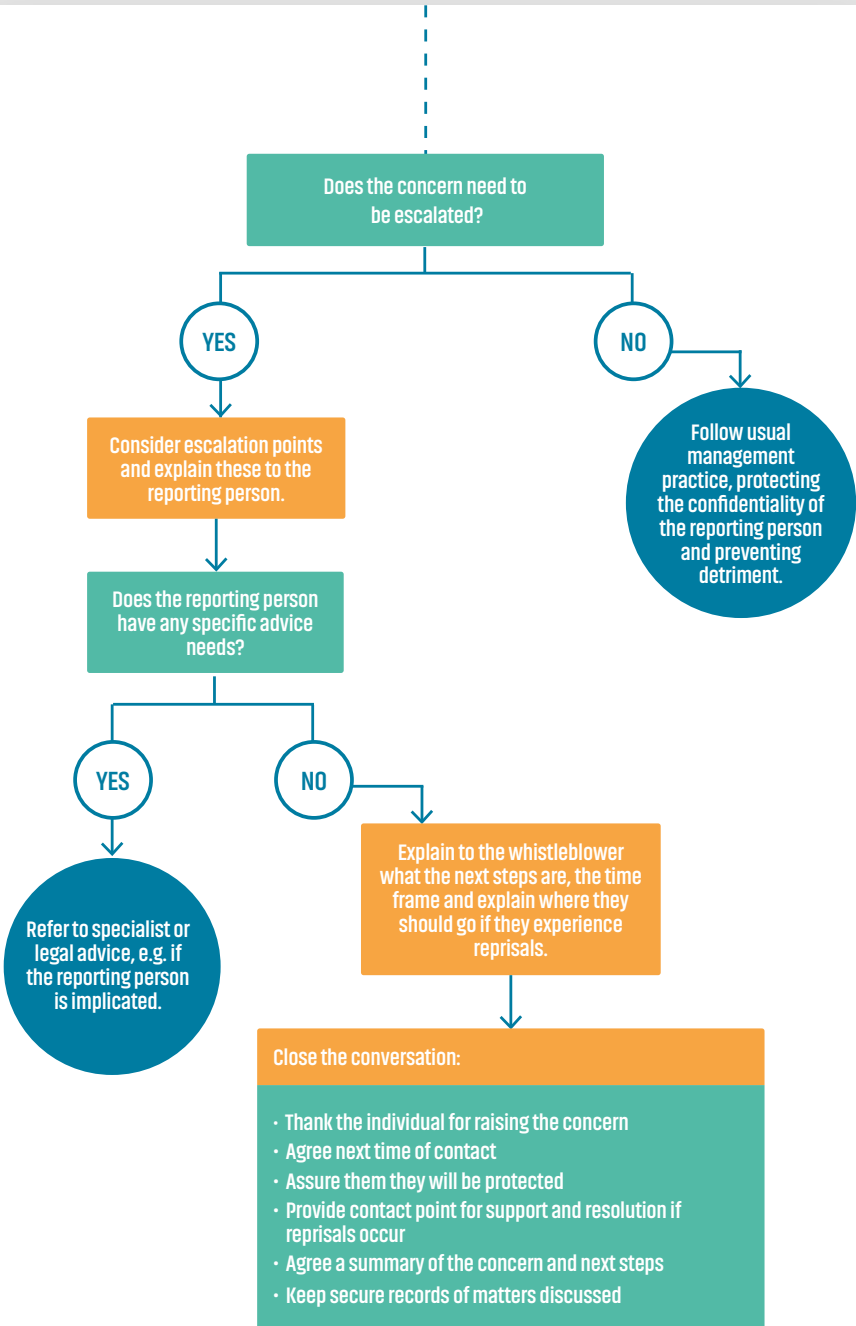
2.2 What if the whistleblower is implicated in the wrongdoing?

Occasionally, you may need to suggest that the whistleblower seeks their own legal advice, for example, if they are implicated in a criminal offence. While the whistleblower may be protected from an employer bringing a claim against them because of their whistleblowing, e.g. for defamation or breach of confidence, the act of whistleblowing does not absolve them from responsibility for offences they have committed.

GUIDANCE FOR TRADE UNION REPRESENTATIVES AND MANAGERS ON RECEIVING CONCERNS

Here is an outline of steps you may want to follow when concerns are raised:





3 | Practical tips for managers and union reps

1. Whistleblowing often takes courage; it is not an act of disloyalty but an attempt to stop harm. Separate the message from the messenger.
2. Remember to thank the whistleblower who raises a concern – even if they are mistaken about the concern.
3. Deal with concerns seriously and promptly, don't question the motive.
4. Ask the whistleblower for their views on how things could be put right – sometimes those with technical knowledge and understanding are best placed to find the solution.
5. Respect promises of confidentiality – when this is undermined, the chances of others coming forward is reduced.
6. Signpost for support – trade unions are the first point of contact but employee assistance programmes, occupational health and other sources of advice may be needed. A trade union representative can help articulate whistleblower's needs for support.
7. Communicate regularly – whistleblowing arrangements need to be promoted to all staff and trade unions can advise on how best to reach remote or shift workers or contractors.
8. Speak the language of governance and risk management. Boards will understand that effective whistleblowing can have an impact on the bottom line.
9. Demonstrate what works “you said....we did” and celebrate when harm has been effectively stopped thanks to staff speaking up.
10. Feedback to the whistleblower. Tell them as much as possible, while respecting the rights of others to confidentiality.
11. Test if arrangements are effective: what do your staff say in surveys, what feedback have those who have been through the whistleblowing process given, how many reprisals have been acted on? Feed this back to the Board/champion.

ANNEX 1

CASE STUDIES

The case studies show typical whistleblowing situations and hurdles faced by those raising concerns. Unions can offer great value in these cases, as highlighted below.

Case study A | Rosa and Dr Cole

Rosa manages a small team in a pharmaceutical research facility. The research project the team is working on is overseen by Dr Cole. Often, Dr Cole gives Rosa work which needs to be done urgently within a short time frame. Rosa has raised with Dr Cole that she feels overworked, but is told that she is given her fair share and that no one else is complaining. Rosa thinks that Dr Cole is not working as hard on the project as other employees.

To check this suspicion, Rosa looks at Dr Cole's calendar and sees that he has arranged a lot of long meetings with a large pharmaceutical company where he used to work as a consultant. Rosa feels there may be a conflict of interest that she wants to raise, however she is unsure about how to explain where she has got this information. Rosa consults her union, who advise her that she could be liable for data breaches if she raises this.

Six months later, Rosa is asked to attend a meeting about her performance by her line manager Chris. Since discovering the concern, Rosa has been quite stressed, and has not been able to reduce her high workload. As a

result, she has been working long hours. At the meeting, Rosa finally tells Chris, a director, about her concerns. She doesn't admit to looking at the calendar, but asks Chris if he is aware that Dr Cole has worked for this pharmaceutical company in the past, and mentions conflicts. Chris appears irritated by this and says he's sure that Dr Cole has worked in many different places before. Rosa decides to drop it.

After the research project has been completed, Rosa hands over the results to Dr Cole. Rosa and the team feel that the drug will have limited impact on the symptoms it is supposed to treat. Dr Cole publishes a report claiming that the drug will have significant impacts on the symptoms. Rosa feels that this has been done to please the pharmaceutical company and does not honestly reflect the results of the study. After discovering that the majority of her research has been removed, Rosa writes to the funding body informing them of her concerns. The funding body then approaches the Board of the research facility, requesting a report and for all data to be handed over.

Learning points:

- A clear whistleblowing policy listing a range of contacts for Rosa to approach with her concern would have given options outside of her line manager to raise concerns with. This may have meant the concern was raised earlier and damage was reduced.
- The EU Directive provides protection from civil liability for offences committed in the act of raising concerns – in this case, Rosa may be protected from liability for the data breaches in looking at the calendar. If her trade union had advised this, Rosa may have raised her concerns earlier.
- If line managers are not trained, whistleblowing concerns can be overlooked. Whistleblowers may not raise concerns until they are personally affected, meaning that concerns and grievances can be confused.
- It is important to note the impact of stress on whistleblowers and the impact this can have on performance, especially if concerns have not yet been raised, or go unaddressed.
- Although it may be unpleasant for the Board to be contacted by the funders, this is preferential to incorrect information to be given to the

public, e.g. if illegitimate findings were to be published. However, clear lines of escalation would have enabled Rosa to re-raise this internally.

How unions can help:

- A trade union representative could support Rosa to raise her concerns, and help her to identify a trusted contact within the organisation to approach.
- Encourage line managers to request training on how to handle whistleblowing disclosures.
- Highlight how stress can impact on performance in relevant cases, attend meetings with workers if they need support.
- Encourage whistleblowers and organisations to focus on the message, addressing the public interest concern first and dealing with any performance or grievance issues separately.

Case study B | Bob and Ted

Bob is a reliable employee in the accounts department of a large firm. His manager Anthea is difficult to work with, and since she started there has been an atmosphere of intimidation. Part of Bob's job is to sign off invoices. He notices some irregularities in these, from a marketing company previously used by the company. Bob calls the company to confirm the invoices, but the company do not recognise them. Bob sees that the invoices total € 30,000 and the address given on them is not the usual address.

Bob raises this with Anthea who ignores his concern and reminds him that she has already signed off the invoices. Bob is instructed to pay them as soon as possible. Bob decides he must resign. Anthea receives his resignation and does not ask for an explanation; however she does tell Bob she will give him a very good reference.

Whilst in his notice period, Bob approaches the managing director Ted and informs him of what he has witnessed. Ted requests that Bob investigate the

address further, and Bob discovers that it is the address of Anthea's sister in law. Ted requests that Bob puts this in writing and revoke his resignation, promising to protect him. Bob is upset by Ted's request and says that he cannot continue in his role while Anthea is there. He thinks that there is a 'cover up' and tells Ted that he is going to tell the press. In the end, Bob is persuaded to return to work. An investigation reveals major fraud totalling € 1million by Anthea, who is dismissed.

Learning points:

- Whistleblowers should not be asked to investigate their concerns. Coming forward is a difficult decision, which should not be followed by a challenging request. Anthea is already aware that Bob is querying the invoices, if she sees that he is looking into them further she may put further pressure on him.
- What seem like small irregularities can indicate bigger problems, erring on the side of caution is wise.
- By asking Bob to put his findings in writing, Ted has made him feel very uncomfortable. This kind of practice could deter other employees from raising concerns in the future.
- Bob's decision to resign reflects the dilemma many whistleblowers can feel. If he obeyed Anthea's instruction, he'd be complicit. If he didn't, he risks being disciplined. A clear whistleblowing policy may have given Bob the mechanism he needed to keep his job.
- Exit interviews can be key opportunities for employers to gain insight. Anthea not asking for an exit interview could be seen as a red flag by Ted, especially when Bob is a long-term trusted employee.

How unions can help:

- Support Bob to identify more appropriate channels than the press to raise his concerns with, for example, a regulator and explain what risks might occur in media disclosure.
- Encourage senior management to engage with whistleblowing best practice, understanding that those raising concerns should not be asked to investigate the matter further.

- Suggest that the employers conduct a risk assessment soon after concerns are raised, to ensure that risks to the individual are minimised, and to assure the whistleblower that they will be protected in an effective manner.
- When employees resign, concerns raised in exit interviews can demonstrate whether there is a healthy speak up culture within the organisation. If concerns are not raised until an employee is leaving the organisation, an employer might want to question why they did not speak up earlier.

ANNEX 2

COMMON QUESTIONS

How can trade unions tell if the worker is being victimised because they have whistleblown, or for another reason?

It may be useful for a union rep to ask:

- Is there anything else which could have led to the victimisation?
- Is the person victimising the worker likely to be aware that the worker has made a report?
- Has the victimisation occurred previously, at a time before reporting?

The stress of reporting a concern can lead to a decline in an individual's work performance. Unions can help workers to identify where they may need additional support, and to reassure them that it is common for these performance effects to occur. Unions may also be able to explain the link between whistleblowing stress and performance to the employer, so that the whistleblower is not unfairly penalised.

What action should be taken if a whistleblower is treated badly?

Cases of mistreatment need to be addressed. Suggesting options can help, for example, the worker could:

- ask to speak with the victimiser directly – a trade union representative could attend the meeting, or role-play the scenario in advance.
- raise a grievance, with the assistance of the trade union representative. However, trade union representatives should point out the risk that the whistleblower's confidentiality may be compromised if they go through the grievance process.

- Explain the mistreatment to the person responsible for investigating the whistleblowing report – and encourage the organisation to find a suitable way to address the victimisation without revealing the whistleblower’s identity.

How can organisations develop and maintain a healthy speak up culture?

Below are ideas for further embedding culture, which organisations of any size can apply:

Tone from the top: leaders are a key driver for culture change and can send clear messages to the workforce about behaviour which is expected and encouraged.

Visible and accessible communication channels are needed so workers know how to raise concerns and feel confident using the arrangements.

Keep confidentiality: a breach of confidentiality may have a silencing effect throughout the organisation.

Discipline those who victimise whistleblowers: employers need to take a strong line, not just in policy but in practice.

Report outcomes: feedback can build confidence that concerns are taken seriously.

ANNEX 3

MODEL POLICY

What this policy is for

Many concerns about what is happening at work are easily resolved. However, if you are worried that there is a risk of wrongdoing, or malpractice that may affect others – staff, customers, the wider public or the organisation itself – we want to hear about it. This Whistleblowing Policy sets out our commitment to you and how we want you to raise concerns with us.

Concerns we want to know about include: [this should be tailored to your industry or sector, and you should consider what you want people to raise –examples are risks to public health, consumer or product safety, fraud, breach of data privacy etc]

This policy applies to all those who work for us: full-time, part-time, agency workers, contractors and volunteers. [Consider who else you may want to include as relevant to your organisation] **If you have a whistleblowing concern, please let us know.**

We have introduced this policy to reassure you that it is safe to speak up, and to enable you to do so at an early stage, in the right way. This policy explains the behaviours we want to encourage; it is not legal advice. If something is troubling you which you think we should know about or look into, please use this policy. If you wish to make a complaint about your employment or your own working arrangements, please use the grievance

policy or [insert other relevant policies e.g. anti-money laundering or anti-fraud and how to find them]

Speaking up – How to raise a concern

You do not need to have firm evidence before raising a concern. Please provide as much information as possible when reporting concerns. You can report a concern orally or in writing.

1. If possible, raise the matter first with your line manager or team leader.
2. However, if you feel unable to do so, you should approach one of the contacts listed below. [Insert names and contact details of appropriate senior managers which may include Chief Executive/Board member]
3. We hope this policy gives you the reassurance you need to raise your concern internally in the first instance. However, there may be circumstances where it is appropriate to report a concern to an outside body. If the internal channels have been followed, and you still have concerns, or if you feel you cannot discuss the matter with any of the internal contacts, you can report your concerns to an appropriate regulator. [Insert contact details for your industry regulator(s)]

If you are not sure whether to raise your concerns or want advice, you can also contact your trade union or professional body for advice. [Insert other sources of support such as independent whistleblowing advice providers].

How we will handle your concern

1. When you raise a concern with us, we will acknowledge receipt of your concern within 7 days. We will consider what action may be appropriate. If we think your concern falls more properly within our grievance, anti-bullying or other procedures, we will let you know.

2. We will keep a confidential record of your concern in [insert how your database is secure] in accordance with data protection laws.
3. We will give you the name of a designated contact and how you can contact them. We will arrange to hold a meeting with you, if you would like that.
4. We will update you on progress every 2 weeks.
5. Within three months, when we have concluded our assessment, we will provide you with feedback, where possible, on the actions taken as a result of your report and the outcome.

In some cases, we may not be able to tell you all the actions we have taken due to the confidentiality of other workers. We aim to share as much information with you as possible without breaching our legal duties to other workers.

We hope you will be willing to provide us with feedback after the above processes have completed. This will allow us to review the of our systems and show where there is room for improvement.

Our assurances to you

The Board and Chief Executive are committed to this policy. Provided you are raising a genuine concern, it does not matter if you are mistaken. Your confidentiality and safety are of the utmost importance to us.

If you raise a genuine concern with us, you will not risk losing your job and should not suffer in any way as a result of raising a concern. We will not tolerate the victimisation of a whistleblower and we will consider the harassment or victimisation of a whistleblower to be a disciplinary matter.

If at any stage you experience negative treatment as a result of raising concerns, please inform your line manager or your designated contact, so action may be taken to resolve the situation.

If you can tell us your identity when you report, this enables us to put protective measures in place, and to provide you with feedback. We will not share your name with others without your consent unless required by law. If you prefer to remain anonymous, it may be more difficult for us to investigate the concern, or to protect you, or provide you with feedback. Your trade union will be able to advise you on the benefits of raising concerns confidentially.

We will ensure that all reports are handled in a secure and confidential manner and protect your data as well as any third party mentioned in your report.

Monitoring and review

The Board/Audit Committee is responsible for this policy and will review it annually. In addition, the [risk/compliance/HR team] will monitor the daily operation of the policy and please ask them if you have any questions.



This guide has been written as part of Eurocadres Whistleblowing in European Workplaces project, with thanks to the expertise of Protect (formerly Public Concern at Work), the UK's whistleblowing charity.

Protect is the UK's whistleblowing charity and has over 25 years' experience advising workers on whistleblowing rights and promoting best practice amongst employers. Each year Protect's free whistleblowing Advice Line handles more than 3,000 public interest cases from all sectors. Since forming in 1993, Protect has advised more than 45,000 whistleblowers. Protect was delighted to partner with Eurocadres on this important project. www.protect-advice.org.uk



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