

Following-up on Whistleblowing Reports

A Comparative Analysis of Models Adopted by Selected European Countries

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This working paper was prepared as an outcome of the Network of European Integrity and Whistleblowing Authorities (NEIWA) working groups on whistleblower support and whistleblowing reports.



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1 INTRODUCTION

Whistleblowers, individuals who identify and report threats and harms to the public interest identified in their workplace, trust the institutions to which they make the reports to investigate, or facilitate an investigation into the content of their reports.¹ Throughout this process, whistleblowers need institutional guidance to submit their report properly, avoid disclosure of their identity and receive updates on the progress and outcomes of the investigations triggered by their report. Once submitted to a competent authority, the report moves through various stages often involving multiple institutions.

The purpose of this working paper is to provide an overview of the stages involved in the reporting process in the context of the system designed by 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 (hereinafter referred to as the Directive), then apply these stages to activities and powers of nine selected member authorities of the Network of European Integrity and Whistleblowing Authorities (NEIWA) and identify some of the best practices that could be utilized by others. The research was carried out using the method of semi-structured qualitative interviews with the representatives of participating NEIWA authorities.

2 DIRECTIVE AND STAGES OF THE WHISTLEBLOWING REPORT

The Directive clearly states that all Member States need to “designate the authorities competent to receive information on breaches falling within the scope of this Directive and give appropriate follow-up to the reports. Such competent authorities² could be judicial authorities, regulatory or supervisory bodies competent in the specific areas concerned, or authorities of a more general competence at a central level within a Member State, law enforcement agencies, anti-corruption bodies or ombudsmen” (Recital 64). These competent authorities are recipients of external whistleblowing reports, and they need to comply with the necessary criteria for safeguarding whistleblower protection (such as the establishment of independent and autonomous channels, communication with the whistleblower, provision of information about existing protection available to whistleblowers, etc.).

When authorities are designated as competent to receive external whistleblowing reports, they need to have the necessary powers and capabilities to follow up on the reports. The Directive clearly states that they need the “necessary capacities and powers to ensure appropriate follow-up, including

¹ Nadia Smaili a Paulina Arroyo. 2019. Categorization of Whistleblowers Using the Whistleblowing Triangle. *Journal of Business Ethics*, 157(1), p. 107–110.

² The definition of a competent authority is provided in Article 5 (14): ‘Competent authority’ means any national authority designated to receive reports in accordance with Chapter III and give feedback to the reporting person, and/or designated to carry out the duties provided for in this Directive, in particular as regards follow-up.

assessing the accuracy of the allegations made in the report and addressing the breaches reported by launching an internal enquiry, investigation, prosecution or action for recovery of funds, or other appropriate remedial action, in accordance with their mandate. Alternatively, those authorities should have the necessary powers to refer the report to another authority responsible for investigating the reported breach, while ensuring that there is appropriate follow-up by such authority” (Recital 65). This means that the recipient of the external whistleblowing report should be able to either investigate the content of the report and take appropriate remedial action (such as prosecution of the perpetrators or imposition of a fine) or have the ability to refer the report to other authorities with such capacities.

Each report therefore passes through several main stages (refer to Figure 1). The first stage is the act of reporting, which means bringing the information about the wrongdoing to the competent authority. Once the report reaches the authority, the report enters the stage of evaluation by the competent staff members (sometimes also referred to as triage) and a decision is made as to whether it meets the necessary criteria of a whistleblowing report (which is a stage that might require the collection of additional information and clarifications).

Figure 1: Stages of the Whistleblowing Report



If the report is evaluated as substantiated, it enters the stage of investigation, which is a thorough and careful examination of the suspicions of the wrongdoing stated in the report in order to reveal the truth about the stated facts, as well as to remedy the situation (through sanctions and/or recommendations). As mentioned above, this stage is covered by the competent authority which received the report, or other authorities, which have the legal powers to investigate such unlawful conduct.

The last stage is the remedy stage, during which a decision is taken on how to remedy the reported wrongdoing and/or take action against the perpetrators. Again, this stage might be performed by a different authority, such as a criminal court in the case of criminal proceedings.

To complicate matters further, apart from receipt of the report, the Directive identifies three crucial stages in the whistleblowing process, i.e. follow-up, investigation, and referral (transmission) of the report, which are further elaborated in a varying extent of detail.

The broadest term is follow-up, which the Directive defines as “any action taken by the recipient of a report or any competent authority, to assess the accuracy of the allegations made in the report and, where relevant, to address the breach reported, including through actions such as an internal enquiry, an in-

vestigation, prosecution, an action for recovery of funds, or the closure of the procedure" (Article 5(12)). Follow-up, which is a central term used throughout the Directive, actually encompasses all three stages of the whistleblowing report, which come after reporting. It is therefore a very broad term, and the follow-up process of a single whistleblowing report can take place at several different organizations.

When it comes to the time period for the competent authorities to deal with whistleblowing reports, the Directive argues for a "reasonable timeframe, given the need to promptly address the problem that is the subject of the report, as well as the need to avoid unnecessary public disclosures" (Recital 67) and sets this timeframe to 3 months or 6 months in cases where the nature and complexity of the subject of the report may require a lengthy investigation. However, this timeframe only refers to the provision of feedback to the reporting person (Article 11).³ Feedback about the follow-up is defined as "the provision to the reporting person of information on the action envisaged or taken as follow-up and on the grounds for such follow-up" (Article 5(13)). Coming back to the stages of the whistleblowing report, it can be argued that the provision of feedback is tied to the end of the report evaluation stage, after which a subsequent course of action is determined. Formal investigations, such as criminal investigations and also administrative investigations often take much longer than the timeframe envisioned by the Directive. Nevertheless, the Directive is not clear enough in this matter since follow-up is defined very broadly.

The goal of any whistleblower is to have their report investigated, to stop the wrongdoing and to punish the perpetrators. This requires careful and diligent investigation by the authority competent to investigate the wrongdoings in specific areas. Investigation, in terms of administrative or criminal proceedings, is a very formalized process. In terms of the Directive, investigation is a form of follow-up action on a report about a breach submitted to a competent authority.

What it means in practice is elaborated on a bit more in the EC Questionnaire for the collection of statistics according to Article 27(2) of Directive (EU) 2019/1937. There, some examples of investigation are given as "e.g. setting up of investigative committees, tax reviews (audits), setting up an investigative commission, on-site visits to the organizations concerned, etc." The European Commission does not define investigation as a formalized process that is regulated by some other laws (e.g. criminal code, or tax law), but it also includes formal acts of establishment of committees and specific powers such as on-site visits. This creates a lack of clarity and uncertainty in distinguishing the investigation from other stages of the whistleblowing report.

Nevertheless, the Directive includes the opportunity to refer the received report to another authority. Safeguarding the identity of the reporting person is a crucial condition that needs to be observed in the process of the referral of the report. The referral process requires competent staff members on both sides of the transfer: "It is necessary that staff members of the competent

³ A slightly different definition is presented in Recital 67, which states that both follow-up and feedback should not exceed 3 months, or 6 months in more complex cases.

authority who are responsible for handling reports and staff members of the competent authority who have the right of access to the information provided by a reporting person comply with the duty of professional secrecy and confidentiality when transmitting the data both inside and outside the competent authority, including where a competent authority opens an investigation or an internal enquiry or engages in enforcement activities in connection with the report" (Recital 77).

When the competent authority which received the report does not have the competence to investigate the content of the report, the report should be referred to a competent authority which has such competence: "Member States shall ensure that any authority which has received a report but does not have the competence to address the breach reported transmits it to the competent authority, within a reasonable time, in a secure manner, and that the reporting person is informed, without delay, of such a transmission" (Article 11 (6)). This process may work smoothly in countries which were able to set up a functional model of competent authorities.

In cases where there is no competent authority with the competence to investigate the content of the report, the Directive does not provide a direct answer on what to do with the report. However, it expects that the reports will be investigated and includes a provision on the referral of the content of the report to other authorities or organizations, which are not competent authorities within the meaning of the Directive. In such referral of a report, the identity of the reporting person must be kept confidential: "Member States shall ensure that the identity of the reporting person is not disclosed to anyone beyond the authorized staff members competent to receive or follow up on reports, without the explicit consent of that person" (Article 16 (1)).

There are, however, some exceptions to this rule, which are directly connected to the formalized investigation procedure carried out by other state authorities: "The identity of the reporting person and any other information referred to in paragraph 1 may be disclosed only where this is a necessary and proportionate obligation imposed by Union or national law in the context of investigations by national authorities or judicial proceedings (Article 16 (2)). In such cases, the reporting person must be informed of such referral before their identity is disclosed and must be provided with an explanation of the reasons for such disclosure of identity.

This means that eventually, despite the subsumption of the three stages of the report under the follow-up umbrella term, the Directive concedes the possibility that the various stages take part at different authorities if the national legislation designs such a model.

Another important mechanism of developing trust in the whistleblowing system is informing the reporting person about the progress and outcome of the investigation, since "lack of confidence in the effectiveness of reporting is one of the main factors discouraging potential whistleblowers" (Recital 63). To increase the confidence, competent authorities "should also give feedback to the reporting persons about the action envisaged or taken as

follow-up, for instance, referral to another authority, closure of the procedure based on lack of sufficient evidence or other grounds, or launch of an investigation, and possibly its findings and any measures taken to address the issue raised, as well as about the grounds for the choice of that follow-up” (Recital 66). This might present a challenge in cases where different stages that fall under the follow-up are performed by different authorities.

Naturally, the Directive does not include any direct blueprint for the set-up of competent authorities, the ways of referring the report to authorities which have the competence to investigate its content, and mechanisms of information flow from the investigations to reporting persons. It is therefore up to the national legislation to develop a functioning system. This opens up possibilities for the establishment of various designs of how the whistleblowing report moves through the stages within the specific system. In the next section, some of the specific national setups will be discussed in more detail.

3 EXPERIENCE OF NEIWA MEMBER AUTHORITIES

The purpose of this paper was to examine the role of the whistleblower protection authorities at different stages of the reporting process and the different ways the report moves within the system and what this movement means for the protection of the whistleblower's identity. The focus was mainly on the stage of evaluation, investigation and a secure transfer of the report from the former to latter phase (refer to Figure 2 below).

Figure 2: Referral of the report



Once the report reaches the authority with the competence to investigate, certain tasks need to be carried out in order to secure the confidentiality of the report and to protect the whistleblower's identity. At the investigation stage, the role of the whistleblower is diminished, since the report “takes on its own life” and the identity of its originator is not that important anymore (except for criminal proceedings, where the whistleblower can play a further role in some capacity, e.g. as a witness).

This working paper therefore further explores four topics. The first one is the process of evaluation of the report and how the authority makes decisions on what is and what is not a whistleblowing report. The second one is the investigation of the content of the report by the receiving authority. The third one is the process of referring the report to the authority with the competence to investigate. At all these stages, the protection of the whistleblower's identity

is further discussed. The last section briefly discusses the investigation by an authority competent to investigate, once the report is referred to it.

The information provided in this paper is based on the results of 9 qualitative interviews with representatives of NEIWA member organizations conducted between October and November 2024 via MS-Teams. Each interview lasted for approximately 1 hour. Follow-up e-mail exchanges followed with a majority of the respondents to obtain additional information and to confirm the accuracy of the information provided.

Authorities which participated in the research:

- Centrum for Integrity, Federal Ombudsman (CINT) – Belgium
- Ministry of Justice – Czechia
- Defender of Rights (DDD) – France
- State Chancellery – Latvia
- Prosecutor General's Office – Lithuania
- Dutch Whistleblowers Authority (HvK) – Netherlands
- The National Integrity Agency (ANI) – Romania
- Whistleblower Protection Office (WPO) – Slovakia
- Andalucian Anti-Fraud Bureau (OAAF) – Spain

The empirical section of the paper is divided into four parts. The first one covers the process of evaluating the report – ways of how and in what time-frame the authorities decide whether the received submission can be considered a whistleblowing report. The second part focuses on the investigations conducted by the authorities themselves – when the reports fall within their investigatory powers. The third part covers the process of referring the report to another authority – this involves the cases when another authority has the powers to investigate the content of the report. The last part briefly mentions the investigatory process at the other authority and the further role of the institutions that received the original report in that process.

4 EVALUATION OF THE REPORT

Each of the participating authorities in this research has the role of a competent authority in their country and therefore operates external channels and receives whistleblowing reports. In some cases, they are the only competent

authority for the whole country, in others they play a role of the competent authority for a specific sector (employees of the federal public sector and private sector) and in the rest of the countries, they are a part of the system of several or many competent authorities.

Once the report is received, each authority performs the stage of evaluation of the report – this means assessment of the report on the grounds of whether it comes from a work-related context, whether it fits the material scope of the law and to what extent the report is substantiated and contains all necessary information. The evaluation has the same features in all authorities, but the process varies in its depth and time limit for the stage. Some authorities have a more restrictive time period to evaluate the report (e.g. 10 days), others have a one-month limit and up to 90 days (based on the Directive limit for follow-up actions). There are some authorities which do not have any legally defined limit for the evaluation. These periods affect the trade-off between the speed of response to the report on the one hand, and the possibility of going into as much detail as possible and gathering additional information before moving to the phase of investigation on the other hand.

Another practice that varies is the collection of additional information from the reporting person. Some authorities have strict periods for submitting additional information (3-15 days), otherwise the files are closed due to insufficient information. In the case of other authorities, further communication with the reporting person might take place over the whole evaluation period, or the file is closed in case the reporting person does not respond to multiple requests for more information. CINT always tries to conduct a personal interview with each reporting person after the submission of the report, in order to gather information and discuss the process and its possible risks in person.

Good practice in the maximization of provided information can be identified in the advice process performed by the HvK. In this system, the report first arrives at the advice department. The advice department offers guidance to the reporting person by explaining the intent of the law and clarifying the way the legal protection has been designed. Advisors verify whether the reporting person meets the criteria defined for a suspected wrongdoing and give advice regarding the reporting procedures available (internal and external). In practice, this means making sure the reporting person is aware of their rights regarding whistleblower protection and making sure they themselves keep within the framework of the law. In the case of a whistleblower, the next step is formalizing the services offered by the advice department and the steps the reporting person can take, with help from the advice department to prepare a request for investigation and which information to include in such request.

The evaluation process ends with the decision on where the content of the report should be investigated – whether it can be investigated by the institution that received the report, or if it needs to be referred to another authority.

5 INVESTIGATION BY THE AUTHORITY

As discussed in the previous section, all the authorities can receive and thus evaluate reports, but not all of them have the competence to investigate the suspected wrongdoing alleged in the report and remedy/sanction it. Usually, the authorities only have the competence in some specific areas and a large portion of reports are therefore referred to other competent authorities, or authorities with the competence to investigate the reported wrongdoings and illegal activities. Some authorities only receive reports in specific areas and once the report does not fit in that area, whistleblowers are redirected to another authority (e.g. only receive reports from the specific sector, or only reports in specific areas).

If the investigation is carried out by the same authority, the research reveals two main models of distribution of different stages of the report. In the first model, both stages of evaluation and investigation are carried out by the same department / same employees of the authority. The second model divides these stages, the receipt and evaluation of the reports are carried out by a different department than the investigation. In these cases, the department responsible for receiving and evaluating often plays a role in providing guidance to the whistleblower and a comprehensive explanation of the process and the whistleblower's rights and possibilities of protection against retaliation (e.g. the advisory process, or establishment of protection files once the report is submitted).

When the investigation is carried out by the same department, the file associated with the report stays with the investigator, or an investigative team is established. Out of the research sample, only 2 authorities perform investigations by the same department. In one authority, the process of evaluation of the report and the process of investigation is not clearly distinguished. Once the report is assessed as a WB report falling under its remit, the process moves to investigation. In the other authority, the evaluation process is concluded and then a team of 2 investigators is assigned to the case.

If the report is referred to another department within the institution, there are two models of referral. In the first model, the whole report is referred to the department responsible for the investigation, including the identity of the reporting person. In this model, any further communication with the whistleblower (such as updates on the progress of the investigation and its outcome) is usually conducted by the investigation department.

In the second model, only the content of the report is transferred to the investigation department, while the identity of the reporting person remains anonymous. This is one of the protection mechanisms to keep the identity hidden from the employer. In these cases, the investigation is carried out and communication with the reporting person is performed by the department that evaluated the report (and which provides advice to the reporting person). In case the identity of the reporting person might be revealed in the investigation process (due to the nature of the reported information or the size of the

organization), some authorities can perform a proportionality test and decide whether to carry on with the investigation if the risk is high and the reported wrongdoing does not severely harm the public interest.

The process of investigation also varies based on what legislation regulates it. The process is either regulated by the whistleblowing law, in which case the protection of the reporting person is higher, or it is regulated by another law that was designed for other types of investigations (e.g. inspections in public organizations). In the latter case, the law is not designed to protect the identity of the reporting person and therefore his/her identity might be revealed during the process. The more formalized process is usually connected with the ability to impose financial sanctions.

In the authorities governed by their own legislation, the process of investigation then entails collection of data, such as documents or contracts, interviews with employees who have some knowledge about the reported wrongdoing, then followed by interviews with the potential perpetrators. Once enough information is collected, the investigators prepare a report with their findings and recommendations on how to remedy the situation. The authorities use their informal power and authority to enforce the remedies.

With most authorities, there are no specific time limits to conduct an investigation. However, some authorities impose the 90 (180) days limit as envisioned by the Directive to this stage of the report. In the investigations within the authority, the reporting persons are kept updated on the progress and outcome of the investigation.

Good practice on the progress status of the report can be identified in the case of OAAF. Every reporting person has a public digital signature to access the status of their report on their website. When the report is submitted, s/he indicates whether s/he wants to be sent further information about the status of the report and related proceedings and its outcome.

A specific situation might occur during the investigation process and that is if the suspicion of a criminal conduct is identified. In these cases, all the authorities have the obligation to submit a criminal report to the prosecution service. As the Directive does not interfere with the rules of criminal proceedings of nation states, even if the reports are submitted without disclosing the identity of the reporting person, this identity might be requested. However, it should be disclosed only in cases where it is necessary for the purposes of the investigation and proportionate to the risks faced by the whistleblower.

Good practice in this area is to have a functioning relationship with the prosecution service. If possible criminal behaviour is identified by the DDD during the investigation process, a contact is made with the public prosecutor. DDD continues with its investigation only in case that the public prosecutor allows the continuation. The public prosecutor gets all the information, including the identity of the reporting person, but is also clearly instructed that the report comes from a whistleblower so that the necessary precautions should be taken, in particular with regard to confidentiality requirements.

6 REFERRAL OF REPORTS AND INVESTIGATION BY OTHER AUTHORITIES

If the report alleges illegal activities that cannot be investigated by the authority which received it, then, once evaluated, the report is referred to another authority for investigation. The referral process is therefore a crucial step, which occurs between the movement from the stage of evaluation to the stage of investigation. During the referral of a whistleblower's report, it is crucial to ensure confidentiality of both the whistleblower's identity and the content of the report.

There are two main models of referring reports to other authorities, which affect the confidentiality of the reporting person's identity. In the first model, the whole report (including the whistleblower's identity) is referred. In the second model, the report is referred in an anonymized form, or the report is already processed into a specific submission for investigation. Usually, the authorities in the sample of the research use either the first or the second model. However, in some cases both models can be utilized for different reports (especially when it comes to severity of the reported harm to the public interest).

The one exception to this process is the criminal proceedings, where either all the data is provided to the prosecution service, or the data can be requested and then must be provided by the authorities who received the original report. In these cases, the whistleblower is usually informed in advance and reasons for the disclosure of identity are provided.

The referral process works best in cases when a functional model is created by individual countries and during the referral, the report stays in the "whistleblowing regime", because it is referred to staff competent to work with whistleblowing reports.

The best practice could be identified in the Latvian systems, where each competent authority has assigned a specific contact person, which oversees the receipt of whistleblowing reports. These contact persons have appropriate training and knowledge of the whistleblowing procedures. The process of transfer is regulated in the "Guidelines for the receipt and examination of whistleblower's reports by the competent authorities", which contain a dedicated chapter "Transmitting the report to another competent institution". The guidelines stress that in such case it is important to indicate that the report was received as a whistleblowing report, and it is important to ensure the confidentiality of the identity as it can be endangered by the transmission.

Another best practice is the case of Lithuania, where there is only one competent authority, and reports are transferred to authorities competent to investigate them through the contact persons responsible for internal channels. This provides that the reports are also received by personnel competent to work with whistleblowing reports.

Problems might arise when the report is referred to a generic contact at the authority competent to investigate and the report is thus treated as a regular submission. Some authorities identified potential problems with leakages when the report arrives at the investigating authority and is accessed by unauthorized personnel.

To keep the report and any information it contains secure, some authorities use secure ways of transmitting the report – e.g. encrypted e-mails, or specialized electronic communication tools. In case the reports are in physical form, they are clearly marked as confidential and accompanied by a cover letter explaining the demands of the whistleblowing regime.

The process of getting the report from the whistleblower to the authority competent to investigate is one of the important steps of the stages of the report, with some vulnerabilities for the whistleblower's identity. Support and communication with the whistleblower regarding this step are therefore important for managing expectations and the risks whistleblowing entails.

7 INVESTIGATION BY THE AUTHORITY COMPETENT TO INVESTIGATE

Once the report is referred to the authority competent to investigate it, the investigation process follows the rules and regulations of that authority and the role of the institution which received the original report as well as that of the reporting person is diminished. With several authorities, their only function is to keep updated about the progress of the investigation and communication with the reporting person. In other cases (usually the ones where the report is referred, including the whistleblower's identity), the communication duties are assumed by the authority that investigates.

In cases where the reporting person's identity is unknown to the investigating authority, the authority that received the original report might be asked to facilitate the provision of more information from the whistleblower when necessary.

The case of a more active authority in the further investigatory proceedings is the case of reports submitted by the WPO. The WPO might submit the report to investigating authorities in its own name (with the information based on the whistleblowing report, combined with information collected by other means during the process of evaluation). Therefore, the WPO is the author of the report for investigation (criminal report, or report to an administrative authority), and takes on all the communication and procedural actions in the ongoing investigation. The identity of the author of the whistleblowing report remains hidden (in some cases, it can even be an anonymous report, where identity is not known to the WPO either). The reporting person is informed about the developments in the investigation through the WPO.

Another important step in this process is the provision of timely information about the progress of the investigation and its conclusion to the whistleblower. Here, the role of the receiving authority varies. The first model establishes that once the report is referred, the information duties also pass to the authority in charge of the investigation. In these cases, the receiving authority may not be informed about the outcome at all.

The best practice can be identified in the case of Latvia. It is the investigating authority that has an obligation to provide feedback on the progress of the report no later than 2 months from when the submission was recognized as a whistleblowing report. However, if the feedback is not provided in the given period, The State Chancellery contacts the leadership of the given authority and asks them to fulfil its legal duties to provide feedback.

In the second model, the information duties lie with the receiving authority. This is often the case in situations where the reporting person's identity is not disclosed to the investigating authority. In this model, a problem arises when the investigating authorities do not have a legal obligation to provide information about the progress and outcome of the investigation to the receiving authority, and therefore it cannot comply with its information duty to whistleblower either.

8 CONCLUSIONS AND RECOMMENDATIONS

This working paper focused on the ways the nation states implemented the whistleblower protection directive in the process of handling external whistleblowing reports. The analysis was conducted on selected authorities which play a central and pivotal role in whistleblowing in their respective countries and which are members of NEIWA. The proper handling of whistleblowing reports represents a crucial condition for the overall trust in the whistleblowing process.

Proper handling of reports should focus on key outcomes of whistleblowing under different legislative regimes. These include professional assessment of the reported wrongdoing, identification and correction of the wrongdoing, adherence to the confidentiality of the reporting person's identity, fair handling and reasonable outcomes of investigations, including the provision of information to the reporting person.⁴ When handling external reports, it is therefore crucial to think in various stages of the report and how the above-mentioned goals need to be kept in mind as the report moves through them.

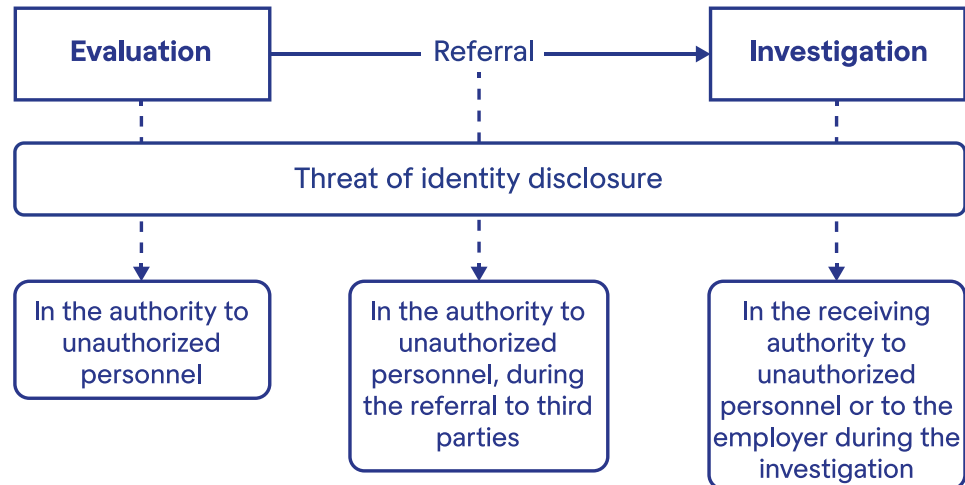
The two main stages of follow-up on the reports are the stage of evaluation of the report and the stage of investigation. Between these two stages, there is often the process of referral of the report, which happens either internally

⁴ A. J. Brown, Daniel P. Meyer, Chris Wheeler, and Jason Zuckerman. 2014. Whistleblower Support in Practice: Towards an Integrated Research Model. In *International Handbook on Whistleblowing Research*. Edited by A. J. Brown, David Lewis, Richard E. Moberly and Wim Vandekerckhove. Cheltenham: Edward Elgar Publishing, p. 488-489

within the authority or the report is referred externally to other authorities, which have the competence to investigate the reported wrongdoing.

The main threat to whistleblower protection and building trust in the process of whistleblowing⁵ at these stages is the threat of disclosure of the reporting person's identity to unauthorized personnel, employer or third parties. This threat of breach is visualized in Figure 3 below.

Figure 3: Threat of identity disclosure at the various stages of the whistleblowing report



There are a variety of regulations governing the whistleblowing process among different authorities/countries and therefore there is no “one size fits all” model. Nevertheless, to facilitate its proper course, protect the identity of reporting persons and ensure compliance with the information duties towards them, this paper identified several best practices that could be adopted.

Stage of evaluation

- **Allow enough time to gather all the necessary information from the reporting person – either electronically or through a personal interview.**
- **Provide personalized advice to whistleblowers to prepare them for the whole process and their rights if they are subject to retaliation.**
- **Anonymize reports upon their receipt to minimize the chances of identity disclosure while the reports are processed. Communicate only the case number and avoid any personal details.**
- **Prioritise preventing disclosure of personal and whistleblower data. Do not provide any information through phone calls, unverified electronic communications. Always request identification when providing sensitive information.**

⁵ Willingness to blow the whistle is higher if the identity of the reporting person stays protected. See e.g. Mary B. Curtis, Eileen Z. Taylor. Whistleblowing in Public Accounting: Influence of Identity Disclosure, Situational Context, and Personal Characteristics. *Accounting and the Public Interest*, 9(1), p. 191-220.

Stage of investigation at the authority

- Separate the stage of evaluation and investigation even at the same authority. Make sure that the investigatory file does not include any personal details of the whistleblower, if the file can be accessed by the party under investigation.
- Think about the risks that the investigation might carry for the whistleblower. If there is a high chance of identity disclosure, perform a proportionality test to balance this risk against the seriousness of the reported wrongdoing.
- Keep the whistleblower informed about the progress of the investigation and its outcomes.

Referral of the report

- Prepare formal guidelines on the referral of the report to the authority competent to investigate to avoid the possibility of identity disclosure and leaking of information.
- Have formal agreements in place with other competent authorities / authorities with competence to investigate that establish rules of communication, referral of reports, keeping the confidentiality of data, flow of information about the ongoing investigation and its outcomes.
- Have contact persons at competent authorities / authorities with competence to investigate so the whistleblowing reports do not get into the hands of any unauthorized personnel.
- If there is no formal arrangement for the processing of whistleblowing reports at the receiving authority, officially notify them that it is a whistleblowing report, and legal protections of confidentiality and protection of the identity apply.
- Refer reports without disclosing the reporting person's identity, in an anonymized form or in a form of submission prepared from the original report.
- Transmit reports through secure means, such as encrypted e-mail or a safe electronic system for transmission of information or use a double envelope system (the report content is in the second envelope, accompanied by a cover letter, which prevents unauthorized personnel from opening the report itself).

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