

Summary

Listening and talking to a potential whistleblower in practice means acting in the best interest of the potential whistleblower. This phase serves to discover and analyse details of the specific report the potential whistleblower wants to file. The organization needs to be crystal clear regarding their role when it comes to the reporting process. This is also a starting point to inform a potential whistleblower regarding their rights. Because it is often the first time that a potential whistleblower can share the complete story, staff of the authority can offer empathy and practical support.

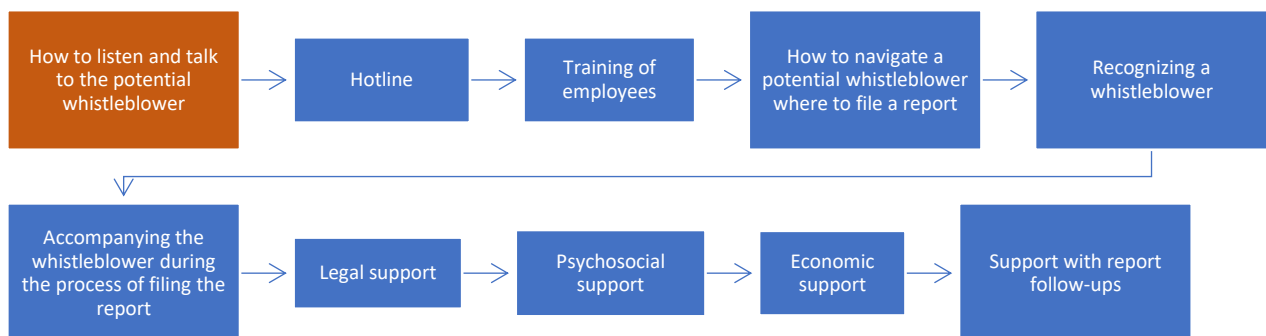
Call for the member states:

It is valuable to invest in adequate resources when it comes to the topic of communication with the potential whistleblower. Since this process can be part of various steps in the reporting process, the availability and quality of staff can be of decisive importance for the potential whistleblower. Being able to connect with – and build trust with – an independent, knowledgeable and empathetic advisor can support the reporting process. The support from an advisor ultimately serves to empower the potential whistleblower, facilitating the way a report can be filed successfully. This step is vital in contributing to the ability to build a safer reporting climate.

Types of Support for Whistleblowers before the report (before filing the WHIB report)

HOW TO LISTEN AND TALK TO THE POTENTIAL WHISTLEBLOWER

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Intentions derived from the Directive

Articles 13 and 20 of the Directive specify the minimum measures regarding information and advice. These articles outline the requirements for authorities tasked with spreading information that needs to be shared with a potential whistleblower. Proper communication enables this first contact, and with that the process of talking to a potential whistleblower can commence.

Article 13

Information regarding the receipt of reports and their follow-up

Member States shall ensure that competent authorities publish on their websites in a separate, easily identifiable and accessible section at least the following information:

- (a) the conditions for qualifying for protection under this Directive;
- (b) the contact details for the external reporting channels as provided for under Article 12, in particular the electronic and postal addresses, and the phone numbers for such channels, indicating whether the phone conversations are recorded;
- (c) the procedures applicable to the reporting of breaches, including the manner in which the competent authority may request the reporting person to clarify the information reported or to provide additional information, the timeframe for providing feedback and the type and content of such feedback;
- (d) the confidentiality regime applicable to reports, and in particular the information in relation to the processing of personal data in accordance with Article 17 of this Directive, Articles 5 and 13 of Regulation (EU) 2016/679, Article 13 of Directive (EU) 2016/680 and Article 15 of Regulation (EU) 2018/1725, as applicable;
- (e) the nature of the follow-up to be given to reports;
- (f) the remedies and procedures for protection against retaliation and the availability of confidential advice for persons contemplating reporting;
- (g) a statement clearly explaining the conditions under which persons reporting to the competent authority are protected from incurring liability for a breach of confidentiality pursuant to Article 21(2); and
- (h) contact details of the information centre or of the single independent administrative authority as provided for in Article 20(3) where applicable.

Source: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1937>

Article 20

Measures of support

1. Member States shall ensure that persons referred to in Article 4 have access, as appropriate, to support measures, in particular the following:

(a) comprehensive and independent information and advice, which is easily accessible to the public and free of charge, on procedures and remedies available, on protection against retaliation, and on the rights of the person concerned;

(b) effective assistance from competent authorities before any relevant authority involved in their protection against retaliation, including, where provided for under national law, certification of the fact that they qualify for protection

under this Directive; and

(c) legal aid in criminal and in cross-border civil proceedings in accordance with Directive (EU) 2016/1919 and Directive 2008/52/EC of the European Parliament and of the Council (48), and, in accordance with national law, legal aid in further proceedings and legal counselling or other legal assistance. (48) Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (OJ L 136, 24.5.2008, p. 3).

2. Member States may provide for financial assistance and support measures, including psychological support, for reporting persons in the framework of legal proceedings.

3. The support measures referred to in this Article may be provided, as appropriate, by an information centre or a single and clearly identified independent administrative authority

Source: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1937>

These first steps consist of sharing information and affirming whether someone qualifies for whistleblower protection.

Introduction

In this chapter, the ways of talking and listening to a potential whistleblower are explored. Important things to keep in mind are discussed according to the experiences of a number of authorities. First, the procedure used by the Dutch Whistleblowers Authority is shared. This procedure is then reviewed and supplemented with the experience and best practices of other authorities.

To be able to determine the ways different authorities make initial contact with potential whistleblowers we sent out a short survey. The results have been compared with our own way of working to give an overview of possible best practices.

What to expect: first contact and asking for advice

There is a step-by-step process in place that might add to the feedback given by the various respondents. This process is intended to walk a potential whistleblower through the reporting process.

1. Request for advice - receiving the question via any of the contact options.

Seeing that this is the first contact, much attention is given to carefully listening to the question and the context of the potential whistleblower. At the same time it is important to be clear on the intent of the Directive and local law. It might be that not everyone making a request will eventually be a whistleblower, but this is not always clear at first sight.

Since the Directive has the aim to inform all potential whistleblowers – this means being open to offer advice to any kind of request is part of the job. The most important part of this step is sharing information. The advisor offers kind understanding, while also being firm in the possibilities the authority has, to ensure that the contact can proceed under the right expectations.

2. Sharing information - after a quick assessment (is the report made in a work-related context?) - a potential whistleblower is given advice and options to proceed.

There are two possible outcomes, when a question does not show any work-related context, the authority is not mandated to give advice regarding the report. At this point it is possible to refer a reporting person to another organization. Depending on the local infrastructure, there might be an advocate available to a reporting person. For instance, an ombudsman or specialized committee tasked with handling complaints or other irregularities.

3. Making a formal request for advice.

The potential whistleblower is invited to share a timeline of events and, when available, documents supporting the content of the report. This serves to build the case – especially when it comes to establishing “reasonable grounds”. When did someone notice this issue, and more importantly, is it possible to verify whether it can in fact constitute a possible wrongdoing? This is also a good time to share information on the integrity infrastructure in the organization where the issue reported was observed. There might be a compliance office involved or sometimes there is a speak-up policy in place.

4. Start of preliminary analysis of the report - does it constitute a wrongdoing with a public interest?

Through analyzing the documents shared, a specialized advisor can interpret the report within the context outlined by the potential whistleblower. The next step is weighing whether the content of the reported issue constitutes a wrongdoing with a public interest. The Directive has specified breaches of Union law that are always considered to be in the public interest, but there is a wide array of possible wrongdoings. This takes careful consideration of the context of the report and the narrative of the potential whistleblower.

5. Confirming the intake - start of the advice process (preferably within one week of the formal request).

After confirming that the authority is qualified to assist in the matter reported; there is in fact a work-related context and the issue reported constitutes a possible wrongdoing in the public interest, an intake is planned. This can be a phone call, but also a meeting in person. This gives a chance to listen to the full story and ask questions to get a complete understanding of the situation. This is also a chance to show empathy and stress the importance of organizing social support when in the process of making a report.

6. Confirming the content of the report and advising the potential whistleblower on their rights and reporting procedures.

This is also a part of communication earlier in the process, in the very first step. At that point it is discussed in more general terms, but when formally taking up a case and offering advice and guidance it is very important to be on the same page with the potential whistleblower. It is also the time to discuss what might happen after filing the report in order to prepare the potential whistleblower. In the end, a reporting person remains in charge of their report. This position of autonomy is always an important position. This serves to empower the reporting person and also stresses the confidentiality offered by the authority. It ensures that nothing happens without their consent.

7. Reviewing the case and making sure a potential whistleblower fits all the criteria.

Is the report coming from a work-related context and does the report mention a suspected wrongdoing with a public interest? Has a formal report already been made and to whom? Does the potential whistleblower face repercussions following the report? What expectations (best possible outcome) does the potential whistleblower have for the advice process?

In a number of cases, a potential whistleblower unfortunately does not meet all criteria. At that point, it is important to know where it is possible to go for advice. The networks associated with whistleblower authorities can be of service. Whenever possible it is helpful to understand the position of the reporting person and still offer an alternative route for guidance on the matter.

8. Formal guidance and recognition of whistleblower status

When all criteria are met, it is possible to offer formal guidance to a whistleblower after consultation within the authority. This means the reporting person qualifies for other facilities available to whistleblowers, such as psychological support and legal subsidies. Other chapters offer more insight in details surrounding the (formal) recognition of the whistleblower status and the services available after recognition.

9. Deciding on next steps

Depending on the wishes of the whistleblower and the content of the case, it may be pertinent to advise a formal investigation or an intervention towards the employer. This depends on the situation and is discussed after the criteria for whistleblower protection status have been met. Whenever the relationship has been formalized, the authority has the possibility to communicate with the employer on behalf of the whistleblower.

Reflections

After tracing the steps of a possible approach to this stage of listening to and talking to a potential whistleblower, it is good to note that not all authorities need to have this same procedure in order to be effective at implementing the aims formulated in the Directive. Authorities might also have a different structure or different goals. Local laws may also be of influence when it comes to this process. The Dutch Whistleblowers Authority for example, consists of three departments. The topic of talking to and listening to a potential whistleblower is covered by the Advice department.

When it comes to ordering an investigation, the Research department has specific legal obligations and follows a legally mandated procedure. The Prevention department offers advice to employers and stimulates integrity within organizations. To ensure the independency of all departments and safeguarding the confidentiality of a potential whistleblower – the departments are not to consult with each other regarding a specific case unless a potential whistleblower gives written consent. This can be the case when there are steps taken to approach the employer involved in the reported issue. Some authorities might have investigative capabilities that are attached to the duties of informing and assisting potential whistleblowers. And for other authorities approaching the employer can be one of the ways to assist a potential whistleblower, even in the early stages of making a report.

Through local laws and the way the authority is structured, differences may be in place regarding the way a potential whistleblower can relate to their own employer through the whistleblower protection authority. There are, however, some commonalities to be shared. In the next parts the framework offered will be supplemented by the feedback offered by some other authorities on this topic.

The survey was completed by:

- The National Integrity Agency (ANI) – Romania
- Valencian Anti-Fraud Agency (AVAF) – Spain
- Defender of Rights (DDD) – France
- Andalucian Anti-Fraud Bureau (OAAF) – Spain
- State Chancellery – Latvia
- Whistleblower Protection Office (WPO) – Slovakia
- Commission for the Prevention of Corruption – Slovenia

Practical experiences

The results from the survey are discussed in the following paragraphs. These give an interesting view on the similarities between the different authorities when it comes to talking to a potential whistleblower.

Availability

A potential whistleblower can reach out to an authority with a request for information, a request for advice or a signal regarding a potential wrongdoing. The first step is receiving this signal through e-mail, a webform or telephone. When it comes to assisting potential whistleblowers, it is important to be able to speak with someone that can understand the situation and offer some advice directly. Most authorities offer different communication channels, so it is easier to make contact. You should at the very least be able to make a phone call. Other channels are also convenient such postal services and in-person contact for those who wish to do so.

How can potential whistleblowers reach your organization?

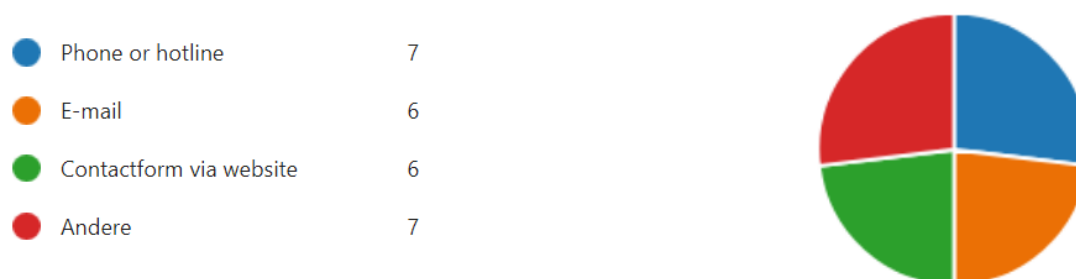


Figure 1 - Most common ways of communication

The key take-away is that all authorities strive to be approachable and easy to reach. In addition to opening up a channel through a website or e-mail, many good experiences were described with a hotline for potential whistleblowers. All respondents made use of this tool, and even the need for a 24/7 hotline was mentioned a couple of times. Until the moment that this might be an option, authorities strive to offer maximum flexibility. In practice the main contact options are always supplemented with other ways of communication. Such as the ability to meet in-person or to mail in a request via postal services. Solutions can be found in investing in communication, for instance through the authority's website. Having a comprehensible procedure that is made available through an organized digital environment, may facilitate potential whistleblowers. This can be easier to realize whenever there is a dedicated department of advisors available.

And in the case a potential whistleblower expresses the need, an advisor can adapt to their wishes and make sure to make time when it fits the potential whistleblower's schedule. When specialized staff is available for this task, it ensures that a potential whistleblower can confidently engage in this, often delicate, conversation.

Most respondents were satisfied with the way they could come into contact with the potential whistleblower. When asked to rate their availability the self-report was positive. But even in case of a positive score, there was room for improvement by expanding the number of staff members available.

If anything, what would you change in your availability?



Figure 2 - Word cloud: Potential changes in availability

Central to the word cloud: people. When reflecting on what can support this very first step of making contact, it appears that authorities are very much aware of the necessary balance. An authority should be service-oriented and is aimed at providing adequate information to the public. At the same time it is important to be prepared for the difficult situation the potential whistleblower faces. This shows that talking to a potential whistleblower is, in its essence, an experience that requires professional qualifications, but also focuses on a human connection with an advisor.

Most important information to share

We asked the respondents to rank the topics in order of importance, most respondents placed “Role of the organization” in first place. The overall picture however, shows that the focus can vary. By being flexible, it is possible to adapt to the needs of the potential whistleblower at that specific moment.

When talking to a potential whistleblower, what is most important to share?

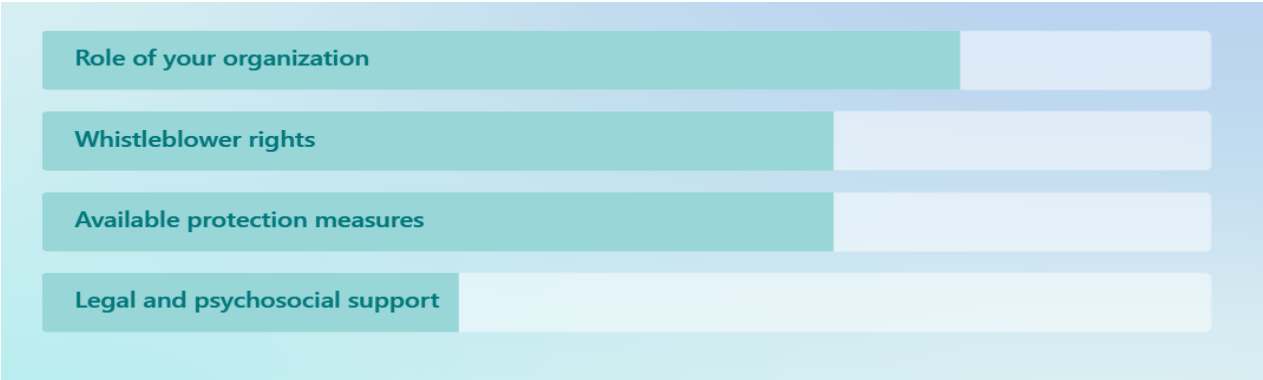


Figure 3 - Most important information to share with a potential whistleblower

It appears that the most important information to share seems to be the role of the authority. This makes sense, since members are very diverse and roles may also change due to changes in legislation. From the perspective of a potential whistleblower, it is important to understand what kind of services can be expected, and also what information or support needs to be gathered somewhere else. Some potential whistleblowers can come to an authority through a number of different routes. This can result in a wide array of people making contact. By being clear in your role, it is possible to avoid false expectations, this sets the tone for the rest of the communication. This also applies to cases that will be referred to competent authorities as a part of the reporting process. A referral to a competent authority can be the case when the internal report does not generate fruitful results or when the suspected wrongdoing or breach requires it.

Besides the role of the authority, there is the need to be clear on the way the whistleblower protection actually works – the language in the Directive can be quite technical and sometimes the implemented local legal framework takes additional steps. A good understanding of the whistleblower rights helps a potential whistleblower to compare their unique situation to the more general legal formulations. Also when interpreting possible retaliation, it might be helpful to consult with a specialist to evaluate the available protection measures.

In reflection on how to further shape the message to a potential whistleblower, authorities wish to value the reporting person in relation to their own mission in promoting transparency and accountability. It should be a process of communication that prepares and encourages strength in the potential whistleblower, so they feel supported.

**If anything, what would you want to change
regarding the message towards potential whistleblowers?**



Figure 4 – Potential changes to the message for a potential whistleblowers

The core message remains clear communication on the limitations and the possibilities offered by a specific authority. The more detailed information on the contents of the report or the exact contours of facilities available to potential whistleblowers can be seen as peripheral and are to be addressed in a later stage.

Personal focus

When asked where to place the focus when giving advice, the most important element seems to be building trust. A way to make this happens is offering a confidential setting (in some cases anonymous). This creates a safe environment for a potential whistleblower. Giving the proper attention to this part of the process, helps the exchange of information in later stages. When these requirements are met, a person can feel comfortable to share the issues and the person feels free to consult the authority with any questions they may have.

From this empathetic atmosphere it is also easier to shift the focus to the process. The authority is keen on its role and makes sure to inform the potential whistleblower on what to expect going forward with the process. What are the steps and why are they designed the way they are? Afterwards it is possible to go into the details of the report itself. After all, the intention is to gain a complete picture to build the file.

Best practices

In the end, the most important aspects of talking to a potential whistleblower is building trust – having a good relationship between the potential whistleblower and the representative of the authority. This is closely followed by mutual understanding of the role of the authority in this matter. It helps to share expectations of the process and be informed about the (legally mandated) role and competencies. Finally, a large part of the contact with a potential whistleblower revolves around empathy and support.

What is, to you, the most important aspect of talking to a potential whistleblower?



Figure 5 - Most important when talking to a potential whistleblower

These elements, or best practices, build a foundation that enables both parties to move forward in the process. The whistleblower knows the way in which they can count on the authority and the authority has all the information necessary on the whistleblower's position and personal needs. Making sure the relationship starts on a good foot, ensures optimal support for the period after the report has been filed.

Significant experiences

In the experiences gathered there are a few moments within this process that prove to be very valuable to the potential whistleblower. These are key interventions that can be offered at any stage, depending on the needs of the case:

- Comprehensive information available at the discretion of a potential whistleblower – to facilitate easy understanding e.g. on a website.
- Offering a single point of contact for information, advice and support.
- Be clear on the meaning of protections but also the limitations of the support.
- Focus on building trust and getting a good relationship before discussing technicalities.
- Dedicated advisors to make the assessment: does someone qualify as a whistleblower?
- Bringing in expertise to speed up the process, some reports or requests are time-sensitive.
- Offering some form of contact with the employer where the possible wrongdoing was observed can support the whistleblower by stressing the importance of their rights.

Although the process of giving information and talking to a potential whistleblower may seem to have different stages, it can be helpful to remain mindful of the fact that some stages overlap. The process might also not move in one direction continuously. Sometimes it is necessary to take a step back or revisit steps that were previously taken. The process of filing a report can be chaotic. This means that it helps when the authority keeps an eye on the necessary procedures. That way it is possible to structure the communication with a potential whistleblower.