

## **G20 High-Level Principles for the Effective Protection of Whistleblowers**

The effective protection of whistleblowers and handling of protected disclosures are central to promoting integrity and preventing corruption. Whistleblowers can play a significant role in revealing information that would otherwise go undetected, leading to improvements in the prevention, detection, investigation and prosecution of corruption. The risk of corruption is heightened in environments where reporting is not facilitated and protected.

The need for effective protection of whistleblowers is already recognised in international and regional instruments. However, implementation of these standards varies significantly across jurisdictions. In addition, some jurisdictions have legislated to protect whistleblowers but many have little or no form of protection. The resulting fragmented approach leads to a lack of predictability and a general misunderstanding about the scope and purpose underlying protection regimes, ultimately discouraging disclosures by whistleblowers and impairing the effective enforcement of anti-corruption laws in G20 countries.

Protecting whistleblowers is a priority issue for Japan's 2019 G20 Presidency, which aims to respond to the 2019-2021 Action Plan of the G20 Anti-Corruption Working Group's (ACWG) call to "assess and identify best practices, implementation gaps and possible further protection measures as appropriate." This issue has been at the forefront of the agenda of the G20 countries since the Seoul Summit in 2010. In response to the call by the G20 Leaders, in 2011, the ACWG tasked the OECD with preparing a "Study on Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation".

The High-Level Principles, developed under Japan's G20 Presidency, and endorsed by the G20 countries, build upon existing standards and good practices from the United Nations<sup>1</sup> and several other international/regional bodies. The Principles reaffirm the importance of acting collectively to ensure the effective protection of whistleblowers. Moreover, they could form the basis for establishing and implementing more effective protection frameworks for whistleblowers in G20 countries, and are not intended to be an exhaustive list of legislative and policy measure that the G20 countries may take. These principles are complemented by the 2015 G20 High Level Principles on Private Sector Transparency and Integrity.<sup>2</sup>

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<sup>1</sup> Article 33 of UNCAC states that "Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention".

<sup>2</sup> 2015 G20 High Level Principles on Private Sector Transparency and Integrity (<http://g20.org.tr/wp-content/uploads/2015/11/G20-High-Level-Principles-on-Private-Sector-Transparency-and-Integrity.pdf>). The document aims to encourage the commitment of businesses, ranging from small and medium sized enterprises (SMEs) to large businesses, for internal controls, ethics and compliance, transparency and integrity. Principle 17 addresses reporting mechanisms and whistleblower protection. It reads, "Effective and easily accessible reporting mechanisms and whistleblower protection should be provided to employees and others who report, on good faith and reasonable grounds, breaches of the law, or violations of the business's policies and procedures. Businesses should undertake appropriate action in response to such reports."

In this context, G20 countries also recognised the need to look into gender-specific aspects related to whistleblowing.

### **Applicability, scope and definitions**

The following High-Level Principles build on the aforementioned Study and provide reference for countries intending to establish, modify or strengthen protection frameworks, legislation, and policies for whistleblowers and are intended to complement existing anti-corruption commitments and not weaken or replace them. They could help countries to assess their whistleblower protection frameworks. To supplement these Principles, a non-exhaustive menu of good practices will be developed and will set out more specific and technical guidance that countries may choose to follow.

The High Level Principles offer flexibility to enable countries to effectively apply them in accordance with their respective legal traditions. The principles can also provide guidance to those responsible for setting up and operating protection frameworks for whistleblowers in the public sector at the national and, consistent with national legal systems, sub-national levels and, as appropriate, the private sector. The High-Level Principles use the term “whistleblower” because of its longstanding and widely understood use in the context of the G20. For the purpose of the High Level Principles, the term “whistleblower” is equivalent to the term “reporting persons” mentioned in Article 33 of the United Nations Convention against Corruption (UNCAC) as further specified in Principles 2-4 below. The High-Level Principles focus on five core pillars: 1) legal framework, 2) scope of protected disclosures, 3) procedure for protected disclosures, 4) remedies and effective protection against retaliation, and 5) effective enforcement and self-evaluation of the legal framework.

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### **Principles**

#### **LEGAL FRAMEWORK**

##### ***Principle 1: Establish and implement clear laws and policies for the protection of whistleblowers***

G20 countries should establish and implement clear laws and policies for the protection of whistleblowers. Where appropriate, G20 countries should consider the adoption of legislation that is dedicated exclusively to such protections.

G20 countries should also encourage organisations to establish and implement protections, and provide guidance on the elements of these protections.

#### **SCOPE OF PROTECTED DISCLOSURES**

##### ***Principle 2: The scope of protected disclosures should be broadly but clearly defined***

G20 countries should endeavour to adopt a broad but clear definition of wrongdoing for protected disclosures. Mindful of the scope and purpose of the High Level Principles, G20 countries are encouraged

to clearly specify the limited exceptions that may apply to protected disclosures. The disclosure of information tending to show the deliberate concealment of these wrongdoings should also be protected.

***Principle 3: Protection should be available to the broadest possible range of reporting persons***

G20 countries' protection frameworks should extend to the broadest possible range of persons, as a minimum, for example to, employees, public officials or workers, irrespective of the nature of their contractual relationship. In addition, G20 countries should seek to provide appropriate protection to persons reporting corruption to competent authorities outside of an employment situation including confidentiality.

**PROCEDURE FOR PROTECTED DISCLOSURES**

***Principle 4: Provide for visible reporting channels and adequate support to whistleblowers***

To facilitate reporting and promote trust, G20 countries should ensure that diverse, highly visible and easily accessible reporting channels are available to whistleblowers and extend protection to all eligible persons reporting through those channels, which could include internal reporting channels established within organisations, external reporting to law enforcement or other competent authorities and where permitted by domestic legal frameworks, to public reporting. Organisations are advised to create internal channels that are granted with the necessary independence for receiving, assessing, investigating and acting on reports, and foster an organisational culture that builds confidence in reporting, proportionate to their size. Internal reporting can contribute to an early and effective resolution of the risk to the public interest and may be encouraged.

Without prejudice to the exceptions under Principle 2, G20 countries should ensure that, contractual or, as appropriate, civil service obligations, including non-disclosure or other employment agreements, such as severance agreements, do not prevent whistleblowers from making protected disclosures, deny them protection or penalise them for having done so.

***Principle 5: Ensure confidentiality for whistleblowers***

G20 countries' protection frameworks should ensure confidentiality of the whistleblower's identifying information and the content of the protected disclosure, as well as the identity of persons concerned by the report, subject to national rules, for example, on investigations by competent authorities or judicial proceedings.

Where appropriate, G20 countries could also consider ways to allow and support whistleblowers to make a report without revealing their own identity while being able to communicate with the recipient of the report.

REMEDIES AND EFFECTIVE PROTECTION AGAINST RETALIATION.

***Principle 6: Define retaliation against whistleblowers in a comprehensive way***

Retaliation against whistleblowers may take many forms, not limited to workplace retaliation and actions that can result in reputational, professional, financial, social, psychological and physical harm.

In developing their protection frameworks, G20 countries are advised to define the scope of retaliation as comprehensively as possible, and are advised to offer guidance and in their legislation provide a not-exhaustive but comprehensive list of types of retaliation that may trigger the protection of whistleblowers to provide more legal certainty and avoid limiting unfavourably the scope of protection.

***Principle 7: Ensuring robust and comprehensive protection for whistleblowers***

G20 countries should ensure that whistleblowers who make a protected disclosure are protected from any form of retaliatory or discriminatory action, should consider providing effective remedies that address direct and indirect detriment suffered as a result of any retaliatory action, and may consider allowing for effective interim protection pending resolution of legal proceedings.

G20 countries should consider having mechanisms that attribute the burden of proof in a proportionate way that protects whistleblowers, including in the case of dismissal.

G20 countries should also consider making available assistance to whistleblowers in order that they are aware of the available reporting channels and how to make use of them, the protections available where retaliation occurs as a result of making a report, and the proceedings available to request a remedy for alleged retaliation.

***Principle 8: Provide for effective, proportionate and dissuasive sanctions for those who retaliate***

G20 countries should consider providing for effective, proportionate and dissuasive sanctions for those who retaliate against whistleblowers or breach confidentiality requirements, and ensuring that the sanctions are applied in a timely and consistent manner, regardless of the level or position of the person who retaliated.

***Principle 9: Ensure that whistleblowers cannot be held liable in connection with protected disclosures***

G20 countries should consider ensuring that those who make protected disclosures using channels in accordance with Principle 4, are not subject to disciplinary proceedings and liability, based on the making of such reports. This Principle is without prejudice to the liability of the person making the report for their involvement in an offence that is the subject of the report and where the reporting person had no reasonable grounds to believe that the information reported was accurate. It is also without prejudice to national rules on the treatment of cooperating offenders.

G20 countries may consider effective, proportionate and dissuasive sanctions for whistleblowers' reports proven to be knowingly false. Where appropriate, measures may be put in place for compensating persons who have suffered damage from such false reports.

**EFFECTIVE ENFORCEMENT AND EVALUATION OF THE LEGAL FRAMEWORK**

***Principle 10: Conduct training, capacity-building and awareness-raising activities***

G20 countries should promote awareness of their frameworks for the protection of whistleblowers, including with a view to changing public perceptions and attitudes towards protected disclosures and whistleblowers. Similarly, they should encourage awareness raising with regard to the usefulness of reporting and the available protected reporting channels and policies on protection from retaliation, including information on where to appeal or seek support.

G20 countries should consider providing for adequate training to the recipients of protected disclosures in the public sector and ensure that detailed and clear guidelines are in place to ensure that these organisations can effectively establish and operate internal protection frameworks.

***Principle 11: Monitor and assess the effectiveness and implementation of the framework***

G20 countries are encouraged to periodically review their frameworks for the protection of whistleblowers. In doing so, G20 countries may consider ways of assessing and improving effectiveness and conducting regular monitoring and evaluation of the entire protection framework, including its impact on corruption reporting, collecting systematically relevant data and information, and where appropriate, reporting on the data while ensuring confidentiality and privacy safeguards.

***Principle 12: Lead the way on the protection of whistleblowers***

Leading by example in this area, G20 countries are encouraged to provide technical assistance to other countries that wish to establish or strengthen their frameworks for the protection of whistleblowers.