



GUIDELINES

For optimising EU policies on
whistleblower protection in sports

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ABOUT T-PREG

The project “Training on Protected Reporting System for Professional and Grassroot Sport” (T-PREG), funded by the European Commission through its Erasmus + Sport Programme, aims to promote and introduce, in a structured way, the use of protected reporting systems in sport.

The project’s overall approach is based on two important facts:

1. All around Europe, education and awareness campaigns to fight against wrongdoing in sport have followed the 3Rs schemes. The 3Rs trains sport actors to: (a) Recognize the characteristics of the problem, (b) Resist any proposal and, more importantly, (c) Report it. In practice, this model united the preventive pillars of education and sanction, helping to create the ethical, disciplinary, and, in some countries, legal frameworks that delimit the desired behaviours of the sports players. In consequence, integrity educational trainings, codes of conduct and ethics, and disciplinary norms have included the obligation to report any suspicion, approach, or tentative suggestion to get engaged in manipulations. In some countries, such as Portugal, the obligation to denounce is incorporated into criminal law.
2. Promoting reporting is considered one of the most effective measures to fight against any type of corruption. Thus, it is mandatory to promote effective and efficient channels to do so and to strengthen protection for those who blow the whistle. In fact, the recent EU Whistleblower Protection Directive (2019) has been created following this premise.

THE NEED FOR GUIDELINES ON WHISTLEBLOWER PROTECTION IN SPORTS

The new sport codes of conduct and discipline require that sport actors report any suspicion, approach, or tentative suggestion to get engaged in manipulations of sport competitions. In some countries, the obligation to denounce is incorporated into criminal law. While international organisations and sport governance bodies have focused in promoting technical and institutional recommendations for implementing protected reporting systems, the T-PREG project's data collection has shown that sport actors do not report because they consider that reporting (despite being mandatory) is still dangerous for their career. Promoting and implementing effective whistleblower protection in sport is a first step for implementing reporting systems and the Macolin Convention recommendations.

In addition, within the scope of public and private policies and actions in progress against wrongdoing in sport, T-PREG's outcomes (education and policy-making materials) have become a useful tool for optimizing regional and national policies.

These practical guidelines are the result of the expertise generated through the data collection process, the analysis of the data, and the implementation of the pilot trainings oriented to the specific social contexts where the phenomenon occurs¹.

The aim of these guidelines is to facilitate, and significantly strengthen, the effectiveness whistleblowing in sports, through the transmission of fundamental knowledge for the competent and appropriate implementation – and use – of the different possible models of protected reporting systems, given that:

- a) Match-fixing and other unethical and/or illegal actions in sports are serious threats to sport integrity and sustainability. These problems are related with the infiltration of organised crime and have been considered as the major challenges for the sport world and law enforcement institutions. Match-fixing is a form of private corruption, in which criminals offer bribes and improper personal advantages – whether material or immaterial, direct or indirect – to sport actors so that they manipulate games according to criminals' interests. This practice is linked to organised crime, which sees match-fixing as an improved opportunity to launder money from other criminal

¹ For complementary scientific evidence see T-PREG (2019) Report: Data setting and analysis on protected reporting practices. T-PREG Global Data Collection Report – Intellectual Output 1. On line in: <http://www.tpreg-training.eu/> and Moriconi, M., & de Cima, C. (2019). To report, or not to report? From code of silence suppositions within sport to public secrecy realities. *Crime, Law and Social Change*, 1-22.

practices (e.g. drug, weapon, or organ trafficking) in the betting markets, whether they're legal (regulated or unregulated) or illegal.

b) A new normative framework has been created and the Macolin Convention has entered into force in 2019. The recognition of the complexity of the phenomenon contributed to the adoption of a set of political and sport reforms². The creation of the Council of Europe Convention on the Manipulation of Sports Competitions, in 2014 (having entered into force on September 1st, 2019), is considered the most effective political initiative to tackle the problem, as it requires cooperation between all interested parties and establishes a set of practical and political recommendations for the creation and promotion of institutional and legal structures to combat the scourge. In particular, Article 7.2. (C) of the Convention recommends the adoption and implementation of "appropriate measures in order to ensure (...) effective mechanisms to facilitate the disclosure of any information concerning potential or actual cases of manipulation of sports competitions, including adequate protection for whistle blowers".

c) Reporting any attempt is an obligation (sanctionable by disciplinary norms and criminal law under certain legal frameworks).

d) T-PREG's data collection has shown that the sport actors consider that reporting is dangerous and can seriously damage their career and personal life.

e) T-PREG's data collection indicates that sport institutions that force sport actors to report are aware of the dangers but, instead of punishing those posing a threat to potential whistleblowers, keep perpetuating the status quo and continue insisting on the obligation of reporting (under dangerous circumstances), while not sufficiently exploring options to create and strengthen a comprehensive ecosystem aimed at protecting whistleblowers.

f) Whistleblowing (and whistleblower protection) is one of the most effective ways to fight against any type of corruption and wrongdoing.

g) The EU Directive on Whistleblower Protection was adopted in 2019 and should be transposed into national law until the end of 2021, but it does not automatically include disclosures of corruption and unethical and/or illegal actions related to sports.

² See Moriconi, M., & Almeida, J. P. (2019). Portuguese fight against match-fixing: Which policies and what ethic?. *Journal of Global Sport Management*, 4(1), 79-96 and Bertaccini Bonoli, P. (2019). Deporte y corrupción en clave transdisciplinar: Marcos teóricos actuales y programas de actuación. *Encuentros Multidisciplinares*

WHISTLEBLOWING IN SPORTS

An effective system to report illegal and unethical behaviour, which protects those who disclose such information, is essential for strengthening transparency, integrity and to identify such behaviours.³ Additionally, based on T-PREG data collection⁴, sport actors recognize that it is extremely difficult to investigate cases of match-fixing, which additionally complicates the discovery of such acts and of those involved. Regardless of the sector, it is evident that the majority of illegal and/or unethical activities are identified by employees. Whistleblowing remains the best way to uncover corruption⁵, and without effective protection of whistleblowers, corruption risks are thus enhanced.⁶

While acknowledging the importance of whistleblowing for uncovering illegal and/or unethical behaviour, it is crucial to highlight the fact that whistleblowing continues to be a rare practice in both the public and the private sectors, due to a significant risk of reprisals and weak protection systems, such as the existence of poorly drawn codes of conduct,⁷ weak regulation and/or enforcement. In sports, current institutional practices and the risk of retaliation,⁸ added to a lack of willingness to speak up,⁹ are highlighted by the so called “omerta”¹⁰, or by what others label as “esprit de corps”¹¹, both effectively discouraging athletes (and other sport actors) to report wrongdoings¹². For these

³ OECD. 2016. Committing to Effective Whistleblower Protection. Paris: OECD Publishing.

⁴ T-PREG’s Data collection included quantitative (surveys of sport actors) and qualitative methods (interviews with sport actors). See Data Collection Report on <http://www.tpreg-training.eu/> See also Moriconi, M., & de Cima, C. (2019). To report, or not to report? From code of silence suppositions within sport to public secrecy realities. *Crime, Law and Social Change*, 1-22.

⁵ Association of Certified Fraud Examiners, Inc. (ACFE). 2016. Report to the Nations on Occupational Fraud and Abuse. www.acfe.com/rtnn2016/docs/2016-report-to-the-nations.pdf

⁶ OECD. 2012. Whistleblower Protection. Accessible at: <http://www.oecd.org/cleangovbiz/toolkit/50042935.pdf>

⁷ Ardigo, Inaki Albisu. 2018. Best Practices for Whistleblowing in Sport. Accessible at: <https://knowledgehub.transparency.org/helpdesk/best-practices-for-whistleblowing-in-sport>.

⁸ In addition to the difficulties to investigate, sport actors in the partners’ countries recognize that reporting wrongdoing in sport is dangerous, as it can damage their career and/or have a negative impact in their personal life. See Data Collection Report on <http://www.tpreg-training.eu/>

⁹ The supposed sport code of silence, more than a common practice within sports, is a necessity of sport actors to protect themselves from potential revenge. See Moriconi, M., & de Cima, C. (2019). To report, or not to report? From code of silence suppositions within sport to public secrecy realities. *Crime, Law and Social Change*, 1-22.

¹⁰ Perez Trivino, Jose Luis. 2017. Whistleblowing in Sport: Psychological challenges. Barcelona: Universitat Pompeu Fabra. Accessible at: <https://playthegame.org/media/7491989/Jose-Luis-P%C3%A9rez-Trivi%C3%B1o.pdf>.

¹¹ Ardigo, Inaki Albisu. 2018. Best Practices for Whistleblowing in Sport. Accessible at: <https://knowledgehub.transparency.org/helpdesk/best-practices-for-whistleblowing-in-sport>.

¹² Moriconi, M. (2020). Deconstructing match-fixing: a holistic framework for sport integrity policies. *Crime, Law and Social Change*, 1-12.

reasons, some sport actors consider that the sports and criminal regulations that force them to report are ineffective and hypocritical.¹³

Therefore, ensuring the effective protection of those who speak up – or who intend to – is essential to strengthen the number and relevance of reports.

The establishment of reporting systems by sports organisations remains one of the fundamental provisions of different instruments such as the Olympic Movement Code on the Prevention of the Manipulation of Competitions, the World Anti-Doping Code, and the Council of Europe Convention on the Manipulation of Sports Competitions. However, the effective protection of whistleblowers in sports, and elsewhere, should be comprehensive and surpass the minimum establishment of a secure reporting system.

Data shows that in some cases, despite the good legal frameworks and prevention programs, organisations are lacking human, economic, and/or technological resources to properly treat complaints and perform investigations that may be necessary. These difficulties to investigate generate unintended structures of opportunity, raising the risks of potential acts of revenge against those who speak up.¹⁴ Hence, there is a need to shift the focus from building more and better reporting systems towards establishing proper policies and rules that guarantee the effective protection of whistleblowers. If such systems are established without an ecosystem designed to protect whistleblowers, involving sports governing bodies and law enforcement entities, they cannot be successful.¹⁵

Policies to protect whistleblowers should be tailor-made to specific environments, taking into consideration specific sectoral risks, stakeholders, and organisational structures. While there are different guides on how to address the reporting of wrongdoing in sports¹⁶, the aim of this set of

¹³ Various sport actors report that athletes who do not denounce illegal and/or unethical behaviour are persecuted and condemned, but no action is taken against those sports managers, officials and actors who retaliate against those blowing the whistle, thus ruining career and negatively affecting their personal life. See Data Collection Report on <http://www.tpreg-training.eu/> See Moriconi, M., & de Cima, C. (2019). To report, or not to report? From code of silence suppositions within sport to public secrecy realities. *Crime, Law and Social Change*, 1-22 and De Cima and Moriconi (2019) Silencio ruidoso: Perceções e atitudes dos atores desportivos sobre mecanismos de denúncia de manipulação de resultados. T-PREG Portuguese data collection report. On line in: <http://www.tpreg-training.eu/>

¹⁴ See Data Collection Report on <http://www.tpreg-training.eu/> Other references are: Moriconi, M. (2019). Manipulación de resultados deportivos: relatos, percepciones y recomendaciones para mejorar su prevención. *Encuentros multidisciplinares*, (63) and Visschers, J., Paoli, L., & Deshpande, A. (2019). Match-fixing: Football referees' attitudes and experiences. *Crime, Law and Social Change*, 1-19.

¹⁵ Ardigo, Inaki Albisu. 2018. Best Practices for Whistleblowing in Sport. Accessible at: <https://knowledgehub.transparency.org/helpdesk/best-practices-for-whistleblowing-in-sport>.

¹⁶ Such as United Nations Office on Drugs and Crime report Reporting Mechanisms in Sport: A Practical Guide for Development and Implementation. Accessible at: https://www.unodc.org/documents/corruption/Publications/2019/19-09580_Reporting_Mechanisms_in_Sport_ebook.pdf

guidelines is to consider wider principles and have a broader understanding of whistleblowing, taking them into account when looking at specific needs in sports.

Based on that, we could summarise seven key elements to establishing an effective whistleblowing mechanism:¹⁷

1. Baseline

There are two primary considerations when assessing the effectiveness of a whistleblowing system. First, there needs to be a thorough understanding and a clear and vocal commitment of the leadership to establish and implement a whistleblowing system. Additionally, such a system needs to be supported with adequate resources, both financial and human.

2. Clear procedures

Ideas of good practices on exact procedures vary and depend on factors such as national legislative frameworks and context, size of organisations and sector, etc. However, there are a few pillars that need to be clearly established and these conditions must be clearly communicated to relevant stakeholders. First, it must be established who can use the whistleblowing channel and who can (and under which circumstances) receive protection in case they report. Second, it must be established what types of complaints can be raised by those who decide to report. Third, there needs to be a very clear procedure on how the complaint has to be raised (e.g. written form, verbally, web platform, in which language, what are the essential elements of the complaint, etc.) and to whom the complaint needs to be raised (e.g. hotline, ethics officer, etc.). Alternative reporting lines, either to management or to an outside body, should be provided as well.

3. Information, communication, and training

One of the key shortcomings of whistleblowing mechanisms, which generates a low level of reports, is the lack of awareness of both the possibility to report wrongdoings and the knowledge of different ways that potential whistleblowers would be protected, in case they would report. Hence, it is essential to ensure that staff are regularly informed on reporting procedures via different channels.

¹⁷ This categorisation is based on Transparency International Topic Guide on Whistleblowing. Accessible at: <https://knowledgehub.transparency.org/assets/uploads/kproducts/Whistleblowing-Topic-Guide.pdf>

4. Confidentiality

While there seems to be a prevalent opinion that open reporting is preferable, it is worth noting that, in specific cases (and/or sectors), confidentiality of the identity of the whistleblower – who is reporting in good faith – needs to be upheld.

5. Addressing a complaint

Established procedures should aim at providing that reports are being acknowledged and processed in a timely manner. Protection should be extended to those reporting in good faith, while making it clear that protection is not extended to those knowingly making a false complaint.

Ensuring the fair treatment of complaints can be strengthened by an unrestricted ability to address higher levels in the reporting chain (e.g. management). At the same time, the whistleblowers need to be kept updated on the status of their complaints and the outcome of the investigations.

6. Whistleblower protection and support

Protection of whistleblowers can only be achieved by a clear statement, which is backed up by real commitment and enforcement, that any kind of retribution (including discrimination, lack of promotions and training, harassment, job sanctions, or, in extreme scenarios, even physical threats) will not be tolerated. Such retaliation or threats should be treated as a disciplinary matter within the organisation.

7. Evaluation and review

Reporting mechanisms should be subjected to periodic reviews and evaluation, to help organisations in improving the existing systems. Collection of the data and the records should be made in a way that ensures data protection.

THE IMPACT OF THE NEW EU WHISTLEBLOWER PROTECTION DIRECTIVE (2019) IN THE WORLD OF SPORTS

In October 2019, the European Union adopted the Directive on the “Protection of persons reporting on breaches of Union law”¹⁸, aimed at introducing high-level protections for whistleblowers reporting breaches of EU law in areas such as financial services, anti-money laundering and terrorist financing, privacy and personal data, the environment, public health, and public procurement.

Over the next two years, the EU Member States will have to transpose the Directive into national law, granting protection to any person working in the private or public sector who – having acquired information in a work-related context – is reporting on breaches (including individuals outside the traditional employee-employer relationship, such as consultants, contractors, volunteers, board members, former workers, and job applicants). Protection will also be granted to those who facilitate the report and assist whistleblowers, as well as individuals and legal entities connected with whistleblowers who may suffer retaliation.

According to Transparency International, the Directive provides strong common minimum standards for the protection of whistleblowers in Europe¹⁹, namely because: a) it places an obligation on a wide range of public and private entities to establish internal whistleblowing mechanisms; b) in granting protection, it does not – in any way – take into account the whistleblower’s motive for reporting, nor their identity (it protects the identity of whistleblowers in most circumstances, and grants protection to whistleblowers who have reported or disclosed information anonymously and who have subsequently been identified); c) it also allows whistleblowers to report breaches of law internally or directly to the competent authorities; d) it prohibits “any form of retaliation” – including threats and attempts of retaliation, providing a long, diverse and non-exhaustive list of examples – and establishes penalties to be applied to persons who hinder or attempt to hinder reporting, retaliate against persons who report (including by bringing vexatious proceedings), and who breach the duty of maintaining the confidentiality of whistleblowers’ identities.

In addition, the new Directive allows for stronger national whistleblower protection, in the sense that Member States can introduce more favourable provisions than those set out in the Directive, and they are prohibited from reducing the level of protection already afforded to whistleblowers.

¹⁸ 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. <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32019L1937>

¹⁹ Building on the EU Directive for Whistleblower Protection: analysis and recommendations. <https://www.transparency.org/en/publications/whistleblower-protection-in-the-eu-analysis-of-and-recommendations>

Nevertheless, the Directive only applies to reports on breaches of EU law, which means that it fails to address the protection of all whistleblowers. Therefore, it is important to advocate for a broader material scope, covering all breaches of the law (whether national or EU law) and threats or harm to the public interest, including the ones related to the Sports world.

On the other hand, as highlighted by many analysts, even though the Directive requires organisations to appoint one person (or more people) to be responsible for managing reports independently and professionally, and to implement secure whistleblowing mechanisms as well as a process that includes a prompt response, diligent follow-up and timely feedback, the truth is that – at the national level – what whistleblowers can report on (and be protected against) is still to be determined. For example, at the EU level, the new Directive does not protect people reporting harassment, discrimination, or bullying.

And even regarding anonymous whistleblowing there are some limitations, since EU countries will decide whether private or public entities and competent authorities need to accept and follow up on anonymous whistleblowing messages. Some countries, for example Spain and Portugal, have traditionally taken a restrictive stance on anonymous whistleblowing.

Finally, concerning penalties for failure to comply, it is important to reflect on the fact that many countries completely miss sanctioning properly non-compliance with whistleblower protection legislation. The new Directive requires that penalties be imposed against those who attempt to hinder reporting, retaliate against whistleblowers, attempt to bring proceedings or reveal the identity of the whistleblower, but without strong enforcement and the setting of minimum penalties, there is a risk of creating an hostile environment for whistleblowers.

That is the reason why most civil society organisations advocating for better whistleblower protection legislation have been promoting: 1) extending protection measures to persons who are believed or suspected to be whistleblowers (even mistakenly), to persons who intended to make a whistleblowing report, and to civil society organisations assisting whistleblowers; 2) strengthening the protection of whistleblowers in legal proceedings and reversing the burden of proof, meaning that the person who has taken a detrimental measure against a whistleblower should prove that they were not linked, in any way, to the reporting or the public disclosure, and would, therefore, have happened anyway; and 3) providing for the full reparation of damages suffered by whistleblowers, through financial compensation and non-financial remedies.

To make it possible, it is key to: a) require private or public entities and competent authorities to accept and follow-up on anonymous reports of breaches, and oblige all public-sector entities (without exception) and non-profit entities with fifty or more workers to establish internal reporting mechanisms; b) stipulate that internal reporting mechanisms should include procedures to protect whistleblowers and foresee penalties for natural or legal persons who fail to fulfil their obligations under the Directive; and c) determine that the explicit consent of a reporting person needs to be obtained, where possible, before their report is transmitted to another authority.

On the side of public policymaking, it is also important to designate an independent whistleblowing authority responsible for the oversight and enforcement of whistleblowing legislation, and for assuring that data on the functioning of the law is collected and published for monitoring and evaluation purposes.

The new Directive creates a timely framework to discuss these issues, adapt the norms to the sports context, and promote public policies that improve the conditions of protection of those who speak up, aiming to strengthen the integrity of sports. Sharing the pathologies of corruption in other sectors, it is urgent to recognize that the whistleblowers' report remains a primary tool to identify potential corruption cases , meaning that ensuring the protection of whistleblowers remains one of the most effective tools to combat corruption in sports.

RECOMMENDATIONS

1. Member States should **broaden the scope of protection** when transposing the EU Whistleblower Protection Directive (2019) to ensure the protection of whistleblowers in sport, including all types of stakeholders.
2. Regulation of protection of whistleblower should **include the protection of people that report harassment, discrimination or bullying**, for example, as these wrongdoings are already considered illegal/unethical (per se) and these might be behaviours of retaliation towards whistleblowers, as well, both in sports and in other sectors.
3. **Independent whistleblowing authorities** should be designated in accordance with the EU Whistleblower Protection Directive (2019) and **include the sports sector**, being responsible for overseeing and enforcing whistleblowing legislation, collecting data on the functioning of the law and publishing it for monitoring and evaluation purposes.
4. **Top decision makers in sports** should provide clear and vocal support for the establishment of an **effective and comprehensive whistleblower protection system** – with the adequate resources –which surpasses the minimal creation of a secure reporting line.
5. **Clear procedures for ‘speaking up’** should be established in the sports sector, including who can report wrongdoings, what can be reported, and to whom whistleblowers can report them.
6. The possibility to **report wrongdoings in the sports sector** should be **regularly promoted**, and such messaging should inform about the different ways that potential whistleblowers would be protected, namely via dedicated training.
7. Clear safeguards in the sports sector should be provided to prevent and sanction potential retaliations against whistleblowers.
8. **Regular reviews and evaluations** should be conducted of whistleblower protection systems in **sports**, as these can uncover additional systemic flaws in the prevention of wrongdoings in sports.

Training on Protected Reporting from Professional and Grassroots Sports

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