



LA QUADRATURE DU NET

WHISTLEBLOWERS AND THE PROTECTION OF SOURCES

At the time of Edward Snowden's revelations of extensive surveillance by the NSA and its international partners, like the French DGSE, a law protecting whistleblowers needs to be more than ever at the center of political and legal thinking. A lot remains to be done to ensure the public's right to information without which there is no true democracy.

The whistleblower status must benefit anyone that reports, discloses or condemns past, present or future acts that violate citizens' rights or conflict with the common interest. With regard to surveillance, this status must include an exemption for state agents and contractors from the silence imposed by their employer. This would protect persons whose actions, such as those of Snowden and numerous other anonymous sources, enable an essential public debate on the drifts of security policies and resorts to the reason of state as a justification for intelligence-led policies.

The provisions included in the French Intelligence law adopted in July 2015 dealing directly with whistleblowers within intelligence services (articles L 862-1 and L.881-1 of the internal security code, also referred to as the CSI, as modified by article 13 of the law) are a step in the wrong direction. They only allow potential whistleblowers to report to the administrative authority responsible for overseeing surveillance operations, the CNCTR (Commission nationale de contrôle des techniques de renseignement, National Oversight Commission for Intelligence Techniques). Moreover, they provide extraordinary legal insecurity which can only dissuade potential whistleblowers from testifying. Worse, the CNCTR is not required to refer claims to the courts even when they relate to criminal offenses. Generally speaking, the law strengthens the suppression of the exposure of abuses in surveillance activities.

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Taking into consideration the European Court of Human Rights's case law (ECHR; 12 February 2008, *Guja v Moldavia*) as well as the global principles for national security and the right to information ([The Tshwane Principles](#)), La Quadrature du Net recommends:

- π to repeal provisions L.862-1 et seq of the CSI and adopt measures to protect whistleblowing, specifying that whistleblowers may denounce any crime, infraction, or violation of rights, whether the information disclosed is confidential or not, even if it is related to matters of national security.
- π to ensure means to denounce or reveal these facts via an internal procedure or via public disclosure. The right to disclose to the press or publicly the existence of abuses, especially crimes and misdemeanours related to state surveillance activities, must be recognised in cases where such information is revealed is in the public interest and the internal procedure in place is objectively risky or ineffective
- π with regard to the internal procedure, the CNCTR (being the independent administrative authority responsible for overseeing intelligence services) could remain allowed to receive reports, but must systematically impart them to the French Conseil d'Etat (top administrative jurisdiction), which must refer the case to the Procureur de la République (public prosecutor).
- π to extend legal protection to third parties (contractors, suppliers, clients, associations, journalists). Journalists and citizens must not be targeted by a law protecting national security preventing the disclosure or access to information that is of public interest. Following this rationale, it is necessary to broaden the protection of sources as to include journalists, either representatives of large press organisations or official media. More generally, means of information dissemination, such as WikiLeaks, should be protected. The 2013 [recommendations \(FR\)](#) of Reporters Without Borders regarding the protection of sources are not only for reporters and editors, but for everyone who contributes to the gathering of news, their writing, their editing, and to the production and dissemination of information by any means.



to improve compensation procedures and to create a fund to support whistleblowers, as proposed by the [report \(FR\)](#) of the French Central Service Against Corruption, placed under the auspices of the French Minister of Justice.