

**WHISTLEBLOWING IN EUROPE
LEGAL PROTECTIONS FOR
WHISTLEBLOWERS IN THE EU**

Transparency International is the global civil society organisation leading the fight against corruption. Through more than 90 chapters worldwide and an international secretariat in Berlin, we raise awareness of the damaging effects of corruption and work with partners in government, business and civil society to develop and implement effective measures to tackle it.

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TABLE OF CONTENTS

ABOUT THIS REPORT	3
LIST OF ABBREVIATIONS AND ACRONYMS	4
EXECUTIVE SUMMARY	5
INTRODUCTION	6
HOW STRONG ARE THE WHISTLEBLOWER LAWS OF EU COUNTRIES?	8
THE LEGAL LANDSCAPE	10
THE POLITICAL LANDSCAPE	13
PERCEPTION OF WHISTLEBLOWERS	15
OTHER CONSIDERATIONS	17
LOST IN TRANSLATION?	19
CALLS TO ACTION	22
WHISTLEBLOWING IN THE EU: COUNTRY PROFILES	24
AUSTRIA	24
BELGIUM	27
BULGARIA	30
CYPRUS	32
CZECH REPUBLIC	35
DENMARK	37
ESTONIA	40
FINLAND	42
FRANCE	44
GERMANY	47
GREECE	49
HUNGARY	51
IRELAND	53
ITALY	55
LATVIA	57
LITHUANIA	59
LUXEMBOURG	61
MALTA	63
NETHERLANDS	66
POLAND	69
PORTUGAL	71
ROMANIA	73

SLOVAKIA	75
SLOVENIA	77
SPAIN	79
SWEDEN	81
UNITED KINGDOM	83
ANNEX 1	86
INTERNATIONAL PRINCIPLES FOR WHISTLEBLOWER LEGISLATION	86
ANNEX 2	91
RESEARCH APPROACH	91
ANNEX 3	93
NATIONAL BACKGROUND RESEARCH	93
ANNEX 4	95
ACKNOWLEDGEMENTS	95

ABOUT THIS REPORT

This report is an overall assessment of the adequacy of whistleblower protection laws of 27 member countries of the European Union (EU).¹ It also looks at a range of political, social and other factors that promote or discourage whistleblowing in the workplace, and that enable or inhibit the enactment of whistleblower laws in EU countries.

It identifies general and specific issues in need of improvement – both in terms of strengthening whistleblower protection for employees and for enhancing the acceptance and appreciation of whistleblowing.

This report is based on in-depth country-level studies conducted by researchers throughout Europe. The background material was used to develop the findings, conclusions and recommendations presented here, and it formed the basis for the individual profiles on each country.²

This report is an element of Transparency International's global campaign to strengthen whistleblower rights for employees, promote whistleblowing as an effective means to expose and fight corruption, and highlight the valuable contributions of whistleblowers toward this end.

¹ This report was researched prior to Croatia's accession to the EU on 1 July 2013.

² These country-level studies are available from Transparency International: ti@transparency.org.

LIST OF ABBREVIATIONS AND ACRONYMS

CNIL	Commission Nationale de l'Informatique et des Libertés (France's data protection authority)
EEC	European Economic Community
EU	European Union
GRECO	Group of States against Corruption
IAVA	Interne Audit van de Vlaamse Administratie (Flemish Internal Auditor)
NGO	Non-governmental organisation
OAS	Organization of American States
OECD	Organisation for Economic Co-operation and Development
OLAF	European Anti-Fraud Office (Office de Lutte Anti-Fraude)
PIDA	UK Public Interest Disclosure Act
TI	Transparency International
UK	United Kingdom
UNCAC	UN Convention Against Corruption

EXECUTIVE SUMMARY

Despite the well-documented value of whistleblowers in exposing and preventing corruption, only four European Union (EU) countries have legal frameworks for whistleblower protection that are considered to be advanced: Luxembourg, Romania, Slovenia and the United Kingdom (UK).

Of the other 23 EU countries, 16 have partial legal protections for employees who come forward to report wrongdoing. The remaining seven countries have either very limited or no legal frameworks.

Moreover, many whistleblower provisions that are currently in place contain loopholes and exceptions. The result is that employees who believe they are protected from retaliation could discover, after they blow the whistle, that they actually have no legal recourse.

Without sufficient legal protections and reliable avenues to report wrongdoing, employees throughout Europe face being fired, demoted or harassed if they expose corruption and other crimes. With would-be whistleblowers inhibited from coming forward, taxpayer money, public property, environmental resources and lives themselves are at risk.

Encouragingly, several EU countries in recent years have taken steps to strengthen whistleblower rights, including Austria, Belgium, Denmark, France, Hungary, Italy, Luxembourg, Malta, Romania and Slovenia. Countries that have issued proposals or have announced plans for proposed laws include Finland, Greece, Ireland, the Netherlands and Slovakia.

Despite these signs of progress, much remains to be done toward ensuring that whistleblowers in the EU receive the protections they deserve under European and international standards. Political will is lacking in many countries. More whistleblower laws would be in place today had government leaders followed through on their commitments to pass and enforce them.

Transparency International urges all EU countries to enshrine comprehensive whistleblower rights into their laws and begin a public dialogue that will lead to a greater appreciation of whistleblowers as important figures in the fight against corruption. The European Commission should follow the call by the European Parliament in October 2013 to submit a legislative proposal establishing an effective and comprehensive whistleblower protection programme in the public and private sectors.

Whistleblowing carries professional and personal risks. EU citizens and residents should consider using safe avenues to report corruption or other serious wrongdoing in their workplace and seek the best available advice before doing so.

INTRODUCTION

Perhaps more than at any point in history, daily headlines are filled with stories of corruption, scandals, and political and corporate wrongdoing. Many of these cases have been brought to light by whistleblowers³ – people who disclose inside information not intended to become public. These cases are becoming more commonplace as the lingering financial crisis and a growing sense of disenfranchisement are compelling people throughout Europe to report corruption, fraud and injustice.

Whistleblowers are important players in national and global efforts to fight corruption. They risk their careers and sometimes their personal safety to expose wrongdoing that threatens public health and safety, financial integrity, human rights, the environment, and the rule of law. By disclosing information about such misdeeds, whistleblowers have helped save countless lives and billions of dollars in public funds⁴ while preventing emerging scandals and disasters from worsening.⁵

Many serious scandals and disasters that have struck Europe in recent years might have been prevented or lessened if employees had come forward to expose problems to regulators or the media. Inadequate whistleblower laws can inhibit people from taking this step.

Among many cases in which employees or officials knew about problems or wrongdoing – but for various reasons the problems persisted – are the fatal flooding of Hungarian villages by aluminium waste in 2010;⁶ the deaths of 193 people when a ferry capsized in Belgium in 1987;⁷ the bribing of foreign officials by the German engineering conglomerate Siemens;⁸ and a cell phone tapping scandal in 2004-2005 known as the “Greek Watergate”.⁹

³ Transparency International defines whistleblowing as the disclosure or reporting of wrongdoing, which includes corruption, criminal offences, breaches of legal obligation, miscarriages of justice, specific dangers to public health, safety or the environment, abuse of authority, unauthorised use of public funds or property, gross waste or mismanagement, conflict of interest, and acts to cover up any of the aforementioned. A whistleblower is any public or private sector employee or worker who discloses information about these types of wrongdoing and who is at risk of retribution. This includes individuals who are outside the traditional employee-employer relationship, such as consultants, contractors, trainees or interns, volunteers, student workers, temporary workers, and former employees.

⁴ See for instance Joe Davidson, ‘After complaint, he landed in basement’, *Washington Post*, 8 December 2011, http://articles.washingtonpost.com/2011-12-08/politics/35285259_1_whistleblower-protections-nuclear-waste-angela-canterbury (accessed 16 October 2013).

⁵ See for instance Jason Uzman, ‘Whistleblower Franz Gayl gets his job back’, *Washington Post*, 17 November 2011, www.washingtonpost.com/blogs/checkpoint-washington/post/a-whistleblower-gets-his-security-clearance-back/2011/11/17/CIQAWuJPUN_blog.html (accessed 16 October 2013); J. Scott Armstrong, ‘The manager’s dilemma: role conflict in marketing’, University of Pennsylvania, 1 June 1978, pp. 5-6, http://repository.upenn.edu/cgi/viewcontent.cgi?article=1040&context=marketing_papers (accessed 16 October 2013).

⁶ ‘Megfenyegették a szivárgást emlegető dolgozókat a MAL Zrt.-nél’, *Népszabadság*, 13 October 2010, http://nol.hu/ajanlo/20101013-jogilag_aggalyos_lehet_az_eljaras (accessed 17 October 2013).

⁷ UK Department of Transport, *mv Herald of Free Enterprise*, Report of Court No. 8074, Formal Investigation, 1987, p. 17, www.maib.gov.uk/cms_resources.cfm?file=/hoffefinal.pdf (accessed 17 October 2013); ‘1987: Hundreds trapped as car ferry capsizes’, *BBC*, http://news.bbc.co.uk/onthisday/hi/dates/stories/march/6/newsid_2515000/2515923.stm (accessed 31 October 2013); ‘Zeebrugge disaster marked by memorial service 25 years on’, *BBC*, 6 March 2012, <http://www.bbc.co.uk/news/uk-england-kent-17268468> (accessed 31 October 2013).

⁸ ‘Trial and error: a few examples’, *The Communications Journal*, November 2008, <http://irfcom.ch/wp-content/uploads/fachzeitung13.pdf> (accessed 17 October 2013).

⁹ ‘Top Greeks targeted in phone tapping scandal’, *Sydney Morning Herald*, 3 February 2006, www.smh.com.au/news/breaking/top-greeks-targeted-in-phone-tapping-scandal/2006/02/03/1138836413044.html (accessed 17 October 2013).

The EU aspires to lead the world in human rights, individual liberties and justice. Yet as this report shows, most EU countries lag behind international standards when it comes to protecting whistleblowers and providing them with safe avenues to report wrongdoing.

All but two of the 27 EU countries studied in this report have ratified the UN Convention Against Corruption (UNCAC), which requires countries to consider adopting whistleblower protections. Yet, many of these 25 countries have not held sustained public debates on the issue.

Most whistleblower laws in the EU also do not live up to the EU's Charter of Fundamental Rights, three provisions of which form the basis of whistleblower protection: freedom of expression, protection from unjustified dismissal and a right to effective remedies.

Moreover, a majority of laws also fall short of standards and guidelines issued by the Council of Europe, the Organisation for Economic Co-operation and Development (OECD), and other international organisations and non-governmental organisations (NGOs), including Transparency International (see Annex 1).

Most EU countries fail to adequately protect whistleblowers even though their value in anti-corruption and crime-fighting efforts has long been proven. If whistleblowing is so effective in exposing and fighting crime, why have not all EU countries passed strong whistleblower laws?

A complex mix of political, social, historical and other factors have not only blocked legislative progress, but they have also prevented whistleblowers from assuming their rightful place in the public sphere as defenders of transparency, integrity and accountability. Whistleblowers remain burdened with negative stereotypes and derogatory labels such as “informer” and “snitch” that prevent them from being recognised for taking personal risks to help the common good.

Fortunately, several EU countries in recent years have strengthened their whistleblower laws to various degrees. This progress has been attributed to a range of factors, from growing activism by non-governmental organisations (NGOs) and pressure from international organisations, to scandals and disasters that have triggered responses from government leaders.¹⁰

Whether EU countries can build on this momentum remains to be seen. What is clear is that there is an opportunity now for governments across the EU itself to strengthen their whistleblower protection laws. Only if they are properly enforced and monitored, however, can these laws help to overcome the two most formidable barriers that whistleblowers face: fear of retaliation and the sense that their disclosures will not make a difference.

Today, there is more than ample expertise readily available for all countries to pass, implement and enforce comprehensive whistleblower laws to protect all types of employees. A broad-based movement of citizens, NGOs, political and business leaders, and journalists is needed to encourage governments to enact comprehensive rights and disclosure opportunities for whistleblowers.

¹⁰ Shahanaz Müller, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Austria* (Austria: September 2012), pp. 7-8; Transparency International, ‘Milan Introduces Protection for Public Sector Whistleblowers’, 19 June 2013, www.transparency.org/news/pressrelease/milan_introduces_protection_for_public_sector_whistleblowers (accessed 15 October 2013); Public Concern at Work, ‘A Guide to PIDA: Public Interest Disclosure Act 1998’, <http://www.pcaw.org.uk/guide-to-pida#background> (accessed 15 October 2013).

HOW STRONG ARE THE WHISTLEBLOWER LAWS OF EU COUNTRIES?

As part of the research for this report, the whistleblower laws and provisions of each EU country were compiled, assessed and compared to prevailing international standards – including those developed by Transparency International (see Annex 1).

Other guidelines and best practices include those developed by the Council of Europe, Government Accountability Project, Organisation of American States (OAS), Organisation for Economic Co-operation and Development (OECD), Open Democracy Advice Centre, and Public Concern at Work.

Based on this review, a rating was assigned to each country, as reflected in the chart below.

Coverage of Whistleblower Protection Laws: Ratings for EU Countries

ADVANCED A country's existing laws include comprehensive or near-comprehensive provisions and procedures for whistleblowers in the public and/or private sectors	PARTIAL A country's existing laws include partial provisions and procedures for whistleblowers in the public and/or private sectors	NONE OR VERY LIMITED A country's existing laws include no or very limited provisions and procedures for whistleblowers in the public and/or private sectors
Luxembourg Romania Slovenia UK	Austria Belgium Cyprus Czech Republic Denmark Estonia France Germany Hungary Ireland Italy Latvia Malta Netherlands Poland Sweden	Bulgaria Finland Greece Lithuania Portugal Slovakia Spain

Methodology for ratings

The ratings are based on the extent to which each country's laws and regulations provide legal protections to whistleblowers against firing, demotion and other forms of retaliation in addition to providing channels for whistleblowers to make disclosures about wrongdoing.

Importantly, the ratings do not take into consideration how well or whether a country's whistleblower laws and regulations work *in practice*. The ratings, therefore, only address how extensively a country's whistleblower laws cover employees in the public and private sectors. Implementation and enforcement of the laws are not considered in this review.

To assess the comprehensiveness of national-level whistleblower frameworks, researchers compared each country's laws and regulations against 15 fundamental elements of whistleblower legislation, including:

- broad definition of whistleblowing
- broad definition of whistleblower
- broad definition of retribution protection
- internal reporting mechanism
- external reporting mechanism
- whistleblower participation
- rewards system
- protection of confidentiality
- anonymous reports accepted
- no sanctions for misguided reporting
- whistleblower complaints authority
- genuine day in court
- full range of remedies
- penalties for retaliation
- involvement of multiple actors

A country's laws were rated "Advanced" if they include comprehensive or near-comprehensive provisions and procedures for whistleblowers who work in the public and/or private sectors. This means that a government or company employee who discloses serious wrongdoing – the disclosure having been made according to the law in their country – ostensibly would be legally protected from certain types of retaliation. A country's laws were rated "Partial" if they contain some provisions and "None or Very Limited" if the laws included no or very limited provisions.

It is important to note that each EU country has its own unique set of laws, provisions and procedures related to whistleblowing. Even though countries rated "Advanced" provide legal protections in different ways that may not be fully comparable with each other, their ratings were based on objective standards: the extent to which their laws provide legal protections for whistleblowers. The same can be said for countries with a "Partial" or "None or Very Limited" rating.

Except for the few countries that have designated, stand-alone whistleblower laws, the whistleblower provisions of most other EU countries are embedded within their labour/employment, public service, criminal or other laws. Some of these provisions are specifically designed to protect whistleblowers, while others may only coincidentally or tangentially apply to whistleblowers. If these various provisions provide some protections and opportunities for whistleblowers, then the country was rated "Partial". If these provisions are very limited or missing, then the country was rated "None or Very Limited".

THE LEGAL LANDSCAPE

AFTER LONG DELAYS, WHISTLEBLOWER PROTECTIONS SLOWLY MAKING THEIR WAY INTO EUROPEAN LAW

Political debates on granting legal protections to whistleblowers have been underway in Europe for at least a generation. Due to growing public awareness of the value of whistleblowing, 20 of the EU 27 countries studied in this report now have certain laws or provisions that at least partially protect government and/or company whistleblowers from retaliation.

It is worth noting that the first comprehensive whistleblower law ever passed in the EU – the UK Public Interest Disclosure Act (PIDA)¹¹ – is widely considered to be the strongest in Europe and among the best in the world.

Following a series of fatal disasters and high-profile political and business scandals, the UK passed PIDA in 1998. PIDA covers nearly all employees in the government, private and non-profit sectors. The law goes so far as to legally protect contractors, trainees and UK workers based overseas.¹²

Representing a pioneering form of protection, PIDA requires employers to prove that any action taken against an employee or worker was not motivated by the fact that an employee was a whistleblower. This reverse burden-of-proof has since become a critical international standard. In addition to actual financial losses, employees who have been retaliated against can also claim compensation for aggravated damages and injury to their feelings.¹³

Though whistleblower advocates in the UK have called for its further improvement, PIDA is often held up as a model and has inspired whistleblower laws and proposals in many other countries, including Australia, Ireland, Japan and South Korea.

Within a few years after PIDA was passed, several EU countries enacted their own laws that went part way toward protecting whistleblowers. Collectively, these improvements represented the first wave of such legislation in Europe.

The Netherlands approved protections for public servants in 2001. This was followed by the establishment of a public sector ethics and integrity agency in 2006, the expansion of the National Ombudsman's Office in 2011, and the opening of the Whistleblowing Advice Centre in 2012.

In 2002 – one year after the Netherlands passed its first law – Malta enacted whistleblower regulations for certain employees. This was followed in 2009 by a ban on retaliation against public officers who report wrongdoing.

Then, in 2004, Romania became the first country in continental Europe to pass a dedicated law to shield whistleblowers from retaliation. The Whistleblower Protection Act covers government employees. Interestingly, it gives equal protection to disclosures made to journalists, activists and other parties outside the workplace – meaning that whistleblowers can bypass their employers

¹¹ Public Concern at Work, 'A Guide to PIDA: Public Interest Disclosure Act 1998', www.pcaw.org.uk/guide-to-pida (accessed 16 October 2013).

¹² UK Employment Rights Act, Section 230 (3); UK Public Interest Disclosure Act, Section 43 K.

¹³ Public Concern at Work, *UK Submission to Transparency International Whistleblower Protection Research Project* (UK: January 2013).

without being punished. Also in 2004, a Flemish law in Belgium was passed to protect public sector whistleblowers.

Following a gap of several years, in 2010, Hungary joined the UK as the only other EU country with a stand-alone law that covers both the public and private sectors. However, the Protection of Fair Procedures Act failed to set up a government agency where whistleblowers can make their disclosures and file complaints of retaliation.

Also in that year, Slovenia passed an anti-corruption law that includes legal protections for public and private sector employees. Though not a dedicated whistleblower law, the measure contains many internationally recognised best practices, including confidentiality, internal and external disclosure channels, a broad range of remedies, fines for retaliators, assistance from the Commission for the Prevention of Corruption, and the burden on employers to prove that adverse personnel actions were justified.

In Ireland, similar safeguards were put in place in 2010 (Prevention of Corruption (Amendment) Act 2010) and 2011 (Criminal Justice Act 2011) for people reporting corruption and related offences.

In 2011, Luxembourg passed an anti-corruption law that includes legal protections for public and private sector employees who report corruption, influence peddling or abuse of office. Importantly, it also places the burden-of-proof on employers and, similar to PIDA in the UK, allows employees to file appeals to a labour court.

One year later, Austria instituted for the first time legal protections for government employees. Those who retaliate against whistleblowers are subject to discipline.

In the past two years, several additional EU countries have passed new or improved whistleblower laws and provisions. Among them:

- In October 2012, Italy adopted its first provision to legally protect public sector whistleblowers – thus overcoming strong political and public opposition to whistleblowing. Drafted with input from Transparency International Italia, it covers government employees who report illicit activities if they do not commit libel or defamation. Less than a year later, in June 2013, the city of Milan approved new measures offering greater protection for municipality employees if they come forward to report corruption. The provisions resulted from cooperation between Transparency International Italia and the Milan City Council's Anti-Mafia Committee.¹⁴
- Also in 2013, France passed a law to protect whistleblowers who expose health and environmental risks. This followed a series of widely reported drug and public health scares, including those related to a diabetes drug, the overconsumption of salt and a hazardous industrial solvent.¹⁵
- In Belgium, a whistleblower law was passed at the federal level in July 2013.

It is worth mentioning that the country with perhaps the most interesting legal framework for whistleblowers in Europe is Sweden. In 1766, Sweden passed what is widely held to be the first freedom of information law in the world. Although Sweden does not have a dedicated whistleblower

¹⁴ Transparency International, 'Milan Introduces Protection for Public Sector Whistleblowers', 19 June 2013, www.transparency.org/news/pressrelease/milan_introduces_protection_for_public_sector_whistleblowers (accessed 16 October 2013).

¹⁵ Nicole Marie Meyer, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: France* (France: September 2012).

law, this historic document formed the basis for an elaborate legal framework that represents de facto protections for those who expose wrongdoing.¹⁶

In short, everyone in Sweden – including all employees – is free to pass on information to the media (excluding official secrets and national security information). Company employees can report wrongdoing to outsiders if they first bring it to the attention of their employers, and they can only be fired if the employer has a just cause. So absolute are these freedoms and rights that the government itself is barred from attempting to learn the identity of anonymous sources.^{17, 18}

Except for Luxembourg, Romania, Slovenia and the UK, the countries with advanced legal provisions and procedures for whistleblowers, the other EU countries have made less or no progress.

Denmark, for instance, currently has no designated whistleblower law, no dedicated agency to advise and protect whistleblowers, and is the only Nordic country with no well-defined whistleblower regulations of any kind. A strong union presence may be part of the explanation. Under the predominant “Danish Labour Market Model”, workplace conflicts are often solved among employees and union representatives.¹⁹ Although a law is scheduled to take effect in January 2014 requiring financial institutions to establish whistleblower regimes, the law would apply only to one sector.

In Portugal, whistleblowers have almost no legal protections and, under Portuguese law, they can be criminally prosecuted or face civil lawsuits for defaming others – particularly those in positions of power. The addition, in 2008, of protections for public sector officials, is viewed as a weak provision, enacted in response to international pressure.²⁰

Although some meaningful progress has been made in many EU countries, only a few whistleblower laws are aligned with international standards, and most laws do not provide advanced legal protections for whistleblowers.

¹⁶ Ingrid Helmius, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Sweden* (Sweden: September 2012).

¹⁷ Helmius, 2012.

¹⁸ Despite having these laws, Sweden’s legal framework is rated “Partial” in this report because the provisions are not specifically geared or designed for whistleblowers, nor do they constitute a whistleblower protection law, per se.

¹⁹ Lars Bo Landstedt, ‘Fagforeninger afviser fløjten’, *Jyllands-Posten*, 25 June 2012, www.langsted.dk/artikler/JP_25.06.2012.pdf (accessed 16 October 2013).

²⁰ David Marques, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Portugal* (Portugal: October 2012).

THE POLITICAL LANDSCAPE

EUROPEAN GOVERNMENTS APPROACH IMPROVING WHISTLEBLOWER RIGHTS WITH CAUTION

Ensuring legal protection for people who expose wrongdoing by government officials – or by companies that may have alliances with the government – is not a small legislative gesture. It demonstrates a strong commitment to freedom of expression – overriding an employer's right to manage its employees and maintain secrecy while legally protecting people who expose wrongdoing from all forms of retaliation.

The European experience shows that while many government officials and agencies have promised to strengthen whistleblower rights, few have actually done so. And even when they have, these new laws are often weak.

In Bulgaria, for example, government officials responded to recent recommendations by the OECD and the Group of States against Corruption (GRECO)²¹ by saying they would consider whistleblower protections for public and private sector workers. But a draft law was never written, and there has been no meaningful progress since.²²

Similarly, in Poland, every political party in Parliament has said they strongly support more effective whistleblower rights.²³ Like Bulgaria, however, officials believe existing laws are adequate and that a stand-alone law is not needed.²⁴ Not only has no legislative progress been made, but little has been done to encourage whistleblowers from coming forward.

Examples like this are commonplace throughout the EU as political leaders in many other countries have not followed up their discussions and promises with legislative action:

- In Lithuania, a draft whistleblower law failed to be passed by Parliament in 2005. And the government has yet to act upon the inclusion of whistleblowing in the 2011 National Anti-Corruption Programme.²⁵
- Since at least 2006, Spain has not followed up on recommendations from the OECD, and the new rights it granted to public servants exclude protection from retaliation when reporting suspected crimes.²⁶
- Austrian officials have begun to debate the issue in response to pressure from international organisations and as a result of political and financial scandals. Two paragraphs dealing with anti-discrimination were added to public service regulations to meet recommendations by GRECO.²⁷ But no other progress has been made, and

²¹ GRECO, *Bulgaria: Phase 2 – Report on the Application of the Convention On Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions*, 6 June 2003, pp. 13, 41-42, www.oecd.org/daf/anti-bribery/anti-briberyconvention/2790505.pdf (accessed 16 October 2013).

²² Lauren Kierans, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Bulgaria* (Bulgaria: April 2013), p. 1.

²³ Antykorupcyjnej Koalicji Organizacji Pozarządowych, 'Obietnice wyborcze 2011', www.ceo.org.pl/pl/onas/news/AKOP/obietnice-wyborcze-2011 (accessed 16 October 2013).

²⁴ Written response from Poland's Ministry of Labour and Social Policy to the Batory Foundation, 2011.

²⁵ Transparency International Lithuania, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Lithuania* (Lithuania: October 2013).

²⁶ OECD Working Group on Bribery, *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Spain*, December 2012, pp. 65-66, www.oecd.org/daf/anti-bribery/Spainphase3reportEN.pdf (accessed 16 October 2013).

²⁷ Federal Law Gazette I Nr. 140/2011.

government officials have not adequately responded to requests for information about their plans on the issue.

- In Germany, the two ruling political parties said in June 2013 that there is no need to pass specific legislation for whistleblower protection.²⁸ The parties maintain this position despite the fact that the OECD and Council of Europe have called on Germany to improve its whistleblower protections in the private sector, and that Germany has agreed to enact whistleblower protections by the end of 2014 as part of the G20 Anti-Corruption Action Plan.²⁹

In a slowly growing number of EU countries, however, some progress is being made – though, at times, in response to scandals and disasters.

Hit by a massive scandal in the construction industry in 2001, the Netherlands has begun to take a number of positive steps in recent years. The Socialist Party introduced legislation, which was debated in Parliament in summer 2013, to set up a “House for Whistleblowers” to provide legal advice to whistleblowers. In the past three years, a National Ombudsman’s Office that intervenes in whistleblower cases was expanded and a Whistleblowing Advice Centre was opened.³⁰

Also shaken by a series of government and corporate scandals, Ireland is engaged in a parliamentary debate over what could be one of the strongest whistleblower protection laws in the world – the Protected Disclosures Bill. The proposal, which would cover workers in the government, business and non-profit sectors, resembles the UK’s landmark PIDA.³¹

Belgium is also emerging as a country willing to improve the situation for whistleblowers. Backed by growing political and institutional support, seven whistleblower bills have been introduced at the federal level since 2005, and federal protections finally were approved in July 2013. Momentum is also increasing at the Flemish level.³²

Greece is a country that until recently lacked the political will to protect whistleblowers. Financial difficulties and scandals, including a phone-tapping case known as the “Greek Watergate”, have begun to change this. At the urging of Transparency International Greece, in spring 2013, government officials announced plans to study whistleblower regulations.³³

Many citizens are growing weary of government and corporate scandals – particularly when they pay the price through decreased public services, job losses and economic insecurity. Granting legal protections and providing disclosure opportunities to people who expose corruption, fraud and other wrongdoing that harm the public interest is a recognition that governments and citizens can be working partners in nurturing accountability and integrity throughout society.

²⁸ Deutscher Bundestag, *Stenografischer Bericht*, 246. Sitzung, Berlin, 13 June 2013, p. 31502B, 31506 B-C, <http://dip21.bundestag.de/dip21/btp/17/17246.pdf>, (accessed 16 October 2013).

²⁹ OECD Working Group on Bribery, ‘G20 Anti-Corruption Action Plan 2013-2014’; OECD, *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Germany*, 2011, pp. 65-66, www.oecd.org/germany/Germanyphase3reportEN.pdf (accessed 16 October 2013); Parliamentary Assembly of the Council of Europe, ‘Resolution 1729 (2010) Protection of “whistle-blowers”’, 2010, <http://assembly.coe.int/main.asp?link=/documents/adoptedtext/ta10/eres1729.htm> (accessed 16 October 2013).

³⁰ Björn Rohde-Liebenau, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Netherlands* (Netherlands: October 2012).

³¹ Lauren Kierans, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Ireland* (Ireland: February 2013).

³² Wim Vandekerckhove, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Belgium* (Belgium: August 2012).

³³ Maria Nini and Anna Damaskou, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Greece* (Greece: August 2012).

PERCEPTION OF WHISTLEBLOWERS

WHISTLEBLOWERS STILL VYING FOR RECOGNITION

Debates about the best ways to legally protect whistleblowers from retaliation often lose sight of what must also be done to protect them from negative perceptions that are entrenched in society. Such powerful factors not only serve to punish whistleblowers, who are often harassed, ostracised and blacklisted. They have also dramatically slowed progress by many EU countries in passing and enforcing whistleblower laws.

Negative perceptions have also prevented whistleblowers from being recognised as corruption- and crime-fighters, and from being congratulated, or even honoured, for taking risks to help the common good.

When it comes to exposing wrongdoing, stepping forward when others decide to remain silent can leave colleagues, supervisors and even friends feeling angered or betrayed. This can stir resentment intensified by distant but real historical and political forces. Some suggest that this is particularly the case in countries that have lived under authoritarian regimes, which had utilised secretive security forces and spies to watch over political enemies and the citizenry at large, according to research conducted for this report.

The barriers to whistleblowing and laws to protect whistleblowers can be extreme in many countries. “Sneak”, “informer”, “snitch” and other derogatory terms for whistleblowers still persist. These stereotypes can weaken the willingness of people to report corruption.

These negative labels and perceptions can also determine how people are treated after they come forward.

In Portugal, interviews with whistleblowers reveal a universal impression that people who report wrongdoing – in a country with virtually no legal protections for whistleblowers – leave themselves open for all kinds of retribution. Whistleblowers ranging from lawyers to politicians to administrative employees generally agreed that the government and criminal authorities are indifferent toward them being threatened, fired or transferred. Public officials in particular should be prepared for the prospect of “losing everything”.³⁴

In France, a 2012 study found that many civil servants who reported wrongdoing were forced into retirement, fired or ostracised.³⁵

In countries where political and business connections are close, there can be a tendency for whistleblowers to be questioned for having ulterior motives. This is the case with Cyprus, where the media and public try to determine whether whistleblowers are acting according to political alliances.

³⁴ Interviews of whistleblowers with David Marques, Transparência e Integridade, Associação Cívica, Portugal, 2012.

³⁵ Stephen Pringault, ‘L’obligation de réserve des agents publics face au devoir de dénonciation d’infractions pénales. Une inadaptation du droit français à la problématique du whistleblowing’, *Droit administratif*, n°4, April 2012, www.lexisnexis.fr/droit-document/article/droit-administratif/04-2012/008_PS_RDA_RDA1204ET00008.htm (accessed 20 October 2013).

Indications of political affiliation can undermine the validity of a whistleblower's disclosure.³⁶

Societal factors also have the power to influence how whistleblowers are treated by the government – for instance, whether they are likely to be prosecuted by authorities for revealing inside information. A case in point is Latvia, which does not have well-developed whistleblower frameworks. Recent cases have seen whistleblowers criminally prosecuted for exposing or attempting to expose wrongdoing.³⁷

However, citizens in some EU countries have begun to look at whistleblowers with a fresh perspective. In Portugal, despite frequent retribution against whistleblowers and an almost complete lack of legal protections, whistleblowers themselves have reported that as many people consider them to be heroes as snitches.³⁸

Such positive shifts have also been seen in the corporate world:

- Seven out of eight senior executives surveyed in the UK said they are free to report cases of fraud or corruption, compared to 54 per cent in the rest of Europe.³⁹ This may be a product of PIDA, which was passed in 1998 following a lengthy and public debate that built strong support within business and political establishments.
- In Poland, nearly two-thirds of company managers support the idea of rewarding whistleblowers, compared to 38 per cent for Western Europe.⁴⁰

Positive changes can also be seen in media coverage. Throughout the EU, the mainstream media is paying more attention to whistleblowers and the information they disclose. Negative terms for whistleblowing such as snitch and informer are still commonly used in the media and by citizens and politicians. But it seems that a turning point has been reached. Today, whistleblowers are far more likely to be seen as heroes and public servants than as recently as a decade ago. Given the power that the media has in shaping public opinion, this shift can contribute to improving the image and perception of whistleblowers.

³⁶ Constantinos Kombos, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Cyprus* (Cyprus: November 2012), p. 19.

³⁷ Mārtiņš Birks, 'Neo lieta' – noziedzīgs nodarījums vai 'ziņotāja' apklusināšana', *Jurista Vārds*, No. 25, 19 June 2012, www.juristavards.lv/index.php?menu=auth&id=249232 (accessed 20 October 2013); 'Aizdomas par policistes korumpētību - pret ziņotāju sāk lietu', *Neatkarīgā Rīta Avīze*, 3 June 2012, <http://nra.lv/latvija/73217-aizdomas-par-policistes-korumpetibu-pret-zinotaju-sak-lietu.htm> (accessed 20 October 2013).

³⁸ Interviews of whistleblowers with David Marques, Transparência e Integridade, Associação Cívica, Portugal, 2012.

³⁹ Paul Stephenson and Michael Levi, *The Protection of Whistleblowers: A study on the feasibility of a legal instrument on the protection of employees who make disclosures in the public interest*, for Council of Europe, 20 December 2012, p. 20,

www.coe.int/t/DGHL/STANDARDSETTING/CDcJ/Documents/CDCJ%202012/CDCJ_2012_9e_FIN_Feasibility_Study_protection_whistleblowers_en.pdf (accessed 20 October 2013).

⁴⁰ Ernst & Young, *O krok dalej: miejsce na uczciwość w biznesie. 12 światowe badanie nadużyć gospodarczych*, 2012, www.blog.ey.pl/audytsledczy/wp-content/uploads/2012/06/raport-12-swiatowe-badanie-naduzyc-gospodarczych.pdf (accessed 20 October 2013).

OTHER CONSIDERATIONS

UNPREDICTABLE EVENTS AND PUBLIC OPINION SHAPE HOW WHISTLEBLOWERS ARE TREATED

Some whistleblower laws have been passed as a response to scandals, public health scares, environmental disasters or other catastrophes that perhaps could have been prevented or lessened if someone would have come forward and exposed the problems before they erupted.

In Europe, there is no better example of this than in the UK. On the evening of 6 March 1987, the *Herald of Free Enterprise* capsized moments after leaving the Belgian port of Zeebrugge. The eight-deck car ferry sank, killing 193 passengers and crew members in what was Britain's worst peacetime maritime disaster in 73 years. An official government inquiry found a "disease of sloppiness" and negligence within the ferry company.⁴¹

This was one of a rapid succession of costly disasters and scandals during the 1980s and 1990s that shocked the nation – along with a train collision, an oil rig explosion, a bank collapse and cases of systematic child abuse. A series of public inquiries found a pattern emerging that workers knew about risks or wrongdoing that contributed to the problems and were either too scared to speak up or – worse still – they had spoken up and were ignored. In response to these calamities, the UK went on to pass one of the strongest whistleblower laws in the world, the Public Interest Disclosure Act (PIDA).⁴²

Due to the unpredictability of the public policy process, tragedies do not always have the same compensatory effect. The spilling of 800 million litres of caustic red sludge in Hungary in 2010, the explosion of 98 containers of munitions at a naval base in Cyprus in 2011 and stories of poorly treated elderly people in Germany in 2005 so far have not led to meaningful progress in whistleblower protections in these countries.

In some countries, the relationships between causes and effects are not obvious. Rampant corruption in the Dutch construction industry was exposed by a whistleblower in 2001.⁴³ And in Malta in 1973, the price-fixing of vitamins was exposed in sensational fashion.⁴⁴ But it is unclear how much these events have contributed to the steps toward reform recently taken in these countries.

In these cases, there are other indicators for helping to predict whether a country will pass a whistleblower law, how strong it would be and how it would work in practice, if at all. Among these are court rulings, opinion polls and public reaction to whistleblowers.

⁴¹ UK Department of Transport, *mv Herald of Free Enterprise*, Report of Court No. 8074, Formal Investigation, 1987, pp. 13-14, www.maib.gov.uk/cms_resources.cfm?file=/hoffefinal.pdf (accessed 20 October 2013).

⁴² Public Concern at Work, *UK Submission to Transparency International Whistleblower Protection Research Project* (UK: January 2013), pp. 1, 15.

⁴³ A.G. Dorée, 'Collusion in the Dutch construction industry: an industrial organization perspective', *Building Research & Information*, March-April 2004, www.utwente.nl/ctw/p3bi/te_downloaden_publicaties/bri_collusie_definitief.pdf (accessed 17 October 2013).

⁴⁴ Nick Mathiason, 'Blowing the Final Whistle', *The Observer*, 25 November 2001, www.theguardian.com/business/2001/nov/25/businessofresearch.research (accessed 17 October 2013).

Austrian courts, for example, have ruled that employees would not violate workplace loyalty oaths if they file a criminal complaint, as long as the complaint is valid. And, employees must blow the whistle in the most “gentle” way possible.⁴⁵

In a 2012 survey in Estonia, only 1 per cent of citizens and business owners, and 13 per cent of civil servants who had personally experienced corruption, actually reported the cases to authorities. In Hungary more than half of public officials answering a survey about reporting corruption responded, “Less said, the better.”⁴⁶

In Ireland, due to a string of high-profile scandals in the clergy, banking, healthcare and other areas of society, public perception of whistleblowers has begun to improve in recent years. Currently, the Irish Parliament is debating what could be among the strongest whistleblower protection laws in the world.

⁴⁵ Shahanaz Müller, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Austria* (Austria: September 2012), p. 23.

⁴⁶ K-Monitor Association, *Whistleblower Protection in the Central and Eastern Europe Region: Whistleblowing in Hungary*, Hungarian Civil Liberties Union, 2010, p. 10.

LOST IN TRANSLATION?

WHAT “WHISTLEBLOWER” MEANS – AND DOES NOT MEAN – IN EU LANGUAGES

“Whistleblower” is not a universally recognised term that can be easily translated into other languages. However imprecise, this colloquialism – which conjures old-fashioned images of a police officer chasing after a thief – has evolved over the decades to mean a person who exposes wrongdoing that has occurred in their midst.

Regardless of whom the person contacts – their line manager, a dedicated helpline, a journalist, the police, an NGO or a government watchdog – a whistleblower is someone who speaks up when most people do not. They are beacons, bell-ringers, alarm-sounders – people who shine the light on secrets that should become known in order to end wrongdoing.

To a surprising extent, the difficulty in translating the term whistleblower into other languages has led to problems in how whistleblowers are perceived publicly. In many EU countries, alternative terms such as “informant”, “denunciator” and “snitch” are still commonly used by citizens and the media alike. Journalists in some non-English-speaking countries simply use whistleblower for lack of a better alternative. They then may have to explain the term to audiences.

This difficulty has also created challenges when it comes to proposing and drafting whistleblower protection laws. Because whistleblowing is not a commonly accepted legal term, phrases such as “public interest disclosure” are sometimes used, as with the UK’s PIDA and Ireland’s Protected Disclosures Bill.

Citizens and journalists, however, are left with a wide range of synonyms, many of which cast whistleblowers in a false or negative light.

The following are some commonly used translations from throughout the EU, including any connotations they may carry – positive, negative, neutral or none.

BULGARIAN

- *служител, подал сигнал за нарушение* – employee who signals a violation – negative

CZECH

- *oznamovatel* – reporter – neutral
- *udavač* – informer – negative
- *práskáč* – snitch – negative

DANISH

- whistleblower – often used by the public
- *sladrehanke* – snitch – negative

DUTCH

- *klokkenluider* – whistleblower (“bell-ringer”)
- *slachtoffer* – victim – term occasionally used by former whistleblowers

ESTONIAN

- *vilepuhuja* – whistleblower (“piper”) – negative
- *väärkäitumisest teavitaja* – one who informs about wrongdoing – neutral
- *korruptsioonist teavitaja* – one who informs about corruption – most neutral
- *koputaja* – snitch – negative

FINNISH

- *ilmiantaja* – a person who finds out information and passes it on – somewhat negative

FRENCH

- *lanceur d’alerte* – one who alerts about wrongdoing – commonly used term
- *signalement* – whistleblowing (“reporting”)
- *dénonciation* – whistleblowing – neutral/negative
- *alerte professionnelle* – whistleblowing – used by trade unions
- *alerte éthique* – whistleblowing – term used by NGOs and media
- *donneur d’alerte* – term used in official contexts (for example, concerning the EU)

GERMAN

- whistleblower – often used by media and in official contexts
- *Denunziant* – squealer, tattletale – negative
- *Hinweisgeber* – hint-giver – neutral
- *Nestbeschmutzer* – one who dirties their own nest – negative

GREEK

- *καρφί (karfi), σπιούνος (spiounos), ρουφιάνος (roufianos), χαφιές (hafies)* – snitch – negative
- *πληροφοριοδότης (pliroforiodotis)* – informant – neutral/negative

- *μάρτυρας δημοσίου συμφέροντος* – public interest witness – positive

HUNGARIAN

- *közérdekű bejelentés* – public-interest reporting – positive
- *bejelentés* – reporting
- *panasz* – complaint – reporting wrongdoing to authorities

IRISH

- no direct translation for whistleblower

ITALIAN

- *sentinella civica* – civic sentinel – positive (used by Transparency International Italia)
- *informatore* – informant – neutral (linked to secret police)
- *segnalante* – reporting person – neutral (used in anti-corruption law)
- *denunciante* – denouncing person – neutral – judicial term
- *fare una soffiata* – to blow – neutral to negative
- *talpa* – mole (spy) – negative
- *corvo* – crow – negative
- *delatore* – leaker – very negative
- *spia / spione* – spy – very negative

LATVIAN

- *ziņotājs* – denouncer – negative
- *Trauksmes cēlējs* – alarm-setter – neutral
- *Trauksmes celšana* – setting the alarm – a process by which wrongdoing is made public – neutral

LITHUANIAN

- *pranešėjas* – whistleblower

LUXEMBOURGISH

- no translation for whistleblower – “whistleblower” is used

MALTESE

- *j iżvela* – neutral term for disclosure

POLISH

- denouncer, informant – negative
- *sygnalista* – signal – positive (new term used by certain NGOs)

PORTUGUESE

- *chibo / bufo* – snitch – negative
- *denunciante* – whistleblower

ROMANIAN

- *avertizori de integritate* – those who give integrity warnings – positive

SLOVAK

- *oznamovateľ* – whistleblower – positive
- *donášač, udavač, práskač* – snitch – negative

SLOVENIAN

- *etični upornik* – ethical resisters
- *žvižgač, piščalkar* – one who whistles
- *prijavitelj* – one who reports – neutral (used in the Slovenia's Integrity and Prevention of Corruption Act)

SPANISH

- *denunciante de acto de corrupción* – blowing the whistle on an act of corruption – neutral

SWEDISH

- *visslare, visselblåsare* – whistleblower – neutral

WELSH

- *chwythwr chwiban* – whistleblower

CALLS TO ACTION

FOR EU MEMBER STATES: IMPROVE DISCLOSURE OPPORTUNITIES AND STRENGTHEN LEGAL PROTECTIONS FOR WHISTLEBLOWERS

All employees and workers in the public and private sectors need:

- accessible, reliable and safe channels to report wrongdoing
- robust protection from all forms of retaliation
- mechanisms for disclosures that promote reforms that correct legislative, policy or procedural inadequacies and deter future wrongdoing

To achieve these goals, Transparency International urges all EU countries to pass, implement and enforce legislation that provides comprehensive legal protections to public and private sector employees who report wrongdoing.

Protected disclosures should include but not be limited to corruption; criminal offences; breaches of legal obligation;⁴⁷ miscarriages of justice; specific dangers to public health, safety or the environment; abuse of authority; unauthorised use of public funds or property; gross waste or mismanagement; and conflict of interest.⁴⁸

Legal protections should be extended to any employee or worker who is at risk of retribution, including individuals outside the traditional employee-employer relationship, such as consultants, contractors, trainees and interns, volunteers, student workers, temporary workers, and former employees.⁴⁹ Protections should be granted for disclosures made with a reasonable belief that the information is true and for disclosures made in honest error.

The public should have ample opportunities to provide input on any such legislation. After passage, the legislation should be reviewed in regular intervals with input from NGOs.

FOR THE EU: ESTABLISH EUROPEAN WHISTLEBLOWER PROTECTION PROGRAMME

Transparency International urges the European Commission to follow the call by the European Parliament in October 2013 to submit a legislative proposal establishing an effective and comprehensive European whistleblower protection programme in the public and private sectors. This proposal should be based on a robust public consultation determining the most appropriate legal instruments to strengthen whistleblower laws, procedures and practices across the EU by defining minimum standards.

The programme should embody recognised international standards and principles, including those developed by the Council of Europe and the OECD, as well as those compiled by NGOs that support or advise whistleblowers, including the Government Accountability Project (US), Open

⁴⁷ Including fraudulent financial disclosures made by government agencies or officials and publicly traded corporations.

⁴⁸ Could also include human rights violations if warranted or appropriate within a national context.

⁴⁹ Protection should extend to attempted and perceived whistleblowers; individuals who provide supporting information regarding a disclosure; and those who assist or attempt to assist a whistleblower.

Democracy Advice Centre (South Africa), Public Concern at Work (UK) and Transparency International.

The programme and related EU laws should also comply with Articles 11, 30 and 41 of the Charter of Fundamental Rights of the European Union, which address a person's rights to freedom of expression, protection from unjustified firing, and effective remedies and a fair trial, respectively.

The programme and any legal instrument should apply to employees in both the public and private sectors, as well as establish a full range of safe and secure disclosure channels for whistleblowers (including anonymous disclosures). All EU institutions and bodies should ensure strong protection mechanisms and support for their staff and members.

FOR EU CITIZENS AND RESIDENTS: CONSIDER THE USE OF RELIABLE AND SAFE AVENUES TO DISCLOSE WRONGDOING

Individuals who become aware of corruption or other types of serious wrongdoing in their workplace should consider their options before speaking up. They should contact whistleblower support or advice organisations, such as Transparency International's Advocacy and Legal Advice Centres,⁵⁰ which operate in 60 countries.

Individuals who decide to make a disclosure – either within or outside their organisation – should carefully assess the risks of doing so. Many government agencies and private companies have whistleblower policies in place, and most EU countries have at least some laws or regulations that theoretically provide some legal protections for certain types of whistleblowers. But such policies, laws and regulations are routinely ignored or poorly enforced, and they often contain loopholes that may not be apparent. Thus, they can serve as a trap for people who believe they are protected from retaliation but actually are not.

Because whistleblowing can be risky, it is strongly recommended that anyone considering reporting wrongdoing seek the best available advice before doing so. If the country has any type of legal protections, one should consider contacting a lawyer to be advised about whether these protections would apply to the case and the likelihood of the protections being enforced.

⁵⁰ Transparency International, 'Report Corruption', www.transparency.org/getinvolved/report (accessed 20 October 2013).

WHISTLEBLOWING IN THE EU: COUNTRY PROFILES

AUSTRIA⁵¹

Rating: Partial

Laws

In a relatively short period of time, Austria has begun to institute and debate some forms of whistleblower protection, due to international pressure and publicised financial scandals and political corruption cases. Movement on a comprehensive whistleblower law, however, has been minimal.

Government employees have long been legally required to report misdeeds to the proper authorities. But they lacked protection from dismissal and other types of retaliation until January 2012 when Protection from Discrimination provisions were added to Austria's Public Service Law. This marks the country's first-ever legal shield related to whistleblowing. Civil servants who become aware of wrongdoing can contact their managers or the Federal Bureau of Anti-Corruption. Whistleblowers seeking protection must take care to follow a long list of strict requirements – and to disincentivise retribution, those who retaliate against whistleblowers can be disciplined.

Additional protections on the books include the Labour Law, which protects all employees from dismissals that violate Austria's basic social principles (including freedom of speech), and the Environmental Information Act, which protects employees who report environmental wrongdoing.

Politics

Protection from discrimination provisions for public servants – two paragraphs – were added to comply with recommendations from the Council of Europe's Group of States against Corruption (GRECO). Public calls for a similar law for employees of private companies, however, have not been honoured by the government.

Attempts, as part of this report, to learn what political leaders are planning in terms of whistleblower protections did not yield much information. The Ministry of Justice, for example, was asked in writing whether it is working on a whistleblower protection law for the private sector, but the response from the ministry was not conclusive either way. However, the response did indicate that the government is discussing whistleblower issues.

Society

While the government has only taken modest steps, media attention and public awareness of whistleblowing – and corruption in general – may be advancing at a quicker pace. Media coverage of political and business corruption, embezzlement, fraud, nepotism and other misdeeds has been

⁵¹ Information is derived from the national background research report: Shahanaz Müller, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Austria* (Austria: September 2012).

on the rise in recent years. Almost every major newspaper in the country now has an investigative reporting team to probe these scandals, many of which were exposed with the help of whistleblowers.

Declining trust in Austria's judicial system, the economy and the political decision-making process has begun to awaken the citizenry. This has helped transform the image of certain whistleblowers into heroes. Though those seen to have hidden motives, however, are still labelled *Denunziant* or *Vernaderer* – squealers and tattletales.

Procurement whistleblower sacked in Vienna

A 2009 dispute over a contract to provide cleaning services to a public hospital in Vienna allegedly led to the bullying and firing of a government lawyer who tried to draw attention to procurement irregularities. Following several “poker nights and champagne parties” with hospital employees, the contract was awarded to a company that was not the lowest bidder. A lawyer in the city of Vienna’s Health Department noticed some of the irregularities and relayed them to the *Die Presse* newspaper. He was then harassed in the workplace and fired for being not “capable of making decisions.” The overall case remains under investigation.⁵²

Discussions within political circles are still at a relatively basic level, as shown by the fact that certain decision-makers do not understand why some whistleblowers need anonymity.

Prospects

The only known official proposals that have sought to improve whistleblower protections were three inquiries submitted to the Parliament by the Green Party. These concerned whistleblower regulation in the public and private sectors, as well as the establishment of a whistleblowing hotline within the Ombudsman Board. The public sector issue was addressed in 2012, but the other two proposals await action. A Green Party member said that because whistleblowing is a fairly new issue in Austria, other members of Parliament needed to be educated on the topic.

The Austrian Data Protection Council has advocated for improved protections, and in 2011 it sent a questionnaire to private and public organisations seeking their input. The results have not yet been released.

In March 2013, the Ministry of Justice set up a whistleblower hotline on the homepage of the Public Prosecutor's Office against Corruption and White Collar Crime. As of September 2013, approximately 590 notifications were sent to the platform. Only 53 of those notifications were not relevant.⁵³ The whistleblower hotline has a test phase of two years.

⁵² Michal Pommer, ‘Ausschreibungen müssen erneut geprüft werden’, *krone.at*, 6 March 2012, www.krone.at/Oesterreich/Ausschreibungen_muessen_erneut_geprueft_werden-AKH-Skandal-Story-313965 (accessed 20 October 2013); Andreas Wetz, ‘AKH-Skandal: Millionenklage gegen Wiener Filz’, *Die Presse*, 1 September 2012, http://diepresse.com/home/panorama/wien/1285401/AKH-Skandal_Millionenklage-gegen-Wiener-Filz?from=simarchiv (accessed 20 October 2013); Andreas Wetz, ‘AKH: Eine Kultur des Wegschauens’, *Die Presse*, 2 September 2011, http://diepresse.com/home/panorama/wien/690376/AKH_Eine-Kultur-des-Wegschauens (accessed 20 October 2013); Florian Klenk, ‘Die Korruptionsakte AKH’, www.florianklenk.com, 27 October 2010, www.florianklenk.com/2010/10/27/die-korruptionsakte-akh/ (accessed 20 October 2013).

⁵³ *Die Presse*, ‘Whistleblower-Hotline: “Erkennen Vernaderer relativ rasch”’, *Die Presse*, 22 September 2013, http://diepresse.com/home/recht/rechtallgemein/1455732/WhistleblowerHotline_Erkennen-Vernaderer-relativ-rasch (accessed 20 October 2013).

Other Considerations

Like many countries, Austria's lack of comprehensive regulations means that the courts often stand in judgement as to whether a whistleblower deserves legal protections. More positively, Austrian courts have ruled that filing a valid criminal complaint does not violate employees' duty of loyalty to their employer. However, employees are obliged to proceed in the most "gentle" way possible, implying they are well advised to discuss matters with their employer or labour union before reporting externally. A lack of transparency in Austria's judicial system leads many whistleblowers to choose anonymity.

BELGIUM⁵⁴

Rating: Partial

Laws

Among the four layers of government in Belgium – federal, Flemish, Walloon and the Brussels-Capital Region – the federal and Flemish levels have certain types of whistleblower legislation in place.

Passed in 2004, the Flemish law is intended to protect whistleblowers in the public sector. It uses a two-tier approach: employees can disclose the information internally to their supervisor or to the Flemish Internal Auditor (IAVA)⁵⁶ if the supervisor is involved in wrongdoing or did not act upon a previous disclosure. If employees are experiencing or fear retaliation, they can raise their concern externally with the Flemish Ombudsperson.⁵⁷ Additionally, public servants have the duty to inform the Public Prosecutor if they believe their supervisor would block them from coming forward. Importantly, the policy is meant to incentivise internal whistleblowing before going to the authorities.

At the federal level, a whistleblower bill was passed in July 2013 that is slated to take effect within six months after it is published in the Official Gazette. Similar to the Flemish law, it also includes a two-tier approach for disclosures. Although the new law is promising, it includes overly complex procedures and lacks a specific agency to investigate concerns.

Fired and prosecuted whistleblowers eventually reinstated

The small, scenic city of Hasselt, Belgium, is the site of a complex case that eventually led to government whistleblowers being fired, transferred and criminally charged with stealing the very documents that they used to expose fraud within the police department. In 2009, acting anonymously, four police department employees handed over to prosecutors evidence of fraud in overtime payments, travel and clothing allowances, and dropping of criminal charges. No action was taken against the police chief, the employees were transferred or fired, and two whistleblowers were charged with stealing confidential files. In 2011, the whistleblowers finally went public, and they were acquitted of the charges and their allegations were found to be true. Eventually they all found new jobs with police departments.⁵⁵

There are no laws that specifically cover private sector whistleblowers in Belgium. Tangentially, there are laws that require financial professions to disclose suspicions of money laundering, grant

⁵⁴ Information is derived from the national background research report: Wim Vandekerckhove, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Belgium* (Belgium: August 2012).

⁵⁵ Hasselt, 'Personeel Hazodi wil klokkenluiders niet terug', *Nieuwsblad*, 15 October 2011, www.nieuwsblad.be/article/detail.aspx?articleid=AU3H4F19 (accessed 20 October 2013).

⁵⁶ On average the IAVA receives 10-15 whistleblower concerns per year, about half of which lead to forensic audits. See: Vandekerckhove, 2012, p. 3; *Jaarverslag 2009*, Vlaamse Ombudsdienst, 2010, p. 244, www.vlaamseombudsdienst.be/ombs/nl/documentatie/pdf/jvdef.pdf (accessed 17 October 2013).

⁵⁷ The Ombudsperson granted whistleblower protection to 11 people from 2006-2011. See: Vandekerckhove, 2012, pp. 3-4.

clemency to companies that denounce cartels of which they are a part, and combat psychosocial pressure in the workplace (“mobbing”).

Politics

Serious political debate about whistleblowing in Belgium began in 1999 when a coalition of liberal democrats, socialists and Greens sought to install confidential whistleblower disclosure channels in every government department.

Of late, a critical mass of political and institutional will to further improve the whistleblower situation seems to have emerged – especially at the Flemish level. IAVA officials and the Ombudsperson’s office exhibit a highly professional attitude towards the role of whistleblowing in good governance, and they are actively seeking ways to improve whistleblower protections and procedures.

Positive impressions are also growing within federal agencies and the Walloon media has begun to associate whistleblowing with civic responsibility. Still, no proposals are active at the Walloon or Brussels-Capital levels.

Society

The political and historical divisions within Belgian society mean that attitudes toward whistleblowers can vary. The situation in Belgium also exposes the difficulties in finding suitable translations for whistleblowing.

In the northern Flemish-speaking part of the country, the media are more likely to use the term *klokkenluider*, or bell-ringer. This term encompasses actions that go beyond traditional whistleblowing – for example, when members of opposition political parties question the ruling party. In the southern French-speaking region, there has been a shift from the somewhat negative term *dénonciateur* (denunciator) to *donneur d’alerte* or *lanceur d’alerte* (issuing an alert), referring to citizens who voice social or environmental concerns. Though more positive terms, they may underestimate the importance of whistleblowing.⁵⁸

Within a company setting, employees tend to raise concerns about workplace malpractice using inadequate and inappropriate channels. They may informally raise the issue with people who they trust but who may not be in the position to take any action. In the end, problems are aired but often without productive outcomes. Whistleblower hotlines are generally disliked and not commonly used by company employees. Based on interviews with compliance, risk management and other experts, not only is there a lack of integrity training for compliance officers, but they also lack the “soft skills” necessary to handle whistleblowing conflicts.⁵⁹

Prospects

Among the urgent challenges is the need to include in federal whistleblower proposals a specific agency that can adequately investigate concerns. Critical mass developing among government agencies and officials should be leveraged to advance debates at the Brussels-Capital and Walloon levels as well as in the private sector.

Demonstrating some progress, in October 2012, the Flemish parliament favourably amended the whistleblower policy for Flemish civil servants. The scope of concerns and complaints that the Ombudsperson can take up was widened, confidentiality provisions for whistleblowers were

⁵⁸ Vandekerckhove, 2012, p. 12.

⁵⁹ Transparency International Belgium, *Evaluatie van het nationale integriteitssysteem België*, 2012, <https://lirias.kuleuven.be/bitstream/123456789/368261/1/NIS+NL+september+2012.pdf> (accessed 20 October 2013).

improved, and whistleblowers were given the option to find new employment in a different organisation within the Flemish public sector. These changes illustrate that the policy review has led to piecemeal legislative changes.

Other Considerations

The IAVA is very active in developing preventive measures. It has worked to bring about positive changes in organisations with regard to people who raise concerns. It is expanding an existing helpline for stress and other psychosocial issues in the workplace. And the agency is helping to create an integrity network within various Flemish government institutions. Called the Virtual Bureau Integrity, the network was launched in January 2012 to, among other things, prevent the escalation of conflicts related to whistleblowing.

BULGARIA⁶⁰

Rating: None or Very Limited

Laws

Bulgaria essentially has no legal protections for whistleblowers, no legal definition of whistleblower and negative social attitudes toward reporting wrongdoing. On paper, employees who have been fired unjustly, harassed or persecuted can be compensated. However, these provisions have not been known to be tested in court.

Under the country's Administrative Procedure Code, all Bulgarian citizens have the right to report wrongdoing that affects the public interest or the rights or interests of other people. Anyone who does so is legally protected from mistreatment. But these provisions are not further explained in the law, which also does not name an agency where people can file complaints. Accordingly, this cannot be considered a whistleblower law.

The country's key laws covering the rights and responsibilities of employees – the Labour Code and Civil Servants Act – contain no elements dealing with whistleblowing. There are no regulations for public agencies to set up whistleblower procedures, even though all public officials are legally required to report criminal offences. Generally, the Law on Contracts and Obligations offers compensation for retaliation, but the law is inadequate and the compensation levels are low.

Whistleblower protections were implemented in 2009 for people who report conflicts of interest regarding public officials, but the only provision is compensation for firing or harassment. Moreover, the law is limited to disclosing of conflicts of interest.

In one of Bulgaria's few constructive measures, the Administrative Procedure Code and the 2009 conflict of interest law allow whistleblowers to participate in the follow-up to their complaints.

Politics

In response to recommendations from the OECD and the Group of States against Corruption (GRECO), in 2006-2007, the Bulgarian government considered introducing specific whistleblower legislation for the public and private sectors. But lawmakers did not prepare nor submit a draft law. Their rationale was that there is no need for a designated law and that whistleblower legislation should be handled on a sectoral basis. There has been no visible political movement on the issue since then.

Society

Bulgaria has almost no record of whistleblowing, and public attitudes toward reporting corruption are generally negative. Even though some reporting channels have been set up, citizens have little trust in them, and no whistleblower cases are known to have had a major impact on society.

⁶⁰ Lauren Kierans, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Bulgaria* (Bulgaria: April 2013).

Prospects

Over the past five years, whistleblower protection has not been on the political agenda, nor has it been subject to any appreciable public debate. Significant political and cultural change is necessary in order to advance discussions on the issue.

As an indication of the perils faced by whistleblowers, in February 2013, two operators of investigative journalism/whistleblower websites in Bulgaria were threatened and their websites clogged via a “flooding” attack. The websites claimed to have published secret documents about past activities of the Bulgarian prime minister.⁶¹

Other Considerations

Despite the fact that Bulgaria has nearly no legal protections for whistleblowers, most state and local government agencies have some type of mechanisms in place for employees to report wrongdoing. Based on a 2009 survey by Transparency International Bulgaria, all ministries, regional administrations and 70 per cent of local administrations have internal disclosure channels in place. However, as an indication of how these systems function in practice, no regional or local administrations have departments to handle whistleblower disclosures or registers of whistleblower cases.

⁶¹ Andy Greenberg, ‘Following Wikileaks’ Playbook, Balkanleaks Releases Insurance File with its Spilled Secrets’, *Forbes*, 2 February 2013, www.forbes.com/sites/andygreenberg/2013/02/13/following-wikileaks-playbook-balkanleaks-releases-insurance-file-with-its-spilled-secrets/ (accessed 17 October 2013); Novinite.com (Sofia News Agency), ‘Cyber Attack Floods Bulgarian Whistleblowing Site’, *novinite.com*, www.novinite.com/view_news.php?id=147616 (accessed 17 October 2013).

Rating: Partial

Laws

Though it has no specialised legislation to shield whistleblowers from retribution, Cyprus has a range of laws that ostensibly provide some protection for employees in the public and private sectors who step forward and report wrongdoing.

Legal protections for government employees are more clearly defined than those for people who work at private companies. Public servants are legally bound to report wrongdoing to their supervisor. If they do so, the Public Service Law protects them from any type of discipline.

The situation is unclear in the private sector. The Unfair Dismissal Law offers vague guidance on protecting company workers from unfair treatment. However, if an employee reports a felony violation, this theoretically would outweigh any internal company regulations. A review of various laws makes it clear that internal disclosures are a safer route than going external, as such protections are limited and untested. Company employees must take care not to violate company regulations.

Whistleblower targets in Cyprus charged, convicted and then promoted

In 2009, a senior official in Cyprus's Agriculture Ministry accused the minister of hiring staff based on party loyalty and doctored test scores. After an investigation, two staff members were charged with nepotism – a crime punishable by up to two years in prison. They pleaded guilty in 2012 and were fined, thus becoming the first government employees in the country's history to be convicted of nepotism. The whistleblower was praised by the Attorney General, most political parties and the media. Rather than losing their jobs, the two convicted staff members were promoted to high-ranking positions. Amid wide media coverage of the scandal, the promotions are under review.⁶³

Cyprus is among the minority of countries that criminalises retribution against whistleblowers. This is punishable by a prison sentence and/or fine, and the whistleblower may be entitled to civil damages. Additionally, Cyprus has a witnesses protection law.

⁶² Information is derived from the national background research report: Constantinos Kombos, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Cyprus* (Cyprus: November 2012).

⁶³ Elias Hazou, 'Guilty of Nepotism and Afterwards Promoted', *Cyprus Today*, 15 December 2012, www.thefreelibrary.com/Guilty+of+nepotism+and+then+promoted.-a0312062820 (accessed 20 October 2013); 'New Nepotism Probe Accuses Accuser', *Cyprus Mail*, 5 November 2009, www.thefreelibrary.com/New+nepotism+probe+accuses+accuser.-a0211201818 (accessed 20 October 2013).

Politics

The lack of a stand-alone whistleblower law in Cyprus is not due to an oversight. Political leaders are aware of European and international pressure to implement such a law but have chosen not to do so. There appears to be no drive within the political leadership to proceed with a law, although various initiatives are underway to reduce and prevent corruption, such as requiring financial disclosures for politicians. Any progress on whistleblowing has been due to influence from European institutions and Transparency Cyprus, which has provided the Minister of Justice with examples of whistleblower protection laws enacted in other countries and asked the minister to begin discussions in Parliament on the issue.

The government has created no independent agency to receive and investigate whistleblower disclosures and complaints, and there has never been an official assessment of the country's whistleblower framework.

Society

The media and the public tend to examine whistleblowers' political motivations for coming forward. In a country with a close-knit society, such personal information usually is easy to come by. This can place whistleblowers at the centre of debates between political factions.

These forces actively deter whistleblowing, and the resulting judgments mean that whistleblowers are usually placed at one end of the spectrum or the other – either snitches (*karfi* in Greek) or heroes.

Prospects

With no formal political activity on whistleblowing in at least the last five years, hopes of improved legal protections are uncertain. The current system has many flaws in need of correction. Protection in the public sector is limited to disclosing cases of bribery and corruption. Barring urgent circumstances, government employees must make their disclosures in writing – seemingly reducing opportunities to maintain confidentiality.

A strong call for a dedicated whistleblower law came from then environment commissioner, Charalambos Theopemptou, following what he called a potentially avoidable explosion at the Evangelos Florakis Naval Base in 2011 that killed 13 people and injured 62 others (see Other Considerations, below).

Transparency Cyprus included whistleblower recommendations in its publication *Anti-corruption Measures*,⁶⁴ which it discussed with President Nicos Anastasiades in July 2013. Transparency Cyprus has also called for the formation of an independent commission against corruption and the appointment of an anti-corruption commissioner to receive and investigate whistleblower disclosures and complaints.

Other Considerations

On 11 July 2011, 98 containers of munitions that had been stored in the sun for more than two years exploded at the Evangelos Florakis Naval Base on Cyprus's southern coast. Thirteen people were killed and sixty-two were injured. Injuries were reported up to 5 km away and houses up to 10 km away were damaged. Registered as a 3.0 seismic event, the explosion was the sixth largest non-nuclear detonation in history.

⁶⁴ See: Transparency Cyprus, 'Anti-Corruption Measures in Cyprus', www.transparencycyprus.org/el/wordpress/archives/1032 (accessed 20 October 2013).

The then environment commissioner, Charalambos Theopemptou, went on record saying that a whistleblower law could have prevented the disaster as it was known that the mutations posed a hazard.

CZECH REPUBLIC⁶⁵

Rating: Partial

Laws

While the Czech Republic's patchwork of labour, criminal and other laws are not entirely ineffective, they do not inspire confidence in potential whistleblowers and give the impression that seeking legal protection is highly risky. Within these codes, which are often circumvented, there is a lack of clarity in reporting systems and follow-up procedures.

Theoretically, the Czech Labour Code protects employees from arbitrary, discriminatory or groundless dismissal and ensures their fair treatment. However, it does not spell out how employees can register complaints with their employer, nor does it afford special protection for employees who act to protect the public interest. Aggrieved workers must sue their employers to obtain relief, and they must take care that they have not slandered or falsely accused anyone, nor disclosed confidential or personal information.

Two-time Czech whistleblower now in Parliament

Within a four-year period, Libor Michálek exposed two national scandals, making him arguably the most famous whistleblower in Czech history. In 1996, Michálek was fired from the National Property Fund after exposing embezzlement related to a tunnelling project. He won an ensuing court case and was involved in compensating those who lost money in the affair. In December 2010, he blew the whistle on a scam by the Environment Ministry to inflate a public water treatment project by some €120 million and siphon the money to the Civic Democratic Party. Former Environment Minister Pavel Drobil, whose advisor Michálek had audiotaped discussing the scheme, resigned the next day. The recipient of numerous anti-corruption awards, Michálek went on to be elected to the Czech Senate in 2012.⁶⁶

Similarly, the Criminal Code requires employees to report bribery and other crimes, but they are not protected from allegations of slander or false accusation.

Another potential route is the Administrative Procedure Code, which allows employees to report wrongdoing confidentially or anonymously to authorities. But from the perspective of whistleblower protection, legal definitions are inadequate.

The Czech Ombudsman can investigate individual cases but is powerless to overturn employment decisions by government agencies.

⁶⁵ Information is derived from the national background research report: Vladan Brož, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Czech Republic* (Czech Republic: August 2012).

⁶⁶ Czech News Agency (ČTK), 'Corruption whistle-blower Michálek running for Senate', *Prague Daily Monitor*, 31 July 2012, <http://praguemonitor.com/2012/08/01/corruption-whistle-blower-mich%C3%A1lek-running-senate> (accessed 20 October 2013); Czech News Agency (ČTK), 'Charter 77 to award corruption whistleblower', *Prague Daily Monitor*, 11 April 2011, <http://praguemonitor.com/2011/04/11/charter-77-award-corruption-whistle-blower> (accessed 20 October 2013).

A review of selected whistleblower cases shows that reports are not always investigated and very rarely lead to corrective action.

Politics

The political will that would be needed to enact and enforce laws to adequately protect whistleblowers from retribution is lacking. Though the current administration has declared a war on corruption, the sole sign of progress in recent years is an analysis of whistleblower measures (which draws upon input from Transparency International Czech Republic). Moreover, proposed legislation does not incorporate the recommendations in the analysis.

With regard to the public sector, no internal reporting mechanisms can be identified other than anonymous telephone lines and e-mail addresses. An anti-corruption hotline was established in 2006, but when its results did not meet expectation, it was abandoned without any replacement.

Society

Although related topics such as fighting corruption and crime in the public sector are widely discussed in Czech society, whistleblowing historically has been largely ignored and often misunderstood. Fear of retaliation combined with insufficient legal protections mean that many potential whistleblowers opt to remain silent. A 2009 survey found most people who had paid a bribe or witnessed wrongdoing did not file complaints.

Outside journalism circles, most people do not perceive whistleblowers as a group that needs special protection, demonstrated by the fact that there is no standardised term for “whistleblower” in the Czech language.

Prospects

Despite these realities, public perceptions are slowly but surely changing for the better. Whistleblowers in the Czech Republic are no longer automatically labelled as troublemakers, snitches or political opportunists. The concept of the honest citizen who is simply working for justice is gradually becoming broadly accepted. However, the political establishment is not keeping pace with societal views.

Plans have been floated to integrate whistleblower protections into the Czech Anti-Discrimination Act, though they are not expected to go beyond the Labour Code. A whistleblower centre is being considered as a component of a new anti-corruption strategy for 2013-2014. However, the strategy resembles a checklist rather than a detailed strategy.

Other Considerations

Hazy rules and the ill-defined relationship between journalists and whistleblowers may explain why many whistleblowers do not come forward. Based on interviews with reporters and editors and on an analysis of articles, it was found that the media makes no distinction between whistleblowers, sources and witnesses. Additionally, some journalists were unaware that other countries devote special attention to whistleblowers via designated laws.

Surprisingly, Czech reporters estimate that 70-90 per cent of their sources insist on anonymity. Yet, editors said that they do not recommend (nor welcome) anonymous sources, due to potential manipulation of journalists. More surprising, editors said that they generally do not try to prevent named whistleblowers from being punished.

DENMARK⁶⁷

Rating: Partial

Laws

Denmark lacks a stand-alone whistleblower law, has no dedicated agency to advise and protect whistleblowers, and is the only Nordic country with no well-defined whistleblower regulations of any kind. Additionally, court rulings on whistleblower cases have been rare. However, this may change in the near future.

Such as it is, the legal framework that loosely could be applied to whistleblowing consists of laws related to freedom of speech and employees' right and duty to inform the public about wrongdoing and irregularities.

Denmark's Penal Code is considered to be the legal instrument that is closest to a whistleblower regulation. Public employees are permitted to disclose confidential information if they are instructed to do so, are acting in an obvious public interest, or are acting in their own or others' best interests. However, the code does not protect whistleblowers from retaliation, and it is complicated by trade-offs that are difficult to predict.

Danish whistleblower caught up in Iraq War controversy

Among the voices questioning the evidence used to justify the Iraq War was that of Frank Grevil. A major in the Danish Defence Intelligence Service, Grevil gave journalists classified information in 2004 revealing that former Prime Minister Anders Fogh Rasmussen, who supported the war, had publicly overstated the evidence of weapons of mass destruction in Iraq. Grevil was sentenced to four months in jail for leaking the documents. In 2009, he received the Sam Adams Award for integrity in intelligence. After leaving office in 2009, Rasmussen became Secretary General of NATO.⁶⁸ A public investigation into the background of Denmark's involvement in the Iraq War is expected soon.

Another law, the Employers' and Salaried Employees' Act, which covers most workers in Denmark, allows for compensation if an employee is arbitrarily fired. However, the compensation is considered to be rather low compared to the potential costs and consequences of whistleblowing and the burden of proof falls on the employee rather than the employer.

A law scheduled to take effect in January 2014 requires financial institutions supervised by the Danish Financial Supervisory Authority to establish whistleblower regimes. The systems must cover

⁶⁷ Information is derived from the national background research report: Louise Scheibel Smed, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Denmark* (Denmark: August 2012).

⁶⁸ BBC News, 'Danes on Trial Over Iraq Secrets', *BBC*, 13 November 2006, <http://news.bbc.co.uk/2/hi/europe/6143794.stm> (accessed 20 October 2013); BBC News, 'Danes Acquitted Over Iraq Secrets', *BBC*, 4 December 2006, <http://news.bbc.co.uk/2/hi/europe/6206848.stm> (accessed 20 October 2013); BBC News, 'Denmark Reveals Iraq Arms Secrets', *BBC*, 19 April 2004, <http://news.bbc.co.uk/2/hi/europe/3639977.stm> (accessed 20 October 2013); Ray McGovern, 'Honoring an Iraq War Whistleblower', *Consortium News*, 30 January 2009, <http://www.consortiumnews.com/2009/013009a.html> (accessed 20 October 2013); Nyhederne, 'Fængsel Til Eksperten Der Ikke Ville Tie', *nyhederne*, 16 April 2004, <http://nyhederne.tv2.dk/article.php?id=615655:f%C3%A6ngsel-til-eksperten-der-ikke-ville-tie.html> (accessed 20 October 2013).

breaches of financial regulations but can be expanded to cover other areas.⁶⁹ This would mark a notable change, although in only one sector.

In general, legally granted freedom of speech for public employees is considered to be greater than in the private sector. Yet, in terms of whistleblowing, the public sector lags behind the private sector.

Politics

Instead of laws and regulations, the Danish employment market is regulated, to a large degree, by voluntary agreements between workers and employers' organisations – a system in which the government generally does not interfere. Within this "Danish Labour Market Model", in which 80 per cent of Danish workers are union members, many workplace conflicts are solved by employees reporting wrongdoing to union representatives.

As of 2013, three local governments have formed whistleblower agencies. However, a recent study of all local governments in Denmark showed that three out of four are not interested in establishing whistleblower procedures mechanisms.

Society

Increased media attention on the issue, the effects of the global financial crisis, and the formation of whistleblower agencies in the private and the public sectors have begun to change Danish society's attitude towards whistleblowing. Some believe that scandals such as bank collapses could have been avoided if whistleblowing laws and procedures had been in place.

Reflecting this, 100 private sector whistleblower mechanisms have been registered with the Data Protection Agency and 20 new applications have been filed.

Because the Danish language has no proper translation for whistleblowing, news headlines often contain terms such as snitches, and gossip and rumour. There has been a tendency in the media to view whistleblowers with some hostility, with the Frank Grevil case (see box, previous page) as an example.

Prospects

Various proposals by political parties have been presented to improve freedom of speech for government employees, including a proposal to establish a whistleblower agency and to shift the burden of proof in disputes to employers. To date, none of these proposals have been passed in Parliament.

Large labour unions that were once opposed to expanded legal protections for whistleblowers have begun to rethink their position.

Among the prevailing options to improve the situation are establishing an independent agency to advise and protect whistleblowers, raising compensation for unfair dismissal, and criminalising the identification of a whistleblower.

Other Considerations

There is a need in Denmark to enhance public employees' willingness to engage in public debates. Studies conducted by two major labour unions in 2010 and 2012 show that awareness-raising steps

⁶⁹ Mette Klingsten, 'Obligatorisk whistleblowerordning', *Berlingske*, 20 October 2013.

have not improved the situation. In fact, the number of public employees who fear retaliation for voicing concerns doubled from 2008 to 2012, primarily due to the financial crisis.

One study showed that 22 per cent of government employees who had publicly voiced concerns about their workplace faced harassment, and 38 per cent decided not to go public due to fears of negative consequences.⁷⁰

⁷⁰ 'Behov for whistleblower-ordninger på danske arbejdspladser', FTF, 28 January 2011 www.ftf.dk/fileadmin/Bruger_filbibliotek/Loen_og_personale/Arbejdsret/Whistleblower.pdf (accessed 31 October 2013).

ESTONIA⁷¹

Rating: Partial

Laws

Estonia has a very narrow legal framework for protecting whistleblowers and enabling whistleblowing – including the absence of a stand-alone whistleblower law.

The only notable law in Estonia that pertains to whistleblowing is the Anti-Corruption Act, which covers the reporting by public officials of corruption and other types of wrongdoing. An updated version of the law was passed in June 2012 and took effect in April 2013.

The new law prohibits public officials from withholding acts of corruption and bribery, and allows for disciplinary measures if this is violated. The names of whistleblowers are automatically kept confidential, unless incorrect information is intentionally reported, which could also trigger criminal penalties. Though disclosing information to the media or NGOs is not permitted, the updated law is generally seen to create more favourable conditions for whistleblowers. The new law also applies when public officials disclose wrongdoing in the private sector. The enforcement of these provisions in practice, however, is unclear.

According to the Data Protection Inspectorate, Estonia's law on personal data protection allows whistleblower mechanisms to be set up in the private sector only if required by a specific regulation.

Whistleblowers are also theoretically protected under a variety of other laws, though there is very little practical experience to gauge their effectiveness or value.

Politics

Save for modest improvements to the Anti-Corruption Act, there is no apparent momentum among Estonia's political leadership to improve whistleblower protections and procedures, and the issue is not a high priority in Parliament. Lawmakers, for example, have not yet required government agencies to develop and enforce internal whistleblowing systems, and the discretion for creating them lies with the agencies themselves.

The results from a questionnaire sent to Estonian ministries and the Tax Office confirm that little has been done to establish internal whistleblowing mechanisms or regulations. Moreover, only a few ministries reported that genuine whistleblowing on corruption has taken place and details were generally not provided.

Additionally, the government has not followed through on its plans to develop whistleblower procedures in the high corruption-risk healthcare industry.

⁷¹ Information is derived from the national background research report: Asso Pii, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Estonia* (Estonia: September 2012).

Society

The public (as well as civil servants) generally harbours negative impressions of whistleblowing and associates it with reporting on people in order to harm them. In one survey, 74 per cent of those surveyed said they would react passively when witnessing bribery. However, there are indications that opinions in Estonia may be changing. Citizens are growing more willing, at least, to report cases in which lives may be in danger.

Prospects

Lacking any meaningful or consistent political support for better whistleblower procedures, and given the strong misconceptions, resources should be devoted and effort exerted to inform the public of useful cases of whistleblowing and how the practice can help to detect and prevent corruption, fraud and mismanagement.

Estonian whistleblower: “The war is against me.”

After twice winning court cases to keep her job, a government whistleblower in Narva, Estonia, eventually lost her job when the city disbanded her department. The case of the former Deputy Director of Narva’s Property and Economy Department received wide media coverage. She was ostracised and fired after making allegations of procurement and contract irregularities involving a network of politicians and business people. She won court cases to keep her job in 2011 and 2012, although she ultimately lost the job when the city dissolved her department. In a media interview, the former official said, “My dismissal was not legal. The war is against me.”⁷²

In the private sector, companies should be informed of how sound whistleblowing systems can improve their internal risk management.

Other Considerations

According to a 2010 survey by the Ministry of Justice, only 1 per cent of citizens and business owners and 13 per cent of civil servants who had personally experienced corruption reported the cases to authorities.⁷³ Even prosecutors and judges have said they are not keen on reporting wrongdoing to law enforcement. Such findings confirm the strong psychological burden related to coming forward: citizens are reluctant to disturb their organisation’s microclimate and are afraid of psychological pressure.

There is a sense among experts that even if it were passed, a whistleblower protection law in Estonia would not work in practice.

⁷² Tartu County Court’s Jõhvi courthouse’s court ruling in an administrative matter nr 3-11-2694, 31 January 2012, <https://dokregister.narva.ee/index.php?page=docshow&docid=86142> (accessed 20 October 2013); Koit Brinkmann, ‘Narva vallandas kahtlastele tehingutele tähelepanu juhtinud ametniku’, *Äripäev*, 9 January 2012, www.ap3.ee/?PublicationId=A0A766E7-8C4D-471A-8873-6B8F8B13D7C7&SiteId=90C2BB91-3761-4C60-9CC9-0E25A8AE6951 (accessed 20 October 2013); Hanneli Rudi, ‘Narva kaotab ametnikust vabanemiseks ameti’, *Postimees*, 23 May 2012, www.postimees.ee/851558/narva-kaotab-ametnikust-vabanemiseks-ameti (accessed 20 October 2013).

⁷³ ‘Corruption in Estonia: Study of Three Target Groups 2010’, Ministry of Justice, 2010, www.just.ee/orb.aw/class=file/action=preview/id=52486/13.+Korruptsioon+Eestis.+Kolme+siht%FChma+uuring+2010.pdf (accessed 31 October 2013).

FINLAND⁷⁴

Rating: None or Very Limited

Laws

Finland has no designated law to protect whistleblowers and no specific, official channels for whistleblowers to disclose wrongdoing. Finland has no dedicated agency to investigate whistleblowers' disclosures, no specific means for whistleblowers to be compensated for retribution and no penalties for people who retaliate against them.

Rather, Finland has relied on the principles of openness, transparency and accountability to serve as the main bulwarks against corruption. This means that few specific measures have been introduced to support whistleblowers. Accordingly, the OECD has observed that officials depend on limited witness protection procedures and that unjustly fired employees must file lawsuits in hopes of being reinstated.

In some cases, citizens are required to report wrongdoing, though there is no legal protection for coming forward – only punishment for not doing so. The Criminal Code makes it a crime to fail to report a serious offence, such as murder, high treason and robbery. But these offences typically would not apply to the usual workplace whistleblowing situation. Government officials are required to report offences in “well-substantiated” cases to the police without delay.

Certain civil laws that provide protection from discrimination could, theoretically, apply to a whistleblower case, but there are no known cases of this occurring.

Many large companies in Finland have voluntarily created internal control and whistleblowing mechanisms according to international guidelines and, in some cases, based on local legislation (see Other Considerations, below). Often, the mechanisms are transparent and auditable. One of the few channels for citizens to report misdeeds is the website of the Police of Finland – *Nettivinkki* (Net Tip) – which can be used anonymously.

Politics

Finland's inaction on whistleblowing began to shift in October 2012 when the government said it would fully implement all requirements of international organisations to combat corruption. Whistleblower protection was included in this decision.

The Anti-Corruption Network, established under the Ministry of Justice in response to international anti-corruption recommendations, has brought together federal and local government officials and representatives from the private sector and NGOs. In 2013, the network named whistleblower protection a priority and began preparing proposals to comply with OECD recommendations. Concrete steps were scheduled to be completed by the end of 2013.

⁷⁴ Information is derived from the national background research report: Johanna Peurala, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Finland* (Finland: October 2012).

Society

Finland lacks a strong history of whistleblowing or the filing of complaints. Within organisations there is a preference to resolve issues internally. Labour unions are the preferred venue for settling cases of wrongdoing in the workplace.

Attitudes, however, have begun to change. Strong and independent media organisations have taken a greater interest in whistleblowing, as have academics, NGOs and social media practitioners. Additionally, because of a lack of legal safeguards, ethical and moral-based public arguments support transparency in public and corporate actions, and this trend seems to be growing.

Prospects

In 2009, the OECD recommended that Finland at least introduce mechanisms to protect from retaliation public and private sector employees who report (in good faith and on reasonable grounds) suspected acts of foreign bribery. The beginnings of a discussion about enacting formal whistleblower protections is finally underway.

The citizenry and social media practitioners are becoming engaged, and some corporations have begun to take voluntary steps to improve accountability.

Other Considerations

Finnish companies have begun to pay more attention to whistleblowing but they still have a long way to go. According to a survey by KPMG Finland, in 2011, fewer than half of the 50 largest companies in Finland had information on their websites saying that they had internal whistleblower disclosure channels available for their employees. And only about half of those provided the opportunity to send messages anonymously. Only a third had reporting systems that were explicitly accessible to outside parties.⁷⁵ Based on these results, it would seem that Finnish companies are not taking full advantage of whistleblowing opportunities.

⁷⁵ KPMG selvitti whistleblowing-järjestelmien hyödyntämistä suomalaisyhtiöissä, KPMG (20 October 2011) www.kpmg.com/fi/fi/ajankohtaista/uutisia-ja-julkaisuja/lehdistotiedotteet/sivut/kpmg-selvitti-whistleblowing-jarjestelmien-hyodyntamista-suomalaisyhtiöissa.aspx (accessed 31 October 2013).

FRANCE⁷⁶

Rating: Partial

Laws

France has no designated law to protect whistleblowers from retaliation. Moreover, until very recently, there has been no political momentum behind strengthening whistleblower laws, no public debate on the issue and no established definition of a person who comes forward to report wrongdoing.

In recent years, strong debates about data protection have sidelined attempts by companies to set up internal whistleblower procedures, leaving private sector workers at the mercy of a poorly defined law.

Overall, the limited protections within the country's labour, civil and criminal codes provide inadequate protections for employees. France is an international oddity, having legislation that ostensibly protects employees of private companies but no law covering government workers.⁷⁷

This law, the 2007 Anti-Corruption Act, intends to protect employees of private companies and "state-owned industrial and commercial establishments" (EPICs) from retaliation if they report wrongdoing in good faith. However, there is no independent agency to conduct investigations or collect data, no clear definition of wrongdoing, no protection of the whistleblower's identity, and no specified internal or external reporting channels.

France blocks US-style whistleblowing

Worries about violating employees' and managers' rights to privacy, and to defend themselves from accusations, led France's Data Protection Authority (CNIL) to reject corporate whistleblower policies that would have permitted anonymous complaints. In 2005, the CNIL turned down applications from McDonalds France and Compagnie Européenne d'Accumulateurs to set up whistleblower procedures to comply with the new United States (US) Sarbanes-Oxley Act.⁷⁸ The US law has been strongly criticised by the French media and labour unions.

Civil servants are legally required to disclose to the State Prosecutor crimes and offences of which they have knowledge but without the benefit of advanced legal protection against retaliation. This gap has left many civil servants jobless and ostracised (see Other Considerations, below).

In a sign that the situation may be improving, in April 2013, the parliament passed a provision to protect whistleblowers who expose health and environmental risks, as well as to strengthen the

⁷⁶ Information is derived from the national background research report: Nicole Marie Meyer, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: France* (France: September 2012).

⁷⁷ Typically, whistleblower laws (in countries that have such laws) protect government employees but not company employees.

⁷⁸ A. E. Worlton and J. Reynolds, 'French Data Protection Authority Blocks SOX Whistleblower Programs', *Privacy In Focus*, July 2005, www.wileyrein.com/publications.cfm?sp=articles&newsletter=4&id=1829 (accessed 16 October 2013).

independence of scientific expertise. In June 2013, Public Administration Minister, Marylise Lebranchu, announced a proposal to protect whistleblowers in the public service.

Additionally, active legislative proposals would protect the disclosure of conflicts of interest and tax evasion. Yet, none of these proposals call for setting up an independent whistleblower agency, protecting the identity of whistleblowers or establishing specified reporting channels.

Politics

Many French political, business and union leaders are staunchly opposed to granting additional legal protections to whistleblowers. Despite international pressure, there is no meaningful effort to pass a comprehensive whistleblower law in France.

A senior government official, in fact, once categorised whistleblowing as “social gangrene” that “paves the way for populism”.⁷⁹ Referring to the US Sarbanes-Oxley Act, which extends whistleblower protections to employees of publicly traded companies, one newspaper headline read, “Whistleblowing does not cross the Atlantic”.⁸⁰ Some unions fear whistleblower systems would make their own procedures questionable, reducing their influence.

Society

Whistleblowers can go by many names in France, including sneaks, informers and “crows” (writers of poison-pen letters). Only in the past several years has public opinion changed, following the exposure of financial, health and environmental scandals. Whistleblowers whose careers were ruined have started to gain support from NGOs, trade unions and some political parties.

The public and the media were relatively indifferent to the practice of whistleblowing until the US Sarbanes-Oxley Act was passed in 2002. This led to harsh criticisms that the law’s whistleblower provisions were hostile to human rights and employee privacy and dignity.

Prospects

Media coverage of scandals and shifting public opinion may be the keys to advancing the whistleblower agenda. In the largest public health scandal in France in at least a decade, the converted diabetes drug Mediator was taken off the market in 2009 after as many as 2,000 people who took it for weight loss died. More than 5 million people had taken the drug over three decades, during which time the manufacturer is alleged to have concealed the health risks. This, along with public concerns over salt consumption and the solvent glycol ethers, may help to reverse public opinion about the value of whistleblowing.

In March 2013, the scandal revolving around former Budget Minister Jérôme Cahuzac⁸¹ compelled the government to propose three anti-corruption bills (related to public service transparency, tax evasion and obligations for the public service) that contain three whistleblower clauses. The

⁷⁹ Convention Nationale de la Compagnie des Conseils et Experts Financiers: *Le Whistleblowing*, *Compagnie des conseils et experts financiers*, 2007, p. 5, www.ccef.net/images/pages_externes/convention_2007/convention/CR04122007.pdf (accessed 18 October 2013).

⁸⁰ Cori Nicolas, ‘L’alerte éthique ne franchit pas l’Atlantique’, *Libération*, 15 September 2005, www.liberation.fr/economie/2005/09/15/l-alerte-ethique-ne-franchit-pas-l-atlantique_532405 (accessed 16 October 2013); Nicole Marie Meyer, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: France* (France: September 2012).

⁸¹ In 2013 Jérôme Cahuzac resigned and was investigated by prosecutors. See: Henry Samuel, ‘France’s former tax tsar admits having undeclared Swiss bank account’, *The Telegraph*, 2 April 2013, www.telegraph.co.uk/news/worldnews/europe/france/9967585/Frances-former-tax-tsar-admits-having-undeclared-Swiss-bank-account.html (accessed 20 October 2013).

provisions were included as a result of cooperation with Transparency International France. The law on public service transparency, which passed in September 2013, includes whistleblower protection only for disclosures related to conflicts of interest.

Other Considerations

With weak legal protections, civil servants in France run the risk of endangering their careers if they blow the whistle on wrongdoing – even though they are legally bound to do so. According to studies from 2012, civil servants who reported misdeeds occurring within their agencies were dismissed, ostracised or compelled to retire. Contract workers (20 per cent of the staff) did not have their contracts renewed or they were dismissed without a chance of reinstatement.

Factors from which civil servants can suffer include administrative slowness and respect for hierarchy, according to research by Transparency International France and the French Ministry of Justice.⁸²

⁸² Service Central de Prevention de la Corruption, 'Les dispositifs d'alerte: le whistleblowing', *Rapport 2011*, pp. 202-220.

GERMANY⁸³

Rating: Partial

Laws

With Germany lacking dedicated legislation to protect whistleblowers, a complex set of disparate laws and principles that are inconsistently interpreted by the courts makes it very difficult for whistleblowers to predict outcomes. Additionally, under German law, employees who expose endeavour to expose wrongdoing can face not only dismissal without notice but also civil liability or even criminal prosecution.

Germany relies on its courts to judge on a case-by-case basis whether whistleblowers in the private and public sectors are entitled to protection from retaliation. These rulings reveal that the courts tend to emphasise the need to respect the interests of employers, including legally enforceable duties of loyalty and secrecy that apply to employees.

This means that, barring exceptional circumstances, whistleblowers in the private sector first must report wrongdoing to their employers and wait for their reaction, before turning to government authorities. The legal framework leaves room for subjective judgments.

Other challenges for whistleblowers in Germany include loopholes in labour law, high burdens for proving damages stemming from reprisals and the fact that only 19 per cent of surveyed German businesses have internal whistleblower policies.⁸⁴ The public sector has hierarchical disclosure rules for public officials, who are obliged to report irregularities to their superiors. In instances of corruption, public officials can turn to external authorities. Public sector employees are not granted this right.

There are specific external disclosure channels for wrongdoing related to corruption, discrimination, data protection, and workplace health and safety issues.

Politics

In early 2013, the two political parties in Germany's ruling coalition held that the country's legal status quo was sufficient and that there was no need to pass specific legislation for whistleblower protection. The three main opposition parties had requested that the legal situation for whistleblowers be improved and submitted proposals to Parliament. A number of hearings were held but in June 2013 Parliament turned down all of the three proposals.

Society

The German Constitution guarantees the right to freedom of expression, though this is limited by the rights of others. This reflects the ethic of balancing the rights of various parties, which permeates the German legal system and society at large.

⁸³ Information is derived from the national background research report: Guido Strack, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Germany* (Germany: October 2012).

⁸⁴ 'Putting Corruption Out of Business – Corporate Measures in Place', Transparency International, 2012, www.transparency.org/research/bps2011/ (accessed 30 October 2013).

The term whistleblower, for which there is no literal translation, is not well known among the German public. Moreover, the concept of reporting wrongdoing, even for the benefit of the common good, can have a negative connotation.

Prospects

Since 2003, the OECD has recommended that Germany improve its private sector whistleblower protections, and in April 2013 the OECD said Germany should provide a written report on its progress within a year. In addition, the G20 and the Council of Europe are calling for legal improvements.

As of summer 2013, however, there appeared to be no interest within the ruling coalition that was in place at the time to enhance legal protections for whistleblowers. At a public hearing held in parliament in March 2012, the two ruling parties called only upon experts who favoured the status quo.

One potential impetus for change could be the recent, highly publicised case of a nurse who publicly exposed poor care in a German nursing home (see Other Considerations, below). Additionally, more than 5,400 people signed an online petition in 2011 requesting Parliament to strengthen whistleblower protections.

In recent years, some multinational companies, small- and medium-sized companies, and public institutions have begun to establish whistleblower systems and promote them in order to build public trust and acceptance.

Other Considerations

The case of nurse Brigitte Heinisch illustrates how Germany's legal system does not go far enough to protect whistleblowers. Heinisch was fired from her job at a nursing home in 2005 after she exposed poor care of some of the residents. German courts ruled against reinstating her. Heinisch took her case to the European Court of Human Rights, which ruled on 21 July 2011 that her right of freedom of expression, granted by Article 10 of the European Convention on Human Rights, had been violated.⁸⁵

The court emphasised the public interest aspect of the case, which German courts up until that time largely had ignored. It remains unclear how – or whether – the ruling on this high-profile case will alter the German courts' stance toward whistleblowers.

⁸⁵ The company paid Heinisch €90,000 in compensation in 2012. See: Ulrike von Leszczynski, '90.000 Euro für ein veröffentlichtes Geheimnis', *Sächsische Zeitung*, 25 May 2012, <http://dialog.sz-online.de/nachrichten/90000-euro-fuer-ein-veroeffentlichtes-geheimnis-1606147.html> (accessed 20 October 2013).

GREECE⁸⁶

Rating: None or Very Limited

Laws

Greece currently has neither a dedicated whistleblower law nor any meaningful regulations or judicial commitment to protect employees who disclose wrongdoing from retribution. Among the laws that theoretically are relevant for whistleblowing, there is disagreement as to whether they would apply in an actual case.

Until recently, there has been little or no political momentum to address these shortcomings, even though financial and political scandals continue to emerge, and some whistleblowers and investigative journalists have been threatened, arrested or killed.

Many laws on the books tangentially relate to whistleblowing, but it is unclear to what extent they have or could protect government and company employees who report wrongdoing. The Civil Code shields employees from unjust dismissal, and Greek law also allows government employees who expose crimes that result in the prosecution of more than one person to request a transfer if they desire. However, it is doubtful that these provisions would work in the context of whistleblowing.

Generally speaking, all citizens are legally bound to tell the authorities if they become aware of a crime.

There are no specific protections for public or private sector employees. Most major companies have codes of conduct, but they generally contain little to encourage or protect whistleblowers. Disclosing classified business information is a crime punishable by at least three months in prison.

Politics

Despite ongoing financial difficulties and political uncertainties, there has been no political or public debate about enhancing whistleblower protections in Greece.

Some insight is provided by an OECD report on Greece's anti-corruption measures. Greek officials told the OECD that whistleblowing frequently occurs because of the legal requirement that citizens report crimes and that many violators of this law have been convicted. The officials could provide no supporting statistics, and representatives from the private sector and NGOs had a different view, stating that Greeks generally are reticent to blow the whistle because of recent historical events.

In addition, while an academic and a judge consulted by the OECD believed the Civil Code could protect a whistleblower from an unjust dismissal, other observers told the OECD that it would not apply or could only be used as a last resort.

⁸⁶ Information is derived from the national background research report: Maria Nini and Anna Damaskou, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Greece* (Greece: August 2012).

Society

Greece has been struck by many financial and political scandals in recent years. In what became known as the “Greek Watergate”, more than 100 mobile phones owned by prominent politicians – including the former prime minister, mayor of Athens and top ministry officials – were illegally tapped in 2004-2005. Other recent cases include expensive delays in the purchase of the Papanikolis submarine from Germany and fraud in the Social Security Service office in Kallithea, Athens.

Eventually it was revealed that in each of these cases, the wrongdoing was known to a wide circle of people over long periods. The lid was kept on these misdeeds even though Greek law requires citizens to report crime and provides for witness protection. These scandals have led to public outrage, but there has not been widespread citizens’ support to improve whistleblower protections.

Prospects

Greek officials told the OECD in 2005 that they were considering expanding whistleblower protections. Eight years later, at a conference organised by Transparency International Greece in April 2013, the Secretary General of Transparency and Human Rights announced that the Ministry of Justice was planning to include whistleblower provisions in a new draft law against corruption.

According to the initial proposal, the new law would provide legal protections and incentives for government and company whistleblowers. A new agency would be established to investigate whistleblowers’ disclosures that concern the public interest.

Based on the EU’s formal agreement to provide financial assistance, Greece has agreed to strengthen the anti-corruption framework of its tax administration – including improved protections for whistleblowers who report corruption.

NGOs believe whistleblower protections could move the country’s financial recovery forward by helping to repatriate billions of euros held in offshore tax havens.

Other Considerations

The stories of a Greek investigative journalist may provide insight into Greece’s conflicting perceptions of whistleblowing. In October 2012, Costas Vaxevanis of the magazine Hot Doc was arrested and criminally charged with releasing private data for publishing the so-called Lagarde List. The list contained the names of more than 2,000 wealthy Greeks with money hidden in Swiss bank accounts. Facing two years in prison and a €30,000 fine, he was acquitted in court a month later.

Rating: Partial

Laws

Hungary is one of the few countries in the world that has a stand-alone whistleblower law, extending legal protection to workers in both the public and private sectors. Taking effect in 2010, the Act on the Protection of Fair Procedures bans retaliation against public and private sector employees as well as owners of small- and medium-sized businesses who disclose wrongdoing concerning public funds or property, administrative actions, or public procurement.

However, almost equally as notable, the Hungarian government has not yet set up the government agency that was envisioned to receive whistleblower reports and enforce the law. Opposed for various reasons by NGOs and opposition parties, legislation to establish the agency was vetoed by former President László Sólyom. In effect, Hungary has a whistleblower protection law without a whistleblower protection mechanism. For this reason, Hungary is ranked “Partial” rather than “Advanced”. Even still, some of the law’s provisions could be put into practice despite the absence of a whistleblower agency.

Whistleblower law does not prevent “Red Sludge” disaster

On 4 October 2010, an estimated 800 million litres of caustic red sludge poured out of a reservoir at a Hungarian aluminium processing plant. At least seven people died, hundreds were injured or forced from their homes in several villages, and tens of millions of euros in private property was destroyed. Some employees at the plant knew about looming problems with the reservoir, but the company’s director threatened to fire them if they went to the authorities. Hungary’s new whistleblower protection law had gone into effect the previous April, but with no designated agency to accept complaints, any employees who wanted to come forward had no one to contact. Hungary still lacks an agency where whistleblowers can report wrongdoing.⁸⁸

In principle, the law allows all employees to report wrongdoing to their employer, their employer’s oversight agency or an anti-corruption agency. Whistleblowers may remain confidential if they choose, and employers must prove that any actions taken against an employee was not related to the employee’s whistleblowing. The law also states that confidentiality and secrecy clauses do not apply to whistleblower disclosures made in good faith.

Elsewhere in Hungarian law, the Labour Code bans the disclosure of business secrets and contains no special whistleblowing provisions. The Civil Servants Act and other labour laws ban the release

⁸⁷ Information is derived from the national background research report: Ádám Földes, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Hungary* (Hungary: August 2012).

⁸⁸ Marton Dunai, ‘Hungary declares emergency after toxic spill’, *Reuters*, 5 October 2010, www.reuters.com/article/2010/10/05/us-hungary-spill-idUSTRE69415O20101005 (accessed 20 October 2013); Budapest Times, ‘Firm behind Hungary’s red sludge disaster hit with 474 million euro fine’, *Sofia Echo*, 19 September 2011, http://sofiaecho.com/2011/09/19/1158847_firm-behind-hungarys-red-sludge-disaster-hit-with-474-million-euro-fine (accessed 20 October 2013); Dan Bilefski, ‘Besides Hungarian Sludge, Potential Troubles Lurk’, *New York Times*, 13 October 2010, www.nytimes.com/2010/10/14/world/europe/14iht-hungary.html?pagewanted=all&r=0 (accessed 20 October 2013).

of classified information. The Criminal Code calls for punishment of public officials who fail to report cases of bribery, though it is not at all effective in practice.

Politics

On the whole, Hungarian law is inadequate in terms of protecting whistleblowers and providing them meaningful opportunities to disclose wrongdoing. Only a few whistleblower cases have been heard in courts, which have weighed public interest and freedom of expression against privacy and slander concerns. In two cases, Hungarian courts have ruled that whistleblowers were unjustly fired. However, in a recent case regarding tobacco retailing, prosecutors have not denied that a whistleblower is being investigated for violating privacy regulations.

Society

Only recently has the term whistleblowing become known among politicians and the public as an effective means for fighting corruption. In a survey of public officials who were asked about reporting wrongdoing by a colleague or superior, more than half responded, “Less said, the better”, while less than a third were in favour of reporting the wrongdoings, saying that, “Who is silent is an accomplice of the guilty ones”.

Citizens in Hungary tend not to report corruption for three main reasons: fear and/or dislike of the police, fear of reprisals from government institutions, and because reporting corruption is not worth it.⁸⁹ According to Transparency International's *Global Corruption Barometer 2013*, 7 out of 10 surveyed Hungarian citizens would not report a case of corruption if they knew about one.⁹⁰

Prospects

Hungary's Act on the Protection of Fair Procedures remains largely dormant. And, despite commitments by the current government, there are no plans to set up a government agency to receive whistleblower complaints and enforce the law.

Other Considerations

Based on a recent study, the Hungarian media is not prone to assess the motivations of whistleblowers or the perception of whistleblowing. An analysis by the Hungarian NGO K-Monitor of 45 articles about whistleblowing from 2009 to 2012 reveals that only seven sought to address whistleblowers' motivations. In only 2 of 11 articles did the media make value judgments of whistleblowers (both positive), and only 5 of 14 articles placed a judgment on whistleblowing (4 positive, 1 negative).

Among the motivations cited were whistleblowers' commitments to honourable professional work, anonymous retribution against another person and when would-be participants in corruption schemes deemed bribes demanded of them to be too high.

⁸⁹ K-Monitor Association, *Whistleblower Protection in the Central and Eastern Europe Region: Whistleblowing in Hungary*, Hungarian Civil Liberties Union, 2010, p. 8.

⁹⁰ Transparency International Hungary, 'Global Corruption Barometer: Summary of Results', 2013.

IRELAND⁹¹

Rating: Partial

Laws

Despite a series of major scandals and what has widely been considered a failed attempt to handle whistleblowing on a piecemeal basis, Ireland still lacks a designated law to protect whistleblowers. In the past two years, however, the momentum behind passing a comprehensive whistleblower law has grown significantly.

Ireland has installed many specific whistleblower provisions over the past decade. These cover, for instance, reporting suspicions of child abuse and neglect, bribery, ethics violations by public officials, corruption and malpractice by the police, health and safety hazards, and white-collar crimes. However, gaps in protection remain.

Options for whistleblowers are also limited. The typical course for a whistleblower who has been fired is to lodge a complaint with the Employment Appeals Tribunal or Labour Court. Normally, financial compensation for retaliation is capped at two years' salary, which may not be enough to support a whistleblower who is engaged in a lengthy legal battle.

The risks faced by prospective whistleblowers are compounded by legal provisions making false reporting a criminal offence in certain circumstances. Under the Health Act, for example, making a false claim that a person "ought to know" can result in criminal penalties including up to three years in prison.

These shortcomings and continuing public concerns about corruption led to the publication of the Protected Disclosures Bill in 2013, which would grant comprehensive legal protections to whistleblowers in both the public and private sectors. The bill was drafted with advice and input from Transparency International Ireland.

Politics

After a series of political corruption scandals in Ireland, a proposal for an overarching whistleblower protection law was presented in 1999. However, it languished for seven years before being dropped because of "legal complexities" that were never fully explained.

Ireland has since reconsidered its position in light of criticism. An official inquiry in 2012 found that the country's fragmented approach toward whistleblowing is complex and opaque, and even likely to deter people from reporting corruption. Attitudes toward whistleblowing are also likely to have been influenced by the banking crisis of 2008 and the publicity surrounding corruption in local authorities, political parties and public contracting.

⁹¹ Information is derived from the national background research report: Lauren Kierans, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Ireland* (Ireland: February 2013).

Society

The public's attitudes towards whistleblowers may be improving due to positive coverage of them in the media. National television and radio stations have broadcasted high-profile, dramatised accounts of whistleblowing.

The recognition of the important role whistleblowers play in exposing wrongdoing arises from the large number of well-publicised cases they have brought to light. In recent years, whistleblowers have exposed maltreatment and sexual abuse of hospital patients, reckless lending and potential fraud in Irish banks, and potential corruption in local and central government (see Other Considerations, below).

Prospects

The Irish government published the Protected Disclosures Bill in June 2013. If it is enacted with key provisions intact, it holds the potential to be one of the world's strongest whistleblower protection laws. It would provide relatively strong legal safeguards for workers in the public, private and non-profit sectors. Whistleblowers would be able to report to employers, government authorities, members of parliament and, in certain circumstances, to the media. They would also receive civil and criminal immunity when making a protected disclosure, and they would be given the right to seek legal damages for any retaliation or discrimination arising from making a protected disclosure.

Employers' representatives have been reluctant to publicly welcome the bill and have claimed it may open them to reputational damage and false or malicious claims.

Other Considerations

Louise Bayliss could not keep quiet when she learned that five psychiatric patients would be kept in a locked hospital ward in Dublin over the Christmas holiday in 2011. But after she exposed the situation on a radio call-in show, she was fired by her employer, the Irish Advocacy Network. A few days after the scandal reached the national media, she was offered her job back. One month after the episode, the draft law to protect all public and private sector whistleblowers in Ireland was unveiled.

ITALY⁹²

Rating: Partial

Laws

Italy not only lacks a comprehensive whistleblower law, but it also has a fractured legal system that can make it very difficult for employees to understand their rights and protections.

However, after several years of political and public debate, in October 2012, the government included into its Anti-Corruption Law the country's first-ever provision intended to legally protect public sector whistleblowers from retaliation.

This relatively narrow provision covers government employees who report illicit activities as long as they do not commit libel or defamation or harm a person's right to privacy. Employees can only disclose information to a workplace supervisor, the Judicial Authority or the Court of Auditors. Their identity cannot be revealed without their consent.⁹³ In a formal submission, Transparency International Italia had called for wider protection covering employees in both the public and private sectors.

Lawmakers rejected suggestions to pass a comprehensive whistleblower law, turned down amendments that would have extended protection to private sector employees and added demotion to a list of banned forms of retaliation.

A variety of other criminal, civil, administrative, labour and data protection laws and regulations touch on whistleblowing, although in a fragmented manner that creates confusion and contradictions.

Politics

Italy has not benefited from a consistent political debate about how – or even whether – whistleblowers should be granted legal protections. Whistleblowing as a productive corruption-fighting tool has begun to garner attention only recently, as demonstrated by increasing interest among the media and academia.

The political debate has also slowly picked up momentum. In addition to the 2012 provision for government employees, another notable step taken recently was the government's establishment of the Commission for the Study and Elaboration of Proposals on Transparency and Prevention of Corruption in the Public Administration. The commission's recommendations included reviewing whistleblower procedures and issuing rewards in return for useful disclosures.

In June 2013, the city of Milan passed a measure to protect and promote whistleblowing by city employees, following a cooperative effort by Transparency International Italia and the Milan City Council's Anti-Mafia Committee.

⁹² Information is derived from the national background research report: Davide Del Monte and Giorgio Frascini, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Italy* (Italy: July 2012).

⁹³ Unless the accusations are exclusively based on the disclosure; or if knowledge of the whistleblower's identity is of absolute necessity to defend the accused person.

Society

A variety of factors discourage whistleblowing in Italy, including a “duty of loyalty” that prohibits employees from disclosing negative information about their employer. Other legal provisions that oblige public officials to report wrongdoing and protect employees from unwarranted firing have not promoted whistleblowing. The courts have not been consistent in ruling on the legality of whistleblower retaliation, and cases can take many years to be settled.

Prospects

Despite recent advances, it appears that the political establishment in Italy is still hesitant toward supporting full legal protections for whistleblowers – in contrast to international recommendations. However, the public is beginning to understand the concept of whistleblowing and its value in combating corruption.

Signalling possible change in the future, Mario Draghi, President of the European Central Bank and former Governor of the Bank of Italy, recently made an appeal for better whistleblower protections in Italy.⁹⁴ In September 2012, the Bank of Italy itself issued a consultation document that provides for implementing alert systems.⁹⁵ And the Italian Authority for the Protection of Private Data has urged the Parliament to better regulate whistleblower procedures.

Other Considerations

In some instances, data protection rules have blocked efforts to install whistleblower procedures. If a public agency or private company allows anonymous reporting or if it investigates a report without notifying the accused person, this could be considered unlawful in court. In the absence of a legal framework that can guide agencies and companies in drafting policies, implementing whistleblowing procedures remains very limited in practice.

⁹⁴ ‘L’azione di prevenzione e contrasto del riciclaggio’, Testimonianza del Governatore della Banca d’Italia Mario Draghi, Rome, 22 July 2009, https://www.bancaditalia.it/interventi/integov/2009/220709/draghi_220709.pdf (accessed 20 October 2013).

⁹⁵ Bank of Italy, ‘Disposizioni di vigilanza prudenziale per le banche. Sistema dei controlli interni, sistema informativo e continuità operativa’, 3 November 2012, www.airant.it/content/banca-ditalia-disposizioni-di-vigilanza-prudenziale-le-banche-sistema-dei-controlli-interni- (accessed 20 October 2013).

Rating: Partial

Laws

Latvia lacks a dedicated law to protect or empower whistleblowers – and the few provisions on the books that relate to whistleblowing are not known to have been tested or tried in court. Despite 20 years of institution-building based on best practices for open government, efforts to legally protect whistleblowers have been held back by a lack of understanding of the importance of such protection for good governance.

The only legal instrument dealing directly with whistleblower protection is the Labour Law, which bans retaliation against public and private sector employees who report suspicions of crimes or administrative violations in the workplace to government officials.

However, employers are primarily responsible for ensuring compliance with the law, and victimised employees seeking compensation for financial losses or moral harm must go to court, which can be a lengthy and, thus, expensive prospect in Latvia. Government agencies interviewed for this report could not cite any cases in which this provision has been used in practice.

Other laws require certain categories of people to report misdeeds related to financial transactions, environmental pollution, maritime law and dangerous equipment; public officials are bound to report conflicts of interest. Any protections for coming forward with such information are unproven.

Would-be whistleblowers must consider that defamation is actionable in civil court (with the burden of proving factuality on them), and that disclosing restricted information such as commercial secrets and financial market information can be criminally punishable.

There are no clear, well-functioning whistleblower reporting channels in the public or private sector. Latvia has many reporting hotlines in the public sector, but the results have not been fully analysed. Installing whistleblower systems is not on the agenda of corporate leaders, despite the fact that many businesses in Latvia are part of multinational corporations with strict anti-corruption policies.

Politics

In itself, the lack of a legislative framework for whistleblowing in Latvia reflects a failure to recognise whistleblowing as an acknowledged form of exposing corruption. Latvia is in the process of developing sound instruments for dealing with dissent and wrongdoing within organisations and the country in general. However, no draft laws to improve whistleblower protection are on the political agenda.

This leaves whistleblowers on unsure legal ground. Criminal court processes are underway against a computer scientist who accessed the database of the State Revenue Service, and they are also underway against a lawyer who reported allegations of corruption within the police.

⁹⁶ Information is derived from the national background research report: Aiga Grišāne, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Latvia* (Latvia: December 2012).

Society

Employees in many organisations and public agencies are reluctant to undermine the legitimacy and the authority of their superiors and often keep quiet about their ineffective and sometimes illegitimate actions. This fear and the practice of non-interference are enhanced by Latvia's close-knit society.

Prospects

The concept of whistleblowing is new and underdeveloped in Latvian society, both in terms of practice and legal regulation. Proposals to strengthen whistleblower protection are moving ahead very slowly. Most of any progress recorded has been due to demands from international institutions rather than internal political will and public demand.

In addition to facilitating a cultural shift toward greater acceptance, specific whistleblower channels should be considered, which is important at both the local and national levels.

Other Considerations

Employees who report alleged corruption are often harassed, transferred or fired for official reasons other than bringing up wrongdoing. A striking example is a case in which employees of the State Fire and Rescue Service took an interest in the purchase of what they considered to be excessively expensive new motor vehicles and equipment. As a result, a disciplinary case was opened against the whistleblower for slandering the agency. Grounds were also sought for opening another disciplinary case against him, of which he was found guilty.⁹⁷

⁹⁷ Aiga Grišāne, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Latvia (Latvia: December 2012)*, p. 18, http://delna.lv/wp-content/uploads/2011/04/Trauksmes-celeju-aizsardziba-LATVIJA_zinojums.pdf (accessed 17 October 2013).

Rating: None or Very Limited

Laws

Despite several attempts to improve whistleblower laws over the past 10 years, Lithuania still lacks a comprehensive law to protect whistleblowers from retaliation. And, unlike many or most other EU countries, Lithuania's legal framework does not provide any specific protections for public or private sector employees who report wrongdoing. Whistleblowing has no recognised definition, and whistleblower cases are not categorised as such in official circles.

No whistleblower provisions are included in Lithuania's labour, civil servant, criminal, corruption prevention, or environmental or consumer protection laws. While employees are legally protected from unfair dismissal under certain circumstances, whistleblowing is not specifically taken into account.

Some government agencies have mechanisms for employees to report wrongdoing, but their effectiveness is highly questionable. According to most agencies, few cases have actually been reported. The situation in the private sector is even less clear-cut. The corporate culture of whistleblowing appears underdeveloped, and few codes of ethics or conduct include whistleblower protection.

In 2013, the government approved the Ministry of Interior's standardised guidelines for reporting potential infringements. Although not directly related to all whistleblowers, the guidelines, to some extent, will contribute to the clarity of reporting channels and procedures for whistleblowers in public institutions.

The only other legal provision remotely related to whistleblowing is a 2003 resolution that allows people to be paid for giving the government useful information on financial crimes. But this has never been known to be used in practice.

Politics

The political debate over whistleblower legislation in Lithuania dates to at least 2003 when the government passed the resolution to reward people for exposing financial crimes.⁹⁹

In 2005, a draft law on protected disclosures stalled in Parliament, but discussions were renewed in 2008 with the election of a new government. Transparency International Lithuania proceeded to research and draft a proposed law. Government officials, however, significantly altered and narrowed the proposal before it was submitted to Parliament.

Whistleblower protection was also included in the government's official programme for 2009-2012 and in the 2011 National Anti-Corruption Programme. A package of government proposals has been assembled to include at least minimal protections for whistleblowers, but the provisions are seen as being very narrow in terms of defining whistleblowers and safeguards. There is still no consensus among politicians as to whether additional legal measures are needed.

⁹⁸ Information is derived from the national background research report: Transparency International Lithuania, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Lithuania* (Lithuania: October 2013).

⁹⁹ In early 2013, Parliament began discussions on reforming or rescinding this ineffective provision.

Society

Surveys commissioned by Transparency International Lithuania reveal that the public sees whistleblowers as being brave and proactive. Today, few people would publicly brand whistleblowers as snitches. Still, there is a reluctance by government agencies and private companies to establish an all-encompassing whistleblower protection system. And, because Lithuania lacks specific regulations and even an accepted term for whistleblowing, it is very difficult to label any cases as such. This makes it difficult to analyse unfair dismissals that may actually be whistleblower cases brought by employees to labour courts.

Prospects

There has been a significant and promising shift in society's attitudes toward whistleblowing, which suggests that any future legal proposals may benefit from this improving environment.

A 2008 survey revealed that most people view whistleblowing as a positive and civic-minded action. More than 80 per cent of company managers, government employees and citizens said whistleblowers are brave. At the same time, however, 45 per cent of company managers said whistleblowers are "selfish and willing to take down people who are not convenient to them", and 24 per cent said whistleblowers "have a sick mind". This would indicate a transformation is needed within the private sector.

Following the National Anti-Corruption Programme, the Ministry of Justice has prepared draft amendments to various laws that aim to encourage whistleblowing in the public sector. Included are provisions such as the duty to blow the whistle and to protect a person's identity – but only for public officials. Due to the narrow protections, unclear channels of reporting and the small group of people to which the provisions apply, Transparency International Lithuania has asked for clarification and broader regulations.

Other Considerations

The implementation and use of anti-corruption and crime-fighting hotlines are on the rise in Lithuania. However, a 2011 study by Transparency International Lithuania revealed systemic and structural problems related to data protection and information handling. After analysing 217 public institutions, Transparency International Lithuania found that they do not fully realise or articulate the need for such hotlines; information provided by the institutions is not clear or comprehensive enough; and there are no standards for data protection concerning the reports and those who report.

The findings sparked a lively debate that led to new government rules adopted in October 2012 on receiving and handling information. The rules, however, are rather limited in scope and in many cases do not offer substantial guarantees.

LUXEMBOURG¹⁰⁰

Rating: Advanced

Laws

Luxembourg has taken several steps in recent years to bolster legal protections for whistleblowers – including a significant reform to its labour and civil service laws in 2011.

Following recommendations by international organisations, in February 2011, Luxembourg passed the Law on Strengthening the Means to Fight Corruption. Though not a dedicated whistleblower law per se, the reform updated existing laws to include legal protections for public and private sector employees who report corruption, influence peddling or abuse of office. If an employee is fired, he or she can appeal the decision to a Labour Court,¹⁰¹ and the employer must prove that the firing was justified by objective grounds not related to whistleblowing.

Employees may report misdeeds to a superior, the Public Prosecutor's Office or an appropriate regulatory agency. There are no protections if whistleblowers contact the media, NGOs or other groups outside the workplace.

To date, the reforms have not been known to be used or tested in court, indicating that no one has blown the whistle or no one has retaliated against a whistleblower.

Politics

Even though Luxembourg recently reformed its whistleblower protections, political leaders acted in response to international obligations.

It is important to note that Luxembourg's small size and close-knit community made it possible for the country to operate for long periods without certain formal laws that today are considered to be the backbone of a free democracy, including comprehensive freedom of information and whistleblower protection legislation.

Society

Luxembourg is noted for its close personal and professional relationships, interconnected political and business circles, and a very high per capita income. These factors may cause the public at large to be largely unaware of how corruption and other crimes become manifest.

Whistleblowing – known as denunciation in Luxembourg – is not positively perceived within government agencies, private companies or the general public. Whistleblowing does not easily translate into any of the country's three administrative languages, so language barriers perhaps also add to misconceptions about the practice.

Even though civil servants are legally required to report crimes to the public prosecutor, this provision has rarely been applied, and in only a few known cases has a civil servant come forward with a disclosure.

¹⁰⁰ Information is derived from the national background research report: Yann Baden, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Luxembourg* (Luxembourg: September 2012).

¹⁰¹ It is unclear if the protection applies to other forms of retaliation (for example, demotion and harassment).

Prospects

The recent reforms in Luxembourg are in need of enhancement. The new law does not protect whistleblowers who contact the media or NGOs, there is no independent agency to receive or investigate complaints, and there is no review mechanism for how the law is applied in practice. However, the reforms do represent an important step.

At an expert meeting in September 2013 organised by Transparency International Luxembourg, Justice Minister Octavie Modert said the fight against corruption – and specifically promoting and protecting whistleblowing – is an important issue for the government. This development suggests the government wants to actively promote whistleblowing and its protection.¹⁰²

On some levels, secondary issues seem more important than legal reforms. Awareness should be raised among citizens, and the benefits of the new law should be promoted.

Other Considerations

Luxembourg's law includes an innovative provision that deputises NGOs to file criminal complaints and other actions in the fight against corruption. Transparency International Luxembourg is the first NGO to obtain government approval to carry this out.

Transparency International Luxembourg had also asked the government to grant protections to whistleblowers who file complaints with third parties, such as Transparency International's Advocacy and Legal Advice Centres. Though the Parliament denied this request, Transparency International Luxembourg continues to negotiate this point with the government.

¹⁰² Transparency International Luxembourg will monitor this announcement.

Rating: Partial

Laws

Malta has not only had whistleblower protections on the books for more than a decade, the country's political parties have agreed to work together to pass a stand-alone whistleblower law in the near future.

Whistleblower regulations in a wider sense were first introduced in 2002. These banned the victimisation of employees who report illegal or corrupt actions of their employer, afforded compensation to victims, and included criminal punishment of up to a €2,329 fine and six months in jail for violators.¹⁰⁴

Further, in 2009, the Public Administration Act banned retaliation against public officers who report wrongdoing to their superiors or government agencies.

A year later, the former ruling Nationalist Party proposed a bill on the Protection of the Whistleblower. The proposal would vastly expand on current regulations by setting up procedures for employees in the private and public sectors¹⁰⁵ to report wrongdoing that they reasonably believe to be true. In an innovation not believed to be replicated elsewhere, the proposal would require all employers – public and private – to bring on a “whistleblowing reporting officer”. Under certain circumstances, employees would be permitted to blow the whistle to external government agencies – including anonymously, if they so choose.

Among additional measures, Malta's Ombudsman has the power to investigate most actions by most public agencies and can refer cases to the prime minister or Parliament. Other federal laws include duties or rights to report wrongdoing related to health, safety and the environment.

Politics

Political and public debates on improving whistleblower protections have been underway since at least 2006.

The Nationalist Party's proposed whistleblower bill of 2010 was bolstered by a comment by former Prime Minister Lawrence Gonzi, who said of the bill: “My government has nothing to fear.”¹⁰⁶ Yet, even though the proposal was set for a second reading in parliament in October 2012, this did not take place. And subsequent statements by the government in favour of the bill have been underwhelming.¹⁰⁷

¹⁰³ Information is derived from the national background research report: Björn Rohde-Liebenau, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Malta* (Malta: November 2012).

¹⁰⁴ To date, no cases of victimisation have been published.

¹⁰⁵ Including volunteer organisations.

¹⁰⁶ ‘Accountability and active citizenship’, *Times of Malta*, 12 February 2013, www.timesofmalta.com/articles/view/20130212/opinion/Accountability-and-active-citizenship.457259 (accessed 31 October 2013).

¹⁰⁷ In 2006, then-Home Affairs Minister Tonio Borg said that a specific whistleblower law was “not indispensable” because there were “enough laws giving immunity to whoever exposes corruption and other crimes.” See: Karl Schembri, ‘Whistleblower Act ‘not indispensable’ says Tonio Borg’, *Malta Today*, 30 April 2006, www.maltatoday.com.mt/2006/04/30/t5.html (accessed 20 October 2013).

Events turned in June 2013 when a first reading on the proposed Protection of the Whistleblower Act was held in parliament. The proposal would protect government, company¹⁰⁸ and non-profit employees who expose improper practices by their employers or other employees from detrimental action. It includes criminal penalties for threatening a whistleblower and for whistleblowing not conducted in “good faith”.

Society

Various voices within Maltese society have called for improved whistleblower protections, expressing their frustration with the current legal framework, as well as with recent corruption cases. According to an online poll in 2008, nearly 70 per cent of respondents said a stronger whistleblower law would serve to deter corruption and abuse.

For reasons including close links between business and politics, many citizens suspect that corruption is commonplace.¹⁰⁹ Thirteen corruption cases have been brought within the Ministry of Transportation,¹¹⁰ and many politicians have been accused of corruption.

Prospects

The political will behind the passing of a strong whistleblower law demonstrated by the two major parties has not been met by action. It is unclear whether prominent cases of corruption, money laundering and nepotism will create enough pressure to induce change.

As for the government’s 2010 proposal, it has many admirable features, including broad protections and the introduction of “whistleblowing reporting officers”. However, the bill would effectively permit victimisation and the identification of whistleblowers when justified. Effective whistleblower protection, therefore, would require the bill to be significantly redrafted.

Other Considerations

Two prominent corruption stories in Malta, one of which was a spectacular whistleblower case, have stirred peoples’ consciousness and may shape the debate over a new whistleblower law.

In 1973, pharmaceutical company executive Stanley Adams gave documents to European Economic Community (EEC) officials revealing the price-fixing of vitamins by Swiss drug-maker Hoffmann-La Roche. After the EEC turned over his name to the company, Adams was arrested as a spy, held in solitary confinement for three months and threatened with 20 years in prison for industrial espionage, which pushed his wife to suicide. Adams was released after six months, but it took 10 years before he received compensation – £200,000 from the EU in 1985.¹¹¹ In 1999, Hoffmann-La Roche was fined a record US\$500 million by the United States for leading a worldwide

¹⁰⁸ Companies meeting at least two of the three criteria: at least 250 employees; a balance sheet of at least €43 million; annual revenue of at least €50 million.

¹⁰⁹ Matthew Vella, ‘Corruption in Malta ‘unavoidable’, blame business and politics’, *Malta Today*, 15 February 2012, www.maltatoday.com.mt/en/newsdetails/news/national/Corruption-in-Malta-unavoidable-blame-business-and-politics-20120215 (accessed 17 October 2013).

¹¹⁰ maltastar.com, ‘13 accused of bribery at Austin Gatt’s Ministry’, *Malta Star*, 29 October 2012, www.maltastar.com/dart/20121029-13-persons-accused-of-bribery-at-austin-gatt-ministry (accessed 17 October 2013).

¹¹¹ Ole Baekgaard, ‘The Cost of Whistleblowing: Stanley Adams v. Hoffmann-La Roche’, *Multinational Monitor*, June 1984, <http://multinationalmonitor.org/hyper/issues/1984/06/baekgaard.html> (accessed 17 October 2013).

conspiracy to raise and fix prices and allocate market shares,¹¹² and they were also fined €462 million by the EU in 2001 for colluding to fix vitamin prices.¹¹³

In October 2012, Maltese politician John Dalli resigned from his position as European commissioner for health and consumer policy after the European Anti-Fraud Office (OLAF) revealed that a Maltese lobbyist told a tobacco producer that he could use his connection with Dalli to influence the regulation of tobacco products. OLAF claimed that while Dalli was not involved, he knew about the situation. Maltese police said in June 2013 that there was no evidence to incriminate Dalli, although its investigation was not closed.¹¹⁴

¹¹² Department of Justice (US), 'Hoffmann-La Roche and BASF Agree to Pay Record Criminal Fines for Participating in International Vitamin Cartel' US Department of Justice, 20 May 1999, www.justice.gov/atr/public/press_releases/1999/2450.htm (accessed 17 October 2013).

¹¹³ The Guardian, 'Vitamin Cartel Fined for Price Fixing', *The Guardian*, 21 November 2001, www.theguardian.com/money/2001/nov/21/personalfinancenews.europeanunion (accessed 17 October 2013).

¹¹⁴ Laurence Norman, 'John Dalli: 'You Become a Pariah'', *Wall Street Journal*, 11 June 2013, <http://blogs.wsj.com/brussels/2013/06/11/john-dalli-you-become-a-pariah/> (accessed 17 October 2013).

NETHERLANDS¹¹⁵

Rating: Partial

Laws

Although the Netherlands currently lacks stand-alone national whistleblower legislation, it has a variety of laws and procedures that provide – despite their limitations – the beginnings of a system to protect and enable whistleblowers. Still, exposing wrongdoing in the Netherlands remains a risky proposition as the system is oriented towards protecting accused organisations rather than whistleblowers.

In 2001, the Netherlands became one of the first European countries to introduce explicit whistleblower procedures for public servants. This was followed by the 2006 establishment of the Office for Promoting Ethics and Integrity in the Public Sector, where public officials can obtain advice; the 2011 expansion of the National Ombudsman's Office to include interventions in whistleblower cases; and the 2012 opening of the Whistleblowing Advice Centre, where public and private sector employees can obtain support and advice in blowing the whistle. The effectiveness of the office for promoting ethics and integrity is seen as needing improvement.

Dutch Supreme Court upholds whistleblower rights

The right – and even the duty – of a bank employee to inform a client about important but confidential financial information was upheld by the Dutch Supreme Court. The Court of Amsterdam ruled in 2011 that the employee first should have reported the problem internally, and that blowing the whistle did not serve an important public interest. The supreme court partially overruled the lower court in October 2012. Importantly, the court said that raising the concern internally likely would have led nowhere, and that the bank's desire for confidentiality did not override the duty of honesty and trusteeship within banking relationships, which the whistleblower had honoured.¹¹⁶

In recent years, whistleblower procedures have also been implemented at various levels of local and regional government, as well as in national police and military agencies. Some federal ministries also have their own internal complaint procedures. Implementation remains a great concern, however, and few people have availed themselves of the opportunities.

Though no laws explicitly protect private sector employees, the Labour Foundation (STAR – the national platform of employers' and employees' associations) has developed a code of conduct and encouraged its members to include whistleblowing procedures in all collective bargaining agreements. Though praised for their clarity, these procedures have not been implemented widely in

¹¹⁵ Information is derived from the national background research report: Björn Rohde-Liebenau, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Netherlands* (Netherlands: October 2012).

¹¹⁶ LJN: BW9244, Hoge Raad, 11/04190, of 26 October 2012 and available at NJB 2012, 2254, RvdW 2012, 1341, and www.rechtspraak.nl (accessed 20 October 2013); Karlijn Teuben, 'Wanneer mag een werknemer als "klokkenluider" vertrouwelijke informatie naar buiten brengen?' *Cassatieblog.nl*, 30 October 2012, <http://cassatieblog.nl/proces-en-beslagerecht/wanneer-mag-een-werknemer-als-klokkenluider-vertrouwelijke-informatie-naar-buiten-brengen/> (accessed 16 October 2013); Suzan Wolters, 'Misstand melden in strijd met de norm van goed werknemerschap?' *Banning Advocaten*, 15 November 2012, www.banning.nl/5209/home-nl/publicaties/archief/misstand-melden-in-strijd-met-de-norm-van-goed-werknemerschap.html (accessed 16 October 2013).

Dutch companies, many of which shy away from independent mechanisms and insist that complaints be filed exclusively within the company.

Actively providing judicial oversight of these various whistleblower rules, the Hoge Raad (Supreme Court) has ruled on at least one whistleblower case annually since 2003 and it heard eight cases in 2011. When specific legislative guidance is lacking, the court applies general principles such as the duty to be a good employer or employee.

Politics

Momentum to step up political discussions about improving whistleblower protections – or at least getting them on the books – has grown since a massive construction scandal erupted in 2001 (see Other Considerations, below). This progress has been aided by a deliberative political system that fosters the inclusion of many stakeholders and an active academic community that has produced a wide range of issue experts.

Society

Indicative of the Netherlands' tradition of conflict resolution, the Raad van State (Council of the State) – which is the oldest active government organisation in the world – has held that legal protections for whistleblowers are unnecessary because of the fact that the civil service is likely to react appropriately to criticism and would not treat workers unfairly. Such optimism, however, is not widely shared.

Prospects

Despite some progress in recent years, three major evaluations found that current regulations do not adequately protect whistleblowers or promote the reporting of presumed irregularities.

Among several ongoing developments and trends, in 2011, the Socialist Party introduced legislation that would establish a “House for Whistleblowers” to provide independent legal advice and investigate disclosures of wrongdoing. As of summer 2013, the proposal was being debated in Parliament.

In general, the Labour Foundation is seen as a key to advancing whistleblower protections – for example, by supporting the House for Whistleblowers proposal. A change in awareness in the courts also may be needed. A large survey of Dutch whistleblowers found that courts have focused more on troubled working relationships and protecting employers' secrets than on the whistleblowers' disclosures.

Other Considerations

Whistleblowing in the Netherlands has had a face and a name since 2001 when Ad Bos, a staff member of a construction company, went public with handwritten records documenting endemic corruption that engulfed nearly the entire Dutch construction industry. From price-fixing and double-entry bookkeeping, to bid-rigging and slush funds, to fictitious invoices and the bribing of public officials, Bos exposed the largest web of construction fraud in the country's history. Following an investigation into hundreds of companies and a lengthy court case that ended in 2005, construction companies were fined a total of €230 million.¹¹⁷

¹¹⁷ DutchNews.nl, 'Bouwfraude', *DutchNews.nl*, www.dutchnews.nl/dictionary/bouwfraude.php, (accessed 17 October 2013).

Bos lost his career and became destitute, but his disclosures immediately sparked discussions about implementing legal protection for whistleblowers.

Rating: Partial

Laws

Though Poland lacks a comprehensive stand-alone law that protects whistleblowers and enables acts of whistleblowing, there is a range of laws and regulations that can provide – under certain circumstances – some degree of protection for employees who disclose wrongdoing.

Like many EU countries, Poland's whistleblower framework is embedded within labour, criminal and other legal codes. These provisions, however, were not specifically intended to apply to whistleblowers and do not provide effective protections.

Since the provisions are subject to judicial interpretation, it is difficult to predict how a particular judge will apply these general rules to a particular whistleblower case. This adds yet more subjectivity into an already incomplete whistleblower framework. Further, judges' hands are tied by Supreme Court rulings that often do not allow the underlying reasons for an employee's dismissal to be examined. This means that judges may not consider a whistleblower's public interest disclosure.

Under Poland's Labour Code, employees with open-ended work contracts can be protected from unlawful or groundless dismissal. Whistleblowers fired for reporting wrongdoing can file complaints with a court, the Labour Inspectorate, the Human Rights Ombudsman or in extreme cases a prosecutor's office. The employer will then have to prove that the grounds for termination were genuine and justified. Whistleblowers face barriers such as having to prove that they did not damage their employer's reputation, improperly disclose trade secrets or perform poorly on the job.

Additionally, penalties for those who infringe upon a person's employment rights turn out to be inapplicable in whistleblowers cases. And Polish law provides very limited guarantees that a whistleblower's confidentiality will be preserved.

Politics

In 2011, all political parties represented in parliament at the time declared their strong support for enhancing legal protection for whistleblowers in Poland. Little if any progress, however, has been made toward fulfilling this pledge. The Ministry of Labour and Social Policy, for example, has stated that current labour laws sufficiently protect whistleblowers against all forms of retaliation. Based on their actions, national political leaders have not pushed to improve whistleblower protections nor encourage the practice of whistleblowing.

Society

Not only is there no Polish word for whistleblowing nor any social concepts that explain the role of whistleblowing in protecting the public interest, but whistleblowers also often face hostility and rejection. Poles simultaneously declare their support for whistleblowers while also expressing fear of being stigmatised and labelled a snitch (see Other Considerations, below).

¹¹⁸ Information is derived from the national background research report: Anne Wojciechowska-Nowak, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Poland* (Poland: September 2012).

Unflattering terms such as denouncer or informant have been used in common speech. In order to improve the image of whistleblowers, NGOs have begun promoting the word *sygnalista*, which derives from the verb “to signal”.

Prospects

According to an OECD review released in June 2013, Poland’s whistleblower regulations are “largely ineffective due to their disparate and vague application,” and “employers are easily able to evade application of the law”. The Labour Ministry has admitted that Poland may need a targeted whistleblower law, but this is not expected to be developed soon, the OECD review said.

Polish courts inconsistent toward whistleblowers

Judicial unpredictability in Poland clearly demonstrates how the lack of a comprehensive whistleblower law can leave whistleblowers without reliable protections. Interviews with employment court judges show that opinions on retribution can vary widely. In one case monitored by the Batory Foundation, a court found that an employee who was fired after reporting dangerous practices was not discriminated against. Generally, judges only consider reasons for firing stated in the termination notice, meaning that whistleblowers may not even have a chance to present their arguments. If a whistleblower had underperformed or been late for work, said one judge, being a whistleblower would not compensate for this.¹¹⁹

Still, given the lack of political momentum to strengthen whistleblower protections, the recent spark of interest in whistleblowing could lead to the introduction of legislative proposals as typically, social change can lead to legal change. As a phenomenon, the reporting of wrongdoing is not new in Poland, but its role in building a modern, active and responsible society would represent a new opportunity.

The private sector may be part of the solution. According to Ernst & Young, 62 per cent of managers of Polish companies support the idea of rewarding whistleblowers – significantly higher than the western European average of 38 per cent.¹²⁰

Other Considerations

Polish citizens are notably divided about the perception of whistleblowers. According to a 2012 public opinion poll, the fear of being branded a snitch and the attitude of “it is none of my business” rank higher than the fear of employer reprisals. At the same time, citizens hold up whistleblowers to be brave, responsible people who care about the common good and loyal employees who care about their employer. This contradiction indicates that there has been a shift in social awareness in recent years, but that Poles are uncertain whether their fellow citizens have also changed their point of view.

¹¹⁹ Anna Wojciechowska-Nowak, *Ochrona prawna sygnalistów w doświadczeniu sędziów sądów pracy. Raport z badań*, Fundacja Batorego, 2011, www.batory.org.pl/doc/Sygnalisci_raport_20110415.pdf (accessed 20 October 2013).

¹²⁰ Ernst & Young, *O krok dalej: miejsce na uczciwość w biznesie. 12 światowe badanie nadużyć gospodarczych*, 2012, www.blog.ey.pl/audytybledczy/wp-content/uploads/2012/06/raport-12-swiatowe-badanie-naduzyc-gospodarczych.pdf (accessed 20 October 2013).

PORTUGAL¹²¹

Rating: None or Very Limited

Laws

Whistleblowers in Portugal have extremely limited legal protections, and they can be criminally prosecuted or face civil lawsuits for defaming others – particularly those in positions of power. The few provisions that are on the books are considered to be weak and passed in response to international pressure. And though many government employees are legally bound to report wrongdoing, protections from retaliation are limited in their application.

With no dedicated whistleblower law, whistleblower protection in Portugal remains an ill-defined concept, scattered in various pieces of legislation, without proper guarantees to ensure legal protections. And there is no central agency to receive and investigate whistleblowers' disclosures, much less to protect them from retribution.

Portuguese law only includes a general principle of protection against unfair treatment for public officials¹²² and employees of state-owned companies. This general principle is not supported by any additional regulations or provisions. The principle is further weakened by vague wording, a one-year limit on protections and the waiving of whistleblower anonymity if a suspected person is formally charged.

Whistleblowing is rare and whistleblower mechanisms scarce and underdeveloped in the private sector, where employees have virtually no protections. This has been aggravated by the financial crisis. Portugal's Labour Code defends employees from unfair personnel actions, but to be reinstated they must file a complaint in court at their own expense.¹²³

With no formal reporting channels in place, whistleblowers typically tell a supervisor at work before going to the police or public auditors if the initial route was unsuccessful.

Politics

Whistleblowing has not been a priority on the political agenda. The 2008 approval of the principle of whistleblower protection for public officials was an empty gesture in reaction to international pressure. No other proposal has since been offered.

The parliament set up a special committee in 2009 to evaluate the country's anti-corruption legal framework, but whistleblowing was only marginally addressed and no legislative proposal emerged.

Media attention on the issue is quite low, and even corruption-related coverage tends to ignore whistleblower concerns.

¹²¹ Information is derived from the national background research report: David Marques, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Portugal* (Portugal: October 2012).

¹²² Excluding the judiciary.

¹²³ Under recent changes to the Labour Code justified as necessary to promote economic recovery, employers can now legally dismiss their employees by simply extinguishing their job position, making it virtually impossible for an employee to prove that the extinction of his or her job position was a consequence of whistleblowing.

Society

Whistleblowers in Portugal are subject to numerous legal and other barriers that can make coming forward very risky. They are extremely vulnerable to laws designed to protect one's public image, such as criminal defamation and civil liability for moral damages. These laws frequently have been used against those who have exposed corruption in the media.

In the past, whistleblowers often were regarded as *chibo* or *bufo* (snitches). These negative images have started to change, however, and the current view of whistleblowers is mixed. Despite frequent retribution against whistleblowers and an almost complete lack of legal protections, whistleblowers interviewed for this report said as many people consider them to be heroes as snitches.¹²⁴

Importantly, in today's economic climate, any initiative including whistleblowing that leads to the prosecution of corrupt individuals is likely to be viewed positively by the public.

Prospects

There is no political momentum behind improving whistleblower protections in Portugal and there are no known legislative proposals to achieve this.

Any movement to advance the agenda should include rescinding the law on criminal defamation, forming an agency to receive and investigate whistleblower disclosures, and continued efforts to reverse the negative perceptions of whistleblowers.

Other Considerations

Given Portugal's hostile climate for whistleblowers, many prefer anonymity. But this does not necessarily reduce the impact: according to the Public Prosecutor's Office, 64 per cent of corruption-related criminal proceedings from 2004 to 2008 began with disclosures from non-official sources, almost half of which were anonymous.¹²⁵ This reflects both the negative connotations of whistleblowing in Portugal and a lack of confidence in protection measures.

¹²⁴ Interviews of whistleblowers with David Marques, Transparência e Integridade, Associação Cívica, Portugal, 2012.

¹²⁵ DCIAP-PGR e CIES-ISCTE, *A corrupção participada em Portugal 2004-2008, Resultados globais de uma pesquisa em curso*, 2010, Tables 12 and 13, pp. 67-68.

ROMANIA¹²⁶

Rating: Advanced

Laws

In 2004, Romania became the first country in continental Europe to pass a dedicated law to shield whistleblowers from retaliation. Though the Whistleblower Protection Act only protects government employees, it is one of the most broadly written whistleblower laws in the EU.

The law, which takes precedence over other legal provisions, is intended to protect permanent and temporary employees (including volunteers) who disclose a wide range of corruption and other crimes committed within public authorities, institutions and companies.

The law is intended to conceal a public sector whistleblower's identity, assumes that they acted in good faith unless proven otherwise, allows them to follow the progress of their cases, and grants the right of court appeals. If the target of the disclosure has supervisory powers over the whistleblower, the law stipulates that the whistleblower's identity shall remain concealed.

Romania's law gives employees the freedom to choose among a wide range of internal and external channels for making their disclosures – including managers or integrity departments in the workplace, the police, judicial authorities, parliamentary commissions, unions, professional and industry organisations, NGOs, and the media. Disclosures made to journalists, activists and other outside parties are protected, just as those made within the workplace.

The law was devised and developed by the Romanian Ministry of Justice and Transparency International Romania as part of Transparency International Romania's broader advocacy campaign to strengthen integrity in the public sector.

There are no specific legal protections for employees of private companies, other than laws that require people to disclose information about criminal offenses if they become aware of them. This provision would override a company's confidentiality clause. However, some confidentiality clauses included in employment contracts forbid the release of trade secrets, and few companies have internal whistleblower policies or procedures. There are no protections in the private sector for whistleblowers who disclose information to the media or an NGO.

Politics

In political circles, a great deal of lip service is paid to the benefits of supporting anti-corruption efforts. However, there is a distinct gap between theory and practice. While most politicians publicly support whistleblowing, the law's actual practice leaves much to be desired. High-ranking politicians lack the will to ensure advanced protection mechanisms for whistleblowers, often citing a lack of funds, or they simply ignore the issue.

Nevertheless, the Whistleblower Protection Act has been effectively applied in numerous cases – including that of a Public Health Ministry employee who won a court case after being dismissed for exposing the allegedly improper hiring of a manager.

¹²⁶ Information is derived from the national background research report: Victor Alistar, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Romania* (Romania: February 2013).

Society

Due to the Whistleblower Protection Act and the public awareness surrounding it, the general perception of whistleblowers is slowly changing and public support for them is on the rise. The law has resulted in more whistleblowers coming forward, and as a result, a number of corruption cases have been successfully resolved. Still, the number of cases remains relatively low – and media coverage is paltry.

Unlike many countries, Romania grants whistleblowers a positive, productive term: *avertizori de integritate*, or “those who give integrity warnings”.

Prospects

Though Romania's Whistleblower Protection Act is very strong in theory, it is weak in practice. Many government employees have little or no knowledge of the law, or misunderstand it, and public institutions have proven reluctant to apply it. Moreover, its provisions are missing from the internal rules of many public institutions that are legally required to have them. These agencies cannot be directly sanctioned for this shortcoming, which serves to explain their inability or unwillingness to implement the law. It also helps to explain the low level of awareness of the law among government employees.

With a strongly worded public sector law on the books, attention must be turned to more effective implementation and to expanding the law to the private sector.

Other Considerations

Ironically, even though it is legally recognised as a means of disclosure for whistleblowers, the media only rarely reports on whistleblower cases. The Whistleblower Protection Act even requires public agencies to invite the media to attend disciplinary hearings if whistleblowers so choose.

Emblematic of this, the case of two whistleblowers who disclosed serious problems within the National Integrity Agency was only reported in two newspapers. There was no media coverage of a court ruling in favour of one of the whistleblowers.

SLOVAKIA¹²⁷

Rating: None or Very Limited

Laws

Slovakia not only lacks a comprehensive law to protect and facilitate whistleblowing, but the concept is not explicitly mentioned in any national law – leaving the country incapable of providing sufficient protection for those who disclose acts of wrongdoing.

Legal provisions that marginally address whistleblowing are highly fragmented, making it difficult for employees to find out which agency or organisation can receive and investigate their disclosures. Moreover, there is no provision for compensation for retaliation, no public information about government ministries' whistleblower procedures, no guarantee of an impartial investigation of a disclosure and no public information about whistleblower cases reported to auditors.

The only legal protection on the books is a provision in the Labour Code that bans sanctions against private sector employees who file complaints to initiate a criminal prosecution of their employer or another employee. As no other forms of protection are in place, employees are left to seek any assistance from the Slovak National Centre for Human Rights¹²⁹ and various NGOs.

Slovakian football referee blows the whistle off the field

It is fitting that one of Slovakia's best-known whistleblowers actually uses a whistle on the job. In 2012, football referee Jozef Žatko exposed attempts by teams to bribe him and other on-field officials. For this he was nominated for Transparency International's Global Integrity Award and received a "White Crow Award". Two years earlier, Žatko revealed that government chauffeurs were stealing fuel. As retaliation, his salary was cut, he was disciplined and harassed into leaving his job, and accused of "spitting around unfounded misinformation". Eventually he was vindicated when the government took steps to reduce fuel consumption by 30,000 litres per month.¹²⁸

Various other laws address the reporting of crimes and other types of wrongdoing, including a little-used provision that requires civil servants to report the loss or misappropriation of property. But these are not whistleblower laws, per se.

Whistleblowing is better known in the private sector than the public sector. All large companies contacted for this report have codes of ethics that contain whistleblower provisions.

¹²⁷ Information is derived from the national background research report: Pavel Nechala, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Slovakia* (Slovakia: September 2012).

¹²⁸ Veronika Prušová, 'Poukázal na kšefty u policajtov, navrhli ho na cenu', *smk.sk*, 6 August 2012, www.sme.sk/c/6486973/poukazal-na-ksefty-u-policajtov-navrhli-ho-na-cenu.html (accessed 20 October 2013); Radka Minarechová 'Slovakia celebrates 23rd anniversary of the Velvet Revolution', *Slovak Spectator*, 19 November 2012, <http://spectator.sme.sk/articles/view/48288/10/slovakia-celebrates-23rd-anniversary-of-the-velvet-revolution.html> (accessed 20 October 2013).

¹²⁹ The centre keeps no special statistics concerning whistleblowing.

Politics

It is unclear whether a stand-alone whistleblower law has a solid chance of becoming a reality in Slovakia. The interior ministers under the current and previous governments have pledged to draft a new law to protect whistleblowers, but the working version of the proposal that has been prepared has not been released to the public.

A draft law on witness protection under consideration in Parliament was rejected in 2013.

Society

Only 5 per cent of Slovakian citizens say they would definitely report instances of bribery (see Other Considerations, below). This reluctance to come forward is so pronounced that a vast majority of citizens risk being prosecuted for “failing to report a crime” rather than be confronted with retaliation. Therefore, the lack of a strong whistleblower protection law is not seen as the greatest obstacle to strengthening a sense civic duty.

Prospects

The chances that the government’s still unreleased whistleblower proposal will become law are unknown. The proposal would protect whistleblowers from reprisals at work, empower prosecutors and labour inspectorates to intervene if employees are treated unfairly, and include financial rewards for whistleblowers.

Beyond legal reforms – and perhaps more importantly – public trust in the process of reporting wrongdoing to authorities needs to be nurtured. And people in leadership positions need to become convinced of the value of public-interest whistleblowing. For example, Igor Vida, Chair of Tatra Banka and President of the Slovak Bank Association, remarked, “Denunciation may achieve the same level within the hierarchy of values of the society as justice, and I do not think this is right.”¹³⁰

Other Considerations

Slovakia is actually experiencing a decline in public trust in new tools for reporting wrongdoing due to inadequate technical capacity and professional expertise within investigative agencies. As evidence of this lack of faith, during the past three years, ministries (excluding the Government Office and the Ministries of Foreign Affairs and Defence) have not recorded any filings that could be regarded as whistleblowing cases.

In response to an information request, the Ombudsman’s Office replied that it “has not registered and has no knowledge of any completed or ongoing lawsuits or petitions for court proceedings concerning whistleblowing.”¹³¹

¹³⁰ Igor Vida, ‘Udávanie ako morálna hodnota’ (Denunciation as a moral value), *Hospodárske noviny*, 18 August 2010, <http://hnonline.sk/nazory/c1-45752730-udavanie-ako-moralna-hodnota> (accessed 15 October 2013).

¹³¹ Reply from the Ombudsman as of 3 August 2012.

SLOVENIA¹³²

Rating: Advanced

Laws

Though Slovenia has no specialised law to safeguard whistleblowers, a substantial portion of the country's recently approved anti-corruption law provides legal protection for employees in both the public and private sectors. This makes Slovenia one of the few countries in the world with specific legal protections both for government and company employees.

Passed in 2010, the Integrity and Prevention of Corruption Act is intended to protect employees from any adverse consequences or discrimination if they report wrongdoing in good faith – that is, if they reasonably believe that the information they disclose is true.

The law contains many other internationally recognised principles for whistleblower protection, including confidentiality; internal and external disclosure channels; a broad range of remedies to compensate for retaliation;¹³³ referral of valid claims to law enforcement; assistance from an independent agency (the Commission for the Prevention of Corruption); fines (ranging from €400-1,200) for those who retaliate against, or disclose the name of, whistleblowers; and the burden on employers to prove that adverse personnel actions were justified. Additionally, the law defines whistleblowing in very broad terms, encompassing all forms illegal or unethical behaviour.

Additional protections for government employees are found in the Civil Servants Act and a Code of Ethics, both of which ban retaliation against civil servants who report wrongdoing. The Civil Servants Act goes so far as to prohibit humiliation, intimidation and insulting one's dignity.

Politics

Sufficient political will was created for the Parliament to pass the Integrity and Prevention of Corruption Act. Little opposition to the law was publicly voiced.

The Commission for the Prevention of Corruption, which is responsible for implementing the law, has been subject to backlash since January 2013 when it found that the Prime Minister of Slovenia and the mayor of Ljubljana failed to properly disclose their assets. Though the Commission is independent, it relies on the government for funding, and it lacks the capacity and resources to effectively protect whistleblowers.

Society

Slovenians are becoming increasingly critical of corruption even as they are becoming progressively more doubtful about the government's success regarding the rule of law and anti-corruption activities. They are also less inclined to report acts of corruption and doubt that any initiated proceedings would succeed.

¹³² Information is derived from the national background research report: Vid Doria, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Slovenia* (Slovenia: January 2013).

¹³³ Including interim and injunctive relief, compensation for pain and suffering incurred, and compensation for loss of past, present and future earnings and status.

However, according to a public opinion poll, 55 per cent of people said they would report a corruption case if they witnessed one. To whom they would disclose the information is also telling; 36 per cent said they would go to the Commission for the Prevention of Corruption and 10 per cent said the media – ranking behind only the police and ranking ahead of the courts and prosecutors.¹³⁴

Prospects

Improvements are needed within the Commission – as well as inspection agencies, courts and police – in order for the Prevention of Corruption Act to be adequately and efficiently enforced. The Commission has not adequately protected a number of whistleblowers, and many cases await processing due to lengthy procedures. The Commission is in need of additional human and material resources.

A review of recent cases shows that the new whistleblower provisions have not been consistently implemented in practice. In one case, a judge allegedly sent the name of a whistleblower and his co-workers to a lawyer. Because under Slovenian law defendants have the right to question witnesses, anonymous whistleblowers can be identified in court. In many cases, defendants have used this legal provision solely for the purposes of identifying whistleblowers.

Civil society must do more to make whistleblowing more accepted and commonplace.

Other Considerations

The common perception is that whistleblowers are more likely than not to be anonymous and unwilling to submit follow-up information. In Slovenia, however, more than 50 per cent of people who have contacted the Commission entrusted the agency with their identity. And, most of them were prepared to pass on additional documentation or clarifications related to their disclosure.

From 2010 to 2012, the Commission protected the identity of 30 people, provided whistleblower protection to five people, and demanded that threats and retaliation cease in five cases. Due to a lack of information, however, it can be difficult to evaluate individual cases.

¹³⁴ 'Raziskave in statistika', Commission for the Prevention of Corruption, <https://www.kpk-rs.si/sl/korupcija-integriteta-in-etika/analize-raziskave-in-statistika/raziskave-in-statistika> (accessed 31 October 2013).

Rating: None or Very Limited

Laws

Spain has no overarching legislation to protect employees in the private and public sector from retaliation for exposing wrongdoing. Moreover, there are close to no labour or administrative codes in place to protect whistleblowers, no palpable culture for employees or citizens to report wrongdoing, and no apparent momentum among political leaders to install legal protections for whistleblowers.

Despite strong recommendations from the OECD to improve the situation for whistleblowers, and despite ongoing political and economic uncertainties that have sapped public confidence in the country's leadership, Spain has not moved to implement any whistleblower protections.

Spain's general framework for reporting crimes may provide insight into the country's approach to whistleblowing – and perhaps why there is no specific legal framework for whistleblowing. All Spanish citizens are obliged to report criminal activity to the proper authorities. However, they must then formally confirm the report by personally coming forward. This is seen to serve as a deterrent to citizens reporting wrongdoing.

Public officials cannot legally be arbitrarily punished or fired, but they lack any specific whistleblower protections. In the private sector, companies are not legally obliged to implement whistleblower mechanisms, due to the lack of national legislation. Under a new Penal Code, private companies can avoid criminal liability if they have whistleblower provisions in place.

The only specific provisions loosely related to whistleblowing in Spain are a law that allows citizens to anonymously report conflicts of interest concerning high-ranking officials and members of the government, and protection for witnesses in judicial proceedings.

Politics

Since at least 2006, the OECD has recommended that Spain implement whistleblower protections for employees – and in some cases these recommendations have been strongly worded. Spanish authorities have announced reforms of the criminal code, but they have not clearly expressed any intention to address whistleblowing.

In its 2012 review of Spain's anti-corruption measures, the OECD stated that Spanish officials cited the rights granted to public servants by the Basic Statute for Public Employees. However, none of these rights relate to protection from retaliatory action when reporting suspected crimes in good faith. There would seem to be a lack of awareness among the country's political leadership about the importance of passing whistleblower protections.

In the face of government inaction, NGOs and labour unions are among the organisations that have called for improved whistleblower protection.

¹³⁵ Information is derived from the national background research report: Mike Beke, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Spain* (Spain: January 2013).

Society

Few cases of whistleblowing have been reported in recent years. Many citizens perceive hotlines and other reporting channels as ineffective. Some people who have chosen to come forward have been subject to rejection and retaliation.

Key government agencies in Spain, especially those empowered to fight corruption (with the exception of the police), enjoy low levels of popular trust. Corruption, which whistleblowing is intended to prevent, is a crucial factor in the perceived decline of the quality of Spain's democracy.

Prospects

In 2012, Spanish officials told the OECD that within two years they would submit a written report on their plans regarding whistleblowing in the public and private sectors. It is important to note that the OECD has made recommendations on whistleblowing since at least 2006, but there has been no action as of now.

NGOs observe that in order to promote whistleblowing and other forms of citizen participation, trust in institutions must be restored and mechanisms must be provided in order for citizens to take part proactively in the democracy.

Rating: Partial

Laws

Credited with putting the world's first freedom of information law on the books, Sweden extends broad freedoms to its citizens to report wrongdoing to government authorities and the media – to the extent that retaliating against a whistleblower is a criminal offence. Implemented in 1766, this groundbreaking legislation continues to shape Sweden's labour, civil service and criminal laws – usually in the direction of protecting the rights of employees to come forward.

Even though Sweden lacks a dedicated law to protect whistleblowers, its extensive and complex legal framework covers many types of disclosures that would be protected under specific whistleblower provisions in other countries.

Essentially, everyone in Sweden, including all employees, is free to supply information (excluding official secrets and national security information) to the press. National and local governments are not permitted to investigate the identity of anonymous sources, nor may employees be fired or otherwise retaliated against.

Private sector employees can report wrongdoing to outside groups or agencies if they first bring it to the attention of their employers, and they can only be fired on objective grounds. It is important to note, however, that private companies are free to investigate which employee provided information to the media and can dismiss an employee on grounds of disloyalty. Civil servants and employees of city-owned companies may anonymously pass on information to the media.

A duty of loyalty is typically included in public and private sector employment contracts. Based on Labour Court rulings, however, employees are protected from dismissal if they blow the whistle on serious wrongdoing, as long as the matter first was brought to the employer's attention and if the goal was to correct a problem.

Employees are permitted to expose business secrets if they concern a possible crime or other serious offence. This right cannot be withheld or restricted through employment contracts.

Despite this range of laws, Sweden is rated "Partial" because the provisions are not all specifically geared or designed for whistleblowers. Whistleblowers may be able to benefit from these provisions, but they do not constitute a whistleblower protection law or framework, per se.

Politics

There seems to be some degree of political will to re-examine whistleblowing and access to information issues.

In January 2011, the government criminalised acts of retaliation against employees who legally expose wrongdoing. As of this writing, the government was studying the whistleblowing situation in general – and specifically a right to anonymity for employees of private companies that are publicly financed, particularly within the healthcare and education sectors. A government study on

¹³⁶ Information is derived from the national background research report Ingrid Helmius, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Sweden* (Sweden: September 2012).

employees' right to anonymity and the protection of whistleblowers in publicly financed private companies is due for completion in November 2013.

Society

Sweden is famed for implementing what is considered the first freedom of information law in the world – His Majesty's Gracious Ordinance Relating to Freedom of Writing and of the Press passed in Parliament in 1766. The declaration has helped shape key laws such as the Fundamental Law on the Freedom of Expression and the Freedom of the Press Act, which in turn grant de facto rights to citizens and employees who blow the whistle.

Whistleblowers harassed but helped to fix care problems

The case of human service workers in Sweden shows how whistleblowers can suffer retaliation but still make a difference. According to a study, about half of 28 staff members who reported to authorities problems such as client abuse, unethical methods and cutbacks in vital services were forced out of their jobs. However, the authorities investigated the cases and the workers were supported by the media and the citizenry. The disclosures put the illegal and immoral practices to an end.¹³⁷

Whistleblowing itself is judged by the press and the public in a measured fashion. Whistleblowers typically are viewed on a case-by-case basis – bona fide heroes are treated accordingly, but people seen to have ulterior motives can be judged harshly in the court of public opinion.

Prospects

In February 2013, the government appointed a special investigator to review the protection of whistleblowers in the workplace and to propose measures to strengthen these protections. The investigator is scheduled to report the findings in May 2014.

However, with political interest in passing a stand-alone whistleblower law still uncertain, attention could be turned to ensuring that the existing provisions are fully understood and enforced. Sweden's Parliamentary Ombudsman has frequently criticised public officials for wrongfully denying access to information, and national and municipal governments often display ignorance of whistleblower-related legal provisions.

Other Considerations

Two Swedish laws that aim to protect vulnerable people from abuse represent a unique solution to whistleblowing. "Lex Sarah" – named after an assistant nurse who was fired after speaking on television about the serious neglect of patients in a nursing home – requires employees caring for children, the elderly and the disabled to report problems to the proper authorities.¹³⁸ Similarly, "Lex Maria" requires medical and healthcare staff to report wrongdoing. Despite their good intentions, both laws have occasionally suffered from inadequate follow-up.

¹³⁷ Ulla-Carin Hedin and Sven-Axel Månsson, 'Whistleblowing processes in Swedish public organisations—complaints and consequences', *European Journal of Social Work*, Volume 15, Issue 2, 2012, www.tandfonline.com/doi/abs/10.1080/13691457.2010.543890#preview (accessed 15 October 2013).

¹³⁸ Under Lex Sarah, for example, a nurse was reported to the authorities in September 2012 after forcing a roll of tape into the mouth of a patient with dementia. See: The Local (Sweden's News in English), 'Nurse stuffs tape roll in dementia patient's mouth', thelocal.se, 19 September 2012, www.thelocal.se/43326/ (accessed 15 October 2013).

UNITED KINGDOM¹³⁹

Rating: Advanced

Laws

In 1998, the UK passed one of the most comprehensive whistleblower protection laws in the world: the Public Interest Disclosure Act. Known as PIDA, the law applies to the vast majority of workers across all sectors: government,¹⁴⁰ private and non-profit. It covers a range of employment categories, including employees, contractors, trainees and UK workers based abroad.¹⁴¹

Under PIDA, whistleblowers are able to disclose a very broad range of crimes and wrongdoing, including corruption, civil offences, miscarriages of justice, dangers to public health or safety, dangers to the environment, and covering up of any of these.

If a whistleblower is fired, the employer must prove that the act of whistleblowing was not a factor in the dismissal. Employees subjected to retaliation can be compensated, including for aggravated damages and injury to feelings; the highest award to date is £5 million.

PIDA uses a unique “tiered” system by which whistleblowers can make their disclosures and be legally protected from retaliation. Employees can disclose information to their employer, regulatory agencies, “external” individuals such as members of Parliament, or directly to the media. However, the standards for accuracy and urgency increase with each tier, so whistleblowers must heed this in order to be legally protected.

PIDA was updated in April 2013 to include a “public interest” test. This means that employees will only be legally protected from retaliation if they reasonably believe that their disclosure was made in the public interest. Also, the government removed the requirement that disclosures must be made in good faith.¹⁴² And legal protections were extended for workers who have been bullied or harassed by co-workers.

Several countries have used PIDA as a template for their own laws and proposals, including Ireland, Japan and South Africa.

Politics

Following a string of major disasters and scandals (see Other Considerations, below), PIDA was passed after receiving cross-party and cross-sector support from various political parties, business groups and labour unions.

Various court rulings have protected reasonable and honest whistleblowers who have raised issues of genuine public interest. In order to achieve a balance, employment tribunals assess, for example, whether an employer had a whistleblower procedure in place that a worker could or should have used when determining whether a wider disclosure outside the workplace was reasonable.

¹³⁹ Information is derived from the national background research report: Public Concern at Work, *UK Submission to Transparency International Whistleblower Protection Research Project* (UK: January 2013).

¹⁴⁰ Including police officers and National Health Service staff.

¹⁴¹ PIDA does not cover those working in the armed forces or intelligence services.

¹⁴² However, financial compensation to a whistleblower can be reduced by up to 25 per cent if bad faith is found.

Society

PIDA is rooted in the long-standing, English common law principle of “no confidence in iniquity”, under which employers cannot hide behind confidentiality clauses and prevent workers from speaking up about wrongdoing. Enshrining this principle in employment law was seen as a major step in protecting whistleblowers.

UK protects whistleblower who went straight to the media

The UK law that protects whistleblowers who disclose wrongdoing directly to the media – skipping over their supervisors and government regulators – has been successfully put to the test. The Employment Tribunal ruled in 2005 that the firing of a National Trust employee who gave a newspaper a confidential report detailing the potential public health hazards of a contaminated landfill near a beach was unfair. The employee’s action, the tribunal said, met the law’s standard for an exceptionally serious concern that justified a “wider disclosure”.¹⁴³

Awareness is growing in the UK that whistleblowing arrangements are important because no matter what the law says, real protection starts with good practice in the workplace and encouraging staff to speak up. Reflective of this, a 2007 survey by Ernst & Young found that 86 per cent of UK senior executives said they felt free to report cases of fraud or corruption, compared to 54 per cent in the rest of Europe.

Prospects

Though it is widely held up as a model for the world, PIDA and its implementation could be improved. According to Public Concern at Work, a London-based NGO that supports whistleblowers and whistleblower rights, PIDA suffers from a lack of promotion and support by the UK government, which views the law as additional “red tape” for UK businesses. The NGO has called for a thorough review and public consultation on PIDA.

Additionally, according to Public Concern at Work:

- There is no specialist tribunal to hear whistleblower claims.
- PIDA does not prescribe how regulators should deal with whistleblowers’ concerns.
- The register of PIDA claims has not been made public.
- Gross waste and mismanagement, and abuse of authority are not included in PIDA.

In February 2013, the UK Department for Business Innovation and Skills announced it would amend PIDA following the collection of evidence to determine whether the law is working properly. PIDA is also being reviewed by the Public Concern at Work-led Whistleblowing Commission, which by the end of 2013 is scheduled to release a report assessing the UK’s current whistleblowing arrangements and recommending areas of improvement.

¹⁴³ Collins v National Trust, UK Employment Tribunal Case 2507255/05, 2005. See: Legal Updates: Media Leak, Public Concern at Work, www.pcaw.org.uk/legal-updates (accessed 16 October); FL Memo, *Employment Memo 2006*, Issue 2, FL Memo Ltd, www.flmemo.co.uk/employment_2006/downloads/Employment_Memo_2006_Issue_2.pdf (accessed 16 October).

Other Considerations

The collective shock from a series of disasters and scandals in the late 1980s generated powerful public pressure on the UK government to pass a strong whistleblower protection law in the hopes of preventing such tragedies in the future. These events included the Clapham Junction train collision (35 dead), the Piper Alpha oil rig explosion (167 dead), the capsizing of the Zeebrugge car ferry (193 dead), the 1991 collapse of BCCI bank and child abuse that went on for 13 years before it was disclosed.

ANNEX 1

INTERNATIONAL PRINCIPLES FOR WHISTLEBLOWER LEGISLATION

BEST PRACTICES FOR LAWS TO PROTECT WHISTLEBLOWERS AND SUPPORT WHISTLEBLOWING IN THE PUBLIC INTEREST

PREAMBLE

Whistleblowers play an essential role in exposing corruption, fraud, mismanagement and other wrongdoing that threaten public health and safety, financial integrity, human rights, the environment, and the rule of law. By disclosing information about such misdeeds, whistleblowers have helped save countless lives and billions of dollars in public funds, while preventing emerging scandals and disasters from worsening.

Whistleblowers often take on high personal risk. They may be fired, sued, blacklisted, arrested, threatened or, in extreme cases, assaulted or killed. Protecting whistleblowers from such retaliation will promote and ease the efficient exposing of corruption, while also enhancing openness and accountability in government and corporate workplaces.

The right of citizens to report wrongdoing is a natural extension of the right of freedom of expression, and it is linked to the principles of transparency and integrity. All people have the inherent right to protect the well-being of other citizens and society at large, and, in some cases, they have the duty to report wrongdoing. The absence of effective protection can therefore pose a dilemma for whistleblowers: they are often expected to report corruption and other crimes, but doing so can expose them to retaliation.

Recognising the role of whistleblowing in corruption-fighting efforts, many countries have pledged to enact whistleblower protection laws through international conventions. And, ever more governments, corporations and non-profit organisations around the world are putting whistleblower procedures in place. It is essential, however, that these policies provide accessible disclosure channels for whistleblowers, meaningfully protect whistleblowers from all forms of retaliation, and ensure that the information they disclose can be used to advance needed reforms.

To help ensure that whistleblowers are afforded proper protection and disclosure opportunities, the principles presented here serve as guidance for formulating new and improving existing whistleblower legislation. They should be adapted to an individual country's political, social and cultural contexts and to its existing legal frameworks. They take into account lessons learned from existing laws and their implementation in practice, and have been shaped by input from whistleblower experts, government officials, academia, research institutes and NGOs from all regions. These principles will be updated and refined as experiences with legislation and practices continue to unfold.

GUIDING DEFINITION

1. *Whistleblowing* – the disclosure of information related to corrupt, illegal, fraudulent or hazardous activities being committed in or by public or private sector organisations¹⁴⁴ – which are of concern to or threaten the public interest – to individuals or entities believed to be able to effect action.

GUIDING PRINCIPLE

2. *Protected individuals and disclosures* – all employees and workers in the public and private sectors need:
 - accessible and reliable channels to report wrongdoing
 - robust protection from all forms of retaliation
 - mechanisms for disclosures that promote reforms that correct legislative, policy or procedural inadequacies and prevent future wrongdoing

SCOPE OF APPLICATION

3. *Broad definition of whistleblowing* – whistleblowing is the disclosure or reporting of wrongdoing, including but not limited to corruption; criminal offences; breaches of legal obligation;¹⁴⁵ miscarriages of justice; specific dangers to public health, safety or the environment; abuse of authority; unauthorised use of public funds or property; gross waste or mismanagement; conflict of interest;¹⁴⁶ and acts to cover up of any of these.
4. *Broad definition of whistleblower* – a whistleblower is any public or private sector employee or worker who discloses information covered in Principle 3 (above) and who is at risk of retribution. This includes individuals who are outside the traditional employee-employer relationship, such as consultants, contractors, trainees/interns, volunteers, student workers, temporary workers, and former employees.¹⁴⁷
5. *Threshold for whistleblower protection: “reasonable belief of wrongdoing”* – protection shall be granted for disclosures made with a reasonable belief that the information is true at the time it is disclosed.¹⁴⁸ Protection extends to those who make inaccurate disclosures made in honest error, and should be in effect while the accuracy of a disclosure is being assessed.

PROTECTION

6. *Protection from retribution* – individuals shall be protected from all forms of retaliation, disadvantage or discrimination at the workplace linked to or resulting from whistleblowing. This includes all types of harm, including dismissal, probation and other job sanctions; punitive transfers; harassment; reduced duties or hours; withholding of promotions or training; loss of status and benefits; and threats of such actions.

¹⁴⁴ Including perceived or potential wrongdoing.

¹⁴⁵ Including fraudulent financial disclosures made by government agencies/officials and publicly traded corporations.

¹⁴⁶ Could also include human rights violations if warranted or appropriate within a national context.

¹⁴⁷ Protection shall extend to attempted and perceived whistleblowers; individuals who provide supporting information regarding a disclosure; and those who assist or attempt to assist a whistleblower.

¹⁴⁸ “Reasonable belief” is defined as when a person reasonably could suspect wrongdoing in light of available evidence.

7. *Preservation of confidentiality* – the identity of the whistleblower may not be disclosed without the individual's explicit consent.
8. *Burden of proof on the employer* – in order to avoid sanctions or penalties, an employer must clearly and convincingly demonstrate that any measures taken against an employee were in no sense connected with, or motivated by, a whistleblower's disclosure.
9. *Knowingly false disclosures not protected* – an individual who makes a disclosure demonstrated to be knowingly false is subject to possible employment/professional sanctions and civil liabilities.¹⁴⁹ Those wrongly accused shall be compensated through all appropriate measures.
10. *Waiver of liability* – any disclosure made within the scope of whistleblower legislation shall be immune from disciplinary proceedings and liability under criminal, civil and administrative laws, including those related to libel, slander, copyright and data protection. The burden shall fall on the subject of the disclosure to prove any intent on the part of the whistleblower to violate the law.
11. *Right to refuse participation in wrongdoing* – employees and workers have the right to decline to participate in corrupt, illegal or fraudulent acts. They are legally protected from any form of retribution or discrimination (see Principle 6, above) if they exercise this right.
12. *Preservation of rights* – any private rule or agreement is invalid if it obstructs whistleblower protections and rights. For instance, whistleblower rights shall override employee "loyalty" oaths and confidentiality/nondisclosure agreements ("gag orders").
13. *Anonymity* – full protection shall be granted to whistleblowers who have disclosed information anonymously and who subsequently have been identified without their explicit consent.
14. *Personal protection* – whistleblowers whose lives or safety is in jeopardy, and their family members, are entitled to receive personal protection measures. Adequate resources should be devoted for such protection.

DISCLOSURE PROCEDURES

15. *Reporting within the workplace* – whistleblower regulations and procedures should be highly visible and understandable; maintain confidentiality or anonymity (unless explicitly waived by the whistleblower); ensure thorough, timely and independent investigations of whistleblowers' disclosures; and have transparent, enforceable and timely mechanisms to follow up on whistleblowers' retaliation complaints (including a process for disciplining perpetrators of retaliation).¹⁵⁰
16. *Reporting to regulators and authorities* – if reporting at the workplace does not seem practical or possible, individuals may make disclosures to regulatory or oversight agencies or individuals outside of their organisation. These channels may include regulatory authorities, law enforcement or investigative agencies, elected officials, or specialised agencies established to receive such disclosures.

¹⁴⁹ The burden shall fall on the subject of the disclosure to prove that the whistleblower knew the information was false at the time of disclosure.

¹⁵⁰ Employees are encouraged to utilise these internal reporting channels as a first step, if possible and practical. For a guide on internal whistleblowing systems, see *PAS Code of Practice for Whistleblowing Arrangements*, British Standards Institute and Public Concern at Work, 2008.

17. *Reporting to external parties* – in cases of urgent or grave public or personal danger, or persistently unaddressed wrongdoing that could affect the public interest, individuals shall be protected for disclosures made to external parties such as the media, civil society organisations, legal associations, trade unions, or business/professional organisations.¹⁵¹
18. *Disclosure and advice tools* – a wide range of accessible disclosure channels and tools should be made available to employees and workers of government agencies and publicly traded companies, including advice lines, hotlines, online portals, compliance offices, and internal or external ombudspersons.¹⁵² Mechanisms shall be provided for safe, secure confidential or anonymous disclosures.¹⁵³
19. *National security/official secrets* – where a disclosure concerns matters of national security, official or military secrets, or classified information, special procedures and safeguards for reporting that take into account the sensitive nature of the subject matter may be adopted in order to promote successful internal follow-up and resolution and to prevent unnecessary external exposure. These procedures should permit internal disclosures, disclosure to an autonomous oversight body that is institutionally and operationally independent from the security sector, or disclosures to authorities with the appropriate security clearance. External disclosure (that is, to the media or civil society organisations) would be justified in demonstrable cases of urgent or grave threats to public health, safety or the environment; if an internal disclosure could lead to personal harm or the destruction of evidence; and if the disclosure was not intended or likely to significantly harm national security or individuals.¹⁵⁴

RELIEF AND PARTICIPATION

20. *Full range of remedies* – a full range of remedies must cover all direct, indirect and future consequences of any reprisals, with the aim to make the whistleblower whole. This includes interim and injunctive relief; attorney and mediation fees; transfer to a new department or supervisor; compensation for lost past, present and future earnings and status; and compensation for pain and suffering.¹⁵⁵ A fund to provide assistance for legal procedures and support whistleblowers in serious financial need should be considered.
21. *Fair hearing (genuine “day in court”)* – whistleblowers who believe their rights have been violated are entitled to a fair hearing before an impartial forum with full right of appeal. Decisions shall be timely, whistleblowers may call and cross-examine witnesses, and rules of procedure must be balanced and objective.
22. *Whistleblower participation* – as informed and interested stakeholders, whistleblowers shall have a meaningful opportunity to provide input to subsequent investigations or inquiries. Whistleblowers shall have the opportunity (but are not required) to clarify their complaint and provide additional information or evidence. They also have the right to be informed of the outcome of any investigation or finding and to review and comment on any results.
23. *Reward systems* – if appropriate within the national context, whistleblowers may receive a portion of any funds recovered or fines levied as a result of their disclosure. Other rewards or

¹⁵¹ If these disclosure channels are differentiated in any manner, the disclosure process in any event shall not be onerous and must allow disclosures based alone on reasonable suspicion (for example, UK Public Interest Disclosure Act).

¹⁵² Individuals seeking advice shall also be fully protected.

¹⁵³ In accordance with relevant data protection laws, regulations and practices.

¹⁵⁴ “Classified” material must be clearly marked as such, and cannot be retroactively declared classified after a protected disclosure has been made.

¹⁵⁵ This may also include medical expenses, relocation costs or identity protection.

acknowledgements may include public recognition or awards (if agreeable to the whistleblower), employment promotion, or an official apology for retribution.

LEGISLATIVE STRUCTURE, OPERATION AND REVIEW

24. *Dedicated legislation* – in order to ensure clarity and seamless application of the whistleblower framework; stand-alone legislation is preferable to a piecemeal or a sectoral approach.
25. *Publication of data* – the whistleblower complaints authority (below) should collect and regularly publish (at least annually) data and information regarding the functioning of whistleblower laws and frameworks (in compliance with relevant privacy and data protection laws). This information should include the number of cases received; the outcomes of cases (that is, dismissed, accepted, investigated or validated); compensation and recoveries (maintaining confidentiality if the whistleblower desires); the prevalence of wrongdoing in the public and private sectors; awareness of and trust in whistleblower mechanisms; and time taken to process cases.
26. *Involvement of multiple actors* – the design and periodic review of whistleblowing laws, regulations and procedures must involve key stakeholders including employee organisations, business/employer associations, civil society organisations and academia.
27. *Whistleblower training* – comprehensive training shall be provided for public sector agencies and publicly traded corporations and their management and staff. Whistleblower laws and procedures shall be posted clearly in public and private sector workplaces where their provisions apply.

ENFORCEMENT

28. *Whistleblower complaints authority* – an independent agency shall receive and investigate complaints of retaliation and improper investigations of whistleblower disclosures. The agency may issue binding recommendations and forward relevant information to regulatory, investigative or prosecutorial authorities for follow-up. The agency shall also provide advice and support, monitor and review whistleblower frameworks, raise public awareness to encourage the use of whistleblower provisions, and enhance cultural acceptance of whistleblowing. The agency shall be provided with adequate resources and capacity to carry out these functions.
29. *Penalties for retaliation and interference* – any act of reprisal for, or interference with, a whistleblower's disclosure shall be considered misconduct, and perpetrators of retaliation shall be subject to employment/professional sanctions and civil penalties.¹⁵⁶
30. *Follow-up and reforms* – valid whistleblower disclosures shall be referred to the appropriate regulatory agencies for follow-up, corrective actions and/or policy reforms.

¹⁵⁶ Criminal penalties may also apply if the act of retaliation is particularly grievous (that is, intentionally placing the whistleblower's safety or life at risk). This would depend on a country's particular context, and should be considered as a means to establish proportionate sanctions only when needed.

ANNEX 2

RESEARCH APPROACH

This report is based on country-level research that identified and compiled whistleblower legislation (for example, laws, regulations, rules, codes and decrees) in 27 EU countries (see Annex 3 for a list of country researchers). These national frameworks were assessed against the latest international standards and best practices, including those developed by Transparency International (see Annex 1). The research was conducted through desk research, legal reviews, and interviews with key experts, decision-makers, journalists and whistleblowers.

The overall goals of the research were to:

- Pinpoint legislative and regulatory gaps around which advocacy efforts can be planned and implemented.
- Highlight best practices currently being utilised and under consideration.
- Identify opportunities where the perception of whistleblowing and whistleblowers can be enhanced.

The specific objectives of the research were to:

- Compile and describe all (current and proposed) national whistleblower laws and regulations in each country as they apply to public and private sector employees.
- Identify areas where gaps and weaknesses in laws and regulations can be addressed.
- Create a snapshot of the perception of whistleblowing and whistleblowers among citizens, the media and decision-makers.
- Gauge the level of political will to protect whistleblowers and enforce whistleblower protection laws.

Researchers were provided with a checklist covering various elements of whistleblower protection laws and frameworks:

- legislation, oversight and enforcement
- scope of application
- protection provisions
- disclosure procedures
- relief, remedies and participation
- public awareness and societal values
- key whistleblower cases

To assess the comprehensiveness of national-level whistleblower frameworks, researchers also compared each country's laws and regulations against 15 fundamental elements of whistleblower legislation:

- broad definition of whistleblowing
- broad definition of whistleblower
- broad definition of retribution protection
- internal reporting mechanism
- external reporting mechanism
- whistleblower participation
- rewards system

- protection of confidentiality
- anonymous reports accepted
- no sanctions for misguided reporting
- whistleblower complaints authority
- genuine day in court
- full range of remedies
- penalties for retaliation
- involvement of multiple actors

ANNEX 3

NATIONAL BACKGROUND RESEARCH¹⁵⁷

Victor Alistar, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Romania* (February 2013).

Yann Baden, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Luxembourg* (September 2012).

Mike Beke, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Spain* (January 2013).

Vladan Brož, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Czech Republic* (August 2012).

Davide Del Monte and Giorgio Frascini, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Italy* (July 2012).

Vid Doria, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Slovenia* (January 2013).

Ádám Földes, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Hungary* (August 2012).

Aiga Grišāne, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Latvia* (December 2012).

Ingrid Helmius, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Sweden* (September 2012).

Lauren Kierans, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Bulgaria* (April 2013).

Lauren Kierans, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Ireland* (February 2013).

Constantinos Kombos, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. National Report for the Republic of Cyprus* (November 2012).

David Marques, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Portugal* (October 2012).

Nicole Marie Meyer, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: France* (September 2012).

Shahanaz Müller, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Austria* (September 2012).

¹⁵⁷ Please note: views expressed in the report are the researcher's own, and may not necessarily reflect the views of the organisation for which they work.

Pavel Nechala, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Slovakia* (September 2012).

Maria Nini and Anna Damaskou, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Greece* (August 2012).

Johanna Peurala, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Finland* (October 2012).

Asso Prii, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Estonia* (September 2012).

Public Concern at Work, *UK Submission to Transparency International Whistleblower Protection Research Project* (January 2013).

Björn Rohde-Liebenau, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Malta* (November 2012).

Björn Rohde-Liebenau, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Netherlands* (October 2012).

Louise Scheibel Smed, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Denmark* (August 2012).

Guido Strack, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Germany* (October 2012).

Transparency International Lithuania, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Lithuania* (October 2013).

Wim Vandekerckhove, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Belgium* (August 2012).

Anne Wojciechowska-Nowak, *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU. Country Report: Poland* (September 2012).

ANNEX 4

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¹⁵⁸ Please note: views expressed in the report are the researcher's own, and may not necessarily reflect the views of the organisation for which they work.

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