

New Frontiers in Detection: Empowering whistleblowers and facilitating voluntary disclosure

(15:45 - 17:00, CC 1)

Key Facts

- The OECD has launched a new publication, *Committing to Effective Whistleblower Protection* which analyses countries' approaches to protecting whistleblowers.
- Voluntary disclosure or whistleblowing was the primary detection method in 33% of foreign bribery cases (OECD Foreign Bribery Report, 2014). Of the cases detected through voluntary disclosure, an internal whistleblower reported allegations in 17% of cases.
- Despite progress, 58% of Working Group on Bribery members still have inadequate whistleblower protection frameworks.
- Countries have recently adopted novel tools, such as monetary incentives for whistleblowers or reduced sanctions for voluntary disclosure, to promote reporting.

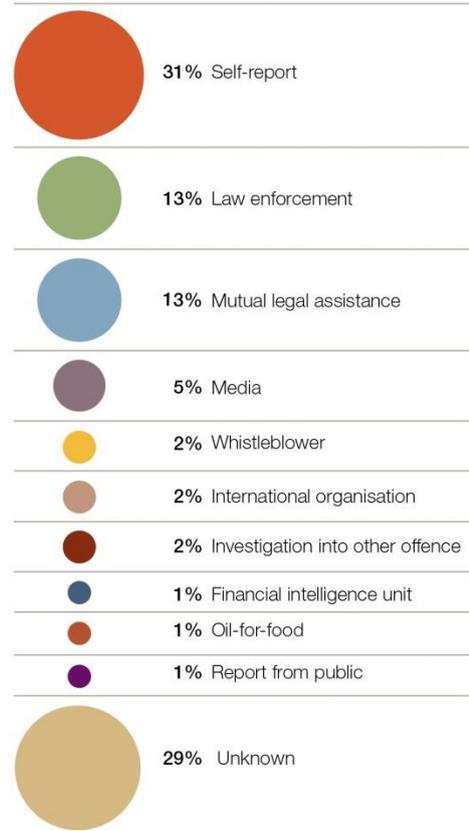
Protecting whistleblowers from retaliation is essential to promote public and private sector integrity and encourage the detection of misconduct.

The OECD is a leader in intergovernmental whistleblower protection instruments. In 1998 the OECD released a Recommendation on Improving Ethical Conduct in the Public Service. This was the first soft law instrument to put in place a dedicated principle on whistleblower protection. This was followed in 2009 with the OECD Anti-Bribery Recommendation which requires Member countries to "protect from discriminatory or disciplinary action public and private sector whistleblowers who report [foreign bribery] in good faith and on reasonable grounds".

Why protect whistleblowers?

Whistleblower protection is essential to promoting the detection and reporting of misconduct, including bribery and corruption. The OECD Foreign Bribery Report (2014), which analysed all concluded foreign bribery cases between 1999 and 2014, found that 33% of cases were detected through voluntary disclosure (self-reporting to law enforcement) or whistleblowing.

How are foreign bribery cases detected by law enforcement?

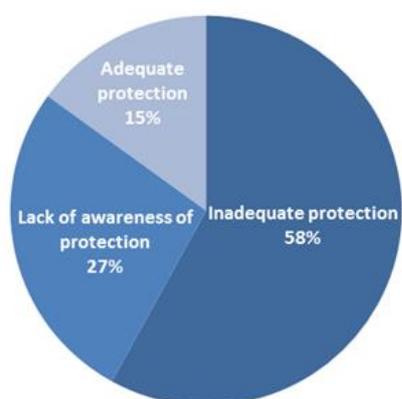


Source: OECD Foreign Bribery Report (2014)

What do countries need to do?

Recent years have seen significant developments in whistleblower protection in OECD countries. More OECD countries have put in place dedicated whistleblower protection laws in the past five years than in the previous quarter century.

Do OECD countries have adequate whistleblower protection laws?



However, there remain only a handful of OECD countries that have enacted widespread dedicated whistleblower protection laws that apply to both public and private sector whistleblowers. Protection of private sector whistleblowers remains a particular issue; many countries provide dedicated protection only to public sector whistleblowers. A majority of countries lack any dedicated whistleblower protection legislation, depending instead upon ad hoc protection through fragmented provisions in a range of laws. The absence of a broad, dedicated framework risks providing less comprehensive protection which may discourage reporting and leave fraud and corruption undetected. Countries should strive to establish a consolidated, dedicated law for the protection of both public and private sector whistleblowers.

In addition to an effective legislative framework, it is also vital that companies and organisations adopt internal whistleblower protection mechanisms. Whistleblowing is a vital tool by which companies can detect misconduct; of all self-reported foreign bribery cases, 17% were detected internally by an internal whistleblower. Unfortunately, internal whistleblower protections are rare: a third of companies surveyed in the OECD Business Integrity Survey had no written policy whistleblower protection or were unaware of such a policy. Countries therefore need to increase efforts to promote and incentivise the establishment of internal company whistleblower protection mechanisms.

Some countries have taken novel steps to encourage whistleblowing or voluntary disclosure. Awareness-raising campaigns to promote protections and reporting have had positive effects and are frequently recommended by the Working Group on Bribery. Other incentives, such as offering monetary awards to whistleblowers or taking voluntary disclosure into account when deciding on sanctions or whether to prosecute, have also had positive results. These efforts can be particularly valuable in countries where the public is generally reluctant to blow the whistle.

Discussion questions

- Given countries' lack of compliance with the 2009 OECD Anti-Bribery Recommendation, is further encouragement needed to enact effective whistleblower protection laws and to achieve stronger implementation? How can civil society, business and international organisations contribute to this agenda?
- Are additional tools (such as monetary incentives or reduced sanctions for self-reporting) required to promote whistleblowing? What are the pros and cons of such tools?
- What can be done to overcome public reluctance to blow the whistle on acts of corruption?
- How important is voluntary disclosure to detecting and fighting economic crime? What are the major incentives and disincentives for companies to voluntarily disclose wrongdoing?
- How can legal frameworks, such as deferred prosecution agreements and other settlement procedures, be used to facilitate effective voluntary disclosure? What types of safeguards are necessary to ensure the proper administration of justice in this context?

Committing to Effective Whistleblower Protection

This new OECD publication was launched on 16 March 2016, on the occasion of the Anti- Bribery Ministerial Meeting. The publication provides a detailed analysis of public and private sector whistleblower protection frameworks in OECD countries. It draws on information provided by countries, findings by the OECD Working Group on Bribery, and data from the OECD Survey on Business Integrity and Corporate Governance to provide an overview of current approaches to public and private sector whistleblower protection. In doing so, the publication highlights and analyses trends, identifies the advantages and drawbacks of particular systems, and outlines areas for future reform. The report is a vital resource for policymakers, government officials, and anyone interested in whistleblower protection.

www.oecd.org/corruption/whistleblower-protection.htm