Technical Report on Whistleblower Protection in the Public Sector in Greece
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About the Greece-OECD Project

The Greek government is prioritising the fight against corruption and bribery and, with the assistance of the European institutions, is committed to taking immediate action. Under the responsibility of the General Secretariat against Corruption, Greece’s National Anti-Corruption Action Plan (NACAP) identifies key areas of reform and provides for a detailed action plan towards strengthening integrity and fighting corruption and bribery. The OECD, together with Greece and the European Commission, has developed support activities for implementing the NACAP. This project is scheduled for completion in January 2018 and is co-funded by the European Commission and Greece. www.oecd.org/corruption/greece-oecd-anti-corruption.html.
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Executive summary

Robust whistleblower policies are a core component of public sector integrity frameworks. Such policies are an effective means for promoting a culture of openness, integrity and accountability among public servants, and enhance organisations’ control environment by facilitating the detection of fraud, corruption and other misconduct harming the public interest. However, to ensure whistleblower policies contribute to achieving these objectives, public servants need to trust that reporting channels will appropriately safeguard their confidentiality in order to avoid reprisals, and that relevant authorities will appropriately act upon their disclosure.

Akin to a witness protection programme, the whistleblower protection framework in Greece is much narrower than in other OECD countries. Public servants can seek protection only if they report information that will be used to prosecute a limited number of corruption-related offences. Public servants do not benefit from any incentive or protection measures if they wish to raise ethical concerns internally within their workplace, which is a major obstacle to the establishment of a culture of openness, integrity and accountability within the Greek public service. The Greek Government is currently considering different options to expand and strengthen its legal and policy frameworks for whistleblowers, and as such it could draw from other OECD countries’ good practices outlined in this report.

But even more importantly and beyond legal considerations, the Greek government could consider investing significant efforts to create an environment of acceptance and openness to constructively discuss integrity issues within the public sector, and beyond. While public perceptions in Greece about “blowing the whistle” have strengthened in recent years, much remains to be done to convince public servants that the relevant authorities will appropriately act upon disclosures of misconduct and that those who report misconduct will not experience reprisals. Based on a survey conducted by the OECD and the Firm Public Issue in 2016, 91% of public servants stated that it would be “very likely” or “likely” that someone who reported bribery or stealing at work would face negative consequences. In addition, among public servants who would not report misconduct witnessed in the workplace, 48% would base their decision on the fact that it would not make any difference, or because it would be too burdensome or not worth the effort.

This report provides 56 recommendations drawn from other OECD countries which, taken together, could contribute to establishing an environment conducive to disclosing misconduct in the public service. However, the implementation of the recommendations all at once may constitute a challenge for the Greek government, as it would require comprehensive changes in the structures of the Greek public administration, as well as changes of public perceptions regarding the importance of the role whistleblowers play.
in combatting corruption. Moreover, considering that the European Commission issued the Proposal for a Directive of the European Parliament and of the Council on the protection of persons reporting on breaches of Union law on 23 April 2018, the implementation of OECD recommendations will need to be aligned with the evolution of the legal framework at the European level, if necessary.

Therefore, to the extent allowed by European Union Law, the Greek government may decide to take an incremental approach to facilitate the implementation of the OECD recommendations. For example, the Greek government could prioritise some recommendations and seek the low-hanging fruit in order to create momentum, build guiding coalitions, and form a strategic vision and initiatives before achieving more ambitious or controversial reforms. Another option for the Greek government is to use pilots in strategic public organisations to test some or all of the recommendations, before considering expanding their implementation across the Greek public sector.

The 56 recommendations to ensure that Greece’s whistleblower system is comprehensive, effective and ensures appropriate action upon disclosures of misconduct are grouped according to six action areas outlined below:

- Ensuring that the public sector whistleblower framework is comprehensive and produces the expected results by:
  - Appropriately defining “whistleblower” and “misconduct”;
  - Providing effective incentives such as performance or honorific rewards to those who take the risk to disclose misconduct;
  - Undertaking periodic reviews of the whistleblowing framework and monitoring outcomes.
- Implementing measures to compensate whistleblowers who have experienced reprisals by:
  - Instilling certainty about whether legal protection will be granted;
  - Establishing clear, safe and diversified reporting channels to disclose wrongdoing in the public sector;
  - Ensuring transparency in decision-making; and establishing clear prohibitions to exercise reprisals.
- Implementing measures to compensate whistleblowers who have experienced reprisals by:
  - Providing effective remedies that are adapted to whistleblowers in the public sector;
  - Implementing cost-effective and timely measures to appeal administrative decisions against public sector whistleblowers;
  - Providing interim relief for whistleblowers when appropriate.
- Exercising leadership and commitment to create the right environment in the public sector to disclose misconduct:
– Setting the tone at the top to frame the duty of loyalty in the public service and shape perceptions about public sector whistleblowers;
– Conducting effective awareness-raising campaigns about the importance of whistleblowers within government and in the general public and strengthen the culture of integrity in the public service;
– Collaborating with civil society to conduct awareness-raising, instilling and fostering an appropriate environment to disclose misconduct in the public sector.
  • Conducting training and capacity-building activities to recipients of whistleblower disclosures in the public sector.
  • Monitoring and assessing the effectiveness of whistleblower implementation by defining relevant indicators.
I. Introduction

Comprehensive whistleblower policies in the civil service are a core component of effective public sector integrity frameworks. Robust whistleblower policies promote a culture of openness, integrity and accountability, and enhance organisations’ control environment by facilitating the detection of fraud, corruption and other misconduct harming the public interest. But in order to be able to achieve these objectives, civil servants must trust that reporting channels will effectively safeguard their confidentiality in order to avoid reprisals, and that the organisation will appropriately act upon disclosures made by public servants.

The protection of “whistleblowers” (employees who disclose wrongdoing in the context of their workplace) is at the core of any organisation’s integrity framework. Enhancing the protection given to whistleblowers has been identified in Greece as an important part of the National Anti-Corruption Action Plan. The Greece-OECD Project: Technical Support on Anti-Corruption supports the strengthening of the existing legal framework for whistleblower protection, as well as focusing on the implementation and capacity gap related to whistleblower protection mechanisms in both the public and the private sectors. This report focuses on whistleblower protection in the public sector.

Insiders have become a primary source of information in a complex modern public sector in terms of exposing misconduct and promoting accountability. Indeed, tips provided by whistleblowers have been, by far, the most common detection method for organisational fraud, accounting for 39.1% of cases. In comparison, internal audit (16.5%) and management review (13.4%) were the second and third most commonly used methods to detect organisational fraud (ACFE 2016).

Effective public sector integrity frameworks must incentivise whistleblowers to report misconduct by ensuring visible support and positive reinforcement from the government and the organisational hierarchy, clear guidance on reporting procedures, as well as effective and comprehensive legal protection from all kinds of retaliation. Officials who are responsible for handling disclosures of misconduct must also be subject to performance, transparency and accountability criteria as to how they exercise their discretion in following-up on such disclosures. An effective combination of all these measures is considered paramount to safeguard the public interest and promote a culture of integrity in the public sector. In addition, it will send the message that officials and the public are expected to raise integrity concerns and dilemmas and that reprisals against whistleblowers will not be tolerated.

Perceptions in Greece about whistleblowers and how they act as the ultimate safeguard of the public interest have strengthened in recent years. Important steps have been taken by the government in 2014 with the passing of the Law 4254/2014 to encourage individuals with knowledge about specific corruption crimes to report relevant
information to the authorities. However, much remains to be done to develop a climate of acceptance and openness towards whistleblowers in Greece, as well as public trust that relevant authorities will take disclosures seriously and effectively protect those who take the risk to disclose. Many stakeholders interviewed for the purpose of this report have reported that the public service is plagued with widespread culture of impunity when it comes to integrity breaches, which greatly affects public servants’ trust in government structure and hierarchy. Indeed, perceived levels of corruption for the political elites and top level public servants is so high that it acts as a justification for average civil servants to engage into questionable behaviour. Such perceptions of impunity and a generalised lack of accountability might explain why stakeholders interviewed for this report unanimously stated they would not trust internal reporting channels within the public service if they were whistleblowers.

The findings of a nationally representative survey carried out on public opinion, attitudes and experiences with corruption (OECD-Public Issue, 2016) are aligned with qualitative data collected from stakeholder interviews. Among the survey respondents, 91% of public servants stated that it would be either “very likely” or “likely” that someone who reported bribery or stealing at work would face negative consequences (Figure 1). Moreover, among public servants who would not report misconduct that they witnessed in the workplace, 48% would base their decision on the fact that it would not make any difference, or because it would be too burdensome or not worth the effort (see figure 6 in subsection II.B.3)).

Figure 1. Likelihood that someone who reports bribery or stealing at work will face negative consequences

![Chart showing likelihood of negative consequences](chart.png)


Based on the data the OECD gathered through the survey, as well as stakeholder interviews and desk research, this report provides a number of recommendations that are drawn from OECD countries good practices. Taken together, these will contribute to establishing an environment conducive to disclosing misconduct in the public service.
However, the implementation of the recommendations all at once may constitute a challenge for the Greek government, as it would require comprehensive changes in the structures of the Greek public administration, as well as changes of public perceptions regarding the importance of the role whistleblowers play in combatting corruption. Moreover, considering that the European Commission issued the Proposal for a Directive of the European Parliament and of the Council on the protection of persons reporting on breaches of Union law on 23 April 2018, the implementation of OECD recommendations will need to be aligned with the evolution of the legal framework at the European level, if necessary.

Therefore, to the extent allowed by European Union Law, the Greek government may decide to take an incremental approach to facilitate the implementation of the OECD recommendations. For example, the Greek government could prioritise some recommendations over others and seek the low-hanging fruit in order to create momentum, build guiding coalitions, and form a strategic vision and initiatives before achieving more ambitious or controversial reforms related to whistleblowing. Another option is to use pilots in strategic public organisations to test some or all of the recommendations, before considering expanding their implementation across the public sector.

This report is organized as follows: Part II below discusses the design of a comprehensive policy framework for whistleblowers in the Greek public sector. Part III suggests policy measures to effectively implement a whistleblower framework in Greece’s public sector. Finally, Part IV offers a set of concrete measures that Greece could consider, to ensure that Greece’s whistleblower system is comprehensive, effective in facilitating the reporting of wrongdoing and protecting against reprisal in practice, and ensures appropriate action upon each disclosure.
II. Creating a comprehensive policy framework for whistleblowers in the Greek public sector

An appropriately designed whistleblower policy framework is the first stepping stone to the establishment of an environment and culture where employees trust their disclosure will be appropriately acted upon and where the likelihood of reprisals is low. A strong public sector whistleblower policy framework will be designed to apply to a wide range of actions that may harm the public interest, will provide direct incentives for whistleblowers to disclose misconduct and will monitor whether policy measures produce the expected impact. Moreover, measures that seek to prevent that reprisals against whistleblowers occur in the first place may also constitute indirect incentives to disclose misconduct. Such measures include providing as much certainty as possible as to whether whistleblowers will be eligible to legal protection, providing alternative communication channels through which misconduct may be disclosed, and establishing clear large prohibitions against the exercise of reprisals against whistleblowers. Finally, when things go wrong and it is not possible to ensure whistleblowers unduly experience reprisals, there must be effective remedies in place to compensate them. The remedies must assure access to an independent, credible forum to seek justice under fair legal standards, with compensation that “makes whole” whistleblowers who prevail.

This section will highlight the key pillars of an effective whistleblower system. It will review good practices in OECD countries, provide a snapshot of the Greek legislative and policy framework, and provide guidance and advice on how the Greek framework could be strengthened to align with such good practices, when applicable. In doing so, this section may be used to support the legislative committee formed by the Greek government to draft the upcoming whistleblower law.

A. Making the most of a whistleblower framework by ensuring the appropriate scope, effective incentives and expected impact

The main objective of any whistleblower policy framework is to allow public servants to expose all integrity breaches that could seriously harm the public interest to a recipient who will undertake appropriate action to safeguard the public interest. Effective whistleblower frameworks are designed according to a whole-of-government approach, while taking into account the sensitivity of certain disclosures. Moreover, as the design and implementation of whistleblower frameworks may require a significant investment of human, technical and financial resources, it is paramount to ensure the framework produces the impact expected by policy-makers on an ongoing basis.
1. Defining the terms “whistleblower” and “misconduct” in a way that effectively safeguards the public interest

The concepts of who can be a whistleblower and what reprehensible actions may be reported through a whistleblower system are some of the key pillars of any whistleblower framework. The concept of “whistleblower” must be large enough to cover potential irregularities occurring in any area of government activity, and the concept of “misconduct” can be aligned with acts that harm the public interest in a meaningful manner. Interviewed stakeholders, including Prosecutor for Counter Terrorism and the National Ombudsman, have recommended clarifying the parameters surrounding who can claim whistleblower status to avoid diverging interpretations and expanding the meaning of the misconduct that can be reported through the whistleblower framework. Carrying out an effective communication and training strategy so that public servants are well aware of the meaning of these concepts will also be key to the implementation of an effective whistleblower system.

Ensuring the scope of the term ‘misconduct’ under the Civil Service Code sufficiently large to capture all actions by public servants that may significantly harm the public interest

One of the main objectives of whistleblower protection systems is to promote and facilitate the reporting of “illegal, unethical or dangerous” activities (Banisar, 2011). Public sector whistleblower laws must thus provide a clear definition of the information that is sought from whistleblowers. Such information may contribute to providing evidence that acts constituting violations of codes of conduct, laws and regulations, gross waste or mismanagement, abuse of authority, dangers to the public health or safety, or corrupt acts have been committed. For legitimacy purposes, it is essential that the concept of “misconduct” be limited to acts that may harm the public interest, in contrast with personal disputes or matters entirely related to one’s private life, which will usually be dealt with by human resources and do not warrant additional legal protection against reprisals. Clearly limiting “misconduct” to public interest-related matters may also help avoid attracting a very large range of irrelevant disclosures that may unduly burden reporting channels.

For example, the UK legislation\(^1\) provides a balanced approach with respect to what may be reported through reporting channels by including the following elements:

- a criminal offence that has been committed, is being committed or is likely to be committed;
- a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;
- a miscarriage of justice that has occurred, is occurring or is likely to occur;

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\(^1\) Section 43B of the UK Public Interest Disclosure Act of 1998, Part IVA.
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The health or safety of any individual that has been, is being or is likely to be endangered;

the environment that has been, is being or is likely to be damaged, or

information tending to show any matter falling within any one of the preceding paragraphs has been, is being, or is likely to be deliberately concealed.

Moreover, article 2 of Serbia’s Law on the Protection of Whistleblowers No. 128/2014 provides “whistleblowing” includes, in addition to the above, the disclosure of misconduct in relation with:

a violation of human rights;

the exercise of public authority in contravention of the purpose for which it was granted.

Protected disclosures in the United States are defined more broadly in the law, as section 5 U.S. Code § 1213 and § 2302(b)(8) define this concept as gross mismanagement, gross waste of funds, abuse of authority and danger to public health and safety. These are more elastic concepts than those under the UK legislation, and therefore it belongs to courts to interpret them. However, leaving the definition of the scope of protected disclosure to courts can produce unexpected results even when the Legislator had openly expressed intent to provide for a broadly applicable regime. After a series of U.S. courts decision that limited the meaning of protected disclosures to such an extent that they could be considered as contrary to the text of the U.S. Whistleblower Protection Act (WPA), a Senate Report adjusted attention back to the original purpose of the WPA and provide further guidance to the courts with respect to the interpretation of the Act. In the Whistleblower Protection Enhancement Act of 2012, Congress unanimously repealed a series of court decisions that had created loopholes in protection for “any” lawful, credible and significant disclosure. Due to repeated hostile judicial activism from a court with a monopoly of judicial review, the Federal circuit Court of Appeals, this was the third time Congress has had to intervene with legislation to restore whistleblower rights first enacted in the Civil Service Reform Act of 1978. In the 2012 law, Congress eliminated the monopoly and restored normal appellate judicial review, with effective results to date.

To avoid overly relying on the courts’ discretionary power, some countries have provided informal guidance to relevant authorities on how protected disclosures could be interpreted. For instance, the concept of “gross mismanagement” used in Canadian whistleblower law is defined on Canada’s Public Sector Integrity Commissioner as the following:

- Matters of significant importance;
- Serious errors that are not debatable among reasonable people;
- More than minor wrongdoing or negligence;

2 Subsection 8c of the Public Servants Disclosure Protection Act, S.C. 2005, c. 46.
II. CREATING A COMPREHENSIVE POLICY FRAMEWORK FOR WHISTLEBLOWERS IN THE GREEK PUBLIC SECTOR

- Management action or inaction that creates a substantial risk of significant adverse impact upon the ability of an organisation, office or unit to carry out its mandate;
- The deliberate nature of the wrongdoing;
- The systemic nature of the wrongdoing.  

Australia’s Public Interest Disclosure Act of 2013 provides guidance on the meaning of “disclosable conduct” directly in section 29 as:

“conduct (in Australia or in a foreign country) that contravenes the law, that constitutes maladministration, that is an abuse of public trust, that results in wastage of public money, public property, money of a prescribed authority, property of a prescribed authority, or conduct that results in danger (or a risk of danger) to the health or safety of one or more persons or the environment. In addition, disclosable conduct also includes when a public official abuses his or her position as a public official and conduct engaged in by a public official that could, if proved, give reasonable grounds for disciplinary action against the public official.”

An interesting feature of the Australian Public Interest Disclosure Act is that it goes beyond the concept of criminal offences or any breach of the law by including under the term “disclosable conduct” as any other action that could be against the public interest and subject to disciplinary action against the public official, based on public sector internal policies such as a code of conduct.

Currently, the scope of the “misconduct” that may be disclosed by the whistleblower while giving rise to legal protection for public servants is very narrow. Protected disclosures are defined by article 110(6) of the Greek Civil Service Code and article 45B of the Code of Criminal Procedure, which provide that any person who, without any involvement in a list of specific crimes and without any personal gain, substantially contributes to the prosecution of those crimes by providing authorities with appropriate information, can be characterised as a whistleblower, and hence cannot be subject to any adverse discrimination directly or indirectly as a result of the disclosure of misconduct. Read together, these provisions imply that a whistleblower would be protected only if he or she discloses misconduct significantly contributing to prosecute bribery-related criminal offences. This falls short of the law in many other jurisdictions, where whistleblowers enjoy legal protections if they disclose misconduct that is related to any breach of laws, including sometimes internal policies such as codes of conduct, regardless of whether they derive any personal gain from blowing the whistle (with the exception of illegal gain).

3 See “What is ‘gross mismanagement’ in the public sector?”, www.psic.gc.ca/eng/wrongdoing#whatisgross.
4 Articles 159 (Venality of political officials), 159A (Bribery of political officials), 235 (Venality of a civil servant), 236 (Bribery of a civil servant), 237 (Venality and bribery of judges) and 237A (Marketing unfair influence on political officials, civil servants and judges -Middlemen) of the Criminal Code.
It is important that the reporting channels to disclose misconduct in the public sector are not used to report minor cases of mismanagement or random errors by managers or public servants that could affect the credibility and soundness of the system. However, reportable misconduct in Greek public service should be broadened to at least include any potential criminal offences, failures to comply with any legal obligation or obstruction of the agency mission, and any action that could lead to disciplinary action against the public official.

Relatedly, the European Commission released on 23 April 2018 the Proposal for a Directive of the European Parliament and of the Council on the protection of persons reporting on breaches of Union Law, which also broadly defines the scope of the information that may be reported through whistleblower reporting channels. The draft directive states that the provision of information in relation to unlawful activities or abuse of law in the following areas may be reported through whistleblower reporting channels and allows for the application of protective measures provided by the draft directive:

- Public procurement;
- Financial services, prevention of money laundering and terrorist financing;
- Product safety;
- Transport safety;
- Protection of the environment;
- Nuclear safety;
- Food and feed safety, animal health and welfare;
- Public health;
- Consumer protection;
- Protection of privacy and personal data, and security of network and information systems;
- Market integrity and competition;
- Fraud or any illegal activity affecting the financial interests of the Union;
- Free movement of goods, persons, services and capital.

Notably the draft Directive, considering the definition of “abuse of law” at article 3(3), requires that acts or omissions within the scope of Union law which do not appear to be unlawful in formal terms but defeat the object or the purpose pursued by the applicable rules be reported through the whistleblower systems implemented by Member States.
Policy recommendation

1. Include a definition of “misconduct” in the Civil Service Code that builds on the good practices identified above, and that at least complies with the final version of the Directive of the European Parliament and of the Council on the protection of persons reporting on breaches of Union Law, as applicable.

Ensuring the whistleblower framework applies to the whole public service, while taking into account the sensitivity characterising certain disclosures

The general meaning of the term “whistleblower” should be wide enough to include all the functions that are part of the public sector’s mandate. All employees working in ministries, government agencies and municipalities, including political appointees and elected officials, should be covered by the framework, as well as of state-owned or controlled enterprises and statutory agencies. In addition, a comprehensive public sector whistleblower framework should also cover private firms that have been granted with an exclusive mandate to provide essential services, such as electricity, water or a port authority. Including all functions that are part of the public sector’s mandate under the scope of the whistleblower framework ensures that all employees falling outside the traditional employee-employer relationship (e.g. consultants, contractors, trainees/interns, temporary employees, former employees and volunteers) are captured by the framework. It is also good practice to include public service job applicants and former public servants under the definition of “whistleblower”, in order to avoid illicit reprisals against whistleblowers before they join or after they leave the public service. For example, article 2 of Serbia’s Law 128/2014 defines a “whistleblower’ as any natural person who performs whistleblowing in connection with his employment; hiring procedure; use of services rendered by public and other authorities, holders of public authority or public services; business dealings; and ownership in a business entity.

However, in many jurisdictions, employees working in sensitive areas, such as armed forces, law enforcement or intelligence agencies, are not captured under the definition of “whistleblower” and therefore are excluded from the application of whistleblower frameworks. These countries require the disclosure of wrongdoing occurring within sensitive agencies like armed forces and the intelligence community to be done internally. In contrast with most other public officials, relevant national laws prohibit these officials from disclosing wrongdoing to a designated third party independent from the relevant organisation.5

There are obvious public interest grounds for restricting the disclosure of sensitive national security matters, such as preventing criminal groups, rogue states and the like to access information that might affect public safety and sensitive strategic interests. This is why some countries impose criminal sanctions if employees disclose information

5 United States: 5 USC § 8H ; United Kingdom : Official Secrets Act, section 1 ; and Canada : Public Servants Disclosure Protection Act, section 2.
concerning official secrets or issues pertaining to national security. However, imposing secrecy on misconduct in the public service is hardly the most appropriate way to respond to national security threats. Not allowing appropriate external disclosures of misconduct in public institutions undermines effectiveness of the whistleblower framework. It creates an institutional conflict of interest with respect to how allegations of misconduct are handled, and decreases the accountability of public officials who have the power to impede on civil rights, which contradict the fundamental rationale behind the enactment of whistleblowing law. Significantly, as of December 2017, out of 38 countries with national whistleblower laws, only 14 had national security loopholes. There have not been any controversies about significant security breaches due to the seamless whistleblower coverage.

Reconciling the competing policy objectives of ensuring that sensitive information is not improperly leaked into the public domain, while ensuring that all public sector organizations are appropriately made accountable for their decisions, should be made a priority by the Greek government. External channels to report misconduct occurring in sensitive areas that may affect national security can be implemented while being subject to higher safeguards and confidentiality requirements to ensure the information is not leaked in the public domain. This would lessen any perceptions of conflict of interest, as well as of lack of transparency and accountability within strategic organizations. This recipient could decide, based on the public interest and clearly established guidelines, the appropriate course of action following allegations of wrongdoing, and which information may or may not be disclosed to the public.

In Australia, for example, a disclosure of conduct that concerns an intelligence agency can be disclosed to the intelligence agency or to the Inspector General of Intelligence and Security, if the discloser believes on reasonable grounds that it would be appropriate for the disclosure to be investigated by the Inspector General of Intelligence and Security. The Inspector-General of Intelligence and Security is an independent statutory office holder who reviews the activities of the six Australian intelligence agencies. The purpose of this review is to ensure that the agencies act legally and with propriety, comply with ministerial guidelines and directives and respect human rights. The Inspector-General can undertake a formal inquiry into the activities of an Australian intelligence agency in response to a complaint or a reference from a minister. The Inspector-General can also act independently to initiate inquiries and conducts regular inspections and monitoring of agency activities.

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6 Albania, Australia, Belgium, Bosnia, Canada, France, Great Britain, Ghana, Hungary, India, Ireland, Israel, Italy, Jamaica, Japan, Korea, Kosovo, Liberia, Luxembourg, Macedonia, Malaysia, Malta, Mozambique, Namibia, Netherlands, New Zealand, Norway, Peru, Romania, Serbia, Slovakia, Slovenia, South Africa, Sweden, Tunisia, Uganda, United States, and Zambia.

7 Canada, India, Ireland, Jamaica, Japan, Netherlands, New Zealand, Norway, Peru, Slovakia, South Africa, United Kingdom, and United States.

8 Sections 6 to 14 of the Inspector-General of Intelligence and Security Act, 1986.
In the United States, the provides some balance by allowing classified disclosures to congressional intelligence oversight committees and to the Office of the Inspector General, as alternatives to reporting misconduct through the chain of command. Moreover, the Council of Europe provides that for disclosures of matters concerning national security, official or military secrets, or classified information, countries may consider adopting special schemes, rules, procedures and safeguards that take into account the nature of the subject matter and prevent unnecessary external exposure of sensitive information (Council of Europe, 2014).

At the moment, the scope of application of the Civil Service Code provided by article 2 is not as comprehensive as the definition of public official provided by the Greek Criminal Code, and leaves out many civil servants involved in strategic services provided by the state. The scope of application of the Civil Service Code, as far as the definition of the public sector whistleblower is concerned, may be expanded based on article 263A of the Criminal Code, which provides a much broader definition of “civil servant” that includes, among others, elected and temporarily appointed officials at the municipal level, or private firms exclusively authorised by the state to provide essential services.

In addition, the Greek government could look into the appropriateness of building on accountability and transparency mechanisms that already exist in Greece. For example, the National Ombudsman Office already conducts monitoring activities to assess the performance of coast guards, police services and prison guards in relation with immigration. Allowing for the recruitment and training of qualified, properly credentialed staff at the Ombudsman Office could ensure maximum credibility as the external channel for national security disclosures.

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### Policy recommendations

2. Align the definition of whistleblower and the scope of application of the Civil Service Code with article 263A of the Greek Criminal Code to ensure it covers all employees working in public entities, state-owned or controlled enterprises, statutory agencies, municipalities and private firms that have been authorised by the state to provide essential services, as well as public service job applicants and former public servants, among others.

3. Consider establishing additional safeguards for external disclosures made to an independent third party (see recommendation 14) arising from sensitive areas (e.g. armed forces, intelligence communities, law enforcement) to avoid that information on national security or strategic interests is leaked in the public domain, as well as guidelines that will clearly provide what information needs to be disclosed to the public to foster transparency and accountability.
2. Considering providing incentives to whistleblowers to disclose misconduct

Considering providing direct incentives for public servants who disclose misconduct

Disclosing wrongdoing can be a daunting undertaking that can lead to social exclusion in the workplace, harassment, demotion and professional marginalisation. In addition to the stigma that may be attached to blowing the whistle, employees may also fear financial and reputational degradation. In order to curtail these potential losses and encourage individuals to come forward in the detection of wrongdoing, countries have introduced various incentives, ranging from tokens of recognition to financial rewards. While these are often considered as incentives, financial payments to whistleblowers can also provide financial support, for example living and legal expenses, following retaliation.

In the United States, the False Claims Act allows individuals to file an anti-fraud lawsuit on behalf of the government in order to recover lost or misspent money. If the lawsuit is successful, the individual can receive up to 30% of the amount recovered. Between 1987 and 2012, some USD 3 billion had been distributed to whistleblowers under the False Claims Act (Valencia, 2011). In addition, the False Claims Act has dramatically increased the amount of money recovered by the government: the US government currently recovers, on average, over USD 1 billion annually, compared to an average of USD 10 million prior to the act’s enactment. The Dodd-Frank Act (2014) authorises the Securities and Exchange Commission (SEC) to provide monetary awards to eligible individuals who come forward with high-quality original information that leads to a commission enforcement action in which over USD 1 million in sanctions is ordered. The range for awards is between 10% and 30% of the money collected. Additional monetary awards can be granted to whistleblowers for qualified related actions by other law enforcement agencies. Since the inception of the programme in 2011, the SEC has awarded more than $111 million to 34 whistleblowers whose information and cooperation assisted the agency in bringing multiple successful Commission enforcement actions and related actions. In 2016 alone, the SEC issued over $57 million of awards, an amount higher than all award amounts issued in previous years combined. The award programme led to “enforcement actions in which over $584 million in financial sanctions was ordered, including more than $346 million in disgorgement of ill-gotten gains and interest” (SEC, 2016).

Korea also provides monetary rewards for whistleblowers who disclose acts of corruption. Under sections 71 to 83 of the Enforcement Decree of the Anti-Corruption Act, which was amended and took effect in October 2015, the ACRC shall provide a maximum of approximately USD 2.6 million (KRW 3 billion) to whistleblowers who directly contribute to increasing the revenue of public agencies. It may also provide a maximum of approximately USD 170 thousand (KRW 200 million) to whistleblowers if

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12 Current to September 2016.
II. Creating a Comprehensive Policy Framework for Whistleblowers in the Greek Public Sector

Whistleblower laws enabling “people who do good to do well” have the potential to bring colossal savings to public finances. Many take the view that whistleblowing law may be more effective by not only relying on individuals with superior morals and ethical values who are willing to risk their career, financial stability and more to accomplish what they consider as their civic duty. In fact, requiring purely or even mainly altruistic motives in order to grant legal protection to whistleblowers may be counterproductive. Personal gain motivations can coexist with the public interest. Putting too much emphasis on motives encourages the wrongdoer to attack the credibility and personality of whistleblowers, and it ultimately shifts the attention from the alleged misconduct to the relationship between the wrongdoer and the whistleblower. Moreover, it may be very difficult to establish whistleblowers’ motives with certainty. What matters most for investigative purposes is that the information may help establish wrongdoing and that it can be verified, and for protection purposes that it has not been intentionally fabricated to mislead relevant authorities.

However, there are certainly important moral hazards that are often associated with providing financial rewards to whistleblowers. Many governance experts believe that providing for financial rewards will increase the number of unsubstantiated complaints significantly. Moreover, many more are against financial rewards based on moral grounds, i.e. that whistleblowers should be motivated by their civic duties rather than by potential benefits that could arise from their disclosure. More importantly however, providing monetary rewards for the disclosure of misconduct has the potential to affect social acceptance for blowing the whistle, as well as to decrease the effectiveness of protection measures for whistleblowers. Reward schemes may have a counterproductive impact on a whistleblowing law particularly in environments with a pre-existing bias against whistleblowers, while providing little realistic chance of benefit for individual whistleblowers. Indeed, as of September 2016, 34 cases out of 18,334 disclosures led to a reward, or 0.02% (SEC 2016). Since cultural background may largely influence where people stand on this issue, the granting of rewards may be more acceptable in some contexts than others.

In jurisdictions where granting financial rewards to whistleblowers would be counterproductive due to cultural considerations, there are other incentives that may be used to encourage disclosures such as personal distinctions and honorific rewards. For instance, the whistleblower protection system in Israel allows the president to award a certificate of merit to a public servant who filed a report in good faith, with an inspected body in accordance with procedures, regarding a corrupt act or other infringement of ethical conduct that occurred at his or her workplace, and where a report has been...
found to have been justified. The certificate is a symbol of public recognition of that person's contribution to ethical conduct in public institutions in Israel. In a similar context, but from a civil society perspective, Ireland’s Transparency International chapter launched a National Integrity Award in 2015, as a symbol of recognition of individuals and organisations that contributed to the public interest by disclosing wrongdoing (Transparency International, 2015). A significant benefit arising from this type of reward is that it reinforces cultural acceptance of whistleblowers, rather than threaten it.

There are currently no financial or honorific rewards, or personal distinctions for blowing the whistle in the public sector in Greece. Article 263B of the Greek Criminal Code allows for lighter sentences for someone who has participated in a criminal offence and shares information with the prosecutor to facilitate the prosecution and conviction of other perpetrators. However, this is typically considered more as plea bargaining rather than a whistleblower incentive as it does not encourage the disclosure of misconduct witnessed in the workplace. The Greek government may wish to consider granting financial rewards, honorific rewards or personal distinctions for whistleblowers that have shown leadership, commitment and exemplary behaviour in safeguarding the public interest.

Several stakeholders interviewed from government and civil society have argued that the granting of honorific rewards, tokens of recognition and the use of favourable performance reviews could contribute to nudge public servants to do more for the public service and build sound organisational cultures where public servants who thrive on integrity and excellence are praised. Based on their testimonies, such an approach would heavily contrast with the current culture of impunity that prevails in the Greek civil service and where public servants are often doing less in order to avoid being a witness of irregular or questionable practices. The same stakeholders indicated being supportive of a financial reward programme, if such a programme is supported by a strong communication strategy that would commend those who have taken significant risks to safeguard the public interest in an outstanding manner.

### Policy recommendations

4. Consider granting honorific and monetary rewards to public sector whistleblowers as it is the case for exemplary conduct under articles 61 and 62 of the Civil Service Code.

5. Consider granting additional honorific and/or monetary rewards in cases where public sector whistleblowers have contributed to safeguard the public interest in an outstanding manner or their disclosure has allowed authorities to recover public funds over a predetermined amount.
3. Ensuring monitoring of the effectivity of the whistleblowing framework

Providing for requirements to review the effectiveness of the whistleblower framework on an ongoing basis

If Greece decides to expand its whistleblowing policy framework based on the recommendations discussed in this report, it could consider reviewing such framework on a periodic basis to assess whether the mechanisms in place are meeting their intended objectives as well as the overall spirit of the whistleblower framework, including but not limited to whether the law is adequately implemented. Legal provisions mandating the review of effectiveness, enforcement and impact of whistleblower policies have been introduced by a number of OECD countries, such as Australia, Canada, Japan, and the Netherlands. The Japanese Whistleblower Protection Act even specifically requires the Government to implement the measures that will be arising from the findings of the review. In both Canada and Australia, the review is carried out by Parliamentary committees and tabled in Parliament. Greece could consider forming a committee of experts on a periodic basis (e.g. every five years), which would include representatives from government, academia, public institutions independent from the government such as the Ombudsman and the General Secretariat Against Corruption, as well as civil society organisations to monitor and assess the implementation of the framework. While a parliamentary committee would necessarily need to be involved in the review and approval of any potential amendments to legal provisions underlying the whistleblower framework, government and civil society stakeholders have suggested that an expert committee should be responsible for conducting the technical analysis on the effectiveness of the framework. Experts should be selected according to their expertise and added value, as opposed to political affiliation or hierarchical status.

In addition, to foster transparency and accountability in relation with the administration of the Greek public sector whistleblower framework, each public entity could be required to report statistics and outcomes of whistleblower cases (once such cases have been anonymised) directly to Parliament, or to the authority that is made responsible for administering the external reporting channels. In addition, effective mandatory reporting would also include win/loss record for cases of retaliation against whistleblowers, including decisions on the merits (i.e. the cases not decided on procedural grounds, but rather about whether the whistleblower’s rights were violated). It is a good practice to make such an external authority equally accountable about its administration of the external disclosure channels by being required to report statistics and outcomes of whistleblower cases (once they have been anonymised) to Parliament. In addition, the publication of cumulative data on taxpayer money recovered from fraud or through fines, as well as savings arising from the elimination of waste or mismanagement, have been very effective in gaining cultural support for whistleblowers. Such reporting obligations may be drawn according to the indicators suggested in subsection III.C.1) of this report. Reports from Greek public sector institutions, as well as from the independent third party responsible for administering external disclosures, could be made publicly available.
II. CREATING A COMPREHENSIVE POLICY FRAMEWORK FOR WHISTLEBLOWERS IN THE GREEK PUBLIC SECTOR

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<td><strong>6.</strong> Consider mandating periodic reviews of legislative provisions part of the public sector whistleblower framework by a committee of experts that includes representatives from government, independent public organisations, academia and civil society. Recommendations may then be tabled in Parliament to be discussed by the Parliamentary committee and the legislative assembly.</td>
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<td><strong>7.</strong> Require each Greek public sector institution to report statistics and outcomes of whistleblower cases to Parliament or the independent third party responsible for administering external disclosures. Require the third party responsible for administering external disclosures to report statistics and outcomes of whistleblower cases to Parliament. To reinforce transparency and public trust, these reports should be made publicly available.</td>
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B. Implementing measures to avoid that reprisals occur in the first place

Upon identifying planned or actual misconduct, a public servant may not be certain of what to do with the information, where or whom to turn to, and whether they are protected by relevant whistleblower protection mechanisms. Throughout the disclosure process, employees may have reservations about safeguards such as anonymity and confidentiality measures, they may also be concerned about whether the recipient of disclosure will ensure adequate follow-up. As the multitude of steps along the disclosure process may look daunting and vague to some whistleblowers, providing them with all the information they need, including responses to the issues raised above, may increase clarity and trust in the process and incentivise whistleblowers to report.

Ideally, a strong whistleblower framework will provide measures that will allow whistleblowers to avoid suffering reprisals of all sorts within their workplace. Such measures include providing as much certainty as possible as to whether whistleblowers will be eligible to legal protection, providing alternative communication channels through which misconduct may be disclosed, and establishing clear large prohibitions against the exercise of reprisals against whistleblowers. Ensuring that those who are responsible as to how they handle disclosures made by whistleblowers are accountable will also significantly contribute to prevent any retaliation to occur.

The OECD surveyed Greek citizens in December 2016 about whether they would report an incident of corruption that they had witness in their workplace. The public service, despite having one of the lowest rate of people who would not report an incident of corruption at 10%, has one of the highest rate of individuals who have responded “maybe/it depends/I don’t know” at 22%. The extent and genuineness of the efforts that have been undertaken to avoid that reprisals happen in the first place will be a key deciding factor about whether public servants will trust the system and feel confident to disclose misconduct.
1. Instilling certainty about whether legal protection will be granted

Defining the relevance of whistleblower motivations (e.g. good faith) and of the accuracy of whistleblower allegations

A principal requirement of most whistleblower protection provisions in multilateral anti-corruption instruments, and corresponding domestic whistleblower protection legislation, is that the disclosures be made in “good faith” and on “reasonable grounds.” However, the interpretation of the term “good faith” varies to a great extent from one jurisdiction to another. Some legislation provides that an employee who reports in good faith is someone who could reasonably believe his or her allegations were true at the time of disclosure, while other legislative frameworks associate good faith as the absence of harmful intent from the whistleblower.

The latter implies that in order to be eligible for legal protection whistleblowers’ motives to disclose misconduct must be purely altruistic and should not be based on a desire to harm the wrongdoer. The main issue with this interpretation is that it is extremely difficult to establish with certainty a whistleblower’s intrinsic motivations to disclose misconduct. Moreover, such an interpretation may provide incentives to personally attack the whistleblower rather than on the accuracy and usefulness of the information reported. Should investigators be concerned more about the accuracy and usefulness of the information reported or about whether the whistleblower and the alleged wrongdoer had a personal dispute in the past? The answer appears to be self-evident.

That being said, when there is evidence to believe that whistleblowers could not reasonably believe their allegations were true at the time of disclosure, or that individuals have reported false or misleading allegations on purpose, such individuals should not only be ineligible for legal protection.
In fact, many countries have limited the meaning of good faith to whether the whistleblower should reasonably have known whether his or her allegations were substantiated. According to this interpretation, whistleblowers who could reasonably believe their allegations were true at the time of disclosure will be eligible for legal protection even though their allegations could not be substantiated before a court or an administrative authority. Such an interpretation of “good faith” increases certainty about whether legal protection will be granted to whistleblowers while providing legal remedies against individuals who would be tempted to make up false allegations on the sole basis of their will to harm others.

The vast majority of OECD countries surveyed reported having put measures in place to preclude individuals from reporting allegations in bad faith (Figure 3). In New Zealand, the motive of the person reporting wrongdoing is not relevant, but the Public Interest Disclosure Act stipulates that the employee must believe on reasonable grounds that the information about suspected serious wrongdoing is true, or likely to be true, in order for the disclosure to come within the act and its protections.\(^\text{13}\) Likewise in Australia, the Public Interest Disclosure Act protections do not apply to those knowingly making a statement that is false or misleading.\(^\text{14}\) Similarly in the United States, motive is not a relevant factor, but the whistleblower must “reasonably believe” that the information is evidence of wrongdoing. This means that mistaken disclosures are consistently protected under US law if they are based on reasonable belief. That reasonable belief standard is defined by the Whistleblower Protection Enhancement Act as whether a peer with similar knowledge, training and experience could have acted as the whistleblower. Section 7 of the US Inspector General Act of 1978 states that employees are not protected from reprisal for disclosing information if the disclosure is made with the knowledge that it is false or with willful disregard for its truth or falsity. In addition, if an individual knowingly and willfully makes a materially false statement, the individual may also be subject to criminal liability.\(^\text{15}\)

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\(^{13}\) See New Zealand Protected Disclosures Act 2000, Section 20.

\(^{14}\) See Australia Public Interest Disclosure Act, 2013, Part 3, section 11.

There are two provisions in Greek law that could indirectly deal with the issue of bad faith whistleblowers. Article 45B of the Code of Criminal Procedure establishes that to qualify as a whistleblower, an individual must not derive any “personal gain” from the disclosure. It is not clear whether the meaning of “personal gain” will be interpreted as being limited to financial gain only, or if it could be interpreted more broadly, such as eliminating a competitor for a sought-after promotion for example. Therefore as currently worded, article 45B may increase the threshold for eligibility for legal protection by making whistleblowers subject to potential conflict of interest allegations and requiring that whistleblowers demonstrate purely altruistic motivations.

Moreover, article 281 of the Greek Civil Code provides that the exercise of a right is prohibited where it manifestly exceeds the bounds of good faith, morality or the economic or social purpose of that right. Generally speaking, it seeks to establish no one should exercise a right granted by Greek law in such a way as to harm others. While it may be interpreted that whistleblowers who wilfully use their freedom of expression to report false allegations against somebody breach article 281 of the Civil code, it is not clear what sanction would be attached to that provision. Moreover, since it is broadly worded, there is a risk that this provision be actually used against legitimate
whistleblowers by the wrongdoers, who may argue disclosures are being made based on the sole intent to harm.

Therefore, public servants should be made ineligible for legal protection only when they should have known they were making a false or misleading statement at the time of disclosure, and disregard whether whistleblowers had an interest in harming the wrongdoer. The possibility to withdraw legal protections from whistleblowers should also be clearly worded and aligned with the ineligibility grounds.

Furthermore, potential legal protections for whistleblowers that have been recommended in this report should apply to all good faith whistleblowers, even if it turns out there is not enough evidence was found to substantiate these allegations before relevant authorities at a later stage.

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<td>8. Limit the meaning of good/bad faith so as to remove legal protections from whistleblowers only when they knew their disclosure was false or misleading at the time of disclosure. This implies that whistleblowers whose allegations turn out not to be true may still be protected if they were deemed in good faith at the time of disclosure.</td>
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<td>9. Ensure that the law does not protect whistleblowers who have made false or misleading disclosures.</td>
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Limiting granting large discretionary powers in the granting of legal protection

One important factor that whistleblowers may take into account in their decision of whether to disclose or not disclose misconduct is knowing with as much certainty as possible if they will be eligible to legal protection. Some of the factors that may help clarifying whether legal protection will be granted are a clear definition of the terms “misconduct” and “whistleblower”, as well other factors such as the appreciation of the “good faith” of the whistleblower. These issues are discussed above in subsections II.A.1 and II.B.1.

However, in addition to these issues, there is a great deal of uncertainty surrounding whether legal protection will be provided to whistleblowers under Greek law due to the large discretion granted to the competent prosecutors. Indeed, article 45B of the Code of Criminal Procedure implies that legal protection can be provided to whistleblowers only by act of the competent Prosecutor upon approval of the Deputy Prosecutor of the Supreme Court, if in their opinion the whistleblower has substantially contributed to the prosecution of bribery-related crimes by providing relevant information. The threshold in order to “substantially contribute” to a prosecution appears to be very high, which means that a whistleblower who has disclosed useful information to prosecuting authorities but that nevertheless does not qualify as a “substantial contribution” may

16 Articles 159 (Venality of political officials), 159A (Bribery of political officials), 235 (Venality of a civil servant), 236 (Bribery of a civil servant), 237 (Venality and bribery of judges) and 237A (Marketing unfair influence on political officials, civil servants and judges -Middlemen) of the Criminal Code).
not be eligible for protection. In addition, this protection could be used as a measure to control witnesses, as the Deputy Prosecutor of the Supreme Court could withdraw legal protection from the witness at any time, including if the witness does not testify however instructed by law enforcement. Such power over witnesses could undermine the credibility of any testimony they provide and actually make it more difficult to obtain convictions (WIN 2017).

Moreover, article 45B of the Criminal Procedure Code and article 110(6) of the Civil Service Code also imply that criminal charges may be considered against the wrongdoer so that the whistleblower becomes eligible to legal protection. In most cases, it is impossible for the whistleblower to know, at the time of the disclosure, if criminal charges will be pressed against the wrongdoer as the criminal investigation did not take place yet. There are numerous technical factors that must be taken into account by the prosecutor in the decision of whether to prosecute the wrongdoer which cannot be reasonably foreseen by the whistleblower.

Nevertheless, there is a lot of information that whistleblowers could be incentivised to report to safeguard the public interest, but that would not constitute evidence in the legal sense of the word due to their level of detail (UNODC, 2015, p. 6 and 60; UNODC, 2009, p. 105). If the subject matter of a whistleblower report does not result in criminal proceedings, or the whistleblower is never called as a witness, then protection will not be provided. Even if a whistleblower is entitled to witness protection due to eventual involvement in related criminal proceedings, the measures provided (such as relocation and identity change) may not always be relevant. Given that whistleblowers are typically employees of the organisation where the reported misconduct took place, they may face specific risks that are normally not covered by witness protection laws – such as demotion, dismissal or harassment. Furthermore, whistleblowers may need compensation for salary losses and career opportunities. Witness protection laws are therefore not sufficient to protect whistleblowers (Transparency International, 2009).

The only protection from which the whistleblower can benefit during the preliminary disciplinary investigation is the protection of his or her identity, as provided by article 125(4) of the Law No. 3528/2007. However, this protection is still discretionary and limited in time as it ends with the end of the preliminary disciplinary investigation.

Such uncertainty as to whether legal protection will be granted to whistleblowers, and whether it will be sufficient in time to effectively avoid reprisals, may impede on the willingness of Greek public servants to report misconduct. The Greek government may consider extending legal protection automatically to all disclosures, regardless of the fact that criminal or administrative charges or any other sanctions were sought by relevant authorities. This would remove the discretionary element and the high threshold to be granted protection that is creating much uncertainty at the moment. The only circumstance in which legal protection can legitimately be denied is when the whistleblower should reasonably have known that his or her disclosure was false or misleading, in which case the individual could be sanctioned by his or her employer and sued for damages by the victim of the false allegations.
II. CREATING A COMPREHENSIVE POLICY FRAMEWORK FOR WHISTLEBLOWERS IN THE GREEK PUBLIC SECTOR

Policy recommendations

10. Whistleblowers who provide information in good faith, as defined above, should be made eligible for legal protection recommended in this report whether they disclose information within the organisation or to a designated third party.

11. Consider expanding the protection programme provided by Law 2928/2001 and Law 4254/2014 to public sector whistleblowers (as defined in this report) when there is evidence that tends to demonstrate that the physical integrity of such whistleblowers is threatened.

12. Limit the denial of legal protection to cases when whistleblowers should reasonably have known that their disclosure was false or misleading, in which case the individual could be sanctioned by his or her employer and sued for damages by the victim of the false allegations.

2. Establishing clear, safe and diversified reporting channels to disclose wrongdoing in the public sector

Channels for reporting misconduct need to be clearly advertised, easy to use and backed by top and middle management within the organisation to facilitate disclosures, as otherwise whistleblowers may lack confidence in the system or may not be comfortable or persistent in coming forward. Findings from 1,000 callers to the UK’s Public Concern at Work (PCaW) confidential advice line found that employers have up to two opportunities to listen to staff, as the concern is usually raised at most twice with line then middle management. Most whistleblowers (44%) raise a concern only once, and a further 39% go on to raise their concern a second time (PCaW, 2013).

The presence of appropriately designed internal channels is an essential prerequisite to any organisational integrity system. Employees who witness wrongdoing should be able to disclose information first internally in a confidential manner, without fear of reprisal. The implementation of a robust whistleblower system in which employees can place their trust demonstrates organisational integrity leadership and a will to tackle corruption issues head-on. An unimpeded path, free from reprimand and retribution, can pave the way for an open organisational culture based on a fruitful partnership involving employees and management. This open culture should be set by management and permeate the entire organisation. Obviously, ensuring the confidentiality of whistleblowers is one of the essential features to establish employees’ trust in reporting channels. Indeed, protecting the confidentiality of whistleblowers implies not only protecting their identity, but also any information that may be contribute to identify them (see the Guidelines for reporting misconduct in the public sector in Greece for more information). Without safe communications channels for raising concerns or reporting wrongdoing, whistleblowers become vulnerable to all sorts or reprisals within the workplace, either from the alleged wrongdoer or from other colleagues.

If whistleblowers perceive they may face reprisals if they disclose misconduct, they may only have two options left, i.e. to remain silent or to spread unsubstantiated allegations within or outside the workplace, which may severely affect and undermine trust in the organisation. This is why public sector whistleblower systems often establish more than
one channel to disclose misconduct. In addition to internal disclosure channels, external disclosures to an expert designated body are often allowed, in order to strengthen perceptions of fairness, transparency and accountability in relation with the misconduct that has been reported and the investigation that may ensue. When circumstances warrant, whistleblowers may even disclose misconduct externally to the media while still being eligible to legal protections. Organisations with strong integrity values operate on the premise that employees will come forward to management with disclosures of wrongdoing, and that management will support the individual’s courage to disclose and follow the measures in place to protect them and investigate the allegations accordingly. By being receptive to disclosures, and encouraging this as a method of detection, management can mitigate the reputational damage that may result if an employee discloses externally.

Internal reporting is a channel that whistleblowers in many countries often explore first, as people in the UK, US, Turkey and South Korea would all prefer to blow the whistle through a formal internal procedure (Transparency International 2009; NBES 2013). However, although employers should react in a supportive and accountable manner by executing the letter of the law or abiding by organisational policies, this does not always occur. In these cases, the whistleblower often fears their employer’s indifference and feels as though there is no choice but to disclose externally to ensure a timely and well received response that will effect change and end the wrongdoing. Opting for external disclosures as the first port of call may be indicative of a closed organisational culture, where management is not responsible or willing to protect its employees (ODAC et al., 2004). This is why the individual circumstances of each case should determine whether internal or external reporting is the most appropriate channel of disclosure, and why both internal and external channels should operate concurrently. Regardless of the assigned paths of disclosure, providing whistleblowers with the chance to decide to whom to disclose, or within which parameters, enables them to disclose with greater ease.

Moreover, if after disclosing misconduct internally whistleblowers are not provided with an adequate response within a certain timeframe, or if appropriate action was not taken, whistleblowers should have the option of disclosing the same wrongdoing externally to relevant authorities.

Under Greek Law, whistleblowers who wish to be eligible to legal protections must imperatively disclose misconduct to the prosecutor and as a result, public servants may not report misconduct internally while being legally protected from reprisals. In addition, there are no reported institutional arrangements that have been established to secure the confidentiality of employees who would decide to disclose misconduct internally. The Greek government may consider developing and implementing a comprehensive whistleblower policy whereby a senior public official would be appointed to act as a designated recipient for disclosures of misconduct within each ministry or government agency (one recipient may be appointed for more than one institution for smaller entities). Such an official, along with staff if necessary, would be responsible for ensuring the right tone from the top and to create an institutional environment where public servants would trust it is not only acceptable to disclose misconduct harming the public interest, but also part of their official duties. The senior official in each public organisation would also be responsible for conducting ethics
training and awareness-raising, and ensuring that those who follow-up on disclosure are appropriately trained and demonstrate the appropriate abilities. Such training, including on free speech and the public servants’ duty to discuss ethical concerns within the workplace, should also be provided to supervisors and other officials with supervisory authority over public servants, as they may be considered by employees as an effective channel for reporting misconduct.

Many of the stakeholders interviewed for the purpose of this report indicated that appointing a designated recipient for disclosures of misconduct in each public organisation may contribute to strengthen the culture of integrity in the Greek public service, at least in theory. The confidentiality of the identity of the person making the disclosure as well as of the information reported is essential to increase the credibility of any internal disclosure regime and as such, the internal investigators could draw from good practices of the Greek police and use tracking numbers for each reported case, which would anonymise the identity of whistleblowers.

The National Ombudsman pointed out that the new institutional process currently being considered to resolve disputes in the public service could be built upon to address potential cases of reprisals in the public service and settle any disputes. According to the proposed reform, the Ombudsman Office would be acting as the top mediator for labour related disputes in the civil service, and be responsible for developing jurisprudence and delegating cases to internal mediators who would be appointed in public institutions. This could be a good opportunity to strengthen the upcoming whistleblower system in Greece, as mutually acceptable resolution through mediation is far better to deter retaliation against whistleblowers than resorting to lawsuits against the employer. However, the implementation of this option would be effective only if the Ombudsman’s powers and duties are legally-binding, rather than being advisory. The awarding of damages to public sector whistleblowers will be further discussed in subsection II.C.1 of this report.

However, almost all interviewed stakeholders raised the concern that the culture of trust and integrity required for effectively handling internal reports is currently lacking in the public service, and that few whistleblowers would feel comfortable to report misconduct internally. For ministries and government agencies where insufficient efforts were made to instil the right culture of integrity and where employees do not trust internal reporting channels, it is paramount that whistleblowers benefit from having an alternative option to report to a third party who is independent from the government of the day and from the ministry or government agency where the misconduct occurred. As misconduct occurring in the public sector is often outside the scope of criminal law, it is more appropriate to have such an independent third party outside the realm of traditional law enforcement authorities. This independent third party would be responsible to investigate misconduct within the public sector (although he should have the power to collect evidence outside the public sector), report back on his or her findings to Parliament so that the information is made available in the public domain, and issue recommendations to address procedural gaps and loopholes that allowed the misconduct to occur. The independent third party could also be made responsible to investigate allegations of reprisals against whistleblowers, and seek sanctions against wrongdoers before administrative authorities. To further encourage people to disclose misconduct, consideration may also be given to allow for anonymous disclosures to this
In order to minimise the risk of political interference as much as possible, the independent third party may be a high level public official appointed and made accountable to Parliament, as opposed to the executive branch. The appointment and impeachment procedures, as well as the institution’s budget allocation and recruitment prerogatives may be specifically determined by statute, and the adoption of any measure affecting the institution’s powers may require an enhanced majority in Parliament for adoption. Moreover, granting a longer but non-renewable mandate to the official at the top of an independent institution tends to reinforce its independence as it provides the latitude to make difficult decisions and prevent that electoral considerations underlie internal decision-making of the institution. For example, the National Ombudsman’s mandate is currently a six-year, non-renewable mandate. The Ombudsman needs to be elected by an 80% majority in Parliament, but this majority could be reduced to 60% by a draft law that is currently being considered.

Institutions that have been mentioned by interviewed stakeholders as potential third party recipients include the National Ombudsman Office and the General Inspector of Public Administration. Based on OECD’s Survey on public opinion, attitudes and experiences with corruption in Greece carried out in December 2016, the National Ombudsman is the second most trusted figure by public servants, at 22%, following the police at 29%. The justice system (courts, tribunals, or public prosecution services), which is currently the only designated authority to grant whistleblower status, is trusted by 11% of public servants (Figure 4).

Figure 4. Most trusted institution by public servants to report a corruption incident


To avoid confusion, interviewed stakeholders suggested that the Greek government clearly communicates within the public service the role of internal and external
reporting channels, when it is appropriate to use each of these channels. Moreover several interviewed stakeholders, including the prosecutors for anti-corruption and counter-terrorism and the National Ombudsman, provided that to avoid duplicating work and misusing already scarce government resources, coordination mechanisms involving recipients of internal and external disclosures as well as public prosecutors may be implemented. For example, internal investigators may consider sharing the investigations currently active with the independent third party responsible for external disclosure to avoid a situation where two separate public institutions would be conducting two separate investigations on the same issue. Moreover, the Intelligence Division of the Hellenic Police has offered to conduct training for public officials responsible for handling internal disclosures on how to conduct pre-investigation analysis, including division of duties and how to handle potential criminal offences.

**Policy recommendations**

13. Designate a senior official in each government and public entity who is responsible for receiving disclosures of misconduct, protecting the confidentiality of the whistleblower and of the information reported, and investigating such disclosures. A senior official could be made responsible for several smaller public organisations. Allocate sufficient human, technical and financial resources to such senior official as necessary.

14. Delegate the responsibility for establishing an institutional environment that is suitable to discuss ethical concerns and dilemmas in confidence to the designated senior official discussed in recommendation 13.

15. Empower an independent high level public official who is independent from the government, such as the Ombudsman or another designated high-level official, as an alternative channel to whom disclosures of misconduct can be made. Such an official would have the power to investigate the disclosures, report on the investigation’s findings and recommend sanctions on the wrongdoer.

16. Ensuring that whistleblowers who are reporting misconduct to their supervisors are eligible to legal protection granted to whistleblowers who disclose misconduct to an internally or externally designated recipient.

17. Establish coordination mechanisms between recipients of internal and external disclosures (e.g. notification of internal investigations to the independent third party responsible for external disclosures), and with law enforcement authorities to ensure criminal prosecutions when circumstances warrant.

18. Use tracking numbers to anonymise internal reports by public servants in order to lessen the likelihood that their identity be leaked or misused. Limit the number of people who know the real identity of whistleblower as much as possible.

*Allowing for anonymous disclosures to incentivise whistleblowers to disclose misconduct*

Whistleblowers who wish to report misconduct anonymously often lack trust in the organisation’s integrity and its internal culture with regards to whistleblowers. Many organisations are cognisant of this situation, so that on top of all their efforts to establish an environment where employees feel it is accepted to raise ethical concerns openly, they implement specific systems to allow for anonymous reporting in order to
hear from employees who are still concerned to disclose misconduct. The legitimacy of allowing for anonymous disclosures rests on the assumption that it encourages reporting, particularly in environments where it is culturally unsuitable to be a whistleblower, or where the institutional safeguards and culture are too weak to provide adequate protection. It also allows to hear from employees that are less inclined to take the risk to report, even if the right organisational culture.

Others believe that anonymous disclosures can render reporting systems less effective as the large volume of cases can render investigations difficult due to insufficient information and limited options for follow up. Concerns also exist regarding reliability and vindictive allegations, which can be based on the assumption that anonymity may make the whistleblower unaccountable and may attract “the cranks, the timewasters and the querulents” (Latimer and Brown, 2008). These differences in opinion regarding anonymity are evidenced among OECD countries: currently, whistleblowers can report anonymously in slightly over half of surveyed countries (Figure 5).

![Figure 5. Can whistleblowers protect their identity through anonymous reporting?](source)


However, there are ways to mitigate the disadvantages associated with anonymous disclosures if the Greek government is interested in allowing for anonymous disclosures.
For example, smartphone apps or web platforms may allow whistleblowers to remain anonymous while reporting misconduct, at least before potential prosecution of the wrongdoer. Such mechanisms may allow for back and forth exchange of information between the whistleblower and the recipient without revealing the identity of the whistleblower. Appropriately trained recipients responsible for managing hotlines may also be able to indicate to anonymous whistleblowers whether the information that is provided would be sufficient to launch a preliminary investigation, and indicate what other information may be necessary.

Australia’s whistleblower protection system allows for a public interest disclosure to be made anonymously as one of three options for reporting a public interest disclosure. In addition, it provides the option of making a public interest disclosure verbally or in writing, and without the discloser asserting that the disclosure is made for the purposes of the act.17 In Japan, anonymous reporting is allowed by the interpretation of a number of articles within the Japanese whistleblower protection law.18 In the Slovak Republic, employees may file an anonymous report to the internal disclosure handling system.19 In Slovenia, the Commission for the Prevention of Corruption treats all reports equally, regardless of whether or not the identity of the discloser is known. To this end, reports can be submitted to the Commission via mail, e-mail, telephone, website, fax or in person.20

A number of countries including, Germany, the Netherlands, Hungary and the United States have established electronic intake systems and hotlines that cater to, among others, anonymous reporting. Some German states have government ombudsmen, as well as hotlines, that allow whistleblowers to report anonymously. In the United States, each inspector general has a hotline system that permits individuals to make anonymous disclosures.21 The Netherlands has a national trustline where individuals can report suspected malpractices anonymously.22 Hungary’s whistleblower protection system enables whistleblowers to remain anonymous through the use of a protected electronic channel, ensured by the Commissioner for Fundamental Rights.23 Furthermore, in order to provide necessary follow up measures, anonymous disclosures are assigned individual identification numbers so that their progress can be followed online (Government of Hungary, 2013).

Currently there are no provisions in Greek Law that prevent whistleblowers from making anonymous disclosures of misconduct within the civil service. The Greek government may consider tapping into the potentially large pool of public servants who would be willing to report misconduct only if done anonymously. Anonymous reporting channels may also be particularly useful while other confidential reporting channels are up and

17 See Australia’s Public Interest Disclosure Act 2013 Part 2 Division 2 Section 28.
18 Whistleblower Protection Act namely Articles 2, 3 and 5.
19 See Act No. 307/2014 Coll. on Certain Aspects of Whistleblowing; Section 1 (definition of “complaint”).
20 Provided in response to the 2014 OECD Survey on Public Sector Whistleblower Protection.
22 www.nlconfidential.org/.
23 See Act CLXV of 2013 on Complaints and Public Interest Disclosures, Article 6.
running. Allowing for anonymous disclosures may facilitate the transition from a working environment where disclosing misconduct was treated as a lack of loyalty to an environment where whistleblowers are praised for safeguarding the public interest and where reporting misconduct is part of the duties of all public servants.

Policy recommendation

19. Establish an internet platform and/or hotline through which anonymous disclosures may be made, and that allow for back and forth communications between investigators and whistleblowers without revealing the identity of whistleblowers.

Providing for effective and balanced protection of the identity of media sources

There are circumstances when disclosing information to the media will be the only way to draw some attention from the public and enforcement authorities on cases of corruption or mismanagement that may seriously harm the public interest. When whistleblowers publicize wrongdoing outside the organization, it is often because the wrongdoing was not corrected after an internal report, because they experienced retaliation, or because the nature of wrongdoing required it (e.g. when fraud and violence in the workplace requires involving the authorities) (Miceli, Near and Dworkin 2008; Ethics Resource Center 2014). Additional research suggests that the media does play an important accountability role for organizations with lower accountability standards. They found that employees are more likely to use external whistleblowing channels when their internal reporting produces no results, when the top management is involved, or when they fear retaliation from hierarchical levels above the level of their supervisors (Callahan and Dworkin 1994).

Appropriately balanced whistleblowing laws can distinguish the organizations that can rightly be given the chance to address wrongdoing occurring from within, from those that cannot. In instances where the organization would have addressed the wrongdoing properly, the value of an external disclosure is questionable because the external recipient (i.e. the regulator or other enforcement authorities) will likely put these facts straight back to those in charge of the organization. However, it is clear that an organization where external disclosures are considered and used as the primary recipient is strong evidence of at least poor management and weak leadership.

Whistleblowers who disclose misconduct to the media may be protected through different ways. First, whistleblowers may be eligible to the same legal protection they would be entitled to if they had reported internally or externally to competent authorities. However, to incentivise organisations to invest efforts in establishing an organisational culture of integrity and to avoid that organisations who would have addressed the misconduct properly get harmed by bad faith whistleblowers, legal protection may be granted to whistleblowers who report information to the media only when they can prove they have a legitimate reason to do so. For example in the UK, to be eligible for legal protection after disclosing information in the public domain, whistleblowers must first satisfy a general test whereby, in all circumstances, it was reasonable to make such a disclosure. To do so, the whistleblower must successfully prove that he or she will be victimized if the disclosure is made to the employer or that
evidence will be concealed, or that the disclosure has previously been made to the employer or to a competent authority. The higher threshold for legal protection for disclosures in the public domain seeks to encourage the whistleblower to first make the disclosure to the person or entity directly accountable for the failure, or to competent authorities.

Similarly, Canada and Serbia allow whistleblowers to report misconduct directly to the media while being eligible for legal protection in limited circumstances. Canada’s section 16(1) of the PSDPA provides that a disclosure pursuant to the Act may be made to the public if there is not sufficient time to make the disclosure according to the mechanisms in place and that the employee believes on reasonable grounds that the subject matter of the disclosure is an act or omission that (1) constitutes a serious offence under an Act of Parliament or of the legislature of a province; and (2) constitutes an imminent risk of a substantial and specific danger to the life, health and safety of persons, or to the environment. Section 19 of Serbia’s Law No. 128/2014, a whistleblower may disclose information publicly without, having previously disclosed it to an employer or competent authority, in the event of an immediate threat to life, public health, and safety, the environment, to causing large-scale damage, or if there is an immediate threat to destroy the evidence. In the United States, whistleblowers can report misconduct directly to the media, unless the information is classified or is specifically prohibited by statute. Some whistleblowers who speak to the media prefer that their identity be protected from public disclosure for fear of reprisals, so another way to enhance protection is to clearly define the circumstances where journalists may be required by courts to disclose the identity of their source. For example, the Supreme Court of Canada stated that the use of the Wigmore criteria was a practical method to judicially approve a promise of journalist-source confidentiality on a case-by-case basis. Based on common law principles, everyone owes a general duty to give evidence relevant to the matter before the court so that the truth may be ascertained. The Wigmore test suggested that exceptions to this duty are recognized as privileges at common law according to which confidentiality of sources will be upheld if the following four criteria are met: (1) the communication originates in a confidence that it will not be disclosed; (2) the confidence must be essential to the relationship in which the communication arises; (3) the relationship must be one which should be “sedulously fostered” in the public good; and (4) the interests served by protecting the communications from disclosure outweigh the interest in getting at the truth. The party seeking to prevent the disclosure has the onus to demonstrate on a balance of probabilities that each criterion has been met. This test was upheld by another Supreme Court decision the same year in Globe and Mail v. Canada (Attorney-General), 2010 SCC 41, which concluded that the Wigmore test was preferable to a blanket class privilege or a constitutional protection for the journalist-source relationship.

Finally, to fully protect journalist sources, there must be clear rules and motivations according to which warrants will be granted by courts in order to track data and call logs for police investigations. For example, the Canadian media recently exposed multiple


cases where the Montreal police and the Quebec provincial police were granted authorisations (i.e. warrants) from judges allowing them to track meta data and call logs of journalists to find out the identity of potential whistleblowers, arguably without appropriate supporting evidence. In response to this scandal, the Quebec government has established a commission of inquiry on the protection of confidential journalistic sources.26

In Greek law, article 252 of the Criminal Code provides that public servants are prohibited from sharing confidential government information for their own personal gain or to harm someone else, upon liability to a minimum of three month imprisonment. The sentence may be increased to a minimum of six months or one year imprisonment for Political Office staff of the Prime Minister, ministers or alternate ministers, and they may also be subject to fines from EUR 100 000 to EUR 500 000. However, article 252 also provides an exception whereby if the government information is used in such a way as to “satisfy a reasonable interest to inform the public opinion”, the person who has used the information in the public interest has not committed an unlawful act. Such provision appear to protect potential public sector whistleblowers from prosecution for illegally leaking information when it is in the public interest, it does not provide any protection from reprisals in the workplace.

Moreover, article 26 of the Civil Service Code, which establishes a confidentiality obligation for public servants with respect to the information they access while conducting their duties, provides that the confidentiality obligation is not enforceable when citizens have a right to access administrative documents. It may be worthwhile for the Greek government to further clarify in which circumstances the public servants’ confidentiality obligation is not enforceable and in which circumstances it should be expected that citizens have a right to access government information.

Regarding the safeguards of the identity of journalist sources, Greek stakeholders interviewed for this report, including the Ministry of Justice, Transparency and Human Rights, the Prosecutor for Counter-Terrorism, the Assistant Prosecutor for Corruption, and the Hellenic Criminal Bar Association unanimously provided that courts never force journalists to reveal the identity of their sources and that even if they did, the sanctions against journalists to refuse to comply to such a court order would be light. Moreover, article 253B of the Criminal Procedure Code provides very strict procedures for the issuance of warrants to tap citizens’, including journalists’, mobiles phones and meta-data, and as such, the potential abuses that might have occurred in Québec would not be able to occur in Greece. Nevertheless, to increase certainty about the extent to which the confidentiality of journalists’ sources will be upheld by courts, the Greek government may consider clarifying in which specific circumstances the identity of journalists’ sources may be mandated by courts.

Policy recommendations

20. Consider granting legal protection discussed in this report to whistleblowers who disclose information to the public, when circumstances warrant.

21. Consider establishing specific criteria to determine with more certainty when the disclosure of journalist sources will be required by courts.

22. Monitor the implementation of rules under which warrants are issued to track meta data and call logs from journalists to identify whistleblowers to avoid abuse.

3. Ensuring transparency in decision making

Ensuring the accountability of recipients of disclosures of misconduct through transparency in decision making

How the recipient of whistleblower disclosures will handle the information and take appropriate action will have a strong impact on the outcomes of such disclosures. Moreover, the track record of recipients of whistleblower disclosures will also strongly contribute as to whether the credibility of whistleblower communication channels are considered as a catalyst or an impediment to establishing a culture of integrity and accountability. Therefore, it is extremely important that recipients of whistleblower allegations be made appropriately accountable as to how they assess and they act on those reports, and that their decisions are appropriately motivated and transparent for public servants as well as the public. It is paramount that recipients of whistleblower disclosures in each government institution are exempt from political interference that may be exercised by political or government officials. Otherwise, public officials will avoid disclosing misconduct as they would fear potential adverse consequences for their careers, or they will seek to leak the information publicly in an anonymous manner.

To create a strong relationship of trust between recipients of whistleblower allegations and public servants, the allocation of human, technical and financial resources to recipients of whistleblower allegations must be sufficient to effectively manage and follow-up on all the disclosures that have been made in a reasonable delay.
Many public organisations seek to ensure the transparency and accountability of recipients by implementing review mechanisms of their decisions. Depending on the structure of the organisation, those who are responsible for reviewing the recipient’s decisions may include separate administrative units, administrative tribunals, courts, supreme audit institutions or public scrutiny.

For example, Mexico’s General Law of Administrative Responsibilities (Ley General de Responsabilidades Administrativas) (LGRA) provides that investigations are launched \textit{ex officio} by internal control bodies or supreme audit institutions once they receive a disclosure of wrongdoing, unless disclosures fall under one of the narrowly-defined exceptions provided in the law, namely when there are no losses incurred in terms of public funds, when the correctness of the action by the civil servant is based on a subjective opinion that does not imply a contravention to applicable rules, and when the act or omission was corrected spontaneously by the civil servant. Before a decision is taken as to whether an offence or which offence will be prosecuted within an internal control body, article 10 of the LGRA provides that investigators must submit their case to a supervisory authority (\textit{autoridad substanciadora}) that will review the investigators’ decision, which may promote consistency and help establish guidelines on the investigation and prosecution of administrative offences. Moreover, article 64 of the LGRA provides that public services responsible for investigating, qualifying and prosecuting administrative offences commit the offence of obstruction of justice if they downplay a serious offence to a non-serious offence, if they do not initiate the appropriate procedure within 30 days after misconduct has been disclosed, or if they disclose the identity of a whistleblower against his or her will.

Finally, according to articles 102 to 110 of the LGRA, whistleblowers can participate in reinforcing accountability over public servants who are responsible for handling disclosures of misconduct. These provisions set a specific procedure whereby whistleblowers can appeal a decision made by internal control bodies with respect to the investigation, qualification and prosecution of administrative offences, and participate in the proceedings.

In the United States, section 5 U.S. Code § 1213 also provides a detailed procedure for following–up on disclosures of misconduct within the public service. Most importantly, to reinforce the accountability of those who handle disclosures of misconduct, comments made by whistleblowers on how their disclosure was handled by relevant authorities are included in the final report arising from the disclosure made by whistleblowers.

Since there is no requirement in the Greek Civil Servants’ Code to report misconduct in the public service and there are no designated recipients for disclosures of misconduct in the Greek public service, there is no systematic review mechanism of how disclosures of misconduct are managed in the public service. This lack of structure and accountability for those to whom disclosures of misconduct may be communicated may impact the will of public servants to raise ethical concerns, even more so considering the absence of accountability mechanisms to ensure the recipient of whistleblower allegations undertakes appropriate action based on such allegations. Public servants have one of the highest rates of individuals who would not report misconduct because it
would make no difference or because it is too burdensome or not worth the effort, among different categories of surveyed citizens (Figure 6).

Figure 6. Reason for not reporting a corruption incident by occupation


However, there are oversight institutions that are seeking to make Greek public institutions more accountable on how they perform their duties and manage public resources. The National Ombudsman office, which is currently conducting audits to monitor the performance of selected public agencies, such as coast guards and police forces, as well the Office of the Inspector General, may be institutions that may already have the necessary expertise to conduct such audits.

Concerning the whistleblower status granted by article 45B of the Code of Criminal Procedure, it can be granted by the Deputy Prosecutor of the Greek Supreme Court according to largely interpretable standards, i.e. the information provided must substantively contribute to the prosecution of a limited list of crimes. There are no known built-in mechanisms to review the decision of the Deputy Prosecutor of the Greek Supreme Court. The Prosecutor for Counter Terrorism demonstrated that misinterpretations can happen due to the lack of clarity of existing rules and lack of training of prosecutors by discussing a case where the lack of clarity of whistleblower status criteria has led to the wrong attribution of whistleblower status.
**Policy recommendations**

23. Define procedures ensuring the accountability of the various recipients of whistleblower allegations in the public sector, including mandatory reviews of decisions to launch investigations, audits, and accessible appeal procedures.

24. Ensure relevant authorities conduct at least a preliminary investigation to verify whistleblower allegations, subject to unambiguously and narrowly defined exceptions (e.g. the disclosure clearly does not constitute “misconduct” under the law; the misconduct has already been addressed; or the disclosure is clearly abusive or misleading).

25. Ensure whistleblowers are able to review the motives of the decisions to investigate or not investigate the disclosures, that whistleblowers’ comments are included in the final report with respect to the decision to launch an investigation, and that whistleblowers have a fair opportunity to appeal the decision.

26. Ensure that disclosure recipients, investigators, prosecutors and any other individual who have committed obstruction of justice are liable to appropriate sanctions.

4. **Establishing clear prohibitions to exercise reprisals**

*Deterring reprisals against whistleblowers in the public service through clear prohibitions and effective enforcement of administrative mechanisms in the public sector*

To increase deterrence against the exercise of reprisals against whistleblowers, some OECD countries have implemented prohibitions to exercise reprisals against whistleblowers. For example, Canada’s Criminal Code article 425.1 establishes a broad criminal prohibition to exercise reprisals against whistleblowers, including any disciplinary measure against an employee such as demotion, termination or otherwise adversely affecting the employment of the whistleblower, or threatening to do so. The prohibition also applies to any employer or person acting on its behalf. Moreover, section 425.1 of the Criminal Code applies to disclosures related to the breach of any federal or provincial laws or regulations, and is therefore not limited to criminal offences.

Prohibitions to exercise reprisals should also be associated with sanctions that will strengthen the deterring effect. In Canada, anyone guilty under Criminal Code article 425.1 can be liable to imprisonment for a term that can be as long as five years. Australia’s whistleblower protection system invokes imprisonment for 2 years or 120 penalty units, in case of reprisal against whistleblowers; while in Korea, the punishment for retaliation varies depending on the type of reprisal that took place. In

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27 In Australia, penalty units are used to describe the payable for fines under commonwealth laws. By multiplying AUS Dollar equivalent of one penalty unit, the fine for an offence is set.

28 Australia’s Public Interest Disclosure Act, Subdivision B, Part 2 – Section 19.
the United States, the Federal Criminal Code (18 U.S.C. §1513 (e)) states that “whoever knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined under this title or imprisoned not more than 10 years, or both.” In addition, the US passed in 2017 the Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017, which provides additional protections to Federal employees who are retaliated against for disclosing waste, fraud, and abuse in the Federal government. Specifically, the legislation increases protections for federal employees, increases awareness of federal whistleblower protections, and increases accountability and requires discipline for supervisors who retaliate against whistleblowers. Among others, the law makes the termination of employment mandatory after the second investigative or initial due process against a manager for having retaliated against a whistleblower.

Moreover, to effectively prohibit the exercise of reprisals against whistleblowers, immunity from legal action may be granted to the whistleblower, unless the disclosure is clearly made in bad faith (see subsection II.B.1 for a discussion on good faith). Such immunity from legal action may include libel or defamation cases, as well as other administrative or civil legal action. Such immunity may also include criminal prosecution, unless the whistleblower has unduly ignored internal or external reporting channels and leaked sensitive government information in such a way that it harms the public interest.

As of November 2016, 13 countries granted immunity from prosecution to whistleblowers in addition to employment protections, i.e. Australia,29 Bosnia,30 Ghana,31 Hungary,32 India,33 Ireland,34 Jamaica,35 Liberia, Malaysia,36 New Zealand,37 Serbia,38 Uganda,39 and Zambia.40

Greece prohibits the exercise of reprisals to some extent, as article 26 of the Law No. 3528/2007 provides that:

“The civil servant characterised as a whistleblower according to article 45B of the Criminal Procedure Code is not to be omitted from any promotion procedures neither is he subject to any disciplinary procedure nor sanction or dismissal or to

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29 Public Interest Disclosure Act, sections 10 and 15.
30 Whistleblower Protection Act, article 6.
31 Whistleblower Protection Act, section 18.
32 Public Interest Disclosure Act, article 11.
33 Whistleblower Protection Act, Ch. IV.11 (1).
34 Protected Disclosure Act, sections 14 and 15.
35 Protected Disclosure Act, section 15(2).
36 Whistleblower Protection Act, Sections 7(b) and 9.
37 Protected Disclosure Act, section 18(1).
38 Whistleblower Protection Act No. 128/2014, section 18(1).
39 Whistleblower Protection Act, sections 2 and 3.
40 Public Interest Disclosure Act, section 56.
any kind of adverse direct or indirect discrimination particularly regarding career development, transfers or placement during the time needed for the judicial investigation of the case.”

As discussed above, public servants can obtain whistleblower status only in very limited circumstances, i.e. when they disclose information that significantly contribute to the criminal prosecution of a limited number of bribery-related crimes, as opposed to any breach of Greek laws. Moreover, as an overwhelming majority of whistleblowers tend to prefer to report misconduct internally before engaging enforcement authorities, it is important that the prohibition to exercise reprisals apply to cases where whistleblowers have disclosed wrongdoing internally to be truly effective.

Finally, prohibitions to exercise reprisals should not be exclusively limited to criminal offence-related disclosures and should also be linked with breaches to the Greek Civil Servants’ Code. Inclusion of such a prohibition in the Code is important as it significantly contributes to create an environment where civil servants feel safe to discuss ethical concerns and dilemmas, and thus to disclose potential misconduct. Moreover, associating a prohibition in the Civil Servants’ Code with appropriate and proportionate sanctions may be more effective as a deterring effect, as the level of evidence necessary to impose sanctions under the Code is much lower than under the Criminal Code, which may require evidence above the “reasonable doubt” threshold.

<table>
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<th>Policy recommendations</th>
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<tr>
<td>27. Broaden the criminal prohibition to exercise reprisals in the Criminal Code to make it applicable to whistleblowers who disclose information in relation with breaches of all Greek laws.</td>
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<tr>
<td>28. Include a prohibition with corresponding proportionate sanctions in the Civil Servants’ Code for exercising reprisals against whistleblowers who have disclosed breaches of the Civil Servants’ Code and of other public internal policies.</td>
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<tr>
<td>29. Provide in the Civil Service Code that prohibitions to exercise reprisals apply to whistleblowers who disclose misconduct either internally or externally to recipients authorised by law.</td>
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<tr>
<td>30. Consider granting immunity for whistleblowers from criminal, civil, or administrative legal action unless the disclosure has clearly been done in bad faith, as discussed in subsection II.B.1) of this report.</td>
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C. Implementing measures to compensate whistleblowers who have experienced reprisals

There are times when it is not possible to prevent reprisals before they take place. In such cases, the right combination of effective remedies should be available to ensure whistleblowers can seek compensation from the individual or organisation that may have had exercised reprisals. Comprehensive whistleblower protection must provide for remedies that will mitigate reprisals that may be experienced by whistleblowers in many different contexts and work environments. Moreover, such remedies must be made
quickly accessible and cost-effective, and providing interim relief may also be considered where appropriate to mitigate the adverse impact of unjustified reprisals against whistleblowers.

1. Providing effective remedies that are adapted to whistleblowers in the public sector

Many whistleblower protection systems include specific remedies that will let whistleblowers who have experienced reprisals bring forward their own case to enforce the prohibitions against the exercise of reprisals. Allowing whistleblowers to introduce their own recourse before courts, instead of relying on the availability of resources of public authorities, could contribute to reinforce public trust in the whistleblowing framework, and allow for a more optimal use of enforcement authorities' limited resources. Moreover, it may help ensure that all cases of reprisals receive an appropriate level of scrutiny from the relevant authorities responsible for dispute settlement in the public service, provided that the dispute settlement agreement does not include gag orders against future reporting by a whistleblower that has experienced reprisals. The ability for whistleblowers to bring forward their own case can also coexist with the possibility for enforcement authorities to launch legal procedures against those who have exercised reprisals (Miceli, Near and Dworkin 2008). Measures of this nature may cover all direct, indirect, and future consequences of reprisal.\(^{41}\) They vary from return to employment after unfair termination, job transfers or compensation, or damages if there was harm that cannot be remedied by injunctions, such as difficulty or impossibility to find a new job. Such remedies may take into account not only lost salary but also compensatory damages, moral damages and punitive damages (Banisar, 2011). Canada’s Public Servants Disclosure Protection Act (PSDPA) includes a comprehensive list of remedies (Box 1).

\(^{41}\) See for example the United States’ Whistleblower Protection Act, Subchapter III Section 1221(h)(1); the United States’ False Claims Act 31 U.S.C. §3730(h)).
Box 1. Remedies for public sector whistleblowers in Canada

To provide an appropriate remedy to the complainant, the Tribunal may, by order, require the employer or the appropriate chief executive, or any person acting on their behalf, to take all necessary measures to:

- Permit the complainant to return to his or her duties.
- Reinstate the complainant or pay compensation to the complainant in lieu of reinstatement if, in the Tribunal’s opinion, the relationship of trust between the parties cannot be restored.
- Pay to the complainant compensation in an amount not greater than the amount that, in the Tribunal’s opinion, is equivalent to the remuneration that would, but for the reprisal, have been paid to the complainant.
- Rescind any measure or action, including any disciplinary action, and pay compensation to the complainant in an amount not greater than the amount that, in the Tribunal’s opinion, is equivalent to any financial or other penalty imposed on the complainant.
- Pay to the complainant an amount equal to any expenses and any other financial losses incurred by the complainant as a direct result of the reprisal.
- Compensate the complainant, by an amount of not more than CAD 10 000, for any pain and suffering that the complainant experienced as a result of the reprisal.

Source: Canada’s Public Servants Disclosure Protection Act of 2005, Section 21.7 (1).

In addition, section 5 USC § 3352 provides the option to the whistleblower to request a transfer within the public service, so that he or she can get a fresh start rather than having to work for a manager that they just defeated in a lawsuit.

Under UK law, the courts have taken the position that moral damages may be awarded based on the same system that was developed under discrimination-related damages (Banisar, 2011). The total amount of damages awarded under the UK PIDA in 2009 and 2010 was GBP 2.3 million, with the highest award GBP 800,000 in the case of John Watkinson v. Royal Cornwall Hospitals NHS Trust (PCaW, 2011). The average PIDA award in 2009 and 2010 was GBP 58,000, compared to average awards of GBP 18,584, GBP 19 499 and GBP 52 087 in race, sex, and disability discrimination cases respectively (PCaW, 2011).

The availability of effective civil remedies can significantly contribute to mitigating the professional marginalisation of whistleblowers by providing for an opportunity for rehabilitation by civil courts. Such remedies could also compensate whistleblowers for prospective revenue losses. Combined with effective public awareness-raising

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42 The Public Sector Disclosure Protection Act is currently under legislative review, and further amendments may be brought to the Act later this year. For further details on the review, [www.psic-ispc.gc.ca/sites/default/files/legislative_review_recommendations.pdf](http://www.psic-ispc.gc.ca/sites/default/files/legislative_review_recommendations.pdf).
campaigns, appropriate civil remedies can significantly contribute to improve public perceptions about whistleblowers and thus, indirectly mitigate professional marginalisation and prospective financial losses.

Several whistleblower protection systems shift the burden of proof on the employer when a disclosure of misconduct was made by an employee and a sanction imposed on that employee. This is in response to the difficulties an employee may face in proving that the retaliation was a result of the disclosure, “especially as many forms of reprisals may be very subtle and difficult to establish” (Chêne, 2009, p. 7). For example in Germany, to qualify for protection provided by the civil code, public servants have burden of proof to demonstrate that their disclosure was legally permissible, that discrimination took place, and that retaliation happened because of their disclosure. In the event that the employer has not explicitly mentioned the disclosure as the reason for termination, meeting this threshold of evidence is very difficult and requires substantive resources from the whistleblower. In such cases, balanced whistleblower remedies would require the employer to prove that the sanction was imposed on other grounds and that it is not related to the disclosure of misconduct made by the whistleblower.

The system in the United States applies a burden-shifting scheme whereby a federal employee who is a purported whistleblower must first establish that she or he:

1. Disclosed conduct that meets a specific category of wrongdoing set forth in the law.
2. Made the disclosure to the “right” type of party (depending on the nature of the disclosure, the employee may be limited regarding to whom the report can be made).
3. Had a reasonable belief that the information is evidence of wrongdoing (the employee does not have to be correct, but the belief must be one that could be shared by a disinterested observer with equivalent knowledge and background as the whistleblower).
4. Suffered a personnel action, the agency’s failure to take a personnel action, or the threat to take or not to take a personnel action.
5. Demonstrated that the disclosure was a contributing factor for the personnel action, failure to take a personnel action, or the threat to take or not take a personnel action (in practice, this is largely equivalent to a modest relevance standard).
6. Sought redress through the proper channels.

If the employee establishes each of these elements, the burden shifts to the employer to establish by clear and convincing evidence that it would have taken the same action in absence of the whistleblowing, in which case relief to the whistleblower would not be granted (US Merit Systems Protection Board, 2010). Clear and convincing evidence means that it is substantially more likely than not that the employer would have taken the same action in the absence of whistleblowing.

In Slovenia, the whistleblower protection system maintains that “if a reporting person cites facts in a dispute that give grounds for the assumption that he has been subject to
retaliation by the employer due to having filed a report, the burden of proof shall rest with the employer”.

In Norway, when employees submit information that gives reason to believe that they have been retaliated against as a result of having come forward with a protected disclosure, it shall be assumed that such retaliation has taken place unless the employer substantiates otherwise.

At the moment, article 26 of Greece’s Public Servant’s Code provides that a public servant who has been designated as a whistleblower under article 45B of the Code of Criminal Procedure shall not be subject to discriminatory treatment with respect to promotion, dismissal, and disciplinary procedures, and shall not be subject to any other direct or indirect discriminatory action that would interfere with the whistleblower’s career development, relocation or placement during the length of the judicial investigation. The protection granted by article 26 is nevertheless very limited, in part because of the narrow application of whistleblower protection in Greece but also because such protection would be applicable only during the judicial investigation. To provide more effective legal protection to whistleblowers, the scope article 26 could be expanded as discussed in subsection II.A.1) of this report on the definition of “misconduct”. Moreover, article 26 should further clarify that once whistleblowers established before a court or disciplinary commission that they have disclosed misconduct in accordance with the law, and that they have experienced direct or indirect disciplinary action, the burden of proof to establish that the disciplinary action is unrelated to the disclosure must be transferred to the employer.

Beyond article 26 of the Civil Service Code discussed above, there are currently no express remedies to seek compensation for experiencing reprisals as a result of disclosing misconduct in the public service.

Finally, the Prosecutor for Counter Terrorism and representatives of the Witness Protection Division of the Hellenic Police indicated that law enforcement officials currently lack the authority to transfer a public servant, for an indefinite period of time, to another agency or location. A Ministerial Order, which would allow such transfers as part of witness protections programmes, has been pending approval for some time and hence, it cannot be implemented. The Prosecutor for Counter Terrorism staff were also of the view that the application of such measures could be expanded and made applicable to a broader range of whistleblowers, when there are reasons to believe their physical integrity may be at risk.
II. Creating a comprehensive policy framework for whistleblowers in the Greek public sector

Policy recommendations

31. Consider granting the option to public servants to bring their own case before competent administrative authorities, such as a disciplinary commission within the public service, if they feel they have experienced reprisals for disclosing misconduct.

32. Provide for specific remedies in the Civil Service Code and in criminal law to compensate public servant whistleblowers for experiencing reprisals, including reinstatement, transfer to another public service organisation for an indefinite period of time, or cancelling any measures affecting the working status of the whistleblower.

33. Consider expanding and clarifying the legal provisions allowing for shifting the burden of proof on the employer to demonstrate that any action taken against an employee was not motivated by, influenced by, or in any way associated with the employee having made, or considered making a report according to the provisions of the law.

2. Implementing cost-effective and timely measures to appeal administrative decisions against public sector whistleblowers

Whistleblowers may be among the most effective means to safeguard the public interest and as such, they are entitled to a fair hearing before an impartial forum with a full right of appeal that does not yield an unduly heavy financial burden. A number of OECD countries have implemented legal provisions to review administrative decisions taken against whistleblowers. The UK Public Interest Disclosure Act (PIDA), for example, allows for appeals to the employment tribunal. Under US law, federal employees who are whistleblowers are also afforded legal standing to bring appeals before the Merit Systems Protection Board and the US Court of Appeals. Canada’s PSDPA provides that the Public Servants Disclosure Protection Tribunal determine whether reprisals have taken place against the complainant. If it does determine that reprisals have taken place, it may order a remedy in favour of the complainant, order disciplinary action against any person identified by the Commissioner in the application as the person or persons who took the reprisals, or both (subsection 20.4(1) of the PSDPA).

The Greek Civil Servants’ Code already has a disciplinary procedure on which the government could build on to provide a quick and effective dispute settlement involving potential whistleblowers and their employer. In addition to a specific procedure for the treatment and investigation of disclosures of misconduct, as well as the consequences for the wrongdoer if the allegations are deemed to be true, the Code could also provide for a simple and effective procedure for dealing with potential cases of reprisals against whistleblowers. Such procedure could include specific requirements to conduct at least a preliminary investigation of any alleged case of undue reprisals. Decisions by government disciplinary bodies should be reviewable by courts, in a timely manner as much as possible.

However, as provided by stakeholders interviewed for the purpose of this report, allowing public service disciplinary commissions to award damages would require modifying Greek law by creating an exception to the general principle that only courts are allowed to grant damages. The ability to award damages by disciplinary commissions
could be limited to a maximum amount, and their decisions may be made reviewable to ensure proper and consistent and legal interpretation of relevant provisions unless they appear to be, *prima facie*, frivolous.

### Policy recommendations

34. Building on articles 106 to 124 of the Civil servants’ Code, provide for a quick and effective dispute settlement mechanism involving potential whistleblowers and their employer, including for potential cases of reprisals.

35. Ensure that the procedures to bring forward allegations of reprisals before administrative authorities involve appropriate scrutiny of alleged cases of reprisals and that such administrative authorities have appropriate capacities and training to rule on alleged cases of reprisals.

36. Ensure that decisions of government disciplinary bodies be reviewable by courts unless appeals appear to be, *prima facie*, frivolous.

### 3. Providing for interim relief for whistleblowers when appropriate

In some cases, seeking to win a hearing or trial for a retaliation case may take years for the whistleblower. During this time, a whistleblower who was dismissed may have had difficulty in finding new employment and may be brought on the brink of bankruptcy (Devine and Walden, 2013). Even if unemployed whistleblowers have the initial decision favouring them, they can remain without revenue while having to pay for legal expenses during the completion of the appeal process (Devine and Walden, 2013).

Therefore, some countries provide for interim relief for whistleblowers who experienced reprisals for making a protected disclosure, such as the United Kingdom and the United States. In the United Kingdom, interim relief can be provided to an employee if an employment tribunal finds that the employee is likely to win an unfair dismissal case at a full hearing. If this is the case, the tribunal will order that the employee is reinstated in their former position, or re-engaged in another job on the same terms and conditions as if he or she had not been dismissed. Moreover, when protection is not provided or the remedy is insufficient, whistleblowers have the right to take up their own case in further court proceedings (Devine and Walden, 2013). Finally, one of the cornerstones of Serbia’s Whistleblower Protection Act is the priority given to the granting of interim relief, which acknowledges how beneficial it may be for reassuring whistleblowers who take the decision to speak up that they will not be let down by authorities. Indeed, section 32 provides that a motion to institute interim relief may be made before the initiation of proceedings for judicial relief in connection with whistleblowing, in the course of such proceedings, or until such time as the court ruling has been enforced. Moreover, section 32 also allows granting interim relief *ex officio* during the course of the proceedings.

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43 See for example Sec. 1221 (c)(1) of the US Whistleblower Protection Act.
Policy recommendation

37. Consider expressly providing interim relief to public sector whistleblowers who may have experienced reprisals for disclosing misconduct and are engaged in legal procedures to seek compensation, when circumstances warrant (e.g. precarious financial situation of the whistleblower, appearance of reprisals at first glance, legal procedures extended over a long period of time, absence of revenue for the whistleblower).
III. Policy measures to effectively implement a whistleblower framework in Greece’s public sector

We often hear from cynics that laws are worth the paper on which they are written, but it may be more accurate to say that laws are worth the efforts in implementing them. While the traditional law enforcement approach is part of the equation when it comes to encouraging whistleblowers to speak up and prevent reprisals, it is ineffective on its own. To be effective, the implementation of whistleblower law must be combined with strategic communication strategies that are essential to foster open organisational cultures. An open organisational culture and whistleblower protection legislation should also be supported by effective awareness raising, communication, training and evaluation efforts.

Raising awareness about the processes and safeguards in place to report wrongdoing and communicating them effectively within an organisation are important elements, necessary for the workplace culture to evolve into an open and supportive environment. Training management, regular staff meetings, clearly outlines of the steps to follow when disclosing wrongdoing and promotional materials, public campaigns and staff guidelines can assure employees of the measures in place to protect them from reprisal. Furthermore, evaluating the processes in place within whistleblower systems enables necessary modifications, which may help streamline and facilitate these procedures to better promote and uphold the tenets of integrity.

A. Exercising leadership and commitment to create the right environment in the public sector to disclose misconduct

The extent to which public institutions express strong leadership and commitment to create a reporting environment based on mutual trust will be one of the determining factors as to whether the Greek government will successfully harness emerging changes in public perceptions about whistleblowers. The establishment of a culture of performance and accountability in the Greek public sector will require the government to have a more balanced approach that would not only focus on imposing disciplinary sanctions on those who break the rules, but also on giving public servants reasons to believe that they can directly contribute to safeguard and promote the public interest. Public organisations leaders can have a huge impact in making public servants realise that their loyalty belongs to citizens as opposed to their line manager, and that they will benefit from taking responsibility to end the culture of laxity and impunity in the public service. As discussed earlier, reinforcing public servants’ trust in public sector reporting channels will be key to convince the numerous public servants who are unsure about whether they would report misconduct they have witnessed in the workplace as well as
those who would not report misconduct because they perceive it would not make any difference or because it is not worth the effort (see figures 1 and 5).

Most importantly, there is a good indication public servants would react positively to efforts by public organisations managers to instil the proper environment to raise ethical dilemmas in the workplace. Indeed, an overwhelming 96% of public servants perceive whistleblowers either very positively (55%) or positively (41%), the highest rate among all categories of respondents to the mandated by the OECD (Figure 7). Therefore, if implemented and communicated properly, a robust whistleblower system that is tailored to the inherent context of the Greek public service may have good chances to be endorsed by public servants and supported by the general public.

![Figure 7. Attitude towards those who disclose misconduct in the workplace](image)


This subsection will discuss how to establish a proper environment to disclose misconduct in the public sector through setting the right “tone at the top”, the conduction of effective awareness-raising campaigns, and strengthened collaboration with civil society.

1. **Setting the tone at the top is essential to frame the duty of loyalty in the public service and shape perceptions about public sector whistleblowers**

   Strengthening integrity and establishing the right environment in the workplace where ethical concerns can be raised are about directly or indirectly changing the perceptions and behaviour of an organisation’s human resources. Therefore, human resources management (HRM) policies and the tone at the top of the organisation are both part of the problem and of the solution towards making it acceptable to raise ethical concerns in the workplace and promoting integrity in the public sector. Generally speaking, a lack of accountability and a high-level of politicisation result in directing public servants’ loyalty towards managers and politicians instead of the public interest, in a poor culture.
of performance, in low levels of employment security, in lack of training and professionalism, in lack of guidance and in a weak tone from the top about the need to meet performance objectives. These are impediments to an open organisational culture where potential misconduct can be discussed and counselling can be sought to resolve ethical issues, which can lead to opportunities for and rationalisation of corrupt practices and low levels of integrity.

Good practices in OECD countries warrant that senior directors and management at all levels of the public entity demonstrate through their directives, actions, and behaviour the importance of integrity and ethical values to achieve individual and collective objectives, and that any breach of such norms should be reported immediately to a dedicated recipient. Such practices require senior managers and officials responsible for applying sanctions to lead by example by treating disclosures of misconduct consistently, regardless of the level or position of the alleged wrongdoer involved, and ensure that their decision-making in relation with the necessity to conduct investigations and the content of their findings is transparent and motivated by a solid, well-rounded rationale. Effective transparency policies warrant decisions whereby investigations were not launched by officials to be clearly motivated and accessible by the whistleblower, whether he chooses an internal or external channel to report misconduct. Such decisions may also be audited by an independent institution, such as a Supreme Audit Institution or an Ombudsman, to reinforce transparency and accountability and assess the performance of the whole system.

For example, Canada’s Public Servants Disclosure Protection Act (PSDPA) requires the chief executives of all public sector departments and organisations to appoint senior officers for disclosure of wrongdoing and to establish procedures for the management of disclosures within their organisation. A senior officer within each organisation receives and deals with internal disclosures made under the act. They have key leadership roles in the implementation of the act in their organisations and provide information and advice to employees and supervisors on the act. Furthermore, they receive, record and review disclosures of wrongdoing, lead investigations of disclosures, and make recommendations to the chief executive regarding any corrective measures to be taken in relation to wrongdoing found. Chief executives must provide public access to information on cases of founded wrongdoing resulting from an internal disclosure under the PSDPA.

Designated officials responsible for managing disclosures of misconduct in each public entity may also be brought to collaborate horizontally through an official network to discuss emerging issues, challenges and share good practices on an ongoing basis. Oversight and coordination over such a network may be provided by integrity leaders from central government agencies.

In the United States, the Whistleblower Protection Enhancement Act mandates that inspectors general at federal agencies and departments designate a whistleblower protection ombudsman, charged with educating employees about rights, responsibilities, and remedies under whistleblower protection laws. The ombudsman is not, however, an employee’s or agency’s legal representative or advocate. The Office of the Special Counsel assists agencies in facilitating their whistleblower protection ombudsman programs and in educating their workforces.
Finally, other OECD countries also demonstrate leadership through the implementation of appropriate measures to monitor the performance and impact of the whistleblower framework, as discussed in subsection II.A.3. Such performance monitoring and assessment may be subject to comprehensive communication strategy seeking participation from all segments of society, and be based on real-life cases that could draw the interest of the general public.

### Policy recommendations

38. Ensure senior officials appointed in each public entity to receive and analyse disclosures of misconduct are made accountable, for example through audits and performance reviews, as to whether:

- they launched investigations when deemed necessary;
- they determined appropriate, proportionate sanctions on wrongdoers and those who exercised reprisals;
- they issued appropriate recommendations to stop the misconduct and close policy or internal control gaps within the organisation;
- they recommended appropriate redress or compensation measures for whistleblowers who experienced reprisals.

39. Ensure senior officials appointed in each public entity to receive and analyse disclosures of misconduct have the appropriate training and capacities to fulfil the duties described in recommendation 38.

40. Include in performance assessments of senior and middle managers how they demonstrate that any breach of integrity and ethical values should be reported immediately to a designated recipient.

41. Implement transparency procedures to ensure that sanctions on misconduct are applied consistently, regardless of the level or position of the alleged wrongdoer involved.

42. Ensure that senior officials’ decision-making to conduct (or not) investigations and the content of their findings is transparent and motivated by a solid, well-explained rationale.

43. Subject decisions to random audits by an independent institution, such as a Supreme Audit Institution or an Ombudsman, to reinforce transparency and accountability over the whistleblower framework and assess the performance and effectiveness of the framework.

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2. **Conducting effective awareness-raising campaigns about the importance of whistleblowers within government and in the general public and strengthen the culture of integrity in the public service**

Communication is an essential characteristic of an open organisational culture. Communicating with employees about their rights and responsibilities and the resources available to them is integral to achieving an environment that functions on a basis of trust, professionalism and collegiality. Using clear and effective methods to
communicate with employees can instil confidence among employees to voice concerns when they arise. Effectively communicating to employees about how they are protected by the whistleblower mechanisms in place highlights the importance of coming forward with suspected wrongdoing for an organisation, and reinforces the mutual interest of defending the tenets of integrity in the workplace and society. Communication and awareness-raising campaigns also yields benefits and positive effects on staff morale.

Communicating to public sector employees their rights and obligations when exposing wrongdoing is essential, as outlined in the 2017 OECD Recommendation on Public Integrity (OECD, 2017). Principle 8 of the Recommendation states that organisations should: “Provide sufficient information, training, guidance and timely advice for public officials to apply public integrity standards in the workplace.” Such awareness-raising activities could include the publication of an annual report by a relevant oversight body or authority that includes information on the outcome of cases received, the compensation for whistleblowers and recoveries that resulted from information from whistleblowers during the year, and the average time it took to process a case. The UK’s Civil Service Commission suggests including a statement in staff manuals to assure employees that it is safe to raise concerns (Box 2).

Box 2. Example of a statement to staff reassuring them to raise concerns

The Civil Service Commission in the United Kingdom promotes the inclusion of a statement in staff manuals that reassures employees that disclosures are protected: “We encourage everyone who works here to raise any concerns they have. We encourage ‘whistleblowing’ within the organisation to help us put things right if they are going wrong. If you think something is wrong please tell us and give us a chance to properly investigate and consider your concerns. We encourage you to raise concerns and will ensure that you do not suffer a detriment for doing so.”


Some OECD countries have adopted provisions within their laws to ensure that awareness measures are in place. For instance, Canada’s whistleblowing protection system requires the minister and public bodies to: “promote ethical practices in the public sector and a positive environment for disclosing wrongdoing by disseminating knowledge of this Act and information about its purposes and processes and by any other means that he or she considers appropriate” (PSDPA, 2005).

Furthermore, the President of the Treasury Board is required by law to promote ethical practices in the public sector and a positive environment for disclosing wrongdoing by disseminating knowledge of the Public Servants Disclosure Protection Act (PSDPA), especially its purposes and processes, by any means considered appropriate. Treasury Board ensures that each organisation does so in different ways, such as awareness sessions and dialogue or training sessions intended for employees, managers and executives. In addition, written information is made available through emails to employees, internal websites, pamphlets and posters. Some organisations invite
speakers, such as the Public Sector Integrity Commissioner, to give presentations to employees on the PSDPA. Many organizations also reported that a section of their organisational code of conduct is dedicated to disclosures under the PSDPA (Government of Canada, 2014).

In the United States, the Occupational Safety and Health Administration Act requires federal agencies to post certain information about whistleblower protection in order to keep employees informed of their rights regarding protected disclosures. There are also special programmes for awareness raising and training in agencies that deal with public procurement, such as the Department of Defence. Such training include a certification programme developed under section 5 USC 2302(c). Furthermore, the OSC offers training to federal agencies and non-federal organisations in the areas of expertise within its jurisdiction, including reprisals against whistleblowers. To ensure that federal employees understand their rights as whistleblowers and how to make protected disclosures, agencies must complete the OSC’s programme to certify compliance with the Whistleblower Protection Act’s (WPA) notification requirements. The No Fear Act also requires that agencies provide annual notices and biannual training to federal employees regarding their rights under employment discrimination and whistleblower laws. These programmes have had a tremendous effect on public awareness of public servants about whistleblower-related issues.

Moreover, title 5 of the US Code renders the head of each agency responsible for: the prevention of prohibited personnel practices; compliance with and enforcement of applicable civil service laws, rules, and regulations, and other aspects of personnel management; and ensuring (in consultation with the OSC) that agency employees are informed of the rights and remedies available to them, including how to make a lawful disclosure of information that is specifically required by law or executive order to be kept classified (Box 3).

44 The OSC publishes a variety of materials on whistleblower disclosures. These publications can be printed from OSC’s website at https://osc.gov/.

45 From response to OECD Survey on Public Sector Whistleblower Protection, Question 44. See 5 U.S.C. § 2302(c).
III. POLICY MEASURES TO EFFECTIVELY IMPLEMENT A WHISTLEBLOWER FRAMEWORK IN GREECE’S PUBLIC SECTOR

Box 3. The United States’ approach to increasing awareness through the Whistleblower Protection Enhancement Act

In the United States, the Whistleblower Protection Enhancement Act (WEPA) places the responsibility with the head of agency to increase the awareness of the rights and responsibilities of whistleblowers. Under 5 U.S.C. § 2302(c) of the WPEA, it is stipulated that “the head of each agency shall be responsible for the prevention of prohibited personnel practices, for the compliance with and enforcement of applicable civil service laws, rules, and regulations, and other aspects of personnel management, and for ensuring (...) that agency employees are informed of the rights and remedies available to them under (...), including how to make a lawful disclosure of information that is specifically required by law or Executive order to be kept classified in the interest of national defense or the conduct of foreign affairs to the Special Counsel, the Inspector General of an agency, Congress, or other agency employee designated to receive such disclosures.”

Furthermore, Section 117 of the Act “designates a Whistleblower Protection Ombudsman who shall educate agency employees:

I. about prohibitions on retaliation for protected disclosures; and
II. who have made or are contemplating making a protected disclosure about the rights and remedies against retaliation for protected disclosures.”


In Japan, the Consumer Affairs Agency (CAA) holds explanatory meetings and symposiums nationwide for business operators, officials, and employees, to disseminate knowledge of the Japanese Whistleblower Protection Act (WPA). Additionally, in order to enhance the knowledge of officials in charge of dealing with whistleblowing within national and local governments, the CAA organises nationwide seminars that emphasise the necessity and importance of whistleblowing, and reinforce knowledge of the WPA and the guidelines.46

In Korea, the government has been implementing national strategies to raise public awareness of the benefits of whistleblowing and to strengthen protection for whistleblowers.47 For example, the Anti-Corruption and Civil Rights Commission (ACRC) introduced and promoted public interest whistleblower protection systems to chief executives of private companies, conducted promotional activities using storytelling methods through internet cartoons, and displayed and aired advertisements through television and subway billboards to promote whistleblower protection systems (ACRC, 2014a; 2014b).


Interviews with Greek public officials and reports from civil society organisations such as Transparency international have depicted a serious image problem about whistleblowers in Greece, but there have never been any public campaigns to raise the profile of whistleblowers and how useful they can be for society as a whole. Whistleblowers are often designated with the same terms that were used to identify individuals who were collaborating with oppressive regimes in Greece during WWII and the 1970s. This very negative designation could not be more at odds with the central role whistleblowers play in safeguarding the public interest. Indeed, those collaborating with oppressive regimes need to be clearly distinguished from whistleblowers, as contrary to the latter, the former were clearly acting in the interest of illegitimate governments and as such, against the public interest.

In addition to reinforce public perceptions about whistleblowers, another critical issue that interviewed stakeholders suggested awareness-raising campaigns could address is the building of trust in internal reporting regimes within the public service, and how these can make a difference in the organisational culture. Indeed, public awareness campaigns could be used to demonstrate why public servants should trust that the use of internal reporting channels will lead to appropriate action by the organisation, while protecting their identity and mitigating attempts to exercise reprisals. In this respect, interviewed stakeholders agreed that awareness-raising campaigns could be used to advertise how the Greek government has implemented the recommendations made in the present report and how it is monitoring its impact and its effectiveness, as discussed in subsection II.A.3) and III.C. At the same time, interviewed stakeholders argued that public awareness-raising campaigns should also make clear that not every disclosure of perceived misconduct is a breach of applicable rules and lead to disciplinary sanctions or prosecution. Officials working for the Prosecutor for Counter Terrorism also maintained that the specific role of internal and external channels for reporting misconduct should be part of awareness-raising campaigns destined for the Greek public sector to help them understand to whom they should talk to when they witness specific behaviours.

It has been suggested by a number of interviewed stakeholder that the National School of Public Administration be closely involved in the development of training seeking to change perceptions of whistleblowers and to inform public servants about their rights and obligations in relation with reporting misconduct.

Finally, once better defined reporting channels for misconduct in the public service are in place, the Greek government may consider using awareness-raising campaigns to ensure all public servants know where to report suspected misconduct once they witness it. Indeed, while the majority of Greek public servants surveyed know where to report corruption, almost half of them (47%) still do not know where to report it (Figure 8).
III. POLICY MEASURES TO EFFECTIVELY IMPLEMENT A WHISTLEBLOWER FRAMEWORK IN GREECE’S PUBLIC SECTOR

44. Design and implement a comprehensive communication strategy seeking to strengthen the perceptions about whistleblowers and that emphasises their important role in safeguarding the public interest.

45. To reinforce trust in reporting channels, particularly internal ones, emphasise why public servants should trust key measures taken by the Greek government to ensure all disclosures will be appropriately and diligently acted upon, to ensure that the identity of the whistleblowers will be safeguarded and that reprisals will not be tolerated.

46. Consider the following communication tools to reinforce perceptions about whistleblowers and inform employees who consider blowing the whistle of their rights:
   - Including statements in staff manuals, website, emails, staff bulletins or pamphlets and posters;
   - Publication of an annual report by a relevant oversight body or authority that includes information on the outcome of cases received;
   - Design special whistleblower awareness-raising campaigns for areas that may be more prone to corruption (e.g. public procurement, health care, customs, etc.).

47. Mandate a specific public sector institution, such as the National School of Public Service, to conduct whistleblower awareness-raising and education campaigns seeking to reinforce public perceptions about whistleblowers as well as to inform public servants about their rights and obligations in relation with blowing the whistle. Awareness-raising and education activities should be conducted at the national, regional and local levels.

48. Disseminate anonymised real-life whistleblower cases that relate to both situations where the misconduct was confirmed and not confirmed, to help public servants realise in which circumstances misconduct can and cannot be substantiated.
49. Require each public sector organisation to promote ethical practices and a positive environment for disclosing wrongdoing by disseminating knowledge of the whistleblower framework.

50. Make the head of any public sector entity responsible, jointly with the senior official responsible for ethics and whistleblowing-related matters, accountable for:

- Prevention of reprisals against whistleblowers in the workplace;
- Compliance with and enforcement of applicable civil service laws, rules, and regulations concerning disclosures of misconduct and whistleblower protection;
- Ensuring that public servants are aware of where to report as well as the role and purpose of each internal and external channels for reporting misconduct;
- Ensuring that public servants are informed of the rights and remedies available to them when they decide to blow the whistle.

3. Collaborating with civil society to conduct awareness-raising and fostering an appropriate environment to disclose misconduct in the public sector

In addition to awareness-raising conducted by governments, a number of NGOs are active in the field. For example, in the United Kingdom, Public Concern at Work provides independent and confidential advice to workers who are unsure whether or how to raise a public interest concern. Furthermore, they conduct policy and public education work and offer training and consultancy to organisations. In the United States, the Government Accountability Project, primarily an organisation of lawyers, defends whistleblowers against retaliation and actively promotes government and corporate accountability through investigations and advocacy for stronger whistleblower rights. More globally, Transparency International conducts advocacy, public awareness and research activities in all regions of the world. It has established Advocacy and Legal Advice Centres in around 50 countries through which they offer advice to whistleblowers and work to make sure that disclosures are addressed by appropriate authorities. The Whistleblowing International Network, co-founded by PCaW and GAP with NGOs from all over the world, is another example of a cross-country initiative.

These organisations play a very important role in terms having citizens and businesses realise government and business integrity in Greece will not get better without their involvement, and that it is their responsibility to report corrupt acts that ham the public interest, such as extortion or influence peddling from public officials. Collaboration by the Greek government with such organisations would likely contribute to implement the Greek whistleblower framework when it comes into force.
51. Consider collaborating with civil society organisations to conduct whole-of-society awareness-raising activities that will support the implementation of the whistleblower framework.

B. Conducting training and capacity-building activities to determine what should be reported and how disclosures should be handled

1. Providing adequate training to recipients of whistleblower disclosures in the public sector

Many OECD countries take the view that training is an essential part of an effective whistleblower strategy. To be effective, such training must be hands-on rather than being based simply on hand-outs and web platforms. There are generally three forms of training that may enhance the implementation of whistleblower frameworks, including 1) training that aim to change cultural perceptions and public attitudes about whistleblowing; 2) training that highlight the rights and obligations of employees who are considering to blow the whistle; and 3) specialised training intended to recipients of whistleblower allegations, as well as relevant law enforcement authorities and judges. As the first two categories of training were addressed in subsection II.A.2) on awareness-raising campaigns, this subsection will focus on specialised training provided to those who receive disclosures of misconduct and law enforcement authorities.

While we more often hear about the first two categories of training, training to recipients of whistleblower allegations plays an essential role in order to effectively manage the potentially high volume of disclosures made through whistleblower systems, to effectively allocate limited analysis and investigation resources and to increase consistency and transparency in decision making. To complement training provided to recipients of whistleblower allegations, countries may make guidance, counselling and advice available on an ongoing basis for employees or specialists participating in whistleblower procedures to address, for example, difficult situations and ethical dilemmas. Countries may also establish specific guidance for the proper exercise of discretionary powers as to whether a formal investigation should be launched in each specific case.

The Greek government does not currently conduct mandatory training on whistleblower-related topics, and this has been pointed as a very important issue by the Prosecutor for Counter Terrorism. Indeed, the prosecutor’s staff as well as representatives from the internal services of the Greek police reported that whistleblower status was erroneously granted to a witness because the recipient of the disclosure (i.e. the prosecuting judge) was not well-aware of applicable rules. While the granting of whistleblower status may be far more simple and rely less on discretionary powers if the recommendations of this report are implemented, this situation...
exemplifies the necessity to mandate high-quality training for those handling whistleblower allegations, to law enforcement authorities as well as to officials part of the judiciary and who will be called on ruling on the rights that should be granted to whistleblowers.

Implementing internal reporting channels in each public institution in Greece will require significant commitment and training efforts on an ongoing basis from public officials with appropriate expertise, knowledge and experience. The intelligence division of the Greek national police has offered to conduct training for public officials responsible for handling internal disclosures on how to conduct pre-investigation analysis, including division of duties and how to handle potential criminal offences. Such training would be drawn from current practices within police forces, which have been designed and implemented under the authority arising from relevant provisions of Law 4249/2014.

Should Greece consider implementing internal reporting channels within each public sector organisation, with designated recipients to receive and analyse disclosures and launch investigations where appropriate, specialised training to relevant staff will be necessary to ensure consistency and appropriate actions by those responsible to directly engage whistleblowers.

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<th>Policy recommendations</th>
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<tr>
<td>52. Draw from skilled investigators’ expertise and experience to design effective training modules intended for those who will manage internal reporting channels within public organisations.</td>
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<td>53. Assess the police forces’ capacity to train recipients of disclosures in each public organisation and if insufficient, design a “train the trainers” strategy so that appropriate training may be conducted in a reasonable time frame, at least in most “at-risk” public organisation.</td>
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<td>54. Prioritise training activities in each public organisation based on proper risk assessment methodology.</td>
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<td>55. Evaluate the skills and knowledge of public officials managing internal reporting channels on a periodic basis, including recipients, investigators, judges and other officials responsible for imposing sanctions or ruling on whistleblowers’ rights.</td>
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C. Monitoring and assessment

1. Defining relevant indicators to measure the effectiveness of the whistleblower framework

Finally, to ensure the Greek whistleblower framework meets the expectations and produces the expected impact, the government may consider systematically collecting strategic data and information to inform and enhance the evaluation of the effectiveness of its whistleblowing systems. To foster relevance and utility, indicators are derived from specific objectives underlying the whistleblower framework.
Interviewed stakeholders maintained that the practice of collecting statistical information through pre-determined indicators is not common practice in the Greek public service. A representative from the National Ombudsman Office provided that their institution has the appropriate structure to design and implement performance indicators, but that very few public organisations do. In this respect, the Greek government may consider drawing from best practices of public organisations that are ahead of the others to enhance performance indicators across the public service.

There are specific indicators that can be drawn from the literature on whether whistleblowing is effective in specific organisations. The data that will be produced by the indicators could be used, for example, to inform potential legislative reviews that may be undertaken by ad hoc or parliamentary committees, or by the Executive Branch. For example, public organisations could gather information on (i) the number and types of public sector disclosures received; (ii) the entities receiving most disclosures; (iii) the outcomes of cases (i.e. if the disclosure was dismissed, accepted, investigated, and validated, and on what grounds); (iv) whether the misconduct came to an end as a result of the disclosure; (v) whether the organization’s policies were changed as a result of the disclosure if gaps were identified; (vi) whether sanctions were exercised against wrongdoers; (vii) the scope, frequency and target audience of awareness-raising and training activities; and (viii) the time it takes to process cases (Transparency International, 2013; Apaza and Chang, 2011; and Miceli and Near, 1992).

This data, in particular information on the outcomes of cases, can be used in the review of a country’s whistleblowing framework in order to assess its impact on public sector organisations. Furthermore, public sector organisations can distribute surveys to review staff awareness, trust and confidence in whistleblowing mechanisms. In the United States, for example, the Merit Systems Protection Board has gathered information by conducting surveys with employees about their experiences as whistleblowers (Banisar, 2011). Such efforts play a key role in assessing the progress or lack thereof in implementing effective whistleblower protection systems.

To measure the effectiveness of protective measures for whistleblowers, additional data could be collected on cases where whistleblowers claimed experiencing reprisals. Such data could include by whom and how reprisals were exercised, whether and how whistleblowers were compensated, the grounds for these decisions, the time it takes to compensate whistleblowers, and whether they were employed during the judicial process.
Policy recommendation

56. Consider developing specific indicators for measuring the effectiveness of Greek whistleblower framework, which could include the following:

- the number and types of public sector disclosures received;
- the entities receiving most disclosures;
- the outcomes of cases (i.e. if the disclosure was dismissed, accepted, investigated, and validated, and on what grounds);
- whether the misconduct came to an end as a result of the disclosure;
- whether the organization’s policies were changed as a result of the disclosure if gaps were identified;
- whether sanctions were exercised against wrongdoers;
- publication of cumulative data on taxpayer money recovered from fraud or through fines due to whistleblowing procedures, as well as savings arising from the elimination of waste or mismanagement;
- the scope, frequency and target audience of awareness-raising and training activities;
- the time it takes to process cases; and
- the cases where whistleblowers claimed experiencing reprisals including:
  - by whom and how reprisals were exercised;
  - win/loss record for cases of retaliation against whistleblowers, including decisions on the merits (i.e. the cases not decided on procedural grounds, but rather about whether the whistleblower’s rights were violated);
  - whether and how whistleblowers were compensated;
  - the grounds for these decisions;
  - the time it takes to compensate whistleblowers;
  - whether whistleblowers were employed during the judicial process.
IV. Summary of recommendations

To ensure that Greece’s whistleblower system is comprehensive, effective in facilitating the reporting of wrongdoing and protecting against reprisal in practice and ensures appropriate action upon each disclosure, the following set of measures could be considered by the Greek government. These measures are grouped below by action area, corresponding to the report sections.

**ACTION 1: Ensure the Greek public sector whistleblower framework has the appropriate scope, provides effective incentives and produces the expected impact**

1. **Define the terms “whistleblower” and “misconduct” in a way that effectively safeguards the public interest**

   1. Include a definition of “misconduct” in the Civil Service Code that would, in effect, grant legal protection for whistleblowers who disclose information in relation with:
      - any criminal offence;
      - a failure to comply with any legal obligation;
      - any action that would warrant disciplinary action against the public official as listed at article 107 of the Civil Service Code;
      - a miscarriage of justice or abuse of power / authority that has occurred, is occurring or is likely to occur;
      - the health or safety of any individual that has been, is being or is likely to be endangered;
      - the environment that has been, is being or is likely to be damaged, or
      - information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

   2. Align the definition of whistleblower and the scope of application of the Civil Service Code with article 263A of the Greek Criminal Code to ensure it covers all employees working in public entities, state-owned or controlled enterprises, statutory agencies, municipalities and private firms that have been authorised by the state to provide essential services, as well as public service job applicants and former public servants, among others.

   

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3. Consider establishing additional safeguards for external disclosures made to an independent third party (see recommendation 14) arising from sensitive areas (e.g. armed forces, intelligence communities, law enforcement) to avoid that information on national security or strategic interests is leaked in the public domain, as well as guidelines that will clearly provide what information needs to be disclosed to the public to foster transparency and accountability.

1.2. Consider providing incentives to whistleblowers to disclose misconduct

4. Consider granting honorific and monetary rewards to public sector whistleblowers as it is the case for exemplary conduct under articles 61 and 62 of the Civil Service Code.

5. Consider granting additional honorific or monetary rewards in cases where public sector whistleblowers have contributed to safeguard the public interest in an outstanding manner or has allowed to recover public funds over a predetermined amount.

1.3. Ensure monitoring of the effectivity of the whistleblowing framework

6. Consider mandating periodic reviews of legislative provisions part of the public sector whistleblower framework by a committee of experts that includes representatives from government, independent public organisations, academia and civil society. Recommendations may then be tabled in Parliament to be discussed by the Parliamentary committee and the legislative assembly.

7. Require each Greek public sector institution to report statistics and outcomes of whistleblower cases to Parliament or the independent third party responsible for administering external disclosures. Require the third party responsible for administering external disclosures to report statistics and outcomes of whistleblower cases to Parliament. To reinforce transparency and public trust, these reports should be made publicly available.

ACTION 2: Implement measures to avoid that reprisals occur in the first place

2.1. Instil certainty about whether legal protection will be granted

8. Limit the meaning of good/bad faith so as to remove legal protections from whistleblowers only when they knew their disclosure was false or misleading at the time of disclosure. This implies that whistleblowers whose allegations turn out not to be true may still be protected if they were deemed in good faith at the time of disclosure.

9. Ensure that the law does not protect whistleblowers who have made false or misleading disclosures.

10. Whistleblowers who provide information in good faith, as defined above, should be made eligible for legal protection recommended in this report whether they disclose information within the organisation or to a designated third party.
11. Consider expanding the protection programme provided by Law 2928/2001 and Law 4254/2014 to public sector whistleblowers (as defined in this report) when there is evidence that tends to demonstrate that the physical integrity of such whistleblowers is threatened.

12. Limit the denial of legal protection to cases when whistleblowers should reasonably have known that their disclosure was false or misleading, in which case the individual could be sanctioned by his or her employer and sued for damages by the victim of the false allegations.

2.2. Establish clear, safe and diversified reporting channels to disclose wrongdoing in the public sector

13. Designate a senior official in each government and public entity who is responsible for receiving disclosures of misconduct, and investigating such disclosures. A senior official could be made responsible for several smaller public organisations. Allocate sufficient human, technical and financial resources as necessary.

14. Delegate the responsibility for establishing an institutional environment that is suitable to discuss ethical concerns and dilemmas in confidence to the senior official referred to in recommendation 13.

15. Empower an independent high level public official who is independent from the government, such as the Ombudsman or another designated high-level official, as an alternative channel to whom disclosures of misconduct can be made. Such an official would have the power to investigate the disclosures, report on the investigation’s findings and recommend sanctions on the wrongdoer.

16. Ensuring that whistleblowers who are reporting misconduct to their supervisors are eligible to legal protection granted to whistleblowers who disclose misconduct to an internally or externally designated recipient.

17. Establish coordination mechanisms between recipients of internal and external disclosures (e.g. notification of internal investigations to the independent third party responsible for external disclosures), and with law enforcement authorities to ensure criminal prosecutions when circumstances warrant.

18. Use tracking numbers to anonymise internal reports by public servants in order to lessen the likelihood that their identity be leaked or misused. Limit the number of people who know the real identity of whistleblower as much as possible.

19. Establish an internet platform through which anonymous disclosures may be made, and that allow for back and forth communications between investigators and whistleblowers without revealing the identity of whistleblowers.

20. Consider granting legal protection to whistleblowers who disclose information to the public when circumstances warrant.

21. Consider establishing specific criteria to determine with more certainty when the disclosure of journalist sources will be required by courts.

22. Monitor the implementation of rules under which warrants are issued to track meta data and call logs from journalists to identify whistleblowers to avoid abuse.
2.3. Ensure transparency in decision making

23. Define procedures ensuring the accountability of the various recipients of whistleblower allegations in the public sector, including mandatory reviews of decisions, audits, and accessible appeal procedures.

24. Ensure relevant authorities conduct at least a preliminary investigation to verify whistleblower allegations, subject to unambiguously and narrowly defined exceptions (e.g. the disclosure clearly does not constitute “misconduct” under the law; the misconduct has already been addressed; or the disclosure is clearly abusive or misleading).

25. Ensure whistleblowers are able to review the motives of the decisions to investigate or not investigate the disclosures, that whistleblowers’ comments are included in the final report with respect to the decision to launch an investigation, and that whistleblowers have a fair opportunity to appeal the decision.

26. Ensure that disclosure recipients, investigators and prosecutors or any other individual who have committed obstruction of justice are liable to appropriate sanctions.

2.4. Establish clear prohibitions to exercise reprisals

27. Broaden the criminal prohibition to exercise reprisals in the Criminal Code to make it applicable to whistleblowers who disclose information in relation with breaches of all Greek laws.

28. Include a prohibition with corresponding sanctions in the Civil Servants’ Code for exercising reprisals against whistleblowers who have disclosed breaches of the Civil Servants’ Code and of other public internal policies.

29. Provide in the Civil Service Code that prohibitions to exercise reprisals apply to whistleblowers who disclose misconduct either internally or externally to recipients authorised by law.

30. Consider granting immunity for whistleblowers from criminal, civil, or administrative legal action unless the disclosure has clearly been done in bad faith, as discussed in subsection II.B.1) of this report.

ACTION 3: Implement measures to compensate whistleblowers who have experienced reprisals

3.1. Provide effective remedies that are adapted to whistleblowers in the public sector

31. Consider granting the option to public servants to bring their own case before competent administrative authorities, such as a disciplinary commission within the public service, if they feel they have experienced reprisals for disclosing misconduct.
32. Provide for specific remedies in the Civil Service Code to compensate public servant whistleblowers for experiencing reprisals, including reinstatement, transfer to another public service organisation, or cancelling any measures affecting the working status of the whistleblower.

33. Consider expanding and clarifying the legal provisions allowing for shifting the burden of proof on the employer to demonstrate that any action taken against an employee was not motivated by, influenced by, or in any way associated with the employee having made, or considered making a report according to the provisions of the law.

3.2. Implement cost-effective and timely measures to appeal administrative decisions against public sector whistleblowers

34. Building on articles 106 to 124 of the Civil servants’ Code, provide for a quick and effective dispute settlement mechanism involving potential whistleblowers and their employer, including for potential cases of reprisals.

35. Ensure that the procedures to bring forward allegations of reprisals before administrative authorities involve appropriate scrutiny of alleged cases of reprisals and that such administrative authorities have appropriate capacities and training to rule on alleged cases of reprisals.

36. Ensure that decisions of government disciplinary bodies be reviewable by courts unless they appear, *prima facie*, frivolous.

3.3. Provide for interim relief for whistleblowers when appropriate

37. Consider expressly providing interim relief to public sector whistleblowers who may have experienced reprisals for disclosing misconduct and are engaged in legal procedures to seek compensation, when circumstances warrant (e.g. precarious financial situation of the whistleblower, appearance of reprisals at first glance, legal procedures extended over a long period of time, absence of revenue for the whistleblower).

ACTION 4: Exercise leadership and commitment to create the right environment in the public sector to disclose misconduct

4.1 Set the tone at the top to frame the duty of loyalty in the public service and shape perceptions about public sector whistleblowers

38. Ensure senior officials appointed in each public entity to receive and analyse disclosures of misconduct are made accountable, for example through audits and performance reviews, as to whether:

- they launched investigations when deemed necessary;
- they determined appropriate, proportionate sanctions on wrongdoers and those who exercised reprisals;
they issued appropriate recommendations to stop the misconduct and close policy or internal control gaps within the organisation;

they recommended appropriate redress or compensation measures for whistleblowers who experienced reprisals.

39. Ensure senior officials appointed in each public entity to receive and analyse disclosures of misconduct have the appropriate training and capacities to fulfil the duties described in recommendation 38.

40. Include in performance assessments of senior and middle managers how they demonstrate that any breach of integrity and ethical values should be reported immediately to a designated recipient.

41. Implement transparency procedures to ensure that sanctions on misconduct are applied consistently, regardless of the level or position of the alleged wrongdoer involved.

42. Ensure that senior officials’ decision-making to conduct (or not) investigations and the content of their findings is transparent and motivated by a solid, well-explained rationale.

43. Subject decisions to random audits by an independent institution, such as a Supreme Audit Institution or an Ombudsman, to reinforce transparency and accountability over the whistleblower framework and assess the performance and effectiveness of the framework.

4.2. Conduct effective awareness-raising campaigns about the importance of whistleblowers within government and in the general public and strengthen the culture of integrity in the public service

44. Design and implement a comprehensive communication strategy seeking to strengthen the perceptions about whistleblowers and that emphasises their important role in safeguarding the public interest.

45. To reinforce trust in reporting channels, particularly internal ones, emphasise why public servants should trust key measures taken by the Greek government to ensure all disclosures will be appropriately and diligently acted upon, to ensure that the identity of the whistleblowers will be safeguarded and that reprisals will not be tolerated.

46. Consider the following communication tools to reinforce perceptions about whistleblowers and inform employees who consider blowing the whistle of their rights:

- Including statements in staff manuals, website, emails, staff bulletins or pamphlets and posters;
- Publication of an annual report by a relevant oversight body or authority that includes information on the outcome of cases received;
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- Design special whistleblower awareness-raising campaigns for areas that may be more prone to corruption (e.g. public procurement, health care, customs, etc.).

47. Mandate a specific public sector entity to conduct whistleblower awareness-raising and information campaigns at the national, regional and local levels.

48. Disseminate anonymised real-life whistleblower cases that relate to both situations where the misconduct was confirmed and not confirmed, to help public servants realise in which circumstances misconduct can and cannot be substantiated.

49. Require each public sector organisation to promote ethical practices and a positive environment for disclosing wrongdoing by disseminating knowledge of the whistleblower framework.

50. Make the head of any public sector entity responsible, jointly with the senior official responsible for ethics and whistleblowing-related matters, accountable for:
   - Prevention of reprisals against whistleblowers in the workplace;
   - Compliance with and enforcement of applicable civil service laws, rules, and regulations concerning disclosures of misconduct and whistleblower protection;
   - Ensuring that public servants are aware of where to report as well as the role and purpose of each internal and external channels for reporting misconduct;
   - Ensuring that public servants are informed of the rights and remedies available to them when they decide to blow the whistle.

4.3. Collaborate with civil society to conduct awareness-raising and instilling and fostering an appropriate environment to disclose misconduct in the public sector

51. Consider collaborating with civil society organisations to conduct whole-of-society awareness-raising activities that will support the implementation of the whistleblower framework.

ACTION 5: Conduct training and capacity-building activities

5.1. Provide adequate training to recipients of whistleblower disclosures in the public sector

52. Draw from skilled investigators’ expertise and experience to design effective training modules intended for those who will manage internal reporting channels within public organisations.

53. Assess the police forces’ capacity to train recipients of disclosures in each public organisation and if insufficient, design a “train the trainers” strategy so that appropriate training may be conducted in a reasonable time frame, at least in most “at-risk” public organisations.
54. Prioritise training activities in each public organisation based on proper risk assessment methodology.

55. Evaluate the skills and knowledge of public officials managing internal reporting channels on a periodic basis, including recipients, investigators, judges and other officials responsible for imposing sanctions or ruling on whistleblowers’ rights.

**ACTION 6: Monitor and assess the effectiveness of whistleblower implementation**

**6.1. Define relevant indicators to measure the effectiveness of the whistleblower framework**

56. Consider developing specific indicators for measuring the effectiveness of Greek whistleblower framework, which could include the following:

- the number and types of public sector disclosures received;
- the entities receiving most disclosures;
- the outcomes of cases (i.e. if the disclosure was dismissed, accepted, investigated, and validated, and on what grounds);
- whether the misconduct came to an end as a result of the disclosure;
- whether the organization’s policies were changed as a result of the disclosure if gaps were identified;
- whether sanctions were exercised against wrongdoers;
- publication of cumulative data on taxpayer money recovered from fraud or through fines due to whistleblowing procedures, as well as savings arising from the elimination of waste or mismanagement;
- the scope, frequency and target audience of awareness-raising and training activities;
- the time it takes to process cases; and
- cases where whistleblowers claimed experiencing reprisals including:
  - by whom and how reprisals were exercised;
  - win/loss record for cases of retaliation against whistleblowers, including decisions on the merits (i.e. the cases not decided on procedural grounds, but rather about whether the whistleblower’s rights were violated);
  - whether and how whistleblowers were compensated;
  - the grounds for these decisions;
  - the time it takes to compensate whistleblowers;
  - whether whistleblowers were employed during the judicial process.


Council of Europe (2014), “Recommendation of the Committee of Ministers to member states on the protection of whistleblowers”, https://wcd.coe.int/viewdoc.jsp?p=&ref=cm/rec%282014%297&language=lanenglish&ver=original&site=cm&backcolorinternet=c3c3c3&backcolorintranet=edb021&backcolorlogged=f5d383&direct=true.


Legislation

Act on the Protection of Public Interest Whistleblowers, 2011 (Korea)
Civil Servants Code (Law 3528/2007) (Greece)
Code of Criminal Procedure (Greece)
Criminal Code (Greece)
Criminal Code, R.S.C., 1985, c. C-46 (Canada)
Dodd-Frank Wall Street Reform and Consumer Protection Act, PUBL. 111–203, H.R. 4173 (United States)
False Claim Act, 31 US Code § 3729 (United States)
Federal Criminal Code, 18USC (United States)
Inspector-General of Intelligence and Security Act, 1986 (Australia)
Law 2928/2001 (Greece)
Law 4254/2014 (Greece)
Law on the Protection of Whistleblowers No. 128/2014 (Serbia)
Ley General de Responsabilidades Administrativas, Nueva Ley DOF 18-07-2016 (Mexico)
Protected Disclosure Act, 2000, No 7 (New Zealand)
Public Interest Disclosure Act, No. 133, 2013 (Australia)
Public Interest Disclosure Act, 1998, c.23 (United Kingdom)
Public Servants Disclosure Protection Act, (S.C. 2005, c. 46) (Canada)
Whistleblower Protection Act of 1989, Pub.L. 101-12 (United States)
Whistleblower Protection Act of 2017 (Kirkpatrick) (United States)
Whistleblower Protection Act, Act no. 122 of 2004 (Japan)
Whistleblower Protection Enhancement Act of 2012 (United States)

Case law
