Fair Market Conditions for Competitiveness in the Adriatic Region

Whistleblower Protection to Fight Corruption
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What is the issue?

“Whistleblowers are brave people willing to bring illegal activities to light – often at great risk to their career and livelihood – in order to protect the public from wrongdoing. They deserve recognition and protection for their brave actions.”1

(Věra Jourová, Vice-President, Values and Transparency, European Commission, 2019)

Whistleblower protection is defined as “protecting and/or providing remedy against any retaliatory action to persons working in the private or public sector who report on reasonable grounds suspected acts of bribery of foreign public officials in international business transactions and related offences in a work-related context” (OECD, 2021a). Protecting whistleblowers helps promote a culture of accountability and integrity in both, public and private institutions, and encourages the reporting of misconduct, fraud and corruption. While there is no internationally accepted definition of a “whistleblower”, a whistleblower can be viewed as any person who reports suspicions of bribery of public officials to law enforcement authorities, an employee who reports such suspicions internally to the company or third persons who report to law enforcement or the media (OECD, 2017).

Whistleblower protection is crucial for detecting misconduct, fostering transparency and promoting integrity. Practice demonstrates that corruption, fraud, and wrongdoing, as well as health and safety violations, are much more likely to occur in organisations that are closed and secretive (OECD, 2016). However, much remains to be done to enable effective whistleblower protection in OECD and non-OECD countries alike. In many cases, employees will be aware of the wrongdoing, but feel unable to report issues for fear of reprisals, concern about acting against the organisation’s culture or a lack of confidence that the matter will be taken seriously (OECD, 2016).

In light of this, governments should work against barriers to whistleblowing and promote a culture of accountability and integrity in both private and public institutions, which would allow for reporting misconduct. In this respect, it is key to develop effective legislation for the protection of whistleblowers in line with international standards as well as to continuously raise awareness about the advantages of whistleblower protection. Regular review sent to the relevant authorities about whistleblowing practices and protection is also beneficial.

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1 From EC Press release: Entry into force of the directive on whistleblower protection.
Why Whistleblower Protection is key for the Adriatic Region

Whistleblower protection in the Adriatic Region is essential to encourage the reporting of misconduct, fraud and corruption as the basis to level the economic playing field for all economic actors. In contrast, the risk of corruption is noticeably heightened in environments where the reporting of wrongdoing is not supported. This applies to both the public and the private sector.

At present, corruption and anti-competitive behaviour substantially tilt the competitive playing field in the Adriatic Region. Transparency International’s Corruption Perception Index 2021 ranks the region as “moderately to significantly corrupt” (Transparency International, 2021). According to the Index, Bosnia and Herzegovina ranks 110th out of the 180 countries analysed, while Croatia ranks 63rd and Serbia 96th. Among the countries in the region, only Croatia ranks above the global average. What is more, Bosnia and Herzegovina, Croatia and Serbia were not able to improve their position in the ranking which illustrates that progress is rather slow.

While whistleblower protection can be an effective instrument to combat corruption and anti-competitive behaviour, in the Adriatic region, implementing it varies across countries and dimensions (OECD, 2021b). The Regional Anti-Corruption Initiative assessment of 2021 has determined that Bosnia and Herzegovina does not have a law on whistleblower protection that is compliant with the EU Directive and EU standards (Devine & Worth 2021). The only standard in place is protection against workplace harassment. While the law calls for transparency, it does not provide specifics on how to achieve this. In the Federation of Bosnia and Herzegovina, there is still no whistleblower protection law. The Republic of Srpska is reported as partially compliant with consensus standards for whistleblower rights thanks to its Law on the Protection of Persons Reporting Corruption in the Republic of Srpska in place since 2017 (Stijak, 2022).

In contrast, Croatia has a relatively advanced whistleblower protection mechanism in place. The Law on Protection of Persons who Report Irregularities was first adopted in 2019 as a lex specialist combining all legal standards in one act and providing similar protection for people working in the private and in the public sector (Council of Europe, 2020). When drafting the law, account was taken of the Council of Europe’s Recommendation CM/Rec (2014)7 on the protection of whistleblowers which was partially transposed into national law. As a result, the law provided for multiple whistleblower protection measures such as internal and external reporting mechanisms and an independent and autonomous ombudsman that was entrusted with external reporting practices about irregularities in line with the Whistleblowers’ Protection Act (Croatia Ombudsman, 2019). However, the law was criticised for being too vague in some parts (Kalajdzic, 2022). In light of this, the government passed a new Law on Protection of Persons who Report Irregularities in April 2022, bringing the national framework in line with the standard defined by the Directive 2019/1937 (EU Whistleblowing Monitor, 2022).

Serbia’s Law on the Protection of Whistleblowers provides comprehensive protection to whistleblowers (OECD, 2021b). Besides whistleblowers, it covers associated persons – those mistakenly perceived as whistleblowers, those performing official duties and those engaging
in research for the disclosure. While the law lists several potential wrongdoings for defining whistleblowing, it still lacks some elements of the categories of misconduct expressed in the EU Directive and Recommendation of the Council of Europe (Devine & Worth, 2021). Generally speaking, the Serbian whistleblowing framework has shown to be efficient, as it has supported a high level of whistleblower activity with 990 whistleblower cases received in courts from June 2015 to December 2021 and a general track record of decisions in favour of whistleblowers (Republic of Serbia, 2020 & 2022). Nevertheless, the whistleblower protection system still falls short of providing all measures of support to the whistleblower such as providing comprehensive information and being easily accessible, providing direct assistance to the whistleblower, financial assistance as well as psychological support (OECD, 2022a).

The OECD guidance on establishing an effective whistleblower protection scheme

International standards have recognised the importance of whistleblower protection laws as part of an effective anti-corruption framework. For instance, whistleblower protection requirements have been introduced in the United Nations Convention against Corruption (2004)\(^2\), the 2021 OECD Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (“Anti-Bribery Recommendation”)\(^3\) and its 2009 predecessor, the 1998 OECD Recommendation on Improving Ethical Conduct in Public Service\(^4\) and the Council of Europe Civil and Criminal Law Conventions on Corruption (1999)\(^5\).

This paper builds on the main findings of the 2017 OECD study on The Detection of Foreign Bribery as well as the 2021 Anti-Bribery Recommendation to illustrate an effective framework for whistleblower protection.

The OECD study on The Detection of Foreign Bribery looks at the primary sources of detection for foreign bribery offences and the role that certain public agencies and private sector actors can play in uncovering such deeds. It examines the practices in different countries and sectors which have led to the successful detection of foreign bribery with a view to sharing good practices and improving countries’ capacity to detect and ultimately step-up efforts against transnational bribery (OECD, 2017).

The 2021 Anti-bribery Recommendation, adopted by the OECD Council in November 2021 as a revision of the 2009 Recommendation, complements the Anti-Bribery Convention with a view to further strengthening and supporting its implementation and includes significant provisions to strengthen whistleblower protection. Measures also focus on rigorous monitoring of Parties’ implementation of the Anti-Bribery Convention and related Recommendations, as well as the wide body of thematic work carried out by the Working  

\(^2\) UNCAC Articles 8, 13 and 33.  
\(^3\) OECD Anti-Bribery Convention, 2021 Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions, Section XXI and XXII. The 2009 version of the Recommendation includes Section IX.iii. and Section X C.v., and Annex II to the Recommendation, Good Practice Guidance on Internal Controls, Ethics and Compliance, Section A.11.ii.  
\(^4\) OECD Recommendation on Improving Ethical Conduct in the Public Service, Principle 4.  
\(^5\) Council of Europe Civil Law Convention on Corruption, Article 9; Council of Europe Criminal Law Convention on Corruption, Article 22.
Group on Bribery on the detection of foreign bribery, liability of legal persons, non-trial resolutions, and the demand side of bribery (OECD, 2021a).

The adherence to the Recommendation was analysed in the OECD Public Sector Whistleblower Protection Survey which was completed by 32 out of 41 member countries of the OECD Working Group on Bribery (OECD, 2016). Figure 1 sets out the timeline for the enactment of dedicated whistleblower protection legislation in the 16 OECD and partner countries that have adopted such laws. Over half of these countries opted for a single dedicated whistleblower protection law that applies to both public and private sector employees (OECD, 2016).

The figure below reveals that Bosnia and Herzegovina was the first in the region to implement a dedicated whistleblower law in 2013, followed by Serbia in 2014 and Croatia in 2019.

Figure 1: Entry into force of dedicated whistleblower protection laws: A timeline

Countries with dedicated laws on whistleblower protection have generally built on the OECD instruments as key components for such legislation. These include mostly disclosure mechanisms and protection against reprisal. However, despite the laws’ common aim, dedicated whistleblower protection legislation often differs in scope. Differences emerge frequently with regards to which types of misconduct are concerned, the reporting channels foreseen, the extent to which confidentiality is granted and potential remedial measures for victims of retaliation. Differences also extend to the methods used to encourage reporting, including financial incentives along awareness raising campaigns (OECD, 2016).

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6 From Committing to Effective Whistleblower Protection - Highlights.
7 The list includes Hungary, Ireland, Israel, Japan, Korea, New Zealand, the Slovak Republic and the United Kingdom.
8 Adapted from Committing to Effective Whistleblower Protection (OECD, 2016).
What policy makers in the Adriatic region can do

Even though steps have been taken to support whistleblowers, countries in the Adriatic Region should further strengthen whistleblower protection mechanisms to address the shortcomings described above. While the economies have taken substantial steps to follow the EU Directive, there is still some lack of coherence in the legislative framework (OECD, 2021b). This includes access to information on the quality of protection measures provided in legislation for all actors involved in reporting misconduct, direct assistance to the whistleblower, financial assistance and psychological support (Devine & Worth, 2021; EU Whistleblowing Monitor, 2022).

In view of this, policy makers in the Adriatic Region, should consider bringing together their whistleblowing protection legal framework into a single, standalone dedicated law addressing the outlined challenges. To make this framework fully effective, governments should consider adhering to the following five-step process outlined in the OECD study on *The Detection of Foreign Bribery* (2017):

![Figure 2: Five steps towards effective whistleblower protection](image)

1. **Raise Awareness**

   Upon identifying wrongdoing, employees in the public or private sector may be uncertain of what to do with the information, where or to whom to turn, or whether they are protected by whistleblower protection mechanisms (OECD, 2016).

   It is essential to communicate to public and private sector employees the importance of reporting misconduct, as well as their rights and obligations when exposing wrongdoing, as outlined in the *1998 Recommendation on Improving Ethical Conduct in the Public Service*

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9 Adapted from *The Detection of Foreign Bribery* (OECD, 2017).
Principle 4 of the Recommendation states that “public servants need to know what protection will be available to them in cases of exposing wrongdoing.” Awareness-raising activities could include the publication of an annual report by a relevant oversight body or authority. This document should include information on the outcome of cases received, the compensation for whistleblowers, recoveries that resulted from whistleblower reports as well as the average time it took to process a case (OECD, 2016). However, as it is the case in many OECD member countries, awareness raising activities remain very limited in the Adriatic Region. Anecdotal evidence of retaliation against whistleblowers recurs in the media and studies have identified various barriers to whistleblowing in the region (OECD, 2021b).

In contrast, Croatia is a good example of how raising public awareness about whistleblowing practices through media coverage can twist the generally sceptical public opinion about the limited efficiency of whistleblower protection. Despite a study by the UN Office on Drugs and Crime reporting “more than half of Croatians believe that people who report corruption are likely to regret it and that nothing constructive will result” (UNODC, 2011), the media “increasingly portrays whistleblowers as heroes and journalists have become more reliant on whistleblowers to expose wrongdoing” (EU, 2014). As a result, Transparency International points out that two thirds of interviewed citizens in Croatia would report instances of corruption and almost a third would utilise government hotlines (Worth, 2015).

Partnerships between the government and civil society can also promote whistleblower reporting and protection. The box below illustrates two examples from Croatia and Serbia, which can serve as a good practice example for the Adriatic Region.

**Good practice example from Croatia:**

- According to the new Anti-Corruption Strategy 2021-2030, authorities plan to conduct a comprehensive anticorruption campaign that will include media activities, conferences for central and local government officials, NGOs and journalists, as well as secondary education activities (Republic of Croatia, 2021).

**Good practice example from Serbia:**

- To raise awareness, the NGO and media outlet Pištaljka trains judges, public prosecutors, and authorised whistleblowing officials in the application of the law related to whistleblowing (Whistleblowing International Network, 2019).

2. Provide clear reporting channels

Channels of disclosure need to be clearly defined and enable effective reporting. Otherwise, whistleblowers may lack confidence in the system or may not be comfortable with reporting misconduct. The 2021 OECD Anti-Bribery Recommendation urges countries to ensure that easily accessible channels are in place to report suspected acts of foreign bribery to law enforcement authorities, in accordance with member countries’ legal principles (OECD, 2021a, Recommendation XXI i-iii). It is recommended to ensure that reports can be made through various channels (e.g., phone, online, mail or fax) to allow whistleblowers to choose the channel most adapted to their circumstances (OECD, 2016).
Hotlines or web platforms, through which whistleblowers can disclose information regarding alleged wrongdoing, may be established as a government directive, as part of a country’s overarching goal to detect corruption and misconduct or through third party initiatives. In addition to wide reaching governmental arrangements, these types of mechanisms can take shape through civil society or be outsourced to private ventures (OECD, 2016).

Several OECD countries have established whistleblower hotlines and websites as part of their government initiatives to facilitate the reporting of wrongdoing and particularly the reporting of acts of corruption. These initiatives are sometimes complemented by non-governmental civil society organisations and national chapters of Transparency International that operate within these countries. It is important, however, that individuals are aware that in some countries only reporting to relevant law enforcement authorities will guarantee follow-up. In contrast, reports made to civil society may not necessarily lead to action. Governments may also consider extending protection to reports made internally or to other external actors, such as the media and civil society.

Bosnia and Herzegovina, Croatia and Serbia have not yet designated official reporting mechanisms such as a hotline for anonymous reporting or a business ombudsman institution which would be responsible for receiving complaints along those received by Anti-Corruption Agencies (OECD, 2021b).

The following box provides two examples of effective hotlines for the reception of whistleblower reports on which the countries from the Adriatic region can build.

### Good practice example from Estonia:

✓ Cases of corruption can be reported through a hotline and website linked to the government’s anti-corruption website. There is also the possibility to report suspicions about corruption to the Police and Border Guard Board through an anonymous hotline (OECD, 2016).

### Good practice example from Hungary:

✓ An anonymous service, “Phone Witness” was set up by the National Police Department. The country’s National Crime Prevention Board also has a dedicated email address for receiving reports (OECD, 2016).

3. **Provide practical guidance**

Whistleblowers sometimes take substantial personal risk in reporting bribery and other crimes or misconduct to law enforcement authorities. Supporting and advising whistleblowers can help instil confidence in the reporting system and encourage them (OECD, 2016).

Countries from the Adriatic Region should consider encouraging whistleblowing by instituting periodic communication with whistleblowers about the status of their filed reports. A communication strategy could help to assure whistleblowers that their concerns are taken
into account and allow law enforcement authorities to ask follow-up questions to obtain further information (OECD, 2016).

Reporting wrongdoing without resorting to anonymous channels requires substantial trust in the disclosure system. This trust often stems from a system based on integrity and the assurance that disciplinary mechanisms are in place to reinforce provisions such as confidentiality (OECD, 2016). The following box depicts different legal good practices from Bosnia and Herzegovina, Croatia and Serbia which aim to increase support and follow up to whistleblowers. However, the countries of the Adriatic Region should consider communicating about the provisions to a wider public, as the basis to provide practical guidance to whistleblowers.

<table>
<thead>
<tr>
<th>Good practice example from Croatia:</th>
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<tr>
<td>✓ According to the Law on Protection of Persons who Report Irregularities adopted in 2019, all employers with at least 50 employees have been required to set up internal reporting channels and appoint a “trusted person” for internal reporting of irregularities. The law likewise envisages the possibility of external reporting to the Ombudsman as well as public disclosure in case of an imminent threat (Council of Europe, 2020). In addition, The Criminal Code makes it illegal to lay off a worker for reporting suspicions of corruption to the authorised government institutions (Worth, 2015).</td>
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<th>Good practice example from Serbia:</th>
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<td>✓ The Serbian Law on Whistleblower Protection (adopted in 2014) includes multiple provisions for protecting whistleblowers and expressly prohibits the hindering of whistleblowing. An employer must inform whistleblowers about their rights stemming from the Law on Whistleblower Protection and must appoint an authorised person for the receipt of information and administering procedures (Worth &amp; Dyrmishi, 2017).</td>
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<th>Good practice example from Bosnia and Herzegovina:</th>
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<tr>
<td>✓ The Law on Protection of Persons Reporting Corruption adopted in 2017 in the Republic of Srpska protects whistleblowers in both the public and private sectors along with persons connected with the whistleblower. It does not set mandatory preconditions for external reporting, nor protect against a broad set of forms of retaliation nor provide the right to free legal assistance (Stijak, 2022).</td>
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4. Provide financial rewards

Disclosing wrongdoing can be a daunting undertaking that can, in extreme cases, lead to a loss of livelihood and professional marginalisation. In addition to the stigma that may be attached to blowing the whistle, employees may also fear financial 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. The latter can include covering living costs and legal expenses following retaliation (OECD, 2016).

According to Transparency International, evidence on the effectiveness of whistleblower reward programmes is mixed. However, they do have some advantages. According to some research, financial rewards work against the stigmatisation of whistleblowers (Kasperevic, 2015). They also have a greater cost effectiveness since “reward programs may lower public spending, as they are less costly than traditional investigative methods” (Transparency International, 2018). In addition, rewarding whistleblowers financially can stimulate a more transparent and responsible workplace culture (Transparency International, 2018) and “counteract negative social pressures that favour silence” (Bradley, 2016).

Bosnia and Herzegovina, Croatia and Serbia are yet to develop financial reward programmes. The box below illustrates how the Hungarian Competition Council introduced partial financial rewards. Such practice can be also considered in the Adriatic Region.

### Good practice examples from Hungary:

- In Hungary, financial rewards are only offered to whistleblowers who provide timely evidence about cartel activity. Rewards are limited to 1 percent of the fine imposed by the Competition Council, with a maximum of HUF 50,000,000 (approximately USD 180,000). No reward is offered to the informant if the evidence has been obtained as a result of a crime or an offence (Hungarian Competition Authority, 2020).
- The Hungarian Competition Act only rewards whistleblowers who provide evidence on cartel activities. Whilst protection is provided for those providing information on corruption and misconduct, there is no formalised reward system for these whistleblowers (Maslen, 2018).

5. Ensure data protection legislation does not impede reporting

Accusing whistleblowers of criminal offences such as slander, violation of bank, commercial or professional secrecy and corporate espionage can all be used to silence them. In addition, civil defamation suits can have a deterring effect on whistleblowers. Cases in Switzerland, where whistleblowers have been detained or held criminally liable for revealing wrongdoing detected in the course of their employment, highlight the need to strike a balance between punishing the malicious disclosure of sensitive corporate information and encouraging those who reveal misconduct that affects the public interest (OECD, 2017).

The following box provides a short description of the role of the Croatian Ombudsman Office in the protection of the data of whistleblowers. This practice can serve as a good practice example for the Adriatic region.

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10 “Proponents of the programmes suggests that they increase the quantity of disclosures and cite its ability to incentivise hesitant whistleblowers, while opponents to such schemes highlight the possibility of monetary rewards undermining the morality of blowing the whistle” (Maslen, 2018).
**Good practice examples from Croatia:**

✓ In Croatia, an Ombudsman reports whistleblowing to competent bodies that take action to protect the whistleblower. The Ombudsman can participate in court proceedings in favour of the whistleblower and file misdemeanour indictment proposals within its competences. In addition, the Ombudsman’s Office is in charge of data collection on whistleblowing which is presented annually to the parliament and thereafter published (Equinet, 2019).

✓ In order to fully harmonise the existing legal framework in Croatia with the *EU Directive 2019/1937 on the protection of persons who report breaches of EU law*, a new draft proposal entered the legislative procedure in December 2021. While the draft recognises that the majority of the mechanisms within the Whistleblowing Directive have already been included in the 2019 Act, the new Act will be improved and more detailed. For instance, the new Act strengthens the legal protection of whistleblowers, while also raising public awareness about the benefits of whistleblowing and whistleblower protection mechanisms (Central State Office for the Development of the Digital Society, Office of Legislation, 2021).

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**Next Steps: Committing to Effective Whistleblower Protection**

This policy brief illustrates the importance of intensifying anti-corruption efforts in the Adriatic Region by improving whistleblower protection. It builds on the OECD guidance on establishing an effective whistleblower protection scheme developed in the 2017 OECD report on *the Detection of Foreign Bribery* and takes the guide’s five-step process to establish effective whistleblower protection mechanisms (OECD 2017). These steps include raising awareness, providing clear reporting channels, giving guidance, providing financial rewards and improving data protection legislation. In their next steps, policymakers should take note of the revised 2021 OECD Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions (2021a). The Recommendation stands as the most rigorous and up-to-date guide for governments to improve bribery reporting mechanisms and the protection of reporting persons. Focusing on the Adriatic region, *Competitiveness in South East Europe 2021* is another essential source mapping out progress in the domain of anti-corruption and whistleblower protection frameworks.

In order to address evolving economic challenges and benefit from good practices that have emerged in the global anti-corruption landscape, policy frameworks need to be regularly revised. This also applies to whistleblower protection. Despite the region’s improvements in establishing whistleblower protection mechanisms, progress remains to be made in some areas such as providing comprehensive information about whistleblowing channels and creating easy access to them. Further progress should be made in providing direct assistance to whistleblowers as well as giving them financial assistance and psychological support. This
note has detailed the options for future action alongside good practice examples for policy reform.

Do you want to find out more?

For further information, please consult:

https://www.oecd.org/gov/ethics/whistleblower-protection/

Sources


Annex

About the Fair Market Conditions for Competitiveness in the Adriatic Region Project
This 3-year project intends to support the creation of a level-playing field and fair market conditions in three pilot countries from the Adriatic region (Serbia, Croatia and Bosnia and Herzegovina) in order to enhance competitiveness and integrity in a sustainable and inclusive way.

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Policy Briefing Notes

Fair Market Conditions for Competitiveness in the Adriatic Region Project

High levels of corruption and lack of transparency are key constraints to economic growth and competitiveness in many countries worldwide. The Policy Briefing Notes, designed for stakeholders from the Adriatic Region, aim to provide practical guidance to tackle corruption, foster integrity and level the playing field for all firms. They draw on OECD guidelines, legal instruments and good practices and are tailored to the region’s circumstances.

The Policy Briefing Notes are one output of the three-year OECD project to promote fair market conditions for competitiveness in Bosnia and Herzegovina, Croatia, and Serbia, supported by the Siemens Integrity Initiative. Through Collective Action, government officials from the region along business leaders, anti-corruption experts and practitioners, civil society representatives and academics have engaged to jointly identify country-specific challenges to integrity and foster fair market competition.

These efforts are part of the engagement of the OECD South East Europe Regional Programme, which collaborates with the region since 2000 to foster private sector development and competitiveness, improve the investment climate and raise living standards for an inclusive and sustainable future for the people of South East Europe.

www.oecd.org/south-east-europe
oe.cd/fair-market-conditions