

**PUBLIC GOVERNANCE AND TERRITORIAL DEVELOPMENT DIRECTORATE  
PUBLIC GOVERNANCE COMMITTEE**

**REVISITING WHISTLEBLOWER PROTECTION IN OECD COUNTRIES: FROM COMMITMENTS  
TO EFFECTIVE PROTECTION**

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*Whistleblower protection is an essential element for safeguarding the public interest, for promoting a culture of public accountability and integrity, and for encouraging the reporting of misconduct, fraud and corruption. In 2010, the importance of whistleblower protection was reaffirmed at the global level when the G20 Anti-Corruption Working Group adopted the Guiding Principles for Whistleblower Protection Legislation, prepared by the OECD. Re-visiting whistleblower protection and reflecting on what countries have learned in recent years is timely. This background document focuses on the main features of whistleblower protection laws and systems, and provides examples throughout of approaches and trends across OECD countries.*

**ACTION**

*Delegates of the Public Sector Integrity Network are invited to:*

- 1. Provide feedback on the draft background document on whistleblower protection in OECD countries.*
- 2. Share good practices and identify necessary conditions and challenges in providing effective whistleblowing mechanisms and protection.*
- 3. Discuss whether the G20 Principles have been useful as a reference for enacting and reviewing, as necessary, whistleblower protection rules in their countries.*

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*This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.*

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## I. THE IMPORTANCE OF WHISTLEBLOWER PROTECTION

1. Encouraging whistleblowing on acts of suspected wrongdoing is essential in safeguarding public interest, safety, and health, and promoting a culture of public accountability and integrity. Employees in both the public and private sectors have access to up-to-date information concerning their workplaces' practices, and are usually the first to recognise wrongdoings (UNODC, 2004a). In the United Kingdom, inquiries into the Clapham rail crash, the Piper Alpha Disaster, the Zeebrugge ferry tragedy, and the collapse of Barings Bank in the 1980s and early 1990s showed that employees knew of the dangers that existed but had either been too scared to raise the issue, or raised it incorrectly or with the wrong person (National Audit Office, 2014). Similarly, in the United States the Challenger disaster in 1986<sup>1</sup> led to the introduction of the Whistleblower Protection Act of 1989, and the US Sarbanes-Oxley ACT Of 2002 was adopted following the scandals at Enron, WorldCom and other companies (Banisar, 2011). One example of whistleblowing that potentially saved millions of lives by alerting the public was when Dr. Jiang Yanyong revealed the extent of the spread of the SARS virus (Calland and Dehn, 2004). If whistleblowers dare to speak up about wrongdoing at their workplace and help identify deficiencies in the system, this can function as a red flag that can be highly useful for their employer as well as policymakers who are able to learn from first-hand accounts of practice.

2. Encouraging and facilitating whistleblowing can also help authorities monitor compliance and detect violations of anti-corruption laws. As an example, the US Internal Revenue Service collected \$367,042,420 in 2013 thanks to the reports submitted by whistleblowers (see Figure 1). Out of this amount, 14.6% were paid as awards to whistleblowers.

3. The risk of corruption is significantly heightened in environments where the reporting of wrongdoing is not supported or protected since whistleblowing is not only a way to declare wrongdoing, but can also have a deterrent effect on it. If employees know that fellow employees will report wrongdoing without fear of retaliation, they may be more reluctant to commit the wrongdoing in the first place. Protecting public sector whistleblowers facilitates the reporting of passive bribery, as well as the misuse of public funds, waste, fraud and other forms of corruption. However, in the United States, over one-third (34%) of state government employees who observed misconduct but chose not to report it feared retaliation from management, and almost as many (30%) non-reporters feared retaliation from their peers (Ethics Resource Center, 2007). In the private sector, economic fraud destroys shareholders' value, threatens enterprises' development, endangers employment opportunities and undermines good corporate governance (ICC, 2008). Protecting private sector whistleblowers facilitates the reporting of active bribery and other corrupt acts committed by companies. It also helps businesses prevent and detect bribery in commercial transactions.

4. In most jurisdictions, there is an obligation for public officials to report corruption and other malpractices. However, employees who report wrongdoings may be subject to intimidation, harassment, dismissal and violence by their colleagues or superiors. In many countries, whistleblowing is even associated with treachery or spying (Banisar, 2011; Transparency International, 2009). This notion may be the result of the influence of cultural connotations and, in turn, may also have an impact on individual

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1 See for example Martin, D. (2012).

careers and on the internal organisational culture (Brown, 2008). As a result, encouragement of whistleblowing must be associated with the corresponding legal protection and clear guidance on reporting procedures for the whistleblower.

5. Providing effective protection for whistleblowers supports an open organisational culture where employees are not only aware of how to report but also have confidence in the reporting procedures. Translating whistleblower protection into legislation legitimises and structures the mechanisms under which public officials can disclose actual or perceived wrongdoings in the public sector, protects public officials against reprisals, and, at the same time, encourages them to fulfil their duties in performing efficient, transparent and high quality public service. If adequately implemented, legislation protecting whistleblowers can become one of the most effective tools to support anti-corruption initiatives, detecting and combating corrupt acts, fraud and mismanagement.<sup>2</sup> In the private sector, employees need to know the rules and procedures for reporting wrongdoing, and what protection will be available to them in case they do.

6. International instruments aimed at combating corruption have also recognised the importance of having whistleblower protection laws in place as part of an effective anti-corruption framework. Whistleblower protection requirements have been introduced in the United Nations Convention against Corruption,<sup>3</sup> the 2009 OECD Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (Anti-Bribery Recommendation),<sup>4</sup> the 1998 OECD Recommendation on Improving Ethical Conduct in Public Service<sup>5</sup>, the Council of Europe Civil and Criminal Law Conventions on Corruption,<sup>6</sup> the Inter-American Convention against Corruption,<sup>7</sup> and the African Union Convention on Preventing and Combating Corruption.<sup>8</sup>

7. In 2010, the importance of whistleblower protection was reaffirmed at the global level when the G20 Anti-Corruption Working Group recommended G20 leaders to support the Guiding Principles for Whistleblower Protection Legislation (Annex), prepared by the OECD, as a reference for enacting and reviewing, as necessary, whistleblower protection rules by the end of 2012. Such provisions have strengthened the international legal framework for countries to establish effective whistleblower protection laws.

8. Although the majority of OECD countries have introduced legal protection for whistleblowers, either through a dedicated law or through provisions in other laws (Figure 1), not all legal frameworks are effective and provide sufficient protection.<sup>9</sup> The below sections provide an overview of the sources of legal protection for whistleblowers among OECD countries and the main elements of existing national legislations. It also focuses on the protection for private sector whistleblowers.

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2 See for example Council of Europe Parliamentary Assembly (2009).

3 UNODC (2004b) Articles 8, 13 and 33.

4 OECD (2009a), 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.

5 OECD (1998), Principle 4

6 Council of Europe (1999a), Article 9; Council of Europe (1999b), Article 22.

7 Organization of American States (1996), Article III(8).

8 African Union (2003), Article 5(6).

9 Transparency International (2009) [revealing that in many countries, legislation is fragmented and weakly enforced].

## II. MAIN FEATURES OF WHISTLEBLOWER PROTECTION MECHANISMS

### 1. Sources of protection

#### a. *International law*

9. Whistleblower protection has been recognised by all major international treaties concerning corruption. The international legal framework against corruption requires countries to incorporate - or consider incorporating - appropriate measures into their domestic legal systems to provide protection for persons who report any facts concerning acts of corruption in good faith and on reasonable grounds to the competent authorities.<sup>10</sup>

10. Moreover, several international soft law instruments also provide for the protection of whistleblowers. Most recent is the 2014 Council of Europe Recommendation of the Committee of Ministers to member States on the protection of whistleblowers, that provides for protection of both public and private sector whistleblowers who report or disclose information on a threat or harm to the public interest in the context of their work-based relationship. The 1998 OECD Recommendation on Improving Ethical Conduct in the Public Service including the Principles for Managing Ethics in the Public Service and the 2003 OECD Recommendation on Guidelines for Managing Conflict of Interest in the Public Service were among the first. The 1998 Recommendation highlights the importance of public servants knowing what their rights and obligations are in terms of exposing actual or suspected wrongdoing within the public service. This includes clear rules and procedures for officials to follow, a formal chain of responsibility, and knowing what protection will be available to them in cases of exposing wrongdoing (OECD, 1998). The 2003 Recommendation includes guidelines to advise countries to “[p]rovide clear rules and procedures for whistle-blowing, and take steps to ensure that those who report violations in compliance with stated rules are protected against reprisal, and that the complaint mechanisms themselves are not abused” (OECD, 2003, p. 35). In addition, the OECD 2009 Anti-bribery Recommendation also provides for the protection of whistleblowers in the public and private sectors. It recommends that Member countries should ensure that “appropriate measures are in place to protect from discriminatory or disciplinary action public and private sector employees who report in good faith and on reasonable grounds to the competent authorities suspected acts of bribery of foreign public officials in international business transactions” (OECD, 2009a, p. 5).

11. There is also important international jurisprudence concerning human rights law that reinforces the protection of whistleblowers, explicitly in circumstances when they are the only person aware of the reported situation and in the best position to alert the employer or the public at large. For instance, in 2008, the European Court of Human Rights ruled that the dismissal of a public servant who released unclassified documents revealing political manipulation of the judiciary system was a violation of article 10 of the European Convention of Human Rights. Recently, the Court ruled in the same fashion, when a nurse working for a State-owned corporation was dismissed after filing a criminal complaint against her

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10 UNODC (2004b), Art. 33; Organization of American States (1996), Art. 3(8). Under the CoE Civil Law Convention and African Union Convention on Preventing and Combating Corruption States Parties are required to establish appropriate protection for persons reporting corruption. See, Council of Europe (1999a), Art. 9; and African Union (2003), Art. 5(6). For a similar provision, see Council of Europe (1999b), Art. 22(a).

employer for its knowingly failure “to provide the high quality care promised in its advertisement ... putting the patients at risk” (European Court of Human Rights, 2011).

***b. Domestic Laws***

12. At the national level the source of protection for whistleblowers may originate either from comprehensive and dedicated laws on whistleblower protection, from specific provisions in different laws and/or sectoral laws (Figure 1).

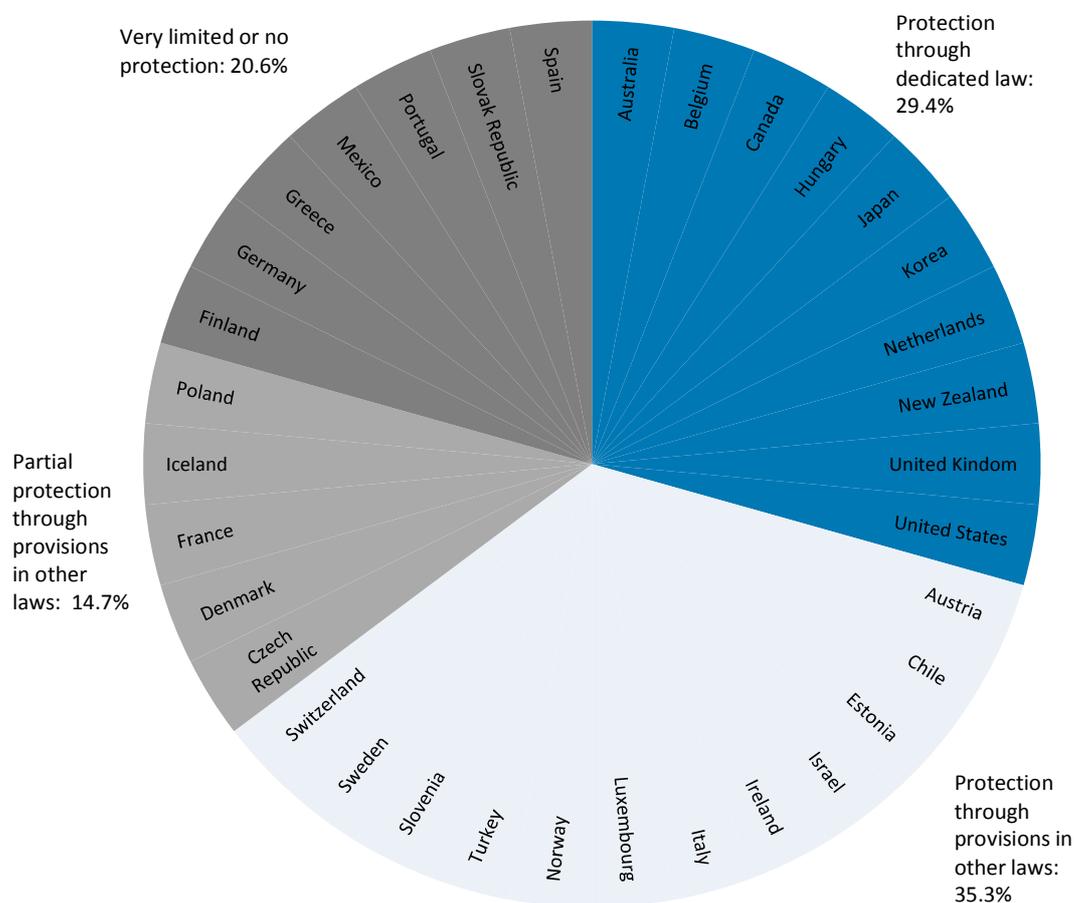
13. The enactment of a comprehensive, dedicated law could be one effective legislative means of providing whistleblower protection.<sup>11</sup> Comprehensive and stand-alone legislation may give the law heightened visibility, thereby making its promotion easier for governments and employers (Banisar, 2011). This approach also allows for the same rules and procedures to apply to public and private sector employees, rather than the more piecemeal approach of sectoral laws, which often only apply to certain employees and to the disclosure of certain types of wrongdoing (Banisar, 2011). The enactment of stand-alone legislation could also contribute to ensuring legal certainty and clarity.<sup>12</sup>

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11 See also Council of Europe Parliamentary Assembly (2010), Article 6.1: “Whistleblowing legislation should be comprehensive.”

12 See also: Transparency International (2013a), Principle 24: “Dedicated legislation – in order to ensure clarity and seamless application of the whistleblower framework, stand-alone legislation is preferable to a piecemeal or a sectoral approach.”

Figure 1. Legal protection of whistleblowers in OECD countries



Source: OECD

### Dedicated law

14. Among OECD countries, Australia,<sup>13</sup> Belgium,<sup>14</sup> Canada,<sup>15</sup> Hungary,<sup>16</sup> Japan,<sup>17</sup> Korea,<sup>18</sup> the Netherlands,<sup>19</sup> New Zealand,<sup>20</sup> the United Kingdom,<sup>21</sup> and the United States<sup>22</sup> have passed comprehensive

13 Public Interest Disclosure Act 2013. In addition, all Australian jurisdictions, except for the Commonwealth, have stand-alone acts that provide for the establishment of whistleblowing schemes and some form of legal protection against reprisals. See, for example the Australian Capital Territory Public Interest Disclosures Act 2012, the New South Wales Protected Disclosures Act 1994, the Northern Territory Public Interest Disclosures Act 2008, Queensland Whistleblowers Protection Act 1994, Tasmania Public Interest Disclosures Act 2002, Victoria Whistleblowers Protection Act 2001, Western Australia Public Interest Disclosures Act 2003, and South Australia Whistleblower Protection Act 1993.

14 The Law of 15 September 2013 relating to the reporting of suspected harm to integrity within a federal administrative authority by a member of its staff

15 Public Servants Disclosure Protection Act of 2005.

16 2009 Act CLXIII on the Protection of Fair Procedures.

and dedicated legislation to protect public sector whistleblowers. The UK is considered to have one of the most developed comprehensive legal systems (Banisar, 2011). The laws in the UK and New Zealand cover both private and public sector whistleblowing protection. The UK also covers the hybrid scheme - when public sector functions are outsourced to private contractors.<sup>23</sup> Between 2009 and 2010, 68% of PIDA cases were from the private sector, 26% from the public sector, 4% of the voluntary sector and 2% unknown (Public Concern at Work, 2011).

15. In the United States, the Whistleblower Protection Act was enacted in 1989, and subsequently has been complemented by the whistleblowing provisions in the Sarbanes-Oxley Act and the Dodd-Frank Wall Street Reform and Consumer Protection Act. These last two Acts are primarily targeted to the private sector, yet also constitute part of the framework that protects whistleblower employees of the federal government from reprisal and provides for redress. The Canadian Public Servants Disclosure Protection Act of 2005 applies only to disclosures made by the Canadian federal public service and to some federal Crown corporations. Australia's whistleblower legislation only provides protection in the public sector, even though some jurisdictions in Australia provide protection for the hybrid scheme. The Japanese whistleblowing protection act protects both public and private employees for public interest disclosures. Specifically, article 7 provides for the "Treatment of National Public Employees in the Regular Service", and prohibits the dismissal or any disadvantageous treatment on the basis of whistleblowing.

*Sectoral laws or provisions in one or more laws*

16. The majority of countries that offer legal protection for whistleblowers have done so in specific provisions in one or more laws. These provisions are usually found in anti-corruption laws, competition laws, corporation laws, public servants laws, labour laws, criminal codes, and other laws such as environmental laws or accounting and banking secrecy laws.

17. Some examples of provisions are as follows:

- **Anti-corruption laws** may include whistleblower protection, such as in France where the 2007 Anti-Corruption Act protects employees of private companies and "state-owned industrial and commercial establishments" from a diverse variety of sanctions if they – in good faith – report

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17	Whistleblower Protection Act of 2004.
18	Act on the Protection of Public Interest Whistleblowers of 2011.
19	The Netherlands have adopted dedicated whistleblowers per sector. This includes the Decree Regulating the Reporting of Suspected Abuses in the Civil Service and the Police (Besluit van 15 december 2009, houdende een regeling voor het melden van een vermoeden van een misstand bij de sectoren Rijk en Politie), the Decree regulating the Reporting of Suspected Wrongdoing in the Defence (Besluit van 30 augustus 2010, houdende wijziging van het Algemeen militair ambtenarenreglement en het Burgerlijk ambtenarenreglement Defensie in verband met een regeling voor het melden van een vermoeden van een misstand), and Regulation of the procedure and protection in the reporting of suspected wrongdoing (province) (Regeling procedure en bescherming bij melding van vermoedens van een misstand).
20	Protected Disclosures Act of 2000.
21	Public Interest Disclosure Act of 1998.
22	Whistleblower Protection Act of 1989.
23	Under section 230(3) of the Employment Rights Act of 1996.

wrongdoing.<sup>24</sup> The Slovenian Integrity and Prevention of Corruption Act covers protection for persons reporting corruption and unethical or illegal conduct.

- **Laws regulating public servants** may also be a legal source of protection for whistleblowers. In Mexico, Article 8 (XXI) of the Federal Law on Administrative Liability of Civil Servants provides for the obligation of civil servants to, *inter alia*, abstain from any acts that would impede the presentation of complaints, or from any acts or omissions that would prejudice the interests of those who formulate or present such complaints. Article 13 provides penalties for administrative misconduct to be imposed on anyone who violates such obligations. In Iceland, the Government Employees Act stipulates that “An employee may not be adversely treated for disclosing to the appropriate parties that laws or ethical rules have been breached of which he has become aware in his work”.<sup>25</sup> Public service codes of ethics and conduct may additionally provide for whistleblower protections within the public sector. For example, the Australian Public Service Code of Conduct makes express reference to whistleblower protections for public service employees who report breaches (or alleged breaches) of the Code to an authorised person.<sup>26</sup>
- **Labour laws or codes** may also be a legal source of protection for whistleblowers, such as in Italy where the Labour Code protects workers against dismissal, but not against other forms of reprisal, and in Germany<sup>27</sup> which allows the existence of whistleblowers by containing basic protection provisions.<sup>28</sup> In Germany, at the constitutional level, the legal framework protecting whistleblowers is taken from Art. 20(3) of the German Constitutional Law. Article 4 of the *Grundgesetz*,<sup>29</sup> guaranteeing the freedom of conscience,<sup>30</sup> of information and expression,<sup>31</sup> and the right to petition,<sup>32</sup> that includes the right to address requests or complaints to government agencies, as well as the general freedom of action<sup>33</sup> and the right to report offences to the public prosecutor also form part of the framework.<sup>34</sup> This, along with the provisions contained in the Labour Law forbidding discrimination caused by a permitted exercise of rights, has been considered<sup>35</sup> to contain the basic protections for whistleblowers.<sup>36</sup> More recently, the Federal Labour Court has established the protection of workers who cooperate with the public prosecutor

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24 Loi n°2007-1598 du 13 novembre 2007 relative à la lutte contre la corruption, Art. 9, JORF 14 novembre 2007.

25 Government Employees Act no. 70/1996, Chapter III, Article 13a.

26 Australian Public Service Code of Conduct, Chapter 17 (Whistleblowing).

27 Bundesarbeitsgericht vom 3.7.2003 – 2 AZR 235/02 und vom 7.12.2006, 2 AZR 400/05

28 Strack (2008), pp. 7-8. See German Civil Code, Section 612 a.

29 Also known as the Basic Law.

30 German Grundgesetz, art. 4.

31 Id., art. 5, paragraph 1.

32 Id., art. 17.

33 Id., art. 2, paragraph 1.

34 Strafgesetzbuch (Criminal Code), Section 138.

35 For instance, this has been recognized as such by the Whistleblower Netzwerk e.V. is a German organization founded to support whistleblowers and educate on subjects related to their protection. See [www.whistleblower-netzwerk.de](http://www.whistleblower-netzwerk.de).

36 Strack (2008), pp. 7- 8. See German Civil Code, Section 612.

or make a voluntary notification to the law enforcement agencies in good faith, if the crime reported refers to a government's interference with a fundamental right.<sup>37</sup> France's Code du Travail also provides some protection measures for employees who report health or safety issues, or instances of sexual harassment.<sup>38</sup> In Austria, the civil servants act provides civil servant who, in good faith,

- **Criminal codes** may also provide for protection of whistleblowers such as in Mexico. Article 219 (I) of the Federal Criminal Code provides that a crime of intimidation is committed when a civil servant, or a person acting on their behalf, uses physical violence or moral aggression to intimidate another person in order to prevent them from reporting, lodging a criminal complaint, or providing information concerning the alleged criminal act punished by the criminal laws of the Federal Law on Administrative Liability of Civil Servants. The Canadian Criminal Code prohibits retaliation against an employee who provides information about a crime.<sup>39</sup> Similarly, the United States Federal Criminal Code was amended by the Sarbanes-Oxley Act (SOX Act) to impose a fine and/or imprisonment for retaliation against a whistleblower who provides truthful information about the commission or possible commission of any Federal offence to law enforcement authorities.<sup>40</sup>

18. In the case of Ireland, provisions have been added in multiple laws. Whistleblowers are protected through the Central Bank (Supervision and Enforcement) Act 2013<sup>41</sup>, the Health Act 2007<sup>42</sup>, the Employment Permits Act 2006<sup>43</sup>, the Criminal Justice Act<sup>44</sup>, the Prevention of Corruption (Amendment) Act 2010, the Protections for Persons Reporting Child Abuse Act 1998, the Competition Act 2002<sup>45</sup>, the Safety, Health and Welfare at Work Act 2005<sup>46</sup>, the Garda Síochána (Confidential Reporting of Corruption Or Malpractice) Regulations 2007, the Charities Act 2009<sup>47</sup>, and the Ethics in Public Office Act 2001<sup>48</sup>.

19. In Sweden, Swedish citizens have – granted by the constitution – extensive freedom to provide information to authors, publishers, editors, etc. for publication (Box 1).

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37 Bundesarbeitsgericht vom 3.7.2003 – 2 AZR 235/02 und vom 7.12.2006, 2 AZR 400/05

38 France Code du Travail, Article L1152.

39 Section 425.1, Criminal Code of Canada.

40 18 U.S.C. §1513(e). Furthermore, this provision of the SOX Act is not limited in its application to only publicly-traded companies; it covers all employers in the United States (Kohn, n.d.).

41 Part 5: Protection for Persons Reporting Breaches

42 PART 9A: Protected Disclosures of Information

43 Section 26

44 Section 20

45 Part 5(50).

46 Section 27.

47 Sections 61 and 62.

48 Section 5(1) and 5(4).

**Box 1. Protection to provide information in Sweden**

Through the Fundamental Law of Freedom of Expression (FLFE) and the Freedom of the Press Act (FPA), Swedish citizens have extensive freedom to provide information for publication. The only exceptions to this freedom is if, by disclosing information, the person makes himself or herself guilty of:

1. high treason, espionage, gross espionage, gross unauthorised trafficking in secret information, insurrection, treason or betrayal of country, or any attempt, preparation or conspiracy to commit such an offence;
2. wrongful release of an official document to which the public does not have access, or release of such a document in contravention of a restriction imposed by a public authority at the time of its release, where the act is deliberate; or
3. deliberate disregard of a duty of confidentiality, in cases specified in a special act of law.

If this is the case, the provisions of law concerning liability for such an offence apply (FLFE Ch. 5 Art. 3; FPA Ch. 7, Art. 3).

In addition to ensuring the anonymity of those who have disclosed information (FLFE Ch. 2, Art. 3; FPA Ch. 3, Art. 3), and fines or prison for those who – through negligence or deliberate intent – breach confidentiality (FLFE Ch. 2 Art. 5; FPA Ch. 3 Art. 5), the law also establishes that no public authority or other body may inquire into the identity of the person who provided information (FLFE Ch. 2, Art. 4; FPA Ch. 3 Art. 5).

Source: Sweden's Fundamental Law of Freedom of Expression and the Freedom of the Press Act.

20. In addition to the countries that cover whistleblower protection in a quite comprehensive way through either a dedicated legislation or through provisions in other laws, there are also examples where the provisions included in other laws only cover specific persons or acts, resulting in limited protection. In for example sectoral laws, the subject of coverage is typically limited by the scope of the law. In France, the Parliament passed a law to protect whistleblowers who expose serious risks to the public health or the environment.<sup>49</sup>

**c. Protection in the private sector**

21. As in the public sector, private sector employees are usually the first to know of problems and whistleblowing can be an “early warning sign” for employers that something is wrong and should be corrected before it gets out of hand (Banisar, 2011). In 2007, companies were alerted to fraud by whistleblowers in one-quarter of cases (KPMG, 2011). In addition to being key in the reporting of active bribery and other corrupt acts committed in the private sector – helping business prevent and detect fraud – the encouragement of whistleblowing in the private sector, coupled with the corresponding protection for whistleblowers, can help create a culture where whistleblowers are seen less as snitches or traitors.

22. The OECD Guidelines for Multinational Enterprises state that MNEs should: “Refrain from discriminatory or disciplinary action against workers who make bona fide reports to management or, as appropriate, to the competent public authorities, on practices that contravene the law, the Guidelines or the enterprise’s policies.”<sup>50</sup> In 2008, the International Chamber of Commerce (ICC) Anti-Corruption

49 LOI n° 2013-316 du 16 avril 2013 relative à l'indépendance de l'expertise en matière de santé et d'environnement et à la protection des lanceurs d'alerte, Titre V.

50 OECD (2011), Section II. 9.

Commission adopted voluntary guidelines aimed at helping companies establish and implement internal whistleblowing programmes.

23. In Australia, the Corporations Act of 2001 (Part 9.4AAA) includes protection for a discloser (an officer or employee of a company, or a supplier or employee of a supplier of goods and services to a company) who has reasonable grounds to suspect that the information disclosed indicates that the company or an officer or employee of the company have, or may have, contravened a provision of the Corporations legislation, and who makes the disclosure in good faith.<sup>51</sup> In the Netherlands, the Dutch Corporate Governance Code<sup>52</sup> and the Declaration on dealing with suspicions of wrongdoing in companies<sup>53</sup> encourages and regulates whistleblowing and the protection of whistleblowers. The former states that "The management board shall ensure that employees have the possibility of reporting alleged irregularities of a general, operational and financial nature within the company to the chairman of the management board or to an official designated by him, without jeopardising their legal position. Alleged irregularities concerning the functioning of management board members shall be reported to the chairman of the supervisory board. The arrangements for whistleblowers shall be posted on the company's website."<sup>54</sup> In the US, the Sarbanes-Oxley Act of 2002 protects employees of publicly traded companies who provide evidence of fraud, and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 protects individuals who provide information relating to a violation of the securities laws to the Securities and Exchange Commission.

## 2. Specific Features of Whistleblower Protection Laws and Mechanisms

### a. Definitions and Scope

#### *Whistleblowing*

24. There is no common legal definition of what constitutes whistleblowing. The International Labour Organization (ILO) defines it as "the reporting by employees or former employees of illegal, irregular, dangerous or unethical practices by employers."<sup>55</sup> In the context of international anti-corruption standards, the 2009 OECD Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (Anti-Bribery Recommendation) refers to protection from "discriminatory or disciplinary action public and private sector employees who report in good faith and on reasonable grounds to the competent authorities".<sup>56</sup> The UNCAC refers to "any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention."<sup>57</sup> The Council of Europe Civil Law Convention on Corruption refers to "employees who have reasonable grounds to suspect corruption and who report in good faith their suspicion to responsible persons or authorities."<sup>58</sup>

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51 Corporations Act 2001, Australia.

52 Corporate Governance Code Monitoring Committee (2009)

53 Stichting van de Arbeid (2010)

54 Corporate Governance Code Monitoring Committee (2009)

55 International Labour Organization (2011)

56 OECD (1997); OECD (2009a), Recommendation IX(iii). See also OECD (1998) and OECD (2011), Section II.9.

57 UNODC (2004b), Article 33.

58 Council of Europe (1999a), Article 9.

25. Similar language has also been applied in national whistleblowing legislation. For example, the UK's PIDA refers to "any disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following..." (the provision continues by listing a series of acts, including in relation to the commission of criminal offences).<sup>59</sup> Key characteristics common to whistleblowing could therefore include: i) the disclosure of wrongdoings connected to the workplace; ii) a public interest dimension, e.g. the reporting of criminal offences, unethical practices, etc., rather than a personal grievance; and, iii) the reporting of wrongdoings through designated channels and/or to designated persons (Chêne, 2009).

*'Good Faith' and 'Reasonable Grounds'*

26. A principal requirement in most whistleblower protection legislation is that the disclosures be made in "good faith" and on "reasonable grounds." Accordingly, protection is afforded to an individual who makes a disclosure based upon his or her belief that the information disclosed evidenced one of the identified conditions in the given statute, even if the individual's belief is incorrect. Under US law, the test for determining whether a purported whistleblower had a "reasonable belief" is based on whether "a disinterested observer with knowledge of the essential facts known to and readily ascertainable by the employee reasonably conclude that the actions of the government" evidence the wrongdoing as defined by the statute (United States Court of Appeals Federal Circuit, 1999). In Japan, whistleblowing protected by the act has to be made "without a purpose of obtaining a wrongful gain, a purpose of causing damages to others, or any other wrongful purpose".<sup>60</sup>

27. It follows that individuals who deliberately make false disclosures should not be afforded protection. Some laws expressly refer to this; for example, Korea's Act on the Protection of Public Interest Whistleblowers states that in the event that the public interest whistleblowing was performed even though the whistleblower had known or could know that the information was false, it shall not be deemed a case of public interest whistleblowing.<sup>61</sup> Some laws may also impose a criminal penalty for making a false disclosure. Ireland's Anti-Corruption (Amendment) Act 2010, for example, punishes any person who reports that a person may have committed or may be committing an offence under the Prevention of Corruption Acts which the person knows to be false by imprisonment of up to three years or a fine of up to 250 000 €. <sup>62</sup> However, whistleblower protection laws would normally not impose sanctions for misguided reporting, and protection would be afforded to disclosures that are made in honest error.

*Scope of Coverage of Persons Afforded Protection*

28. A broad definition of who a whistleblower is may be considered essential. A "no loophole" approach to the scope of coverage of protected persons ensures that – in addition to public servants and permanent employees – coverage also includes individuals who are outside the traditional employee-employer relationship, such as consultants, contractors, trainees/interns, temporary employees, former employees and volunteers. Under UK law for example, contractors' disclosures are protected. A more expansive approach to the "no loophole" principle could also extend protection to a wider range of persons, including job applicants, the unemployed, persons who have been blacklisted and family members (Chêne, 2009).

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59 UK PIDA (1998), Part IV.A., Section 43B.

60 Japan's Whistleblower Protection Act (Act No. 122 of 2004) Article 2 (Definitions) (1)

61 Korea's Act on the Protection of Public Interest Whistleblowers, Article 2. 2.a.

62 Ireland's Prevention of Corruption (Amendment) Act 2010 Section 4. 8A. (3) and (8).

29. Some whistleblower protection laws expressly exclude certain categories of public sector employees from protection. This could for instance apply to those in the intelligence services or the army. In other countries, public sector employees who are engaged in particularly sensitive areas of work may be subject to special whistleblower protection legislation. For example, the Intelligence Community Whistleblower Protection Act<sup>63</sup> provides some protection for civilian employees, military employees or contractors assigned to the four federal intelligence agencies in the United States (the Defense Intelligence Agency, the National Security Agency, the National Reconnaissance Office, and the National Geospatial-Intelligence Agency), but does not apply to activities of the military services, combatant commands, or the Office of Secretary of Defense.

30. At present, while most whistleblower protection laws do not extend to include private sector employees, some OECD countries, such as Japan, Korea and the UK have enacted dedicated whistleblower protection legislation that expressly applies to both public and private sector employees. Korea's Act on the Protection of Public Interest Whistleblowers (PPIW Act), for example, expressly applies to "any person" who reports a violation of the public interest.<sup>64</sup> Japan's whistleblower covers whistleblowing by "a worker".<sup>65</sup> Best practice for coverage is to protect all who carry out activities relevant to the organization's mission, whether these are full time, part-time, temporary, permanent, expert consultants, contractors, employees seconded from another organisation, or volunteers (Devine & Walden, 2013).

#### **Box 2. The typical whistleblower in the United Kingdom**

From a sample consisting of 1 000 cases from the advice line of UK NGO Public Concern at Work (PCaW) between 20 August 2009 and 30 December 2010, they found that the typical whistleblower has been working for less than two years, is concerned about a wrongdoing that is on-going, that affects wider society, and that has been occurring for less than six months.

The top six industries are health, care, education, charities, local government, and financial services, with one-third of whistleblowers who contacted PCaW being from the health and social care sectors. The most common types of wrongdoing are ethical and financial concerns, followed by work safety. Close to three-quarters of the cases (74%) involved harm outside the workforce, e.g. consumers or patients were affected.

In their sample, concerns were raised 1,514 times, of which 82% was internal, 15% external, and 3% to a union. The majority of whistleblowers (44%) raise their concern once, and a further 39% will go on to raise their concern a second time. The concern is raised at most twice with line management, then middle management. Of those that raise the concern three times (119), 60% continue to raise a concern internally. The whistleblower is most likely to experience no response – either negative or positive – from management (60% of the sample). Where management do respond the most common response is a formal reprisal.

Source : Public Concern at Work and the University of Greenwich (2013) Whistleblowing: The inside story – A study of the experiences of 1 000 whistleblowers, <http://www.pcaw.org.uk/files/Whistleblowing%20-%20the%20inside%20story%20FINAL.pdf>

#### *The difference between whistleblowers, witnesses and informants*

31. There are important differences between the definition of whistleblowers, witnesses and informants. This, in turn, makes for example witness protection insufficient to protect whistleblowers.

63 Intelligence Community Whistleblower Protection Act (1999).

64 Act on the Protection of Public Interest Whistleblowers (enacted 29 March 2011, to enter into force on 30 September 2011).

65 Japan's Whistleblower Protection Act (Act No. 122 of 2004) Article 2 (Definitions) 1.

UNCAC deals with both whistleblower protection (Article 33) and witness protection (Article 32). The Technical Guide explains the difference by saying that Article 33 is intended to “cover those individuals who may possess information which is not of such detail to constitute evidence in the legal sense of the word” (UNODC, 2009, p.105). Although UNCAC does not define the term “witness”, Article 32 limits the scope to witnesses who give testimony concerning offences established in accordance with the Convention (UNODC, 2009, p.102).

32. There is a potential overlap between whistleblowers and witnesses as some whistleblowers may possess solid evidence and become witnesses in legal proceedings (Transparency International, 2013b). When whistleblowers testify during court proceedings, they can be covered under witness protection laws. However, because whistleblowers often suspect wrongdoing without having formal evidence these laws would normally not apply. Also, given that whistleblowers are usually employees of where they blow the whistle, they may face specific risks which are normally not covered by witness protection laws – such as harassment at work or dismissal. Furthermore, in terms of remedies for retaliation, they may need compensation for salary losses and career opportunities. Witness protection laws are therefore not sufficient to protection whistleblowers (Transparency International, 2009).

33. Informants on the other hand are often themselves involved in some sort of wrongdoing and are using their disclosure of information as a means to reduce their liability (Banisar, 2011). Furthermore, informants often seek favours or remuneration for their disclosures. Whistleblowers usually do not receive any benefits for their disclosures apart from being able to maintain the status quo (Banisar, 2011). If a ‘strategic’ disclosure about wrongdoing (in which the whistleblower was personally involved) is made with the purpose of escaping or lessen the severity of the sanctions for the wrongdoing, it is recommended that these should only be protected “in relation to any retaliation for making the disclosure, not for the disclosed misconduct itself” (Whitton, 2008, p. 3).

#### *Scope of Subject Matter of Protected Disclosures*

34. One of the main objectives of whistleblower protection laws is to promote and facilitate the reporting of “illegal, unethical or dangerous” activities (Banisar, 2011). The legal framework should provide a clear definition of the protected disclosures, specifying the acts that constitute violations to any codes of conduct, regulations or laws; gross waste or mismanagement; abuse of authority; dangers to the public health or safety; or corrupt acts.<sup>66</sup> There is often a public interest dimension to whistleblowing. Japan’s WPA, for example, expressly lists violations of food, health, safety and environmental laws. The Korean Act on the Protection of Public Interest Whistleblowers defines “violation of the public interest” as an act that infringes on the health and safety of the public, the environment, consumer interests and fair competition.<sup>67</sup> Again, a “no loophole” approach would be most effective when identifying the breadth of subject matter to be afforded protection (Chêne, 2009). In the context of using whistleblower protection mechanisms as a means of combating corruption, for purposes of clarity and legal certainty, the disclosure of corruption offences may explicitly be referred to in the legislation, or the reporting of crime more generally. It is important to establish protection measures for whistleblowers when they report acts of corruption that might not be recognised as crimes but could be subject to administrative investigations.<sup>68</sup> This is for example the case in Australia where the Public Interest Disclosure Act 2013 adds to the

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66 As established in the UK PDA §43(a), (b); the Japanese WA art. 2.3; the US WPA §2(a)(2); Australian PDA §4; and Canadian PSPDA art. 8. See also Devine & Shelley (2013).

67 Korean Act on the Protection of Public Interest Whistleblowers, Article 2 (Definitions) 1.

68 See for example MESICIC (2007), p. 26; MESICIC (2008), p. 29; MESICIC (2006), p. 28.

definition of disclosable conduct (Box 3) the conduct engaged in by a public official that could, if proved, give reasonable grounds for disciplinary action against the public official.<sup>69</sup>

**Box 3. Disclosable conduct as defined by the Australian Public Interest Disclosure Act 2013**

The Australian Public Interest Disclosure Act 2013 defines disclosable conduct 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.

Source : Australia's Public Interest Disclosure Act 2013 Part 2 Division 2 Section 29.

35. Some countries set minimum thresholds on the extent of the wrongdoing before whistleblower protection may be triggered. Protected disclosures under US law, for example, include *inter alia* gross mismanagement and gross waste of funds. To qualify as “gross” there must be something more than a debateable difference in opinion; the agency’s ability to accomplish its mission must be implicated. Furthermore, under US law, disclosures of “trivial” violations do not constitute protected disclosures.<sup>70</sup> Australia’s Public Service Regulations also state that there is no obligation to investigate whistleblower reports that are “frivolous or vexatious”.<sup>71</sup>

36. Practice shows that the procedures for disclosures should reflect a balance between being overly prescriptive and thus making it difficult to disclose, or overly relaxed, allowing for unlimited disclosures, that in the end do not encourage internal resolution of issues within the organisation (Banisar, 2011). The UK legislation provides a balanced approach with a detailed definition including exceptions (Box 4).

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69 Australia’s Public Interest Disclosure Act 2013 Part 2 Division 2 Section 29

70 The Federal Circuit defined “trivial” as, “arguably minor and inadvertent miscues occurring in the conscientious carrying out of one’s assigned duties.” (United States Court of Appeals Federal Circuit (2008)). However, the Federal Circuit has also held that disclosing a seemingly-minor event can be a qualified disclosure when the purpose of the disclosure is to show the existence of a repeated practice (United States Court of Appeals Federal Circuit (1995)).

71 Australia’s Public Service Regulations (1999), 61B (4).

**Box 4. A detailed definition of protected disclosures in the United Kingdom**

Part IVA: Protected disclosures

43A: Meaning of “protected disclosure”

In this Act a “protected disclosure” means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.

43B: Disclosures qualifying for protection

(1) In this Part a “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following—

(a) that a criminal offence has been committed, is being committed or is likely to be committed,

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

(d) that the health or safety of any individual has been, is being or is likely to be endangered,

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

(f) that 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) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.

(3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.

(4) A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.

(5) In this Part “the relevant failure”, in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1).

Source : UK Public Interest Disclosure Act of 1998, Part IVA.

37. In addition to defining the scope of subject matters covered, the Canadian and Australian laws include provisions on the amount of information to disclose. Australia’s Public Interest Disclosure Act specifies that “[n]o more information is publicly disclosed than what is reasonably necessary to identify one or more instances of disclosable conduct”.<sup>72</sup> Similarly, the Canadian Public Servants Disclosure

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72 Australia’s Public Interest Disclosure Act 2013 Part 2, Division 2, Subdivision A, Article 26 (1) 2 (f)

Protection states that “[i]n making a disclosure under this Act, a public servant must (a) provide no more information than is reasonably necessary to make the disclosure [...]”<sup>73</sup>

### *Reporting on issues of national security*

38. For disclosure of matters of national security, official or military secrets, or classified information, countries may consider adopting special schemes, rules, procedures and safeguards for reporting that take into account the nature of the subject matter and to prevent unnecessary external exposure of sensitive information (Council of Europe, 2014; Transparency International, 2013a). Transparency International recommends that these procedures allow for internal disclosure, or disclosure through a prescribed channel – such as an oversight body that is independent from the security sector or to authorities with the appropriate security clearance (Transparency International, 2013a). In Australia, for example, disclosure of conduct that relates to an intelligence agency (Box 5) can be disclosed to the intelligence agency or, 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.<sup>74</sup>

#### **Box 5. Definition of intelligence information in Australia**

##### Section 41. Meaning of intelligence information

(1) Each of the following is intelligence information:

(a) information that has originated with, or has been received from, an intelligence agency;

(b) information that is about, or that might reveal:

(i) a source of information referred to in paragraph (a); or

(ii) the technologies or methods used, proposed to be used, or being developed for use, by an intelligence agency to collect, analyse, secure or otherwise deal with, information referred to in paragraph (a); or

(iii) operations that have been, are being, or are proposed to be, undertaken by an intelligence agency;

(c) information:

(i) that has been received by a public official from an authority of a foreign government, being an authority that has functions similar to the functions of an intelligence agency; and

(ii) that is about, or that might reveal, a matter communicated by that authority in confidence;

(d) information that has originated with, or has been received from, the Defence Department and that is about, or that might reveal:

(i) the collection, reporting, or analysis of operational intelligence; or

(ii) a program under which a foreign government provides restricted access to technology;

(e) information that includes a summary of, or an extract from, information referred to in paragraph (a), (b), (c) or (d);

73 Canada Public Servants Disclosure Protection Act of 2005 Article 15.1

74 Australia’s Public Interest Disclosure Act 2013, Part 2, Division 2, Subdivision C, Section 34, 2.

(f) information:

(i) that identifies a person as being, or having been, an agent or member of the staff (however described) of the Australian Secret Intelligence Service or the Australian Security Intelligence Organisation (other than a person referred to in subsection (3)); or

(ii) from which the identity of a person who is, or has been, such an agent or member of staff (however described) could reasonably be inferred; or

(iii) that could reasonably lead to the identity of such an agent or member of staff (however described) being established;

(g) sensitive law enforcement information.

Source : Australian Public Interest Disclosure Act 2013 Part 2, Division 2, Subdivision D , Section 41.

39. New Zealand has established special rules on procedures of intelligence and security agencies in the Protected Disclosures Act (Box 6). According to the Act, disclosures can only be made to a person who has the appropriate security clearance and who is authorised to have access to the information, and the only appropriate authority to disclose to in the Inspector-General of Intelligence and Security. If a disclosure from the Department of the Prime Minister and Cabinet, the Department of Foreign Affairs and Trade, the Ministry of Defence, or the New Zealand Defence Force concerns the international relations of the Government or security and intelligence matters, the same rules regarding security clearance and authorisation applies, but the appropriate authority to disclose to is an Ombudsman.<sup>75</sup>

**Box 6. Whistleblowing procedures in New Zealand's intelligence and security agencies**

The internal procedures of an intelligence and security agency must—

(a) provide that the persons to whom a disclosure may be made must be persons holding an appropriate security clearance and be authorised to have access to the information; and

(b) state that the only appropriate authority to whom information may be disclosed is the Inspector-General of Intelligence and Security; and

(c) invite any employee who has disclosed, or is considering the disclosure of, information under this Act to seek information and guidance from the Inspector-General of Intelligence and Security, and not from an Ombudsman; and

(d) state that no disclosure may be made to an Ombudsman, or to a Minister of the Crown other than—

(i) the Minister responsible for the relevant intelligence and security agency; or

(ii) the Prime Minister

Source : New Zealand's Protected Disclosures Act 2000, Article 12.

40. In the US, the 1999 Intelligence Community Whistleblower Protection Act only allows national security whistleblowing to the House and Senate Intelligence Committees and the agency's Inspector

<sup>75</sup> New Zealand's Protected Disclosures Act 2000, Article 13.

general, providing limited protection for intelligence employees. The Military Whistleblower Protection Act regulates whistleblowing in the armed forces. The Act protects members of the armed forces who complain of, or disclose information that the member reasonably believes constitutes evidence of a violation of law or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety to:<sup>76</sup>

- a Member of Congress
- an Inspector General
- a member of a Department of Defense audit, inspection, investigation, or law enforcement organization;
- any person or organization in the chain of command; or
- any other person or organization designated pursuant to regulations or other established administrative procedures for such communications.

41. It is recommended that classified material is clearly marked as such, and that information and material cannot be retroactively declared classified after a disclosure has been made (Transparency International, 2013a).

***b. Reporting Procedures and Mechanisms***

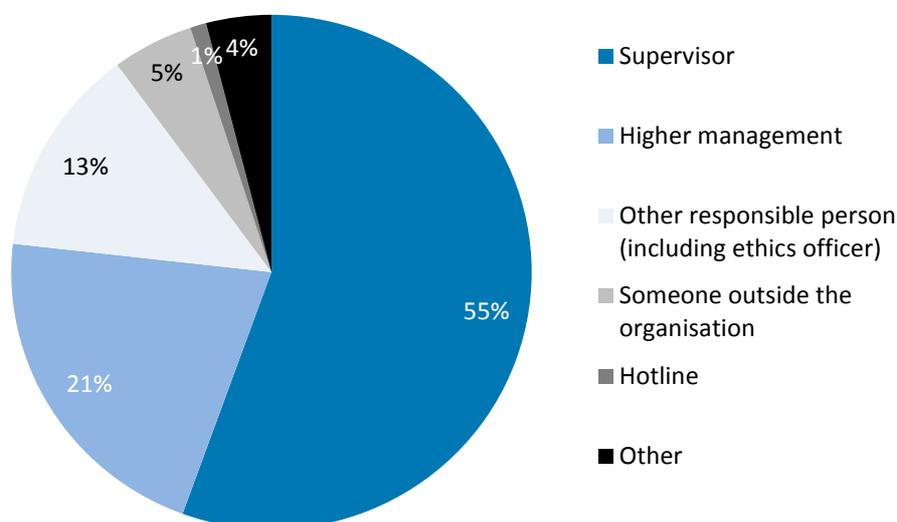
*Channels for Reporting*

42. Whistleblowing legislation may refer to one or more channels by which protected disclosures can be made. These generally include internal disclosures, external disclosures to a designated body, and external disclosures to the public. The individual circumstances of each case should determine the most appropriate channel (Council of Europe, 2014). The UK PIDA, for example, applies a “tiered” approach whereby disclosures may be made to one of the following “tiers” of persons: Tier 1. Internal disclosures to employers or Ministers of the Crown; Tier 2. Regulatory disclosures to prescribed bodies (e.g. the Financial Services Authority or Inland Revenue), and; Tier 3. Wider disclosures to the police, media, Members of Parliament and non-prescribed regulators. Each tier incrementally requires a higher threshold of conditions to satisfy for the whistleblower to be protected. This is intended to encourage internal reporting and the use of external reporting channels as a last resort (Banisar, 2011). Public Concern at Work found that PIDA claimants were more likely to raise a concern with their line manager (43%) (Public Concern at Work (2011). Since the individual circumstances of each case should determine the most appropriate channel, a variety of channels need to be available to match the circumstances, but also for whistleblowers to have the choice of which channel they trust most in and prefer to make their disclosure to (see for example Figure 2 on the case of the US).

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76 United States’ Military Whistleblower Protection Act, Title 10 U.S.C. § 1034, (b) (1) and (c) (2).

**Figure 2. Chosen method of reporting for US Government employees surveyed by the Ethics Resource Center (2007)**



Source: Ethics Resource Center (2007) National Government Ethics Survey, Ethics Resource Center, Arlington, [http://www.ethics.org/files/u5/The\\_National\\_Government\\_Ethics\\_Survey.pdf](http://www.ethics.org/files/u5/The_National_Government_Ethics_Survey.pdf), p. 8.

43. External disclosure usually requires that the whistleblower has already tried to disclose internally to no avail or reasonably believes it would have resulted in retribution to do so. External disclosure can also be permitted when the matter concerns a significant and urgent danger to public health and safety, or when an internal disclosure could lead to the destruction of evidence (Transparency International, 2013a). In Canada, disclosures may be made to the public<sup>77</sup> where there is not sufficient time to make the disclosure under other sections of the PSDPA and where the public servant believes on reasonable grounds that the subject-matter of the disclosure is an act or omission that (a) constitutes a serious offence or (b) constitutes an imminent risk of a substantial and specific danger to the life, health and safety of persons, or to the environment.<sup>78</sup>

44. In Australia, a public interest disclosure can be made (i) within the government, to an authorised internal recipient or a supervisor, concerning suspected or probable illegal conduct or other wrongdoing, (ii) to anybody, if an internal disclosure of the information has not been adequately dealt with, and if wider disclosure satisfies public interest requirements is a disclosure of information, (iii) to anybody if there is substantial and imminent danger to health or safety, or (iv) to an Australian legal practitioner for purposes connected with first three points. However, there are limitations in relation to intelligence information.<sup>79</sup> In some of its states, Australia provides that a public interest disclosure can be done to a journalist if the entity to which the disclosure was made decided not to investigate it, or investigated it but did not recommend any action, or did not notify the whistleblower after six months.<sup>80</sup> As noted in the previous section, certain categories of employees, such as those working in the intelligence sector, may also be

77 Provided the disclosure is not prohibited under the law.

78 Canada's Public Servants Disclosure Protection Act of 2005, Section 16.

79 Australia's Public Interest Disclosure Act 2013 Part 2 Division 2 Section 25

80 Queensland Public interest Disclosure Act of 2010, part 4.

subject to narrower reporting channels in order to be afforded protection.<sup>81</sup> An investigation must be completed within 90 days of the disclosure.<sup>82</sup>

### *Hotlines*

45. A number of OECD countries have also established whistleblower hotlines as a mechanism to facilitate the reporting of wrongdoing. These are particularly prevalent with the reporting of acts of corruption. Korea's ACRC, for example, has established a telephone hotline to receive whistleblower reports. Similarly, a hotline has been established by the US Securities and Exchange Commission's Office of the Whistleblower. In the United Kingdom, the NGO Public Concern at Work runs a hotline for providing advice to whistleblowers. In the US, the Ethics Resource Center found in their National Government Ethics Survey that less than one percent of the state government employees who choose to report their observations of misconduct use a whistleblower hotline. The majority (53%) chose instead to report to their supervisors (Ethics Resource Center, 2007).

46. A number of companies have also established hotlines for the reporting of corruption and other forms of misconduct or illegal behaviour within their organisations, particularly in response to the Sarbanes-Oxley Act and Dodd-Frank Act. These are often run by outside organisations such as consulting companies (Banisar, 2011). In for example the ICC Guidelines on Whistleblowing, it is stated that "[a]s part of these arrangements, an enterprise may designate a firm, external to the group, specialized in receiving and handling whistleblowing reports. Such firm should be independent, of undisputable repute and should offer appropriate guarantees of professionalism and secrecy (ICC, 2008).

47. If allowing for anonymous disclosures through hotlines, assigning a unique identification number to callers can allow them to call back later anonymously in order to receive feedback or follow-up questions from investigators (Banisar, 2011). Although hotlines can be an effective way of collecting information from whistleblowers, a number of European countries have expressed concerns about the use of personal information collected by them (ARTICLE 29 Data Protection Working Party, 2006).

### *Anonymity and Confidentiality*

48. Most whistleblower laws provide for the protection of the identity of the whistleblower, which is kept confidential unless the whistleblower provides his/her consent to disclose it.<sup>83</sup> US law, for example, prohibits the disclosure of the identity of the whistleblower without consent, unless the Office of the Special Counsel "determines that the disclosure of the individual's identity is necessary because of an imminent danger to public health or safety or imminent violation of any criminal law."<sup>84</sup> In certain states, Germany has implemented an anonymous hotline which allows interactions with the whistleblower while keeping the exchange anonymous.<sup>85</sup> The whistleblower's consent to disclose his or her identity is key, as access to information laws may otherwise be used to gain access to identifying information. The whistleblower protection provisions included in Italy's Anti-Corruption Law is one example of where a whistleblowing report is excluded from being covered by an access to information law (Box 7).

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81 See para. 11 on U.S. Intelligence Community Whistleblower Protection Act (1999).

82 Australia's Public Interest Disclosure Act 2013 Part 3, Division 2, Section 52

83 For example Estonia's Anti-corruption Act § 6 (2). For a more in depth discussion on this issue, see: Banisar (2011).

84 US Whistleblower Protection Act 1989; 5 U.S.C. § 1213(h).

85 German companies, such as Siemens, have also established anonymous hotlines.

**Box 7. Reports by whistleblowers and the access to administrative documents law in Italy**

Under article 54b (Protection for public employees reporting offences), the fourth paragraph states that the report shall not be made available in accordance with Articles 22 and seq. of Law no. 241 of 7 August 1990. The law referred to is the Italian access to administrative documents law. This means that the access to administrative documents law cannot be used to gain access to identifying information of the whistleblower.

*Source* : OECD (2013), OECD Integrity Review of Italy: Reinforcing public sector integrity, restoring trust for sustainable growth, OECD Publishing, Paris.

49. Some countries also impose sanctions for disclosing the identity of the whistleblower; for example, Australia's Public Interest Disclosure Act imposes a penalty of 6 months imprisonment or a fine for revealing the identity of the whistleblower.<sup>86</sup> Similarly, any person who discloses personal information of a whistleblower – or other facts that infer the identity of the public interest whistleblower –under Korea's Act on the Protection of Public Interest Whistleblowers will be punished by imprisonment for up to three years or by a fine of up to 30 million won.<sup>87</sup> In Sweden, it is punishable by a fine or imprisonment of up to one year to inquire into the identity of a person who has provided information for publication.<sup>88</sup>

50. Although anonymity can provide a strong incentive for whistleblower to come forward, a number of whistleblower protection laws exclude anonymous disclosures or provide that they will not be acted upon. This can be done on the assumption that anonymity may make the whistleblower unaccountable, and may attract "the cranks, the timewasters and the querulents" (Latimer & Brown, 2008). In the UK, most organisations will investigate anonymous disclosures but this can be open to abuse and organisations generally discourage anonymous reports (National Audit Office, 2014). Ireland's Prevention of Corruption (Amendment) Act states that a confidential communication may not be made anonymously.<sup>89</sup> Similarly, the Irish Central Bank (Supervision and Enforcement) Act 2013 states that a disclosure that is made anonymously is not protected under the act.<sup>90</sup>

51. There are several concerns regarding anonymity. One highlighted by Transparency International is that the identity of a whistleblower can often be deduced from circumstances, and the fact that a disclosure is made anonymous can focus attention on the identity of the person who made it rather than on the message disclosed by the whistleblower (Transparency International, 2013b). Other concerns include those of reliability, restriction of investigations, vindictive allegations, fair play, cultural opposition, and doubt regarding the protection of anonymity.<sup>91</sup> Obstacles to protecting anonymous whistleblowers can also

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86 Australia's Public Interest Disclosure Act 2013, Section 20.

87 Korea's Act on the Protection of Public Interest Whistleblowers, Chapter V Article 30 (1)

88 The Fundamental Law of Freedom of Expression, Chapter 2, Article 4 and 5; The Freedom of Press Act, Chapter 3, Article 4 and 5.

89 Ireland's Prevention of Corruption (Amendment) Act 2010, Schedule 2. 3. (3).

90 Ireland's Central Bank (Supervision and Enforcement) Act 2013, 38 (3).

91 Presentation by Professor Robert G. Vaughn, American University Washington College of Law, at the webinar "Corruption Whistleblower Systems: Challenges, Practices, Innovations" organised by the World Bank's International Corruption Hunters Alliance on 6 May 2014.

be cultural, because in certain contexts whistleblowers can be seen negatively. In certain countries, the term whistleblower is often associated with being an informant, a traitor or spy or even a snitch.<sup>92</sup>

### *Use of Incentives to Encourage Reporting*

52. To encourage whistleblowing, some OECD countries have adopted rewards systems, including monetary rewards. In the US, for example, the False Claims Act allows individuals to sue on behalf of the government in order to recover lost or misspent money, and can receive up to 30 percent of the amount recovered.<sup>93</sup> Between 1987 and 2012, some \$3 billion has been distributed to whistleblowers under the False Claims Act (Valencia, 2011). The Dodd-Frank Act also authorizes the SEC to pay rewards to individuals who provide the Commission with original information that leads to successful SEC enforcement actions (and certain related actions). Rewards may range from 10 percent to 30 percent of the funds recovered. SEC Commissioner Luis Aguilar has said that the agency's staff have seen a noticeable difference in the quality of information they receive since the monetary rewards to whistleblowers who provide original information leading to a successful enforcement case were introduced (Orol, 2012). Internal Revenue Service (IRS) data shows that from 2007 through 2012, 1 967 bounty hunters submitted tax-evasion claims on 11 372 companies (Browning, 2014). In 2013 alone, the total award amount to whistleblowers was \$53 519 630, representing 14.6% of total amounts collected (Table 1).

**Table 1. Amounts collected and awards paid to whistleblowers by the IRS (Financial years 2009-2013)**

	2009	2010	2011	2012	2013
Awards Paid	110	97	97	128	122
Collections over \$ 2 000 000	5	9	4	12	6
Total Amounts of Award Paid	\$ 5 851 608	\$18 745 327	\$8 008 430	\$125 355 799	\$53 054 302
Amounts collected	\$206 032 872	\$464 695 459	\$48 047 500	\$592 498 294	\$367 042 420
Awards paid as a percentage of amounts collected	2.80%	4.00%	16.70%	21.20%	14.60%

Source: Internal Revenue Service Fiscal Year 2013 Report to the Congress on the Use of Section 7623, p. 23, [http://www.irs.gov/pub/whistleblower/Whistleblower\\_Annual\\_report\\_FY\\_13\\_3\\_7\\_14\\_52549.pdf](http://www.irs.gov/pub/whistleblower/Whistleblower_Annual_report_FY_13_3_7_14_52549.pdf).

53. Similar to the US, Korean law also provides monetary rewards for whistleblowers who disclose acts of corruption. The ACRC may provide whistleblowers with rewards of up to USD 2 million if their report has contributed directly to recovering or increasing revenues or reducing expenditures for public agencies. The ACRC may also grant or recommend awards if the whistleblowing has served the public interest (Anti-Corruption and Civil Rights Commission of Korea, 2014). The success of this practice of rewards has encouraged countries such as Canada or Italy to also consider its implementation.

54. It has however been argued that financial reward will be most useful and likely encourage disclosures in cases of low moral outrage. In cases of high moral outrage – which likely creates a greater

92 See Transparency International (2009).

93 False Claims Act, 31 U.S.C. §3729.

ethical stake in disclosure – appeals should instead be made to duty and financial incentives may conflict with internal motivations to report.<sup>94</sup>

**c. Mechanisms for Protection**

*Protection against Retaliation*

55. The absence of effective protection for whistleblowers can pose a dilemma for whistleblowers as they are often expected to report corruption and other crimes, but doing so can expose them to retaliation. Retaliation for whistleblowing usually presents itself in the form of disciplinary actions or harassment in the workplace. Whistleblower protection laws should provide comprehensive protection against discriminatory or retaliatory personnel action.<sup>95</sup> Therefore, legislation focuses on providing ample protection of the whistleblower's employment status, including unfair dismissal.<sup>96</sup> According to the US Project on Government Oversight, typical forms of retaliation are to (Project on Government Oversight, 2005):

- Take away job duties so that the employee is marginalised.
- Take away an employee's national security clearance so that he or she is effectively fired.
- Blacklist an employee so that he or she is unable to find gainful employment.
- Conduct retaliatory investigations in order to divert attention from the waste, fraud, or abuse the whistleblower is trying to expose.
- Question a whistleblower's mental health, professional competence, or honesty.
- Set the whistleblower up by giving impossible assignments or seeking to entrap him or her.
- Reassign an employee geographically so he or she is unable to do the job.

56. In the UK, a study conducted by Public Concern at Work showed that 40% (399 people) of their sample of whistleblowers that had contacted them through the PCaW advice line mentioned responses from management when raising a concern. Of the 40%, the most common response to the individual was formal action short of dismissal such as demotion, suspension or disciplinary. If whistleblowers experience responses from co-workers, they are most likely to experience informal reprisal. This tends to occur when the concern is raised with a line manager (65%) or specialist channels (100%). Formal reprisal by co-workers is most likely when a concern is raised with higher management (46%) (Public Concern at Work, 2013). In Australia, a survey conducted by the Public Service Commission in 2013 showed that 59% of

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94 Presentation by Professor Robert G. Vaughn, American University Washington College of Law, at the webinar "Corruption Whistleblower Systems: Challenges, Practices, Innovations" organised by the World Bank's International Corruption Hunters Alliance on 6 May 2014.

95 See European Court of Human Rights (2011), in which dismissal of a nurse after having brought a criminal complaint against her employer alleging deficiencies in the care provided constituted a violation of article 10 of the European Convention of Human Rights.

96 See for example the United Kingdom's Public Interest Disclosure Act §5, 103(A); Korea's Act on the Protection of Public Interest Whistleblowers, Article 2. 6; Japan's Whistleblower Protection Act, Articles 3-5; Australia's Public Interest Disclosure Act Section 13; and Canada's Public Servants Disclosure Protection Act, Section 19.

employees who indicated they had witnessed suspected serious misconduct<sup>97</sup> chose to report it so action could be taken (Australian Public Service Commission, 2013). Those who chose not to report it did it for the reasons presented in Table 2.

**Table 2. Reasons for not reporting suspected serious misconduct in Australia (2012 and 2013)**

Reasons for not reporting	Employees who did not report for this reason (%)	
	2012	2013
I did not think any action would be taken	46	39
It could affect my career	33	30
I did not want to upset relationships in the workplace	30	25
The matter was reported by someone else	N/A	26

Source: Australian Public Service Commission (2013) State of the Service Report: State of the Service Series 2012–13, p. 60. Available at: [http://www.apsc.gov.au/data/assets/pdf\\_file/0018/29223/SOSR-2012\\_13-final-tagged2.pdf](http://www.apsc.gov.au/data/assets/pdf_file/0018/29223/SOSR-2012_13-final-tagged2.pdf).

57. Canada prohibits that whistleblowers be subject to any disciplinary measures, demotions, terminations of employment, measures that adversely affects the employment or working conditions of the public servant, or any threats to take any of these measures, for making a protected disclosure or cooperating in an investigation about a disclosure.<sup>98</sup> Along these same lines, Ireland provides for a comprehensive list of what constitutes penalisation of a whistleblower (Box 8).

**Box 8. Definition of penalisation in Ireland’s Prevention of Corruption (Amendment) Act**

‘[P]enalisation’ means any act or omission by an employer, or by a person acting on behalf of an employer, that affects an employee to his or her detriment with respect to any term or condition of his or her employment, and, without prejudice to the generality of the foregoing, includes—

- (a) suspension, lay-off or dismissal,
- (b) the threat of suspension, lay-off or dismissal,
- (c) demotion or loss of opportunity for promotion,
- (d) transfer of duties, change of location of place of work, reduction in wages or change in working hours,
- (e) the imposition or the administering of any discipline, reprimand or other penalty (including a financial penalty),
- (f) unfair treatment, including selection for redundancy,
- (g) coercion, intimidation or harassment,
- (h) discrimination, disadvantage or adverse treatment,
- (i) injury, damage or loss, and
- (j) threats of reprisal.

Source : Ireland Prevention of Corruption (Amendment) Act 2010 Section 4 8aA (16)

97 Defined as “fraud, theft, misusing clients’ personal information, sexual harassment, leaking classified documentation or other behaviour that would likely result in termination of employment”.

98 Canada Public Servants Disclosure Protection Act of 2005, article 2.

58. Under US law, protection is also provided against less severe disciplinary actions, such as admonishments or reprimands. In a comprehensive list of what disadvantageous measures whistleblowers should be protected against, Korea’s Act on the Protection of Public Interest Whistleblowers also provides protection against financial or administrative disadvantages, such as the cancellation of a permit or license, or the revocation of a contract (Box 9).<sup>99</sup>

**Box 9. Comprehensive protection in Korea**

“The term “disadvantageous measures” means an action that falls under any of the following items:

- a. Removal from office, release from office, dismissal or any other unfavorable personnel action equivalent to the loss of status at work;
- b. Disciplinary action, suspension from office, reduction in pay, demotion, restriction on promotion and any other unfair personnel actions;
- c. Work reassignment, transfer, denial of duties, rearrangement of duties or any other personnel actions that are against the whistleblower’s will;
- d. Discrimination in the performance evaluation, peer review, etc. and subsequent discrimination in the payment of wages, bonuses, etc.;
- e. The cancellation of education, training or other self-development opportunities; the restriction or removal of budget, work force or other available resources, the suspension of access to security information or classified information; the cancellation of authorization to handle security information or classified information; or any other discrimination or measure detrimental to the working conditions of the whistleblower;
- f. Putting the whistleblower’s name on a black list as well as the release such a blacklist, bullying, the use of violence and abusive language toward the whistleblower, or any other action that causes psychological or physical harm to the whistleblower;
- g. Unfair audit or inspection of the whistleblower’s work as well as the disclosure of the results of such an audit or inspection;
- h. The cancellation of a license or permit, or any other action that causes administrative disadvantages to the whistleblower;

Source: Korea’s Act on the Protection of Public Interest Whistleblowers, Act No. 10472, Mar. 29, 2011. Article 2 (6).

59. Threatening to take action can have the same effect on the whistleblower as actual retaliation. In for example the Australian Public Interest Disclosure Act, it is therefore specified that it is an offence to take a reprisal, or to threaten to take a reprisal, against a person because of a public interest disclosure. This also covers a proposed or suspected public interest disclosure.<sup>100</sup> Similarly, Ireland’s Anti-Corruption Act stipulates that “[a]n employer shall not penalise or threaten penalisation against an employee, or cause or permit any other person to penalise or threaten penalisation against an employee”.<sup>101</sup>

*Criminal and Civil Liability*

60. Some countries impose criminal sanctions if employees disclose information concerning official secrets or national security. In establishing whistleblower protection legislation, countries may consider waiving such criminal liability for protected disclosures, or only affording protection if the disclosure is made through a prescribed channel (See Section II. 2.b. of this study). In the US, for example, if a

99 Korea’s Act on the Protection of Public Interest Whistleblowers, Article 2 (6).

100 Public Interest Disclosure Act 2013, Part 2 – Subdivision B (13).

101 Ireland’s Prevention of Corruption (Amendment) Act 2010 Section 4. 8A. (5).

purported whistleblower makes a disclosure that is specifically ordered by law or Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs, the disclosure is “prohibited by law” and will not be afforded whistleblower protection unless it is made to the agency’s Inspector General or the Office of Special Counsel.

61. More comprehensive whistleblower protection laws may also provide protection against libel and defamation suits, as such actions can pose a serious deterrent to whistleblowing. Korea’s PPIW Act, for example, provides protection from a claim for damages caused by the public interest whistleblowing.<sup>102</sup> According to Article 14(4), the whistleblowee cannot file a claim for damages caused by public interest whistleblowing, against the whistleblower. In New Zealand, no person who makes a protected disclosure of information is liable to any civil or criminal proceeding or to a disciplinary proceeding by reason of having made that disclosure.<sup>103</sup> Similar provisions are included in the Australian Public Interest Disclosure Act 2013 (Box 10) and Ireland’s Prevention of Corruption (Amendment) Act and Health Act (Box 11).

**Box 10. Immunity from liability in the Australian Public Interest Disclosure Act of 2013**

“Immunity from liability:

(1) If an individual makes a public interest disclosure:

(a) the individual is not subject to any civil, criminal or administrative liability (including disciplinary action) for making the public interest disclosure; and

(b) no contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the individual on the basis of the public interest disclosure.

(2) Without limiting subsection (1):

(a) the individual has absolute privilege in proceedings for defamation in respect of the public interest disclosure; and

(b) a contract to which the individual is a party must not be terminated on the basis that the public interest disclosure constitutes a breach of the contract.”

The section on immunity from liability does not apply to civil, criminal or administrative liability (including disciplinary action) if the discloser knowingly made a statement that was false or misleading. In addition, it does not apply to liability for an offence against section 137.1 (knowingly giving information that is false or misleading information to another person), 137.2 (knowingly producing false or misleading documents to another person), 144.1 (forgery) or 145.1 (using forged documents) of the Criminal Code.

Source: Australia’s Public Interest Disclosure Act 2013, Part 2 – Subdivision B, Section 10, <http://www.comlaw.gov.au/Details/C2013A00133>; Australia’s Criminal Code Act 1995, <http://www.comlaw.gov.au/Details/C2014C00151>.

102 Korea’s Act on the Protection of Public Interest Whistleblowers, Article 14(4).

103 New Zealand Protected Disclosures Act 2000 Article 18

**Box 11. Protection against liability in damages in Ireland**

*Prevention of Corruption (Amendment) Act 2010 Section 4. 8A.— (1)*

A person who, apart from this section, would be so liable shall not be liable in damages in respect of the communication, whether in writing or otherwise, by the person to an appropriate person of his or her opinion that an offence under the Prevention of Corruption Acts 1889 to 2010 may have been or may be being committed unless—

(a) in communicating his or her opinion to that appropriate person did so—

(i) knowing it to be false, misleading, frivolous or vexatious, or

(ii) reckless as to whether it was false, misleading, frivolous or vexatious,

Or (b) in connection with the communication of his or her opinion to that appropriate person, furnished information that he or she knew to be false or misleading.

*Health Act 2007 55L. (1)*

A person is not liable in damages in consequence of a protected disclosure.

Source: Prevention of Corruption (Amendment) Act 2010 Section 4. 8A.— (1); Health Act 2007 55L. (1).

*Burden of Proof*

62. Whistleblower protection laws may lower the burden of proof whereby the employer must prove that the conduct taken against the employee is unrelated to his or her whistleblowing. 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 maybe very subtle and difficult to establish” (Chêne, 2009, p. 7). In this regard, Slovenia’s Integrity and Prevention of Corruption Act states 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”.<sup>104</sup> Similarly, the Norwegian Working Environment Act provides that when an employee submits information that gives reason to believe that retaliation against the employee for whistleblowing has taken place, it shall be assumed that such retaliation has taken place unless the employer substantiates otherwise.<sup>105</sup>

63. US law applies a burden-shifting scheme pursuant to which a Federal employee who is a purported whistleblower must first establish that he or she:

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. Made a report that is either outside of the employee’s course of duties or communicated outside of normal channels;
4. Made the report to someone other than the wrongdoer;

104 Slovenia’s Integrity and Prevention of Corruption Act Article 25 (5)

105 Norway’s Working Environment Act, Section 2-5.

5. Had a reasonable belief of wrongdoing (the employee does not have to be correct, but the belief must be reasonable to a disinterested observer);
6. 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.

64. 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.

#### *Protection against false reporting*

65. Defamation is the issuance of a false statement about another person, which causes that person to suffer harm. In whistleblower protection laws in OECD countries, disclosures that are made in bad faith, with the discloser knowing that the acts have not been committed, or disclosures with falsified evidence, are not offered protection under the law. The key element of the offence of slanderous reporting lies not in the falsity of the allegation itself, but in the knowledge, on the day the allegation was made, that it was false (OECD, 2012). If no protection is granted, the person who made the slanderous reporting can be subject to libel and defamation suits.

66. Some countries have also introduced sanctions in their whistleblower protection laws or provisions for those who slanders or makes a false report. In Ireland, for instance, any person who makes any statement which the person knows to be false or does not believe to be true shall be guilty of an offence and liable on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both.<sup>106</sup>

#### **d. Enforcement Mechanisms**

##### *Oversight and Enforcement Authorities*

67. In certain countries, the establishment of specific independent agencies with the legal capacity to receive complaints related to retaliation, investigate them and provide remedies has proved effective (Box 12). Best practice when setting up an oversight and enforcement agency is to ensure that it is independent, and that it has sufficient budgetary resources to ensure it operates effectively and meets the objectives of the law. It is also essential to ensure that a strong and independent judiciary have the resources, capacity and independence to prosecute whistleblowing related offences.

68. The Office of the Civil Service Commissioners in the UK is an independent body appointed by the Crown which can receive public sector disclosures as a last resort. In the US, the Office of the Special Counsel (OSC), an independent federal investigative and prosecutorial agency that protects federal employee whistleblowers, receives, investigates and prosecutes complaints from whistleblowers who claim to have suffered reprisals. In addition, there is the Merit Systems Protection Board (MSPB), an independent quasi-judicial agency with the power to adjudicate decisions and established to protect federal employees against political and other prohibited personnel practices as well as to ensure that there is adequate protection from abuses by agency management.<sup>107</sup> The Dodd-Frank Act has also called upon the SEC to create an Office of the Whistleblower to work with whistleblowers, handle their tips and complaints, and help the SEC determine whistleblower awards.

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106 Ireland's Health Act 2007 Article 55S and Anti-Corruption (Amendment) Act 2010 (10)

107 The MSPB and the OSC were set up under the Civil Service Reform Act (CSRA) of 1978.

69. In Canada, the Public Sector Integrity Commissioner is required to report annually to the Parliament and has the power to give recommendations to the heads of public offices. The Public Servants Disclosure Protection Tribunal is in charge of determining remedies and sanctions when violations of whistleblowers' rights occur (Banisar, 2011). Conversely, other countries that do not count on these specialised bodies can rely on the action of the Ombudsman or information commissioners created by Freedom of Information Acts, as most of them have the power to order releases of information and remedies. In fact, the ombudsman's mission typically lays on the investigation of maladministration, so they usually receive complaints from whistleblowers and order investigations in public agencies.<sup>108</sup> Both types of bodies have limited jurisdiction, can only protect whistleblowers in specific areas.

**Box 12. Independent central and integrity agencies**

Best practice provides for the existence and the identification of independent central and integrity agencies for a whistleblower to report to such as:

- "proper authorities", administrative agency or administrative organ, a public interest disclosure agency, public employment agencies or a "prescribed person"
- the Auditor-General
- the Counsel
- Anti-corruption bodies
- Ombudsman
- the police and the Director of Public Prosecutions (DPP)
- Public Protector (South Africa)
- relevant policy agencies
- trade unions

*Source:* Paul Latimer and A. J. Brown, Whistleblower Laws: International Best Practice (November 01, 2008). Monash U. Department of Business Law & Taxation Research Paper No. 1326766, pp. 12.

*Availability of Judicial Review*

70. An identified best practice for whistleblower legislation is to ensure that whistleblowers are entitled to a fair hearing before an impartial forum with a full right of appeal ("genuine day in court") (Transparency International, 2013a). A number of OECD countries have adopted such provisions within their laws. The UK 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 complaints before the Merit Systems Protection Board and the US Court of Appeals, rather than rely on the OSC to prosecute the case.

*Interim relief*

71. Seeking to win a hearing or trial of a retaliation case may take years for the whistleblower. During this time, a whistleblower who was dismissed and may have been unable to find new employment

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108 Banisar (2011). See New Zealand, where the Ombudsman can receive complaints and provide advice to whistleblowers, but defers to the Human Rights Commission in the handling of retribution cases; and in Ireland, where the Ombudsman functions also as the Information Commissioner.

can go bankrupt (Devine & Walden, 2013). Even if an unemployed whistleblower has won, he or she can go bankrupt while waiting for the completion of an appeals process (Devine & Walden, 2013). Interim relief is therefore necessary. According to the Council of Europe (2014) Recommendation on the protection of whistleblowers, “[i]nterim relief pending the outcome of civil proceedings should be available for persons who have been the victim of retaliation for having made a public interest report or disclosure, particularly in cases of loss of employment”. Similar provisions can also be found in national legislation in for example the UK and the US.<sup>109</sup> According to section 9 of UK’s Public Interest Disclosure Act, 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 his former position, or reengaged in another job on the same terms and conditions as if he or she had not been dismissed.

### *Remedies for Retaliation*

72. Whistleblower protection laws will most often include remedies for whistleblowers who have suffered harm. Legislations may cover all direct, indirect, and future consequences of reprisal,<sup>110</sup> and can vary from return to employment after unfair termination, transfers to comparable job positions, compensations where they have suffered harms that cannot be remedied by injunctions, as difficulty or impossibility to find a new job and suffering. Canada’s Public Servants Disclosure Protection Act includes a comprehensive list of remedies (Box 13).

#### **Box 13. Remedies for 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

- (a) permit the complainant to return to his or her duties;
- (b) 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;
- (c) 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;
- (d) 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;
- (e) 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; or
- (f) compensate the complainant, by an amount of not more than \$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, 21.7 (1)

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

110 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)

73. Moreover, when protection is not provided or the remedy is insufficient, whistleblowers have the right to take action in court proceedings (Devine & Walden, 2013). The importance of such provisions is highlighted in the Council of Europe’s Parliamentary Assembly Resolution on Whistleblower Protection, which states that the “relevant legislation should... seek corrective action from the employer, including interim relief pending a full hearing and appropriate financial compensation if the effects of the retaliatory measures cannot reasonably be undone.”<sup>111</sup> Such remedies may take into account not only lost salary but also compensatory damages for suffering (Banisar, 2011). Under UK law, for example, the courts have ruled that compensation can be provided for suffering, based on the system developed under discrimination law (Banisar, 2011). The total amount of damages awarded under the UK PIDA in 2009 and 2010 was £2.3 million with the highest award being £800 000 in the case of John Watkinson v Royal Cornwall Hospitals NHS Trust (Public Concern at Work, 2011). The average PIDA award in 2009 and 2010 was £58 000, compared to average awards of £18 584, £19 499 and £52 087 in race, sex, and disability discrimination cases respectively (Public Concern at Work, 2011). The German law allots claims for damages (*Schadensersatzansprüche*) and/or claims for compensation (*Entschädigungsansprüche*) for the whistleblower.

74. Legislation may also limit the amount of damages that may be sought. Under Ireland’s Prevention of Corruption (Amendment) Act and the Protections for Persons Reporting Child Abuse Act, for example, damages may not exceed 104 weeks’ remuneration in respect of the employee’s employment.<sup>112</sup> Limits are also specified – but in a slightly different manner – in Canada’s Public Servants Discloser Protection Act (Box 13).

#### *Sanctions for Retaliation*

75. Some OECD countries, like Canada<sup>113</sup> and the US, impose criminal sanctions against employers who retaliate against whistleblowers. In the United States, this was introduced through the Sarbanes-Oxley Act. The US 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 Australia, the Public Interest Disclosure Act provides for imprisonment for 2 years – or 120 penalty units, or both – in case of reprisal against whistleblowers.<sup>114</sup> In Korea, there punishment for retaliation varies depending on the type of retaliation that took place (Box 14).<sup>115</sup>

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111 Council of Europe Parliamentary Assembly (2010), Article 6.2.5.

112 Ireland Prevention of Corruption (Amendment Act) Section 6 1. (3) (c) and the Protections for Persons Reporting Child Abuse Act, 1998, Section 4. (5) (c).

113 Criminal Code, art. 425.1 (1)(a)(b).

114 Australia’s Public Interest Disclosure Act, Subdivision B, Part 2 – Section 18.

115 Korea’s Act on the Protection of Public Interest Whistleblowers, Chapter V Article 30 (2)

#### Box 14. Sanctions for retaliation in Korea

According to Korea's Protection of Public Interest Whistleblowers Act, any person who falls under any of the following points shall be punished by imprisonment for not more than two years or by a fine not exceeding 20 million won:

1. A person who implemented disadvantageous measures described in Article 2, subparagraph 6, item (a) [Removal from office, release from office, dismissal or any other unfavorable personnel action equivalent to the loss of status at work] against a public interest whistleblower.

2. A person who did not carry out the decision to take protective measures that had been confirmed by the Commission or by an administrative proceeding.

In addition, any person who falls under any of the following points shall be punished by imprisonment for not more than one year or a fine not exceeding 10 million won:

1. A person who implemented disadvantageous measures that fall under any of Items (b) through (g) in Article 2, Subparagraph 6 against the public interest whistleblower [(b) Disciplinary action, suspension from office, reduction in pay, demotion, restriction on promotion and any other unfair personnel actions; (c) Work reassignment, transfer, denial of duties, rearrangement of duties or any other personnel actions that are against the whistleblower's will; (d) Discrimination in the performance evaluation, peer review, etc. and subsequent discrimination in the payment of wages, bonuses, etc.; (e) The cancellation of education, training or other self-development opportunities; the restriction or removal of budget, work force or other available resources, the suspension of access to security information or classified information; the cancellation of authorization to handle security information or classified information; or any other discrimination or measure detrimental to the working conditions of the whistleblower; (f) Putting the whistleblower's name on a black list as well as the release such a blacklist, bullying, the use of violence and abusive language toward the whistleblower, or any other action that causes psychological or physical harm to the whistleblower; (g). Unfair audit or inspection of the whistleblower's work as well as the disclosure of the results of such an audit or inspection; (h). The cancellation of a license or permit, or any other action that causes administrative disadvantages to the whistleblower]

2. A person who obstructed the public interest whistleblowing, etc. or forced the public interest whistleblower to rescind his/her case, etc. in violation of Article 15, Paragraph 2.

Source : Korea's Protection of Public Interest Whistleblowers Act No. 10472, Chapter V Article 30 (2) and (3)

76. In Ireland, a person who is found guilty of retaliating against a whistleblower is liable on summary conviction, to a fine not exceeding €5 000 or imprisonment for a term not exceeding 12 months or both, or on conviction on indictment, to a fine not exceeding €250 000 or imprisonment for a term not exceeding 3 years or both.<sup>116</sup>

#### *Review of the law in place*

77. In order to ensure that the regulation in place is meeting the purposes for which it was introduced, countries should regularly review the law and the effectiveness of its implementation. If necessary, the regulation can then be amended based on the findings of the evaluation. Provisions regarding the review of effectiveness, enforcement and impact of whistleblower protection laws have been introduced by a number of OECD countries, such as for example Australia, Canada, Japan, the Netherlands, and the United States. In Canada<sup>117</sup>, Japan<sup>118</sup> and the Netherlands<sup>119</sup>, the review must take place within five years of the

116 Ireland's Anti-Corruption Act 2010, Section 4 8A. (8).

117 Canada's Public Servants Disclosure Protection Act, 54.

118 Japan's Whistleblower Protection Act (Act No. 122 of 2004) Supplementary provisions, Article 2.

regulation's entry into force. In Australia, the review of the operation of the Act must start 2 years after the commencement of the Act and be completed within 6 months,<sup>120</sup> and under the US Dodd-Frank Act, the a study of the whistleblower protection program must be finalised no later than 30 months after the Act was enacted.<sup>121</sup> The Japanese law specifically outlines that the Government must take the necessary measures based on the findings of the review. In both Canada and Australia, the review must be presented before the House of Parliament.<sup>122</sup>

78. Systematically collecting data and information is another means of evaluating the effectiveness of a whistleblowing system. This can include information on (i) the number of cases received; (ii) the outcomes of cases (i.e. if the case was dismissed, accepted, investigated, and validated); (iii) compensation for whistleblowers and recoveries that resulted from information from whistleblowers; (iv) awareness of whistleblower mechanisms; and (v) the time it takes to process cases (Transparency International, 2013a). Furthermore, surveys can also be distributed to staff to review staff awareness, trust and confidence in the arrangements. 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 whistleblower protection legislation.

*e. Awareness-Raising, communication and training*

79. Whistleblower protection legislation should be supported by effective awareness-raising, communication, training and evaluation efforts. Communicating to public or private sector employees their rights and obligations when exposing wrongdoing is essential as outlined by the 1998 OECD Recommendation on Improving Ethical Conduct in the Public Service. The Recommendation stresses in its Principle 4 that “public servants need to know what protection will be available to them in cases of exposing wrongdoing”. A number of OECD countries have undertaken such efforts. In France, the Commission Nationale de l'Informatique et des Libertés issued guidelines on the implementation of whistleblowing systems which include reference to the need to have clear and complete information communicated to potential users.<sup>123</sup>

80. Some OECD countries have also adopted express provisions within their laws to this effect. For example, in the United States, the Occupational Safety and Health Administration Act (OSHA) requires Federal agencies to post certain information about whistleblower protection in order to keep employees informed of their rights in connection with protected disclosures. Also in the United States, there are special programmes for awareness raising and training in agencies that deal with public procurement, such as the Department of Defense. Its Whistleblower Program commands the Inspector General to supervise whistleblower protection and inform personnel of their rights through training. Its programme has significantly increased public awareness through articles and briefings to public servants. Within the agency, there is also the Directorate for Whistleblowing and Transparency, which provides advice, counsel and oversight capability to the Inspector General. There is also a Deputy Inspector General whose mission is to ensure that allegations of whistleblower reprisal are resolved in an objective and timely manner. Finally, through a Certification Programme developed under Section 2302(c) of the Office of the Special

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119 Decree Regulating the Reporting of Suspected Abuses in the Civil Service and the Police, article 36.

120 Australia's Public Interest Disclosure Act, Part 5 Section 82A.

121 US Dodd-Frank Act SEC 922 (a) (j) (d) (2)

122 Australia's Public Interest Disclosure Act Part 5 Section 82A and Canada's Public Servants Disclosure Protection Act 54.

123 CNIL (2005), Article 4.

Counsel, the department has made efforts on promoting outreach, investigations and training as the three core methods for raising awareness.<sup>124</sup>

81. In addition to raising awareness and training employees, awareness-raising activities for the general public as well as employees about the successful handling of whistleblowing cases is of utmost importance since the most common reason for an employee not to raise a concern is because he or she believes that no action will be taken as a result of it (Australian Public Service Commission, 2013). In for example the United States, as many as 54% of respondents surveyed by the Merit Systems Protection Boards said that a belief that nothing would be done to stop it affects their decision to report wrongdoing (United States Merit Systems Protection Board, 2011). Awareness-raising activities could for example include the publication of an annual report by the relevant oversight body that includes information on the outcomes 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 cases.

82. Furthermore, increasing the awareness of whistleblowing and whistleblower protection is important as a mechanism to improve the often negative cultural connotations linked to the term ‘whistleblower’. Communicating the importance of whistleblowing from for example a public health and safety perspective can help improve the public view of whistleblowers as important safeguards of public interest, and not snitches reporting on colleagues. In the United Kingdom, the cultural connotations of the term ‘whistleblower’ changed considerably (Box 15).

**Box 15. Change of cultural connotations of ‘whistleblower’ and ‘whistleblowing: the case of the UK**

In the UK, a research project commissioned by Public Concern at Work from Cardiff University examined national newspaper reporting on whistleblowing and whistleblowers covering the period from 1st January 1997 to 31st December 2009. This includes the period immediately before the introduction of the Public Interest Disclosure Act and tracks how the culture has changed since then. The study found that whistleblowers were overwhelmingly represented in a positive light in the media. Over half (54%) of the newspaper stories represented whistleblowers in a positive light, with only 5% of stories being negative. The remainder (41%) were neutral. Similarly, a study by YouGov found that 82% of workers view the term ‘whistleblowers’ as neutral or positive.

*Source:* Public Concern at Work (2010), Where’s whistleblowing now? 10 years of legal protection for whistleblowers, Public Concern at Work, London, p. 17, [http://www.pcaw.org.uk/files/PIDA\\_10year\\_Final\\_PDF.pdf](http://www.pcaw.org.uk/files/PIDA_10year_Final_PDF.pdf); YouGov (2011), YouGov/PCAW Survey Results, YouGov, London, p.8, [http://d25d2506sfb94s.cloudfront.net/cumulus\\_uploads/document/aecs67p0bl/YG-Archive-PCAW-whistleblowing-work-concerns-100611.pdf](http://d25d2506sfb94s.cloudfront.net/cumulus_uploads/document/aecs67p0bl/YG-Archive-PCAW-whistleblowing-work-concerns-100611.pdf).

83. Certain countries provide that the Ombudsman prepare and publish guidelines and periodic reports regarding public servants whistleblowing (Latimer & Brown, 2008). The Canadian Commissioner not only has the responsibility to submit annual reports to the Parliament, but also the duty to make special reports whenever it considers there is an urgent matter concerning disclosures in the public sector.<sup>125</sup> Also, the President of the Treasury Board is required by law to promote ethical practices in the public sector and a positive environment for disclosing wrongdoings by disseminating knowledge of the Act – specially its purposes and processes – by any means considered appropriate.<sup>126</sup>

84. In addition to awareness raising conducted by governments, a number of NGOs are active in the field. For example, in the UK, Public Concern at Work provides independent and confidential advice to

124 See [www.defense.gov](http://www.defense.gov) and <http://www.dodig.mil/>.

125 Canada’s Public Servants Disclosure Protection Act, 37, 38, 38.1.

126 Canada’s Public Servants Disclosure Protection Act, 4.

workers who are unsure whether or how to raise a public interest concern, conducts policy and public education work, and offers training and consultancy to organisations.<sup>127</sup> In the United States, the Government Accountability Project – primarily an organisation of lawyers – defends whistleblowers against retaliation, and actively promotes government and corporate accountability.<sup>128</sup> Transparency International conducts advocacy, public awareness and research activities in all regions of the world. TI has for example established Advocacy and Legal Advice Centres in around 50 countries through which they offer advice to whistleblowers and work to make sure that the disclosures are addressed by appropriate authorities, and have developed international principles for whistleblower legislation, and recommended areas of improvement.<sup>129</sup>

*f. Barriers to whistleblowing*

85. It is important to consider the most common barriers to whistleblowing. The burden of current procedures imposed on whistleblowers is a matter of concern. For example, in Germany, the Federal Labour Court has upheld in certain occasions that public servants wishing to disclose wrongdoings have to first seek in-house clarification and determine the appropriateness of their disclosure or they could face a legal dismissal if they fail to correctly outweigh the public interest versus their loyalty obligation.<sup>130</sup> Usually, courts undertake their own appreciation of situations, which in practice constitutes a disincentive to become a whistleblower (Strack, 2008). The legal qualification based on notions of responsibility is present in many countries. Many civil service acts require that information collected is kept confidential, as in the Australian Public Service Code, prohibiting its disclosure and sanctioning with demotions or even termination of employment (Banisar, 2011). In the case of the US, the Supreme Court ruled in May 2006 that public employees were not protected by the Constitution when speaking as part of their official duties (Supreme Court of the United States, 2006).

86. Also, in Germany, to qualify for the protection that the Civil Code offers, the public servant is charged with the burden of proof, having to demonstrate that his/her disclosure was legally permissible, that discrimination took place, and that retaliation happened because of his/her disclosure.<sup>131</sup> This proof has proved to be almost impossible to provide as long as the employer has not explicitly mentioned this as the reason for termination. For that reason, several legislations provide for a flexible approach to the burden of proof, assuming that retaliation has occurred where adverse action against a whistleblower cannot be clearly justified on management grounds unrelated to the fact or consequences of the disclosure.<sup>132</sup>

87. Furthermore, protection of classified information by secret acts can deter whistleblowers from speaking out. Many countries count on Official Secrets Acts, which prohibit the release of information obtained under government employment, as in the UK, under certain circumstances.<sup>133</sup>

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127 See <http://www.pcaw.org.uk/>

128 See <http://www.whistleblower.org/>

129 See [http://www.transparency.org/whatwedo/activity/our\\_work\\_on\\_whistleblowing](http://www.transparency.org/whatwedo/activity/our_work_on_whistleblowing)

130 In-house clarification is not required if the employer is the one allegedly committing the wrongdoing or if there are valid reasons to expect that the employer will not act.

131 German Civil Code, Section 612a.

132 See, US WPA 5USC §1214(b)(2)(4) and §1221(e). See also Whitton (2008), p. 3 and Devine and Walden (2013), p. 7.

133 In 2002 the House of Lords reinforced the legislation by stating that there is no public interest in the OSA. See House of Lords (2002).

88. Experience also shows that a similar barrier exists in the form of libel and defamation laws, which are used to deter whistleblowers from disclosing illegal activities (for more on libel and defamation, see section 2.c). Whistleblower protection legislation needs to be balanced when contrasted against the duty of loyalty to their organisations and other agreements of non-disclosure. Certainly, as the European Court of Human Rights held on a recent case, the public interest in being informed about the quality of public services outweighs the interests of protecting the reputation of any organisation (European Court of Human Rights, 2011). An effective whistleblowing protection law needs to take into account these obstacles and other legal hurdles to disclosure, and to protect “good faith” whistleblowers from civil and criminal liability. This includes the regulation of ways of relieving whistleblowers from civil liability for defamation or breach of confidentiality and statutory secrecy provisions.

89. Finally, in most countries the cultural perception of whistleblowers may also constitute a significant barrier to introduce legislation on whistleblowing. Such cultural connotations need to be taken into account when developing and implementing whistleblower protection legislation. It would require tackling deeply engrained cultural attitudes which date back to social and political circumstances such as dictatorship and/or foreign domination under which distrust towards “informers” of the despised authorities was only normal (Council of Europe Parliamentary Assembly, 2009). Another cultural barrier can be that of power distance. People living in a low individualistic, high power distance country are less likely to challenge authority and those in authority are less likely to tolerate challenges (Morehead Dworkin, 2002), making it more difficult for whistleblowing to take place.

## **ANNEX: G20 COMPENDIUM OF BEST PRACTICES AND GUIDING PRINCIPLES FOR LEGISLATION ON THE PROTECTION OF WHISTLEBLOWERS**

The following guiding principles and examples of best practices build on the preceding Study and provide reference for countries intending to establish, modify or complement whistleblower protection frameworks. In this sense, they are prospective and offer guidance for future legislation. They do not constitute a benchmark against which current legislation should be tested.

The guiding principles are broadly framed and can apply to both public and private sector whistleblower protection. To supplement these principles, a non-exhaustive menu of examples of best practices sets out more specific and technical guidance that countries may choose to follow.

Taking into account the diversity of legal systems among G20 countries, the guiding principles offer flexibility to enable countries to effectively apply them in accordance with their respective legal systems.

### **1. Clear legislation and an effective institutional framework are in place to protect from discriminatory or disciplinary action employees who disclose in good faith and on reasonable grounds certain suspected acts of wrongdoing or corruption to competent authorities.**

Examples of best practices in support of this principle could include, *inter alia*:

- Enactment of dedicated legislation in order to ensure legal certainty and clarity, and to avoid a fragmented approach to establishing whistleblower protection;
- Requirement or strong encouragement for companies to implement control measures to provide for and facilitate whistleblowing (e.g. through internal controls, ethics and compliance programmes, distinct anti-corruption programmes, fraud risk management, etc.).

### **2. The legislation provides a clear definition of the scope of protected disclosures and of the persons afforded protection under the law.**

Examples of best practices in support of this principle could include, *inter alia*:

- Protected disclosures include: a violation of law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; a substantial and specific danger to public health or safety; or types of wrongdoing that fall under the term “corruption”, as defined under domestic law(s);
- Individuals are not afforded whistleblower protection for disclosures that are prohibited by domestic laws in the interest of national defense or the conduct of foreign affairs, unless the disclosures are made in the specific manner and to the specific entity/entities those domestic laws require;
- Public and private sector employees are afforded protection, including not only permanent employees and public servants, but also consultants, contractors, temporary employees, former employees, volunteers, etc.;

- Clear definition of “good faith” or “reasonable belief”; although individuals are not afforded protection for deliberately-made false disclosures, protection is afforded to an individual who makes a disclosure based upon the individual’s reasonable belief that the information disclosed evidenced one of the identified conditions in the statute, even if the individual’s belief is incorrect.

**3. The legislation ensures that the protection afforded to whistleblowers is robust and comprehensive.**

Examples of best practices in support of this principle could include, *inter alia*:

- Due process for both parties (the whistleblower and the respondent), including, *inter alia*, the need for protecting confidentiality;
- Protection from any form of discriminatory or retaliatory personnel action, including dismissal, suspension, or demotion; other disciplinary or corrective action; detail transfer, or reassignment; performance evaluation; decision concerning pay, benefits, awards, education or training; order to undergo medical test or examination; or any other significant change in duties, responsibilities, or working conditions;
- Protection from failure to take personnel actions, such as selection, reinstatement, appointment, or promotion;
- Protection from harassment, stigmatisation, threats, and any other form of retaliatory action;
- Protection from other forms of retaliatory conduct, including through waiver of liability/protection from criminal and civil liability, particularly against defamation and breach of confidentiality or official secrets laws;
- Protection of identity through availability of anonymous reporting;
- Clear indication that, upon a *prima facie* showing of whistleblower retaliation, the employer has the burden of proving that measures taken to the detriment of the whistleblower were motivated by reasons other than the disclosure;
- Protection against disclosures an individual reasonably believes reveal wrongdoing even if the whistleblower is incorrect”;
- Protection of employees whom employers mistakenly believe to be whistleblowers.

**4. The legislation clearly defines the procedures and prescribed channels for facilitating the reporting of suspected acts of corruption, and encourages the use of protective and easily accessible whistleblowing channels.**

Examples of best practices in support of this principle could include, *inter alia*:

- Provision of protection for disclosures made internally or externally;
- Establishment of internal channels for reporting within the public sector;
- Strong encouragement for companies to establish internal reporting channels;

- Protection afforded to disclosures made directly to law enforcement authorities;
- Specific channels and additional safeguards for dealing with national security or state secrets-related disclosures;
- Allowing reporting to external channels, including to media, civil society organisations, etc.;
- Incentives for whistleblowers to come forward, including through the expediency of the process, follow-up mechanisms, specific protection from whistleblower retaliation, etc.;
- Positive reinforcements, including the possibility of financial rewards for whistleblowing;
- Provision of information, advice and feedback to the whistleblower on action being taken in response to disclosures.

**5. The legislation ensures that effective protection mechanisms are in place, including by entrusting a specific body that is accountable and empowered with the responsibility of receiving and investigating complaints of retaliation and/or improper investigation, and by providing for a full range of remedies.**

Examples of best practices in support of this principle could include, *inter alia*:

- Appointment of an accountable whistleblower complaints body responsible for investigating and prosecuting retaliatory, discriminatory, or disciplinary action taken against whistleblowers who have reported in good faith and on reasonable grounds suspected acts of corruption to competent authorities;
- Rights of whistleblowers in court proceedings as an aggrieved party with an individual right of action, and to have their “genuine day in court”;
- Penalties for retaliation inflicted upon whistleblowers, whether this takes the form of disciplinary or discriminatory action, of civil or criminal penalties.

**6. Implementation of whistleblower protection legislation is supported by awareness-raising, communication, training and periodic evaluation of the effectiveness of the framework of protection.**

Examples of best practices in support of this principle could include, *inter alia*:

- Promoting awareness of whistleblowing mechanisms, provide general advice, monitor and periodically review the effectiveness of the whistleblowing framework, collect and disseminate data, etc.;
- Raising awareness with a view to changing cultural perceptions and public attitude towards whistleblowing, to be considered an act of loyalty to the organisation;
- Training within the public sector to ensure managers are adequately trained to receive reports, and to recognise and prevent occurrences of discriminatory and disciplinary action taken against whistleblowers;
- Requirement in the law that employers post and keep posted notices informing employees of their rights in connection with protected disclosures.

## BIBLIOGRAPHY

- 2009 Act CLXIII on the Protection of Fair Procedures (2009. évi CLXIII. törvény), Hungary.
- Act on the Protection of Public Interest Whistleblowers (Act No. 10472, Mar. 29, 2011), Korea.
- African Union (2003), African Union Convention on Preventing and Combating Corruption, [http://www.au.int/en/sites/default/files/AFRICAN\\_UNION\\_CONVENTION\\_PREVENTING\\_COMBATING\\_CORRUPTION.pdf](http://www.au.int/en/sites/default/files/AFRICAN_UNION_CONVENTION_PREVENTING_COMBATING_CORRUPTION.pdf)
- Anti-corruption Act, Estonia.
- Anti-Corruption and Civil Rights Commission of Korea (2014), “Protecting and Rewarding Whistleblowers”, available at: <http://www.acrc.go.kr/eng/board.do?command=searchDetail&method=searchList&menuId=020311>
- ARTICLE 29 Data Protection Working Party (2006), Opinion 1/2006 on the application of EU data protection rules to internal whistleblowing schemes in the fields of accounting, internal accounting controls, auditing matters, fight against bribery, banking and financial crime, Adopted on 1 February 2006. [http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2006/wp117\\_en.pdf](http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2006/wp117_en.pdf)
- Australian Public Service Commission (2013), State of the Service Report: State of the Service Series 2012–13. Available at: [http://www.apsc.gov.au/\\_data/assets/pdf\\_file/0018/29223/SOSR-2012\\_13-final-tagged2.pdf](http://www.apsc.gov.au/_data/assets/pdf_file/0018/29223/SOSR-2012_13-final-tagged2.pdf)
- Banisar, D. (2011) “Whistleblowing: International Standards and Developments” in Sandoval, I. (editor), Corruption and Transparency: Debating the Frontiers between State, Market and Society, World Bank-Institute for Social Research, UNAM, Washington, D.C. Available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1753180](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1753180)
- Browning, L. (2014), The Perks of Being a Whistle-blower, 1/30/14, Newsweek, <http://www.newsweek.com/how-would-you-spend-30-1-trillion-227390>
- Bundesarbeitsgericht vom 3.7.2003 – 2 AZR 235/02 und vom 7.12.2006, 2 AZR 400/05, Germany.
- Bürgerliches Gesetzbuch (Civil Code), Germany.
- Calland and Dehn (2004) Whistleblowing around the world: law and culture and practice, ODAC and PCAW.
- Central Bank (Supervision and Enforcement) Act 2013, Ireland.
- Charities Act 2009, Ireland.
- Chêne, M. (2009), Good Practice in Whistleblowing Protection Legislation (WPL), U4 Anti-Corruption Resource Centre, Bergen. <http://www.u4.no/publications/good-practice-in-whistleblowing-protection-legislation-wpl/>
- Code du Travail, France.

GOV/PGC/ETH(2014)4

Commission nationale de l'informatique et des libertés CNIL (2005) Guideline document adopted by the "Commission nationale de l'informatique et des libertés" (CNIL) on 10 November 2005 for the implementation of whistleblowing systems in compliance with the French Data Protection Act of 6 January 1978, as amended in August 2004, relating to information technology, data filing systems and liberties. <http://www.cnil.fr/fileadmin/documents/en/CNIL-recommandations-whistleblowing-VA.pdf>

Competition Act 2002, Ireland.

Corporate Governance Code Monitoring Committee (2009) Dutch corporate governance code: Principles of good corporate governance and best practice provisions, <http://www.mccg.nl/download/?id=606>

Corporations Act (2001), No. 50, 2001 as amended, Australia.  
<http://www.comlaw.gov.au/Series/C2004A00818>

Council of Europe (2014), Recommendation CM/Rec(2014)7 of the Committee of Ministers to member States on the protection of whistleblowers, Adopted by the Committee of Ministers on 30 April 2014, at the 1198th meeting of the Ministers' Deputies,  
<https://wcd.coe.int/ViewDoc.jsp?id=2188855&Site=CM>

Council of Europe (1999a) Civil Law Convention on Corruption, Council of Europe, Strasbourg.  
<http://conventions.coe.int/Treaty/en/Treaties/Html/174.htm>

Council of Europe (1999b) Council of Europe Criminal Law Convention on Corruption, Council of Europe, Strasbourg. <http://conventions.coe.int/Treaty/en/Treaties/Html/173.htm>

Council of Europe Parliamentary Assembly (2010), Resolution 1729 (2010) The protection of "whistle-blowers", <http://assembly.coe.int/main.asp?link=/documents/adoptedtext/ta10/eres1729.htm>

Council of Europe Parliamentary Assembly (2009) Report of the Committee on Legal Affairs and Human Rights, The protection of "whistle-blowers", 14 September 2009, available at <http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=12302&lang=en>

Criminal Code of Canada

Criminal Code (Strafgesetzbuch), Germany.

Criminal Justice Act, Ireland.

Decree Regulating the Reporting of Suspected Abuses in the Civil Service and the Police (Besluit van 15 december 2009, houdende een regeling voor het melden van een vermoeden van een misstand bij de sectoren Rijk en Politie), Netherlands.

Decree regulating the Reporting of Suspected Wrongdoing in the Defence (Besluit van 30 augustus 2010, houdende wijziging van het Algemeen militair ambtenarenreglement en het Burgerlijk ambtenarenreglement Defensie in verband met een regeling voor het melden van een vermoeden van een misstand), Netherlands.

Devine, T and Walden, S. (2013) International Best Practices for Whistleblower Policies, Government Accountability Project, Washington D.C.

Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010

Employment Permits Act 2006, Ireland.

Employment Rights Act of 1996, United Kingdom.

Ethics in Public Office Act 2001, Ireland.

Ethics Resource Center (2007) National Government Ethics Survey, Ethics Resource Center, Arlington,  
[http://www.ethics.org/files/u5/The\\_National\\_Government\\_Ethics\\_Survey.pdf](http://www.ethics.org/files/u5/The_National_Government_Ethics_Survey.pdf).

European Court of Human Rights (2011), Heinisch v. Germany, application no. 28274/08, July 21<sup>st</sup>, 2011,  
 European Court of Human Rights, Strasbourg.  
[http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-105777#{\"itemid\":\[\"001-105777\"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-105777#{\)

False Claims Act (31 U.S.C. §§ 3729–3733), United States.

Federal Criminal Code and Rules (18 U.S.C.

Garda Síochána (Confidential Reporting of Corruption Or Malpractice) Regulations 2007, Ireland.

Government Employees Act no. 70/1996, Iceland.

Grundgesetz (Basic Law), Germany.

Health Act 2007, Ireland.

House of Lords (2002), Judgments - Regina v Shayler (On Appeal From The Court of Appeal (Criminal Division)), <http://www.parliament.thestationeryoffice.co.uk/pa/ld200102/ldjudgmt/jd020321/shayle-1.htm>.

ICC (International Chamber of Commerce) (2008) ICC Guidelines on Whistleblower Protection,  
<http://www.iccwbo.org/Data/Policies/2008/ICC-Whistleblowing-Guidelines/>

Integrity and Prevention of Corruption Act, Slovenia.

Intelligence Community Whistleblower Protection Act (1999), United States.

Internal Revenue Service (2013) Internal Revenue Service Fiscal Year 2013 Report to the Congress on the Use of Section 7623,  
[http://www.irs.gov/pub/whistleblower/Whistleblower\\_Annual\\_report\\_FY\\_13\\_3\\_7\\_14\\_52549.pdf](http://www.irs.gov/pub/whistleblower/Whistleblower_Annual_report_FY_13_3_7_14_52549.pdf).

International Labour Organization (2011) International Labour Organization Thesaurus ‘whistleblowing’  
<http://www.ilo.org/thesaurus/defaulten.asp>

Kohn, S.M., (n.d.) “Sarbanes-Oxley Act: Legal Protection for Corporate Whistleblowers”, National Whistleblowers Centre.  
[http://www.whistleblowers.org/index.php?option=com\\_content&task=view&id=27](http://www.whistleblowers.org/index.php?option=com_content&task=view&id=27)

KPMG (2011) Who is the typical fraudster?  
<http://www.kpmg.com/BY/ru/IssuesAndInsights/ArticlesPublications/Press%20Releases/Documents/Who%20is%20the%20typical%20fraudster.pdf>

GOV/PGC/ETH(2014)4

Law of 15 September 2013 relating to the reporting of suspected harm to integrity within a federal administrative authority by a member of its staff, Belgium

LOI n° 2013-316 du 16 avril 2013 relative à l'indépendance de l'expertise en matière de santé et d'environnement et à la protection des lanceurs d'alerte, Titre V, France.

Loi n°2007-1598 du 13 novembre 2007 relative à la lutte contre la corruption, Art. 9, JORF 14 novembre 2007, France.

Martin, D. (2012) 'Roger Boisjoly, 73, Dies; Warned of Shuttle Danger', The New York Times, 3 February 2012, [http://www.nytimes.com/2012/02/04/us/roger-boisjoly-73-dies-warned-of-shuttle-danger.html?\\_r=0](http://www.nytimes.com/2012/02/04/us/roger-boisjoly-73-dies-warned-of-shuttle-danger.html?_r=0)

MESICIC (2008), Republic of Guatemala: Final Report, Adopted at the June 27, 2008 plenary session, [http://www.oas.org/juridico/english/mesicic\\_II\\_inf\\_gtm\\_en.pdf](http://www.oas.org/juridico/english/mesicic_II_inf_gtm_en.pdf).

MESICIC (2007), Mexico: Final Report, Adopted at the June 29, 2007 plenary session, [http://www.oas.org/juridico/english/mesicic\\_II\\_rep\\_mex.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_mex.pdf).

MESICIC (2006), Republic of Argentina: Final Report, Adopted at the December 15, 2006 plenary session, [http://www.oas.org/juridico/english/mesicic\\_II\\_rep\\_arg.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_arg.pdf).

Military Whistleblower Protection Act, Title 10 U.S.C., United States.

Morehead Dworkin, T. (2002) "Whistleblowing, MNCs and Peace", William Davidson Working Paper Number 437, February 2002.

National Audit Office (2014) Government whistleblower policies, London. <http://www.nao.org.uk/wp-content/uploads/2014/01/Government-whistleblowing-policies.pdf>

OECD (2013), OECD Integrity Review of Italy: Reinforcing public sector integrity, restoring trust for sustainable growth, OECD Publishing, Paris.

OECD (2012), Phase 3 Report on Implementing the OECD Anti-Bribery Convention in France, <http://www.oecd.org/daf/anti-bribery/Francephase3reportEN.pdf>

OECD (2011), Guidelines for Multinational Enterprises (updated 2011), OECD Publishing, Paris. <http://www.oecd.org/daf/inv/mne/48004323.pdf>

OECD (2009a), Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in international Business Transactions, 28 November 2009, <http://www.oecd.org/daf/anti-bribery/44176910.pdf>

OECD (2009b), Government at a Glance, OECD Publishing, Paris.

OECD (2003), Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences, OECD Publishing, Paris. <http://www.oecd.org/gov/ethics/48994419.pdf>

OECD (1998), Recommendation of the Council on Improving Ethical Conduct in the Public Service Including Principles for Managing Ethics in the Public Service, 23 April 1998. Available at: <http://acts.oecd.org/Instruments/ShowInstrumentView.aspx?InstrumentID=129&InstrumentPID=125&Lang=en&Book=>

OECD (1997) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Paris.

Organization of American States (1996) Inter-American Convention against Corruption, Organization of American States, Washington D.C., <http://www.oas.org/juridico/english/treaties/b-58.html>

Orol, R.D. (2012), SEC gets nearly 3,000 whistleblower tips, Oct. 18, 2012, MarketWatch, <http://www.marketwatch.com/story/sec-gets-nearly-3000-whistleblower-tips-2012-10-18>

Latimer, P. and Brown, A. J., (2008) Whistleblower Laws: International Best Practice, November 1, 2008. Monash U. Department of Business Law & Taxation Research Paper No. 1326766. Available at SSRN: <http://ssrn.com/abstract=1326766> or <http://dx.doi.org/10.2139/ssrn.1326766>

Prevention of Corruption (Amendment) Act 2010, Ireland.

Project on Government Oversight (2005), Homeland and National Security Whistleblower Protections: The Unfinished Agenda, Project on Government Oversight, Washington D.C. <http://www.pogo.org/our-work/reports/2005/wi-wp-20060428.html>

Protected Disclosures Act of 2000, New Zealand.

Protections for Persons Reporting Child Abuse Act, 1998, Ireland.

Public Concern at Work and the University of Greenwich (2013), Whistleblowing: The inside story – A study of the experiences of 1 000 whistleblowers, <http://www.pcaw.org.uk/files/Whistleblowing%20-%20the%20inside%20story%20FINAL.pdf>

Public Concern at Work (2011), Whistleblowing: Beyond the law, Public Concern at Work, London. [http://www.pcaw.org.uk/files/PCAW\\_Review\\_beyondthelaw.pdf](http://www.pcaw.org.uk/files/PCAW_Review_beyondthelaw.pdf)

Public Concern at Work (2010), Where's whistleblowing now? 10 years of legal protection for whistleblowers, Public Concern at Work, London, p. 17, [http://www.pcaw.org.uk/files/PIDA\\_10year\\_Final\\_PDF.pdf](http://www.pcaw.org.uk/files/PIDA_10year_Final_PDF.pdf)

Public Interest Disclosure Act 2013, Australia.

Public Interest Disclosure Act of 1998, United Kingdom.

Public Servants Disclosure Protection Act of 2005, Canada.

Public Service Code of Conduct, Australia

Public Service Regulations (1999), Australia.

Queensland Public interest Disclosure Act of 2010, Australia.

Regulation of the procedure and protection in the reporting of suspected wrongdoing (province) (Regeling procedure en bescherming bij melding van vermoedens van een misstand), Netherlands.

Safety, Health and Welfare at Work Act 2005, Ireland.

Sarbanes-Oxley Act (18 U.S.C.), United States.

GOV/PGC/ETH(2014)4

Strack, G. (2008), Whistleblowing in Germany. Whistleblower-Netzwerk, Köln.

[http://www.whistleblower-net.de/pdf/WB\\_in\\_Germany.pdf](http://www.whistleblower-net.de/pdf/WB_in_Germany.pdf)

Stichting van de Arbeid (2010) Verklaring inzake het omgaan met vermoedens van misstanden in ondernemingen (the Declaration on dealing with suspicions of wrongdoing in companies), 3 maart 2010, publicatienr. 1/10, <http://www.adviespuntklokkenluiders.nl/docs/bibliotheek/verklaring-inzake-het-omgaan-met-vermoedens-van-misstanden-in-ondernemingen.pdf?sfvrsn=18>

Strafgesetzbuch (Criminal Code), Germany.

Supreme Court of the United States (2006), Gil Garcetti, et al., petitioners V. Richard Ceballos, No. 04-473, May 30, 2006, 547 U. S. \_\_\_\_ (2006), <http://supreme.justia.com/cases/federal/us/547/04-473/dissent.html>

The Fundamental Law of Freedom of Expression, Sweden.

The Freedom of Press Act, Sweden.

Transparency International (2013a), International Principles for Whistleblower Legislation: Best Practices for Laws to Protect Whistleblowers and Support Whistleblowing in the Public Interest, Transparency International, Berlin.

[http://www.transparency.org/whatwedo/pub/international\\_principles\\_for\\_whistleblower\\_legislation](http://www.transparency.org/whatwedo/pub/international_principles_for_whistleblower_legislation)

Transparency International (2013b), Whistleblower Protection and the UN Convention Against Corruption, Transparency International, Berlin.

[http://www.europarl.europa.eu/meetdocs/2009\\_2014/documents/libe/dv/ti\\_report\\_/ti\\_report\\_en.pdf](http://www.europarl.europa.eu/meetdocs/2009_2014/documents/libe/dv/ti_report_/ti_report_en.pdf)

Transparency International (2009), Alternative to Silence: Whistleblower Protection in 10 European Countries, Transparency International, Berlin.

[http://www.transparency.org/whatwedo/pub/alternative\\_to\\_silence\\_whistleblower\\_protection\\_in\\_10\\_european\\_countries](http://www.transparency.org/whatwedo/pub/alternative_to_silence_whistleblower_protection_in_10_european_countries)

UNODC (United Nations Office on Drugs and Crime) (2009), Technical Guide to the United Nations Convention Against Corruption, United Nations, Vienna.

[http://www.unodc.org/documents/corruption/Technical\\_Guide\\_UNCAC.pdf](http://www.unodc.org/documents/corruption/Technical_Guide_UNCAC.pdf)

UNODC (2004a) UN Anti-Corruption Toolkit, 3rd Edition, United Nations, Vienna, p. 67.

[http://www.unodc.org/pdf/crime/corruption/toolkit/corruption\\_un\\_anti\\_corruption\\_toolkit\\_sep04.pdf](http://www.unodc.org/pdf/crime/corruption/toolkit/corruption_un_anti_corruption_toolkit_sep04.pdf)

UNODC (2004b), United Nations Convention against Corruption, United Nations, Vienna,

[http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026\\_E.pdf](http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf).

United States Court of Appeals Federal Circuit (2008), Drake v. Agency for Int'l Dev., 543 F.3D 1377 (FED. CIR. 2008), Decided Oct. 7. <https://casetext.com/case/drake-v-agency-for-intl-dev#.U4MJMvmSww>

United States Court of Appeals Federal Circuit (1999), Lachance v. White, 174 F.3D 1378 (Fed. Cir. 1999), Decided May 14, 1999, <https://casetext.com/case/lachance-v-white#.U4MrKvmSww>

- United States Court of Appeals Federal Circuit (1995), Horton v. Dep't of Navy, 66 F.3D 279 (Fed. Cir. 1995), Decided Sept. 12 1995, <https://casetext.com/case/horton-v-department-of-navy#.U4MMVPmSww>.
- United States Merit Systems Protection Board (2011), Blowing the Whistle: Barriers to Federal Employees Making Disclosures, U.S. Merit Systems Protection Board, Washington D.C., <http://www.mspb.gov/netsearch/viewdocs.aspx?docnumber=662503&version=664475&application=ACROBAT>
- Valencia, M. (2011), Year of the bounty hunter, Nov 17th 2011, From The World in 2012 print edition, The Economist, <http://www.economist.com/node/21537931>
- Vaughn, R.G., Presentation by Professor Robert G. Vaughn, American University Washington College of Law, at the webinar “Corruption Whistleblower Systems: Challenges, Practices, Innovations” organised by the World Bank’s International Corruption Hunters Alliance on 6 May 2014.
- Whistleblower Protection Act 1989; 5 U.S.C., United States.
- Whistleblower Protection Act No. 122 of 2004, Japan
- Whistleblowers Protection Act 2001, Victoria, Australia.
- Whitton, H. (2008), Making whistleblower protection work: elements of an effective approach, U4 Anti-Corruption Research Centre, Bergen. <http://www.u4.no/publications/making-whistleblower-protection-work-elements-of-an-effective-approach/downloadasset/117>
- Working Environment Act, Norway.
- YouGov (2011), YouGov/PCAW Survey Results, YouGov, London, p.8, [http://d25d2506sfb94s.cloudfront.net/cumulus\\_uploads/document/aecs67p0bl/YG-Archive-PCAW-whistleblowing-work-concerns-100611.pdf](http://d25d2506sfb94s.cloudfront.net/cumulus_uploads/document/aecs67p0bl/YG-Archive-PCAW-whistleblowing-work-concerns-100611.pdf)