LIST OF ANNEXES

ANNEX 1: PROCEDURAL INFORMATION

1. Agenda planning and Work Programme References

The need to assess the scope for horizontal or further sectorial EU action to protect the whistleblowers has been indicated in the Commission Work Programme 2017 as well as in the Commission Work Programme 2018[1].

JUST is the lead DG for this initiative. The Agenda Planning Reference is [2016/271] and the Inception Impact Assessment was published on 26/01/2017[2].

2. Inter-Service Steering Group (ISSG)

The meetings of the Inter-Service Steering Group have taken place on 10 January 2017, 27 January 2016, 16 March 2017, 26 October 2017, 19 December 2017 and 2 February 2018. The following Directorates-General (DG) and services were part of the group: Secretariat-General, Legal Service, DG Human Resources and Security, DG Communications Networks, Content and Technology, DG Employment, Social Affairs and Inclusion, DG Environment, DG Energy, DG Migration and Home Affairs, DG Mobility and Transport, DG Internal Market, Industry, Entrepreneurship and SMEs, DG Health and Food Safety, DG Taxation and Customs Union, DG Trade and the European Anti-Fraud Office.

3. RSB negative opinion and resubmission

The impact assessment report was examined by the Regulatory Scrutiny board on 24 January 2018. Recommendation from the Board were transmitted on 25 January 2018.

Board's Recommendations	Implementation of the recommendations into the revised IA report
1. The report does not explain why it does not explore an umbrella whistleblower protection.	Section 1 has been redrafted to explain that a horizontal approach to the problem of lack of whistleblower protection has been explored and found not to be possible at EU level. It also explains how the EU law enforcement perspective targets the European dimension of this problem. This is further substantiated in Section 2.1 on the problem definition and in Section 3.2 on the legal bases.
It does not adequately address the issue of subsidiarity.	Section 2.2 has been redrafted to better address the issue of subsidiarity. It demonstrates that the EU intervention focuses on areas with a clear EU dimension and where the impact on enforcement is the strongest. It presents, for all areas identified as necessitating the introduction of whistleblower protection, the strength of potential spill-over impacts. The overall findings are summarised and presented in a comparative table in Section 3.1, and taken into account in the assessment of the options. They thus substantiate why action at Member States level would be less effective in achieving the objective envisaged and demonstrate that the

[1] Commission Work Programme 2018 An agenda for a more united, stronger and more democratic Europe, Strasbourg, 24.10.2017 COM(2017) 650 final, p. 7.

[2] http://ec.europa.eu/smart-regulation/roadmaps/docs/plan_2016_241_whistleblower_protection_en.pdf

	preferred option is focused on areas with a clear EU dimension, meeting the requirements of both subsidiarity and proportionality. In the same vein, Section 5.2 contains a detailed assessment of these aspects also for the discarded options, as well as a comparison of the potential content of the discarded options compared to the ones assessed in terms of the protection that could be provided to workers. Further relevant elements are provided in the assessment of the preferred option.
It does not provide either sufficient rationale for the EU law enforcement perspective and for the selective sectoral approach to whistleblower protection that it proposes	Section 2.5 has been redrafted to set out the criteria for the identification of the areas where whistleblower protection needs to be introduced as an enforcement tool of EU law. It also clarifies that, whilst this identification is based on currently available evidence, any EU action should be "future-proof", e.g. it should provide for a review process as regards its material scope of application. The presentation of the content and the analysis of the preferred option (sections 5.2.5 and 6.3.4) refer to the fact that the Directive will be accompanied by a Communication which will encourage Member States to consider applying also in other areas standards which would be necessary to ensure coherence and legal certainty within the national legal framework.
2. The report does not provide sufficient information on how whistleblowers would in fact be protected. In particular, the report does not specify provisions for workers' protection, despite large evidence of their exposure to retaliation in the context of their employment relationships.	Section 2.2 presents in detail how whistleblowers will be protected. It specifies the different forms that retaliation can take for employees, as the most vulnerable category, and for persons in other types of work-based relationship who play a key role in reporting violations of the law. These are further presented in Section 2.4 and in Annex 8. Mirroring this analysis, Section 5.1 details, under point 4, the different measures to be put in place for the protection of all these categories of persons against retaliation. This section also clarifies how these measures have been designed to address the specific risks faced by whistleblowers. This Section indicates in detail how the different elements of protection translate the principles of the 2014 CoE Recommendation.
3. The report does not demonstrate that the preferred option will provide an effective and future-proof enforcement tool and whistleblower protection.	Section 5.1 presents the minimum content of protection for all options and its effectiveness in terms of addressing the problem identified. Specifically as regards the preferred option, Section 7 presents concretely the different regulatory and non-regulatory elements of this option and explains in detail how they ensure an effective and balanced approach. In particular, to further enhance the effectiveness of the Directive an obligation will be placed on Member States provide data on the number of reports as well as the outcome of the related enquiries. It also specifically refers to the review process that it would entail so as to be “future-proof”.

The analysis of the impacts needs to be clarified both in terms of benefits and costs. It should detail how the high benefit values have been calculated, and why its range is so large. In particular, the report should better explain uncertainties and risks related to the estimates.	Section 6 of the Impact assessment has been developed to include a detailed explanation on the methodology to determine benefits and costs. It is explained that, due to the lack of collection of data, numbers presented in the report are based on modelling with a series of assumptions assuming that, from the positive impact of increasing whistleblowers' protection, this will in turn will increase the number of reports and will lead to a positive benefit in enforcement of EU law and proper supervision, with a percentage of recovery of misused revenues of the EU budget. In terms of certainty, the scenario where benefits largely outweighs costs also mirror the experiences in other non-EU countries where figures corresponding to the US between 90-2000s are also estimated with an average ratio of benefits to costs in 33/1 (section 7.1 IA) Annex 3 on costs and benefits has also been reinforced by adding a specific paragraph explaining the methodology followed by the external contractor to make the estimates.
The report should explain better what success of this initiative would look like. The monitoring and evaluation framework should reflect the logic of intervention, propose benchmarks for success and discuss how the necessary data will realistically be collected.	In Section 8 on monitoring and evaluation, a better explanation on the future evaluation was added as well as the description of benchmarks that will be use to assess the success of the initiative. It has been specified that the Directive will oblige national authorities to gather data on the number of reports as well as the outcome of them. Benchmarks will be added to the table to reflect progress of implementation of the future instrument as well as progress as regards the main objective to better support the enforcement of EU law.

4. RSB positive opinion after resubmission

The impact assessment report was resubmitted on 15 February 2018. The Board issued a positive opinion on 5 March 2018, which included a few considerations and recommendations.

Board's Recommendations	**Implementation of the recommendations into the revised IA report**
1. Who is covered by the "whistleblower" initiative is still ambiguously defined.	Section 5.1, under "Policy options", clarifies that the personal scope, common to all the policy options, covers both the public and the private sector and grants protection both to workers in standard employment relationships as well as to part-time workers, fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary agency, and to a wider population of persons in a work-based relationship, such as self-employed persons providing services, freelance, contractors, sub-contractors and suppliers, given that these

	broader categories can be key for exposing violations of the law and may suffer different forms of retaliation. Shareholders and persons in managerial bodies will also be included for the same reasons. The personal scope will also include further categories of reporting persons who do not rely on their work-related activities economically but who may nevertheless suffer retaliation, such as volunteers and unpaid trainees. More generally, the options would ensure that the need for protection is determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship, so as to cover the whole range of persons connected in a broad sense to the organisation where the breach has occurred, including in particular candidates for employment or for providing services to an organisation who acquired the information on breaches of law during the recruitment process or other pre-contractual negotiation stage.
Provisions to protect whistleblowers mostly mirror the Council of Europe's 2014 Recommendation on the Protection of Whistleblowers. But the report is sometimes ambiguous: the summary of the policy options only refers to employees on one side and contractors, suppliers or other self-employed persons providing services on the other, even though its description of the minimum level of protection of all policy options refers to Principles 3 and 4 of the 2014 Recommendation. These provide for a broad scope and go beyond the definition of employees as all individuals working in either public or private sectors, irrespective of the nature of their working relationship, and whether they are paid or not, whether the working relationship has ended or not, or during recruitment process or pre-contractual negotiation stage. Additional deviations from the 2014 Recommendation could also	A new annex 12 explains one by one how the principles of the Council of Europe recommendation have been transposed under the preferred option.

be better explained. Such deviations include omitting the consultation of workers and their representatives on proposals to set up internal reporting procedures (Principle 16) and the possibility to disclose information to the public, e.g. to a journalist or a Member of Parliament (Principle 14).	
2. The report does not explain well the review process that is to ensure that whistleblower protections remain effective and proportionate.	Section 8 – "Monitoring and evaluation" explains that the proposed legislation would include the commitment to submit an *implementation report* assessing the situation of transposition to the European Parliament and the Council 2 years after the deadline of transposition. This will ensure that there is a sufficient period of time to evaluate the new legislation and that data is collected to determine the level of implementation of Member States as well as the effective EU added value. An additional *report evaluating the effectiveness, efficiency and overall coherence* in enforcing EU law would be submitted 6 years after the deadline for transposition, taking into account the implementation report cited above and statistics submitted by Member States. The report shall allow for a review also as regards the material scope of application of the Directive. This way, if, in the future, evidence comes to the fore substantiating the need for whistleblower protection as a means of strengthening the enforcement of Union law also in other areas and legislative acts (including future acts) the Commission will consider, within this report, the need for additional measures, including, where appropriate, amendments with a view to extending whistleblower protection to further areas or Union acts
The preferred option provides for a review process to ensure that the scope of the initiative remains in line with evolving evidence of needs. The report proposes benchmarks against which to assess progress. It is not clear how some of these benchmarks would provide useful points of comparison. Not all benchmarks relate directly to the data that the Directive obliges Member States to gather, and some of the required data lack	Section 8 now provides more detailed information on how the benchmarks would be used to evaluate the way in which, under the preferred option; the Directive has operated and to assess the need to extend, where appropriate, whistleblower protection to other Union policy areas or acts. Administrative costs relating to data collection could not be ascertained. More extensive quantification is not possible because there is a lack of reliable data. This did not allow for far-reaching extrapolations or modelling.

meaningful benchmarks. The report might add goals for e.g. timeliness of responding to whistleblower allegations, and investigations of such allegations. It might also establish goals with regard to ensuring reasonable awareness of whistleblowing protections and how to file complaints if protections are not respected. It might institute reporting requirements with regard to reprisal cases and mechanisms for investigating alleged reprisals. The report could usefully estimate the administrative costs these information requirements could potentially generate for Member States and, if relevant, companies.	

5. Relevant evidence

The impact assessment is based on the report submitted to DG JUST by ICF Consulting Services Limited "Study on the need for horizontal or further sectorial action at EU level to strengthen the protection of whistleblowers"[3] submitted in November 2017. The report is composed of a principal report and 12 annexes. In this study a reference is made also to Milieu's report commissioned by DG GROW: "Estimating the economic benefits of whistleblower protection in public procurement"[4].

[3] ICF (2017), Study on the need for horizontal or further sectorial action at EU level to strengthen the protection of whistleblowers Final Report, Principal Report and Annexes.

[4] Milieu (2017), Estimating the Economic Benefits of Whistleblower Protection in Public Procurement, Final Report, 582/PP/GRO/IMA/16/1131/9824.

ANNEX 2: STAKEHOLDER CONSULTATIONS

A. Introduction

The following consultation activities were carried out, allowing for reaching all stakeholder groups identified in the consultation strategy:

- A 12-week open public consultation
- Targeted stakeholder consultations
- A workshop with private experts
- Three workshops with experts from Member States' authorities.

The **open public consultation (OPC)** ran from 3 March to 29 May 2017. A total of 5,707 replies were received. Of these, 97% (5,516) were from respondents taking part as private individuals and 3% from respondents acting on behalf of an organisation (191 replies). More than a quarter (26%) of the 191 organisations were NGOs, 22% were business associations; 19% trade unions; 13% enterprises and 7% public authorities (50 NGOs, 42 business associations, 37 trade unions, 25 enterprises, 14 public authorities). 44 organisations and 6 individuals[5] also submitted position papers.

As the numbers of responding stakeholders were small and not all of them replied to all the questions, for all these sub-samples below 50, no percentages are given as they would be misleading. The small sample size does not allow for meaningful comparison of percentages across groups. For many questions, the responses of the different types of stakeholders did not differ substantially, so data presented in this Annex are not disaggregated. Where their views did diverge or where there were significant differences of views within categories of stakeholders, this is specifically mentioned, including with references to the actual numbers.

Two-thirds of the OPC respondents (individuals and organisations) came from Germany and France (43% and 23% respectively). No campaigns were identified. A total of 593 respondents (one in ten respondents) had knowledge of whistleblower cases from their direct work experience from the last ten years.

Three targeted online stakeholder consultations were launched in May 2017 for a duration of 4 weeks. They were targeted at stakeholders who are professionally involved in issues related to whistleblowing, e.g. setting up protection mechanisms inside organisations, receiving whistleblower reports, investigating and/or deciding on whistleblower reports and the matters referred to therein as a public authority, providing advice and assistance, collecting information, developing policy and legislation etc. They had an overall response rate of 8% (41 responses from 530 invitations sent).[6] There were 26 respondents to the consultation targeting public authorities: 18 national public authorities from 10 EU Member States,[7] 7 EU Agencies,[8] and 1 international organisation.[9] There were 14 respondents to the consultation targeting experts: 7 responded in their own capacity; the other 7 responded on

5 These were 20 business professional/associations, 8 NGOs, 5 trade unions, 4 institutional stakeholders (three public authorities and a European Parliament political group), three media organisations, 3 enterprises, 1 law firm, and 6 private individuals

6 Three different targeted consultations were launched: to public authorities, to experts and to private companies: 26 public authorities, 14 experts and 1 private company responded to the consultation.

7 The countries represented are: Bulgaria (4 responses), Croatia (2 responses), Denmark (2 responses), Austria, Cyprus, Estonia, Ireland, Latvia, Romania and Slovakia (1 response each). Two independent surveillance authorities: Commission for the Prevention of Corruption (Slovenia); Office of the Commissioner for Fundamental Rights (Hungary); One judicial authority: Public Prosecutor's office for combatting economic crimes and corruption (Austria).

8 BEREC; CEPOL; CVPO; EBA; EFSA; Frontex; one anonymised organisation.

9 Council of Europe - Secretariat of the group of States against Corruption.

behalf of organisations which comprised NGOs, national trade unions and trade union associations and various associations and think tanks. Only one private company responded to the third consultation. In addition, interviews were undertaken with the **assistants to** 7 **Members of the European Parliament** actively involved in whistleblowers protection issues. A further **targeted consultation** was launched on 15 June 2017 for a duration of four weeks amongst the members of the **Platform on Tax Good Governance**. 12 Member States and 6 representatives of civil society and business organisations sent their replies.

An **expert workshop** on 7 June 2017 gathered eight experts selected on the basis of their particular expertise in issues related to whistleblower protection, developed through their academic work, their participation in work carried out in international fora, their work in advocacy, raising public awareness or offering training and consultancy to organisations. **A** second **workshop** with experts from **Member States' authorities**[10] took place in Brussels on 13 October 2017 and was attended by experts from 27 Member States, plus Norway. Finally, a third **workshop** took place on 23 November 2017 with **OLAF** and the **Member States experts,** focusing on the whistleblowers protection in the framework of the protection of the financial interests of the Union.

The consultations aimed at gathering input on the problems arising from a lack of protection for whistleblowers at national and EU level, key elements of effective and balanced whistleblower protection regimes, the areas in which EU action would have the most added value, the form, scope and potential impacts of such EU action.

B. Main results of the consultations

1. Overall support for whistleblower protection

Almost all **OPC respondents** (99.4%) agreed that whistleblowing should be protected. For the majority of OPC respondents, the main benefits of mandatory protection of whistleblowers are enhancing compliance with the law (84% of individuals and 69% of organisations) and enhancing transparency and accountability in the workplace (78% of individuals and 62% of organisations).

2. Under-reporting of wrongdoing and related reasons

A large majority of the **OPC** respondents (85%) believed that workers very rarely or rarely report concerns about threat or harm to the public interest. Individuals were more likely than organisations to state that workers very rarely reported their concerns (46% against 29%).

OPC respondents were asked to indicate the reasons why workers do not report wrongdoing. The four most frequently given reasons were:

- fear of legal consequences;
- fear of financial consequences;
- fear of bad reputation;
- negative attitudes towards whistleblowers.

According to both **the experts and the public authorities responding to the targeted consultations,** the most frequent negative consequences for whistleblowers are the deterioration of their psychosocial wellbeing, dismissal and negative or hostile attitude at work (harassment, discrimination). The experts reporting on cases they had come across in the

[10] Experts were designated by the Ministries of Justice and/or Interior Affairs and some were from the Permanent Representations.

last ten years were unanimous in stating that reporting wrongdoing had a negative impact on the lives of whistleblowers (psychologically, socially and professionally).

3. Types of wrongdoing most commonly reported and outcomes of whistleblowing

According to the findings of the **stakeholder consultations targeted at experts and public authorities**, fraud and corruption are the most common types of wrongdoing reported.

13 public authorities provided information on the nature of the whistleblower cases they had knowledge of in the last ten years for 5,579 cases. Of these cases, 2,778 related to tax evasion (50%) and tax avoidance (28 cases; 1%), whilst 2,444 related to fraud and corruption (44%).

The 8 experts/organisations who had direct involvement in or knowledge of whistleblower cases reported that they had come across 562 cases within the last ten years. Of these, 207 related to fraud and corruption (37%). The other main areas identified were threats to public health, market abuse or other violation of financial regulations, mismanagement of public funds; serious violations of human rights in general; anti-competitive practices.

4. Key elements of effective whistleblower protection

OPC respondents indicated that measures to protect against retaliation at work were a key factor for effective whistleblower protection. The other most frequently cited factors were:

- protection of whistleblowers in administrative proceedings;
- protection in case of disclosure to the public where channels for reporting are unavailable or not functioning properly;
- establishment of channels for reporting to oversight institutions.

OPC respondents were further asked to indicate which measures would ensure that whistleblowers are effectively protected from retaliation at work. Confidentiality ranked top of the respondents' protection priorities. The other most commonly selected options were protection against harassment at work and protection against reductions/deductions in wages.

Confidentiality

The importance of safeguarding confidentiality of the identity of the whistleblowers was highlighted by the majority of **experts responding to the stakeholder consultation** and by the MEP assistants interviewed. At the **expert workshop** there was general agreement that reporting channels should guarantee confidentiality to ensure a safe alternative to silence. It might be advisable to provide also for anonymous channels so as to encourage more people to report wrongdoing – in particular among 'vulnerable groups' (women and young people, workers on low salaries).

Protection from harassment and mental distress

There was general agreement at the **expert workshop** that many forms of retaliation that cause workplace stress and mental anguish could be considered as harassment, - even the fear to speak up could be considered as source of workplace stress. Experts considered that it would be possible to link protection against such forms to the EU framework directive that protects the physical and mental health and wellbeing of workers and to explore synergies with existing social partners' initiatives - a framework agreement on harassment and violence and another one on stress – and that guidance to employers on how to assess the related risks and then develop preventive and protective strategies would be welcome.

Member States' experts participating in the workshop of 13 October also discussed the links of whistleblower protection rules with dignity of work and the protection of workers' wellbeing, as illustrated notably in the Swedish, Irish and Norwegian laws.

Raising awareness and enhancing the cultural acceptance of whistleblowing

A further element considered important was raising awareness amongst the general public and in workplaces about whistleblower protection rules and the role of whistleblowers in enhancing a culture of transparency.

Only 15% of all **OPC** respondents had knowledge of existing rules for whistleblower protection in their country of residence or establishment; organisations were much more likely than individuals to know about existing rules (64% vs 13%).

Asked about the most important factors that raise awareness of whistleblower rights and procedures for whistleblower protection, **OPC respondents** most commonly selected the clear definition in law of the threats to public interest covered by whistleblower protection and state-led information and awareness-raising campaigns on the rights of whistleblowers. Organisations volunteered further approaches such as the provision of organisation-level training for management and staff; and the public promotion of cases of whistleblowers that have set precedents in the law by their actions.

The need to create a climate of transparency and integrity in workplaces that sees whistleblowing as part of doing business and the importance of raising awareness through information campaigns to combat negative attitudes was also stressed by **experts responding to the targeted stakeholder consultation and participating in the workshop of 7 June 2017;** the latter element was also highlighted by **Member States' experts** participating in the workshop of 13 October.

5. Key elements for balancing the rights of whistleblowers with other rights and interests involved

The majority of **OPC** respondents indicated that the most important measures for the protection of third parties in the context of whistleblowing are the requirement that the whistleblowers reasonably believe that the information they disclose is true and the protection of the rights of the person or organisation affected by the report.

The main safeguards for protecting the rights of third parties discussed at the **expert workshop** were the requirement of good faith and a tiered use of reporting channels[11]. Experts indicated that good faith can serve as a safeguard against malicious disclosures, however, it should not extend to examine the whistleblower's motives; rather it should suffice that the whistleblower reasonably believed that the information reported was accurate.

At the **expert workshop** there was agreement about the need to encourage workers to initially report internally, so as to enable organisations to remedy the problem and protect their reputation and interests. The view that clear and confidential internal and external channels and a reporting escalation process are necessary and have positive impacts on organisations' reputations and interests was shared by many stakeholders who submitted position papers in the **OPC**. Also, of the organisations taking part in the **stakeholder consultations**, those with internal whistleblower protection rules and procedures frequently acknowledged that these generate positive effects, including on their reputation.

[11] Meaning that whistleblowers first use internal channels, i.e. report to their employer; only if this does not work – or could reasonably not be expected to work – they report to competent authorities, and only as a last resort they turn to the public, for instance to the media.

On the other hand, a few stakeholders (media organisations and NGOs) who submitted position papers in the **OPC** maintained that external reporting channels must be available without having first to use internal channels, so that the whistleblower can have a choice depending on the individual circumstances. The **respondents to the targeted consultation in the area of tax** also expressed mixed views about the requirement of a tiered use of internal and external channels, with a few indicating that in the field of tax reporting to the tax authorities should be the only protected reporting channel.

6. Problems arising from insufficient whistleblower protection within the national context and across national borders

A majority of **OPC** respondents indicated that the main problem arising from insufficient whistleblower protection within the national context is that private sector workers are reluctant to report wrongdoing. The second and third main problems identified by individuals were high levels of tax evasion and negative impacts on working conditions. The second and third main problems identified by organisations were reluctance among public sector workers to report wrongdoing and negative impacts on workers' well-being.

In response to the question about negative impacts resulting from the absence of - or the insufficient - whistleblower protection in some EU countries for other EU countries and the EU as a whole, the top two negative impacts identified by OPC respondents were on:

- the protection of the public interest of the EU as a whole and of those Member States with high levels of whistleblower protection and
- the protection of financial interests of the EU.

Few OPC respondents saw benefits in the uneven level of protection provided to whistleblowers across the EU. In fact, 54% of the responding organisations and 45% of individual respondents believed that there were no single positive impacts from the lack of harmonised whistleblower protection across the EU.

Participants at the expert workshop of 7 June provided concrete examples of how the lack of adequate whistleblower protection in individual Member States can affect other Member States and the EU as a whole, related to the fight against fraud and corruption, the protection of public health and safety and of the environment and maintaining of fair competition.

7. Need and scope of a potential EU initiative

The **OPC** responses showed very strong support for setting legally binding minimum standards on whistleblower protection in EU law in conjunction with national law (96% of individuals and 84% of organisations). Asked specifically in which areas the EU should support Member States to better protect whistleblowers, the top four areas they cited were:

- fight against fraud and corruption (95% of respondents);
- fight against tax evasion and avoidance (93% of respondents);
- protection of environment (93% of respondents); and
- protection of public health and safety (92% of respondents).

In their position papers, many stakeholders (**a mix of NGOs, trade unions, media organisations and public authorities)** call for EU legislation on minimum levels of protection which allows for freedom of implementation at national level and is accompanied by a series of soft law measures. They see such EU legislation as a means of: providing legal certainty, protecting common European interests which transcend borders (e.g. environment, public health); supporting the correct implementation of EU laws and policies (e.g. in the

common market); enhancing transparency and accountability in the EU and protecting freedom of expression.

Amongst **business associations responding to the OPC,** support for EU legally binding minimum standards was not as high as amongst other stakeholders' groups. Out of a total of 40 responses, 20 selected EU legislation as preferred option, 14 solely national law and 5 considered that no legislation is needed. Some business organisations were in favour of EU rules as a prerequisite for fair competition and as a way of avoiding the risk of companies moving to countries with less stringent rules. However, others consider that existing national legislation and voluntary company-level compliance measures are already implementing sufficient and carefully balanced protection mechanisms, hence there is no need for any legislative mechanisms at the EU level.

Whistleblowerprotection.eu, a platform gathering the key stakeholders across Europe such as Eurocadres, Transparency International and EFJ submitted in November 2017 to the Commission a petition with 81,063 signatures calling the Commission to urgently propose an EU-wide legislation on whistleblower protection with a broad scope of groups and areas of activities protected.

Experts participating at the workshop of 7 June considered that non-regulatory measures such as a Commission recommendation would not be suitable or sufficient to address the problems resulting from lack of adequate whistleblower protection, given that they would not be enforceable. They argued that EU harmonisation might reduce costs for companies established in different Member States who currently need to comply with the different rules. Such lower costs together with improved compliance and risk management arising out of whistleblower arrangements would bring a reputational dividend.

Some of the **public authorities that responded to the OPC** and some of the **Member States' experts** which participated at the workshop of **13 October** drew attention to the need for any EU legislation to have an appropriate legal basis in the Treaties and to respect the principle of subsidiarity as well as the need for an evaluation of existing EU rules. At the same time, experts from a large number of Member States which are currently in the process of considering or drafting legislation on whistleblower protection were keen to have the European perspective, with a few expressing a clear preference for EU soft-law measures.

Participants at the experts' workshop of 7 June considered that soft-law measures such as strengthening the role of whistleblowing as means of fighting corruption in the context of the European Semester or a Commission recommendation would not be suitable or sufficient to address the problems resulting from lack of adequate whistleblower protection. **Experts participating in the workshop of 13 October** indicated the EU soft-law measures would be useful, but they affirmed that they do not see the need for a minimum level of harmonisation.

The **OPC** respondents were asked to identify the areas in which the EU should further support the Member States in order to better protect whistleblowers. The top five areas identified were: the fight against fraud and corruption; the fight against tax evasion and avoidance; protection of environment; protection of public health and safety and protection of food safety. Also the **experts participating in the workshop of 13 October** affirmed the importance of whistleblower protection mostly in the financial sector, while some experts indicated also health care, public procurement, tax evasion, increasing citizens' trust in institutions.

For almost all aspects of whistleblower protection, the policy option favoured by OPC respondents was a combination of EU and national legislation. The share of respondents favouring this option was highest regarding the establishment of channels for reporting to law enforcement (61% of organisations and 48% of individual respondents).

The second most favoured policy option overall was the adoption of EU horizontal legal provisions. Among individuals, support for this option was highest (39%) regarding the protection of whistleblowers in case of disclosure to the public. Among the responding organisations, support for this option was highest (35%) regarding procedures that grant whistleblowers an official status with rights of information. The two other policy options proposed in the OPC (both involving sectorial legislation) were systematically less favoured by the respondents across all aspects of whistleblower protection.

On the issue of whether EU action to strengthen whistleblower protection should be horizontal or sector-specific, **the experts at the workshop of 7 June** agreed that, while the situation is improving, the levels of whistleblower protection vary considerably across the EU which makes for a complex patchwork of legislation that can be daunting for workers and companies operating across borders. Thus, if the long-term goal is blanket protection for workers in the public and private sector, pursuing interim options can be beneficial as a first step; sectorial options should however not be considered as equally good alternatives as a horizontal approach. In particular, a sectorial approach would not address current fragmentation. This view was shared by most **MEP assistants** interviewed, who stressed that current EU rules are insufficient and cover only a few sectors.

In response to the question whether whistleblowing in tax matters should be protected by horizontal or tax-specific EU rules, 14 **members of the Platform on Tax Good Governance responding to the related targeted consultation** were in favour of the former (although 4 of them would rather exclusively rely on national rules); only 1 favoured a tax-specific initiative. On the question whether the protection should be limited to tax evasion or also cover acts qualifying as tax avoidance, 6 of the respondents were in favour of the first approach and 8 in favour of the second.

On the question whether EU action to strengthen whistleblower protection would have specific added value for the protection of the financial interests of the Union, 9 public authorities involved in this area and **responding to the targeted consultations** expressed mixed views. Some insisted on the importance of ensuring confidentiality and anonymity to whistleblowers in this field, whilst others considered that national rules and procedures in place are sufficient or could still be adequately improved at national level without the need for EU action. A workshop specifically devoted to the evaluation of this issue took place on **23 November 2017** with Member States' experts and OLAF. Overall, Member States supported the need of protecting whistleblowers in the area of corruption and fraud.

On the question whether a related EU initiative should specifically address this area, **experts at the workshop of 7 June** pointed out that such sectorial protection could lead to different sets of rules for national and EU funds, creating legal complexity and uncertainty for whistleblowers or in specific sectorial areas or addressing only the public sector.

ANNEX 3: WHO IS AFFECTED BY THE INITIATIVE AND HOW?

A. Methodology and baseline

An external study (ICF's Study) [12] has been commissioned to assess quantitative and qualitative impacts and benefits of the implementation of whistleblowing protection in different areas covering EU and national law. . The ICF study details an analysis and provides evidence supporting some of the policy options developed by the Commission in which minimum standards of protection are set across Europe, including the provision of internal reporting channels and establishing measures of protection for whistleblowers against retaliation.

ICF methodology follows a similar structure as the one of a Commission's impact assessment. Information of overall impacts of the policy options, particularly on certain aspects of the internal market is complemented by other information sources[13]. While the options described in the ICF study and the ones in the Impact Assessment do not perfectly overlap[14], in order to evaluate the impacts of the preferred option (Option 4 sub option 1), the relevant data has been extrapolated from the policy option 4 of the ICF's Study (legislative option aimed at enhancing the good functioning of the internal market).

Precise data on the costs and benefits relating to the different policy options is limited or non-existent. Very few Member States or national agencies collect data on the number of cases reported by whistleblowers and their outcome, therefore data pertaining to the benefits of the action of whistleblowers is very limited. As regards the costs, only very few Member states have legislation in place and costs are not available. Accordingly, the figures relating to costs and benefits have been determined using data modelling (see details of the precise methodology in Annex 13). A key assumption is that an initiative with the objective of increasing whistleblowers' protection will in turn have a positive benefit on the enforcement of EU law as well as a proper protection of the financial interests of the Union, leading to percentage of recovery of misused revenues of the EU budget.

This Annex summarises the quantitative and qualitative impacts relating to the preferred option by estimating:

(i) administrative costs for Member States of putting in place the obligations addressed to them under the future Directive (i.e. transposition and enforcement of the legislation);

(ii) implementation costs of employers in the public and private sector) relating to the compliance of the obligations to establish effective internal channels under the future Directive (compliance with the legislation as employers) and;

(iii) quantitative benefits due to recovery of EU and national budget related to fraud and other offences (savings through a reduction of illegal activities/crime) as well as qualitative benefits

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12 See Annex 13 for the report of the study. In Annex 14 methods, assumptions, sources and qualifications to the impact assessment can be found as well as country-by-country figures for the option assessment.

13 See, for example, the report of Milieu on a detailed analysis of the benefits of whistleblowing in the area of public procurement, https://publications.europa.eu/en/publication-detail/-/publication/8d5955bd-9378-11e7-b92d-01aa75ed71a1/language-en, as well as specific information relating to national data provided in the preparatory impact assessments of national legislation on whistle protection in Ireland and Sweden

14 The ICF Study proposes 4 options in similar terms as the Impact assessment: a non-regulatory initiative, an initiative addressing only the financial interest of the Union, an option relating to the proper functioning of the internal market and a final option called horizontal framework. As explained in the ICF report, the last option would cover all types of violations and wrongdoings both at national and EU level but does not consider constraints of subsidiarity.

due to a potential reduction of crime caused by an encouraged deterrence and a more effective investigation and prosecution of crimes.

The quantification of the administrative costs for Member States is calibrated to the current legal situation (*i.e.* baseline scenario) in each Member State. Therefore, the new legal requirements under the policy options would not impose additional costs to those Member States whose national law already mirrors the specific requirements of the policy option. For those Member States are currently preparing new legislation on whistleblower protection, the quantification has been made as regards the *status quo*, without taking into account future developments, since the outcome of the legislative procedures is uncertain and could be minimal[15].

The implementation costs are equivalent to annual costs for the year 2022. This year has been selected to allow for:

- time for legislation to be adopted and then transposed into Member State law; and
- time for reporting channels to be set up, publicised and established.

The costs have been estimated for private employers and public sector employers by multiplying the number of employers affected by the obligation legislation by the cost factors described below (time is costed at the labour cost of the amount of time taken for each activity). The valuation assumes that all employers fully comply with the legal protection defined in the baseline and in the policy option.

The approach taken may result in some underreporting of costs and benefits insofar as self-employed, contractors and SME suppliers that could have access to whistleblower channels of larger firms are excluded from the calculations. The rationale is that these types of categories are difficult to quantify and is assumed that their possibility to report internally first is limited – having, in the majority of cases, to report directly through the external channel i.e. national authorities.

The costs associated to the obligation of establishing an internal reporting system (one-off implementation and annual operational costs) are based on estimates of the duration of time that employers will spend on tasks related to the changes in the legislation and following-up on reports of wrongdoing.

The implementation costs to employers have four main components:

- The cost of interpreting the changes in legislation and implementing these into employment practices where necessary. The model assumes an average of 21 hours of staff time being consumed by this activity per organisation. This level of effort is reduced by 50% if there are few differences between the current legislation (for employers of the given size and sector in the relevant Member State) and the approach proposed in the policy option;
- The cost of researching and implementing new reporting channels where necessary. The model assumes an average level of effort of 14 hours staff time per enterprise for a reporting channel provided using internal resources and, as the alternative, 35 hours for a reporting channel provided by a third part supplier (outsourced reporting channel);
- The cost of outsourcing a new internal reporting channel is assumed to be €500 per entity; and
- The cost of developing new training materials where necessary (assumed to be the monetary equivalent of 35 hours' labour per entity). The cost is assumed to be reduced

[15] The Member States in particular are defined in Annex 6.

by 50% if there are few differences between the legislation applying to the entity in the baseline scenario and the approach proposed in the policy option).

The assessment of time has been converted into monetary values using average labour costs. The labour cost factors used include wages and salaries plus social security costs and other labour costs paid by the employer.

The annual operational costs are determined according the following parameters:

- Providing internal reporting channels for workers to report cases of wrongdoing (estimated to cost one hour of staff time per report of wrongdoing; the number of reports of wrongdoing per worker is assumed to increase as the strength of protection increases);
- Providing outsourced internal reporting channels for workers to report cases of wrongdoing (estimated to cost €1.5 per employee per year, based on consultations with hotline providers and other experts);
- Investigating and managing cases of wrongdoing (estimated to take an average of two days of staff time per report of wrongdoing for both internal and outsourced internal reporting channels); and
- Providing training that ensures that workers are aware of how to report wrongdoing and are confident that they will not be retaliated against for making reports (estimated at half an hour of training per employee per year). The proportion of workers who receive training to ensure they are aware of wrongdoing and reporting channels is assumed to vary by the strength of protection available in a Member State.

B. Who is affected?

The initiative will directly impact on Member States in terms of adapting the justice system to the new legislation as well as public bodies and medium and large businesses in their capacity as employers[16]. Private and public entities acting as employers will be subject to additional compliance obligations and Member States will have to implement new rules and audit practices ensuring the application of these rules by businesses.

1. Private businesses

The employers affected by the preferred option are higher in number as compared to the baseline. The reference to "employer" in this Annex refers to public authorities as well as large and medium-sized companies.

1.1. Large enterprises

Large enterprises, (defined as having more than 250 employees amount to 44,000 in the EU[17] and) cover 1% of all enterprises in the EU[18], would be affected by the initiative. Notwithstanding this type of companies will not experience a burdensome change, since in practice, a large majority of companies in this category already have in place measures (i.e.

[16] This includes any type of organisation, whether for profit or non-profit that will fall under the scope of application of the new initiative.

[17] http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Key_size_class_indicators,_non-financial_business_economy,_EU-28,_2012.png

[18] http://ec.europa.eu/eurostat/statistics-explained/pdfscache/10100.pdf. In 2012, there were around 44 thousand large enterprises active within the EU-28's business economy, generating, by contrast, EUR 2.62 billion of value added, which equated to 42.5 % of the non-financial business economy total (http://ec.europa.eu/eurostat/statistics-explained/index.php/Statistics_on_small_and_medium-sized_enterprises)

reporting channels) to protect whistleblowers, particularly those based on the US market, which are compelled by US legislation/standards to have measures in place.

1.2. Medium-sized enterprises

Medium-sized companies (from 50 to 249 employees) operating in Europe will also be under the obligation to establish internal reporting channels through the Directive established by the preferred option. According to the data of Eurostat, in 2015, the number of medium-sized companies in the EU was around 228,000, creating EUR 1. 3 billion of value added at factor cost. [19] Medium-sized companies are the largest group affected by the initiative and the largest group that currently do not provide for internal channels to report and internal measures of whistleblowing protection such as the obligation to maintain confidentiality (as compared to large companies and public bodies). Notwithstanding, medium-sized enterprises, are often part of a group,[20] would be less affected less by the preferred option, since as explained above, a certain majority of large enterprises have already in place internal reporting channels and training.

1.3. Small and micro enterprises

From the data of Eurostat 23.2 million small and micro companies are registered in the EU (99% of the total companies, out of which approximately 94% are micro companies and 6% small companies)[21] . In 2022, there are estimated to be 33 million employers in the EU with fewer than 50 employees (i.e. overall number of small and micro companies in the EU)[22].

The Directive under the preferred option would exempt micro companies from its scope of application. The reason links to the objective which is to prevent violations of EU law that cause serious harm to the public interest and the well-being of society. It is understood that in a large majority of cases small and micro companies have not a capacity to breach the law in a manner that could cause that risk to society. Only in very specific circumstances, small companies (from 25-49 employees) due to their belonging to a specific risk sector (i.e. financial services or vulnerable to money laundering or terrorist financing) or due to their unusual high annual turnover as compared to their size (i.e. more than 10 million of annual turnover) will also be obliged to set up internal channels. Moreover, outside of the obligations imposed by the preferred option, it is also understood that small and micro business employers that are not directly obligated may be also impacted where a larger businesses requires its suppliers, which may include representatives of small and micro businesses, to take additional training or to participate in meetings relating to whistleblower protection[23].

This rationale follows on one side the existing practices of Member States with a comprehensive law in whistleblowing protection[24] and follows the rationale of the existing EU acquis on whistleblowing in the financial services sector that due to the nature of the

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19 This is most common in manufacturing and to a lesser degree in knowledge-intensive business services, see http://ec.europa.eu/eurostat/statistics-explained/index.php/Statistics_on_small_and_medium-sized_enterprises.

21 2015 Data from Eurostat: Annual enterprise statistics by size class for special aggregates of activities, sbs_sc_sca_r2

22 Eurostat, Structural Business Statistics. See Annex 6 for details.

23 See Annex 13, page 141.

24 See for example the Impact assessment of Sweden -*"(t)he obligation to adopt procedures or other measures should be proportionate. This means that the employer's obligation to adopt measures should be proportionate to the risk of serious maladministration in the business in question*.")

activities performed does not exclude small investment firms from the obligation to set reporting channels or affording protection to reporting persons. For other areas, the risk assessment would be optional and introduced, if necessary, by Member States according to a risk assessment and national needs, to be communicated to the Commission.

The fact that small and micro companies are exempted from including internal channels does not entail that individuals working in those types of businesses would not be protected. Rather, due to the size of the company, it is more adequate for the individual to report externally to competent authorities directly.

2. Member States

Member States are affected both in their activity as public employers and in the capacity of the public authorities as regulators and in relation to public finance. While the costs for Member States as "employers" are detailed below, Member States will also incur in administrative costs related to the design and transposition of the new legislation. The expected increase of costs as regards the expenditure on implementing the legal requirements by the preferred option is estimated to EUR 34 million, (around EUR 15 million higher than in the baseline scenario).

The quantification of the administrative costs for Member States is calibrated to the current legal situation (i.e. baseline scenario) in each Member State. Therefore, the new legal requirements under the policy options would not impose additional costs to those Member States whose national law already mirrors the specific requirements of the policy option. For those Member States are currently preparing new legislation on whistleblower protection, the quantification has been made as regards the status quo, without taking into account future developments, since the outcome of the legislative procedures is uncertain and could be minimal.

3. Individuals on a work-based context

All individuals on a work-based context who decide to blow the whistle would be protected from retaliation[25]. According to the CBES, improving whistleblower protection would entail a direct prevention of retaliation of 7% of the workforce employed in the sectors covered by the survey[26].

B. How they are affected?

1. Benefits

Protecting whistleblowers promotes a culture of accountability and integrity in both public and private institutions, and encourages the reporting of misconduct, fraud and corruption. Whistleblower protection contributes to an environment of trust and tolerance and enhances the capacity for countries to respond to wrongdoing and matters of public concern[27].

Regarding businesses, the benefits of having a protection of whistleblowers relate to both the affected categories of enterprises in general; nonetheless, it is possible to identify specific benefits related to the different size of the businesses. In *large* enterprises there will be the alignment of EU whistleblower protection to the U.S. standards aimed at avoiding damages related to the compensation of unfair dismissal and wrong termination of employment due to

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25 Detailed figures in the overview tables of the Annex 14, ICF Study, vol. II Annex 7 "Option assessment".

26 http://www.world-psi.org/sites/default/files/documents/research/en_whistleblower_protection.pdf

27 OECD (2016), Committing to Effective Whistleblower Protection, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264252639-en

disclosure. *Medium-sized* enterprises will be positively affected by increasing their competitiveness and the related attractiveness for investors; their reputation will be enforced and ensure the workers a better working environment.

An overall quantification of the amount of the benefits is not possible; nonetheless, sectorial benefits could be estimated.

If adopted, this initiative allows avoiding losses in several sectors. Consider that the volume of the tax base shifted by companies in eight Member States assessed in the 2017 European Parliament study on the impacts of the "Panama Papers", in 2015 was estimated at EUR 88 billion. According to this study, the schemes revealed by the leak of the Panama Papers, which were used by individuals, resulted in a revenue loss for the entire EU of EUR 109-237 billion, with lost taxes of at least EUR 173 billion (mid-point of range). Additional economic impacts identified include losses to the public and private sectors of all Member States, arising from the schemes removing money from national economies without any return. Further effects include unfair competition, as companies using tax havens are able to retain higher levels of profit than those companies which do not use these types of schemes.

Moreover, although benefits cannot be quantified, evidence shows[28] that whistleblowers would enable preventing negligence and malpractice with severe impacts on environmental protection, product, food and transport safety, consumer protection and public health.

- *Assessment of the benefits in the area of public procurement*

A specific evaluation of the benefits of whistleblower protection has been developed with regards to public procurement. According to the Milieu's study provided for DG GROW on the economic benefits of whistleblower protection in public procurement,[29] direct and indirect benefits could be identified. Direct benefits include the reduction of corruption and the increase of transparency, while indirect benefits concern the protection of democratic principles such as free speech, as well as the decrease of corrupt practices and increase in overall transparency in the area of public procurement.

In order to calculate the potential amount of benefits and to circumnavigate the lack of available data from Member States, the study has used two different approaches: the first approach estimated the amount of corrupted funds in public procurement that can potentially be identified thanks to whistleblower disclosures; a second approach estimated the amount of misused public funds that could be potentially recovered from the corrupted funds previously identified.

Using the first approach, the overall potential benefits for the EU-28 are in the range of EUR 32.3 to 53.8 billion each year[30]. Using the more conservative second measure, the potential benefits were estimated to be EUR 5.8 to 9.6 billion each year. These estimates relate to the public procurement sector alone, and do not take into account public benefits that would accrue from whistleblower.

2. Costs

2.1. Costs to the obligated organisations (private and public sector)

a) *The one-off implementation costs*

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28 See quantification of qualitative benefits/impacts in Annex 13, ICF Study, Section

29 Study of Milieu (2017) on a detailed analysis of the benefits of whistleblowing in the area of public procurement, https://publications.europa.eu/en/publication-detail/-/publication/8d5955bd-9378-11e7-b92d-01aa75ed71a1/language-en

30 See report of Milieu, footnote 4. Benefits are calculated in different scenarios depending on the percentage/ amount of recovery estimated

The one-off costs related to implementation of new legislation are divided as follows:

- The cost to employers to interpret the new legislation and develop workplace policies which align with the legislation;
- The cost to employers to set-up internal reporting channels to comply with the new or amended legislation; and
- The cost to develop or amend training materials to ensure staff is aware of reporting channels and what constitutes wrongdoing.

The assessment of the amount of the costs that enterprises would face must take into consideration the starting level of the protection provided in the different Member States. This means that the lower is the level of protection in the Member States, the higher will be the costs to provide a system of protection which matches the requirements set forth in the initiative.

For this reason, Member States with a high level of protection (such as Sweden and Ireland), will face a smaller amount of implementation costs than Member States where the level of the existing protection is very low (such as Bulgaria, Cyprus, Latvia and Spain).

The data provided in the following relates to the implementation costs for all EU Member States including those which have a lower level of existing protection of whistleblowers and those with protective measures already in place. Data are based on the research of the ICF's *Study on the need for horizontal or further sectorial action at EU level to strengthen the protection of whistleblowers*[31].

Table 3.1. Overview of implementation costs

Overview of one-off implementation costs*	
Implementation of new policy	EUR 213 million
Implementation of internal reporting channel	EUR 78 million
Implementation of third party reporting channel (internal time costs)	EUR 66 million
Implementation of third party reporting channel (fee)	EUR 36 million
Development of training materials	EUR 355 million
Total implementation costs for reporting channels	EUR 180 million
Total	**EUR 748 million**

*Source: ICF analysis. In the table the components do not always sum exactly to the total because of rounding errors on the component totals.**Implementation costs are assumed to be incurred by employers both public and private in the first year of the change in legislation.

Table 3.2. Implementation costs by type/size of employer

One-off Implementation costs by type/size of employer	
Public sector	EUR 204.9 million
Large (private*) employer	EUR 104.1 million
Medium (private*) employer	EUR 438.8 million
Total	EUR 747.8 million

*Source: ICF analysis. Note: *'private' includes non-profit sector organisations.*

The results underline that the implementation (one-off) costs will mostly fall to medium enterprises with between 50 and 250 employees. This is because, in practice, a large majority of large-sized companies already have in place measures (i.e. reporting channels) to protect

[31] Annex 13, ICF's Study, (2017).

whistleblowers, particularly those based on the US market, which are compelled by US legislation/standards to have measures in place. Nonetheless, for medium sized companies the costs of providing reporting channels and training are not disproportionate and the change in regulatory burden per business is not a large proportion of average turnover. The average one off costs for the implementation of the initiative are estimated in 0,01% or less of the average annual turnover of a medium-sized business for all Member States.

b) The annual operational costs:

The **additional annual operational** costs are the costs of:

- Providing reporting internal reporting channels for workers to report cases of wrongdoing;
- Providing outsourced internal reporting channels for workers to report cases of wrongdoing;
- Investigating and managing cases of wrongdoing;
- Providing training that ensures that workers are aware of how to report wrongdoing and are confident that they will not be retaliated against for making reports.

Table 3.3. Overview of annual operational costs 2022

Overview of annual operational costs 2022	
Providing internal reporting channel	EUR 340 million
Providing third party reporting channel (internal)	EUR 227 million
Providing third party reporting channel (fee)	EUR 47 million
Total (reporting channels)	EUR 614 million
Delivery of annual training (cost of employee time)	EUR 722 million
Total	EUR 1336 million

Source: ICF analysis.

The results as to the operational costs show that the costs paid by the employers are expected to increase due to the fact that the number of employers providing reporting channels is expected to increase and the majority of the additional costs will be incurred by private enterprises.

Specifically:

- The cost for providing training in 2022 increases by EUR 722 million;
- The cost for providing a reporting channel is estimated to be EUR 614 million in 2022.

With regard to the operational costs, an analysis has been provided regarding the costs of the enterprises depending on their type and size. The results are as follows:

Table 3.4. Additional annual operational costs by type/size of employer, 2022

Additional annual operational costs by type/size of employer, 2022	
Public sector	EUR 319.9 million
Large (private*) employer	EUR 668.7 million
Medium (private*) employer	EUR 348 million

Source: ICF analysis.

According to the data, the majority of the additional costs will be incurred by private enterprises.

2.2. Costs to Member States to transpose legislation

The cost of this impact has been assessed quantitatively. Information was collected for the cost to regulatory bodies for Member States with different levels of whistleblower protection. For strong protection, a tiered approach is needed, and a regulatory body can provide an additional reporting channel and investigatory function. This would be used when a whistleblower does not feel that their concerns have been adequately dealt with by their employer. Advisory services may be provided by the regulatory or by a third party that receives some public support.

Data were obtained on annual costs to provide all the functions needed to collect and investigate cases of wrongdoing. A cost per person protected by whistleblower legislation in the Member States has been calculated where information is available. This cost factor was used for Member States where equivalent information was not available (The cost per person protected has been adjusted to the costs in each Member States by using the labour costs in each Member State.). This was then multiplied by the number of workers protected in each Member State to estimate the overall cost.

The economic impact on Member States in their capacity as regulators and in relation to public finance will regard the cost of the increased expenditure for the:

- Introduction of new legislation;

These costs relate to the necessity that the Member States ensure that employers are aware of the new legislations and how it may influence their organization. This would most likely be done through producing guidance documents available for the employers, but the initiative does not specifically requests this. The cost to Member States to produce guidance documents is estimated to be small by comparison with other impacts, and therefore has not been assessed quantitatively[32].

- Enhance of regulatory and advisory bodies which receive and investigate cases of wrongdoing and to support services they provide;

There is a cost to Member State public authorities:

- to provide or enhance regulatory bodies which receive and investigate cases of wrongdoing;
- to support services that provide impartial advice to potential whistleblowers.

In most Member States it will not be necessary to set up a new regulatory body to monitor whistleblower support and protection by obligated entities, and (where needed) to investigate cases of wrongdoing referred under the tier system of reporting. This is because there is an existing body dealing with the issue in most Member States. Instead, the institution's function will need to be expanded as the level of whistleblowing protection improves and where the scope of protected disclosures covered by legislation is expanded.

The costs to enhancing all the functions needed to collect and investigate cases of wrongdoing have been estimated in EUR 19 million in 2022[33].

- Investigative and judicial activity.

Some impact on expenditure (i.e. greater costs) is to be expected[34]. The extension of reporting channels and provision of additional protection to whistleblowers means that the number of reports of wrongdoing is expected to increase and this means that government expenditure on police services, law courts and prisons could also be affected by the introduction of the policy options. Impacts seem likely to vary according the legal processes applying in each Member

[32] See Annex 13, ICF's Study, Section 6.4.3.1., p. 122.
[33] See Annex 13, ICF's Study, Section 6.4.3.2., p. 122.
[34] See Annex 13, ICF's Study, Section 6.4.3.3., p. 124.

State, the financing mechanism and operational flexibility, but the initiative is not expected to make a measureable difference to overall expenditure on the overall justice system.

Public authorities are also likely to be experience changes in expenditure on compensations payments due to whistleblowers that experience retaliation. These would be expected to decline over time in response to changes in workplace behaviours[35].

[35] See Annex 13, ICF's Study, Section 6.4.3.3., p. 123.

Table 3.5. Overview of Benefits (total for all provisions) – Preferred Option

I. Overview of Benefits (total for all provisions) – Preferred Option		
Description	***Amount***	***Comments***
Direct benefits		
Increasing number of reports of wrongdoings	+ 87,700	Reports of wrongdoing, annual outcomes for 2022, see Annex 14, Table A7.29.
Decreasing number of measures of retaliation	- 46,600	Cases of retaliation, 2022, See annex 14, table A7.30
Recovery of funds	EUR 1.75 billion over 10 years	Putting in place a robust whistleblower regime prevents one in a thousand incidents of VAT fraud (see annex XIII, sect. 6.4.3.5, p. 126)
Sectorial benefits in the field of public procurement	Range of EUR 32.3 to 53.8 billion each year	Amount of corrupted funds in public procurement that can potentially be identified thanks to whistleblower disclosures (for details see Milieu (2017) Section. 3.1, p. 38)
	Range of EUR 5.8 to 9.6 billion each year	Amount of misused public funds that could be potentially recovered from the corrupted funds previously identified (for details see Milieu (2017) Section 3.1., p. 38).
Indirect benefits		
Encouragement of the reporting of misconduct, fraud and corruption	N/A	The dedicated study found impacts being moderate positive.(see Annex 12 Sections 6.4.5 AND 6.5.)
Creation of an environment of trust and tolerance and enhances	N/A	
Enhancement the capacity for countries to respond to wrongdoing and matters of public concern	N/A	
Sectorial benefits in the field of public procurement		Reduction of corruption and increase of transparency, protection of democratic principles such as free speech, as well as the decrease of corrupt practices and increase in overall transparency in the area of public procurement, see Milieu (2017)

Table 3.6. Overview of costs – Preferred option

II. Overview of costs – Preferred option*							
				Businesses**		Administrations***	
				One-off	Recurrent***	One-off	Recurrent
Implementation of new policy	Direct costs			213		204.9****	319.9****
Implementation of internal reporting channel	Direct costs			78	340		
Implementation of third party reporting channel(internal time costs)	Direct costs			66	227		
Implementation of third party reporting channel (fee)	Direct costs			36	47		
Development of training materials	Direct costs			355			
Delivery of annual training (cost of employee time)	Direct costs				722		

Source: ICF analysis. Note: costs are expressed in 2017 €million. Costs are assumed to occur in 2022.
* Costs reported are for obligated employers. There are no costs on citizens expected.
** Costs reported are for obligated employers. Detailed information is given in tables 3.2, 3.3 and 3.4. and annex XIV (breakdown per MS).
*** Costs reported are for obligated employers. These operational costs will be incurred each year in providing and supporting reporting channels and investigating reports. It is not possible to further split down the estimates obtained. The costs to Member States in their capacity of regulators are indicated in Section 2.2.

Annex 4: Analytical models used in preparing the impact assessment

The IA analysis relied on the ICF's on the need for horizontal or further sectorial action at EU level to strengthen the protection of whistleblowers[36]. Moreover, key inputs were provided by the Milieu's study on "Estimating the Economic Benefits of Whistleblower Protection in Public Procurement"[37]. For this reason, the model used for preparing this Impact Assessment reflects the methodology followed in these studies and described below.

A. ICF's Study on the need for horizontal or further sectorial action at EU level to strengthen the protection of whistleblowers

The external study describes in its section on methodology how each type of impact in the intervention logic is assessed. The scale of the impacts in each policy option varies depending on:

- The strength of the intervention (reporting channels, protection for workers);
- The coverage of the intervention (types of wrongdoing covered, public/private sector coverage); and
- The number of employers / workers affected by the change in legislation.

Desk research provided evidence to support the formation of assumptions for the quantitative modelling of impact. It involved interrogating academic and grey literature to fill data gaps remaining from the earlier phases of work that helped in the construction of assumptions and analysis.

Qualitative interviews and desk research were undertaken to collect information on the size and scale of the impacts, which will support the formation of assumptions. Consultations were conducted with:

- Experts in the subject area, including academics in Europe and North America and experts who participated in the project's expert workshop.
- Individuals/organisations able to provide insights from countries that have recently adopted whistleblower-relevant legislation that will help the analysis, e.g. on the implementation process.
- Organisations who provide whistleblowing services (independent reporting channels to other employers).

These consultations provided information on topics such as:

- Evidence for and research on the impact of whistleblower channels and proportion on rates of wrongdoing;
- The current proportion of employers who provide whistleblower support that exceeds current Member State legislation, e.g. hotlines
- What an appropriate reporting channel is for different types of employer
- The costs of different types of reporting channels.

The scale of economic, social and environmental benefits which may be achieved in each policy option.

The research explored the use of hotlines by firms that were not under a legal requirement to use them.

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36 See Annex 14 for details on the methodology of the ICF (2017).

37 Milieu (2017), see footnote 4.

The theory of change for legislation that promotes whistleblowing by provision of channels and protection for whistleblowers suggested that such legislation will increase the risk (expected cost) of wrongdoing by making it more likely that the activity is reported and the reports acted upon. It should also help to reduce the harm caused to whistleblowers through retaliation.

A review of the academic literature suggests that comparatively little research has been conducted on the economic impacts of whistleblowing legislation. Recent review articles suggest that economic models of the problem have yet to be constructed. Robust evaluations of whistleblower laws are also lacking.

Research suggests that the impact of new, robust whistleblower legislation on expected scale of specific types of wrongdoing in a specific country is underdetermined, and certainly there is not yet a general theory that might be applied to a legislative, economic and social context as diverse as the EU28. This creates challenges in quantification of some of the principal expected benefits of the EU action. The academic literature does not assist the development of estimates of how much fraud, corruption, environmental crime, etc. might be avoided by whistleblower support measures.

The approach taken was therefore:

- To rely on a narrative approach that references the estimated scale of the overall problems (as set out in the problem definition) in the EU, the options' theories of change, and specific examples of where whistleblower channels are believed to have had an effect.
- To add to this narrative approach some inductive reasoning whereby the fraction of specific elements of fraud etc. (based on figures in the problem definition) that would need to be avoided in order for benefits to exceed costs.

There are some issues with the latter approach in that benefits and costs do not necessarily accrue to the same groups in society. The benefits of avoiding a specific fraud, for example, in a given company accrue to its owners rather than society at large, though it has been shown that corruption has a negative impact on productivity in the economy at large.

The options that require internal reporting channels impose costs on all firms falling within the scope. Hotlines may go unused either because workers do not have cause to (because there is no wrongdoing of the type considered by the legislation), or because the hotline is not trusted. There is some evidence that large share of ethics hotlines are never used, principally because of a lack of trust. Firm level guidance, and societal change, can contribute to tackle the lack of trust.

Annex 1 to the ICF's study[38] provides details of the **approach taken to each impact category**. The categories taken into consideration are related to the affected stakeholders (businesses and workers affected by legislation change) and to the economic, social and environmental impact.

Specific **assumptions, sources and qualifications to the impact assessment** are provided in Annex 6 to the ICF's study[39] organised in: workers protected and businesses covered, cost of activities, outcomes and impacts.

Further details are available in the abovementioned annexes.

B. Milieu's study on "Estimating the Economic Benefits of Whistleblower Protection in Public Procurement"

[38] See Annex 14, on the supporting annexes to the ICF study related to information and methodology.

[39] *Ibid.*

The Milieu's study was designed to investigate the economic case for whistleblower protection in the EU by drawing on quantifiable evidence from countries in which some degree of protection was already in place.

Specifically, a **cost-benefit analysis** approach was taken in which the costs of the whistleblower protection system and the handling of cases with a whistleblower disclosure were assessed against the benefits in terms of reducing corruption and misused public funds.

Two approaches were considered to implement the **cost-benefit analysis**: the first was a detailed review and extrapolation of a sample of actual cases of whistleblower disclosures in the area of public procurement; the second examined the costs and potential benefits of whistleblower protection systems.

The **benefits** were identified in terms of reducing corruption, increasing transparency, protecting democratic principles such as free speech and recovery of misused public funds. To this last extent, a reasonable proxy for the benefits of whistleblower protection in the area of public procurement has been identified in the amount of public funds recovered thanks to whistleblower disclosures.

As this information was not available from the Member States, the Study constructed two measures through an economic analysis of existing data and statistics. The first measure was the estimated amount of corrupted funds in public procurement that could potentially be identified thanks to whistleblower disclosures. However, corruption and unlawful actions may not necessarily result in the loss of public funds. Thus, the second measure was the estimated amount of public funds that could potentially be recovered from the corrupted funds identified previously.

Moreover, the protection of whistleblower could have **indirect benefits** in terms of deterring corrupt practices and increasing overall transparency in the area of public procurement.

As to the **costs**, information about the costs of a whistleblower protection system was gathered from seven EU Member States: France, Ireland, Italy, the Netherlands, Romania, the Slovak Republic, and the United Kingdom.

In those Member States, five main categories of costs were defined as follows: **development of legislation**, **internal channels, external channels,** j**udicial costs** and **free legal advice**.

Four of the five cost categories may include systemic and incremental costs. The drafting of the legislation would include only systemic costs.

The framework focused on financial costs incurred by public institutions in each Member State considered, given that the study seeks to build an economic case for whistleblower protection from the public finance standpoint. Costs that private companies and whistleblowers may encounter themselves have been excluded.

Finally, the main **challenges and limitations** related to the analysis have been identified as follows: the study estimates potential benefits, not the actual benefits gained; a causal relationship cannot be directly demonstrated between estimated costs and potential benefits; significant variation in the setup and implementation of whistleblower protection in the Member States; data and information regarding the costs varied significantly across the Member States in terms of the type of costs available as well the level of detail; one-off and recurrent costs were not distinguished in relation to the systemic costs.

Further details are available under paragraph 2 of the Milieu's Study on Methodology[40].

[40] See Milieu (2017), footnote 4, p.28.

Annex 5: Existing EU rules on whistleblower protection

DG JUSTICE carried out a mapping exercise to identify rules and tools on whistleblower protection that already exist in different sectors of EU law. This Annex presents an overview of these instruments, their rationale and main elements of their content, and takes stock of the overall state of protection of whistleblowers at EU level. Despite the lack of evaluative evidence on the existing rules, it is possible to draw certain conclusions from a backward-looking analysis of the EU rules, which serve as "lessons learnt" in the context of the present impact assessment, as regards in particular the definition of the scope and the content of the policy options assessed and of the preferred policy option.

A. Overview of existing EU rules and tools on whistleblower protection[41]

The list below sets out existing EU sectorial instruments and tools which contain elements of whistleblower protection:

Financial services

- Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse;
- Commission Implementing Directive (EU) 2015/2392 of 17 December 2015 on Regulation (EU) No 596/2014 as regards reporting to competent authorities of actual or potential infringements of that Regulation;
- Regulation (EU) 2017/1129 of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market;
- Directive 2014/65/EU of 15 May 2014 on markets in financial instruments and Regulation (EU) No 600/2014 of 15 May 2014 on markets in financial instruments;
- Directive 2013/36/EU of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms;
- Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions;
- Directive 2009/65/EC of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS);
- Directive 2014/56/EU of 16 April 2014 and Regulation (EU) No 537/2014 of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities;
- Regulation (EU) 2015/2365 of 25 November 2015 on transparency of securities financing transactions and of reuse;
- Regulation (EU) No 909/2014 of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories;
- Directive (EU) 2016/97 of 20 January 2016 on insurance distribution (recast) Directive (EU) 2016/2341 of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs);
- Regulation (EU) No 1286/2014 of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs)
- Directive (EU) 2015/849 of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing;

[41] The list has been compiled from information provided by various Commission services in meetings dedicated to this mapping exercise, in meetings of the Interservice coordination group on the implementation of the EU Charter of Fundamental Rights and of the Interservice group on whistleblower protection. It also contains proposals for legislative instruments which have not yet been adopted.

- Proposal for a Directive amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directive 2009/101/EC;
- Regulation (EU) 2015/847 of 20 May 2015 on information accompanying transfers of funds;
- Directive (EU) 2015/2366 on payment services in the internal market,;
- Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority) .

Competition

- Proposal for a Directive of the European Parliament and of the Council to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market;
- Anonymous Whistleblower Tool in the field of competition law[42].

Trade secrets

- Directive (EU) 2016/943 of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure;

Transport safety

- Regulation (EU) No 376/2014 of 3 April 2014 on the reporting, analysis and follow-up of occurrences in civil aviation;
- Directive 2013/54/EU of 20 November 2013 concerning certain flag State responsibilities for compliance with and enforcement of the Maritime Labour Convention;
- Directive 2009/16/EC of 23 April 2009 on port State control.

Environmental protection

- Directive 2013/30/EU of 12 June 2013 on safety of offshore oil and gas operations;
- Council Directive 2014/87/EURATOM of 8 July 2014 amending Directive 2009/71/Euratom establishing a Community framework for the nuclear safety of nuclear installations (Nuclear Safety Directive)

Protection of the financial interests of the Union

- Regulation (EU Euratom) No 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999
- Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO')

Rules applicable to EU institutions

- Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004 amending the Staff Regulations of officials of the European Communities and the Conditions of

[42] http://www.jonesday.com/European-Commission-Launches-Competition-Law-Anonymous-Whistleblower-Tool-04-25-2017/?RSS=true

Employment of other servants of the European Communities; 2012 Commission Whistleblowing Guidelines

- Regulation 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data;

Data protection

- Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA ("Police Directive");
- Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);

Equal treatment

- Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast);
- Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services;
- Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation;
- Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

B. Rationale and content of the existing EU instruments

In almost all existing legislative instruments, reporting channels and protection for whistleblowers are provided for as a means of strengthening the enforcement of EU law[43].

The only instrument where the rationale for introducing whistleblower protection rules was different is Directive 2016/943, the "Trade Secrets Directive": in this case, whistleblowers do not enjoy protection as a means to attain the objective of the Directive (which is the protection of trade secrets); rather, they are granted protection by means of a derogation with a view to safeguarding freedom of expression. In particular, this Directive exempts from civil proceedings the person who acquired, used or disclosed a trade secret for revealing misconduct, wrongdoing or illegal activity, provided that this person acted for the purpose of protecting the general public interest. As explicitly indicated in this Directive, the aim is to ensure "*that the exercise of the right to freedom of expression and information which encompasses media freedom and pluralism, as reflected in Article 11 of the Charter of Fundamental Rights of the European Union ('the Charter'), not be restricted, in particular with regard to investigative journalism and the protection of journalistic sources*".

To the extent that the whistleblower protection rules inserted in the EU instruments are intended to improve enforcement, they essentially require Member States:

i. to establish channels for reporting violations of the relevant rules;

and, in some cases, also

ii. to take measures for the protection of whistleblowers from retaliation.

The elements of whistleblower protection provided for vary from one instrument to the other. Overall, the instruments that contain the most developed frameworks for whistleblower protection are the Market Abuse Directive and the Staff Regulations.

i. In particular, as regards the obligation to establish reporting channels, some instruments in the financial services sector, such as the Anti-money laundering Directive, the Audit Directive and the rule son Market Abuse (Regulation and Directive), provide both for internal and external channels[44]. In most other instruments, however, Member States are only required to establish reporting channels to competent authorities, guaranteeing in particular confidentiality of the identity of the reporting persons. A few instruments (such as the Nuclear Safety Directive and the Directive on port State control) simply provide for some forms of complaint systems that can be assimilated to very basic whistleblowing reporting mechanisms.

ii. As regards protection provided to the reporting persons, again, mainly instruments in the financial sector (Anti-money laundering Directive, Market Abuse Directive, MIFID2, Capital requirements Directive, Insurance Distribution Directive etc.) provide for protection against employment-related retaliation. Generally it is referred to as encompassing threats or hostile action, adverse or discriminatory employment actions and other types of unfair treatment.

The Market Abuse Directive is the only instrument containing more detailed provisions on the content of protection, indicating that such protection shall ensure at least that reporting

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43 The EPPO Regulation acknowledges the importance of whistleblower protection to facilitate the detection of offences falling within its competence, but does not contain relevant provisions. Rather, it encourages Member States to provide, in accordance with their national law, effective reporting procedures competence and to ensure protection of the reporting persons who report such offences from retaliation and in particular from adverse or discriminatory employment actions.

44 The Market Abuse Directive is the instrument regulating in most detail the procedures applicable to external reporting.

persons have access to comprehensive information and advice on the remedies and procedures available under national law and to effective assistance from competent authorities before any relevant authority involved in their protection against unfair treatment.

The Directives on equal treatment can also be considered as containing an element of whistleblower protection, to the extent that they protect against "victimisation" not only those who lodge complaints about discrimination in their own case but also other persons against adverse treatment or consequences measures "*as a reaction to […] any legal proceedings aimed at enforcing compliance with the principle of equal treatment*".

C. Lessons learnt from a backward-looking analysis of existing EU rules

Evaluative evidence on the rules on whistleblower protection already introduced in some EU instruments is not available, mainly because the relevant instruments are very recent. Most are yet to be evaluated[45]. In a few cases where evaluations were already carried out[46], they did not produce any specific evidence on the application of the rules on whistleblower protection.[47] However, based on an overall analysis of the existing rules and also drawing on elements and evidence from the impact assessments of these instruments, it is possible to draw certain preliminary indications about the relevance, effectiveness, efficiency, EU added value and coherence of these rules, as well as certain "lessons learnt" of relevance for the present impact assessment.

a) Added value of whistleblower protection as a means of strengthening the enforcement of EU law

In a number of EU acts and policy areas, the legislator has clearly acknowledged the added value of whistleblower protection as a key tool to encourage reporting and enhance upstream the collection of information that enforcement bodies need to detect violations of EU law.

As illustrated by the "ex-post" EU intervention in the financial services sector, similarly as at national level, the introduction of whistleblower protection follows incidents of harm to the public interest which could have been prevented if persons who had insider information had felt safe to report them.

As indicated in the Communication of 8.12.2010 "Reinforcing sanctioning regimes in the financial services sector"[48], against the background of the financial crisis, which showed that financial market rules are not always respected and applied as they should be, the Commission considered ways to reinforce sanctioning regimes to ensure the effective application of EU rules on the Internal Market. Noting the lack of convergence between Member States with regard to encouragement of persons who are aware of potential violations to report those violations within a financial institution or to the competent authorities ("whistleblowing"), the Commission considered it useful to explore, amongst others, whether "common provisions could be introduced on mechanisms that Member States should put in place to better detect violations of EU law, particularly those aiming at protecting persons (e.g. employees of financial institutions) who denounce potential violations committed by

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45 For instance, the transposition deadline of the 4th AML Directive expired in June 2017 whilst the deadline for the transposition of the Trade Secrets Directive only expires in June 2018.

46 For instance, the evaluation reports on the EU acquis on equal treatment did not yield any evidence on the implementation of the victimisation provisions.

47 A provision added in the Staff Regulations, which entered into force in 2014, required all EU institutions to adopt internal rules on whistleblowing. The European Ombudsman conducted in 2014 an own-initiative enquiry on the rules adopted and issued guidelines for further improvement, noting that a commendable progress has been made by the Commission and the Court of Auditors. https://www.ombudsman.europa.eu/en/press/release.faces/en/59135/html.bookmark

48 COM(2010) 716 final http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52010DC0716&from=en

other persons ("whistleblowing"). It indicated that, by allowing competent authorities to uncover violations that would have probably remained undetected, or to gather additional evidence about a violation, such mechanisms could contribute to more effective application of EU law, to the benefit of all players in financial markets.

Taking into account the input received through the public consultation launched on this basis on the most appropriate policy actions to be taken, the Commission decided to implement the sanction policy set out in the Communication, including by inserting provisions on whistleblowing in new legislative proposals in the financial sector.

By way of illustration, as regards the Regulation No 596/2014 on Market Abuse, part of the problem as defined in the IA[49] was that whistleblowing provisions differ significantly within Europe and there are key areas where current provisions are considered insufficient: on the protection available to whistleblowers, the lack of appropriate processes in place by competent authorities for reporting and the lack of incentives for persons to "blow the whistle". The effectiveness of the preferred option providing for whistleblower protection was assessed qualitatively as: increasing protection available to individuals reporting market abuse; providing regulators with primary information and assistance in market abuse cases; increasing the accessibility of regulators; enhancing the information available to regulators; acting as a deterrent against potential market abuse; ensuring legal clarity for the protection of whistle blowers.

The reasoning was similar for the introduction of whistleblower protection in the area of transport safety.

According to the Impact assessment[50] for Regulation 376/2014, on the reporting, analysis and follow-up of occurrences in civil aviation, setting up a mandatory reporting system to facilitate the collection of details of occurrences and protection of persons making such reports are expected to contribute to the reduction of the number of aircraft accidents, and of related fatalities, through the improvement of existing systems, both at national and European level, using civil aviation occurrences for correcting safety deficiencies and prevent them from reoccurring and from leading to an accident. This is based on the reasoning that civil aviation accidents are often preceded by a number of precursors which were not investigated or not addressed in an appropriate manner. The lack of optimal collection of occurrences can be explained by several causes, one of which is that individuals are afraid to report. No quantification of the extent of whistleblowing in the civil aviation sector is provided, with the assessment of its added value being based on case studies of major civil aviation incidents.

In the same vein, the Staff Regulations of officials and Conditions of Employment of other servants of the European Union include, since 2004, rules on whistleblowing, setting out procedures for reporting any fraud, corruption or serious irregularity, and providing protection to whistleblowers from adverse consequences of this reporting.

Based on the same reasoning on the added value of whistleblowing in terms of enhancing the detection rate of wrongdoings, Regulation 883/2013 on investigations by OLAF provides that OLAF may receive information provided by any third party about suspicions of irregularities affecting the Union's financial interests. Where the whistleblowers are EU staff, they enjoy the protection offered by the Staff Regulations. As regards other whistleblowers OLAF protects the confidentiality of their identity while for the rest they can only benefit from protection in accordance with any legislation existing at national level.

b) The scope of whistleblower protection provided at EU level is very limited

[49] http://ec.europa.eu/smart-regulation/impact/ia_carried_out/cia_2011_en.htm#markt
[50] http://eur-lex.europa.eu/legal-content/EN/TXT/DOC/?uri=CELEX:52012SC0441&from=EN

It becomes clear from the overview of the relevant instruments that the protection offered at EU level is very limited in scope, aimed at ensuring enforcement of specific EU acts and areas. Indeed, it covers only specific sectors or instruments with no sector being completely covered. Moreover, crucial areas are left without any provision on whistleblower protection.

A telling example is the area of transport safety: where the existing instruments provide for certain elements of protection of whistleblowers in air and maritime transport safety, whilst there are no relevant rules on rail and road safety.

The piecemeal, sectorial approach leading to fragmented protection of whistleblowers creates legal uncertainty. This has a dissuasive effect on whistleblowing, as potential whistleblowers cannot be confident that they will enjoy the protection of the law. This fragmentation has thus a negative impact on the effectiveness of the existing EU level whistleblower protection.

c) The content and level of protection at EU level is uneven and in most cases limited

As indicated above, the content of the whistleblower protection provided at EU level varies from one instrument to the other and is often very limited.

In particular, some instruments provide only for reporting channels without providing for protection against retaliation whilst most provide only for external reporting channels. Even in those instruments which provide for protection, the protection referred to consists in protection against employment-retaliation and does not extend to other forms of adverse treatment, such as for instance criminal, civil or administrative proceedings launched against the whistleblower for instance for defamation etc.

In addition, the personal scope and content of protection is mainly left at the discretion of Member States: for instance, none of the EU rules provide for essential measures of protection such as the reversal of the burden of proof in employment disputes or regulate the categories of persons who would be entitled to receive protection.

The uneven and limited protection provided by the EU rules substantiates the need to improve the coherence of the existing rules, aligning them on the basis of common minimum standards of harmonisation.

d) Need for awareness-raising for the rules to be effective

The Staff Regulations of officials and Conditions of Employment of other servants of the European Union include, since 2004, rules on whistleblowing, setting out procedures for reporting any fraud, corruption or serious irregularity, and providing protection to whistleblowers from adverse consequences of this reporting. These rules were complemented in 2012 by Guidelines, which were reviewed by the Commission at the end of 2015. At the end of 2015, pursuant to the Guidelines' review clause, the Commission conducted a review of their effectiveness. The review, finalised in 2016, concluded that, while there is no need to change the content of the Guidelines, it is necessary to increase staff awareness of the whistleblowing rules and guidelines, in particular that of the managers, who play a pivotal role in the reporting system.

Table A5.1[51] Overview of impact assessments and evaluations of existing EU legislation relevant to whistleblowing

DG	Legislation	Impact assessment / evaluation	Contents of legislation relevant for whistleblowing	Key findings
DG MOVE	Regulation 376/2014 (reporting occurrences in civil aviation)	Impact assessment[52], the evaluation is to be carried out by 2020[53]	Civil aviation accidents are often preceded by a number of precursors which were not investigated or not addressed in an appropriate manner. This optimal collection of occurrences has not been achieved and can be explained by several causes. One of them is that individuals are afraid to report (the "Just Culture" issue). [54] The Regulation establishes mandatory reporting system to facilitate the collection of details of occurrences and the principle of the protection of persons making such reports (i.e. whistleblowers).	No quantification of the extent of whistleblowing in the civil aviation sector is provided with the assessment of the whistleblowing being based on the case studies of major civil aviation incidents. **IA findings related to the effectiveness of this EU legislation relating to the whistleblower protection:** the legislation is expected to be effective in improving the clarification of reporting requirements, a harmonisation of reporting lines in the Member States and the establishment of rules ensuring better protection to the reporter. **IA findings related to the efficiency of this EU legislation relating to the whistleblower protection**: the legislation is expected to introduce certain costs mainly related to the introduction of new requirements regarding the use of data collected for safety improvements which has an impact varying from very limited to more substantial depending on the organisation or the Member State concerned, and a moderate impact on EU budget. These costs are expected to be offset by the important safety and economic benefits resulting from a decreased number of accidents. The efficency of provisions relating to the whistleblower protection is not assessed separately. **IA findings related to the relevance of this EU legislation relating to the whistleblower protection**: the legislation is expected to contribute to the reduction of the number of aircraft accidents, and of related fatalities, through the improvement of existing systems, both at national and European level, using civil aviation occurrences for correcting safety deficiencies and prevent them from reoccurring and from leading to an accident. The

51 This table reflects Annex 3 of the ICF's Report (2017).

52 http://eur-lex.europa.eu/legal-content/EN/TXT/DOC/?uri=CELEX:52012SC0441&from=EN

53 Article 24 "By 16 November 2020, the Commission shall publish and send to the European Parliament and to the Council an evaluation report on the implementation of this Regulation. That report shall cover, in particular, the contribution made by this Regulation to reducing the number of aircraft accidents and related fatalities."

54 This issue is the shortcoming mentioned the most frequently both by the Member States in their reply to the Commission questionnaire and by respondents to the public consultation held by the Commission (70.5% of the replies).

DG	Legislation	Impact assessment / evaluation	Contents of legislation relevant for whistleblowing	Key findings
				relevance of provisions relating to the whistleblower protection is not assessed separately. **IA findings related to the coherence of this EU legislation relating to the whistleblower protection:** the legislation is assessed as being coherent with the overarching objectives of EU policy and designed to reach the specific objectives without implying significant negative impacts or addressing one type of impact to the expense of another. **IA findings related to the EU added value of this EU legislation relating to the whistleblower protection:** Union action in this area is considered to bring safety benefits by strengthening and developing proactive actions based on occurrence analysis at national and EU level. In addition, an event that appears to be an isolated occurrence in a Member State, when looked at across the Union as a whole, can point to a need for action. The added value of provisions relating to the whistleblower protection is not assessed separately.
DG MOVE	Directive 2013/54/EU, aiming to introduce certain compliance and enforcement provisions of ILO Maritime Labour Convention 2006 which are incumbent upon Flag States[55]	Monitoring of transposition, no impact assessment undertaken [56] , no evaluations so far, evaluation report planned for end 2018[57]	Appropriate on-board complaint procedures, protection of confidentiality of persons making complaints	The explanatory memorandum to the proposal for the Directive contains no specific information on whistleblowing cases.[58] **Findings related to the effectiveness of this EU legislation relating to the whistleblower protection:** the directive is expected to the effective enforcement of the new rules by means of adequate measures, including flag and port State control requirements. The expected effectiveness of provisions relating to the whistleblower protection is not assessed separately. **Findings related to the efficiency of this EU legislation relating to the whistleblower protection**: The efficiency aspect is not considered in the

55 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013L0054

56 http://ec.europa.eu/smart-regulation/impact/ia_carried_out/cia_2012_en.htm#move

57 Article 6: "No later than 31 December 2018, the Commission shall submit a report to the European Parliament and to the Council on the implementation and application of Regulation 5.3 of MLC 2006 regarding labour-supplying responsibilities. If appropriate, the report may include proposals for measures to enhance living and working conditions in the maritime sector."

58 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2012:0134:FIN

DG	Legislation	Impact assessment / evaluation	Contents of legislation relevant for whistleblowing	Key findings
				memorandum. **Findings related to the relevance of this EU legislation relating to the whistleblower protection**: the legislation is expected to contribute to considerably improving working and living conditions on board ships and improving the attractiveness of the maritime profession. The relevance of provisions relating to the whistleblower protection is not assessed separately. **Findings related to the coherence of this EU legislation relating to the whistleblower protection**: the legislation is assessed as being coherent with the overarching objectives of EU policy and designed to reach the specific objectives in the maritime sector. The coherence of provisions relating to the whistleblower protection is not assessed separately. **Findings related to the EU added value of this EU legislation relating to the whistleblower protection**: Union action in this area is considered to support the comprehensive and standard application of the ILO Convention across the Member States. The added value of provisions relating to the whistleblower protection is not assessed separately.
DG MOVE	Directive 2009/16/EC of 23 April 2009 on port State control (Recast)	Monitoring of transposition, impact assessment relevant for the Directive 2009/16/EC [59], evaluation planned for 2016 [60] but not completed as of July 2017	Regulating the inspection regime of the ships, with provision for pilots to make reports on apparent anomalies	No specific information on whistleblowing cases. DG MOVE confirmed that the evaluation report is still being drafted (July 2017) and it is not evaluating the whistleblower provisions.

59 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52005SC1499

60 http://ec.europa.eu/smart-regulation/roadmaps/docs/2016_move_058_evaluation_port_state_control_en.pdf

DG	Legislation	Impact assessment / evaluation	Contents of legislation relevant for whistleblowing	Key findings
DG Energy	Directive 2013/30/EU on offshore safety[61]	Monitoring of transposition, evaluation report completed in 2015 [62]	Establishment of mechanisms for reporting safety and environmental concerns whilst maintaining the anonymity of the individuals concerned	In 21 Member States the transposition of the Directive is considered complete (as of July 2017); there are still 7 pending infringement procedures for incomplete transposition. The evaluation report in 2015[63] focussed on assessing the effectiveness of the liability systems in the States for traditional damage caused by pollution from offshore oil and gas operations, regimes to handle compensation claims for the damage, the availability of financial security instruments, and requirements for financial security associated with the claims. There was no evaluation of specific whistleblowing provisions.
DG FISMA	Commission Implementing Directive 2015/2392 as regards reporting to competent authorities of actual or potential infringements of the Market Abuse Regulation (MAR) and Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation)	Monitoring of transposition, evaluation to be submitted by July 2019[64]	Internal and outsourced internal reporting channels, whistleblower protection	Market Abuse Regulation (MAR) was accompanied by an impact assessment conducted in 2011.[65] The IA problem definition (cf. section 7.3.4) considered that provisions for whistle blowing within Europe differ significantly and there are key areas where current provisions are considered insufficient; specifically - the protection available to whistle blowers, the lack of appropriate processes in place by competent authorities for the reporting of whistle blowing and the lack of incentives for persons to "blow the whistle". The policy option 5.3.6 was considered in the IA to include the protection of the whistleblowers from retaliation. It was ultimately included in the preferred option and contained in the Regulation. **IA findings related to the effectiveness of this policy option relating to the whistleblower protection**: the option was assessed qualitatively as follows: (++) increases protection available to individuals reporting market abuse. (+) provides regulators with primary information and assistance in market abuse cases.

61 https://ec.europa.eu/energy/en/topics/oil-gas-and-coal/offshore-oil-and-gas-safety

62 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52015DC0422

63 https://ec.europa.eu/energy/en/topics/oil-gas-and-coal/offshore-oil-and-gas-safety

64 http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0596&from=EN

Article 38: By 3 July 2019, the Commission shall submit a report to the European Parliament and to the Council on the application of this Regulation.

65 http://ec.europa.eu/smart-regulation/impact/ia_carried_out/cia_2011_en.htm#markt

DG	Legislation	Impact assessment / evaluation	Contents of legislation relevant for whistleblowing	Key findings
				(+) increases the accessibility of regulators. (++) enhances the information available to regulators. (+) acts as a deterrent against potential market abuse. (+) ensures legal clarity for the protection of whistle blowers. **IA findings related to the efficiency of this policy option relating to the whistleblower protection**: the option is considered to be highly efficient due to limited associated costs. The overall net benefits were estimated only for a package of preferred options, of which the whistleblower protection formed a part of.[66] **IA findings related to the relevance of this EU legislation relating to the whistleblower protection**: not assessed explicitly in the IA. **IA findings related to the coherence of this EU legislation relating to the whistleblower protection**: not assessed in the IA (cf. below on coherence with the Charter of Fundamental Rights). **IA findings related to the EU added value of this EU legislation relating to the whistleblower protection**: not assessed. **Other impacts**: option was assessed as interfering with Articles 7, 8 and 48 of CFR[67]. Option provides for limitation of these rights in law while respecting essence of these rights. Limiting these rights is necessary to meet general interest objective of ensuring market integrity (by improving detection of market abuse) and to protect fundamental right to property (article 17 of CFR). It is proportionate as it will ensure the protection of whistle blowers, including of their personal data, and in considering information from whistle blowers competent authorities should assess if

66 The annual benefits in terms of the estimated reduction of market abuse are estimated at EUR 2.7 billion annually, and the annual costs are estimated at EUR 300 million (plus in the first year estimated one-off costs of EUR 320 million to comply with the information obligations). Therefore **the package of preferred policy options** is expected to generate net benefits of an estimated 2.4 billion per year.

67 IA notes that whistle blowing raises issues regarding the protection of personal data (Art 8 of the EU Charter and Art. 16 of the TFEU) and the presumption of innocence and right of defence (Art. 48) of the EU Charter.

DG	Legislation	Impact assessment / evaluation	Contents of legislation relevant for whistleblowing	Key findings
				there are reasonable grounds to suspect market abuse, based on the presumption of innocence and right of defence. So far, the Commission referred Spain to the CJEU for failure to notify measures for fully implementing the EU rules on whistleblowers[68]. An Infringement proceeding for non-communication of the national transposition measure is also pending against the following Member States[69]: NL, MT, SE, SK, BE, PT, LU, IE, ES, AT, BG, CZ, HU, RO, CY, HR, PL and EL.
DG FISMA	Prospectus Regulation[70]	Impact assessment, current proposal under consideration, envisages the evaluation 5 years after the adoption of the proposal	Regulates the prospectus to be published when securities are offered to the public or admitted to trading	The impact assessment for the new Prospectus regime does not include elements related to whistleblowing[71]. Whistleblowing provisions were included in the proposal in order to raise the Prospectus regime to the level of standard of other financial legislation such as MAR.
DG FISMA	Markets in Financial Instruments Directive (MiFID II) - Directive 2014/65/EU[72] and Regulation No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments[73]	IA; Directive does not contain provisions for evaluation, the Regulation envisages the evaluation by 2019[74]	Effective reporting mechanisms and protection of reporting persons	MiFID II: IA includes several references to whistleblower schemes throughout the analysis[75]. Two policy options 4.8 (Introduce effective and deterrent sanctions by introducing common minimum rules for administrative measures and sanctions) and 4.9 (Introduce effective and deterrent sanctions by harmonising administrative measures and sanctions) included amongst sanctions also elements relating to the whistleblower channels.

68 http://europa.eu/rapid/press-release_IP-17-1950_en.htm
http://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/index.cfm?lang_code=EN&r_dossier=&noncom=0&decision_date_from=&decision_date_to=&active_only=1&title=market+abuse&submit=Search

70 The original Directive was adopted in 2003 http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015SC0255&from=EN. It was amended in November 2010 as part of a simplification exercise within the "Action programme for the reduction of administrative burdens.

71 http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015SC0255&from=EN

72 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0065

73 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014R0600

74 Article 52: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0600&from=EN

DG	Legislation	Impact assessment / evaluation	Contents of legislation relevant for whistleblowing	Key findings
				The IA did not assess effectiveness, efficiency, relevance, coherence or EU added value of the elements relating to the whistleblowing channels. The area of impacts assessed for whistleblower schemes was the impact on fundamental rights. Here the IA noted that for both options, regarding the introduction of "whistleblowing schemes", this raises issues regarding the protection of personal data (Art 8 of the EU Charter and Art. 16 of the TFEU) and the presumption of innocence and right of defence (Art. 48) of the EU Charter. Therefore, any implementation of whistleblowing schemes should comply and integrate data protection principles and criteria indicated by EU data protection authorities and ensure safeguards in compliance with the Charter of fundamental rights.
DG FISMA	Directive 2013/36/EU (CRD4) on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms[76]	IA, Evaluation and reporting scheduled by July 2016	Effective internal and external reporting mechanisms and protection of reporting persons	IA[77] contained a problem analysis which showed amongst other issues also the lack of whistleblower protection, but no quantitative findings on whistleblowing cases or occurrence across the Member States were reported. [78] Two policy options were considered as preferred, one to establish internal whistleblowing mechanism in credit institutions and two to require Member States to set up systems for the protection of whistleblowers. **IA findings related to the effectiveness of the two policy options relating**

75 https://ec.europa.eu/info/law/markets-financial-instruments-mifid-ii-directive-2014-65-eu/legislative-history_en

76 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013L0036

77 http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011SC0952&from=EN

78 "In particular, the information available shows that a majority of Member States do not have in place any mechanism encouraging persons who are aware of potential violations of the CRD to report those violations within a financial institution or to the competent authorities (whistle blowing). While some industry representatives raised doubts on the appropriateness of an EU mechanism, almost all respondents to the consultation agreed that whistle blowing is an important tool to facilitate detection of violations. Indeed, whistleblowing programmes have been successful across sectors within the EU and in other jurisdictions. For example, on the basis of an internal whistleblowing programme, OLAF, the European Anti-Fraud Office, has received important pieces of information – for example in five cases in 2008. In the US, the SEC reports that in 2009 in 303 cases investigations were triggered by tips."

DG	Legislation	Impact assessment / evaluation	Contents of legislation relevant for whistleblowing	Key findings
				to the whistleblower protection: effective in pursuing the objective achieved, a higher detection of violations of the CRD leading to a higher level of enforcement and ultimately to a more effective, dissuasive and proportionate sanctioning regime in all Member States. **IA findings related to the efficiency of the two policy options relating to the whistleblower protection**: efficient in terms of impact on Member States and credit institutions: they would both require changes in national legislation and procedures to be put in place by Member States and credit institutions, and would involve compliance costs to set up and manage the whistleblowing systems. This would concern Member States where no whistleblowing mechanisms are currently in place (i.e. a large majority of member States). **IA findings related to the relevance of this EU legislation relating to the whistleblower protection**: not assessed explicitly in the IA. **IA findings related to the coherence of this EU legislation relating to the whistleblower protection**: not assessed in the IA (cf. below on coherence with the Charter of Fundamental Rights). **IA findings related to the EU added value of this EU legislation relating to the whistleblower protection**: not assessed. Impacts on fundamental rights: both options will have impacts on fundamental rights, in particular the respect for private and family life (Art. 7), protection of personal data (Art. 8) and presumption of innocence and right of defence (Art 48). However, those impacts can be mitigated by requiring the processing of personal data in compliance with Directive 95/46/EC and adequate procedures for the protection of confidential information, and clarification that competent authorities should assess if there are reasonable grounds to suspect a violation. In view of this mitigation, and given the importance of the objectives to ensure sanctioning

DG	Legislation	Impact assessment / evaluation	Contents of legislation relevant for whistleblowing	Key findings
				regimes for violations of the CD are effective, dissuasive and proportionate, this impact is necessary and proportionate. In the field of anti-money laundering, the 2010 Communication[79] noted the lack of convergence between the MS concerning, in particular, mechanisms encouraging persons who are aware of potential violations to report those violations within a financial institution or to the competent authorities ("whistleblowing"), and at encouraging persons who are responsible of potential violations, to report those violations to the competent authorities. Hence, the accompanying IA considers a number of whistleblower channels in the different policy options. The Communication calls for the Member States to explore "common provisions could be introduced on mechanisms that Member States should put in place to better detect violations of EU law, particularly those aiming at protecting persons (e.g. employees of financial institutions) who denounce potential violations committed by other persons ("whistleblowing"). By allowing competent authorities to uncover violations that would have probably been remained undetected, or to gather additional evidence about a violation, such mechanisms can contribute to more effective application of EU law, to the benefit of all players in financial market". As of July 2017, two reports are available on the application of the Directive published in 2016 and relate to the rules on remuneration and the rules on diversity of management, not directly to the whistleblower channels.
DG FISMA	Council Regulation (EU) No 1024/2013 (SSM Regulation)[80] conferring specific tasks on the European Central Bank concerning policies relating to	No IA, evaluation by 2015[81]	The ECB shall ensure that effective mechanisms are put in place for reporting of breaches by credit institutions, financial holding companies or mixed financial holding companies or competent authorities	SSM Regulation: no impact assessment 2014 Report on banking supervision by European Court of Auditors[82] does not deal with issue of effective mechanisms of reporting of breaches.

79 Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions Reinforcing sanctioning regimes in the financial services sector and accompanying IA {SEC(2010) 1496 final} {SEC(2010) 1497 final}.

80 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013R1024

81 Article 32: By 31 December 2015, and subsequently every three years thereafter, the Commission shall publish a report on the application of this Regulation.

82 http://www.eca.europa.eu/Lists/ECADocuments/SR14_05/SR14_05_EN.pdf

DG	Legislation	Impact assessment / evaluation	Contents of legislation relevant for whistleblowing	Key findings
	the prudential supervision of credit institutions		in the participating Member States	
DG FISMA	UCITS Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)[83]	IA [84], no evaluation foreseen in the Directive	Whistleblowing channels	IA[85] contained a problem analysis which showed amongst other issues also the lack of whistleblower protection, but no quantitative findings on whistleblowing cases or occurrence across the Member States were reported. [86] Policy option 2 introducing minimum harmonisation regime including internal whistleblowing channels was considered as preferred. **IA findings related to the effectiveness of the policy option relating to the whistleblower protection**: the IA considered that the setting of appropriate whistleblowing mechanisms would help protect those persons providing information on infringements and provide incentives for whistleblowers to cooperate. The so-called 'whistleblower' programmes are an additional and effective mean to discover illegal behaviour within fund management firms and a worthy step forward towards an effective EU-wide sanctioning regime. **IA findings related to the efficiency of the policy option relating to the whistleblower protection**: Establishment of internal whistleblower mechanisms would involve costs for the in-house training programmes or eventual consultancy fees. It is deemed that these are one-off costs whose benefits outweigh the disadvantages of lengthy and costly litigation with a lasting impact on a firm's reputation. **IA findings related to the relevance of policy option relating to the whistleblower protection**: not assessed explicitly in the IA.

83 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:302:0032:0096:EN:PDF

84 http://ec.europa.eu/internal_market/investment/docs/ucits-directive/20120703-impact-assessment_en.pdf

85 http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011SC0952&from=EN

86 "A majority of Member States do not have in place any mechanism encouraging persons who are aware of potential violations of the UCITS to report those violations ("whistle blowing" systems), while whistle blowing can is an important tool which can facilitate detection of violations and therefore improve the application of sanctions." The absence of effective whistleblower protection might lead to the result that certain UCITS related irregularities remain below the radar.

DG	Legislation	Impact assessment / evaluation	Contents of legislation relevant for whistleblowing	Key findings
				IA findings related to the coherence of policy option relating to the whistleblower protection: not assessed in the IA (cf. below on coherence with the Charter of Fundamental Rights). **IA findings related to the EU added value of policy option relating to the whistleblower protection**: not assessed. Impact on fundamental rights: Regarding the introduction of "whistle blowing schemes", this raises issues regarding the protection of personal data (Art 8 of the EU Charter and Art. 16 of the TFEU) and the presumption of innocence and right of defence (Art. 48) of the EU Charter. Therefore, any implementation of whistle blowing schemes should comply and integrate data protection principles and criteria indicated by EU data protection authorities and ensure safeguards in compliance with the Charter of fundamental rights.
DG FISMA	Audit Directive 2014/56 (amending Directive 2006/43) [87] and Audit Regulation 537/2014[88]	IA, the Directive has no review clause. Art 40(4) of the Audit Regulation provides that the Commission has to submit a report on the application of the Regulation by 17 June 2028	Effective mechanisms are established to encourage reporting of breaches of this Directive	IA[89] The relevant whistleblowing measures (defined as "reporting of breaches") can found at the following pages: 28, 85 ("supervision sections" where many replies support the creation of specific channel of communication/reporting from audit firms to supervisors), 110, 136 (where the policy option to include the report of breaches is detailed), and 158 (summarising the replies received supporting the establishment of a communication channel with supervisors). IA contained a problem analysis which showed amongst other issues also that auditors of most financial institutions regulated at EU level are already required under EU law to report promptly to the supervisors of those institutions any fact that is liable to bring about a material breach of the

87 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0056
88 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014R0537
89 http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011SC1384&from=EN

DG	Legislation	Impact assessment / evaluation	Contents of legislation relevant for whistleblowing	Key findings
				laws, affect the ability of the audited entity as a going concern or lead to a qualified audit report. The real enforcement of those early warning obligations was not evident during the crisis; the lack of such communication may be attributable to the absence of any sanctions283 and/or the fear of potentially infringing the professional secrecy principle when making a report to the authorities. Beyond this reporting obligation, there is no requirement for auditors to regularly engage with supervisors of PIEs. Policy option introducing internal whistleblowing channels was considered (defined as reporting of breaches). **IA findings related to the effectiveness of the policy option relating to the whistleblower channels**: the IA considered that the reporting of breaches would consist in empowering auditors and supervisors of PIEs to engage in regular dialogue. It would guarantee that auditors do not breach their confidentiality rules when they engage in such dialogue. **IA findings related to the efficiency of the policy option relating to the whistleblower channels:** the policy options will ensure that the dialogue will effectively take place and, at the same time, allows for sufficient flexibility to be built into the system so as to avoid the requirement becoming a meaningless bureaucratic obligation. The expected benefits for the supervisory system from both options would outweigh the expected moderate costs (e.g. meetings **IA findings related to the relevance of policy option relating to the whistleblower channels**: not assessed explicitly in the IA. **IA findings related to the coherence of policy option relating to the whistleblower channels:** not assessed in the IA (cf. below on coherence with the Charter of Fundamental Rights). **IA findings related to the EU added value of policy option relating to the whistleblower channels**: not assessed.

DG	Legislation	Impact assessment / evaluation	Contents of legislation relevant for whistleblowing	Key findings
				Impact on fundamental rights: Regarding the introduction of "whistle blowing schemes", this raises issues regarding the protection of personal data (Art 8 of the EU Charter and Art. 16 of the TFEU) and the presumption of innocence and right of defence (Art. 48) of the EU Charter. Therefore, any implementation of whistle blowing schemes should comply and integrate data protection principles and criteria indicated by EU data protection authorities and ensure safeguards in compliance with the Charter of fundamental rights.
DG FISMA	Regulation 2015/2365 SFTR[90] on transparency of securities financing transactions and of reuse Regulation 909/2014 CSDR[91]	No IA, Regulation 2015/2365: reports within 24 months and 36 months since entry into force (not yet available) Regulation 909/2014: report by 18 September 2019	effective mechanisms to enable reporting of actual or potential breaches of the Regulation	SFTR and CSDR: No impact assessments conducted.
DG FISMA	Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast)[92]	IA [93], report on implementation by 23 February 2021	Effective mechanisms to enable and encourage the reporting, protection of reporting persons	Although the current provision on whistleblower protection (Art 35(2) IDD) existed already in the Commission proposal, the issue was not explicitly mentioned in the Impact Assessment which dealt only with more general questions such as the insufficient level of sanctions, lack of enforcement etc. and assessed different abstract regulatory options preferring a "general framework" to a full harmonisation. Besides a short mention in the Explanatory Memorandum accompanying the proposal, summarising the content of Article 35, there is no specific assessment of the whistleblower protection effectiveness, efficiency, relevance, added value in the IA.
DG FISMA	Directive (EU) 2016/2341 of	IA [95], report on	Both the Commission proposal and the	The Impact Assessment refers to EIOPA's "whistleblowing" report from

90 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015R2365
91 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014R0909
92 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016L0097
93 http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012SC0191&from=EN

DG	Legislation	Impact assessment / evaluation	Contents of legislation relevant for whistleblowing	Key findings
	the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs)[94]	implementation by 31 December 2017	Directive provide a whistle-blower provision as part of the system of governance rules: Member States have to "ensure the legal protection of persons informing the competent authority" about a "substantial risk that the IORP will not comply with a materially significant statutory requirement" or about "a significant material breach of the laws, regulations or administrative provisions applicable to the IORP and its activities".	2011 and mentions rules about whistleblowers' protection as possible new governance requirements in the areas internal control system, internal audit and actuarial function. However, there is no specific assessment of the whistleblower protection effectiveness, efficiency, relevance, added value in the IA.
DG FISMA	PRIIPs Regulation 1286/2014[96]	IA [97], review of implementation by 31 December 2018	Reporting of actual or potential infringements of this Regulation, protection of reporting persons	No mention of whistleblowing in the PRIIPs IA Report.
DG HR	2012 Commission Whistleblowing Guidelines, accompanying action plan on communication/outreach	No evaluation	Guidance to the Commission staff on internal reporting channels and procedures	Guidance to the Commission staff on internal reporting channels and procedures, no evaluation criteria covered.
DG COMP	Proposal for a Directive Of The European Parliament And Of The Council to empower the competition authorities of the Member States to be more effective	IA [99], no evaluation (not yet adopted)	This is a current Commission proposal for a Directive to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market. This proposal envisages a form of whistleblower protection in Article 22[100],	The IA does not explicitly refer to the whistleblowers.

95 http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014SC0103&from=EN
94 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016L2341
96 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014R1286
97 https://ec.europa.eu/info/law/key-information-documents-packaged-retail-and-insurance-based-investment-products-priips-regulation-eu-no-1286-2014/legislative-history_en
99 http://ec.europa.eu/competition/antitrust/impact_assessment_annexes_en.pdf

DG	Legislation	Impact assessment / evaluation	Contents of legislation relevant for whistleblowing	Key findings
	enforcers and to ensure the proper functioning of the internal market (not yet adopted)[98]		and it is referred to in recital 40.[101][102]	
DG COMP	Anonymous Whistleblower Tool[103] [104]		This is an anonymous whistleblower tool for reporting violation of competitive law. The new tool to encourage individuals to disclose anticompetitive conduct. The tool is innovative as it is designed to guarantee full anonymity, with specially designed encrypted messaging system run by an external service provider. The new tool targets carte infringements as well as any anticompetitive conduct. Similar tools exist in Denmark, Germany, the UK and Poland. According to the Danish competition authorities about 10% of anonymous submissions resulted in	The Commission will give employees more confidence in reporting anticompetitive conduct at their companies. This insider information provided to the Commission is likely to be very valuable for EU antitrust enforcement. The existence of this European tool is likely to increase cartel instability as companies will have to take into account this new instrument likely to lead to greater exposure when engaging in anticompetitive conduct. However, some limitations to the tool are anticipated, these include missing strong financial incentives to reward individuals, the risk of revealing the identity of the whistleblower still exist as often only few employees are aware of misconduct. Ethical considerations, loyalty to the company and social stigma still need to be taken into account[106].

100 "Member States shall ensure that current and former employees and directors of applicants for immunity from fines to competition authorities are protected from any criminal and administrative sanctions and from sanctions imposed in non-criminal judicial proceedings for their involvement in the secret cartel covered by the application, if these employees and directors actively cooperate with the competition authorities concerned and the immunity application predates the start of the criminal proceedings."

98 http://ec.europa.eu/competition/antitrust/proposed_directive_en.pdf

101 "Legal uncertainty as to whether undertakings' employees are shielded from individual sanctions can prevent potential applicants from applying for leniency. Current and former employees and directors of undertakings that apply for immunity from fines to competition authorities should thus be protected from any sanctions imposed by public authorities for their involvement in the secret cartel covered by the application. Such protection should be dependent on these employees and directors actively cooperating with the NCAs concerned and the immunity application predating the start of the criminal proceedings."

102 http://ec.europa.eu/competition/antitrust/proposed_directive_en.pdf

103 http://www.jonesday.com/files/Publication/dbf9c047-6558-4f9d-a591-1285e05ef023/Presentation/PublicationAttachment/b4cf9165-b561-4359-b58b-1a884aadb6c5/EC%20Anonymous%20Whistleblower%20Tool.pdf

104 http://ec.europa.eu/competition/cartels/whistleblower/index.html

DG	Legislation	Impact assessment / evaluation	Contents of legislation relevant for whistleblowing	Key findings
			follow-up investigations. The German Federal Cartel Office (FCO), since the introduction of an online system in 2012 has received more than 1,400 anonymous tips. In 2015, following and investigation from anonymous tip, the FCO imposed €75 million fine to car manufactures[105].	
DG JUST	Framework on anti - money laundering and counter - terrorist financing ("AML/CFT"): i) Directive (EU) 2015/849 of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (4AMLD)	IA:, [107] 4ALMD: implementation report by 26 June 2019[108] Regulation EU 2015/847: Commission to report on the application of sanctions and measures after Member States have notified the Commission of the changes in rules following the Regulation	The 4AMLD prevents the use of the Union's financial system for money laundering and financing of terrorism purposes. In Article 61, Member States are required to establish effective and reliable mechanisms to encourage the reporting to competent authorities of potential or actual breaches of the national provisions transposing this Directive, including specific procedures, protection of reporting and accused person, protection of personal data and rules for guaranteeing confidentiality. The Directive also calls for Member States to require legal entities to establish internal reporting channels (independent, specific and anonymous). Regulation EU 2015/847 required Member States to establish effective mechanisms to	**IA findings related to the effectiveness of the policy option relating to the whistleblower channels**: IA found differences in the current MS administrative measures and sanctions and different incentives for obliged entities to comply with the AMLD via reporting, as a result, their reduced effectiveness **IA findings related to the efficiency of the policy option relating to the whistleblower channels:** the IA estimated the ongoing costs of the 3ALMD directive internal and external reporting in the overall cost drivers for various types of stakeholders, on average they were below 10% of the overall costs **IA findings related to the relevance of policy option relating to the whistleblower channels**: not assessed explicitly in the IA. **IA findings related to the coherence of policy option relating to the whistleblower channels:** not assessed in the IA (cf. below on coherence with the Charter of Fundamental Rights).

106 http://www.jonesday.com/european-commission-launches-competition-law-anonymous-whistleblower-tool-04-25-2017/

105 http://www.jonesday.com/european-commission-launches-competition-law-anonymous-whistleblower-tool-04-25-2017/

107 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=SWD:2013:0021:FIN

108 Article 65: By 26 June 2019, the Commission shall draw up a report on the implementation of this Directive and submit it to the European Parliament and to the Council, http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015L0849&from=EN

DG	Legislation	Impact assessment / evaluation	Contents of legislation relevant for whistleblowing	Key findings
	ii) Regulation EU 2015/847 on information accompanying transfers of funds (FTR)		encourage the reporting to competent authorities of breaches of the Regulation. Payment service providers, in cooperation with the competent authorities, are to establish appropriate internal procedures for their employees, or persons in a comparable position, to report breaches internally through a secure, independent, specific and anonymous channel,	**IA findings related to the EU added value of policy option relating to the whistleblower channels**: not assessed. **Impact on fundamental rights:** the IA noted that the proposed policy option will have no impact on the right to an effective remedy and to a fair trial (Article 47 of the EU Charter of Fundamental Rights), as no changes to the current provisions were proposed in this respect. Although legal professions regularly express concerns that this right and their obligation of professional secrecy would be violated by AML/CFT obligations to report suspicious transactions, the CJEU has ruled that since reporting obligations only apply to activities of a financial or real estate nature and do not apply in the context of judicial proceedings, they fall outside the scope of the right of a fair trial.

Table A5.2[109] Mapping of existing EU rules on whistleblowing

Name	Sectors covered / excluded	Categories of workers	Categories of wrongdoing covered	Reporting channels	Protection of whistleblowers	Provisions for confidentiality	Good faith	Burden of proof
Directive (EU) 2016/943 of 8 June 2016 (Trade Secrets Directive)[110]	All businesses involved in trade (i.e. the whole economy)	Any natural or legal person involved in trade secrets	Misconduct, wrongdoing or illegal activity	Not mentioned	As long as a whistleblower acts in the general public interest and the trade secret is disclosed for revealing a misconduct, wrongdoing or illegal activity, the whistleblower is exempted from the application of the remedies foreseen in the Directive for those who breach trade secrets.[111]	Not mentioned	If a person has originally acquired a trade secret in good faith, but only becomes aware at a later stage, including upon notice served by the original trade secret holder, that that person's knowledge of the trade secret in question derived from sources using or disclosing the relevant trade secret in an unlawful manner, Member States should provide for the possibility, in appropriate cases, of pecuniary compensation being awarded to the injured party as an alternative measure. (see Article 29)	Not mentioned
Directive (EU) 2015/849 of 20 May 2015 (4th Anti-money laundering	Financial and non-financial sectors defined as obliged entities[113] (e.g. banks	Employees or persons in a comparable position working in all	Financial transactions when there is a suspicion that funds are the proceeds of serious criminal	Both internal and external: Member States shall require the obliged entities to have in place appropriate procedures for their employees or persons in a	Member States shall ensure that individuals, including employees and representatives of the obliged entity who	Obliged entities and their directors and employees shall not disclose to the customer concerned or	Article 37: Disclosure of information in good faith by an obliged entity or by an employee or director of such an obliged entity in	Not mentioned

109 This table reflects Annex 14 ICF's Study (2017), vol. II Annex 3.

110 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016L0943

111 Article 5: "Member States shall ensure that an application for the measures, procedures and remedies provided for in this Directive is dismissed where the alleged acquisition, use or disclosure of the trade secret was carried out in any of the following cases: […] (b) for revealing misconduct, wrongdoing or illegal activity, provided that the respondent acted for the purpose of protecting the general public interest […]".

Name	Sectors covered / excluded	Categories of workers	Categories of wrongdoing covered	Reporting channels	Protection of whistleblowers	Provisions for confidentiality	Good faith	Burden of proof
(AML) Directive)[112]	accountants, traders in high value goods, casinos etc.)	obliged entities	activities (listed in Article 3.4) or are related to terrorist financing	comparable position to report breaches internally through a specific, independent and anonymous channel (see Article 61(3)). In addition, Member States shall ensure that competent authorities establish effective and reliable mechanisms to encourage the reporting to competent authorities of potential or actual breaches of national provisions transposing this Directive (see Article 61(1) and (2)). This should include at least specific procedures for the receipt of reports on breaches, appropriate protection for employees of obliged entities who report such breaches, protection of personal data concerning both the person who reports the breaches and the natural person who is allegedly responsible for the breach.	report suspicions of money laundering or terrorist financing either internally or to the FIU are protected from being exposed to threats or hostile action, and in particular from adverse or discriminatory employment actions (see art. 38). Moreover, such a disclosure in good faith shall not constitute a breach of any restriction on disclosure of information imposed by Contract or legislative/regulatory provisions.	to other third persons the fact that a suspicious transaction report was made (see Article 39). MS should adopt clear rules to ensure confidentiality in all cases for the reporting person, unless such disclosure is required by national law in the context of further investigations or subsequent judicial proceedings.	accordance with Articles 33 and 34 shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not involve the obliged entity or its directors or employees in liability of any kind even in circumstances where they were not precisely aware of the underlying criminal activity and regardless of whether illegal activity actually occurred.	
The Market Abuse Regulation	Financial market instruments[116]	Natural and legal persons	Inside information, insider dealing,	Whistleblowers should be free to report either through internal	Reporting persons have access to	Reports of infringements can also	Not mentioned Good faith required	Not mentioned

113 A full list of obliged entities is listed in Article 2.1 of the Directive.

112 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015L0849

Name	Sectors covered / excluded	Categories of workers	Categories of wrongdoing covered	Reporting channels	Protection of whistleblowers	Provisions for confidentiality	Good faith	Burden of proof
(EU) No 596/2014, of May 2015[114] Commission Implementing Directive (EU) 2015/2392 of 17 December 2015, adopted on the basis of this Regulation[115]		involved in the financial instruments and persons 'closely associated'	unlawful disclosure of inside information and market manipulation	procedures, where such procedures exist, or directly to the competent authority. Member States should appoint and train dedicated staff members of the competent authorities, who are professionally trained, including on applicable data protection rules, to handle reports of infringements of the Market Abuse Regulation and to ensure communication with the reporting person, as well as following up on the report in a suitable manner. Competent authorities should therefore publicly disclose and make easily accessible information about the available communication channels with competent authorities, about the applicable procedures and about the dedicated staff	comprehensive information and advice on the remedies and procedures available under national law to protect them against unfair treatment, including on the procedures for claiming pecuniary compensation; (b) reporting persons have access to effective assistance from competent authorities before any relevant authority involved in their protection against unfair treatment, including by certifying the condition of whistleblower of the reporting person in employment disputes	be submitted anonymously. Member States shall ensure that competent authorities establish independent and autonomous communication channels, which are both secure and ensure confidentiality, for receiving and following-up the reporting of infringements.	'Persons who knowingly report wrong or misleading information to competent authorities should not be considered as whistle-blowers and thus should not enjoy the protection mechanisms.'	

[116] Article 2: "financial instruments admitted to trading on a regulated market or for which a request for admission to trading on a regulated market has been made;
(b) financial instruments traded on an MTF, admitted to trading on an MTF or for which a request for admission to trading on an MTF has been made;
(c) financial instruments traded on an OTF;
(d) financial instruments not covered by point (a), (b) or (c), the price or value of which depends on or has an effect on the price or value of a financial instrument referred to in those points, including, but not limited to, credit default swaps and contracts for difference."

[114] http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014R0596

[115] http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015L2392

Name	Sectors covered / excluded	Categories of workers	Categories of wrongdoing covered	Reporting channels	Protection of whistleblowers	Provisions for confidentiality	Good faith	Burden of proof
				members within the authority dealing with reports of infringements. All information regarding reports of infringements should be transparent, easily understandable and reliable in order to promote and not deter reporting of infringements.				
Directive 2014/65/EU of 15 May 2014 on Markets in Financial Instruments Directive (MiFID2)[117])	Investment firms, market operators, data reporting services providers, and third-country firms providing investment services or performing investment activities through the establishment of a branch in the Union and a very long list of exemptions (see Article 2)	Not explicitly defined	Potential or actual infringements of the MiFIR provisions and of the national provisions adopted in the implementation of MiFID2	Competent authorities must themselves establish effective mechanisms for reporting of potential or actual infringements of the MiFIR provisions and of the national provisions adopted in the implementation of MiFID2 to competent authorities. Investment firms and credit institutions must have in place appropriate procedures for their employees to report potential or actual infringements internally through a specific, independent and autonomous channel. (Article 73 MiFID 2).	Competent authorities should provide appropriate protection for employees who report infringements against retaliation, discrimination or other types of unfair treatment	Competent authorities should provide for the protection of the identity of both the person who reports the infringements and the natural person who is allegedly responsible for an infringement (unless such disclosure is required by National law in the context of further investigation or subsequent administrative or judicial proceedings).	Article 77(2): The disclosure in good faith to the competent authorities, by persons authorised within the meaning of Directive 2006/43/EC, of any fact or decision referred to in paragraph 1 shall not constitute a breach of any contractual or legal restriction on disclosure of information and shall not involve such persons in liability of any kind.	
Capital Requirements IV Directive ('CRD4') EU	Directive Article 1: credit institutions and investment firms	Not explicitly defined	Potential or actual breaches of the directive's provisions	Directive Article 71: Member States shall ensure that competent authorities establish effective and reliable	Directive Article 71: Member States shall ensure appropriate protection for	Directive Article 71: Member States shall ensure protection of personal data	Not mentioned	Not mentioned

[117] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU - http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0065

Name	Sectors covered / excluded	Categories of workers	Categories of wrongdoing covered	Reporting channels	Protection of whistleblowers	Provisions for confidentiality	Good faith	Burden of proof
Directive 2013/36/EU [118] and Capital Requirements Regulation EU Regulation 575/2013[119]	and a long list of exempt institutions (see Article 2)			mechanisms to encourage reporting of potential or actual breaches of national provisions transposing this Directive and of Regulation (EU) No 575/2013 to competent authorities. Member States shall require institutions to have in place appropriate procedures for their employees to report breaches internally through a specific, independent and autonomous channel. Such a channel may also be provided through arrangements provided for by social partners.	employees of institutions who report breaches committed within the institution against retaliation, discrimination or other types of unfair treatment at a minimum	concerning both the person who reports the breaches and the natural person who is allegedly responsible for a breach, in accordance with Directive 95/46/EC; And clear rules that ensure that confidentiality is guaranteed in all cases in relation to the person who reports the breaches committed within the institution, unless disclosure is required by national law in the context of further investigations or subsequent judicial proceedings.		
Undertakings for Collective Investments in Transferable Securities (UCITS V) Directive[120]	Collective investment in transferable securities (UCITS) established within the	Not explicitly defined	Article 99d: potential of actual infringements of national provisions transposing the UCITS Directive to competent authorities	Member States to establish any reliable mechanisms to encourage the reporting of potential of actual infringements of national provisions transposing the UCITS Directive to competent	Not mentioned explicitly	ESMA, the European Securities and Markets Authority, has to provide for one or more secure communication channels for whistleblowing which	Article 106(2): The disclosure in good faith to the competent authorities, by persons approved in accordance with Directive 2006/43/EC of any fact or decision referred to in	Not mentioned

118 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013L0036
119 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:176:0001:0337:EN:PDF
120 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32009L0065

Name	Sectors covered / excluded	Categories of workers	Categories of wrongdoing covered	Reporting channels	Protection of whistleblowers	Provisions for confidentiality	Good faith	Burden of proof
	territories of the Member States[121]			authorities. ESMA, the European Securities and Markets Authority, has to provide for one or more secure communication channels for whistleblowing which have to meet confidentiality and data protection requirements.		have to meet confidentiality and data protection requirements.	paragraph 1 shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision and shall not subject such persons to liability of any kind.	
Audit Directive and Regulation: Directive 2014/56/EU of 16 April 2014 on statutory audits of annual accounts and consolidated accounts [122] and the Regulation (EU) No 537/2014 of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities[123]	Statutory audits of companies and public interest entities	Auditors and parties involved in the audit process	Breaches of this Directive or of Regulation (EU) No 537/2014 to the competent authorities	Directive Article 30e: Member States shall ensure that effective mechanisms are established to encourage reporting of breaches of this Directive or of Regulation (EU) No 537/2014 to the competent authorities. Member States shall ensure that audit firms establish appropriate procedures for their employees to report potential or actual breaches of this Directive or of Regulation (EU) No 537/2014 internally through a specific channel. In addition to Article 30e of the Directive the Regulation reinforces the framework in Article 7 (report of Irregularities) and in Article 12 paragraph 1 (duty for the auditor	Not regulated explicitly	Directive Article 30e(3): Member States shall ensure protection of personal data concerning both the person who reports the suspected or actual breach and the person who is suspected of committing, or who has allegedly committed that breach, in compliance with the principles laid down in Directive 95/46/EC; Both Article 7 and 12 of the Regulation provides for:" The disclosure in good faith to the competent	Article 7: The disclosure in good faith to those authorities, by the statutory auditor or the audit firm, of any irregularities referred to in the first subparagraph shall not constitute a breach of any contractual or legal restriction on disclosure of information. Article 12(3): The disclosure in good faith to the competent authorities or to ESRB and the CEAOB, by the statutory auditor or the audit firm or network, where applicable, of any information referred to in paragraph 1 or of any	Not mentioned

121 This category of investment funds accounts for around 75% of all collective investments by small investors in Europe, see https://ec.europa.eu/info/business-economy-euro/growth-and-investment/investment-funds_en

122 Directive 2014/56/EU of 16 April 2014 on statutory audits of annual accounts and consolidated accounts.

123 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014R0537

Name	Sectors covered / excluded	Categories of workers	Categories of wrongdoing covered	Reporting channels	Protection of whistleblowers	Provisions for confidentiality	Good faith	Burden of proof
				to report certain categories of breaches)		authorities by the statutory auditor or the audit firm or network, where applicable, of any information referred to in paragraph 1 shall not constitute a breach of any contractual or legal restriction on disclosure of information."	information emerging during the dialogue provided for in paragraph 2 shall not constitute a breach of any contractual or legal restriction on disclosure of information.	
Securities Financing Transactions Regulation (SFTR)[124]	Securities financing transactions (SFTs) and of reuse	Persons working under a contract of employment (article 24)	Article 24: actual or potential infringements of Articles 4 [125] and 15 [126] to other competent authorities	Article 24: The competent authorities shall establish effective mechanisms to enable reporting of actual or potential infringements of Articles 4 and 15 to other competent authorities. 2. The mechanisms referred to in paragraph 1 shall include at least: (a) specific procedures for the receipt of reports of infringements of Article 4 or 15 and their follow-up, including the establishment of secure communication channels for such reports. Counterparties shall have in	Article 24: The mechanisms referred to in paragraph 1 shall include at least: b) appropriate protection for persons working under a contract of employment who report infringements of Article 4 or 15 or who are accused of infringing those articles against retaliation, discrimination and other types of unfair treatment;	Article 24: The mechanisms referred to in paragraph 1 shall include at least c) protection of personal data both of the person who reports the infringement of Article 4 or 15 and of the person who allegedly committed the infringement, including protection in relation to preserving the confidentiality of their identity, at all stages of the procedure without prejudice to disclosure	Not mentioned	Not mentioned

124 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015R2365
125 Reporting obligation and safeguarding in respect of SFTs.
126 Reuse of financial instruments received under a collateral arrangement.

Name	Sectors covered / excluded	Categories of workers	Categories of wrongdoing covered	Reporting channels	Protection of whistleblowers	Provisions for confidentiality	Good faith	Burden of proof
				place appropriate internal procedures for their employees to report infringements of Articles 4 and 15.		of information being required by national law in the context of investigations or subsequent judicial proceedings.		
Central Securities Depositories Regulation (CSDR)[127]	The organisation and conduct of central securities depositories (CSDs)	Employees working with CSDs	Actual or potential infringements of the Regulation	Article 24: A CSD shall have appropriate procedures for its employees to report internally potential infringements of this Regulation through a specific channel. Article 65: Member States shall ensure that competent authorities establish effective mechanisms to encourage reporting of potential or actual infringements of this Regulation to competent authorities. Member States shall require institutions to have in place appropriate procedures for their employees to report actual or potential infringements internally through a specific, independent and autonomous channel. Such a channel may also be provided through arrangements provided for by social partners.	Appropriate protection for employees of institutions who report potential or actual infringements committed within the institution against retaliation, discrimination or other types of unfair treatment at a minimum;	Protection of personal data concerning both the person who reports the potential or actual infringements and the natural person who is allegedly responsible for an infringement in compliance with the principles laid down in Directive 95/46/EC; EN 28.8.2014 Official Journal of the European Union L 257/65 (d) protection of the identity of both the person who reports the infringements and the natural person who is allegedly responsible for an infringement, at all stages of the procedures unless such disclosure is required by national law in the context of further	Not mentioned	Not mentioned

127 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014R0909

Name	Sectors covered / excluded	Categories of workers	Categories of wrongdoing covered	Reporting channels	Protection of whistleblowers	Provisions for confidentiality	Good faith	Burden of proof
						investigation or subsequent administrative or judicial proceedings.		
Insurance Distribution Directive (IDD)[128]	Insurance products	Article 35: employees of insurance or reinsurance distributors and, where possible, for other persons, who report infringements committed within those entities	Article 35: possible or actual breaches of national provisions implementing this Directive	Article 35: Member States shall ensure that the competent authorities establish effective mechanisms to enable and encourage the reporting to them of possible or actual breaches of national provisions implementing this Directive.	Article 35: appropriate protection, at least against retaliation, discrimination or other types of unfair treatment, for employees of insurance or reinsurance distributors and, where possible, for other persons, who report infringements committed within those entities;	Article 35: protection of the identity of both the person who reports the breach and the natural person who is allegedly responsible for the breach, at all stages of the procedure unless such disclosure is required by national law in the context of further investigation or subsequent administrative or judicial proceedings	Not mentioned	Not mentioned
Packaged retail and insurance based investment products (PRIIPS)[129]	Packaged retail and insurance based investment products	Employees who report infringements committed within their employer	Article 28: reporting of actual or potential infringements of this Regulation	Article 28: Competent authorities shall establish effective mechanisms to enable reporting of actual or potential infringements of this Regulation to them. Member States may provide for competent authorities to establish additional mechanisms under national law.	Article 28: appropriate protection for employees who report infringements committed within their employer at least against retaliation, discrimination and other types of unfair treatment;	Article 28: protection of the identity both of the person who reports the infringements and the natural person who is allegedly responsible for an infringement, at all stages of the procedure unless such disclosure is required by national law in the	Not mentioned	Not mentioned

128 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016L0097

129 http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32014R1286

Name	Sectors covered / excluded	Categories of workers	Categories of wrongdoing covered	Reporting channels	Protection of whistleblowers	Provisions for confidentiality	Good faith	Burden of proof
				4. Member States may require employers engaged in activities that are regulated for financial services purposes to have in place appropriate procedures for their employees to report actual or potential infringements internally through a specific, independent and autonomous channel.		context of further investigation or subsequent judicial proceedings		
Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') [130]	Criminal offences affecting the financial interests of the Union	Recital 49: any person can bring information on conduct which might constitute an offence within the competence of EPPO	Conduct which might constitute an offence within the EPPO competence	The European Public Prosecutor's Office may collect or receive information from any person on conduct which might constitute an offence within its competence.	Mentioned in recital 50	Article 108 provides for protecting the confidentiality for all the information received by the EPPO, unless that information has already lawfully been made public.	Not mentioned	Not mentioned
Regulation 883/2013 of 11 September 2013 on investigations by OLAF	Protection of the EU budget and integrity of EU staff	Article 5/ OLAF can open an investigation based on information provided by any third party	Fraud, corruption or any illegal activity affecting the financial interests of the Union and serious misconduct of EU staff	OLAF may receive information	Not mentioned explicitly	Not mentioned explicitly	Not mentioned	Not mentioned

130 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32017R1939

Name	Sectors covered / excluded	Categories of workers	Categories of wrongdoing covered	Reporting channels	Protection of whistleblowers	Provisions for confidentiality	Good faith	Burden of proof
		or anonymous information						
Directive 2013/30/EU of 12 June 2013, on safety of offshore oil and gas operations[131]	Offshore oil and gas operations	Individuals	Safety and environmental concerns relating to offshore oil and gas operations	Article 22: Member States shall ensure that the competent authority establishes mechanisms: (a) for confidential reporting of safety and environmental concerns relating to offshore oil and gas operations from any source; and (b) for investigation of such reports while maintaining the anonymity of the individuals concerned. 2. Member States shall require operators and owners to communicate details of the national arrangements for the mechanisms referred to in paragraph 1 to their employees and contractors connected with the operation and their employees, and to ensure that reference to confidential reporting is included in relevant training and notices.	Not mentioned explicitly	Article 22: ensure that the competent authority establishes mechanisms whilst maintaining the anonymity of the individuals concerned.	Not mentioned	Not mentioned
Nuclear Safety Directive 2014/87 / Euratom[132]	Nuclear safety	Workers in the nuclear industry	Nuclear safety concerns	Article 8b(2)(a) of that Directive states that: "2. In order to achieve the	Not mentioned explicitly	Not mentioned explicitly	Not mentioned	Not mentioned

131 http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013L0030

132 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.219.01.0042.01.ENG

Name	Sectors covered / excluded	Categories of workers	Categories of wrongdoing covered	Reporting channels	Protection of whistleblowers	Provisions for confidentiality	Good faith	Burden of proof
				nuclear safety objective set out in Article 8a, Member States shall ensure that the national framework requires that the competent regulatory authority and the licence holder take measures to promote and enhance an effective nuclear safety culture. Those measures include in particular: Management systems which give due priority to nuclear safety and promote, at all levels of staff and management, the ability to question the effective delivery of relevant safety principles and practices, and to report in a timely manner on safety issues, in accordance with Article 6(d);"				
Regulation (EU) No 376/2014 of 3 April 2014, on the reporting, analysis and follow-up of occurrences in civil aviation[133]	Civil aviation	Natural person who reports an occurrence or other safety-related information pursuant to this Regulation	Occurrence or other safety-related information	Each Member State shall establish a mandatory reporting system to facilitate the collection of details of occurrences	Article 16: 8. Member States may adopt or maintain in force legislative provisions ensuring a higher level of protection for reporters or for persons mentioned in occurrence reports than those established in this Regulation. 9. Except where	Member States and organisations, in accordance with their national law, and the Agency shall take the necessary measures to ensure the appropriate confidentiality of the details of occurrences received by them. Each Member State shall ensure that no personal	Not mentioned	Not mentioned

133 http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0376&from=EN

Name	Sectors covered / excluded	Categories of workers	Categories of wrongdoing covered	Reporting channels	Protection of whistleblowers	Provisions for confidentiality	Good faith	Burden of proof
					paragraph 10 applies, employees and contracted personnel who report or are mentioned in occurrence reports collected in accordance with Articles 4 and 5 shall not be subject to any prejudice by their employer or by the organisation for which the services are provided on the basis of the information supplied by the reporter	details are ever recorded in the national database referred to in Article 6(6). Such unidentified information shall be made available to all relevant parties, for example to allow them to discharge their obligations in relation to aviation safety improvement.		
Staff Regulations of officials and Conditions of Employment of other servants of the European Union[134]	European institutions	'Any member of staff'	'Possible illegal activity, including fraud or corruption, detrimental to the interests of the Communities, or of conduct relating to the discharge of professional duties which may constitute a serious failure to comply with the obligations of officials of the Communities'	(…) Each institution shall put in place a procedure for the handling of complaints made by officials concerning the way in which they were treated after or in consequence of the fulfilment by them of their obligations under Article 22a or 22b. The appointing authority of each institution shall lay down internal rules on inter alia: - the provision to officials referred to in Article 22a(1) or Article 22b of information on	"An official shall not suffer any prejudicial effects on the part of the institution as a result of having communicated the information referred to in paragraphs 1 and 2,"	The institution concerned shall ensure that such complaints are handled confidentially and, where warranted by the circumstances, before the expiry of the deadlines set out in Article 90.	Required Protection will be afforded if the official acted reasonably and honestly and/or if the official honestly and reasonably believes that the information disclosed, and any allegation contained in it, are substantially true; and	Reversed'(…) the onus shall be on the institution to prove that there has been no breach of the principle of equal treatment.'

[134] Staff Regulations of officials and Conditions of Employment of other servants of the European Union as amended by Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013 amending the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union.

Name	Sectors covered / excluded	Categories of workers	Categories of wrongdoing covered	Reporting channels	Protection of whistleblowers	Provisions for confidentiality	Good faith	Burden of proof
				the handling of the matters reported by them, - the protection of the legitimate interests of those officials and of their privacy, and the procedure for the handling of complaints referred to in the first paragraph of this Article'				
Proposal for a Directive to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market COM(2017) 142 final	All sectors covered	Broad category of workers: 'current and former employees and directors'	Any types of antitrust violations	The Proposal provides that individuals willing to report antitrust violations 'should be encouraged to provide that information, e.g. including through the establishment of reliable and confidential reporting channels'	Protection from 'any criminal and administrative sanctions and from sanctions imposed in non-criminal judicial proceedings for their involvement in the secret cartel covered by the application, if these employees and directors actively cooperate with the competition authorities concerned and the immunity application predates the start of the criminal proceedings.'	'Member States should be encouraged to provide that information, e.g. including through the establishment of reliable and confidential reporting channels'	Not mentioned	Not mentioned

Annex 6: Member States' Legislative framework

The present annex presents A) an analysis of the national legislative frameworks on whistleblowing in the 28 Member States B) trends regarding the adoption of new legislation on whistleblower protection and recent developments C) Information on the implementation of whistleblower protection at national level and D) Lessons learnt from existing national laws and their implementation.

A. Analysis of the national legislative frameworks on whistleblowing in the 28 Member States

The external study commissioned by DG JUST gathered information[135] on the legislative frameworks on whistleblower protection in all Member States and assessed them against eight criteria based on the 2014 Council of Europe Recommendation and corresponding to essential components of a balanced legal framework. The criteria are:

- **Sectors and organisations covered**. This considers the scope of the law by reference to the sectors and size of organisations covered, such as the scope being restricted to the financial sectors service.
- **Categories of protected whistleblowers (personal scope)**.This clarifies the categories of citizens or workers who are covered by the legislation, including whether the scope covers trainees, volunteers, etc.
- **Type of wrongdoings that can be reported**. This addresses the range of wrongdoings that can be reported under the legislation. Countries usually adopt one of two approaches, either (i) an enumerative list of wrongdoings, or (ii) reference to the notion of 'harm or threat to the public interest' which allows for a wider range of wrongdoings to be reported.
- **Nature and extent of protection of whistleblowers in the workplace**. This criterion assesses the level and type of protection afforded to the whistleblowers against retaliation and the types of remedies available.
- **Channels of reporting (tiered approach).** This assesses the availability of appropriate channels to enable the whistleblower to disclose information. A tiered approach seeks reporting through internal channels first while providing additional channels in the event that the disclosure through the internal channel does not elicit a response, e.g. reporting to public regulatory bodies and if unsuccessful disclosing to the public.
- **Confidentiality of the whistleblower's identity** and penalties for breach of confidentiality. This considers whether the identity of the whistleblower is protected. Confidentiality helps to ensure the whistleblower's protection and removes a disincentive to report wrongdoing.
- **Burden of proof.** This considers whether the whistleblowing legislation provides for the reversal of the burden of proof in prima facie cases of retaliation. This provision gives better protection to the whistleblower who will not have to demonstrate facts that lie entirely within the employer's own knowledge.

[135] The information regarding the state of national legislation was gathered by August 2017. Developments on adoption of new national legislation occurred after August 2017 are reflected in the main impact assessment but not in the Annex 6. This discrepancy, particularly, applies to developments occurred in Italy and Lithuania, where the introduction of new laws are not fully reflected in the Annex and reference is made to the national laws and provisions in place before August 2017.

- **Good faith requirement**. This considers whether the legislation providing protection specifies that the whistleblower's disclosure must be made in good faith or with a reasonable belief that the information is true and in such cases protects the whistleblower also in the event that the information reported was incorrect.

The report found that, in **2 Member States, whistleblowers have no protection** (CY, LV). In the other 26 Member States, it identified the following **main gaps:**

- **Lack of protection:** In 17 Member States whistleblowers are only partially protected: only in certain sectors (e.g. public sector, private sector, just the banking/financial sector) (AT, BG, CZ, DE, DK, EE, EL, FI, HR, LT, LU, PL, PT, RO, SI) or only in parts of the territory (BE, ES) Only 9 Member States have a single, horizontal law for the protection of whistleblowers (FR, HU, IE, IT, MT, NL, UK, SE, SK).
- **Lack of protection of private employees:** In 13 Member States, private sector employees are not at all protected (in 6 Member States: BE, BG, CZ, EL, LT, RO) or very partially protected (in 5 Member States only the financial and/or banking sector is covered: AT, DE, DK, FI, PL).
- **Strict definition of workers who can be protected:** 12 Member States offer protection only to employees very strictly defined (not to subcontractors, former employees, trainees etc.): AT, BE, CZ, DK, EL, HR, LU, PL, PT, RO, SE, SK.
- **Limited types of wrongdoing that can be reported ("protected disclosures"):** in 12 Member States whistleblowers are only protected if they report on corruption (EE, EL, HR, LU, PT, RO SI) or other very limited types of wrongdoing that can harm the public interest (IT, PL, DK, FI, ES).
- **Limited protection**: In 2 Member States whistleblowers have no legal protection against retaliation (EE, FI), in 11 Member States they are protected only from some forms of workplace retaliation such as unfair dismissal or discrimination (AT, BG, CZ, DE, DK, EL, HR, IT, LT, PT, RO).
- **Reporting channels:** Laws in 7 Member States do not prescribe setting up reporting channels (BG, EE, EL, ES, HR, LU, RO). In some Member States reporting channels are only prescribed by law to the certain sectors (PT, SI) or do not require the set-up of channels but refer to reporting channels such as a possibility to report to employers (HU, IE). 6 Member States require a tiered use of prescribed channels, i.e. that whistleblowers first report within their organisation and only report externally if internal channels do not or cannot be expected to function properly (FR, IE, MT, NL, UK, PT, SE). 7 Member States do not require a tiered use of channels (AT, BE, IT, LT, PL, SK, SI).
- **Confidentiality of the whistleblower's identity is not ensured**: Confidentiality is not guaranteed in 4 Member States (DE, EL, LU, SE) and only partly guaranteed, e.g. only in some of their sectorial laws in 3 Member States (BG, ES PT).
- **No reverse burden of proof in favour of the whistleblowers**. 9 Member States do not expressly require the reversal of the burden of proof (AT, BG, HU, IT, LT, MT, NL, PL,UK,); 2 Member States reverse it only in some sectors (HR, PT) and in 1 Member State the burden is not reversed in law, but in practice (SE).

No requirement of good faith: 5 Member States do not require 'good faith' to afford protection to whistleblowers (BG, CZ, DK, FI, ES); 2 Member States require it only based on case law and not in the law (AT, DE) ; 2 Member States require it only in some of their sectoral laws (LT, PT).

In the following table on the legal framework on protection of whistleblowers in the 28 Member States[136] a different colour code was used to reflect the type of provisions that exist in the Member State.

[136] See Annex 14 ICF's Study (2017), vol. II Annex 4.

Table A6.1 *Overview of Member States' legal framework on protection of whistleblowers*

No specific provision
Partial/sectorial provision
Specific provision

Member State	Horizontal law[137]	Protection of employees in the private sector[138]	Legal obligation to set up reporting channels[139]	Broad definition of wrongdoing[140]	Broad protection against retaliation[141]	Confidentiality	Specific protection in Courts (reverse burden of proof)[142]	Requirement of good faith[143]
Austria	X	X	√	√	X	√	X	√*
Belgium	X*	X	√	√	√	√	√	√
Bulgaria	X	X	X	√	X	X	X	X
Croatia	X	√	X	X*	X	√	√*	√
Cyprus	X	X	X	X	X	X	X	X
Czech Republic	X	X	√	√	X	√	√	X
Denmark	X	X	√	X*	X	√	√	X
Estonia	X	√	X	X*	X	√	√	√
Finland	X	X	√	X*	X	√	√	X
France	√	√	√	√	√	√	√	√
Germany	X	X	√	√	X	X	√	√*
Greece	X	X	X	X*	X	X	√	√
Hungary	√	√	X	√	√	√	X	√
Ireland	√	√	X	√	√	√	X	√*
Italy	√	√	√	X*	X	√	√	√
Latvia	X	X	X	X	X	X	X	X
Lithuania	X	X	√	√	X	√	X	√*
Luxembourg	X	√	X	X*	√	X	√	√
Malta	√	√	√	√	√	√	X	√
Netherlands	√	√	√	√	√	√	X	√
Poland	X	X	√	X*	√	√	X	√
Portugal	√	X	X	X*	X	X	√*	√*
Romania	X	X	X	X*	X	√	√	√
Slovakia	√	√	√	√	√	√	√	√
Slovenia	X	√	X	X*	√	√	√	√
Spain	X*	√	X	X*	√	X	√	X
Sweden	√	√	√	√	√	X	√*	√
United Kingdom	√	√	√	√	√	√	X	√*

137 Member Stes have a single, horizontal law for the protection of whistle blowers. (*) Legislation provides protection only in parts of the territory.

138 Partial protection is provided by Member States only in the financial and/or banking sector.

139 (*) Reporting channels are only prescribed by law to the certain sectors (PT, SI) or do not require the set-up of channels but refer to reporting channels such as a possibility to report to employers (HU, IE).

140 (*) Partial protection of whistleblowers only limited to cases of corruption (EE, EL, HR, LU, PT, RO, SI) or if wrongdoing that can harm the public interest (DK, ES, FI, IT, PL)

141 Partial provisions of protection since whistleblowers are only protected against some forms of retaliation such as unfair dismissal or discrimination.

142 (*) Reverse burden of proof only in some sectors (HR, PT) or not foreseen by law, but in practice (SE).

143 The requirement of good faith is very different from one Member States to another. (*) Good faith is understood as the reasonable belief that the disclosure is substantially true (IE, UK) only required by caselaw (AT, DE) or only in some sectorial laws (LT, PL).

B. Trends regarding the adoption of new legislation on whistleblower protection and recent developments

Table A6.2 summarises recent developments in whistleblower protection law in the EU Member States, as identified in the ICF study.

Eight Member States (FR; HU; IE; MT; NL; SE; SK; UK[144]) introduced whistleblower protection laws between the years 2013 and 2016, with the exception of the UK, which had already introduced The Public Disclosure Act (PIDA) in 1998 (amending it in 2013). Among the reasons behind the adoption of the new legislation were:

- Pressure from civil society and trade unions (FR)[145]. In the framework of the drafting and adoption of the Law Sapin II on transparency, prevention of corruption and modernisation of political life, 17 organisations of the civil society launched a petition to strengthen protection of whistleblowers in France and include such provisions in the Law Sapin II.
- Increased public awareness and call for transparency (HU[146], SE[147] and SK); and
- Political pressure on governments to amend or introduce protection laws (IE[148], MT and the UK) notably by NGOs and trade unions.

Among the Member States, plans to amend existing laws or to adopt new legislation are under discussion in Belgium, Croatia and Lithuania. In Italy, the legislative proposal on whistleblowers protection was approved by the Parliament on 15 November 2017.

Initiatives to launch discussions or adopt legislation at national level have recently been launched in several Member States. In Cyprus, the Czech Republic, Latvia and Spain, a legislative proposal has been submitted to the national Parliament. Discussions to introduce a new legislative framework are also undergoing in Greece with the support of the OECD. In Denmark, the proposal to establish a whistleblower mechanism for the military staff and police intelligence officers was not adopted. Similarly, legislative proposals to introduce protection for whistleblowers in 2012 and 2014 in Germany failed. In both countries, there is no on-going discussion to introduce new legislation on whistleblowing. Even where Member States initiatives are under discussion, there is no certainty that these initiatives will be adopted with their intended scope in the near future - as shown by the Danish and German example.

C. Information on the implementation of whistleblower protection at national level

The information below was collected through targeted consultations with stakeholders carried out by the Commission. This information is of relevance for defining the scope of the envisaged EU initiative, the design of the channels to be prescribed, as well as for the choice of measures to be provided for to protect whistleblowers from retaliation.

Thirteen (50%) of the 26 public authorities that responded to the targeted consultation had come across whistleblower cases within the last ten years. Collectively they reported 7,059 cases from the previous 10 years. The reports related to tax evasion, tax avoidance, fraud,

144 Since the findings of the ICF study, Italy also adopted a horizontal legislative framework on whistleblower protection

145 https://transparency-france.org/actu/17-organisations-de-societe-civile-lancent-petition-renforcer-protection-lanceurs-dalerte-france/ - information supported by stakeholder interviews.

146 This legislation was introduced following an incident in which 800 million litres of caustic red sludge was released from an aluminium processing plant.

147 For example, the Lux Leaks scandal.

148 Ireland abandoned its sectoral approach in in 2012 and replaced it with a single piece of protected disclosure legislation.

irregularities or any other illegal activities affecting the financial interests of the EU, money laundering, mismanagement of public funds, misuse of personal data, threats to public health and the environment, violations of human rights in general and violation of financial regulations.

Information on the reporting channels used by the whistleblowers was reported for 5,389 cases.

For the vast majority of those cases (5,303 or 98%), organisation-level or internal channels (e.g. HR) were used by the whistleblowers. In all but three cases, the use of such channels is prescribed by the organisations in question. For 60 cases, the whistleblower reported the wrongdoing to an oversight authority (e.g. ombudsman). For 56 out of the 60 cases, the use of this particular channel is prescribed by national law (reported in BG, HR, HU, and SI). Disclosure to the public via web platforms was reported for 9 cases; for 5 of these cases, the use of this channel was prescribed at the level of the organisation. A further two cases were reported as disclosed to the public via social media. Other channels used include: the police (four cases), the media (four cases), trade unions (one case), and the parliament (one case)

The most frequently identified **negative consequences suffered by whistleblowers**, as reported in detail by three stakeholders were:

- The deterioration of the whistleblower's psychosocial wellbeing and dismissal of the whistleblower (five occurrences for both consequences).
- Negative consequences linked to hostile attitudes towards whistleblowers. These include: harassment by superiors or colleagues and other punitive or discriminatory treatment at work (three occurrences for both consequences).
- The other identified negative consequences for whistleblowers include: the loss of promotion opportunities (three occurrences); costs of administrative proceedings (three occurrences); blacklisting (one occurrence); demotivation at work (one occurrence).

The Hungarian Office of the Commissioner for Fundamental Rights reported that: out of the 1,121 cases dealt with, assistance/protection was used in 890 cases (79%).

The **forms of assistance** used by the whistleblowers were reported for a total of 47 cases referred to by different stakeholders:

- The form of assistance or protection most frequently used by whistleblowers was internal or at the level of the organisation (11 cases) –.
- Assistance or protection was also sought from public authorities with investigative powers (8 cases). The data show that in almost all cases (seven out of eight), this type of protection is not prescribed by national law or organisations.
- Counselling or psychological support was reported as a form of assistance used in six cases – in all instances this was prescribed by national law (reported by a Slovenian public authority).
- For four cases, the whistleblowers sought assistance from independent public authorities (e.g. ombudspersons).
- In three cases, the type of protection used was the employer burden of proof prescribed by national law.

D) Lessons learnt from existing national laws and their implementation

The implementation of national laws on whistleblower protection in the EU and in third countries enables to draw certain "lessons learnt", of relevance for the Impact Assessment.

Introducing whistleblower protection increases reporting of wrongdoing

Examples of the existence of a cause and effect link between the introduction of binding rules on protecting whistleblowers and an increase in reports of wrongdoings refer to the following:

- Increase of reports: following the introduction of the 2013 law on whistleblower protection in Hungary, the number of reports received by the Commissioner for Human rights grew by 143% in a year[149]
- Increase of requests for specialist legal advice or guidance. Since the enactment of the Protected Disclosures Act in Ireland in 2014), Transparency International Ireland noticed a significant increase of 237% in persons demanding specialist legal advice or guidance on protected disclosures since 2011 [150]
- Increase in willingness to report: in the UK, where the Public Interest Disclosures Act was adopted in 2000, a survey found that 86% of individuals would report compared to 54% in mainland Europe;[151]

Comprehensive legislation is necessary to avoid fragmentation

The experience in Member States shows that a piecemeal sectorial approach, which result in fragmented protection of whistleblowers does not provide a sufficient level of protection.

A clear example of this can be found in Ireland which in 2014 amended its legislation specifically to remedy fragmentation.[152]

During the expert workshop organised by the Commission on 13 October 2017, 4 out of 9 Member States which were currently drafting legislation or have proposals in the legislative process affirmed that they were drafting to provide protection horizontally (HR, IT, LV, SK). In particular, Italy and Slovakia explained that their legislative work was aimed to address gaps of the current legal framework.

Need for awareness-raising

Members States' experience shows that legislation needs to be complemented by awareness: At the expert workshop organised by the Commission on 13 October 2017, experts underlined the need to ensure awareness of the existence of the rules protecting whistleblowers through awareness-raising campaigns as well as by producing and publicising guidelines to employers and employees.

The reversal of the burden of proof is an essential element of whistleblower protection

A lesson has been learnt from the experience in the U.S., which is one of those States with the longest standing whistleblower protection laws, is related to the positive effect of the reversal of the burden of proof. Since the U.S. government changed the burden of proof in its whistleblower laws, it is estimated that the rate of success on the merits has increased from 1 to 5 percent annually to 25 to 33 percent, which gives whistleblowers.

149 Information provided in bilateral contacts by Transparency International.

150 *Ibid.*

151 Public Concern at Work (2010): Where's whistleblowing now? 10 years of legal protection for whistleblowers, p. 15. https://www.pcaw.org.uk/content/4-law-policy/4-document-library/report-10-year-where-s-whistleblowing-now-10-year-review-of-pida.pdf

152 Protected disclosures bill (2013) Regulatory impact analysis, p. 14 http://www.google.be/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0ahUKEwig9_br79zYAhUCQBQKHRhlBugQFggzMAE&url=http%3A%2F%2Fper.gov.ie%2Fwp-content%2Fuploads%2FProtected-Disclosures-Bill-2013-Regulatory-Impact-Assessment.pdf&usg=AOvVaw2eIINb23WtuqgmNFB5YIj0

Table A6.2[153] *Table summarising plans to introduce or amend whistleblower protection laws in EU Member States*

MS	Recently adopted laws (since 2013)	Legislative proposal	On-going discussions to adopt new legislation	Failed attempt to introduce new legislation
AT	-	-	-	-
BE	**Yes** Sectoral legislation covering only the federal and Flemish civil servants[154][155]	**Yes** The law would remain sectoral Amendments to the current Federal Law on Integrity and Ethics are pending before the Parliament.[156] However this would only extend the personal scope of the law to the police sector.	-	-
BG	-	-	-	**Yes** In 2014 the government's Centre for Prevention and Countering of Corruption and Organized Crime released an in-depth study meant to serve as a basis for possible reforms. Since then, however, no known progress has been made.[157] Two proposals to establish a unified anti-corruption agency were considered by Parliament, in 2015 and 2016. Both included provisions on whistleblowing – or "signals." The first proposal was narrowly defeated in September 2015. It was resubmitted in April 2016 and defeated the following December**.**
CY	-	**Yes** A draft bill is currently being discussed in Parliament. It was suggested by the national press	-	-

153 This table reflects Annex 14 ICF's Study (2017), vol. II Annex 4 adjourned after the adoption of the law of 15 November 2017 by Italy.

154 Decree on Whistleblowers for the public sector *(Decreet houdende instelling van de Vlaamse Ombudsdienst)* https://codex.vlaanderen.be/Portals/Codex/documenten/1006276.html

155 Law on Integrity and Ethics *(Loi relative à la dénonciation d'une atteinte suspectée à l'intégrité au sein d'une autorité administrative fédérale par un membre de son personnel)* http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=2013091506

156 http://www.lachambre.be/FLWB/PDF/54/2324/54K2324001.pdf

157 http://borkor.government.bg/en/page/482

MS	Recently adopted laws (since 2013)	Legislative proposal	On-going discussions to adopt new legislation	Failed attempt to introduce new legislation
		that an alternative bill is being prepared by the Ministry of Justice. However, the timescale remains unclear. The Cypriot Securities and Exchange Commission has also submitted a draft bill to the Parliament entitled 'Law on reporting of infringement' to help tackle financial crime.		
CZ	-	**Yes** A draft bill was submitted to the Parliament. As of the time of research in mid-2017 the bill had yet to be discussed by the Parliament. The law as it is offers protection to both public and private sector workers.	-	-
DE	-	-	-	**Yes** Two draft bills were submitted by opposition parties in 2012[158] and 2014[159] but both did not go through. The proposed changes referred to both the private and public sectors.
DK	-	-	-	**Yes** Members of Parliament proposed the establishment of a whistleblower mechanism for military staff and police intelligence officers. The proposed legislation was not adopted.
EE	-	-	-	-
EL	-	-	**Yes** The Ministry of Justice with the support of the OECD is leading discussions on the introduction of a new legislative framework in the remainder of 2017.	-

158 http://dip21.bundestag.de/dip21/btd/17/097/1709782.pdf
159 http://dip21.bundestag.de/dip21/btd/18/030/1803039.pdf

MS	Recently adopted laws (since 2013)	Legislative proposal	On-going discussions to adopt new legislation	Failed attempt to introduce new legislation
ES	-	**Yes** The political party Ciudadanos has submitted a legislative proposal to the national Parliament in July 2017. The proposal aims to recognise the rights of whistleblowers in the area of Public Administration.	-	-
FI	-	-	-	-
FR	**Yes** Horizontal legislation introduced in 2016	-	-	-
HR	-	-	**Yes** The Ministry of Justice has announced plans to introduce stronger protection for whistleblowers by the end of 2018	-
HU	**Yes** Horizontal legislation introduced in 2013	-	-	-
IE	**Yes** Horizontal legislation introduced in 2014	-	-	-
IT	**Yes** Horizontal legislation adopted on 15 November 2017		-	-
LT	-	-	**Yes** In spring 2017, Ministry of Justice established a working group to prepare a new proposal, which is receiving a renewed attention from the Parliament as well	-
LU	-	-	-	-
LV	-	**Yes** A legislative proposal passed the Senate in March 2017 and has now been submitted to the Parliament.	-	-

MS	Recently adopted laws (since 2013)	Legislative proposal	On-going discussions to adopt new legislation	Failed attempt to introduce new legislation
		The legislative proposal as it is would allow any citizen to report a wide range of wrongdoings.		
MT	**Yes** Horizontal legislation introduced in 2013	-	-	-
NL	**Yes** Horizontal legislation introduced in 2014	-	-	-
PL[160]	-	-	**Yes** Ongoing political debate about the need for whistleblower's protection law	-
PT	-	-	-	-
RO	-	-	**Yes** The National Anti-Corruption Strategy 2016-2020 proposed amending the current Whistleblower Protection Law.	-
SE	**Yes** Horizontal legislation introduced in 2016	-	-	-
SI	-	-	-	-
SK	**Yes** Horizontal legislation introduced in 2014	-	-	-
UK	**Yes** Horizontal legislation introduced in 1998 and amended in 2013	-	-	-

160 Information gathered by September 2017.

D. Overview of national legislation on the protection of whistleblowers in the 28 EU Member States[161]

A6.C.1. Overview of the national legislation on the protection of whistleblowers in Austria

AUSTRIA	
Type of legislation and approach **Plans to adopt new legislation or amend the existing one**	No comprehensive legislation. Few laws in relation to releasing information on issues concerning corruption exist and may protect persons revealing specific wrongdoings. No legislation currently discussed.
Sectors and organisations covered **Existence of criteria (minimum number of employees, annual turnover)**	Public sector: reporting any motivated suspicion of a criminal act or breaches of official duty. Corruption: specific protection of civil servants, citizens. Financial sector: money laundering, bribery, insider trading and market manipulation, financing of terrorism only. Environmental harmful substances: employees private sector No minimum criteria.
Categories of protected whistleblowers	No general level of protection. Public sector: Civil servants Corruption: All citizens can report on corruption via a general online platform, as well as public sector employees. Financial sector: Employees report on insider trading and market manipulation, money laundering, financing of terrorism. Environmental harmful substances: employees.
Type of wrongdoings that can be reported (Public interest approach or enumerative list of wrongdoings) and exceptions	No general definition of wrongdoings. Various approaches to specific types of wrongdoings. Public sector: reporting on criminal acts liable for prosecution, breaches of official duty. Financial sector: specific to insider trading, market manipulation, money laundering, bribery, financing of terrorism. Corruption: instances of corruption. Environmental harmful substances: concrete indications of a breach of the rules set out in the ordinance and accompanying rules (implementing EU rules) on the creation of a European pollutant release and Transfer Register (E-PRTR).

[161] This table reflects Annex 14 ICF's Study (2017), vol. II Annex 10 (2017).

Nature and extent of protection of whistleblowers in the workplace and beyond the workplace and remedies available	No comprehensive protection measures. Public sector: general definition – "no disadvantage should be suffered". Physical protection as guaranteed by the prosecution procedures. Corruption: civil servants shall not "suffer any disadvantages"[162]. Financial sector: only introduces mechanisms for reporting does not provide protection Environmental harmful substances: "should not be penalised, harassed, or chased"[163]. No remedies detailed. No procedural aspects regulated.
Channels of reporting (existence of tiered channels **Deadline for the companies to address the disclosure**	Sector specific approach: Public sector: Internal: specific internal complaint procedure. External: Criminal police for criminal acts. For public sector – immediately once known. The supervisor has to start investigations to collect information and verify facts reported and start a disciplinary procedures. In case elements indicate a criminal act, then the facts will be reported to state prosecution. Financial institutions: 1) Internal – shall have an internal reporting procedures for cases of trading, market manipulation, money laundering, bribery, financing of terrorism 2)External reporting body; Corruption: open public reporting channel - online [164] to report on corruption and white-collar criminality. Environmental harmful substances: general reporting form at Environmental Agency and responsible Federal Ministries.
Confidentiality of the whistleblower's identity and penalties for breach of confidentiality	All cases: confidentiality guaranteed. No penalties specified.
Burden of proof	All cases: No reversal of burden of proof
Good faith requirement/Existence of a reasonable belief	All cases: Derived condition of good faith from case law and general legal framework in place – not specifically referring to whistleblowers.
Sanctions	Not specified.
Balancing competing rights	Not specified.
Follow-up provisions and feedback	Not specified
General advice and awareness raising	Financial sector: foresees that training should be provided and awareness raising campaigns, need for a specific budget. All other cases: Not specified.

162 https://www.jusline.at/Beamten- Dienstrechtsgesetz (BDG).html – Art. 53a

163 https://www.jusline.at/Umweltinformationsgesetz (UIG).html – Art. 9b

164 https://www.bkms-system.net/bkwebanon/report/clientInfo?cin=1at21&language=ger

Assessment	The approach is sectoral and limited to specific types of wrongdoings. Thus, there is no comprehensive framework on protection of whistleblowers and no specific rules for the private sector. Wrongdoing is defined with a limited scope to specific types of criminal acts. Rules mainly address channels of reporting. Financial sector rules provide for an external body that uses a system of reporting primarily to sanction abuse. Possibility in these cases to report anonymously.

A6.C.2. Overview of the national legislation on the protection of whistleblowers in Belgium

BELGIUM	
Type of legislation and approach **Plans to adopt new legislation or amend the existing one**	There is no comprehensive legal framework for whistleblower protection in Belgium. In the public sector each federal entity approaches whistleblowing separately. At the Federal State level there is a Law on Integrity and Ethics[165] which is applicable to Federal Administrative bodies (excluding Federal Police, Ministerial Cabinets and Parliament). The Flemish Region has a Decree on Whistleblowers for the public sector[166]. At Federal level there are currently plans to adopt amendments of the Law on Integrity and Ethics to broaden the scope and to apply it to the Federal Police.[167]
Sectors and organisations covered **Existence of criteria (minimum number of employees, annual turnover)**	The public sector is covered but only at the Federal Administration level (excluding the police) and in the Flemish region. The Wallonia region and Brussels (except bodies connected to the Flemish Community/ Flanders) do not have relevant legislation in place. There is no specific legal approach for the private sector.
Categories of protected whistleblowers	Federal level – all workers currently employed in the Federal Administration (this excludes Federal Police corps, Ministerial Cabinets and Parliament – the latter two have their separate systems). Flemish Region – all workers currently employed in an administrative authority belonging to the Flemish Region and Flemish speaking authorities in Brussels (part of the Flemish Community)[168].

165 Law on Integrity and Ethics *(Loi relative à la dénonciation d'une atteinte suspectée à l'intégrité au sein d'une autorité administrative fédérale par un membre de son personnel)* http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=2013091506

166 Decree on Whistleblowers for the public sector *(Decreet houdende instelling van de Vlaamse Ombudsdienst)* https://codex.vlaanderen.be/Portals/Codex/documenten/1006276.html

167 http://www.lachambre.be/FLWB/PDF/54/2324/54K2324001.pdf - Proposal

168 'Administrative authority' has been re-defined in 2015 and the scope has been broadened – now meaning all administrative authorities of public law, including those that are controlled by a public authority, including also those administrations that are of public interest or that make binding decision for third parties and that is of public interest; including also the Flemish Education and Research sector, Flemish Parliament, Ministries and connected departments; any administrative body that is created by decree, including the Public Employment Service.

Type of wrongdoings that can be reported (Public interest approach or enumerative list of wrongdoings)	The Federal and Flemish laws, both provide an enumerative list of wrongdoings. The Federal law provides an extensive list of wrongdoings. The Flemish law provides a broad definition referring to any negligence, abuse or crime. Federal level: all types of acts that constitute an infringement to applicable rules of public administrations and their personnel; any act that *is involving an unacceptable risk to life, health or safety of persons or of the environment;* all acts are in serious breach of professional duties or the proper management of a federal administrative authority; order of a personnel to act or has advised to act in breach of integrity rules. The wrongdoing needs to be reported within 5 years. Flemish Region: refers to negligence, abuse or crime. The wrongdoing shall be reported within one year. The wrongdoing can also relate to issues of workplace regulations.
Nature and extent of protection of whistleblowers in the workplace and beyond the workplace and remedies available	Federal level: a specific period of protection will be determined, lasting at least 2 years after closing the investigation (once the report is completed by the Ombudsman) or definite criminal court judgement. The law defines an extensive list of types of prohibited retaliation. The worker is protected. Cases of retaliation or any discriminatory act concerning the whistleblower can be reported to the Federal Ombudsman, who will launch a procedure, notifying the administration concerned. The highest managing official of that administration investigates and reports to the Ombudsman if the presumed acts of retaliation were acts of retaliation or not. In the case it proofed an act of retaliation the retaliator will face a disciplinary procedure. There are no remedies. Flemish Region: the law prohibits acts of retaliation and sanctions (broad sense) against the staff member that has reported. No specific listing. A period of protection will be determined lasting up to 2 years after closing the investigation. The Ombudsman can investigate upon complaints received from the whistleblower. The outcome of this investigation will be provided to the whistleblower and the line manager. The Ombudsman provides recommendations and aims to find solutions. The worker can voluntarily change the place of work. No other specific remedies are provided.
Channels of reporting (existence of tiered channels) **Deadline for the companies to address the disclosure**	Both systems use a two-channel approach. Federal level: De facto tiered system. 1) Internal – supervisor or line manager; or person of trust within the administrative body or responsible ministry for integrity management (A unit in the Ministry for Budget). 2) External: Federal Ombudsman. The whistleblower does not have to respect any order – internal first and then external, a choice is possible. Flemish Region: 1) Internal administration: line manager; or directly Flemish public integrity management body Spreekbuis, or Audit Flanders; 2) External body Ombudsman Flanders: this body can be contacted after 30 days if the whistleblower does not receive satisfactory reply – ; None of these regulations foresee a specific approach with regard to media.
Confidentiality of the whistleblower's identity and penalties for breach of confidentiality	In both cases: confidentiality is guaranteed.
Burden of proof	In both cases: there is a reversal of burden of proof.

Good faith requirement/Existence of a reasonable belief	In both cases: there is a requirement "good faith reporting". Federal level also requires existence of reasonable belief.
Sanctions	Federal level: sanctions are foreseen for the person who is the author of the act of retaliation – disciplinary procedure. Flemish Region: not specified.
Balancing competing rights	In both cases: not specifically mentioned in the law.
Follow-up provisions and feedback	In both cases: The Ombudsman at Federal level and in the Flemish Region will provide an advice as to how the situation shall be followed up and provides feedback to the affected administration and whistleblower and any other affected member of personnel. In case it is about criminal activity (confirmed after investigation) the case will be filed with state prosecution. Flemish Region: in case the recommendations of the Ombudsman are not followed-up to a satisfactory level, the Ombudsman will then report the affair to the competent Minister. The competent Minister has to provide a motivated note within 40 days upon receipt why the substantiated complaint cannot be given follow-up measures. The Ombudsman can deliver this nota to the Flemish Parliament ensuring confidentiality of parties involved.
General advice and awareness raising	In both cases: not specified in the law.
Assessment:	- The law covers the public sector (but not in the entire country). - A broad definition of wrongdoings not only linked to public interest approach. - Protection against retaliation at the workplace - Dual channels with flexibility in case of no reaction, external channel to guarantee protection against retaliation - The confidentiality is guaranteed - The burden of proof is reversed - Good faith requirement

A6.C.3. Overview of the national legislation on the protection of whistleblowers in Bulgaria

BULGARIA	
Type of legislation and approach **Plans to adopt new legislation or amend the existing one**	There is some protection of whistleblowers in included within the Administrative Procedure Code (APC) and the Conflict of Interest Prevention and Ascertainment Act (CIPAA). It covers all people reporting wrongdoings as defined in the legislation.
Sectors and organisations covered **Existence of criteria (minimum number of employees, annual turnover)**	Only public institutions covered
Categories of protected whistleblowers	All citizens are covered albeit only for misconduct related to the public sector.

Type of wrongdoings that can be reported (Public interest approach or enumerative list of wrongdoings) and exceptions	APC: public interest: misconduct amounting to abuse of power, corruption, mismanagement of state or municipal property, or any other illegal or inappropriate act/ omission. CIPAA: conflicts of interest in the public sector, including state and municipal enterprises, companies and non-profit organizations that are involved in the state or municipalities.
Nature and extent of protection of whistleblowers in the workplace and beyond the workplace and remedies available	General application, no specific mention of workplace: APC: "no person shall be prosecuted solely for making report according to the provisions of the APC" CIPAA: a person who reports a conflict of interest may not be persecuted solely for this reason. Persons who are responsible for handling reports must make proposals to other officials to take concrete measures to protect the dignity of whistleblowers, including measures to prevent mental and physical abuse. A person who is dismissed, prosecuted or suffers mental or physical abuse has the right to compensation for personal injury and damage to property in court.
Channels of reporting (existence of tiered channels) **Deadline for the companies to address the disclosure?**	Not addressed in the law.
Confidentiality of the whistleblower's identity and penalties for breach of confidentiality	In the APC: it's up to the administrations to determine the rules of procedure for protection. Confidentiality is not explicitly ensured In the CIPAA: Those examining the report may not disclose the identity of the whistleblower or make public any facts in connection with the report and must safeguard documents. Failure to comply will result in a fine from BGN 1,000 to 3,000 (EUR 500 to 1,500).
Burden of proof	Not addressed in law.
Good faith requirement/Existence of a reasonable belief	Not addressed in the APC or CIPAA.
Sanctions	Not reported in relation to retaliation – there are sanctions for other offences, such as breach of confidentiality, breach of secrecy of data, slander, etc.
Balancing competing rights	Not addressed in the APC or CIPAA
Follow-up provisions and feedback	APC: simply requires officials to investigate the reports without clarifying who can receive the reports. CIPAA: includes detailed roles and responsibilities for investigating and punishing violations of conflict of interest regulations. Lack details as to how this will happen in practice.
General advice and awareness raising	Not specified in the law.

Assessment	- The laws only cover misdemeanours occurring in the public sector, however any citizen may be a whistleblower so not just employees. - The public interest approach allows to disclose a wide range of wrongdoings with a list but also a wide "any illegal act" option. - Protection for whistleblowers is available and appears to be wide however it is very generic. No particular retaliatory actions are mentioned and we would need to see the court's interpretation of the wording to establish the extent of the protection. - Channels are not addressed by the law - Confidentiality is potentially guaranteed but not explicitly enough - The burden of proof is not addressed by the law

A6.C.4. Overview of the national legislation on the protection of whistleblowers in Croatia

	CROATIA
Type of legislation and approach **Plans to adopt new legislation or amend the existing one**	There is no comprehensive legislation protecting whistleblowers in Croatia. Several pieces of legislation guarantee a minimum protection to employees form the private and public sectors reporting corruption. Various laws provide protection to public servants reporting certain types of wrongdoings in the public sector. The Civil Servants Act and the Governmental Employees Act in local and regional self-government provide protection to civil servants reporting corruption or suspicion of corruption while the Law on the Internal Financial Control System in the Public Sector protect civil servants reporting any 'irregularity'. Different laws provide protection to private sector employees reporting certain types of wrongdoings in the private sector. The Trade Act[169] and the Labour Act provide protection to private employees reporting corruption or suspicion of corruption while the Criminal Code provides sanctions for employers who would unfairly dismissed employees There is a plan to adopt a legal framework for the protection of whistleblowers from the end of 2018, as mentioned in the Draft of Action Plan 2017-2018 for suppression of corruption. The current president made a campaign promise about supporting stronger whistleblower protection measures.[170] The Ministry of Justice announced a review of the protection of whistleblowers in September 2016, but no information on the process is publicly available.
Sectors and organisations covered **Existence of criteria (minimum number of employees, annual turnover)**	Public sector: all public sector Private sector: all private sector
Categories of protected whistleblowers	Public sector: all public sector employees Private sector: all private sector employees

169 Article 57(3) of the Trade Act - https://www.zakon.hr/z/175/Zakon-o-trgovini

170 https://inavukic.com/2015/03/29/croatia-fight-against-corruption-and-presidents-important-step-in-earnest-protection-of-whistleblowers/.

Type of wrongdoings that can be reported (Public interest approach or enumerative list of wrongdoings) and exceptions	Public sector: corruption, suspicion of corruption and protect civil servants reporting any 'irregularity' in relation to Internal Financial Control System in the Public Sector. Private sector: corruption and suspicion of corruption.
Nature and extent of protection of whistleblowers in the workplace and beyond the workplace and remedies available	Public and private sectors: Protection against discrimination at the workplace and unfair dismissal
Channels of reporting (existence of tiered channels) **Deadline for the companies to address the disclosure**	Public and private sectors: The Laws mention 'when reporting to the responsible person or relevant competent authorities' but do not require public and private sector entities to set up such reporting channels. There are numerous public hotlines through which whistleblowers can report wrongdoings but this is not a requirement from the law.
Confidentiality of the whistleblower's identity and penalties for breach of confidentiality	Public and private sectors: confidentiality is guaranteed. Anonymous reports are possible.
Burden of proof	Public sector: not provided in the law Private sector: burden of proof reversed in cases of unfair dismissal
Good faith requirement/Existence of a reasonable belief	Public sector: required Private sector: required
Sanctions	Public sector: not provided in the law. Private sector: unfair dismissal based on the ground of a corruption report is punished by law up to a three-year prison sentence. In case an employer does not re-instates back the employee upon the courts order, s/he can be subject up to a three-year prison sentence.
Balancing competing rights	Public and private sectors: not provided in the law.
Follow-up provisions and feedback	Public and private sectors: not provided in the law.
General advice and awareness raising	Public and private sectors: not provided in the law.
Assessment	- There is no standalone legislation on whistleblowing in Croatia. The relevant law covers public and private sectors and is scattered across different provisions. - The law provides protection against discrimination at the workplace and unfair dismissal in the public and private sectors. - There is no requirement to set up reporting channels and the law only mentions that public and private sector employees can report to the relevant person or organisation. - Confidentiality is guaranteed in both sectors. - The burden of proof is reversed only in the private sector. - There is no mention of good faith in the law.

A6.C.5. Overview of the national legislation on the protection of whistleblowers in Cyprus

	CYPRUS
Type of legislation and approach **Plans to adopt new legislation or amend the existing one**	There is no horizontal legislation protecting whistleblowers in Cyprus. The Public Service Law[171] requires public sector employees to report incidents of corruption and bribery but does not offer any protection nor channels for reporting. A proposal for a law on whistleblowing is currently being discussed in the Parliament. Press reports from March 2017 suggested the Ministry of Justice was preparing an alternative bill[172]. At time of writing the likelihood of new legislation being adopted and the timescale are unclear. The Cyprus Securities and Exchange Commission has submitted to the Parliament a draft bill entitled 'Law on reporting of infringement' to help tackle financial crime. The draft text was published on the website of the Cyprus Securities and Exchange Commission.[173]
Sectors and organisations covered **Existence of criteria (minimum number of employees, annual turnover)**	None
Categories of protected whistleblowers	None
Type of wrongdoings that can be reported (Public interest approach or enumerative list of wrongdoings) and exceptions	None
Nature and extent of protection of whistleblowers in the workplace and beyond the workplace and remedies available	None
Channels of reporting (existence of tiered channels) **Deadline for the companies to address the disclosure**	None
Confidentiality of the whistleblower's identity and penalties for breach of confidentiality	None
Burden of proof	None

171 Public Service Law L1(I)/1990 ,Art. 69A: http://www.cylaw.org/nomoi/enop/non-ind/1990_1_1/full.html

172 This is mostly due to fact that the wide scope of the bill is considered 'general and vague'. Reluctance comes from the fact that this bill may create a financial burden on the state since it requires the creation of the institution of the Chief-inspector and inspectors.

173 The proposed legislation would harmonise Cypriot legislation with what is required under:

- Article 32 of the EU Market Abuse Regulation (Reg. 596/2014)
- Commission Directive 2015/2392
- Article 73 of Directive 2014/65/EU on markets in financial instruments
- Article 99d of Directive 2014/91/EU (UCITS V Directive)
- Article 28 of Regulation 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs)

Article 24 of Regulation 2015/2365 on transparency of securities financing transactions and of reuse

Good faith requirement/Existence of a reasonable belief	None
Sanctions	None
Balancing competing rights	None
Follow-up provisions and feedback	None
General advice and awareness raising	None
Assessment	- There is no horizontal legislation protecting whistleblowers in Cyprus. - Public sector employees are required to report corruption and bribery but the law does not offer any protection nor reporting channels.

A6.C.6. Overview of the national legislation on the protection of whistleblowers in Czech Republic

CZECH REPUBLIC	
Type of legislation and approach **Plans to adopt new legislation or amend the existing one**	There is no specific legislation on whistleblowers. General protection of whistleblowers does not exist. However, some Government Resolution 145/2015 Coll [174] (protects public sector employees against workplace relations when notifying suspected misconduct in the public sector) Administrative Procedure Code [175] (ensures that employees can submit report anonymously and confidentially but does not offer protection) A bill in the parliament was under discussion during the time of research for this report (2017).
Sectors and organisations covered **Existence of criteria (minimum number of employees, annual turnover)**	Public sector (in relation to misconduct in the public sector) There are no criteria
Categories of protected whistleblowers	Civil servants reporting misconduct in the public sector
Type of wrongdoings that can be reported (Public interest approach or enumerative list of wrongdoings) and exceptions	No specific definition of 'misconduct'

174 https://www.zakonyprolidi.cz/cs/2015-145
175 http://www.wipo.int/wipolex/en/details.jsp?id=11354

Nature and extent of protection of whistleblowers in the workplace and beyond the workplace and remedies available	Protection of public sector employees against retaliation. They cannot be 'disadvantaged nor penalised'. There is no further specification of what is meant by retaliation in the law.
Channels of reporting (existence of tiered channels) **Deadline for the companies to address the disclosure**	A special centralised channel has been put in place for public sector employees to report misconduct in the public sector No requirement for companies, but some companies offer internal channels. In case of public servants the deadline is 20 days or 40 days if very complicated case. In case of employees putting motions through the Administrative procedure Code the administrative body is obliged to notify the person within 30 days whether proceeding has begun or whether there is no ground for proceeding.
Confidentiality of the whistleblower's identity and penalties for breach of confidentiality	Disclosures can be made confidentially or anonymously. However, they are no penalties if this is breached.
Burden of proof	There is no reversal burden of proof.
Good faith requirement/Existence of a reasonable belief	Not specified in the law
Sanctions	Not specified in the law
Balancing competing rights	Not specified in the law
Follow-up provisions and feedback	The public body receiving the disclosure is required to send the whistleblower a report on the progress and results of the proceeding, if the whistleblower is known.
General advice and awareness raising	Not specified in the law
Assessment	- No specific legislation on whistleblowers, even though there were already several attempts, the law never passed - Public servants have special protection and channels to report wrongdoing

A6.C.7. Overview of the national legislation on the protection of whistleblowers in Denmark

DENMARK

Type of legislation and approach **Plans to adopt new legislation or amend the existing one**	No dedicated horizontal legislation but protection is provided, to a certain extent, via existing legislation. The Danish Financial Business Act, amended in 2016, [176] requires financial institutions to have reporting mechanisms and to protect whistleblowers against unfavourable treatment. Public employees are permitted to disclose confidential information if they are instructed to do so, are acting in an obvious public interest, or are acting in their own or others' best interests.[177] This definition includes sharing information of wrongdoings and irregularities, obvious abuse of public funds and professionally unjustifiable circumstances[178]. However, this stems from guidelines and is not enshrined in the law. In Denmark, collective agreements between unions and employers also play a very big role in the regulation of work place relationships. In 2015, three Members of Parliament proposed the establishment of whistleblower mechanisms for staff in the military and police intelligence services. The proposed legislation was not adopted by the parliament. Transparency International-Denmark and Veron then suggested establishing trial whistleblower mechanisms in high-risk institutions such as the police, military and tax authority. Such mechanisms could be established administratively without amending the legislation. This change has not yet been adopted.
Sectors and organisations covered **Existence of criteria (minimum number of employees, annual turnover)**	Financial sector: companies in the financial sector only
Categories of protected whistleblowers	Financial sector: Employees: from the financial sector only
Type of wrongdoings that can be reported (Public interest approach or enumerative list of wrongdoings) and exceptions	Financial sector: breaches or potential breaches of financial regulation committed by the undertaking, also in relation to employees or members of the board of directors of the undertaking.
Nature and extent of protection of whistleblowers in the workplace and beyond the workplace and remedies available	Financial sector: protection against unfair treatment or unfair consequences because whistleblowers have reported the undertaking's breach or potential breach of financial regulation to the Danish FSA or to an arrangement in the undertaking. No other remedies available.
Channels of reporting (existence of tiered channels) **Deadline for the companies to address the disclosure**	Details about setting up of reporting channels may be laid out through collective agreement. There is no tiered approach mentioned.
Confidentiality of the whistleblower's identity and penalties for breach of confidentiality	Financial sector: confidentiality guaranteed. Anonymous reporting is possible.
Burden of proof	The burden of proof lies on the employee.

176 Danish Financial Business Act *(Lov om Financiel Virksomhed)* Unofficial version available at: https://www.finanstilsynet.dk/Lovgivning/Translated_regulations/Acts

177 Whistleblowing in Europe Legal Protections for Whistleblowers in the EU, Transparency International, 2013

178 Guidelines for public employees' Freedom of Speech", 2016: http://www.justitsministeriet.dk/sites/default/files/media/Pressemeddelelser/pdf/2016/vejledning_om_offentligt_ansattes_ytringsfrihed.pdf - Vejledning om offentligt ansattes ytringsfrihed, 2016

Good faith requirement/Existence of a reasonable belief	Not provided in the law
Sanctions	Not provided in the law
Balancing competing rights	Not provided in the law
Follow-up provisions and feedback	Not provided in the law
General advice and awareness raising	Not provided in the law
Assessment	Outside of financial sector there is no dedicated provision and the law offers rather fragmented protection and low compensation.

A6.C.8. Overview of the national legislation on the protection of whistleblowers in Estonia

ESTONIA	
Type of legislation and approach **Plans to adopt new legislation or amend the existing one**	There is no standalone legislation protecting whistleblowers in Estonia. The 2012 Anti-Corruption Act[179] protects people reporting corruption. There is no pending legal initiative to protect whistleblowers at the moment.
Sectors and organisations covered **Existence of criteria (minimum number of employees, annual turnover)**	Both public and private sectors are covered.
Categories of protected whistleblowers	All citizens. The Anti-Corruption Act refers to "any person", therefore also covering all categories of workers.
Type of wrongdoings that can be reported (Public interest approach or enumerative list of wrongdoings) and exceptions	Incidents of corruption.
Nature and extent of protection of whistleblowers in the workplace and beyond the workplace and remedies available	The law provides for reporting channels but makes no reference to protection afforded to people disclosing cases of corruption. Protection against unequal treatment can be interpreted from the law but this is not clearly stated.[180] There are no remedies available to whistleblowers.

179 Anti-corruption Act, 06.06.2012 (Korruptsioonivastane seadus) https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/530032016001/consolide

180 "A person having recourse to a court shall state in his or her application the facts based on which it may be presumed that he or she has been subject to unequal treatment. If the person against whom the application was filed does not prove otherwise, *it is presumed that unequal treatment was caused by notification of an incident of corruption*."

Channels of reporting (existence of tiered channels?) **Deadline for the companies to address the disclosure?**	There is no requirement to set up reporting channels. The law only mentions that a case of corruption may be reported to "agencies performing public duties, their officials, persons exercising supervision over agencies, persons controlling declarations or bodies conducting proceedings concerning an offence". There is no tiered approach.
Confidentiality of the whistleblower's identity and penalties for breach of confidentiality	Confidentiality is guaranteed. If the notifier knowingly communicates incorrect information, the confidentiality of the fact of notification shall not be ensured.
Burden of proof	Shared burden of proof
Good faith requirement/Existence of a reasonable belief	Good faith requirement
Sanctions	Not provided in the law
Balancing competing rights	Not provided in the law
Follow-up provisions and feedback	Not provided in the law
General advice and awareness raising	Not provided in the law
Assessment	- The law aims to covers all citizens and instances of corruption in both the private and public sectors. - However, there is no real protection afforded to whistleblowers and there is no requirement to set up reporting channels. - The law still qualifies as 'mid-level protection' because of its intention to cover a wide scope of persons allowed to report as well as the protection of basic rights such as confidentiality and the good faith requirement. - The lack of protection and reporting channels as well as the limitation to reporting of corruption only, does not provide good protection for whistleblowers.

A6.C.9. Overview of the national legislation on the protection of whistleblowers in Finland

FINLAND	
Type of legislation and approach **Plans to adopt new legislation or amend the existing one**	There is no legislation protecting whistleblowers in Finland. Some sectoral legislation requires establishment of reporting channels but protection of whistleblowers is not provided: The Act on Credit Institutions[181] requires credit institutions to have effective and confidential internal mechanisms for reporting of breaches. The Act on Financial Supervision[182] requires financial supervisory authority to maintain a reporting system on suspected breaches.

[181] Law No 8.8.2014/610, Act on Credit Institutions 8.8.2014/610 *(Laki luottolaitostoiminnasta)* Ch. 7, Sc. 6 https://www.finlex.fi/en/laki/kaannokset/2014/en20140610.pdf

Sectors and organisations covered **Existence of criteria (minimum number of employees, annual turnover)**	Only covers two specific sectors. Private sector: credit institutions and financial supervisory authorities (only in relation to reporting channels)
Categories of protected whistleblowers	Employees only can report (but no protection afforded is afforded in Finish legislation)
Type of wrongdoings that can be reported (Public interest approach or enumerative list of wrongdoings) and exceptions	Very limited scope. The two sectoral laws cover 'suspected breaches of the law' in their respective sector.
Nature and extent of protection of whistleblowers in the workplace and beyond the workplace and remedies available	No protection afforded under Finnish law. Act on Credit Institutions: the law specifies that 'a *credit institution shall implement appropriate and adequate measures in order to protect the relators'*. However there is no specification on the minimum level of protection that needs to be afforded.
Channels of reporting (existence of tiered channels?) **Deadline for the companies to address the disclosure?**	Act on Credit Institutions: requires credit institutions to have effective and confidential internal mechanisms for reporting of breaches. Act on Financial Supervision: requires financial supervisory authority to maintain a reporting system on suspected breaches.
Confidentiality of the whistleblower's identity and penalties for breach of confidentiality	For both credit institutions and financial supervisory authorities: confidentiality is guaranteed.
Burden of proof	Not provided in the law
Good faith requirement/Existence of a reasonable belief	Not provided in the law
Sanctions	Not provided in the law
Balancing competing rights	Not provided in the law
Follow-up provisions and feedback	Not provided in the law
General advice and awareness raising	Not provided in the law
Assessment:	- There is no general protection of whistleblowers nor a requirement to set up reporting channels. - Only two sectoral and very specific legislation require credit institutions and financial supervisory authorities to have internal reporting mechanisms but there is no protection for people reporting through those mechanisms.

[182] Law No 878/2008, Act on Financial Supervision *(Laki finanssivalvonnasta)* Ch. 8, Sc. *71a*https://www.finlex.fi/fi/laki/ajantasa/2008/20080878

A6.C.10. Overview of the national legislation on the protection of whistleblowers in France

	FRANCE
Type of legislation and approach **Plans to adopt new legislation or amend the existing one**	The protection of whistleblowers stems from one law (Loi Sapin II).[183] It covers all citizens reporting any harm or threat the public interest.
Sectors and organisations covered **Existence of criteria (minimum number of employees, annual turnover)**	Both private and public sectors are covered. Whistleblowing procedures must be put in place in: - Companies with more than 50 employees - National, regional and communal administrations in communes of over 10 000 inhabitants
Categories of protected whistleblowers	All citizens. Thus, all type of workers from the private and public sectors are covered.
Type of wrong-doings that can be reported (Public interest approach or enumerative list of wrong-doings) and exceptions	Public interest approach. '*Any serious harm or threat to the public interest as well as violations of the national or international law*'. Exceptions apply in relation to: - national security - medical secrecy -legal privilege
Nature and extent of protection of whistleblowers in the workplace and beyond the workplace and remedies available	Protection against workplace retaliation (i.e. discrimination, sanctions, no access to training or promotions). The interim relief procedure is available to suspend dismissal and there is a right to reinstatement in the work place after trial. Provisions on protection beyond the workplace are unclear.
Channels of reporting (existence of tiered channels?) **Deadline for the companies to address the disclosure?**	Tiered channels provided in the law 1) internal channel (to manager or the appointed person) 2) authorities (judicial authority, administrative authorities or to the national professional bodies) 3) public channel (civil society, media) The whistleblower can go public after three months in case of no reaction from the previous channels. In case of serious and imminent danger or a risk of irreversible damage, the whistleblower can also directly report to authorities or the public.
Confidentiality of the whistleblower's identity and penalties for breach of confidentiality	Confidentiality applies to the identity of the whistleblower, the person concerned by the disclosure and all the information collected. Any breach of confidentiality can lead to a two-year prison sentence and a €30,000 fine.

[183] Law n ° 2016-1691 of 9 December 2016 on transparency, the fight against corruption and the modernisation of economic life (Law Sapin II) https://www.legifrance.gouv.fr/eli/loi/2016/12/9/2016-1691/jo/texte

Burden of proof	Reversal of the burden of proof applies.
Good faith requirement/Existence of a reasonable belief	Good faith requirement. The whistleblower must disclose information in a 'disinterested manner and in good faith'.
Sanctions	- Sanctions for obstructing the protected disclosure: up to one-year imprisonment and a €15,000 fine. - Fine for abusive defamation proceedings: €30,000. This amount is twice what is normally provided in Criminal Procedure Code (€15,000 normally).
Balancing competing rights	- Lawyer-client privilege and medical secrete
Follow-up provisions and feedback	Not specified in the law
General advice and awareness raising	Not specified in the law
Assessment:	- The law covers all citizens and in all sectors - The public interest approach allows to disclose a wide range of wrong-doings. Exceptions are limited to three categories - Protection against retaliation at the workplace - Tiered channels with flexibility in case of no reaction or serious danger - The confidentiality is guaranteed - The burden of proof is reversed - Good faith requirement

A6.C.11. Overview of the national legislation on the protection of whistleblowers in Germany

GERMANY	
Type of legislation and approach **Plans to adopt new legislation or amend the existing one**	No comprehensive protection or whistleblower act in place. Sector-specific legislation covering the reporting of specific types of wrongdoing exists in the public sector[184] and financial sector[185]. No legislation currently discussed.
Sectors and organisations covered **Existence of criteria (minimum number of employees, annual turnover)**	Public sector and financial sector. No minimum criteria.

[184] Federal Civil Service Act (*Bundesbeamtengesetz*) https://www.gesetze-im-internet.de/bbg_2009/index.html

[185] Law on the Federal Financial Supervisory Authority, 22.04.2002 (Gesetz über die Bundesanstalt für Finanzdienstleistungsaufsicht) https://www.gesetze-im-internet.de/findag/BJNR131010002.html

Categories of protected whistleblowers	Public sector: Employees only Financial sector: Workers and companies (as well as subcontractors of tasks) of financial institutions that are under the control of the German Federal Financial Supervisory Authority.
Type of wrongdoings that can be reported (Public interest approach or enumerative list of wrongdoings) and exceptions	Public sector - "*concerns about legality of official orders – coming from the hierarchical superior*"; criminal acts; Financial institutions: "*any potential or actual violations of laws, legal regulations, general regulations and other regulations, as well as regulations and directives of the European Union, where the task of the Federal Agency is to ensure compliance with this by the companies and persons supervised by it*". Wrongdoings relating to money laundering and financing of terrorism.
Nature and extent of protection of whistleblowers in the workplace and beyond the workplace and remedies available	Public sector – limited protection in general against "disadvantages", internal procedural law; criminal acts – witness procedural rules apply; Financial institutions – no legal consequences for employers who retaliate under labour or criminal law provisions, nor can they be sued for damages
Channels of reporting (existence of tiered channels?) **Deadline for the companies to address the disclosure?**	Public sector: Internal procedure within the public authority – specific internal complaint procedure. Financial institutions: External reporting body. Derived rule of internal reporting first from case law (in particular for private sector). One month for administrative orders/acts according to the rules of the Code of Administrative Courts.
Confidentiality of the whistleblower's identity and penalties for breach of confidentiality	Public sector: No specific confidentiality rules. In cases of criminal acts - witness protection – confidentiality is guaranteed. Financial institutions: confidentiality is guaranteed. No penalties in case of violation of confidentiality.
Burden of proof	No reversal of burden of proof
Good faith requirement/Existence of a reasonable belief	Derived condition of good faith from case law
Sanctions	Not specified.
Balancing competing rights	Balancing of competing rights will be applied in principle in practice and in courts. It can also be derived from the Constitutional Act. Wrongdoings tend to/need to be of a criminal nature to outweigh other rights. In the private sector, case law indicates that the principle of loyalty is strongly protected. Civil servant rules are under a general duty of confidentiality unless they report a criminal act.
Follow-up provisions and feedback	Not specified

General advice and awareness raising	Not specified.
Assessment:	The level of protection depends on the type of wrongdoing reported in the public sector. However, this procedure cannot be regarded as a whistleblowing procedure but rather a procedure of complaint or reporting of abusive or unlawful behaviour. Financial sector rules provide for an external body that uses a system of reporting primarily to sanction abuse. There is the possibility in these cases to report anonymously.

A6.C.12. Overview of the national legislation on the protection of whistleblowers in Greece

GREECE	
Type of legislation and approach **Plans to adopt new legislation or amend the existing one**	There is legislation on protection of whistleblowers from 2014 (Law 4254/2014[186]) but it only covers the public sector. The Ministry of Justice, in cooperation with the OECD, is leading discussions on new a legislative framework in order to fill gaps in the protection of whistleblowers, this legislative initiative is expected to take shape in September 2017.
Sectors and organisations covered **Existence of criteria (minimum number of employees, annual turnover)**	Public sector only
Categories of protected whistleblowers	Employees only (in the public sector)
Type of wrongdoings that can be reported (Public interest approach or enumerative list of wrongdoings) and exceptions	The list of wrongdoings is limited to bribery in the public sector (i.e. bribery and bribery of political officials, bribery of an official, bribery of judicial officers, influence trading and intermediaries; the crimes of disloyalty in the service, false assertion, misappropriation, fraud, money laundering). The wrongdoing must always be linked to public interest, which is not clearly defined.
Nature and extent of protection of whistleblowers in the workplace and beyond the workplace and remedies available	Limited protection is given to whistleblowers. There is no automatic protection against workplace retaliation. Whistleblowers can be given the status of 'public interest witness' and enjoy special protection against workplace retaliation for as long as they have this status. But this does not prevent them from being dismissed once this status no longer applies. Whistleblowers are protected from criminal prosecution for offences of perjury, false denunciation, calumniating defamation, violation of classified information and disclosure of personal data. There is no specified protection of whistleblowers beyond the workplace.

[186] Law 4254/2014 *(Νόμος 4254/2014)* http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/100579/120708/F-1081253648/GRC100579%20Grk.pdf

Channels of reporting (existence of tiered channels?) **Deadline for the companies to address the disclosure?**	Not specified in the law
Confidentiality of the whistleblower's identity and penalties for breach of confidentiality	Not specified in the law
Burden of proof	Not specified in the law
Good faith requirement/Existence of a reasonable belief	Good faith requirement. Whistleblowers have to act in 'good faith'
Sanctions	Not specified in the law
Balancing competing rights	Not specified in the law
Follow-up provisions and feedback	Not specified in the law
General advice and awareness raising	No specified in the law
Assessment:	- The law covers only the public sector - The law has a very limited scope as only corruption and associated wrongdoings can be reported. - Whistleblowers benefit from very little and very unclear protection in the workplace. - There is no requirement to set up reporting channels - There is no mention of the reversal of burden of proof or on the guarantee confidentiality when revealing information. - Good faith is required

A6.C.13. Overview of the national legislation on the protection of whistleblowers in Hungary

HUNGARY	
Type of legislation and approach **Plans to adopt new legislation or amend the existing one**	Act CLXV of 2013 on Complaints and Public Interest Disclosures[187] is a comprehensive whistleblower protection legislation that covers both public and private sectors. This legislation was introduced following the 'Red Sludge disaster' in which 800 million litres of caustic red sludge were released from an aluminium processing plant. There is currently no significant initiative to amend the law or introduce relevant provisions foreseen in the legislation.

187 Act CLXV of 2013 on Complaints and Public Interest Disclosures *(2013. évi CLXV törvény a panaszokról és a közérdekű bejelentésekről)* https://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=a1300165.tv

Sectors and organisations covered **Existence of criteria (minimum number of employees, annual turnover)**	Both private and public sectors are covered regarding the protection of employees. Reporting channels are not mandatory
Categories of protected whistleblowers	All citizens. Thus, all type of workers from the private and public sectors are covered.
Type of wrongdoings that can be reported (Public interest approach or enumerative list of wrongdoings) and exceptions	Public interest approach. "*A public interest disclosure calls attention to a circumstance the remedying or discontinuation of which is in the interest of the community or the whole society*."
Nature and extent of protection of whistleblowers in the workplace and beyond the workplace and remedies available	Protection against workplace retaliation (i.e. '*any kind of disadvantage as a consequence of blowing the whistle'*). The whistleblower is entitled to legal advice, free of charge. No mention of specific remedies available to the whistleblower. No protection beyond the workplace.
Channels of reporting (existence of tiered channels?) **Deadline for the companies to address the disclosure?**	<u>Public sector</u>: There is a requirement to have reporting channels in place in the public sectors. Two channels are available: - **Centralised channel**: protected and electronic reporting channel operated by the Ombudsman[188] - **Institutional reporting channel**: operated by integrity advisors in the public sector or their equivalents in the private sector No tired approach and no clear reporting mechanism The entity receiving the disclosure has to follow-up on the disclosure within 30 days. <u>Private sector</u>: There is no obligation to set up reporting channels in the private sector. However, if companies choose to set up such channels, they must comply with the provisions of the law which provides requirements for the channels. Companies retain some latitude in the design of their internal procedures. No tiered approach.
Confidentiality of the whistleblower's identity and penalties for breach of confidentiality	Confidentiality is guaranteed. Anonymous reporting is in general not accepted but it may be decided to start an investigation on an anonymous complaint where it refers to 'serious unlawfulness'
Burden of proof	No reversal of burden of proof is mentioned in the law
Good faith requirement/Existence of a reasonable belief	Good faith requirement
Sanctions	General civil and criminal sanctions for 'unlawful acts' apply.

188 Office of the Commissioner for Fundamental Rights

Balancing competing rights	Not mentioned in the law.
Follow-up provisions and feedback	The entity receiving the disclosure has to follow-up on the disclosure within 30 days. If the investigation takes longer, the whistleblower has to be notified. The whistleblower has to be notified of the outcome of his/her disclosure. If a disclosure is found to be relevant, the receiving entity has to make sure that steps are taken to counter the offense.
General advice and awareness raising	If the company sets up reporting channels, it must make information about the internal channels available on its website in Hungarian language.
Assessment:	- The law covers both the public and private sectors and allows all citizens to make a protected disclosure. - Thanks to the concept of public interest, a wide range of wrongdoings can be reported. - Whistleblowers are protected against workplace retaliation and can use free legal advice. - Confidentiality is guaranteed and good faith is required to be protected. - Although employees are protected against retaliation in the workplace, there is no obligation for companies to set up reporting channels. - There is also no reversal of the burden of proof.

A6.C.14. Overview of the national legislation on the protection of whistleblowers in Ireland

IRELAND	
Type of legislation and approach **Plans to adopt new legislation or amend the existing one**	The protection of whistleblowers stems from one law (Protected Disclosures Act 2014[189]). It covers all employees who report misconduct in the manner foreseen in the legislation. There is no legislation under discussion, neither plans to introduce new legislation.
Sectors and organisations covered **Existence of criteria (minimum number of employees, annual turnover)**	Both private and public sectors are covered. No criteria mentioned.
Categories of protected whistleblowers	All type of workers from the private and public sectors are covered (broad definition of workers: current and former employees; contractors and consultants; agency workers; trainees; temporary workers; interns and those on work experience). The legislation specifically includes: policemen form the national police services; freelancers, contractors, etc. Legal advisors are excluded from the protection of the law.

[189] Number 14 of 2014, PROTECTED DISCLOSURES ACT 2014 http://www.irishstatutebook.ie/eli/2014/act/14/enacted/en/print#sec5

Type of wrongdoings that can be reported (Public interest approach or enumerative list of wrongdoings) and exceptions	Enumerative and extensive list of wrongdoings. Reportable wrongdoings include: (a) that an offence has been, is being 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, other than one arising under the worker's contract of employment or other contract whereby the worker undertakes to do or perform personally any work or services, (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, (f) that an unlawful or otherwise improper use of funds or resources of a public body, or of other public money, has occurred, is occurring or is likely to occur, (g) that an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement, or (h) that information tending to show any matter falling within any of the preceding paragraphs has been, is being or is likely to be concealed or destroyed.
Nature and extent of protection of whistleblowers in the workplace and beyond the workplace and remedies available	Protection against workplace- retaliation (i.e. dismissal, coercion, intimidation or harassment, discrimination, disadvantage or adverse treatment in relation to employment (or prospective employment), injury, damage or loss, threat of reprisal). Interim relief procedure is available to the whistleblower.
Channels of reporting (existence of tiered channels?) **Deadline for the companies to address the disclosure?**	No requirements for companies regarding the establishment of specific internal systems. Different institutions can be addressed to make the disclosure (employers, government authorities, parliament members, lawyers, trade unions or, in special situations, to the media). Tiered disclosure system set out by the law. Whistleblowers are encouraged to disclose information internally first; exceptions can be made if that is not possible, inappropriate or ineffective. No specific deadlines for companies to respond mentioned.
Confidentiality of the whistleblower's identity and penalties for breach of confidentiality	The confidentiality of whistleblower is granted.
Burden of proof	Reversal of the burden of proof applies.
Good faith requirement/Existence of a reasonable belief	Requirement for a 'reasonable belief of the worker'. The whistleblower must disclose information 'in the reasonable belief of the worker, it tends to show one or more relevant wrongdoings'.
Sanctions	Criminal sanctions apply to offenses towards a whistleblower. Penalties for retaliators are determined according to the criminal code.
Balancing competing rights	No information in the legislation.
Follow-up provisions and feedback	No specific procedure; it depends on the recipient.
General advice and awareness raising	Not specified in the law.

Assessment:	- The law covers all citizens and in all sectors - The public interest approach allows disclosing a wide range of wrongdoings. - Protection against retaliation at the workplace - The confidentiality is guaranteed - The burden of proof is reversed.

A6.C.15. Overview of the national legislation on the protection of whistleblowers in Italy

	ITALY
Type of legislation and approach **Plans to adopt new legislation or amend the existing one**	On 15 November 2017 Italy approved an horizontal law protecting whistleblowers[190], amending the previous fragmented system consisting of: • Legislative Decree 165/ 2001 regulating public employment (art. 54-bis on protection of whistleblowers)[191] • Law 6 November 190/2012 (Anticorruption Law)[192] amended by Legislative Decree 90/2014 empowering the National Anticorruption Authority (ANAC) • Legislative Decree 385/1993 on banking[193] • Legislative Decree 58/1998 on financial intermediaries[194] • Legislative Decree 231/2001, on the obligation to report any illicit activity[195] • Legislative Decree 81/2008 on health and safety obliges all workers to report cases of non-compliance[196] • Workers' Statute, Law 300/1970[197]
Sectors and organisations covered **Existence of criteria (minimum number of employees, annual turnover)**	The new law covers both public and private sectors.

190 http://www.senato.it/leg/17/BGT/Schede/FascicoloSchedeDDL/ebook/46411.pdf

191 Legislative Decree 165/ 2001 regulating public employment (art. 54-bis on protection of whistleblowers) *(Testo Unico del Pubblico Impiego*) http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2001-03-30;165!vig=

192 Law 6 November 190/2012 (Anticorruption Law) *(Legge Severino)*http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2012-11-6;190

193 Legislative Decree 385/1993 on banking *(Testo Unico Bancario)* https://www.bancaditalia.it/compiti/vigilanza/intermediari/Testo-Unico-Bancario.pdf

194 Legislative Decree 58/1998 on financial intermediaries (*Testo Unico sugli intermediari finanziari*) http://www.dt.tesoro.it/export/sites/sitodt/modules/documenti_it/regolamentazione_bancaria_finanziaria/normativa/051.pdf

195 Legislative Decree 231/2001, on the obligation to report any illicit activity (Disciplina della responsabilita' amministrativa delle persone giuridiche, delle societa' e delle associazioni anche prive di personalita' giuridica) http://www.camera.it/parlam/leggi/deleghe/01231dl.htm

196 Legislative Decree 81/2008 on health and safety obliges all workers to report cases of non-compliance (*Testo Unico in materia di Sicurezza)* http://www.lavoro.gov.it/documenti-e-norme/studi-e-statistiche/Documents/Testo%20Unico%20sulla%20Salute%20e%20Sicurezza%20sul%20Lavoro/Testo-Unico-81-08-Edizione-Giugno%202016.pdf

197 Workers' Statute, Law 300/1970 (*Norme sulla tutela della liberta' e dignita' dei lavoratori, della liberta' sindacale e dell'attivita' sindacale, nei luoghi di lavoro e norme sul collocamento*) https://www.cliclavoro.gov.it/Normative/Legge_20_maggio_1970_n.300.pdf

Categories of protected whistleblowers	Employees and also consultants in the private sector. The legislation in the banking sector requires banks to implement independent reporting channels.
Type of wrongdoings that can be reported (Public interest approach or enumerative list of wrongdoings) and exceptions	There is no specific definition of wrongdoing in the law. The scope is generically defined as 'unlawful wrongdoing' The ANAC guidelines clarify that 'unlawful activities' include: offences against the Public Administration, abuse of power to obtain private advantages, use of public functions for private purposes.
Nature and extent of protection of whistleblowers in the workplace and beyond the workplace and remedies available	The legislation provides a broad protection to employees who cannot be dismissed, terminated, sanctioned, moved or be damaged by any other negative effects on his working conditions..
Channels of reporting (existence of tiered channels?) **Deadline for the companies to address the disclosure?**	The legislation on protection of whistleblowers in the public service does not require organisations to implement specific reporting channels. It only identifies recipients of disclose information: workplace supervisor, the Judicial Authority, the Court of Auditors or the ANAC. The legislation in the banking sector required banks to implement independent reporting channels without further specifications on type of channels and methods.
Confidentiality of the whistleblower's identity and penalties for breach of confidentiality	Confidentiality is granted to whistleblowers. In the banking sector independent channels are specifically required to ensure confidentiality of the whistleblower.
Burden of proof	No reversal of the burden of proof
Good faith requirement/Existence of a reasonable belief	Good faith requirement. Whistleblowers are protected as long as they do not commit libel or defamation or harm a person's right to privacy.
Sanctions	No sanctions are envisaged for retaliation of whistleblowers
Balancing competing rights	No rules on balancing competing rights
Follow-up provisions and feedback	No specific follow-up provisions are provided by the legislation
General advice and awareness raising	No specific requirements for organisations on advice and awareness raising activities
Assessment:	- The legislation covers the employees in the public and private sectors and the consultant in the private sector, banking and finance sectors. - The legislation does not provide a specific definition of wrongdoing - There is no reversal of the burden of proof - Confidentiality is granted to whistleblowers - Good faith requirement.

A6.C.16. Overview of the national legislation on the protection of whistleblowers in Latvia

LATVIA	
Type of legislation and approach **Plans to adopt new legislation or amend the existing one**	There is no legislation protecting whistleblowing in Latvia In 2015 Latvia's State Chancellery formed a working group to study the issue of whistleblowers protection The legislative proposal[198] has passed senate consultation on 7 March 2017 and is waiting to be considered at first reading in Parliament (*Saeima*). This legislative proposal would set up a comprehensive legal framework for whistleblowers protection.
Sectors and organisations covered **Existence of criteria (minimum number of employees, annual turnover)**	There is no legislation on whistleblowing in Latvia.
Categories of protected whistleblowers	There is no legislation on whistleblowing in Latvia.
Type of wrongdoings that can be reported (Public interest approach or enumerative list of wrongdoings) and exceptions	There is no legislation on whistleblowing in Latvia.
Nature and extent of protection of whistleblowers in the workplace and beyond the workplace and remedies available	There is no legislation on whistleblowing in Latvia.
Channels of reporting (existence of tiered channels?) **Deadline for the companies to address the disclosure?**	There is no legislation on whistleblowing in Latvia.
Confidentiality of the whistleblower's identity and penalties for breach of confidentiality	There is no legislation on whistleblowing in Latvia.
Burden of proof	There is no legislation on whistleblowing in Latvia.
Good faith requirement/Existence of a reasonable belief	There is no legislation on whistleblowing in Latvia.
Sanctions	There is no legislation on whistleblowing in Latvia.
Balancing competing rights	There is no legislation on whistleblowing in Latvia.
Follow-up provisions and feedback	There is no legislation on whistleblowing in Latvia.
General advice and awareness raising	There is no legislation on whistleblowing in Latvia.
Assessment:	There is no legislation on whistleblowing in Latvia.

198 Draft Whistleblowers protection law: http://titania.saeima.lv/__C2257D79002642E1.nsf/0/D0E4D462A120A90EC22580DD004F7AE1?OpenDocument

A6.C.17. Overview of the national legislation on the protection of whistleblowers in Lithuania

	LITHUANIA
Type of legislation and approach **Plans to adopt new legislation or amend the existing one**	There is no standalone legislation relating to whistleblowers in Lithuania. Two sectoral laws, the Law on Public Administration[199] and the Law on Banks[200], provide requirements to set up channels to report wrongdoings. The Law of Banks also provides protection for employees reporting wrongdoings via the procedures in place. In 2017, the Ministry of Justice established a working group to prepare a new legislative proposal that received a renewed attention from the Parliament. The draft is now in early preparatory stages. This was in great part due to the disclosure made by Rasa Kazėnienė, the head of the Accounting Division within the Kaunas Remand Prison, who reported to the media a potential network of misconduct in the prison system However, since 2005 when the first proposal for standalone legislation on whistleblowers protection was registered in the Parliament, there have been few initiatives to review the whistleblowers protection situation in Lithuania. There has been no consensus on whether a separate law is needed and no political will to drive the issue forward.
Sectors and organisations covered **Existence of criteria (minimum number of employees, annual turnover)**	Law on Public Administration: public sector Law on Banks: banking sector
Categories of protected whistleblowers	Law on Public Administration: all citizens can report but they are not protected. Law on Banks: employees only
Type of wrongdoings that can be reported (Public interest approach or enumerative list of wrongdoings) and exceptions	Law on Public Administration: Wide definition of wrongdoings: 'actions, omissions or administrative decisions of a public administration' Law on Banks: any breach of law
Nature and extent of protection of whistleblowers in the workplace and beyond the workplace and remedies available	Law on Public Administration: There is no protection of persons reporting wrongdoings. Law on Banks: Protection against workplace retaliation, discrimination or other unlawful or fraudulent behaviour. There is no mention of any remedies available to whistleblowers.

199 Law on Public Administration- Article 14, Section 5, sub-section 1 (*Lietuvos Respublikos Viešojo Administravimo Įstatymas*) - implementing legislation or Regulation (EU) No. 575/2013. Available at: https://www.e-tar.lt/portal/lt/legalAct/TAR.0BDFFD850A66/fULukajuTi

200 Law on Banks, Article 65 (prim) (*Bankų Įstatymas*). Available at: https://www.e-tar.lt/portal/lt/legalAct/TAR.B6B636C7384A/UGGppsKjKF

Channels of reporting (existence of tiered channels?) **Deadline for the companies to address the disclosure?**	Law on Public Administration: Public administration bodies are required to set up mechanisms so that citizens can report. The public administration must organise its work in such a way that persons wishing or obliged to file an application or a complaint can do so at all office hours. It must set at least two additional hours per week for the acceptance of applications and complaints before or after the organisation's working hours. If more than six months have elapsed since the disclosure of the violations specified in the complaint to the person until the date of filing of the complaint, the complaint may be disregarded. Complaints may submitted by e-mail or by mail. A person must be informed about the non-examination of a claim or complaint not later than within five business days from the date of receipt of the request or complaint in the public administration entity, except in cases where the request or complaint does not indicate any personal data to maintain contact. There is no tiered approach. Law on Banks: There is an obligation to set up reporting mechanisms for banks. However, there are no specifications on the form or procedures that these reporting mechanisms should take.
Confidentiality of the whistleblower's identity and penalties for breach of confidentiality	In both the Law on Public Administration and Law on Banks: Confidentiality is guaranteed
Burden of proof	In both the Law on Public Administration and Law on Banks: : not provided in the law
Good faith requirement/Existence of a reasonable belief	Law on Public Administration: good faith required Law on Banks: not provided in the law
Sanctions	In both the Law on Public Administration and Law on Banks: not provided in the law
Balancing competing rights	In both the Law on Public Administration and Law on Banks: not provided in the law
Follow-up provisions and feedback	Law on Public Administration: The public administration must inform the person who made the report if It is unable to resolve the issue set out in the request or to adopt an administrative procedure for a decision on a mater raised in a complaint, or It does not examine it and, within five working days from receipt of the request or complaint, forward it to the competent public administration body. Law on Banks: Not provided in the law
General advice and awareness raising	In both the Law on Public Administration and Law on Banks: not provided in the law

Assessment:	- There is a requirement to set up reporting channels in the public sector and in the banking sector but protection of those reporting is only ensured in the banking sector. - Confidentiality is guaranteed in both sectors (public and banking). - The reversal of the burden of proof is not provided in the law - Good faith is only required for disclosures in relation to the public administration.

A6.C.18. Overview of the national legislation on the protection of whistleblowers in Luxembourg

LUXEMBOURG	
Type of legislation and approach **Plans to adopt new legislation or amend the existing one**	Law on Strengthening the Means to Fight Corruption of 13 February 2011 No legislation under discussion or plan to discuss new legislation.
Sectors and organisations covered **Existence of criteria (minimum number of employees, annual turnover)**	Both private and public sectors are covered. No provisions on criteria for companies/public bodies
Categories of protected whistleblowers	Employees strictly defined.
Type of wrongdoings that can be reported (Public interest approach or enumerative list of wrongdoings) and exceptions	Protection is limited to the disclosure of illegal acts and a few criminal offenses: corruption, influence peddling and illegal assets peddling
Nature and extent of protection of whistleblowers in the workplace and beyond the workplace and remedies available	Protection against workplace retaliation. There is a right of reinstatement in the workplace. No mention of specific remedies available to the whistleblower in the law.
Channels of reporting (existence of tiered channels?) **Deadline for the companies to address the disclosure?**	There is no requirement for employers to set up reporting channels. Whistleblowers may report to their employer or the competent authorities as mentioned by the law but there is no further indication on channels to do. No deadline for companies to address the disclosure.
Confidentiality of the whistleblower's identity and penalties for breach of confidentiality	No mention of protection of confidentiality in the law.
Burden of proof	Reversal of the burden of proof applies.
Good faith requirement/Existence of a reasonable belief	Good faith required.
Sanctions	Civil sanctions apply (i.e. financial compensation)
Balancing competing rights	Not specified in the law.
Follow-up provisions and feedback	Not specified in the law.

General advice and awareness raising	Not specified in the law.
Assessment:	- The law covers workers in all sectors - Only limited types of wrongdoings protected - Protection against retaliation at the workplace - No requirement to set up reporting channels - No provisions on confidentiality - The burden of proof is reversed - Good faith requirement

A6.C.19. Overview of the national legislation on the protection of whistleblowers in Malta

MALTA	
Type of legislation and approach **Plans to adopt new legislation or amend the existing one**	The Protection of the Whistleblower Act[201] (Chapter 527 of the Laws of Malta) introduced in 2013 is a comprehensive stand-alone whistleblower law. It provides extensive protection to whistleblowers and requires tiered reporting channels to be put in place in both the private and public sectors.
Sectors and organisations covered and exceptions **Existence of criteria (minimum number of employees, annual turnover)**	Both private and public sectors are covered Under this law an employer is defined as: 1) each ministry of the Government of Malta 2) any organisation within the private sector which, according to its last annual or consolidated accounts, meets at least two of the following criteria: an average number of employees, during the financial year, of more than 250; a total balance sheet exceeding €43,000,000 and an annual turnover exceeding €50,000,000 Any voluntary organisation which annually raises more than five hundred thousand euro (€500,000) from public collections and other donations. Exceptions to the scope of the Whistleblower Protection Act include: members of the disciplined force, members of the Security Service or to persons employed in the foreign, consular or diplomatic service of the Government.

[201] Protection of the Whistleblower Act, official version: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=25151&l=1

Categories of protected whistleblowers	The term 'employee' covers a wide range of employees: any person who has entered into or works under a contract of service with an employer any contractor or subcontractor any outworker any former employee; any person who is or was seconded to an employer; any volunteer and any candidate for employment only where information concerning a serious threat to the public interest constituting an improper practice has been acquired during the recruitment process or at another pre-contractual negotiating stage.
Type of wrongdoings that can be reported (Public interest approach or enumerative list of wrongdoings) and exceptions	Enumerative list covering a wide range of wrongdoings, namely: (a) a person has failed, is failing or is likely to fail to comply with any law and, or legal obligation to which he is subject; or (b) the health or safety of any individual has been, is being or is likely to be endangered; or (c) the environment has been, is being or is likely to be damaged; or (d) a corrupt practice has occurred or is likely to occur or to have occurred; or (e) a criminal offence has been committed, is being committed or is likely to be committed; or (f) a miscarriage of justice that has occurred, is occurring or is likely to occur; or (g) bribery has occurred or is likely to occur or to have occurred; or (h) a person above his authority; or (i) 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.
Nature and extent of protection of whistleblowers in the workplace and beyond the workplace and remedies available	Any detrimental action resulting from having made a protected disclosure is prohibited. Whistleblowers are exempted from civil or criminal proceedings or from a disciplinary proceeding for having made a protected disclosure. Detrimental action includes: (a) action causing injury, loss or damage; and, or (b) victimisation, intimidation or harassment; and, or (c) occupational detriment; and, or (d) prosecution under article 101 of the Criminal Code relating to calumnious accusations and/or; (e) civil or criminal proceedings or disciplinary proceedings; When the whistleblower refers the matter to the court, the court may make an interim order or grant an interim injunction pending the final determination of an application under this article.

Channels of reporting (existence of tiered channels?) **Deadline for the companies to address the disclosure?**	Reporting channels: Employers and the relevant authorities mentioned in the law[202] are required to set up internal reporting channels within their organisation. Such internal procedures must at least identify the person or persons within the organisation. Tiered approach: 1) Internal channel: whistleblowers have to disclose information internally first. Exceptions exist for cases where no internal systems are established or when the whistleblowing officer/head of the organisation is suspected to be involved in the reported wrongdoing. 2) External channel: whistleblowers may disclose the information externally only if an internal disclosure has already been made or attempted to be made. An external disclosure may be made to the whistleblowing reports unit of the relevant authorities[203] if the whistleblower believes on reasonable grounds – that the head of the organisation is or may be involved in the wrongdoing alleged in the disclosure there is a matter of emergency s/he believes that s/he will suffer from workplace retaliation if s/he makes an internal disclosure there is a risk for the proofs to be destroyed if no action taken is taken following the internal disclosure.
Confidentiality of the whistleblower's identity and penalties for breach of confidentiality	Confidentiality is guaranteed
Burden of proof	Not provided in the law
Good faith requirement/Existence of a reasonable belief	Good faith requirement Protection is afforded when disclosures are made in good faith and with reasonable belief that information is true and not for the purpose of personal gain. Knowingly false information is not protected by the Protection of the Whistleblower Act, and can be prosecuted in accordance with criminal law. Penalties: criminal prosecution, in accordance with Criminal Code
Sanctions	Threatening to use violence against a whistleblower is a criminal offence subject to criminal sanctions.

202 Designation of authorities prescribed to receive external disclosures in the First Schedule to the Act: Auditor General, Ombudsman, Malta Financial Services Authority, Commissioner for Revenue, Financial Intelligence Analysis Unit, Commissioner for Voluntary Organisations and Permanent Commission Against Corruption. The First Schedule describes the matters each authority is competent for, e.g. Auditor General: failure to observe laws, rules and regulations relating to public finance and misuse of public resources.

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Balancing competing rights	The law does not authorise a person to disclose information protected by legal professional privilege and a disclosure of such information is not a protected disclosure for the purposes of the Act.
Follow-up provisions and feedback	The whistleblowing reporting officer must, within a reasonable time after receiving an internal disclosure, notify the whistleblower of the status of the improper practice disclosed or such matters as may be prescribed.
General advice and awareness raising	Information about the existence of the internal procedures, and adequate information on how to use the procedures must be published widely within the organisation and must be republished at regular intervals.
Assessment:	- Wide scope of protection covering several types of work relationships in both the private and public sectors. - Requirement to set up reporting channels in the public and private sectors and tiered approach to reporting. - Many guarantees are provided in the law such as the confidentiality, the protection under the existence of a good faith and the availability of remedies (interim relief and interim injunction). - The only weakness is that the reversal of the burden of proof is not provided in the legislation.

A6.C.20. Overview of the national legislation on the protection of whistleblowers in the Netherlands

NETHERLANDS	
Type of legislation and approach **Plans to adopt new legislation or amend the existing one**	The legislative framework has been revised in 2016. The new framework is based on mainly on one law – Act House for Whistleblowers[204]. It covers the public and private sectors. There are also Codes of Conduct on reporting channels (for the private sector, municipalities, Union of Waterboards), as well as decrees for specific bodies (government, police, military) that regulate external reporting channels. No legislation currently discussed.
Sectors and organisations covered **Existence of criteria (minimum number of employees, annual turnover)**	Both private and public sectors are covered. - "Employer" with more than 50 employees – this can be public or private sector
Categories of protected whistleblowers	Broad definition of workers. All workers are covered – also those that have been collaborating with a company/public body – including sub-contractors, other contractors, and collaborators. Workers do not necessarily have to be still employed by the organisation.
Type of wrongdoings that can be reported (Public interest approach or enumerative list of wrongdoings) and exceptions	Public interest approach. There is not a concrete definition of what a "wrongdoing" may be but there must be a public interest (any breach of statutory regulations, public health, public safety, environment, functioning of public service).

[204] http://wetten.overheid.nl/BWBR0037852/2016-07-01

Nature and extent of protection of whistleblowers in the workplace and beyond the workplace and remedies available	No specific protection is provided under the legal framework but recommendations for workplace protection measures have been made by the external complaint body (House of Whistleblowers). They are not legally-binding but, in theory, whistleblowers should be able to rely on these recommendations before the courts.
Channels of reporting (existence of tiered channels?) **Deadline for the companies to address the disclosure?**	Dual approach – Internal procedure within the company/public authority External procedure - external whistleblower body –providing specific advise No specific deadline.
Confidentiality of the whistleblower's identity and penalties for breach of confidentiality	Confidentiality is guaranteed. Confidentiality must be respected in cases where the reporter wishes so. The House of Whistleblowers guarantees the confidentiality of the person reporting. Reports cannot be made anonymously. No penalties.
Burden of proof	No reversal of burden of proof
Good faith requirement/Existence of a reasonable belief	Good faith requirement – claim must be made on reasonable grounds.
Sanctions	The body investigating reports of abuse can make recommendations (undo retaliations, reinstatement etc.) which are not binding as such; the law does not provide for specific sanctions
Balancing competing rights	The body investigating reports of abuse may refuse to investigate on grounds of national security, professional secrecy or other statutory regulations
Follow-up provisions and feedback	The external body investigating on reports of abuse and providing advice in case of suspicion of wrongdoing can provide in its non-binding advice feedback and follow-up provisions.
General advice and awareness raising	The employer has to communicate information about the existence of the external reporting channels.
Assessment:	- Broad coverage of employees in public and private sector - Broad definition of wrongdoing - Tiered reporting - No sanctions set out in legal framework - External body can make only non-legally binding recommendations (based on a name and shame principle)

A6.C.21. Overview of the national legislation on the protection of whistleblowers in Poland

POLAND

Type of legislation and approach **Plans to adopt new legislation or amend the existing one**	There is no legislation on protection of whistleblowers in Poland. The only requirement to set up reporting channels can be found in banking law[205]. There is an on-going debate in Poland regarding the need of adoption of the legislation on whistleblowing but no official bill has been drafted so far.
Sectors and organisations covered **Existence of criteria (minimum number of employees, annual turnover)**	Banking sector: There is a requirement to set up reporting mechanisms in the banking sector
Categories of protected whistleblowers	Employees only
Type of wrongdoings that can be reported (Public interest approach or enumerative list of wrongdoings). Existence of exceptions	Banking sector: violations of law and bank ethical procedures and standards.
Nature and extent of protection of whistleblowers in the workplace and beyond the workplace and remedies available	Banking sector: organisations are required to provide protection to employees who report breaches (protection against at least repressive actions, discrimination or other types of unfair treatment).
Channels of reporting (existence of tiered channels?) **Deadline for the companies to address the disclosure?**	Banking sector: the law regulating the banking sector requires enterprises in scope to set up reporting channels but no further detail is provided. The bank's management is responsible for the design, implementation and operation of the system Internal control adjusted to the size and profile of the risk.
Confidentiality of the whistleblower's identity and penalties for breach of confidentiality	Banking sector: confidentiality is guaranteed. There is a requirement to have in place internal management systems that cover procedures for anonymous reporting.
Burden of proof	Not provided in the law
Good faith requirement/Existence of a reasonable belief	Good faith required
Sanctions	Not provided in the law
Balancing competing rights	Not provided in the law
Follow-up provisions and feedback	Not provided in the law
General advice and awareness raising	Not provided in the law

[205] Act of 29 August 1997 - Banking Law *(Prawo bankowe)* http://isap.sejm.gov.pl/DetailsServlet?id=WDU20070890589

Assessment:	- There is no dedicated legislation. The only existing protection derives from banking law. - Protection of whistleblowers against retaliation at the workplace exists but only for employees of the banking sector. - No general requirement for the setting up of reporting channels (only in banking sector) and no guarantee of confidentiality.

A6.C.22. Overview of the national legislation on the protection of whistleblowers in Portugal

	PORTUGAL
Type of legislation and approach **Plans to adopt new legislation or amend the existing one**	There is no standalone legislation protecting whistleblowers or requiring establishment of reporting channels in Portugal. Whistleblowers may be protected indirectly by different sectoral legislation but only few categories of whistleblowers are protected. Reporting channels only exist in the banking sector. Law 19/2008 of 21 April (amended by Law 30/2015 of 22 April) – General Tax Law Law 25/2008 of 5 June (last amended by Law 118/2015 of 31 August) - Preventive and repressive measures regarding money laundering and the financing of terrorism: Portuguese Criminal Code, approved by Law 48/95, March 15 Portuguese Code of Labour, approved by Law 7/2009, February 12 Law 59/2008, September 11, Law regulating public officials and civil servants contracts Decree-Law 298/92 of 31 December (last amended by Law 16/2017 of 3 May) There is currently no proposal to reform protection of whistleblowing in Portugal.
Sectors and organisations covered **Existence of criteria (minimum number of employees, annual turnover)**	Part of public and private sectors
Categories of protected whistleblowers	Employees (of both private and public sectors)
Type of wrongdoings that can be reported (Public interest approach or enumerative list of wrongdoings) and exceptions	Corruption, crimes discovered during the performance of their duties, infringements in the private and public sector
Nature and extent of protection of whistleblowers in the workplace and beyond the workplace and remedies available	Protection under specific legislation is available to civil servants and employees of financial institutions. Such employees who use whistleblowing policies in good faith are protected from disciplinary or other measures resulting from action they have taken under the whistleblowing policy.
Channels of reporting (existence of tiered channels?) **Deadline for the companies to address the disclosure?**	Requirement to set up channels only for credit institutions. Credit institutions must implement effective mechanisms for receiving reports of infringements to Regulation 575/2013.

Confidentiality of the whistleblower's identity and penalties for breach of confidentiality	Private sector (credit institution and fight against corruption): guaranteed Public sector (fight against corruption): guaranteed Sanctions are mentioned in relation to reporting money laundering and the financing of terrorism: up to 3 years of imprisonment or a fine for those who reveal the identity of whistleblowers[206].
Burden of proof	Private and public sectors (fight against corruption): reversed
Good faith requirement/Existence of a reasonable belief	Private sector (Preventive and repressive measures regarding money laundering and the financing of terrorism): Information reported in good faith falling under the scope of this law does not violate any secrecy obligations either arising from the law or from contract (see Art.20)
Sanctions	Not provided in the law
Balancing competing rights	Not provided in the law
Follow-up provisions and feedback	Not provided in the law
General advice and awareness raising	Not provided in the law
Assessment:	- There is no specific legislation on whistleblowing. - The legal framework that currently applies to the protection of whistleblowers derives from criminal/employment law as well as from sector-specific provisions (e.g. fight against corruption, money laundering, financing of terrorism). - The provision on the fight against corruption applies to both the public and the private sector. It guarantees the anonymity of the whistleblower and reverses the burden of proof in case of disciplinary sanctions against whistleblowers. - The lack of horizontal regulation on whistleblowing means that there are a lot of important areas that are not regulated in Portugal, including reporting procedures, workplace support, and confidentiality rights/rules.

A6.C.23. Overview of the national legislation on the protection of whistleblowers in Romania

	ROMANIA
Type of legislation and approach **Plans to adopt new legislation or amend the existing one**	Law no. 571/2004 on the protection of the personnel belonging to public authorities, public institutes and other entities which signal violations of the law[207] as amended by the National Anticorruption Strategy 2016-2020. The National Anticorruption Strategy 2016-2020 mentioned the possibility of amending the current Whistleblower Protection Law 571/2004.

206 See Article 20, of Law 25/2008 of 5 June (last amended by Law 118/2015 of 31 August)

207 Law no. 571/2004 on the protection of the personnel belonging to public authorities, public institutes and other entities which signal violations of the law (*Legea nr. 571 din 2004 privind protectia personalului din autoritatile*

Sectors and organisations covered **Existence of criteria (minimum number of employees, annual turnover)**	Public sector only (excluding magistrates)
Categories of protected whistleblowers	Permanent and temporary employees (only public sector)
Type of wrongdoings that can be reported (Public interest approach or enumerative list of wrongdoings) and exceptions	The list of wrongdoings including offences connected to corruption, irregularities while on duty, forgery, nepotism, conflict of interest, incompetence/negligence, fraud and other violations of the law foreseen in the legislation.
Nature and extent of protection of whistleblowers in the workplace and beyond the workplace and remedies available	Disciplinary or administrative sanctions taken against whistleblowers can be declared void by the disciplinary committee or the Court if those were applied as a result of an act of whistleblowing in the public interest, done in good faith. There are no remedies available to whistleblowers mentioned in the law.
Channels of reporting (existence of tiered channels?) **Deadline for the companies to address the disclosure?**	There is no obligation to set up reporting channels. The law allows for a wide range of channels to be used (from hierarchy to NGOs) but there is no system required. No tiered approach.
Confidentiality of the whistleblower's identity and penalties for breach of confidentiality	Confidentiality is guaranteed No penalties mentioned.
Burden of proof	Reversal of burden of proof
Good faith requirement/Existence of a reasonable belief	Good faith requirement
Sanctions	Not provided in the law
Balancing competing rights	Not provided in the law
Follow-up provisions and feedback	Not provided in the law
General advice and awareness raising	Not provided in the law
Assessment:	- Legislation dedicated to Whistleblowing only applies to public sector employees - Reports can be made on many types of wrongdoing but it is unclear which channels should be used. Workplace protection is available. - Confidentiality is guaranteed.

A6.C.24. Overview of the Slovak legislation on the protection of whistleblowers

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publice, institutiile publice si din alte unitati care semnaleaza incalcari ale legii) http://legislatie.resurse-pentru-democratie.org/legea/571-2004.php

	SLOVAKIA
Type of legislation and approach **Plans to adopt new legislation or amend the existing one**	There is a comprehensive law in Slovakia since 2014 specifically targeted on whistleblower protection - Act No. 307/2014 Coll[208].
Sectors and organisations covered **Existence of criteria (minimum number of employees, annual turnover)**	Both private and public sectors are covered. Setting a reporting system is mandatory for all public authorities and for private institutions with more than 50 employees.
Categories of protected whistleblowers	Employees from the private and public sectors are covered.
Type of wrongdoings that can be reported (Public interest approach or enumerative list of wrongdoings)	Wide definition of wrongdoing ('antisocial activity') covering both misconduct within the employment practices as well as criminal and administrative offences i.e.: any of the offenses damaging the financial interests of the EU an offense of misuse in public procurement and public auction an offense of public officials or some of the corruption offenses as clearly indicated in the law an offense for which the Criminal Code provides for imprisonment with a maximum imprisonment exceeding three years, or an administrative offense, punishable by a fine with a top threshold of at least 50 000 euros
Nature and extent of protection of whistleblowers in the workplace and beyond the workplace and remedies available	Protection against workplace relation by the Labour Inspectorate upon the whistleblower request. Employer can only undertake activity against the employee with the permission of the Labour Inspectorate. There is also financial reward for whistleblowers. No protection beyond the workplace defined.
Channels of reporting (existence of tiered channels?) **Deadline for the companies to address the disclosure?**	Reporting channels must be set up in all public administration and in companies with more than 50 employees. The channel can take the form of a department or unit in the organisation or can be a single appointed person. Whistleblowers can also report to the criminal body (prosecutor) or administrative body (Labour Inspectorate). There is no tiered approach mentioned in the law. There is a requirement of having at least one reporting channel available 24 hours a day. Internal submissions must be handled within 90 days.
Confidentiality of the whistleblower's identity and penalties for breach of confidentiality	Confidentiality is guaranteed. Possibility to report anonymously.

208 http://www.zakonypreludi.sk/zz/2014-307

Burden of proof	Not mentioned in law but the burden on proof generally lies with the employer in practice.
Good faith requirement/Existence of a reasonable belief	Good faith requirement.
Sanctions	No penalties defined in law, only in regard to not setting up the internal channel of reporting or not dealing with the whistleblower report, in which case the penalty can be up to 20 000 EUR.
Balancing competing rights	There are several competing rights mentioned in the legislation such as postal secrecy, telecommunication secrecy, bank secrecy, medical information and secrecy, tax secrecy, lawyer-client secrecy.
Follow-up provisions and feedback	In case of the internal channel for reporting, the body must inform the whistleblower 10 days after decision on the disclosure about the outcomes of the decision. Employer must keep a record of the protected disclosures for a period of three years.
General advice and awareness raising	Companies must produce internal regulation specifying the internal channel and information on the protection of employee. The appointed person and the procedure to make a protected disclosure must be made public and available to all staff.
Assessment:	- The law covers all citizens and in all sectors - The public interest approach allows disclosing a wide range of wrongdoings. - Protection against retaliation at the workplace - Tiered channels are in place - The confidentiality is guaranteed - Good faith requirement - The implementation of the law is unsatisfactory

A6.C.25. Overview of the national legislation on the protection of whistleblowers in Slovenia

SLOVENIA	
Type of legislation and approach **Plans to adopt new legislation or amend the existing one**	Protection of whistleblowers stems mainly from the 2010 Integrity and Prevention of Corruption Act[209]. There is no live initiative to amend the existing law or adopt new legislation.
Sectors and organisations covered **Existence of criteria (minimum number of employees, annual turnover)**	Both public and private sectors (but only in relation to a few types of wrongdoing).

[209] Integrity and Prevention of Corruption Act (*Zakon o integriteti in preprečevanju korupcije – ZintPK*) https://www.kpk-rs.si/upload/datoteke/ZintPK-ENG.pdf

Categories of protected whistleblowers	All citizens (reporting corruption) or any employee from public sector employee reporting unethical or illegal activity
Type of wrongdoings that can be reported (Public interest approach or enumerative list of wrongdoings) and exceptions	All citizens: corruption Public sector: Any official who has good grounds for believing that an illegal or unethical conduct is required from him/her or any form of psychological or physical violence is exerted upon him/her with this purpose may report it
Nature and extent of protection of whistleblowers in the workplace and beyond the workplace and remedies available	Protection against workplace retaliation. The whistleblower can also claim compensation. The Anticorruption Commission may also provide assistance to whistleblowers to establish a link between negative consequences and retaliatory activities. Once the link is established, the employer is immediately required to cease such activities. The whistleblower and his/her family members may also be provided protection in accordance with witness protection rules. Whistleblowers working in the public sector can be transferred to another position within the organisation in case of continuation of retaliatory activities (if whistleblowers are state officials). The time limit for employers to implement the transfer to another work post within the same organisation is 90 days.
Channels of reporting (existence of tiered channels?) **Deadline for the companies to address the disclosure?**	<u>All citizens (corruption)</u>: A report has to be filed to the Anti-Corruption Commission or another competent body. The Commission and other competent bodies must reply to the statements of the person reporting the case within 30 days or submit a notice on further action and procedures in the case of a more complex case. <u>Public sector (illegal and unethical activities)</u>: - Internal channel: a superior or a duly appointed person. The competent person must respond to the report in writing within five business days. - Anti-Corruption Commission: if the competent person fails to respond to the report in writing within five business days or if the competent person is the person who has required from him/her to get involved in an illegal or unethical conduct, the Commission shall be the competent body.
Confidentiality of the whistleblower's identity and penalties for breach of confidentiality	Confidentiality is guaranteed. Reports to the Anti-Corruption Commission can be anonymous.
Burden of proof	Burden of proof is reversed
Good faith requirement/Existence of a reasonable belief	Good faith requirement. Malicious disclosures are punished as a minor offence.
Sanctions	Employers retaliating against whistleblowers have to pay fines and compensation. This would be considered a 'small offence' for which the fine ranges from €400 to €4000.
Balancing competing rights	Not provided in the law

Follow-up provisions and feedback	The Anti-Corruption Commission has to notify whistleblowers on the actions taken upon their request
General advice and awareness raising	Not provided in the law
Assessment:	- The law covers all sectors but is restricted to a limited number of wrongdoings. It only covers all citizens reporting corruption and civil servants reporting any illegal or unethical acts. - Reports may be made to the Anti-Corruption Commission (for corruption) or any competent body but it is not clear what a competent body is. - In the public sector, whistleblowers can report internally first and then to the Anti-Corruption Commission. - The law provides good protection to the whistleblower at the workplace (workplace retaliation) and to the whistleblower's family. - Other important guarantees are provided to whistleblowers, such as confidentiality, the reversal of the burden of proof and protection if the report is made in good faith. - The limited scope of wrongdoings that can be reported mean that the law does not qualify as providing an 'advanced level' of protection.

A6.C.26. Overview of the national legislation on the protection of whistleblowers in Spain[210]

	SPAIN
Type of legislation and approach **Plans to adopt new legislation or amend the existing one**	There is no standalone national law providing protection for whistleblowers but very fragmented legislation that is theoretically applicable to whistleblowing cases. Three regional laws regulate whistleblowing in Castilla y León[211], Islas Baleares[212] and Valencia[213]. The political party Ciudadanos submitted a legislative proposal that is being discussed at the national parliament as of July 2017. It aims to recognise the rights of whistleblowers in the area of public administration only [214] . The original proposal was considered as not protective enough by Transparency International which called for sanctions against retaliators as well as reducing the conditions attached to a protected disclosure.[215] Civil society in Spain is very active on the issue of whistleblowers' rights. Some NGOs have submitted legislative proposals or supported town councils (e.g. in Barcelona in installing a 'Anti-Corruption Complaint Box'.[216]

210 Please note that the rating will be based on the national provisions and that regional legal provisions are detailed for the purpose of the impact assessment.

211 Law 2/2016 of 11 November 2016 on information on crimes against the Public Administration and establishing *(Ley 2/2016, de 11 de noviembre de 2016, sobre información sobre delitos contra la Administración Pública y establecimiento)* https://www.boe.es/diario_boe/txt.php?id=BOE-A-2016-11673

212 Law 16/2016 of 9 December 2016 creating an Agency for the prevention and fight of Fraud and Corruption *(Ley 16/2016, de 9 de diciembre de 2016, por la que se crea un Organismo de Prevención y Lucha contra el Fraude y la Corrupción)* https://www.boe.es/diario_boe/txt.php?id=BOE-A-2016-11673

213 Law 11/2016 of 28 November 2016 creating an Agency for the prevention and fight of Fraud and Corruption *(Ley 11/2016, de 28 de noviembre de 2016, por la que se crea un Organismo de Prevención y Lucha contra el Fraude y la Corrupción)* https://www.boe.es/diario_boe/txt.php?id=BOE-A-2016-12048

Sectors and organisations covered **Existence of criteria (minimum number of employees, annual turnover)**	National level: none Castilla y León, Islas Baleares and Valencia: public sector only
Categories of protected whistleblowers	National level: none Castilla y León, Islas Baleares and Valencia: civil servants
Type of wrongdoings that can be reported (Public interest approach or enumerative list of wrongdoings) and exceptions	National level: none Castilla y León: perverting the course of justice, abandonment of destiny and the omission of the duty to prosecute, disobedience and denial of help, infidelity in custody of documents and breach of secrets, bribes, influence peddling, embezzlement, fraud and illegal exaction, and negotiations and activities prohibited to public officials and abuses in the exercise of their function Islas Baleares and Valencia: corruption in the public administration
Nature and extent of protection of whistleblowers in the workplace and beyond the workplace and remedies available	National level: none Castilla y León: any harm to the whistleblower's working relationship or working conditions. Whistleblowers cannot be dismissed or moved to another job. Guarantees shall apply until one year after the end of the procedure. The public body can decide the relocation of work if requested by the whistleblower Islas Baleares: any harm 'to the rights' of the whistleblower. Valencia: any kind of isolation, persecution or worsening of working or professional conditions, or any type of measure that implies any form of prejudice or discrimination. In case of work retaliation, the Agency may exercise corrective or restoration actions. It can decide to move the whistleblower elsewhere in the organisation if requested to do so by the whistleblower. Exceptionally, the whistleblower can request a paid leave permit during a specific period of time. The protection measures can be extended even after the end of the procedure.
Channels of reporting (existence of tiered channels?) **Deadline for the companies to address the disclosure?**	National level: none Castilla y León: No requirement to set up reporting channels. The regional law only specifies that information must be reported to the General Inspection of Services (dependent of the regional ministry of internal affairs). This body will communicate it to the regional ombudsman (*Procurador del Común*). Islas Baleares and Valencia: No requirement to set up reporting channels. Agencies created by the regional laws in Valencia and Islas Baleares can act ex-officio or through a communication from an informant.

214 Proposición de Ley Integral de Lucha contra la Corrupción y Protección de los Denunciantes

215 http://www.eleconomista.es/legislacion/noticias/8298262/04/17/La-Ley-anticorrupcion-protege-al-denunciante-de-forma-insuficiente-.html

216 https://xnet-x.net/en/whistleblowing-platform-barcelona-city-council/

Confidentiality of the whistleblower's identity and penalties for breach of confidentiality	National level: none Castilla y León: cconfidentiality is only guaranteed during the process/procedure and during 1 year after its end. Islas Baleares: confidentiality guaranteed. No time limit specified. Valencia: confidentiality guaranteed. No time limit specified.
Burden of proof	National level: none Castilla y León, Islas Baleares and Valencia: not provided in the law
Good faith requirement/Existence of a reasonable belief	National level: none Castilla y León, Islas Baleares and Valencia: not provided in the law
Sanctions	National level: none Castilla y León, Islas Baleares and Valencia: not provided in the law
Balancing competing rights	National level: none Castilla y León, Islas Baleares and Valencia: not provided in the law
Follow-up provisions and feedback	National level: none Castilla y León, Islas Baleares and Valencia: not provided in the law
General advice and awareness raising	National level: none Castilla y León, Islas Baleares and Valencia: not provided in the law
Assessment:	National level: There are no legal provisions protecting whistleblowers at national level and there is no requirement for companies or public organisations to set up reporting channels. Castilla y León, Islas Baleares and Valencia: Only three out of 17 regions have legislation protecting whistleblowers in the public sector. However, this protection is still limited to public sector employees and to the report of certain wrongdoings only (corruption and/or any illegal activities within the administration).

A6.C.27. Overview of the national legislation on the protection of whistleblowers in Sweden

SWEDEN

Type of legislation and approach **Plans to adopt new legislation or amend the existing one**	Act (2016:749) on special protection against victimisation of workers who blow the whistle about serious wrongdoings ("the Whistleblowing Act")[217] – this consolidates and reinforces previous legislation.
Sectors and organisations covered **Existence of criteria (minimum number of employees, annual turnover)**	Both private and public sectors are covered.
Categories of protected whistleblowers	All public sector workers. In the private sector the legislation covers workers and lease workers (but not contractors).
Type of wrongdoings that can be reported (Public interest approach or enumerative list of wrongdoings) and exceptions	"Serious offenses or wrongdoings" i.e. conduct that presumably constitutes a crime with an imprisonment sentence or anything of a comparable nature. For example: - Different types of economic crime (e.g. tax evasion, fraud, embezzlement and breach of trust) - Violations of fundamental rights and freedoms - Failure to comply with applicable regulations - Corruption - Risk to life, safety and health - Damages and risk of environmental damage - Misuse of public funds - Breaches of financial markets regulations - Violation of internal rules and principles
Nature and extent of protection of whistleblowers in the workplace and beyond the workplace and remedies available	Protection against workplace retaliation (dismissal, reduced benefits, isolation, etc.). In those cases, there is a statutory right to damages. No other remedies specified.

217 The Swedish Whistleblowing Act (2016:749) *(Den svenska Whistleblowing Acten)* https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2016749-om-sarskilt-skydd-mot-repressalier_sfs-2016-749

Channels of reporting (existence of tiered channels?) **Deadline for the companies to address the disclosure?**	The law provides for internal and external reporting channels. The law requires employees to follow a tiered approach to be afforded protection. Employees should, as a general principle, have reported the serious wrongdoings internally before disclosing them externally. Exceptions can be made: • The employer has not taken appropriate measures in response to the internal reporting • The employee has justified reasons to disclose the information externally (i.e. emergency situation) • The wrongdoings are of particularly serious nature • The employee has specific reasons to expect retaliation • The employer is responsible for the wrongdoings • Risk of destruction of evidence and another case 1) **Internal channel**: whistleblowers can report to the employer or a representative of the employer or follow a reporting routine prescribed by the employer (employer's internal whistleblowing system) **Trade Unions**: whistleblower can also report reports serious wrongdoings to their trade union if the employer has a collective agreement with the employee's trade union. **2) External channel:** whistleblowers can report to an authority or disclose the information for publication.
Confidentiality of the whistleblower's identity and penalties for breach of confidentiality	Not specified in the law. When informing the media, public sector employees can benefit from protection as an informant under the Freedom of the Press Act.
Burden of proof	This is reversed where the employee can demonstrate a prima facie case of retaliation
Good faith requirement/Existence of a reasonable belief	Good faith requirement. The employee is required to have valid reasons to believe that disclosed information is correct.
Sanctions	Not provided in the law
Balancing competing rights	Not provided in the law
Follow-up provisions and feedback	Not provided in the law
General advice and awareness raising	Not provided in the law
Assessment:	- The law covers both public and private sector workers, covers a wide range of misconduct and protects from retaliation. - The law is lacking insofar as confidentiality is concerned as the rules surrounding it are not specified. - The law provides good guidance on channels to use for disclosure but does not describe how channels should be set up.

A6.C.28. Overview of the national legislation on the protection of whistleblowers in the UK

UNITED KINGDOM	
Type of legislation and approach **Plans to adopt new legislation or amend the existing one**	The Public Interest Disclosure Act (PIDA)[218] enacted on 2 July 1998 and took effect on 2 July 1999, amended on 25 April 2013 by the Enterprise and Regulatory Reform Act 2013 (ERRA) There is no legislation under discussion, neither plans to introduce new legislation.
Sectors and organisations covered **Existence of criteria (minimum number of employees, annual turnover)**	Both private and public sectors are covered.
Categories of protected whistleblowers	All workers in the public and private sectors (including trainees, contractors and temporary workers)
Type of wrongdoings that can be reported (Public interest approach or enumerative list of wrongdoings) and exceptions	Enumerative list of wrongdoings. "Qualifying disclosure" refers to an extensive list of wrongdoings that is detailed in the law: 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.
Nature and extent of protection of whistleblowers in the workplace and beyond the workplace and remedies available	Protection against workplace retaliation (this includes dismissal, involuntary transfer, salary reduction, and loss of duties and responsibilities). Interim relief procedures are available. Whistleblowers may seek reinstatement and/or compensation by filing a claim with an Employment Tribunal.

[218] http://www.legislation.gov.uk/ukpga/1998/23/contents

Channels of reporting (existence of tiered channels?) **Deadline for the companies to address the disclosure?**	Three-tiered approach • Tier 1: internal (within the workplace) • Tier 2: public regulators and authorities (Prescribed Persons) • Tier 3: media and the public There is no requirement for disclosures first to be made internally. For Tier 2, disclosures can be made only If the employee reasonable believes that the information falls within the authority's purview and that the information is "substantially true". Disclosures to the media and the public are permitted if the worker fears detriment, evidence may be destroyed, the issue is of an "exceptionally serious nature," or the worker has already made a report internally or to a Prescribed Person. No timescale is mentioned in relation to investigating whistleblowers disclosure.
Confidentiality of the whistleblower's identity and penalties for breach of confidentiality	Confidentiality is granted
Burden of proof	No reversal of burden of proof. Lack of clarity stemming from the sentence "done on the ground that the worker has made a protected disclosure" means that whistleblowers have to demonstrate the link between the retaliation and the disclosure.
Good faith requirement/Existence of a reasonable belief	Requirement for the whistleblower to make the disclosure with the reasonable belief that it is made in the public interest. The good faith requirement was removed from the law.
Sanctions	No civil, criminal penalties for whistleblower retaliation, threats of retaliation, or failing to protect a person from retaliation are foreseen.
Balancing competing rights	The legislation does not mention the issue of competing rights.
Follow-up provisions and feedback	No follow-up provisions and feedback are mentioned in the legislation.
General advice and awareness raising	No general advice and awareness raising actions are required by the legislation.
Assessment:	Advanced protection

E. Overview of strengths and weaknesses of national legislation on the protection of whistleblowers in the 28 EU Member States[219]

A6.D.1. Overview of strengths and weaknesses of national legislation on the protection of whistleblowers in Austria

AUSTRIA	
Strengths of the national legislation on whistleblower protection	**Weaknesses of the national legislation on whistleblower protection**
– **Good faith**: required (general) **General advice and awareness:** Financial sector - the law requires companies/agencies to publicise details about the internal and external reporting channels; – **Channels of reporting:** anonymous reporting possible for corruption and white collar crimes; financial institutions have a tiered approach; – **Confidentiality of the whistleblower**: is guaranteed.	– **Scope**: sector specific; wrongdoing specific approach (white collar crimes, corruption, environmental harmful substances); no protection for private sector in place; – **Channels of reporting**: not comprehensively regulated; can be done anonymously, public sector follows an internal process (in case of disciplinary measures may lead to an administrative court process and for criminal acts - follow up by criminal police, if confirmed –criminal court); financial sector is required to have an internal process but no tiered approach – employee can also use external body for reporting. – **Type of wrongdoings**: not comprehensive; – **Nature and extent of protection**: Broad definition of protection; no procedures specified; no remedies set out; – **Burden of proof**: no reversal – **Follow-up provisions:** Not specified. – **Sanctions:** Not specified

A6.D.2. Overview of strengths and weaknesses of national legislation on the protection of whistleblowers in Belgium

BELGIUM	
Strengths of the national legislation on whistleblower protection	**Weaknesses of the national legislation on whistleblower protection**
– **Type of wrongdoings**: negligence/misconduct/abuse in a broad sense; including public interest – **Dual channels**: yes (internal, external); flexibility between channels. – **Nature and extent of protection:** exhaustive list and broad definition of acts of retaliation; external protection mechanism; – **Good faith**: required	– **Scope:** only direct public sector employees – **Nature and extend of protection**: no remedies specified in case of retaliation; only Flemish Region for public sector foresees a voluntary change of employment. – **Sanctions**: for acts of retaliation this can lead to disciplinary procedure; no other sanctions foreseen. – **Balancing competing rights:** not specified in the

219 This table reflects Annex 14 ICF's Study (2017), vol. II Annex 11.

BELGIUM	
Strengths of the national legislation on whistleblower protection	**Weaknesses of the national legislation on whistleblower protection**
– **Burden of proof**: reversed – **Follow-up provisions:** the Ombudsman makes a decision whether a breach of integrity took place or not. In case there are enough factors indicating that the breach of integrity is a criminal act then the Ombudsman may refer the case to the state prosecutor. Otherwise the Ombudsman provides a number of recommendations which are followed-up by the administration. – **Other:** The Federal Ombudsman publishes annual reports on the number of cases, wrongdoings and recommendations.	relevant laws – **Confidentiality of the whistleblower**: protected but no remedies in place, in case identity has been revealed. – **Advice and awareness**: nothing in particular specified in the laws.

A6.D.3. Overview of strengths and weaknesses of national legislation on the protection of whistleblowers Bulgaria

BULGARIA	
Strengths of the national legislation on whistleblower protection	**Weaknesses of the national legislation on whistleblower protection**
- **Type of wrongdoings:** A list is provided in the Administrative Procedure Code (APC) which is quite comprehensive. The Conflict of Interest Prevention and Ascertainment Act (CIPAA) focuses on conflict of interest. - **Confidentiality**: provided under CIPAA - **Follow up provisions:** CIPAA specifies roles and responsibilities however doesn't set out procedure - **Nature and extent of protection:** general prohibition from prosecuting solely on the grounds of disclosure.	- **Channels:** reporting channels are not addressed in the law but rather (under the APC at least) left up to the public institutions to establish - **Scope**: while all citizens may be potential whistleblowers, only wrongdoings connected to the public sector are covered. - **Nature and extent of protection:** no specific protection for employees (e.g. against dismissal). - **Confidentiality**: APC leaves decision up to the public institutions to determine the rules. - **Follow up provisions:** APC doesn't specify - **Burden of proof**: not addressed - **General advice and awareness:** Not specified in the law

A6.D.4. Overview of strengths and weaknesses of national legislation on the protection of whistleblowers in Croatia

CROATIA	
Strengths of the national legislation on whistleblower protection	**Weaknesses of the national legislation on whistleblower protection**

CROATIA	
Strengths of the national legislation on whistleblower protection	**Weaknesses of the national legislation on whistleblower protection**
- **Scope**: covers both private and public sectors - **Nature and extent of protection**: Protection against discrimination and unfair dismissal. - **Confidentiality of the whistleblower**: protected in both sectors - **Sanctions**: existence of sanctions against a private employer who would dismiss employees on the basis of the disclosure.	- **Nature and extent of protection**: no other remedies available to whistleblowers - **Type of wrongdoings**: restricted to corruption and suspicion of corruption - **Reporting channels:** no requirement in both sectors - **Burden of proof**: only reversed in the private sector in case of unfair dismissal - **Good faith**: no requirement in legislation - **Follow-up provisions:** not mentioned in the law - **General advice and awareness:** not mentioned in the law

A6.D.5. Overview of strengths and weaknesses of national legislation on the protection of whistleblowers in Cyprus

CYPRUS	
Strengths of the national legislation on whistleblower protection	**Weaknesses of the national legislation on whistleblower protection**
- There is no legislation on whistleblowing in Cyprus.	- There is no legislation on whistleblowing in Cyprus.

A6.D.6. Overview of strengths and weaknesses of national legislation on the protection of whistleblowers in Czech Republic

CZECH REPUBLIC	
Strengths of the national legislation on whistleblower protection	**Weaknesses of the national legislation on whistleblower protection**
- **Nature and extent of protection**: protection against unfair dismissal and discrimination - **Confidentiality of the whistleblower's identity**: Confidentiality is protected. It is possible to submit disclosures anonymously -**Channels:** In the case of public service, the reporting channel is centralised and the rules are clearly defined	- **Scope**: There is no national legislation specifically focused on whistleblower protection. There is also no legal definition of whistleblowers - **Channels**: Not specified in the law in the case of private sector and public sector with exception of civil servants - **Follow-up provisions:** Not specified in the law in the case of private sector and public sector with exception of civil servants - **General advice and awareness:** Not specified in the law

A6.D.7. Overview of strengths and weaknesses of national legislation on the protection of whistleblowers in Denmark

DENMARK	
Strengths of the national legislation on whistleblower protection	**Weaknesses of the national legislation on whistleblower protection**
- **Scope:** Financial sector only. - **Type of wrongdoings:** breaches of financial regulations - **Nature and extent of protection:** protection against retaliation - **Confidentiality** guaranteed. Anonymous reporting is allowed.	- **Scope:** Guidelines on protection of whistleblowers in the public sector exist but they are not binding. There is no comprehensive legislation. Current protection does not cover all sectors and only applies to employees in the financial sector. - **Reporting channels:** only soft law suggesting that these be put in place. No tiered approach. - **Nature and extent of protection:** No right to reinstatement explicitly provided for. - **Burden of proof** no reversal - **Good faith** not required in the law - **General advice and awareness:** While this has been identified by national studies as an important aspect, nothing has been done to address the need. No provision. - **Follow-up provisions:** Not specified

A6.D.8. Overview of strengths and weaknesses of national legislation on the protection of whistleblowers in Estonia

ESTONIA	
Strengths of the national legislation on whistleblower protection	**Weaknesses of the national legislation on whistleblower protection**
- **Scope**: All citizens in both public and private sectors - **Confidentiality of the whistleblower**: protected - **Burden of proof**: shared - **Good faith**: required	- **Type of wrongdoings**: corruption - **Nature and extent of protection**: None - **Tiered channels**: No - **Follow-up provisions:** None - **Sanctions**: None - **Balancing competing rights**: None - **General advice and awareness:** None

A6.D.9. Overview of strengths and weaknesses of national legislation on the protection of whistleblowers in Finland

FINLAND	
Strengths of the national legislation on whistleblower protection	**Weaknesses of the national legislation on whistleblower protection**
- **Reporting channels**: requirement to set up channels in two specific sectors (credit institutions and financial supervision authorities). - **Confidentiality of the whistleblower**: protected in these two	- **Scope**: Very limited - **Type of wrongdoings**: limited types of wrongdoings, only in relation to suspected breaches in the two specific sectors - **Nature and extent of protection**: None

FINLAND	
Strengths of the national legislation on whistleblower protection	**Weaknesses of the national legislation on whistleblower protection**
specific sectors	- **Burden of proof**: not provided in the law - **Good faith**: no requirement - **Follow-up provisions:** not provided in the law - **General advice and awareness:** no provisions in this regard in the legislation

A6.D.10. Overview of strengths and weaknesses of national legislation on the protection of whistleblowers in France

FRANCE	
Strengths of the national legislation on whistleblower protection	**Weaknesses of the national legislation on whistleblower protection**
- **Scope:** All citizens and in all sectors - **Type of wrong-doings:** everything relevant to the public interest - **Nature and extent of protection:** Retaliation at the workplace. - **Tiered channels:** yes (internal, authorities and to the public) - **Confidentiality of the whistleblower:** protected - **Burden of proof:** reversed - **Good faith:** required - **Balancing competing rights**: lawyer-client privilege and medical secrete	- **Nature and extent of protection:** unclear provisions on protection beyond the workplace - **Tiered channels:** flexibility of the tiered channels not mentioned in the law in case of the involvement of the hierarchy in the wrong-doing. - **Follow-up provisions:** Not specified in the law - **General advice and awareness:** Not specified in the law - **Others:** the National Ombudsman has a role in directing the whistleblower to the right authority but it is unclear whether it has sufficient human and financial resources to do so.

A6.D.11. Overview of strengths and weaknesses of national legislation on the protection of whistleblowers in the Germany

GERMANY	
Strengths of the national legislation on whistleblower protection	**Weaknesses of the national legislation on whistleblower protection**

GERMANY	
Strengths of the national legislation on whistleblower protection	**Weaknesses of the national legislation on whistleblower protection**
– **Good faith**: required – **Balancing competing rights:** Competing rights considered in practice and in courts, depending on the wrongdoing reported. – **General advice and awareness:** the law requires that companies/agencies need to inform about the external channels; all workers that would like to report an abuse may ask for an advisor, as set out under the law	– **Scope**: not specific; only for financial institutions – **Channels of reporting**: either only external (financial) or only internal (civil servants); case law requires however internal reporting first – **Type of wrongdoings**: not comprehensive; – **Nature and extent of protection**: Not specified. – **Confidentiality of the whistleblower**: not clearly protected – **Burden of proof**: no reversal – **Follow-up provisions:** Not specified. – **Sanctions:** Not specified

A6.D.12. Overview of strengths and weaknesses of national legislation on the protection of whistleblowers in Greece

GREECE	
Strengths of the national legislation on whistleblower protection	**Weaknesses of the national legislation on whistleblower protection**
- **Scope:** Legislation restricted to the public sector - **Good faith**: required	- **Scope:** There is no legislation protecting whistleblowers in the private sector - **Wrongdoings**: limited scope restricted to corruption in the public sector - **Reporting channels:** no requirement to set up reporting channels - **Sanctions:** not provided in the law - **Confidentiality**: not provided in the law - **Balancing competing rights**: not provided in the law - **Follow-up provisions and feedback**: not provided in the law - **General advice and awareness raising**: not provided in the law

A6.D.13. Overview of strengths and weaknesses of national legislation on the protection of whistleblowers in Hungary

HUNGARY	
Strengths of the national legislation on whistleblower protection	**Weaknesses of the national legislation on whistleblower protection**

HUNGARY	
Strengths of the national legislation on whistleblower protection	**Weaknesses of the national legislation on whistleblower protection**
- **Scope**: All citizens in all sectors - **Type of wrongdoings**: public interest - **Nature and extent of protection**: Retaliation at the workplace. - **Confidentiality of the whistleblower**: protected - **Follow-up provisions:** - **Good faith**: required - **General advice and awareness: requirement of:** if the company sets up reporting channels, it must make information about the internal channels available on its website in Hungarian language. **Sanctions**: civil and criminal sanctions can apply	- **Nature and extent of protection**: Unclear provisions on protection beyond the workplace. - **Channels**: No binding requirement to set up channels and no tiered approach - **Burden of proof**: not explicitly reversed - **Balancing competing rights:** not mentioned

A6.D.14. Overview of strengths and weaknesses of national legislation on the protection of whistleblowers in Ireland

IRELAND	
Strengths of the national legislation on whistleblower protection	**Weaknesses of the national legislation on whistleblower protection**
- **Scope**: All employees and in all sectors - **Type of wrongdoings**: public interest - **Nature and extent of protection**: Retaliation at the workplace. - T**iered channels**: no - **Confidentiality of the whistleblower**: protected - **Burden of proof**: reversed - **Good faith:** existence of a 'reasonable belief'	- **Nature and extent of protection**: unclear provisions on protection beyond the workplace - **Tiered channels**: tiered channels foreseen by the law. Whistleblowers are encouraged to address internally before externally. Flexibility of the tiered channels not mentioned in the law in the case of the involvement of the hierarchy in the wrongdoing. - **Follow-up provisions:** Depend on the recipient of the information - **Balancing competing rights:** no information - **General advice and awareness:** Not specified in the law - **Others**: Whistleblowers can turn to Ombudsman & Citizen Information Centre for Advice as well as to legal advisors for legal advice. Free legal advice is provided to anyone who wishes to disclose wrongdoing, particularly under the Protected Disclosures Act.

A6.D.15. Overview of strengths and weaknesses of national legislation on the protection of whistleblowers in Italy

ITALY	
Strengths of the national legislation on whistleblower protection	**Weaknesses of the national legislation on whistleblower protection**

ITALY	
Strengths of the national legislation on whistleblower protection	**Weaknesses of the national legislation on whistleblower protection**
- **Scope**: employees in the public sector, in banking and in the private sector. **Tiered channels**: independent channels are required in the banking sector. - **Confidentiality of whistleblower**: protected - **Good faith**: required - **Others**: The National Anticorruption Authority (ANAC) has issued guidelines on protection of whistleblowers	- **Type of wrongdoing**: wrongdoing is defined only as general 'unlawful wrongdoing' - **Tiered channels**: no tiered channels approach is envisaged. - **Burden of proof**: no reversal of the burden of proof - **Balancing competing rights**: not mentioned - **Follow-up provisions**: not identified in the law - **General advice and awareness**: no specified in the law

A6.D.16. Overview of strengths and weaknesses of national legislation on the protection of whistleblowers in Latvia

LATVIA	
Strengths of the national legislation on whistleblower protection	**Weaknesses of the national legislation on whistleblower protection**
There is no legislation on whistleblowing in Latvia.	

A6.D.17. Overview of strengths and weaknesses of national legislation on the protection of whistleblowers in Lithuania

LITHUANIA	
Strengths of the national legislation on whistleblower protection	**Weaknesses of the national legislation on whistleblower protection**
- **Scope**: public sector and banking sector - **Type of wrongdoings**: any breaches of law in relation to the public sector or banking sector - **Nature and extent of protection**: No protection in the public sector and protection against retaliation at the workplace in the banking sector. - **Confidentiality of the whistleblower**: protected - **Good faith**: only required in the public sector - **Follow-up provisions:** exists in the public sector	- **Nature and extent of protection**: only protects employees of the bank - **Tiered channels**: no - **Burden of proof**: reversal of the burden of proof not provided in the law - **General advice and awareness:** not provided in the law

A6.D.18. Overview of strengths and weaknesses of the legislation in Luxembourg

LUXEMBOURG	
Strengths of the national legislation on whistleblower protection	**Weaknesses of the national legislation on whistleblower protection**

LUXEMBOURG	
Strengths of the national legislation on whistleblower protection	**Weaknesses of the national legislation on whistleblower protection**
- **Scope**: All sectors - **Type of wrongdoings**: limited number - **Nature and extent of protection**: Protection against retaliation at the workplace. - **Burden of proof**: reversed - **Good faith**: required	- **Nature and extent of protection**: unclear provisions on protection beyond the workplace - **Tiered channels**: Not required - **Confidentiality**: not protected - **Balancing competing rights:** no provisions - **Follow-up provisions:** Not specified in the law - **General advice and awareness:** Not specified in the law

A6.D.19. Overview of strengths and weaknesses of national legislation on the protection of whistleblowers in Malta

MALTA	
Strengths of the national legislation on whistleblower protection	**Weaknesses of the national legislation on whistleblower protection**
- **Scope**: both private and public entities - **Type of wrongdoings**: extensive list of wrongdoings - **Nature and extent of protection**: wide scope of protection - **Tiered channels**: yes (internal, authorities and to the public) - **Confidentiality of the whistleblower**: protected - **Good faith**: required - **Follow-up provisions:** whistleblowers must be kept informed on the status of their disclosure - **General advice and awareness:** requirement of regularly informing employees about the reporting channels and their use	- **Scope:** three important categories of workers are excluded: members of the armed force, members of the Security Service or to persons employed in the foreign, consular or diplomatic service of the Government - **Tiered channels**: it is not clear whether the disclosure can be made public (to the media) - **Burden of proof**: reversal not provided in the law.

A6.D.20. Overview of strengths and weaknesses of national legislation on the protection of whistleblowers in the Netherlands

NETHERLANDS	
Strengths of the national legislation on whistleblower protection	**Weaknesses of the national legislation on whistleblower protection**
– **Scope**: all workers in private and public sector – **Type of wrongdoings**: misconduct/abuse in a broad sense; including public interest – **Tiered channels**: yes (internal, external); flexibility between channels as the law does not provide specific time limits but only specifies that the 'external' channel may be used if the 'internal'	– **Nature and extent of protection**: Not specified. – **Confidentiality of the whistleblower**: protected but no penalties – **Burden of proof**: no reversal – **Follow-up provisions:** Not specified in the law; but House of Whistleblowers can provide for

NETHERLANDS	
Strengths of the national legislation on whistleblower protection	**Weaknesses of the national legislation on whistleblower protection**
one was not 'fruitful'. – **Good faith**: required – **Balancing competing rights:** flexibility, the House of Whistleblowers may decide not to investigate in cases of conflicts of competing rights – **General advice and awareness:** the law requires, that companies/agencies inform about the external channel; all workers that would like to report an abuse may ask for an advisor, as set out under the law – **Other:** The House of Whistleblowers publishes final investigation reports (without names).	recommendations – **Others**: The House of Whistleblowers only provides non-legally binding recommendations upon closure of an investigation.

A6.D.21. Overview of strengths and weaknesses of national legislation on the protection of whistleblowers in Poland

POLAND	
Strengths of the national legislation on whistleblower protection	**Weaknesses of the national legislation on whistleblower protection**
- **Type of wrongdoings:** Banking sector covers violations of law and bank ethical procedures and standards. - **Nature and extent of protection:** Employees receive protection from retaliation in the banking sector. - **Burden of proof**: where a complaint is filed against a dismissal, the burden of proof is reversed. - **Confidentiality of the whistleblower**: guaranteed in the banking sector. Anonymous reporting possible.	- **Scope:** No overall legislation, only coverage through other codes which only apply to employees. Only the banking sector has specific rules to follow. - **Type of wrongdoings:** Only general duty to report criminal activity. - **Reporting channels:** The banking sector is required to provide reporting channels but no further detail is provided. - **Good faith:** to avoid liability, the disclosed events must have taken place. Good faith insufficient. - **Follow-up provisions:** Not specified in the law - **General advice and awareness:** Not specified in the law

A6.D.22. Overview of strengths and weaknesses of national legislation on the protection of whistleblowers in Portugal

PORTUGAL	
Strengths of the national legislation on whistleblower protection	**Weaknesses of the national legislation on whistleblower protection**
- **Scope**: public and private sectors - **Type of wrongdoings**: corruption and related acts - **Nature and extent of protection**: Retaliation at the	- **Nature and extent of protection**: only apply in specific sectors - **Reporting channels**: only in the banking sector

PORTUGAL	
Strengths of the national legislation on whistleblower protection	**Weaknesses of the national legislation on whistleblower protection**
workplace. - **Confidentiality of the whistleblower**: protected - **Burden of proof**: reversed in the law on money laundering or the financing of terrorism - **Good faith**: required in the law on money laundering or the financing of terrorism	- **Follow-up provisions:** not provided in the law - **General advice and awareness:** not provided in the law - **Sanctions**: not provided in the law

A6.D.23. Overview of strengths and weaknesses of national legislation on the protection of whistleblowers in Romania

ROMANIA	
Strengths of the national legislation on whistleblower protection	**Weaknesses of the national legislation on whistleblower protection**
- **Scope:** Both permanent and temporary employees. - **Type of wrongdoings:** exhaustive list of wrongdoings - **Nature and extent of protection:** protection from retaliation may be provided. - **Tiered channels:** The law allows the whistleblower to use various channels - **Confidentiality**: granted in certain instances. - **Good faith:** good faith required.	- **Scope:** only public sector. - **Nature and extent of protection:** need to proactively address the retaliation (through the labour courts in the case of external disclosure and through a disciplinary committee in the case of internal) - **Tiered channels:** no obligation for such channels to be set up. - **Burden of proof:** not mentioned in the law. - **Follow-up provisions:** Not specified in the law - **General advice and awareness:** Not specified in the law

A6.D.24. Overview of strengths and weaknesses of the Slovak legislation on the protection of whistleblowers

SLOVAKIA	
Strengths of the national legislation on whistleblower protection	**Weaknesses of the national legislation on whistleblower protection**
- **Scope**: employees in all sectors - **Type of wrongdoings**: Extensive list - **Nature and extent of protection**: Retaliation at the workplace. - **Tiered channels**: yes (internal, authorities and to the public) - **Confidentiality of the whistleblower**: protected - **Good faith**: required - **Balancing competing rights:** postal secrecy, telecommunication secrecy, bank secrecy, medical	- **Protection in a workplace:** Even though in the legislation there is protection by the Labour Inspectorate, in practice the Labour Inspectorate is ineffective. - **Protection beyond workplace:** lack of regulation - **Burden of proof:** Even though in practice the burden of proof is reversed, this is not specified in the law

SLOVAKIA	
Strengths of the national legislation on whistleblower protection	**Weaknesses of the national legislation on whistleblower protection**
information and secrecy, tax secrecy, lawyer-client secrecy	

A6.D.25. Overview of strengths and weaknesses of national legislation on the protection of whistleblowers in Slovenia

SLOVENIA	
Strengths of the national legislation on whistleblower protection	**Weaknesses of the national legislation on whistleblower protection**
- **Nature and extent of protection**: Retaliation at the workplace and beyond the workplace - **Tiered channels**: several channels are foreseen for public servants but not for all citizens when reporting wrongdoings. - **Confidentiality of the whistleblower**: protected - **Burden of proof**: reversed - **Good faith**: required - **Follow-up provisions and feedback:** whistleblowers must be kept informed on the follow-up of their request	- **Type of wrongdoings**: restricted to corruption only (for all citizens) and any illegal or unethical actions (for public servants) - **Scope**: public and private sectors but this is restricted by the fact that only certain wrongdoings can be reported - **Tiered channels**: no clear requirement of tiered channels - **Balancing competing rights:** not provided - **General advice and awareness:** not provided

A6.D.26. Overview of strengths and weaknesses of national legislation on the protection of whistleblowers in Spain

SPAIN	
Strengths of the national legislation on whistleblower protection	**Weaknesses of the national legislation on whistleblower protection**
- **Scope**: All citizens and in all sectors - **Type of wrongdoings**: public interest - **Nature and extent of protection**: Retaliation at the workplace. - **Tiered channels**: yes (internal, authorities and to the public) - **Confidentiality of the whistleblower**: protected - **Burden of proof**: reversed - **Good faith**: required-	- **Nature and extent of protection**: unclear provisions on protection beyond the workplace - **Tiered channels**: flexibility of the tiered channels not mentioned in the law in the case of the involvement of the hierarchy in the wrongdoing. - **Follow-up provisions:** Not specified in the law - **General advice and awareness:** Not specified in the law - Balancing competing rights: not specified in the law - **Others**: the National Ombudsman has a role in directing the whistleblower to the right authority but it is unclear whether it has sufficient human and financial resources to do so.

A6.D.27. Overview of strengths and weaknesses of national legislation on the protection of whistleblowers in Sweden

SWEDEN	
Strengths of the national legislation on whistleblower protection	**Weaknesses of the national legislation on whistleblower protection**
- **Scope:** both private sector and public sector. - **Type of wrongdoings:** all serious offences covered - **Nature and extent of protection:** right to damages foreseen for various retaliatory actions - **Tiered channels:** clear explanations of the channels to be used for disclosure and which have priority. - **Burden of proof** is reversed if retaliation is assumed. - **Good faith** is expected of the employee when disclosing (valid reasons that information is correct).	- **Confidentiality** is not provided for - **Type of wrongdoings:** lack of explicit description of "a serious offence". Examples are nonetheless given. - **Nature and extent of protection:** There is no explicit provision for a right to reinstatement. - **General advice and awareness:** Not specified in the law - **Follow-up provisions:** Not specified in the law

A6.D.28. Overview of strengths and weaknesses of national legislation on the protection of whistleblowers in the UK

UNITED KINGDOM	
Strengths of the national legislation on whistleblower protection	**Weaknesses of the national legislation on whistleblower protection**
- **Sectors covered** – public and private - **Scope**: broad coverage of workers - **Type of wrongdoings**: public interest - **Nature and extent of protection**: extensive protection and interim relief available - **Tiered channels**: three-tiered approach - **Confidentiality of the whistleblower**: protected - **Good faith**: not required	- **Burden of proof**: no reversal of burden of proof - **Follow-up provisions:** Not specified in the law - **General advice and awareness:** Not specified in the law - **Others**: lack of designated public agency to enforce the law, advice, support and protect whistleblowers. There are no penalties for retaliation against whistleblowers but whistleblowers can receive damages (e.g. Compensation of whistleblowers can include lost past and future wages, compensation for unfair dismissal, aggravated damages, moral damages, and stigma damages.)

F. Information on the impact of the national legislation, its implementation and the availability of quantitative data in relation to whistleblowing in the 28 EU Member States[220]

A6.E.1. Overview of the data on the impact of the legislation, availability of quantitative data in relation to whistleblowing and implementation of any existing law in Austria

AUSTRIA

- **Information on impact of the legislation:**

No mention on impact assessments.

- **Availability of national data:**

No comprehensive data available. Some prominent cases of whistleblowing that have been reported in the media.

In 2016, the Justice Ministry launched an official government website allowing citizens to send reports of corruption and white collar crime to the Public Prosecutor's Office. The site had been running on an experimental level since 2013. According to a question to the government filed by parliamentarians, the website received a total of 5408 reports between March 2013 and March 2017. About 10% of those cases led to official investigations. 1,3 % of the reports contributed to ongoing investigations. The possibility to report anonymously was perceived as beneficial and a success factor.

- **Implementation of the law:**

A report by UNODC dating from 2014[221] assesses the implementation of the UN Convention against Corruption and has a focus on the law on corruption. With regard to whistleblowing it states that a system of protection for civil servants, judges and prosecutors reporting in good faith well founded on criminal acts was implemented, allowing bi-directional communication between investigative authority and the whistleblower while guarding anonymity. There is extensive witness protection legislation in place which guarantees confidentiality. It states that there is no protection for workers in the private sector. The report also mentions that there had been issues with the legal basis (in the Criminal Procedural Code) for the hotline to report anonymously. Thus, the hotline is under the authority of the specialised anti-corruption prosecution service (WKStA) and not with the Federal Bureau of Anti-Corruption (BAK). The report also mentions that even light negligence from the reporting person will his/her good faith. UNODC recommended: reconsidering the legal basis for the hotline and to clarifying the competence of the Federal Bureau of Anti-Corruption; further definition of "good faith reporting" to remove uncertainty for whistleblowers; provision of protection for workers in the private sector and protection of whistleblowers from retaliation/unfair dismissals.

A6.E.2. Overview of the data on the impact of the legislation, availability of quantitative data in relation to whistleblowing and implementation of any existing law in Belgium

BELGIUM

- **Information on impact**:

No impact assessment for the Federal level legislation has been identified.

The Flemish Region carried out an evaluative review of the law. In 2011, the Flemish Ombudsman published a note highlighting difficulties when applying procedures of the Whistleblower Decree. It notes that the lack of remedy in cases of acts of retaliation was problematic and requested a legal change to allow the whistleblower to request a change of employment within administration. The Ombudsman shall have a facilitation role, to assist the whistleblower in this change. In 2013 the rules were reviewed to address this issue.

- **Availability of national data:**

Federal level – Each year, the Ombudsman publishes an annual report detailing the number of requests of information, the number of cases that were submitted for preliminary assessments, the number of cases investigated, outcomes of cases as well as the general details of the cases and recommendations. In 2014, the central contact point of the Ombudsman received 15 requests for information. In four cases, a preliminary assessment was carried out. None led to further investigations. In 2015, the report mentions that the

220 This table reflects Annex 14 ICF's Study (2017), vol. II Annex 12.

221 See report available at: https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2014_08_26_Austria_Final_Country_Report.pdf

BELGIUM

Ombudsman had opened 29 cases.

In 2016[222], the Ombudsman office dealt with 24 reports. After preliminary assessments, it investigated ten cases (decisions on four were still pending at the time of the report's publication). Out of these ten, two cases were terminated and eight investigated. At the end of 2016, six cases were finalised. Four were recognised as wrongdoing; no wrongdoing could be established for two others.

Flemish Region: In a speech in 2016 at the House of Whistleblowing in the Netherlands, the Flemish Ombudsman detailed that it had, up to 2006, placed whistleblowers under its protection in 20 cases[223]. No comprehensive reporting is provided on numbers of cases investigated though some cases are mentioned in the annual activity reports of the Ombudsman.

- **Implementation of the law:**

Federal level: The 2014 Federal Ombudsman annual report states that the system has been active since April 2014. It highlights that the law on integrity is a key aspect of the overall integrity management system. The Ombudsman finds that internal audit and integrity control through the reporting system put in place is complementary. It noted that the Ombudsman was looking forward, in 2015, to a reinforcement of audit control mechanisms to strengthen the integrity management system. The 2015 Federal Ombudsman annual report mentions implementation activities, e.g. elections of persons of trust in the Federal Administrations, training of persons of trust; information campaign to inform administrators of the new integrity management system. In 2015, a new Federal Internal Audit unit was created (FAI) which took up work in 2016. This unit will be carrying out audits to reliability of the internal control systems at federal level.

The 2016 Ombudsman report states that 2016 was the first full year that the persons of trust had effectively been in place. They received 98 requests for information, of which eight were assessed by the Ombudsman. Some persons of trust received between 15 to 30 cases of requests of information in 2016 while others received none. The role of the persons of trust is also to carry out preliminary assessments and to understand whether a case is serious or fictional. In their 2016 annual reports, the persons of trust requested further training and also further legal protection for their role.

The 2016 Ombudsman report mentions that feedback and the outcome of the case will be given to the whistleblower and the persons involved in a summary style to protect confidentiality (this will exclude also details of the facts of the case relating to the persons involved). Only the responsible person of the administration or the relevant minister will received a fully detailed report. This rule seems to be perceived negatively by the whistleblowers and other persons involved.

The proposal tabled in mid-2016 to amend the integrity law does not further amend procedures but only amends the scope – the integrity management system shall be applied also to the Federal Police if it is passed.

Flemish Region: A review of the Whistleblower Decree was carried out in 2011, detailing some issues that the Ombudsman experienced in the application of the rules concerning the Ombudsman. Of this review, only the note from the Ombudsman on the issues of application could be accessed. No evaluation study had been produced or could be accessed.

A Transparency International report that evaluates integrity management in Belgium pre-dates the Federal law and recent amendments in Flanders.

A6.E.3. Overview of the data on the impact of the legislation, availability of quantitative data in relation to whistleblowing and implementation of any existing law in Bulgaria

BULGARIA

- **Information on impact:**

No impact assessment of the legislation on whistleblowers or evaluations are available.

- **Availability of national data:**

None available

- **Implementation of the law:**

None available

222 http://www.mediateurfederal.be/sites/default/files/jaarverslag_-_rapport_annuel_-_2016_-_web.pdf

223 http://www.vlaamseombudsdienst.be/ombs/nl/documentatie/pdf/20161013_klok_denhaag.pdf

A6.E.4. Overview of the data on the impact of the legislation, availability of quantitative data in relation to whistleblowing and implementation of any existing law in Croatia

CROATIA

- **Information on impact**:

No studies, evaluations or regulatory impact assessments at national level were identified that assess the impact of whistleblower protection in Croatia. The Ministry of Justice analysed the legal and institutional framework for the protection of whistleblowers in 2016. The results have not yet been published.

In 2013 the Ministry of Justice conducted an independent survey targeted at civil servants (Anonymous survey on the perception of civil servants from the Ministry of Justice on the efficiency of the whistleblower protection'). The survey results showed:

- The majority of civil servants of the Ministry of Justice believe that whistleblowers are not adequately protected by the current legal framework;
- Most respondents of the survey would not blow the whistle if they witnessed corruption;
- More than two thirds of respondents believe if they were to act as a whistleblower, they would be exposed to discrimination and/or mobbing or be dismissed;
- That they would only act as a whistleblower if their anonymity were guaranteed.

The latest survey on Public attitudes to whistleblowing in South East Europe - data analysis of opinion survey about whistleblowing and the protection of whistleblowers shows a very strong support for whistleblowers and the practice of whistleblowing among Croatian citizens.

- **Availability of national data:**

Some administrative data are available (via the annual Report of the Ministry of Justice on the number of submitted complaints on the standard of professional behaviour of civil servants.) The report provides the number of complaints and type of violations of the Rules of Professional Conduct (e.g. the conflict of interests or personal gain).

According to Transparency International Hrvatska, there were 146 cases of whistleblowing in 2016. Most cases were reported by small entrepreneurs / companies in relation to irregularities in public procurement procedures, especially in the health sector.

The latest Study on the assessment of the corruption[224] in Croatia (2016) reports that:

- In Croatia, percentage of the citizens involved in the corruption is lesser than in 2014 but the pressure to be a part of the corruption is stronger;
- That implies that Croatian citizens, although pressured to participate in corruption (e.g. to give bribe) are not willing to do so;
- Majority of the respondents in this survey expressed absolute intolerance to any form of corruption;
- In Croatia, civil servants (both on the local and national level), including members of the Parliament and judges, are considered as the most corrupted, whereas there is a significant increase in the public perception of corruption in journalism and NGOs.

- **Implementation of the law:**

No information is available on the implementation of the law due to the low level of legal requirements.

A6.E.5. Overview of the data on the impact of the legislation, availability of quantitative data in relation to whistleblowing and implementation of any existing law in Cyprus

CYPRUS

- **Information on impact**:

Due to the lack of legislation on whistleblowing, there is no information on the impact of the law.

- **Availability of national data:**

No evaluations or impact assessments have been identified that assess the level of detection of wrongdoing in different areas or the

[224] Developed and published as a part of the project *Civil Society for Good Governance and Anti-Corruption in Southeast Europe: Capacity Building for Monitoring, Advocacy and Awareness Raising*, financed by IPA Civil Society Facility and implemented as the national coordinator by the Croatian NGO *Partnerstvo za društveni razvoj.*

impact of whistleblowing in the social/economic/public sphere. Relevant data are not, therefore, available.

- **Implementation of the law:**

Due to the lack of legislation on whistleblowing, there is no information on the implementation of the law. Some information about whistleblowing cases is available:

In 2011, 98 containers of munitions stored at a naval base exploded causing the death of 13 people and injuring 62. The island's largest power station, situated close to the base, was extensively damaged in the blast and Cyprus lost around half its electricity supply. After the explosion it was revealed that some people were aware of the danger associated with the way the munitions were being stored. According to the Commissioner for Environment at the time, existing legislation had failed to create a secure environment for whistleblowers to come forward[225].

A6.E.6. Overview of the data on the impact of the legislation, availability of quantitative data in relation to whistleblowing and implementation of any existing law in Czech Republic

- **Information on impact**:

There is no legislation specifically targeted on whistleblowers

- **Availability of national data:**

No quantitative data are collected at national level.

Transparency International did a survey among employees in 2009[226]

- 2/3 of employees who witnessed misconduct did not act
- The main reasons for the lack of action is:
- 1) lack of information about appropriate whistleblower channel
- 2) worry that the whistleblowing activity will end in vain
- 3) fear of revenge

A6.E.7. Overview of the data on the impact of the legislation, availability of quantitative data in relation to whistleblowing and implementation of any existing law in Denmark

- **Information on impact:**

Two government studies, published in 2006 and 2015[227] respectively, assessed whether the legal framework sufficiently protects public employees' freedom of speech and clearly defines public employees' right and duty to inform the public about wrongdoing and irregularities[228] .

Both concluded that no comprehensive whistleblower legislation is needed and that both freedom of speech and employees' right and duty to inform about wrongdoing and irregularities are sufficiently defined in the legal framework.

225 Transparency International (2013) Whistleblowing in Europe: Legal protection for whistleblowers in the EU p.33

226 Transparency International Česká republika (2009): Průzkum mapující vnímání whistleblowingu zaměstnanci v České republice, www.transparency.cz

227 Betænkning om offentlige ansattes ytringsfrihed og whistleblowerordninger, betænkning 1553, Ministry of Justice, 2015

228 Betænkning fra Udvalget om offentligt ansattes ytringsfrihed og meddeleret, nr. 1472, March. 2006, "Ytringsfrihed og meddeleret for offentligt ansatte", p. 50 ff.: Personnel Agency, Local Government Denmark and Danish Regions: Good behavior in the public sector, June 2007; and Betænkning om offentlige ansattes ytringsfrihed og whistleblowerordninger, betænkning 1553, Ministry of Justice, 2015

Both studies also concluded that there is a need to ensure that public employees are better informed about their rights and duties to inform.[229] This was a conclusion of the 2006 assessment and there was no improvement during the following 10 years. The number of cases remains low. Revisions to the "Guidelines for public employees' Freedom of Speech", adopted in 2016 included a new section on the duty to inform and regulations for whistleblowing.

- **Availability of national data:**

In 2016, six out of 98 local governments and two out of five regions had established whistleblower bodies.

In 2014, 198 private companies and organisations had established a whistleblower mechanism and this number is expected to be much higher today since this was before the Danish Financial Business Act was amended requiring financial and audit businesses to establish whistleblower mechanisms thereby implementing Directive 2014/56/EU (Audit Directive)[230].

- **Implementation of the law:**

See the section on impact above.

A6.E.8. Overview of the data on the impact of the legislation, availability of quantitative data in relation to whistleblowing and implementation of any existing law in Estonia

- **Information on impact:**

No studies on the impact of the legislation have been identified.

- **Availability of national data:**

A comparative survey[231]conducted among Estonian and Danish business managers showed that only 27.2% of Estonian managers responding to the survey agreed that reporting to law enforcement is an effective measure for preventing misuse compared to 71.8% of Danish managers (p 25). Another survey[232][233] found that 51% of the people surveyed would not tell anyone when witnessing corruption and 1% would report corruption to the law enforcement (the figure is however significantly higher for public sector workers – 42%).

No quantitative data is available.

- **Implementation of the law:**

There is a low level of awareness of the concept of whistleblowing. Comparatively few organisations have whistleblowing systems and channels.

A6.E.9. Overview of the data on the impact of the legislation, availability of quantitative data in relation to whistleblowing and implementation of any existing law in Finland

229 Betænkning fra Udvalget om offentligt ansattes ytringsfrihed og meddeleret, nr. 1472, March. 2006, "Ytringsfrihed og meddeleret for offentligt ansatte", p. 50 ff.: Personnel Agency, Local Government Denmark and Danish Regions: Good behavior in the public sector, June 2007; and Betænkning om offentlige ansattes ytringsfrihed og whistleblowerordninger, betænkning 1553, Ministry of Justice, 2015

230 For more details see http://www.norrbomvinding.com/en/news/04042016/mandatory-whistleblowing-schemes-auditing-firms

231 Aarhus University, Tartu University, Ministry of Justice of Estonia.(2016) "Private-to-Private Corruption A survey on Danish and Estonian business environment" http://www.korruptsioon.ee/sites/www.korruptsioon.ee/files/elfinder/dokumendid/private-to-private_corruption_final_report_2.pdf

232 Ministry of Justice. Corruption in Estonia 2016. (Survey report) http://www.korruptsioon.ee/sites/www.korruptsioon.ee/files/elfinder/dokumendid/korruptsiooniuuring_loplik.pdf

FINLAND

- **Information on impact**:

In 2015-16 a working group coordinated by the Ministry of Justice studied corruption-related whistleblowing (protection and channels, and how these respond to Finland's international obligations). The working group recognized that current norms are to some degree splintered in different pieces of law, which may make them difficult to understand. According to the working group, the current legislation covers whistleblower protection fairly well and it did not identify an immediate need for the enactment of a new specific law. The working group proposed the establishment of a new public reporting channel that would allow anonymous, or at least confidential reporting.

- **Availability of national data:**

In recent years companies have started developing their own reporting channels. However, in 2011, less than 50% of the 50 biggest Finnish companies had some kind of whistleblowing channel installed.[234]

The general level of reporting is rather low. According to a survey conducted by Transparency International in 2013,[235], 35% of the respondents in Finland said that they would not report a corruption case that they knew about. In 2012, the police received 11,246 reports through its online channel. 181 of them concerned corruption and 2,210 fraud. The customs office received 400 reports. The National Audit Office received 23 reports from public authorities and 55 reports from private persons. The Competition and Consumer Authority receives annually 250 reports from whistleblowers[236].

- **Implementation of the law:**

There is no legislation protecting whistleblowers in Finland. There is no information on the reporting channels linked to the obligations under the Act on Credit Institutions and the Act on Financial Supervision.

A6.E.10. Overview of the data on the impact of the legislation, availability of quantitative data in relation to whistleblowing and implementation of any existing law in France

FRANCE

- **Information on impact**:

An impact assessment study from the Council of State[237] was prepared for the French law (Loi Sapin II). However, very little information on the impact of the provisions on whistleblower protection is available in this report. This is due to the fact that the important amendments to the Law Sapin II aimed to protect whistleblowers were made by the Parliament after the publication of this report[238]. The only information on impact refers to the European Commission impact assessment study in the framework of the preparation of Regulation No 596/2014 and Directive 2014/57/EU on criminal sanctions for market abuse and therefore does not build on anything new.

- **Availability of national data:**

No quantitative data seem to be collected at national level. The Law Sapin II being very recent (from December 2016) data might be available in the year to come from the Ombudsman.

A survey on the perception of whistleblowers[239] was carried-out in 2015 by Transparency International France. It found out that:

- Reasons given for not reporting a wrong-doing are by order of importance: 1) the feeling that this would have no impact; 2) the fear of retaliation; 3) not knowing where to go to report
- The most vulnerable workers would only report anonymously (women, young employees, employees with low wages and

234 https://www.kpmg.com/FI/fi/Ajankohtaista/Uutisia-ja-julkaisuja/Neuvontapalvelut/Documents/KPMG_Whistleblowing_esite_2011.indd.pdf

235 Transparency International (2015) *In Detail: Global Corruption Barometer 2013* http://www.transparency.org/gcb2013/in_detail

236 Salminen, Ari and Heiskanen, Lauri (2013*). Whistleblowing. Pilliin puhaltaminen ja organisaatioiden kehittäminen: Katsaus tutkimuskirjallisuuteen. (Whistleblowing. Blowing the whistle and organisational development: An overview of research literature).* Vaasan yliopiston julkaisuja selvityksiä ja raportteja 192. University of Vaasa.

237 See report available at: https://www.legifrance.gouv.fr/content/download/9989/117721/version/1/file/ei_transparence_corruption_modernisation_vie_economique_cm_30.03.2016.pdf

238 Information collected through an interview with the French Ministry on 24/05/2017

239 https://transparency-france.org/wp-content/uploads/2016/04/R%C3%A9sultats-sondage-Harris-Interactive.pdf

employees with short-term contracts)

- **Implementation of the law:**

No information is available on the implementation. The Law Sapin II will enter into force on 1 January 2018.[240]

A6.E.11. Overview of the data on the impact of the legislation, availability of quantitative data in relation to whistleblowing and implementation of any existing law in Germany

GERMANY

- **Information on impact**:

No mention on impact assessments.

- **Availability of national data:**

No comprehensive data available. Some prominent cases of whistleblowing that have been reported in the media.

- **Implementation of the law:**

No information on implementation of laws by public authorities. Some assessments by third parties[241]. Germany has just recently introduced a law criminalising bribing the MPs and introducing sanctions. A law on fighting corruption is still under discussion in the Parliament[242] and it does not refer to whistleblowing. Germany ratified the UN Anti-Corruption Convention from 2003 in 2014. There is no specific law or standalone legislation on whistleblowing available. The last attempt to introduce legislation occurred in 2012 but was unsuccessful. The legal framework is based on wrongdoing specific approach – some laws set out reporting obligations or possibilities to lodge complaints for specific types of wrongdoings (criminal acts, money laundering and financing of terrorism) or issues (e.g. risks of health and safety, cases of discrimination) and a specific procedure for civil servants in the public sector (to alert in principal about bribery). In cases where whistleblowing does not relate to any of the above mentioned specific wrongdoings, protection may be derived from the general legal framework but this does not provide for certainty for the whistleblower. While "good faith" is derived from case law, there is no clear definition for cases of whistleblowing and existing case law indicates that even slight negligence will exclude good faith defense. The 2011 Global Integrity Report classified whistleblower protection measures in Germany as 'very weak'[243].

A6.E.12. Overview of the data on the impact of the legislation, availability of quantitative data in relation to whistleblowing and implementation of any existing law in Greece

GREECE

- **Information on impact**:

The legislation has not been yet assessed. There are no studies, evaluations or impact assessments on the whistleblower regulation

- **Availability of national data:**

There is no national data on the number of whistleblower cases

- **Implementation of the law:**

240 Decree No. 2017-564 of 19 April 2017 implementing the Law Sapin II https://www.legifrance.gouv.fr/eli/decret/2017/4/19/ECFM1702990D/jo/texte

241 Whistleblowing in Germany: http://www.whistleblower-net.de/pdf/WB_in_Germany.pdf ; TI report 2013: http://whistleblower-net.de/pdf/TI_EU27_Germany_WBNW.pdf

242 See information available at: http://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/GE_Korruptionsbekaempfung.pdf;jsessionid=7326ECF9FA927909F00BFBFB0F4D9B67.2_cid289?__blob=publicationFile&v=5

243 https://www.globalintegrity.org/research/reports/global-integrity-report/global-integrity-report-2011/gir-scorecard-2011-germany/

GREECE

There is no information on implementation of the law but shortcomings of the current legislation are as follows:

- The limited scope of wrongdoings that can be reported constitutes one of the main issues of the Greek legislation.
- There are no provisions for prompt compensation of any direct, indirect and future negative consequences (damages etc.) created by any reprisals suffered by the whistleblower due to their disclosures (e.g.. lost or expected income and difficulty to reintegrate into employment), nor any specific penalties of civil, discipline or criminal nature for the employer.
- Finally, this whistleblower status can be recalled, according to the law, at any time by the prosecutors. Thus, whistleblowers can feel threatened by this.

A6.E.13. Overview of the data on the impact of the legislation, availability of quantitative data in relation to whistleblowing and implementation of any existing law in Hungary

HUNGARY

- **Information on impact**:

Studies are available on the evaluation of the Act on Complaints and Public Interest Disclosures, mainly from the time of the adoption of the new law (2013). The impact assessment suggests that the lack of effective safeguards in the Act may prevent most whistleblowers from coming forward. These studies mainly criticize the lack of definition on 'public interest', the lack of clarity in the rules under which entities may prosecute whistleblowers acting in bad faith and maliciously, and the lack of clearly articulated obligations and model rules (minimum standards) to employers on adopting internal rules for conduct applicable to disclosures. Since the Act has been in effect, *ex post* impact assessments have not been carried out in a horizontal way. K-Monitor, an NGO that deals with whistleblower protection in relation to the fight against corruption, signals failed attempts of whistleblowers to establish a public interest case for their disclosures. K-Monitor believes that most whistleblowers disclosing potential corruption acts anonymously and these disclosures are typically not, therefore, investigated[244].

- **Availability of national data:**

Statistics are not available on the volume of whistleblowing reporting. The Commissioner for Fundamental Rights reported that in the first 10 months after the Act on Complaints and Public Interest Disclosures had entered into force (1 January 2014 to 30 October 2014), 270 disclosures were received. In the subsequent period, around 500 disclosures have been addressed to the Commissioner each year reaching a total of 1,121 cases within the last ten years. The Commissioner for Fundamental Rights typically finds 40% of these disclosures well founded. Many disclosures arrive anonymously or without any grounds.

Most disclosures are related to potential fraud and corruption (61), tax evasion (11) and tax avoidance (27). In 890 cases out of these 1,121 cases, whistleblowers made use of assistance or any forms of protection. An internal enquiry was carried in 695 cases and in 366 of these cases the existence of a wrongdoing was proved. The Commissioner has indicated that most disclosures are against public sector organisations; very few relate to the private sector.

- **Implementation of the law:**

The effectiveness of the legislation is not known to date. Different sources indicate that the law is rarely being used. The Commissioner for Fundamental Rights typically gets around 500 complaints and public interest disclosures a year, mainly against the public sector (e.g. tax authority, governmental offices, local governments), and finds about 40% of them to be well founded.

A6.E.14. Overview of the data on the impact of the legislation, availability of quantitative data in relation to whistleblowing and implementation of any existing law in Ireland

[244] Critics of TASZ and K-Monitor on the draft legislation on the law on public dicslosures (A K-Monitor és a TASZ álláspontja a közérdekű bejelentésekről szóló törvény tervezetéhez) http://adatbazis.k-monitor.hu/hirek/magyar-hirek/a-k-monitor-es-a-tasz-allaspontja-a-kozerdeku-bejelentesekrol-szolo-torveny-tervezetehez).

IRELAND

- **Information on impact**:

A Regulatory Impact Assessment on the 2013 Protected Disclosures Bill was carried-out by the Government Reform Unit in July 2013.

- **Availability of national data:**

No information on availability of national data

- **Implementation of the law:**

Due to the recent adoption of the law, there is no information available on the implementation of the law.

A6.E.15. Overview of the data on the impact of the legislation, availability of quantitative data in relation to whistleblowing and implementation of any existing law in Italy

ITALY

- **Information on impact**:

No impact assessment or evaluation of legislation on whistleblowers have been produced.

- **Availability of national data:**

Whistleblowing is a very limited part of the competence of the Anticorruption authority. In June 2017 ANAC presented the results of the first national monitoring of whistleblowing cases in Italy[245], covering 34 public administrations and 6 public companies. Between September 2014 and May 2017 a total of 731 reporting were received by ANAC from public administrations or public owned companies and 443 investigations were initiated.

- **Implementation of the law:**

No studies or evaluation are available specifically on implementation of whistleblowers protection rules. The national monitoring published in 2017 does not provide information on the implementation of legislation.

A6.E.16. Overview of the data on the impact of the legislation, availability of quantitative data in relation to whistleblowing and implementation of any existing law in Latvia

LATVIA

- **Information on impact**:

No evaluations or regulatory impact assessments have been carried out due to the lack of legislation in the field.

- **Availability of national data:**

Since there is no national legislation on the topic there is no data compiling this information.

- **Implementation of the law:**

There is no legislation on whistleblowing in Latvia for the moment. A draft law has recently been approved by the government and is waiting to be examined before the Parliament.

[245] See information available at: https://www.anticorruzione.it/portal/public/classic/AttivitaAutorita/Anticorruzione/SegnalIllecitoWhistleblower/_presentPrimoMonitoraggioNaz

A6.E.17. Overview of the data on the impact of the legislation, availability of quantitative data in relation to whistleblowing and implementation of any existing law in Lithuania

LITHUANIA

- **Information on impact**:

No evaluations or regulatory impact assessments have been carried out recently as there is no comprehensive legislation protecting whistleblowers in Lithuania.

- **Availability of national data:**

There are only a limited number of public sector institutions which keep track of whistleblower complaints. The Special Investigation Service received 1925 reports in in 2016, from which 26 pre-trial investigations have been launched (in 2015 these number were respectively 1509 and 39). The National Tax Inspectorate claims to receive around 4000 reports per year (but they do not distinguish between type of complaint, i.e. whether complaint is of whistleblowing nature or normal complaint)[246]. No private sector data is available.

According to a 2015 report[247] by Transparency International Lithuania, there are more than 100 reporting channels in different institutions in the country, but no clear rules of how they are managed, what are the responsibilities of these institutions in protecting the reports and no oversight

- **Implementation of the law:**

One of the main driver behind advancing on whistleblower protection is the OECD and its recommendations for Lithuania which is currently seeking membership.

In practice, public sector institutions do have established reporting channels (the number is not clear and there is no registry, an estimate would be around 100). The problem is that institutions do not differentiate those channels which are established for reports in the whistleblowing sense from channels devoted for complaints (under the Law on Public Administration).

A6.E.18. Overview of the data on the impact of the legislation, availability of quantitative data in relation to whistleblowing and implementation of any existing law in Luxembourg

LUXEMBOURG

- **Information on impact**:

No impact assessment has been done at national level.

- **Availability of national data:**

No quantitative data seem to be collected at national level.

- **Information on implementation of the law:**

No information is available on the implementation of the law.

The existing legislation was not applicable in Luxembourg's biggest whistleblower case: LuxLeaks. In that case, Antoine Deltour and Raphaël Halet were tried and convicted of theft in an appeal trial in March 2017.[248] The legislation could not protect whistleblowers in that case because of its limited scope. Indeed, the law requires the disclosure of an "illegal" act, which excludes acts that would only be "unethical". Even though the Advanced Tax Agreements (subject of the disclosure) were harming the public interest[249] and have been recognised as such by the Luxembourg Court and the European Parliament [250], they were not illegal and thus did not fall into the scope of the Luxembourgish law.

246 Activity Report 2015 of the Special Investigation Service: http://stt.lt/documents/ataskaitos/stt_ataskaita_2016_web.pdf

247 Transparency International (2015) Pranešimų Kanalai Lietuvoje – Informavimo Standart Ų Analizė http://www.transparency.lt/wp-content/uploads/2015/11/pranesimu_kanalai_lietuvoje_informavimo_standartu_analize1.pdf

248 https://support-antoine.org/docs/pr/2017-04-05-pr-decision-antoine-EN.pdf

249 http://www.europarl.europa.eu/

250 T European Parliament which launched investigations against the targeted companies. See http://www.eppgroup.eu/fr/TAXE

A6.E.19. Overview of the data on the impact of the legislation, availability of quantitative data in relation to whistleblowing and implementation of any existing law in Malta

MALTA

- **Information on impact**:

No studies, evaluations or regulatory impact assessments assessing the strength or otherwise of whistleblower protection in Malta were identified.

- **Availability of national data:**

No administrative data on the number of whistleblowing reports were found.

No information is available on the level of detection of wrongdoing or on the outcomes of whistleblowing is available.

- **Implementation of the law:**

There is no information on the implementation of the law. However, there has been criticism on the fact that some categories of workers did not fall into the scope of the Whistleblower Act[251]. This concerns members of the disciplined force, members of the Security Service and persons employed by the foreign, consular or diplomatic service of the Government.

A6.E.20. Overview of the data on the impact of the legislation, availability of quantitative data in relation to whistleblowing and implementation of any existing law in the Netherlands

NETHERLANDS

- **Information on impact**:

No mention of impact assessment.

- **Availability of national data:**

The law only came into force as of 1st July 2016[252]. Thus, not much recent data relating to the current legal framework exists. The 2016 Report states that 532 cases were related to advice (of which 53 from the predecessor). The House has investigated 12 cases in the second half of 2016[253].

- **Implementation of the law:**

No specific report available. The House of Whistleblowers only started its work as of 1 July 2016 which makes difficult to assess the implementation of the law. There is no information available yet on how companies design their procedures.

A6.E.21. Overview of the data on the impact of the legislation, availability of quantitative data in relation to whistleblowing and implementation of any existing law in Poland

POLAND

251 http://www.maltatoday.com.mt/comment/blogs/37813/a_whistleless_whistleblower#.WWTg5FGxVLM

252 http://wetten.overheid.nl/BWBR0037852/2016-07-01

253 See information available at: https://huisvoorklokkenluiders.nl/wp-content/uploads/2017/02/De-Graaf-2013-Een-luisterend-oor-Rapport-Interne-meldsystemen.pdf and https://huisvoorklokkenluiders.nl/wp-content/uploads/2017/02/Huberts-2016-Integrity-Management-in-the-Public-Sector-1.pdf

POLAND

- **Information on impact:**

There is no information on impact of the law as there is no whistleblower legislation to assess. No studies have been identified on the impact of the requirement to have reporting channels in the banking sector.

- **Availability of data:**

No available data.

- **Implementation of the law:**

There is no information on implementation of the law as there is no whistleblower legislation to assess. No studies have been identified on the implementation of the requirement to have reporting channels in the banking sector.

A6.E.22. Overview of the data on the impact of the legislation, availability of quantitative data in relation to whistleblowing and implementation of any existing law in Portugal

PORTUGAL

- **Information on impact**:

There is no information available.

- **Availability of national data:**

There is no information available

- **Implementation of the law:**

There is no information available.

A6.E.23. Overview of the data on the impact of the legislation, availability of quantitative data in relation to whistleblowing and implementation of any existing law in Romania

ROMANIA

- **Information on impact**

Several guidelines were developed by NGOs, such as Transparency International Romania, Active Watch for whistleblower protection.

Transparency International Romania carried-out some reports on the evaluation of the level of corruption for several year or periods, such as: 2005, 2007, 2009-2011 etc.[254]

Also, the Ministry of Justice developed a report on the evaluation of the National Anticorruption Strategy which contains data with respect to the application and implementation of the whistleblower protection legislation.[255] Regarding the implementation of the National Anticorruption Strategy, the technical secretariat of the Government developed two guidelines on declaring gifts and protecting whistleblowers, disseminated to the members of the cooperation platforms (e.g. platform of independent authorities and anti-corruption institutions; the central public administration platform; the local public administration platform; business platform; the civil society platform.)

254 TI National Corruption Report 2007, available at: https://www.transparency.org.ro/politici_si_studii/studii/national_coruptie/2007/NCR_2007_FINAL_site_eng.pdf; TI National Corruption Report 2005, available at:https://www.transparency.org.ro/files/File/RNC%202005%20en.pdf; TI National Corruption Report 2011, available at: https://www.transparency.org.ro/politici_si_studii/studii/national_coruptie/2011/RNC2011.pdf.

255 http://www.just.ro/strategii-si-politici/strategii-nationale/

ROMANIA

- **Availability of national data:**

The evaluation of the Ministry of Justice of the National Anticorruption Strategy 2012-2015provides the following data in relation to disclosures[256]:

- 8 out of the 19 ministries said that they have not registered any whistleblower cases.
- The total number of complaints registered in the evidence of the Ministry of Justice is 1598, the majority of the complaints being registered with the Ministry of Internal Affairs (1466).
- In 1,244 institutions, there are individuals especially appointed to receive whistleblower notifications, (including over 900 at the Ministry of Internal Affairs).
- There was only one case of retaliation at the workplace (within the Ministry of Internal Affairs), and in 23 cases compensation was granted to whistleblowers.
- At the same time, there have been 18 complaints in court. To implement these preventive measures, 5,094 training activities were organised, involving 43,755 people.
- Regarding independent authorities, there were no notices of infringement, in 18 institutions there were specially appointed individuals to receive whistleblower notifications.
- There were 6 professional training courses attended by 250 people. At the level of the central public administration, 219 administrative measures were adopted to remove the causes or circumstances that favoured the violation.
- With respect to the population trust levels it was assessed that 60% of the population trust the National Anti-Corruption Directorate (DNA), while 24% of the Romanians trust the government, 16% trust the parliament and 39% trust regional or local government, 58.5% believe "that public officials often or very often call for money or gifts to act on certain requests" (Ministry of Justice, n.d.).)[257] Also, Romanians distrust the police and prosecution - the police is trusted by 48% (EU 57%) and justice, which also includes prosecution, by only 13% (EU 27%). However, as we saw above, trust in anti-corruption investigations is on the rise.[258]

- **Implementation of the law:**

As the law does not provide for a mandatory obligation on the institutions to implement whistleblower protection mechanisms within their institutions, the applicability of the law and its implementation varies across institutions and areas.

Best practices regarding the implementation of the whistleblower protection include cooperation platforms with stakeholders and thematic evaluation missions coordinated by the Ministry of Justice; training, risk assessment and other preventive measures by the General Anti-Corruption Directorate of the Ministry of Interior.

A6.E.24. Overview of the data on the impact of the legislation, availability of quantitative data in relation to whistleblowing and implementation of any existing law in Slovakia

SLOVAKIA

- **Information on impact:**

There has been no impact study but an evaluation study of the new legislation was done in 2016[259]. The evaluation was focused on the employers compliance with the new legislation under which it is mandatory to put in place internal channels for reporting, in total 166 organisations were assessed and in 24 cases infringements have been found.

Moreover, a summary report of the Labour Inspectorate suggests that there is still reluctance to report antisocial behaviour in Slovakia[260].

- **Availability of national data:**

Data on whistleblower cases are kept at national level, however they are very few cases, between 2015 and 2016 only 32

256 Final Report on the implementation of the National Anticorruption Strategy 2012-2015, available at http://www.just.ro/strategii-si-politici/strategii-nationale/

257 *Ibid.*

258 *Ibid.*

259 http://snslp.sk/CCMS/files/2Hodnotiaca_sprava_2016_-_finalna_verzia.pdf

260 http://www.nip.sk/?id_af=582&ins=nip

cases were granted protection by Labour Inspectorate (18 were reporting criminal activity, 14 administrative offence)[261].

In the years 2015 and 2016, labour inspectorates received a total of four applications from the employer for the granting of consent for an action concerning the protected whistleblower. The applications concerned a total of eight labour actions[262]. Appropriate inspectorates have given prior approval to take action in three cases and in five cases the action of an employer against the employee was dismissed. Within the national Labour Inspectorate[263], there was 1 recorded whistleblower submission which is currently being dealt with.

A survey in 2010 found that only 5% of Slovaks would report corruption[264].

- **Implementation of the law**

During 2015 and 2016, the main focus of the Labour Inspectorate's action in relation to the new law was to check whether employers had complied with their obligations to set up internal reporting channels. The 2016 Summary report of the Slovak Labour Inspectorate presents the findings of this exercise which took place between January and December 2016. In total, 166 organisations were assessed, both from private and public sector. There were in total 24 infringements related to the employer's obligations to set up internal reporting channels.

Serious gaps in the implementation affect effectiveness of the law such as the insufficient number of staff and financial means of the relevant institutions[265].

Although dedicated legislation concerning protection of whistleblowers exists, there are practical issues with the implementation on the ground. The 2016 Summary report of the labour Inspectorate highlighted the fact that a climate of unwillingness/hesitation to report anti-social activity persists in Slovakia. Employees are not often coming forward. One of the reasons is very negative examples of whistleblowers who came forward, were dismissed from their employment, and still struggle to integrate into social and working environment due to a stigma of being a 'trouble –maker'[266] .

A6.E.25. Overview of the data on the impact of the legislation, availability of quantitative data in relation to whistleblowing and implementation of any existing law in Slovenia

- **Information on impact**:

No studies evaluating the impact of the legislation have been identified.

- **Availability of national data:**

The number of reports made to the Anti-Corruption Commission has fallen over time (from 2,300 reports in 2013 to 1,575 reports in 2015)**.**

Statistics of protection measures granted by the Anti-Corruption Commission:

Measure	2011	2012	2013	2014	2015	2016
Code name	13	14	10	5	2	1
Demand for termination of retaliatory measures	1	1	/	/	/	/
Good faith test met?	/	4	/	/	1	/
Protection of person in public office	/	5	/	/	/	/
Establishing nexus with?	/	4	/	/	1	/
Malicious report	2	/	2	/	/	1

261 Slovak National labour Inspectorate (2016) Summary report *Kontrola vnútorného systému vybavovania podnetov* http://www.nip.sk/?id_af=582&ins=nip

262 Slovak National labour Inspectorate (2016) Summary report *Kontrola vnútorného systému vybavovania podnetov* http://www.nip.sk/?id_af=582&ins=nip

263 http://www.nip.sk/?

264 http://www.fair-play.sk/docs/eknihy/jeden-za-vsetkych.pdf

265 Transparency International Slovensko, Whistleblower protection is only on paper http://www.transparency.sk/wp-content/uploads/2016/02/Whistleblower-protection-is-only-on-paper_ENG.pdf

266 http://www.nip.sk/?id_af=582&ins=nip

SLOVENIA

Source: Stakeholder Interview

- **Implementation of the law:**

The increased protection provided in law to whistleblowers in Slovenia has not led to an increase in the level of reporting of corruption or unethical and illegal acts. There is some evidence that workers are reluctant to report out of fear of retaliation (Global Corruption Barometer / Transparency Slovenia).

A6.E.26. Overview of the data on the impact of the legislation, availability of quantitative data in relation to whistleblowing and implementation of any existing law in Spain

SPAIN

- **Information on impact**:

Due the lack of legislation protecting whistleblowers in Spain, no evaluations or regulatory impact assessments have been carried out to assess the strength or otherwise of whistleblower protection. The three regional legislation date back from 2016 and there is therefore no information available on their impact.

- **Availability of national data:**

Due the lack of legislation protecting whistleblowers in Spain, there is no data available.

- **Implementation of the law:**

Due the lack of legislation protecting whistleblowers in Spain, there is no information available on the implementation of the law. The three regional legislative instruments on whistleblowers in the public sector are very recent (2016) and therefore no study has been conducted on their implementation so far.

A6.E.27. Overview of the data on the impact of the legislation, availability of quantitative data in relation to whistleblowing and implementation of any existing law in Sweden

SWEDEN

- **Information on impact:**

The legislation is very recent (2017) so no ex-post assessments of its impacts have been carried out. The preparatory work done in relation to the legislation is available online.

Two studies by The Swedish National Council for Crime Prevention from 2013 and 2014 have been published[267]. These reports show a trend towards a more professional and less corruption-prone society thanks to better arrangements and safeguards in the public sector. The authors found that this also applies in industry. The increase in the number of reports does not necessarily mean that there are more wrongdoings committed, but rather that there is an increased willingness to file a report.

- **Availability of national data:**

Due to recent nature of legislation no data are available.

- **Implementation of the law**

Due to the recent adoption of the law, no information on its implementation is available.

A6.E.28. Overview of the data on the impact of the legislation, availability of quantitative data in relation to whistleblowing and implementation of any existing law in the United Kingdom

[267] https://www.bra.se/bra/bra-in-english/home/publications/archive/publications/2014-03-21-reported-corruption-in-sweden.html and https://www.bra.se/bra/bra-in-english/home/publications/archive/publications/2014-01-24-corruption-in-government-agencies.html#

UNITED KINGDOM

- **Information on impact**:

There was no impact assessment carried-out for The Public Interest Disclosure Act. An Impact Assessment was done on 'Police Whistleblowing: Changes to Police (Conduct) Regulations 2012 and Home Office guidance on police officer misconduct' but it was only partially about whistleblowing.

- **Availability of national data:**

Public Concern at Work (PCW)[268] is the main source of data on whistleblowers. According to PCaW), in the first 10 years of the PIDA Act there were approximately 9,000 claims, 3,000 resulted in a written judgement, and only in 500 cases was possible to identify the cause of the public concern.

Main findings from a review of PIDA claims between 2011 and 2013 by PCaW:

- 66% of claims are lodged by claimants in the private sector, 26% in the public, 4% in the voluntary, 4% unknown
- 12% in health sector, 9% in care sector, 7% in education, 7% in local government, 5% in finance
- Only 7% of claimants who brought interim relief claims were successful
- 20% drop in the number of whistleblowing claims lodged with the employment tribunal following the introduction of fees

- **Implementation of the law**

Problems with the use of PIDA have been identified. It was shown that PIDA was not sufficiently known and staff who had raised concerns internally and then decided to leave their job often signed 'gagging clauses' as part of a settlement. Even though these are void under PIDA in respect of public interest disclosures, the staff concerned was not always aware of this and thus the issue of concern may never be properly aired[269].

268 "Whistleblowing: The Inside Story" http://www.pcaw.org.uk/files/Whistleblowing%20-%20the%20inside%20story%20FINAL.pdf
"Is the Law Protecting Whistleblowers: A Review of PIDA Claims" http://www.pcaw.org.uk/files/PIDA%20REPORT%20FINAL.pdf
PCaW (2011) Whistleblowing: beyond the law https://www.pcaw.org.uk/files/PCAW_Review_beyondthelaw.pdf
http://www.pcaw.org.uk/law-policy/a-guide-to-pida/pida-statistics

269 Transparency International (2013) Whistleblower protection and the UN Convention against Corruption http://www.europarl.europa.eu/meetdocs/2009_2014/documents/libe/dv/ti_report_/ti_report_en.pdf

Annex 7: International sources for the protection for whistleblowers

The protection of whistleblowers is enshrined in a large number of international instruments, which require States to incorporate – or consider incorporating – specific measures to protect the reporting person.

The 2005 **UN Convention against Corruption** (UNCAC)[270] requires the States to carry out a process of evaluating appropriate measures to protect people who report corruption-related offences from retaliation. Article 33 (Protection of reporting persons), specifically provides for whistleblower protection by affirming that: "each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for 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."

At regional level, the Council of Europe 1999 **Civil Law Convention on Corruption**[271] requires, at its Article 9 (Protection of employees), that the European governments "shall provide in its internal law for appropriate protection against any unjustified sanction for employees who have reasonable grounds to suspect corruption and who report in good faith their suspicion to responsible persons or authorities". In addition, Article 22 of the **Criminal Law Convention on Corruption**[272] affirms that: "Each Party shall adopt such measures as may be necessary to provide effective and appropriate protection for: a) those who report the criminal offences established in accordance with Articles 2 to 14 or otherwise co-operate with the investigating or prosecuting authorities; b) witnesses who give testimony concerning these offences".

Other regional instruments against corruption which provide for a protection whistleblower are the **African Union Convention on Preventing and Combating Corruption**[273] and the 2001

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270 The Convention was adopted by the General Assembly of the United Nations on 31 October 2003 at United Nations Headquarters in New York and entered into force on 14 December 2005 https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf . Other relevant provisions of the UNCAC are Article 32 (*Protection of witnesses, experts and victims*), Article 37(*Cooperation with law enforcement authorities*) and Article 39(*Cooperation between national authorities and the private sector*).

271 Coe's Civil Law Convention on Corruption**,** Strasbourg, 4.XI.1999, https://rm.coe.int/168007f3f6. With specific regard to the protection of the reporting person, the Explanatory Report (http://www.whistleblowers.org/storage/documents/internationalhomepage/civil%20convention%20explanatory%20notes.pdf) to this Convention states "69. The "appropriate protection against any unjustified sanction" implies that, on the basis of this Convention, any sanction against employees based on the ground that they had reported an act of corruption to persons or authorities responsible for receiving such reports, will not be justified. Reporting should not be considered as a breach of the duty of confidentiality. Examples of unjustified sanctions may be a dismissal or demotion of these persons or otherwise acting in a way which limits progress in their career. 70. It should be made clear that, although no one could prevent employers from taking any necessary action against their employees in accordance with the relevant provisions (e.g. in the field of labour law) applicable to the circumstances of the case, employers should not inflict unjustified sanctions against employees solely on the ground that the latter had reported their suspicion to the responsible person or authority. 71. Therefore the appropriate protection which Parties are required to take should encourage employees to report their suspicions to the responsible person or authority. Indeed, in many cases, persons who have information of corruption activities do not report them mainly because of fear of the possible negative consequences. 72. As far as employees are concerned, this protection provided covers only the cases where they have reasonable ground to report their suspicion and report them in good faith. In other words, it applies only to genuine cases and not to malicious ones".

272 Coe's Criminal Law Convention on Corruption**,** Strasbourg, 27.I.1999 https://rm.coe.int/168007f3f5.

273 The Convention was adopted on 01 July 2003 and entered into force on 5 August 2006, https://au.int/sites/default/files/treaties/7786-treaty-0028_-_african_union_convention_on_preventing_and_combating_corruption_e.pdf .

Protocol against Corruption [274] to the **Treaty of the Southern African Development Community.**

The protection of whistleblower is also enshrined into soft-law international instruments.

Article 4 of the 1998 **OECD Recommendation on Improving Ethical Conduct in the Public Service including the Principles for Managing Ethics in the Public Service**[275] states that "public servants need to know what their rights and obligations are in terms of exposing actual or suspected wrongdoing within the public service. These should include clear rules and procedures for officials to follow, and a formal chain of responsibility. Public servants also need to know what protection will be available to them in cases of exposing wrongdoing".

Furthermore, the **2003 OECD Recommendation on Guidelines for Managing Conflict of Interest in the Public Service**[276] requires the States to provide "clear rules and procedures for whistleblowing, 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"[277]. The **2009 OECD Anti-bribery Recommendation**[278] also provides for the protection of whistleblowers.

At the Seoul Summit in November 2010, G20 Leaders identified the protection of whistleblowers as one of the high priority areas in their global anticorruption agenda. For that reason, the Leaders, in point 7 of the G20 Anti-Corruption Action Plan, called on G20 countries to lead by: "*To protect from discriminatory and retaliatory actions whistleblowers who report in good faith suspected acts of corruption, G-20 countries will enact and implement whistleblower protection rules by the end of 2012"*. The result was the "**G20 compendium of best practices and guiding principles for legislation on the protection of whistleblowers**" aimed at providing reference for countries intending to establish, modify or complement whistleblower protection frameworks and offering guidance for future legislation.

A. The Council of Europe Recommendation CM/Rec(2014)7 [279] on the protection of whistleblowers

The key principles for an efficient and balanced whistleblower protection system as established in the Council of Europe 2014 Recommendation refer to:

- **Public interest:**

"1. The national normative, institutional and judicial framework, including, as appropriate, collective labour agreements, should be designed and developed to facilitate public interest reports and disclosures by establishing rules to protect the rights and interests of whistleblowers.

2. Whilst it is for member States to determine what lies in the public interest for the purposes of implementing these principles, member States should explicitly specify the scope of the national framework, which should, at least, include violations of law and human rights, as well as risks to public health and safety and to the environment".

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274 The protocol was adopted on 14 August 2001 and entered into force on 6 August 2006, http://www.sadc.int/files/7913/5292/8361/Protocol_Against_Corruption2001.pdf, Article 4.

275 http://www.oecd.org/gov/ethics/Principles-on-Managing-Ethics-in-the-Public-Service.pdf.

276 http://www.oecd.org/development/governance-development/33967052.pdf.

277 *Ibid.*, para 2.3.2. b).

278 https://www.oecd.org/daf/anti-bribery/44176910.pdf.

279 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://rm.coe.int/16807096c7 .

The Explanatory memorandum [280] explains that: "throughout Europe, the public interest is understood as the "welfare" or "well-being" of the general public or society. Protecting the welfare and well-being of the public from harm, damage or breach of their rights is at the heart of this recommendation. Thus, Principle 2 needs to be read in conjunction with Principle 1. The purpose of a national framework is to facilitate the reporting or disclosing of information about wrongdoing or risk to the public interest as it is in the public interest to prevent and punish such acts. Thus, the recommendation encourages a change of paradigm, from whistleblowing being considered as an act of disloyalty to one of democratic responsibility […] While what is in the public interest will in many areas be common ground between member States, in other areas there may well be a difference of appreciation. What constitutes the public interest is, therefore, intentionally not defined in the recommendation. This is left to each member State, a position reflected by the European Court of Human Rights in its case law. Principle 2 makes this clear, while also drawing attention to the importance of including the three areas mentioned (risks to public health and safety, risks to the environment and violations of law and human rights)"[281].

- **Personal scope:**

"3. The personal scope of the national framework should cover all individuals working in either the public or private sectors, irrespective of the nature of their working relationship and whether they are paid or not.

4. The national framework should also include individuals whose work based relationship has ended and, possibly, where it is yet to begin in cases where information concerning a threat or harm to the public interest has been acquired during the recruitment process or other pre-contractual negotiation stage

5. A special scheme or rules, including modified rights and obligations, may apply to information relating to national security, defence, intelligence, public order or international relations of the State.

6. These principles are without prejudice to the well-established and recognised rules for the protection of legal and other professional privilege".

On the definition of the personal scope of application, the Explanatory Memorandum affirms that "principles 3 and 4 take a broad and purposive approach to the range of individuals who might come across wrongdoing in the workplace or through their work-related activities. From the perspective of protecting the public interest, these are all individuals who by virtue of a de facto working relationship (paid or unpaid) are in a privileged position vis-à-vis access to information and may witness or identify when something is going wrong at a very early stage – whether it involves deliberate wrongdoing or not. This would include temporary and part-time workers as well as trainees and volunteers. In certain contexts and within an appropriate legal framework, member States might also wish to extend protection to consultants, freelance and self-employed persons, and sub-contractors; the underlying reasons for recommending protection to whistleblowers being their position of economic vulnerability vis-à-vis the person on whom they depend for work"[282].

A restricted set of rules can be applied by members States when the information relate to "wrongdoing or serious malpractice related to national security, defence, intelligence, public order or international relations of the State […] The principle is based on the assumption that member

280 Recommendation CM/Rec(2014)7 adopted by the Committee of Ministers of the Council of Europe on 30 April 2014 and explanatory memorandum, ISBN 978-92-871-7929-6, Council of Europe, October 2014

281 *Ibid.*, p. 24.

282 Council of Europe, Explanatory Memorandum (2014), p. 25.

States may introduce a scheme of more restrictive rights in relation to the general scheme but that they may not leave the whistleblower completely without protection or a potential defence. It is to be noted that Principle 5 refers to information only. It does not permit categories of persons (such as police officers, for example) to be subject to a modified scheme. Rather, it is the category of information that may be subject to a modified scheme. The principle, therefore, extends, for example, to non-military personnel who, through a work-based relationship with the military (sub-contractors, for example) acquire information on a threat or harm to the public interest"[283]. Principle 6 refers to professional privileged, for example in the relation between a lawyer and clients by recognising "the importance of professional privilege or client confidentiality between a lawyer and his or her client in a democratic society governed by the rule of law " and referring to the national framework[284].

- **Normative framework:**

7. The normative framework should reflect a comprehensive and coherent approach to facilitating public interest reporting and disclosures.

8. Restrictions and exceptions to the rights and obligations of any person in relation to public interest reports and disclosures should be no more than necessary and, in any event, not be such as to defeat the objectives of the principles set out in this recommendation.

9. Member States should ensure that there is in place an effective mechanism or mechanisms for acting on public interest reports and disclosures.

10. Any person who is prejudiced, whether directly or indirectly, by the reporting or disclosure of inaccurate or misleading information should retain the protection and the remedies available to him or her under the rules of general law.

11. An employer should not be able to rely on a person's legal or contractual obligations in order to prevent that person from making a public interest report or disclosure or to penalise him or her for having done so".

On the necessity of using a coherent and comprehensive approach, the Explanatory Memorandum states that it "will ensure a coverage of persons and situations that is as wide as possible. It implies that the relevant norms may be legislative or contained in legal documents (such as collective bargaining agreements) and professional and employer codes. A coherent approach will ensure that potential whistleblowers are not discouraged or penalised by conflicting or restrictive legal provisions, and that their reports or disclosures are acted upon in an effective manner"[285].

When the disclosure is made in the public domain relevant issues come at stake and in this regard the European Court of Human Rights has made a number of important rulings. "In the cases of *Guja v. Moldova* and later in *Heinisch v. Germany* and *Bucur and Toma v. Romania*, the Court has set out six principles on which it has relied in determining whether an interference with Article 10 (freedom of expression) of the Convention in relation to the actions of a whistleblower who makes disclosures in the public domain was "necessary in a democratic society"[286]. These principles are set out below in the order used by the Court in the case of *Bucur and Toma v. Romania*", they refers to: 1. Existence of alternative channels for making the disclosure; 2. Public interest in the disclosed information: 3. the authenticity of the disclosed information; 4. The detriment to the employer and 5. Whether the disclosure is made in good faith.

283 *Ibid.*
284 *Ibid.*, p. 27.
285 Ibid., p. 27.
286 *Ibid.*, p. 29.

- **Reporting channels:**

"12. The national framework should foster an environment that encourages reporting or disclosure in an open manner. Individuals should feel safe to freely raise public interest concerns.

13. Clear channels should be put in place for public interest reporting and disclosures and recourse to them should be facilitated through appropriate measures.

14. The channels for reporting and disclosures comprise:

– reports within an organisation or enterprise (including to persons designated to receive reports in confidence);

– reports to relevant public regulatory bodies, law enforcement agencies and supervisory bodies;

– disclosures to the public, for example to a journalist or a member of parliament.

The individual circumstances of each case will determine the most appropriate channel

15. Employers should be encouraged to put in place internal reporting procedures.

16. Workers and their representatives should be consulted on proposals to set up internal reporting procedures, if appropriate.

17. As a general rule, internal reporting and reporting to relevant public regulatory bodies, law enforcement agencies and supervisory bodies should be encouraged.".

According to the explanatory memorandum the purpose of putting in place reporting channels is "to encourage member States to put in place a normative framework that is clear and operational, and which furthers the general interest of transparency and accountability. By providing greater and sufficient protection to whistleblowers, member States will both encourage reporting, in an open manner, of threats and harm to the public interest and, in this way, discourage the making of anonymous denunciations. Reporting in an open manner does not, however, imply a right to disclose confidential information unrelated to the suspected threat or harm to the public interest"[287].

Moreover, Principles 13 and 14 which identify the potential recipients of information on acts and omissions that represent a threat or harm to the public interest, should be read in conjunction with Principle 8.

Principle 14 sets out the reporting channels accordingly to the tiered approach and the Explanatory memorandum in explaining the reason of this choice affirms: "considering how legal accountability works in each system and who has power to address a problem or make changes will help member States identify the appropriate recipients for public interest reports and disclosures. It will also help identify the support and resources different recipients might need to handle and act on such information". The designation of internal channels refers to the need to ensure that the first recipient is the person "closest placed the accountability and potential reporting and disclosure"[288].

The Memorandum explains that "all channels are interconnected, without any order of priority, and should be available and protected in an appropriate way"[289].

Moreover, "in order to facilitate the communication of information about wrongdoing or risk, organisations or enterprises of sufficient size are likely to appoint persons with responsibility for

287 *Ibid.*, p. 31.
288 *Ibid.*, p. 32.
289 *Idem.*

receiving reports in confidence: designated officers or confidential advisors, for example. To be effective, such persons, while not necessarily being independent of the employer, should enjoy a certain degree of autonomy in discharging their responsibility"[290].

According to the different sizes of the employers these Principles the Explanatory memorandum points out that: "in large businesses, reports may also be made to the board and non-executive directors are now taking on more responsibility in this regard. To cater for the needs of small businesses, however, and even more generally, some member States may consider it beneficial to establish a public body or commission to receive such reports in confidence. Such a body would not be responsible for remedial action as this, of course, remains within the prerogative of the employer or regulatory authority. Government departments, businesses and professional associations often provide support and guidance to small and medium-sized enterprises and can be encouraged to include guidance on whistleblowing"[291].

Principle 17 clarifies this approach: this recommendation does not establish an order of priority between the different channels of reporting and disclosure. Such an order of hierarchy would in any event be difficult to establish as, in practice, each situation will be different and will determine which channel is the most appropriate […] The encouragement for internal reporting is given in the recommendation because setting up effective internal reporting systems is part of good and transparent management practice and governance, and, together with reports to public regulatory authorities, enforcement agencies and supervisory bodies, internal reporting can contribute in many cases to the early and effective resolution of risks to the public interest."

Principle 15 refers to the obligation on member States to do more than implement a law on whistleblower protection: "There are a number of ways in which member States can help employers understand the value of facilitating internal whistleblowing. The most important is to implement a clear and strong legal framework that makes an employer liable for any detriment caused to anyone working for them for having exercised their right to report a concern or disclose information about wrongdoing according to the law. Employers who understand that those who work for them can report directly to a regulator or independent body and that they will be liable in law if they try to deter their staff from doing so, will understand why it is in their interests to implement safe and effective internal arrangements. Furthermore, member States can make available the research in this area that shows the value of whistleblowing in terms of good governance and detecting wrongdoing"[292]. Moreover "no explicit mention is made to providing employers with assistance in setting up internal reporting procedures. Indeed, in many cases this may not be necessary or even possible. Some member States may, however, wish to consider providing financial, technical or legal support, particularly for employers in areas where there may be more of a likelihood of threats or harm to the public interest"[293].

- **Confidentiality:**

"18. Whistleblowers should be entitled to have the confidentiality of their identity maintained, subject to fair trial guarantees".

According to the Explanatory Memorandum, "confidentiality" should be offered and guaranteed to the individual disclosing the information in order to reassure them and ensure the focus remains on the substance of the disclosure rather than on the individual who made it. The principle of confidentiality (i.e. where the name of the individual who reported or disclosed information is

290 *Idem.*
291 *Idem.*
292 *Ibid.*, p. 33.
293 *Ibid.*, p. 34.

known by the recipient but will not be disclosed without the individual's consent, unless required by law) in the recommendation should not be confused with anonymous reporting or disclosures (i.e. where a report or information is received but no one knows the source). […] However, the principle of confidentiality should not act as a barrier for sharing information related to the investigation or handling of a report between regulatory or investigatory bodies so long as proper safeguards are in place and these are explained to the whistleblower. […] The principle also recognises that protecting the identity of the whistleblower can occasionally conflict with the rules of fairness (for example, fair trial and the common-law notion of natural justice). Where it is impossible to proceed – for example, to take action against a wrongdoer or those responsible for the damage caused without relying directly on the evidence of the whistleblower and revealing his or her identity – the consent and co-operation of the whistleblower should be sought, and any concern that he or she might have about their own position addressed. In some cases it may be necessary to seek a judicial ruling on whether and to what extent the identity of the whistleblower can be revealed"[294].

- **Follow-up to report:**

"19. Public interest reports and disclosures by whistleblowers should be investigated promptly and, where necessary, the results acted on by the employer and the appropriate public regulatory body, law enforcement agency or supervisory body in an efficient and effective manner.

20. A whistleblower who makes an internal report should, as a general rule, be informed, by the person to whom the report was made, of the action taken in response to the report".

Requirements are to be set for the independent and timely investigation of whistleblower reports, for the protection of confidentiality throughout the procedure, for the protection of the identity of whistleblowers who disclose information anonymously, and for the protection of the rights of the persons implicated by a disclosure.

As to the timeframe, "“Promptly” means that action should be taken without delay, taking into account the resources available and the scale of the harm to the public interest that is revealed in the report or disclosure"[295].

- **Protection against retaliation:**

21. Whistleblowers should be protected against retaliation of any form, whether directly or indirectly, by their employer and by persons working for or acting on behalf of the employer. Forms of such retaliation might include dismissal, suspension, demotion, loss of promotion opportunities, punitive transfers and reductions in or deductions of wages, harassment or other punitive or discriminatory treatment.

22. Protection should not be lost solely on the basis that the individual making the report or disclosure was mistaken as to its import or that the perceived threat to the public interest has not materialised, provided he or she had reasonable grounds to believe in its accuracy.

23. A whistleblower should be entitled to raise, in appropriate civil, criminal or administrative proceedings, the fact that the report or disclosure was made in accordance with the national framework.

24. Where an employer has put in place an internal reporting system, and the whistleblower has made a disclosure to the public without resorting to the system, this may be taken into consideration when deciding on the remedies or level of protection to afford to the whistleblower.

294 *Ibid.*, p. 35.
295 *Ibid.*, p. 36.

25. In legal proceedings relating to a detriment suffered by a whistleblower, and subject to him or her providing reasonable grounds to believe that the detriment was in retaliation for having made the report or disclosure, it should be for the employer to establish that the detriment was not so motivated.

26. Interim 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.

These principles are aimed at ensuring "a strong level of protection in law for those who alert their employers, the authorities or the wider public to wrongdoing or risks that damage or harm the public"[296].

On the different forms of retaliation, the Explanatory Memorandum, refer to *inter alia* dismissal, demotion, withholding of promotion, coercion, intimidation, etc.

- **Advice, awareness and assessment**:

"27. The national framework should be promoted widely in order to develop positive attitudes amongst the public and professions and to facilitate the disclosure of information in cases where the public interest is at stake.

28. Consideration should be given to making access to information and confidential advice free of charge for individuals contemplating making a public interest report or disclosure. Existing structures able to provide such information and advice should be identified and their details made available to the general public. If necessary, and where possible, other appropriate structures might be equipped in order to fulfil this role or new structures created.

29. Periodic assessments of the effectiveness of the national framework should be undertaken by the national authorities".

The importance of raising awareness is stressed in the Explanatory memorandum that states: "the law on protecting whistleblowers and what it means in practice needs to be promoted across all sectors. The value of whistleblowing in detecting and deterring corruption, preventing wrongdoing and minimising serious risk to people or the environment, will not be recognised if the purpose and application of the law is not properly understood or promoted"[297]. Moreover, it stressed that "it is important to train judges and other decision makers, particularly those receiving and handling public interest reports and disclosures, on the detail of the law and, more importantly, on its public interest aim."

The confidential advices referred to in Principle 28 can be provided by trade unions, independent lawyer or other bodies.

According to the evolution of whistleblower protection, the Explanatory Memorandum, stresses that "periodic reviews in all member States will ensure that the system works in the public interest and that there is public confidence and trust in it"[298].

296 *Ibid.*, p. 37.
297 *Ibid.*, p. 41.
298 *Ibid.*, p. 41.

Annex 8: Fear of retaliation

This annex complements the evidence set out in section 2.3 on fear of retaliation as a factor contributing to the underreporting of wrongdoing.

1. Fear of retaliation discourages reporting

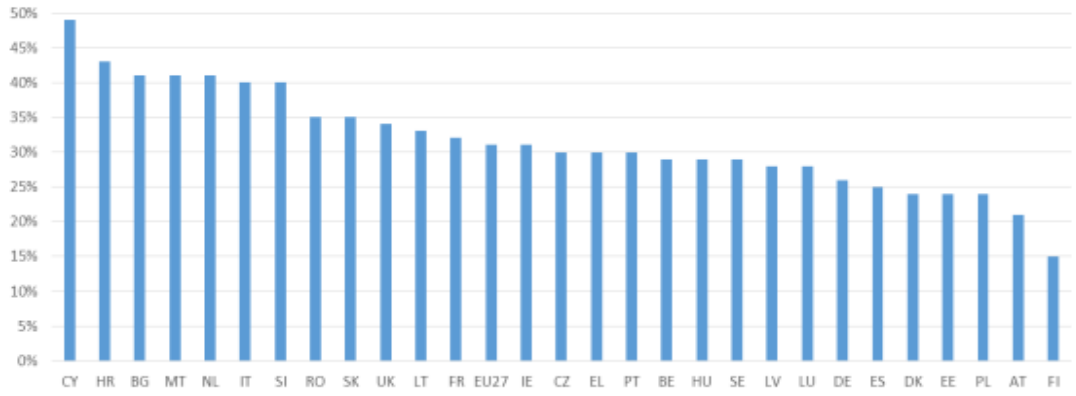
According to the ICF's study the fear of retaliation discourages reporting and, *indeed,* is commonly cited as a factor dissuading potential whistleblowers from making a report.

GBES found that across all countries covered **59% of respondents who did not report observed wrongdoing did so for fear of retaliation**.

Almost one third of the Special Eurobarometer respondents (31%) indicated that people may decide not to report a case of corruption because there is no protection for those reporting corruption. Almost 50% of respondents in Cyprus supported this proposition compared to only 15% in Finland.

According to the Transparency International's *Global Corruption Barometer*[299], fear is the main reason people don't report. Worryingly, **the most common reason people don't report corruption is that they are afraid of the consequences** (30 per cent). This demonstrates that fear of retaliation or a negative backlash (such as losing one's job) is a major barrier to more people from coming forward. In France, Switzerland, Portugal and the Netherlands a half or more respondents say that they think this is the main reason more people don't report corruption (from 50 to 56 per cent).

Figure A8.1. Percentage of citizens who believe that people do not report wrongdoing because of lack of protection ("there is no protection for those who report corruption")



Source: Special Eurobarometer 397 [QB14 I am going to read out some possible reasons why people may decide not to report a case of corruption. Please tell me those which you think are the most important?]

Transparency International France (2015) found that 39% of employees who did not report wrongdoing did so out of fear of retaliation[300]. Similarly Technologia (2015) found that 36% of employees in France did not report because of a fear of retaliation.

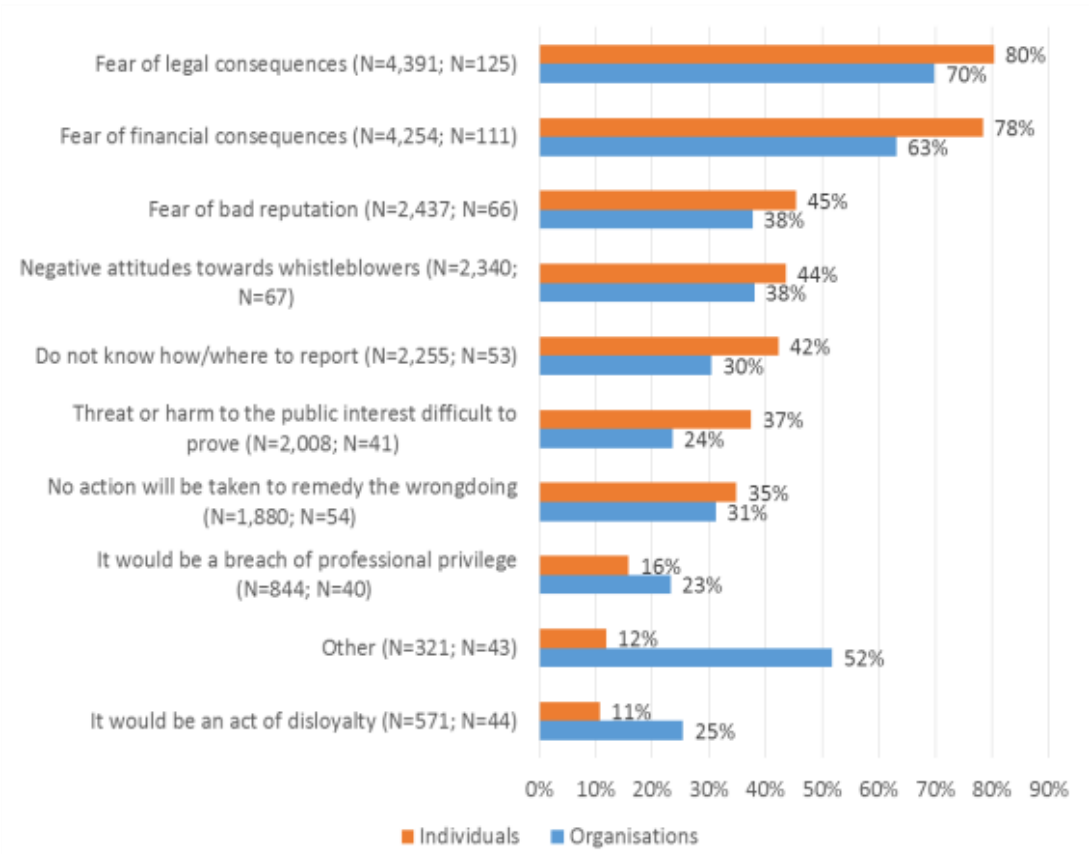
299 Transparency International (2016), *People and Corruption: Europe and Central Asia – Global Corruption Barometer 2016*.

300 Transparency International (2015) "Lanceurs d'alerte": quelle perception de la part des salariés? https://transparency-france.org/wp-content/uploads/2016/04/R%C3%A9sultats-sondage-Harris-Interactive.pdf

The OECD (2016) remarks how lack of reporting is linked to fear of retaliation and consequences as being a whistleblower can lead to loss of income, jobs, marginalisation, stigma, financial and reputational degradation.

Respondents to the Open Public Consultation conducted by the Commission were asked to indicate the reasons why workers do not report wrongdoing[301]. The factors most commonly selected from the list provided were **fear of legal consequences** (80% of individual respondents and 70% of organisations); **fear of financial consequences** (78% of individual respondents and 63% of organisations) and **fear of bad reputation** (45% of individual respondents and 38% of organisations), as shown in Figure A8.2.

Figure A8.2. Reasons for not 'blowing the whistle'



Source: ICF from OPC data [Overall Basel: N=5493 / Individuals: N=5468 to N=5324 / Organisations: N=172 to N=179] [Q: To your mind, which of the following are the most important reasons why a person might decide not to blow the whistle?]

2. Many whistleblowers suffer harm due to retaliation

The evidence suggests that the fear of retaliation is often well-founded. Retaliation against whistleblowers is a complex phenomenon and it occurs in many forms.

301 OPC Q: To your mind, which of the following are the most important reasons why a person might decide not to blow the whistle? For each item respondents had to tick 1,2,3,4, don't know, no answer. Only responses for the rating 1 are provided.

UNODC (2015)[302] reports that forms of unfair treatment can include: coercion, intimidation or harassment to reporting persons and relatives; discrimination; damage to property; threat of reprisal; suspension, lay off or dismissal; demotion or loss of opportunities and transfer of duties.

OECD (2016) observes that legislation often requires workers to report wrongdoing but does not provide the right protection, thus exposing workers to retaliation, and that the availability of reporting channels is not in itself a protection against retaliation. The different forms of retaliation identified by the United States' Project on Government Oversight, as reported by the OECD study, are:

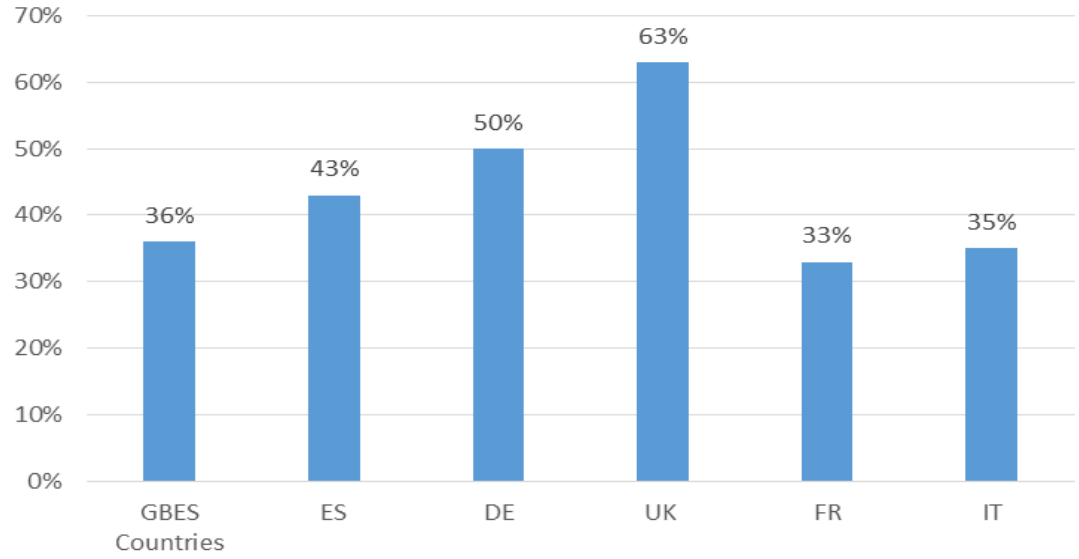
- Taking away job duties so that the employee is marginalised.
- Taking away an employee's national security clearance so that he or she is effectively fired.
- Blacklisting an employee so that he or she is unable to find gainful employment.
- Conducting retaliatory investigations in order to divert attention from the waste, fraud, or abuse the whistleblower is trying to expose.
- Questioning a whistleblower's mental health, professional competence, or honesty.
- Setting the whistleblower up by giving impossible assignments or seeking to entrap him or her.
- Reassigning an employee geographically so he or she is unable to do the job.
- From the analysis of the experience of 1,000 callers to its hotline, PCaW[303] reports a number of responses and actions taken by managers vis-à-vis whistleblowers, including both formal and informal responses:
- Informal – closer monitoring, ostracism, bullying, verbal harassment.
- Blocking resources – blocking access to emails, to information, to training.
- Formal – a formal accusation of grievance with subsequent demotion, suspensions, disciplinary measures and relocation.
- Dismissal.

According to the GBES **more than one in three people making a report (36%) experienced retaliation** in 11 out of 13 countries surveyed. The UK was the country with the highest proportion of employees reporting having experienced retaliation (63%), followed by Germany (50%), Spain (43%), Italy (35%) and France (33) (Figure A8.3). The GBES also found that whistleblowers in the **public sector** were more likely to experience retaliation than workers in the private (41% vs. 33%).

302 UNODC (2015) Resource Guide on Good Practices in the Protection of Reporting Persons https://www.unodc.org/documents/corruption/Publications/2015/15-04741_Person_Guide_eBook.pdf

303 Public Concern at Work (2013) Whistleblowing: the inside story. A study of the experiences of 1,000 whistleblowers.

Figure A8.3. Percentages of reporters who experienced retaliation in GBES survey



Source: GBES survey, 2016

Transparency International cites research in Portugal which found that whistleblowers are exposed to various types of reprisals from employers and personal networks. The study also found that whistleblowers from a wide range of sectors (from lawyers to politicians to administrative employees) generally agreed that the government and criminal authorities are indifferent to retribution, such as threats, firing or transfer[304].

Research reported in PSI (2016) from a 2013 National Business Ethic Survey in the US, taken with a representative sample of private sector employees at all levels, found that **21% of those workers who had reported wrongdoing had experienced retaliation**, thus estimating that 6.2 million American workers in the private sector needed whistleblower protection.

OECD (2016) also suggests that reprisal is often delayed and can occur even months or years after reporting, therefore protection needs to be guaranteed for an appropriate period of time.

For workers in the financial and health sector dismissal was more likely to happen after the first report. In all other sectors the likelihood of dismissal increases when a concern is raised more than once.

Public Concern at Work found that workers in high management position tend to be dismissed at early stages of the process while whistleblowers in lower positions are tolerated longer, but face different forms of retaliation. When the wrongdoer is a co-worker and they are aware of the identity of the reporter, the whistleblower is more likely to face informal reprisals (58%) if the concern is raised through line managers or hotlines. Formal reprisal is more likely to occur when the concerns are raised with higher managers (46%).

The GBES survey found that retaliation occurs within the first three weeks of reporting and at least 90% of retaliation occurred within the first six months.

304 Interviews of whistleblowers with David Marques, Transparência e Integridade, Associação Cívica, Portugal, 2012. Cited in Transparency International (2013) Whistleblowing in Europe: Legal protections for whistleblowers in the EU

Hersh (2002)[305] found that retaliation normally occurs in four stages. First, pressure is put on the whistleblower to desist, for instance by verbal pressure or criticisms of job performance. Next the whistleblower is isolated, their organisational role downgraded and resources restricted. The third stage comprises the defamation of character and may be supported by a fourth stage of expulsion. During all these stages the whistleblower experiences negative psychological and physical effects.

De Maria et al. (1996)[306] make a distinction between official retaliation, in which punishment is covered up by policy and procedures, and unofficial reprisals. In a survey, reported by De Maria et al. (1997)[307], 71% of respondents experienced official reprisals and 94% unofficial revenge, with multiple acts of reprisal happening in most cases. Formal reprimand was the most common official reprisal, followed by punitive transfer and compulsory psychiatric or other referrals. Dismissal occurred in 8% of cases. Workplace ostracism was the most common form of unofficial reprisal, followed by personal attacks and increased scrutiny.

A 2015 survey of NHS staff[308] found that 20.9% of workers who raised a concern felt unsafe afterwards and 9.6% very unsafe. The research also investigated the treatment by co-workers and management after raising a concern, and found that:

- 19.7% of whistleblowers were ignored by management;
- 15.6% were praised by co-workers;
- 9.1% were ignored by co-workers;
- 8.8% were praised by managers; and
- 8.2% were victimised by co-workers and 17.3% victimised by management.

There is evidence in the literature that whistleblowing is stressful and most whistleblowers need psychological support at some point in the process (Vandekerckhove and Lewis, 2015). Results from fifteen semi-structured interviews conducted with whistleblowers amongst others in the US, Ireland, the UK showed that mental health issues occur at different stages of the whistleblowing process:

- before the disclosure when people are considering reporting;
- during the reporting phase when whistleblower have the made the disclosure, often in this stage whistleblowers make a first disclosure internally and are facing challenges from their organisations;
- when whistleblowers are retaliated by their organisations;
- when whistleblowers go outside their organisation;
- when the whistleblower identity come known within the professional and personal network.

A number of consequences have been observed: “temptation to give up”, self-censoring caused by the stigma; and, mental health issues that are used by organisations to retaliate and discredit the worker[309].

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305 Hersh M.A. “Whistleblowers - Heroes or Traitors?: Individual and Collective Responsibility for Ethical Behaviour,” Annual Reviews in Control 26 (2002): 243-262.

306 De Maria, W. and C. Jan (1996). Crime, Law and Social Change, 24, 151-166.

307 DeMaria, W. and C. Jan (1997). Eating its own, Australian J. of Social Issues, 32(1), 37-59.

308 Lewis, D., D’Angelo A., Clarke, L. (2015) The independent review into creating an open and honest reporting culture in the NHS, quantitative research report, Surveys of NHS staff, trusts and stakeholders.

PSI (2016) reports that workers are subject to various forms of retaliation including ostracism, demotion, dismissal, destruction of property, assault and even murder.

Fotaki et al. (2015)[310] shows that retaliation takes many forms (from bullying to threatening, demotion, ostracism at the workplace and firing) and has been shown to have severe repercussions on both the mental and the physical health of whistleblowers (e.g. depression and symptoms analogous to post traumatic stress but also physical pain and diseases). The authors interviewed several whistleblowers. The study demonstrates that the participants experienced, among others, severe threatening behaviour by their employers, false claims of mental instability by their institution and requests to undergo medical counselling, panic attacks and other stress-related diseases, insomnia, abdominal diseases, psoriasis and other skin diseases, and cardiovascular diseases. The study concludes that whistleblowers experienced multiple instances of stress, anxiety and fear before and during the process. The retaliation deployed by organisations caused them to suffer from a variety of mental and physical conditions which were eventually used to delegitimise the whistleblower and their disclosures.

Hersh (2002)[311] reviewed the literature on organisational responses, including retaliation, the effectiveness of whistleblowing and the state of legal protection in the US and the UK. Hersh found that surveys (e.g. De Maria et al, 1996[312], 1997[313]) and qualitative research into whistleblowers' experience found that most whistleblowers experience retaliation, sometimes of a very severe kind[314].

Lennane (1993)[315] examined the response of organisations to whistleblowing in Australia and the effects on individual whistleblowers. The survey sample consisted of 25 men and 10 women from various occupations who had exposed corruption or danger to the public, or both. Whistleblowers worked in a variety of sectors and occupations: banking/finance, health, law enforcement, public administration, transport, teaching and the state. All whistleblowers in the sample suffered adverse consequences as a result of blowing the whistle. In 29 cases victimisation had started immediately after their first, internal, complaint. Only 17 approached the media. Ostracism at the workplace was extensive: dismissal (8), demotion (10), and resignation or early retirement because of ill health related to victimisation (10) took place. Long term relationships broke up in 7 cases, and 60 of the 77 children of the subjects were adversely affected. All subjects reported stress-related symptoms while 15 were prescribed long term treatment with medication which they had never been prescribed before, and in 17 cases there was an attempted suicide. In more than 14 cases there was a reduction in income and a total financial loss for 17 whistleblowers was estimated in

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309 Vandekerckhove, W., Lewis, D. (2015) Developments in whistleblowing research 2015. Whistleblowing and mental health: a new weapon for retaliation? https://www.google.be/url?sa=t&rct=j&q=&esrc=s&source=web&cd=8&ved=0ahUKEwiEyf3N-MbUAhVEaVAKHSAEDzQQFghsMAc&url=http%3A%2F%2Fwww.track.unodc.org%2FAcademia%2FDocuments%2F151110%2520IWRN%2520ebook%25202015.pdf&usg=AFQjCNHrGNjMvxwL5IaeVkL-sBml_GuMPw&cad=rja

310 Fotaki M., K. Kenny and S. Scriver in Lewis, D. & Vandekerckhove, W. (2015). Developments in whistleblowing research 2015, London: International Whistleblowing Research Network.

311 Hersh M.A. "Whistleblowers - Heroes or Traitors?: Individual and Collective Responsibility for Ethical Behaviour," Annual Reviews in Control 26 (2002): 243-262.

312 De Maria, W. and C. Jan (1996). Crime, Law and Social Change, 24, 151-166.

313 DeMaria, W. and C. Jan (1997). Eating its own, Australian J. of Social Issues, 32(1), 37-59.

314 This is not entirely consistent with the survey evidence reported earlier in this section which found that retaliation was experienced by a minority of those making reports.

315 Lennane K. J. (1993). "Whistleblowing": a health issue. BMJ (1993) 307:670-3.

hundreds of thousands of Australian dollars. Whistleblowers reported receiving little or no help from statutory authorities and little help from colleagues. In most cases the corruption and malpractice continued unchanged. On that basis, the author of the study concluded that both the whistleblowers themselves and their families suffered severe and long-lasting health, financial, and personal repercussions.

McDonald and Ahern (2002)[316] examined the effects of whistleblowing on nurses in Australia. The survey included 95 nurses out of which 70 were whistleblowers and 25 observed misconduct but did not report. Results indicated that 70% of the whistleblowers experienced stress-induced physical problems against 64% of nurses who observed misconduct but did not report. Physical problems commonly experienced by nurses included restlessness during sleep, insomnia, headaches, fatigues and increased smoking. Stress-related problems were experienced by 94% of whistleblowers and 92% of those who did not report. The most frequent stress related problem included anger, anxiety, and disillusionment. Both groups experienced similar physical health problems, with the same incidence among the two groups. Nurses who did not report the wrongdoing were more likely to experience feelings of guilt, shame, and unworthiness. These findings add to the evidence that whistleblowing and experience of wrongdoing are stressful, whether or not the misconduct is reported.

Greaves and McGlone (2012)[317] observed an increase in drinking, smoking, poor nutrition, giving up fitness routing through interviews with whistleblowers, depression and feelings of being treated "like lepers". All this eventually led to long term sick leave. The report concluded that the long process and the investigations the whistleblowers had to endure meant that their careers and lives were devastated. It was found that the longer the whistleblowing process was, the more detrimental was the effects on people's lives. Those who managed to cope were whistleblowers with a short process or those who left the organisation early in the process.

Illustrative examples of the different types of retaliation against workers can further be found in the ECtHR case law assessing whether such retaliation constitutes interference with the individuals' right to freedom of expression. For instance, in the case of B. Heinisch v. Germany, retaliation took the form of dismissal; in case D. Otto v. Germany retaliation was in the form of restriction and refusal of promotion; in the cases T. Lahr v. Germany, Vogt v. Germany, Fuentes Bobo v. Spain there was premature termination of employment or non-renewal of contract[318].

Transparency International (2013) cites both research and national courts' rulings on cases of retaliation against whistleblowers across Europe. Examples include a case of a Deputy Director of Narva's Property and Economy Department in Narva, Estonia, who after reporting irregularities in public procurement procedures and contracts exposing politicians and business people, was dismissed even though she won a court case to keep her job in 2011 and 2012. A 2012 study in France found that many civil servants who reported wrongdoing were forced into retirement, fired or ostracised.

316 McDonald S. and K. Ahern. (2002). Physical and Emotional Effects of Whistle blowing. Journal of Psychosocial Nursing and Mental Health Services, 2002, 40 (14-27).

317 Greaves, R., McGlone, J., K. (2012) The health consequences of speaking out, Social Medicine, Volume 6, Number 4, May 2012

318 F. Dorssemont, K. Lorcher, I. Schomann (2013) The European Convention on Human Rights and the Employment Relation (2013), Hart Publishing, Oxford; page 240. Vogt v. Germany 17851/91, judgment of 26 September 1995; Fuentes Bobo v. Spain, 39293/98, judgment of 29 February 2000; D. Otto v. Germany, 27547/02, judgment of 24 November 2005 ; T. Lahr v. Germany, 16912/05, judgment of 1st July 2008 ; Heinisch v. Germany, 28274/08, judgment of 11 July 2011.

Annex 9: Legal basis for the EU to act

The protection of whistleblowers is not provided by any specific EU competence under the TFEU. However, there are several Treaty articles that can serve as legal basis for instruments aimed at strengthening whistleblower protection as a means of improving the enforcement of EU legislation: Articles 292, 50(2)g , 325(4), 114(1) and 153(1)(a) and (b)TFEU.

- **Article 292 TFEU: Commission Recommendation**

According to Article 292 TFEU "*the Commission shall adopt recommendations"*. A Commission Recommendation providing guidance to Member States on further enhancing the protection of whistleblowers in the EU would seek to overall raise the level of protection of whistleblowers, both in the private and the public sector, and promote greater convergence of national approaches. It would also promote best practices such as training of legal practitioners and judges, awareness-raising, regular review of national frameworks and data collection.

- **Article 50 TFEU: legislation enhancing the integrity of the private sector**

According to Article 50(1) TFEU "*in order to attain freedom of establishment as regards a particular activity, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, shall act by means of directives"*. In particular, according to paragraph (2)(g) of Article 50 TFEU, the Commission *"shall carry out the duties devolving upon them under the preceding provisions, in particular by coordinating to the necessary extent the safeguards which, for the protection of the interests of members and others, are required by Member States of companies or firms within the meaning of the second paragraph of Article 54 with a view to making such safeguards equivalent throughout the Union"*. A legislative instrument based on Article 50(2)(g) TFEU could oblige private law entities to set up, based on minimum standards, internal channels for employees to report wrongdoings and illegal activities that could seriously affect investors' interests. This would reassure workers that it is safe for them to internally raise concerns and would likely increase the ability of those in charge of the organisation to take steps in time to prevent damages to the company's economic performance and business reputation, thus increasing business' accountability, consumers' trust, investor confidence and shareholder returns.

- **Article 325 TFEU: legislation protecting the financial interests of the Union**

According to Article 325(4) TFEU, *"The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, after consulting the Court of Auditors, shall adopt the necessary measures in the fields of the prevention of and fight against fraud affecting the financial interests of the Union with a view to affording effective and equivalent protection in the Member States and in all the Union's institutions, bodies, offices and agencies"*.

A legislative instrument based on Article 325(4) TFEU could set out minimum standards of harmonisation on reporting channels and protection of whistleblowers both in the public and the private sector reporting about fraud and corruption linked to the EU budget, including mismanagement of EU funds, EU public procurement and illegal activities affecting the financial interests of the EU.

- **Article 153 TFEU: legislation protecting workers' health and well-being**

According to Article 153(1)(a) and (b), with a view to achieving the objectives of Article 151[319], the Union shall support and complement the activities of the Member States to improve the

[319] *"The Union and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the*

working environment and to protect workers' health and safety and working conditions. According to Article 154 the procedure the Commission shall follow in order to submit a proposal under Article 153(1)(a) and (b) encompasses a consultation of social partners[320].

A legislative instrument based on Article 153(1)(a) and (b) TFEU, aimed at protecting workers who blow the whistle from the consequences of retaliation on their health and safety, which encompasses their physical and mental health and general well-being[321], would encourage whistleblowing, thus leading to a better enforcement of both national and EU law. This legislative instrument could require Member States to introduce appropriate reporting channels and protect from retaliation those workers in the public and private sector who report about wrongdoings and violations of EU and national rules in order to safeguard the public interest. It could only cover employees (i.e. workers with an established employment contract with the employer) and not self-employed persons.

- **Article 114 TFEU: legislation enhancing the proper functioning of the internal market**

Article 114(1) provides the legal basis for adopting *"the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market"*. A legislative initiative based on Article 114(1) TFEU would set out minimum standards of harmonisation with regard to reporting channels and protection of whistleblowers, both employees and self-employed, in the public and the private sector, who report a wrongdoing or violation of EU law to enhance the enforcement of EU law, as regards specific Union acts or sectors, in areas related to the proper functioning of the internal market, such as financial services, public procurement, tax evasion and avoidance.

To extend the application of whistleblower protection also to other EU policy areas, such as environmental protection, consumer protection, food, product and transport safety [data protection] a combination is possible with other legal bases providing for the ordinary legislative procedure, e.g. Articles 192, 168, 169, 43 , 91 and 16 TFEU.

- **Article 192 TFEU: legislation on environmental protection**

Article 192 TFEU sets out the legislative procedure for the Union policy on environmental protection, allowing for legislative acts aimed, according to Article 191, at:

Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion".

320 Article 154 TFEU reads as follow: "*The Commission shall have the task of promoting the consultation of management and labour at Union level and shall take any relevant measure to facilitate their dialogue by ensuring balanced support for the parties. To this end, before submitting proposals in the social policy field, the Commission shall consult management and labour on the possible direction of Union action. If, after such consultation, the Commission considers Union action advisable, it shall consult management and labour on the content of the envisaged proposal. Management and labour shall forward to the Commission an opinion or, where appropriate, a recommendation. On the occasion of the consultation referred to in paragraphs 2 and 3, management and labour may inform the Commission of their wish to initiate the process provided for in Article 155. The duration of this process shall not exceed nine months, unless the management and labour concerned and the Commission decide jointly to extend it*."

321 CJEU judgment of 12 November 1996, United Kingdom v Council, C-84/94, EU:C:1996:431, paragraph 15.

- *"preserving, protecting and improving the quality of the environment;*
- *protecting human health;*
- *prudent and rational utilisation of natural resources,*
- *promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change."*

- **Article 168 TFEU: legislation on protection of human health**

Article 168(1) TFEU defines the objectives of the Union action aimed at protecting human health, referring to ensuring a high level of human health protection in the definition and implementation of all Union policies and activities.

According to Paragraph 4 of Article 168 TFEU, legislative acts shall contribute to the achievement of these objectives *"through adopting in order to meet common safety concerns:*

a) measures setting high standards of quality and safety of organs and substances of human origin, blood and blood derivatives; these measures shall not prevent any Member State from maintaining or introducing more stringent protective measures;
b) measures in the veterinary and phytosanitary fields which have as their direct objective the protection of public health;
c) *measures setting high standards of quality and safety for medicinal products and devices for medical use".*

Moreover, paragraph 5 of Article 168 TFEU provides that legislative acts may consist in *"incentive measures designed to protect and improve human health and in particular to combat the major cross-border health scourges, measures concerning monitoring, early warning of and combating serious cross-border threats to health, and measures which have as their direct objective the protection of public health regarding tobacco and the abuse of alcohol, excluding any harmonisation of the laws and regulations of the Member States."*

- **Article 169 TFEU: legislation on consumer protection**

Article 169 TFEU define the actions that can be taken at Union level to in order to promote the interests of consumers and to ensure a high level of consumer protection. In particular, "*the Union shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests."*

According to paragraph 2(b) of Article 169 TFEU, "*the Union shall contribute to the attainment of the objectives referred to in paragraph 1 through*

a. measures adopted pursuant to Article 114 in the context of the completion of the internal market".
b. measures which support, supplement and monitor the policy pursued by the Member States".

- **Article 43 TFEU: legislation on agriculture and fisheries**

Paragraph 2 of Article 43 TFEU allows for legislative acts "*to establish the common organisation of agricultural markets provided for in Article 40(1) and the other provisions necessary for the pursuit of the objectives of the common agricultural policy and the common fisheries policy".*

- **Article 91 TFEU: legislation on transport safety**

Paragraph 1 (c) of Article 91 TFEU provides for legislative acts to *"lay down measures to improve transport safety".*

- **Article 16 TFEU: legislation on data protection**

Paragraph 2 of Article 16 TFEU provides for legislative acts to "*lay down the rules relating to the protection of individuals with regard to the processing of personal data by Union institutions, bodies, offices and agencies, and by the Member States when carrying out activities which fall within the scope of Union law, and the rules relating to the free movement of such data*".

Annex 10: Data on fraud and corruption against the EU budget

The complete picture of the state of play of PIF offences across the EU is provided by the 2016 PIF report[322]. The tables below do not represent a precise estimate of fraud and irregularities: they only represent the PIF offences which the Member States have detected and notified to the Commission[323].

According to this data, in 2016, there were 826 reports of fraudulent activity affecting the EU expenditures (e.g. fraud to structural funds), involving a damage of about EUR 300 Mio and 513 reports for the revenue side (e.g. customs duties) involving a damage of about EUR 83 Mio.

As for the irregularities (i.e. less serious offences, non-criminal): 11 557 reports, involving a damage of about EUR 2 Billion for the expenditure side and 4134 reports involving a damage of about EUR 453 Mio.

322 2016 PIF report https://ec.europa.eu/anti-fraud/sites/antifraud/files/1_act_part1_v2_en.pdf

323 The Member States only have to report cases with damage over EUR 10 000.

Figure 10.1: Irregularities reported as fraudulent in 2

ANNEX 1 — IRREGULARITIES REPORTED AS FRAUDULENT IN 2016

The number of irregularities reported as fraudulent measures the results of Member States' work to counter fraud and other illegal activities affecting the EU's financial interests. Therefore, the figures should not be interpreted as indicating the level of fraud in the Member States' territories. Totals differ from Table 1 as Annex 1 does not include third countries (pre-accession) and direct expenditure.

Member States	Agriculture		Internal policies		Cohesion Policy & Fisheries		Pre-Accession		TOTAL EXPENDITURE		REVENUE	
	N	€	N	€	N	€	N	€	N	€	N	€
Belgique/België									0	0	36	9 261 635
Bulgaria	60	12 107 506			5	608 311	2	1 438	67	12 717 255	11	436 567
Ceská republika	14	852 246			37	30 467 351			51	31 319 598	2	140 600
Danmark	4	254 730							4	254 730	5	8 581 374
Deutschland	3	231 833			24	5 508 712			27	5 740 545	93	5 112 337
Eesti	5	1 735 030			9	3 958 131			14	5 693 160	1	0
Éire/Ireland	2	38 015							2	38 015	3	445 574
Ellada					17	3 401 448			17	3 401 448	30	5 594 313
España	10	580 768			7	5 213 134			17	5 793 902	42	2 972 087
France	22	3 375 812							22	3 375 812	83	28 785 027
Hrvatska	10	2 575 582			1	92 949	1	1 006	12	2 669 536	5	342 006
Italia	20	2 707 009							20	2 707 009	22	6 548 191
Kypros									0	0	7	332 446
Latvija	12	987 285			12	10 601 187			24	11 588 471	12	661 068
Lietuva	11	2 087 218			3	359 879			14	2 447 097	10	266 102
Luxembourg									0	0	0	0
Magyarország	24	1 154 158			21	1 844 119			45	2 998 277	2	88 762
Malta									0	0	1	167 040
Nederland					2				2	0	6	261 626
Österreich	2	27 444							2	27 444	14	5 716 261
Polska	97	13 020 953			56	33 262 948			153	46 283 901	92	3 101 717
Portugal	4	6 033 837			11	8 850 629			15	14 884 466	0	0
Romania	108	14 007 684			95	48 222 873	3	1 828 769	206	64 059 326	16	2 943 686
Slovenija					2	660 070			2	660 070	0	0
Slovensko	1	1 483			99	82 310 323			100	82 311 807	3	707 196
Suomi/Finland									0	0	6	119 457
Sverige	1								1	0	2	101 720
United Kingdom	3	80 766			6	1 542 723			9	1 623 489	9	297 577
TOTAL	413	61 859 359	0	0	407	236 904 788	6	1 831 212	826	300 595 358	513	82 984 369

35

Source: 2016 PIF report

Figure 10.2: Irregularities not reported as fraudulent in 2016

ANNEX 2 — IRREGULARITIES NOT REPORTED AS FRAUDULENT IN 2016

Totals differ from Table 2 as Annex 2 does not include third countries (pre-accession) and direct expenditure.

Member States	Agriculture		Internal policies		Cohesion Policy & Fisheries		Pre-Accession		TOTAL EXPENDITURE		REVENUE	
	N	€	N	€	N	€	N	€	N	€	N	€
Belgique/België	21	442 748			58	3 239 754			79	3 682 502	167	6 679 740
Bulgaria	40	3 713 584			147	33 901 405	33	218 544	220	37 833 532	2	52 150
Ceská republika	42	2 747 385			414	112 332 254			456	115 079 639	80	5 298 065
Danmark	23	3 532 670			14	629 377			37	4 162 048	73	3 720 877
Deutschland	69	3 045 188	1	178 812	260	24 973 617			330	28 197 616	1 489	67 203 731
Eesti	18	713 094			30	1 514 040			48	2 227 134	3	63 879
Éire/Ireland	58	1 380 576			66	8 187 661			124	9 568 237	28	4 561 472
Ellada	108	2 051 777			554	183 569 916			662	185 621 694	8	8 599 250
España	311	21 701 167			2 687	313 038 531			2 998	334 739 698	242	41 581 643
France	207	9 590 957			80	8 970 768			287	18 561 726	234	21 343 994
Hrvatska	23	500 251			7	2 220 316	8	164 783	38	2 885 350	12	589 781
Italia	703	62 263 456			158	50 150 868			861	112 414 324	89	17 235 008
Kypros					7	314 400			7	314 400	0	0
Latvija	15	620 012			179	40 519 313			194	41 139 324	15	2 523 277
Lietuva	92	4 578 948	3	463 921	31	3 901 424			126	8 944 293	16	1 055 777
Luxembourg									0	0	0	0
Magyarország	157	6 434 407			522	105 695 234			679	112 129 641	14	4 126 454
Malta					13	10 955 650			13	10 955 650	0	0
Nederland	44	1 324 326			55	3 760 864			99	5 085 190	517	147 056 822
Österreich	10	257 725			33	2 143 370			43	2 401 095	47	10 535 675
Polska	316	21 718 907			1 077	305 831 256			1 393	327 550 164	74	4 084 106
Portugal	450	18 726 879			171	11 417 924			621	30 144 803	15	6 461 250
Romania	595	41 369 126			557	109 492 694	2	146 543	1 154	151 008 362	41	3 243 332
Slovenija	11	429 072			24	4 348 776			35	4 777 848	1	25 222
Slovensko	35	2 252 313			428	445 621 389			463	447 873 702	13	292 640
Suomi/Finland	21	390 814			15	497 452			36	888 266	34	2 000 001
Sverige	4	93 164			5	212 081			9	305 245	96	6 360 043
United Kingdom	47	1 379 771			498	38 815 499			545	40 195 270	824	89 063 434
TOTAL	3 420	211 258 317	4	642 732	8 090	1 826 255 834	43	529 869	11 557	2 038 686 753	4 134	453 757 623

Source: 2016 PIF report

In the field of public procurement, OLAF'S investigations show that this is an attractive marketplace for fraudsters, who use corruption and offshore accounts to facilitate fraud. Moreover, the new fraud scenarios often involve a contracting authority from one Member State and bidders from several other Member States who subcontract their works to companies in different countries[324].

The "incoming information"[325], especially those coming from private sources gives an indication on potential whistleblowers even if OLAF currently does not have the possibility to know whether there are whistleblowers among them.

According to the data, the trend is a global **increase in the reports to OLAF since 2009** (959 in 2009, 1136 in 2016) even if there is a decrease the last 2 years).

Figure 10.3: OLAF's investigative performance

Figure 17: OLAF's investigative performance

	2009	2010	2011	2012	2013	2014	2015	2016
Incoming information	959	975	1041	1264	1294	1417	1372	1136
Investigations opened	160	152	146	431	253	234	219	219
Investigations concluded	140	136	154	266	293	250	304	272
Recommendations issued	194	172	175	199	353	397	364	346

Source: 2016 PIF report

Figure 10.4: Amounts recommended by OLAF for financial recovery

Year	Amount in € million
2012	284.0
2013	402.8
2014	901.0
2015	888.1
2016	631.1

Source OLAF reports (2012, 2013, 2014, 2015, 2016)

Globally, there is an increase in the reports from private sources as compared to public sources (66% in 2016, 54% in 2009). In 2016, **66% of sources were private** (1136 reports, among which 756 from private sources and 380 from public sources).

Figure 10.5: Incoming information by source

[324] 2016 PIF report, p. 32.

[325] This refers to the number of reports received by OLAF and to the number of investigations in 2009-2016, in addition to or instead of the amount of recoveries (the latter only gives an indication of the financial damage).

Figure 22: Incoming information by source

Source	2009	2010	2011	2012	2013	2014	2015	2016
PRIVATE	523	594	767	889	889	959	933	756
PUBLIC	436	381	274	375	405	458	439	380
Total	**959**	**975**	**1041**	**1264**	**1294**	**1417**	**1372**	**1136**

Source: 2016 PIF report

The **ratio "incoming information" / "investigations opened"** also gives an indication of the **reliability** of the reports received by OLAF (an average of 17% of investigations were opened following an information received in 2009-2016, except in 2012: 33%).

Figure 10.6: Incoming information from Member states in 2016

Figure 23: Incoming information from Member States in 2016

Member State	Public source	Private source	Total
Austria	1	7	8
Belgium	11	14	25
Bulgaria	1	32	33
Croatia	2	4	6
Cyprus	0	1	1
Czech Republic	1	19	20
Denmark	2	2	4
Estonia	0	3	3
Finland	1	1	2
France	0	11	11
Germany	6	29	35
Greece	4	11	15
Hungary	2	20	22
Ireland	0	3	3
Italy	8	15	23
Latvia	1	2	3
Lithuania	2	6	8
Luxembourg	1	4	5
Malta	1	1	2
Netherlands	2	4	6
Poland	2	18	20
Portugal	1	4	5
Romania	2	33	35
Slovakia	2	16	18
Slovenia	1	5	6
Spain	7	23	30
Sweden	0	1	1
United Kingdom	3	14	17
Total	**64**	**303**	**367**

Source: 2016 PIF report

Annex 11: SMEs Test

The SME test is examined as part of the Commission's better regulation procedures[326]. Hence, through the 4 step procedure, impacts on SMEs are identified and quantified and mitigating measures are established.

The SME test is performed as regards costs linked to the obligation under the preferred option to establish reporting internal channels and provide adequate means to ensure whistleblowing protection at the employers' premises.

As will be explained below in Section 1, the preferred option may only have a significant economic impact to medium-sized companies and accordingly, costs have only been calculated for this type of category of businesses.

1. Identification of affected businesses

Micro companies with less than 10 employees and an inferior annual turnover of EUR 10 million are exempted completely from the obligation to establish internal reporting channels. The reason links to the objective of the initiative which is to prevent violations of EU law that cause serious harm to the public interest and the well-being of society. It is understood that in all cases, with the exception of financial services, micro companies have not a capacity to breach the law in a manner that could cause that risk to society. This exclusion of micro companies from the obligation to establish internal reporting channels entails that the preferred option does not economically affect and. does not impose economic obligations to 92% of the EU businesses.

Medium-sized enterprises with a number of employees between 50 and 249 or businesses with an annual turnover or balance sheet exceeding EUR 10 million will be obliged to introduce internal reporting channels. This implies that around 320000 will be affected[327], employing approximately 25 million employees[328].

The decision to place medium sized businesses with more than 49 employees in the scope of the option flows from the problem definition – these employers employ a sizeable proportion of the overall workforce. On the other side, medium sized-companies as compared to large companies do not provide in a large majority with internal channels to report. Thus, the preferred option primarily targets this group.

Small business with between 10 and 49 employees or with an annual turnover or balance sheet of less than EUR 10 million will be *a priori* exempted from the obligation to establish internal reporting channels and associated measures. Only in very specific circumstances, small companies due to their belonging to the specific sector of financial services or vulnerable to money laundering or terrorist financing or due to their unusual high annual turnover as compared to their size (more than EUR 10 million of annual turnover or balance sheet) will be obliged to include channels of reporting and afford protection to whistleblowing. This follows the rationale of the existing EU *acquis* on whistleblowing in the financial services sector that due to the nature of the activities performed does not exclude small investment firms from the obligation to set reporting channels or affording protection to reporting persons.

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326 https://ec.europa.eu/info/better-regulation-toolbox_en

327 Data available on Eurostat refers to a number of 227,976 medium enterprises for non-financial services. Data from 2015 from Eurostat available at: http://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do

328 2012 Data available from Eurostat, at https://ec.europa.eu/jrc/sites/jrcsh/files/annual_report_-_eu_smes_2015-16.pdf

Finally, the preferred option would also give an option to Member Stes to enlarge the sectors in which small and micro companies would also be obliged to establish internal reporting channels. Such a decision, however, should be duly motivated following a risk assessment and should be communicated to the Commission. This rationale follows the existing practices of Member States with a comprehensive law in whistleblowing protection.

Therefore, small companies would only be affected by the preferred option to the extent that, there is an established need to set up measures on whistleblower protection. While it is difficult to ascertain how many small businesses would be caught by the preferred option, and would need to establish internal channels, the economic impact is minimal, since this obligation already stems from current EU legislation[329].

2. Consultation of SME stakeholders

Relevant stakeholders have been consulted through the public and targeted consultations and the costs of introducing and reporting system for whistleblowers for medium sized companies has been calculated based on average labour costs per Member State in the EU.

Despite the Commission efforts[330], the information provided by the businesses organisations is limited. Only 42 business organisations representing small and medium sized companies replied to the open public consultation, which provided all with a positive feedback on establishing an initiative on whistleblowing protection. Moreover, although the Commission also set up a targeted consultation of businesses and contacted several business organisations inviting them to participate in the consultation only 1 organisation submitted its positive position as regards a future initiative at EU level on whistleblowing protection.

Commission's DG JUST has also met several national business organisations, which have provided a positive feedback[331].

3. Measurement of the impact on Medium-Sized Companies

Costs:

Implementation costs of the proposal have been broken down into (1) one-off expenses and (2) operating expenses for keeping the new policy in place. This second category of expenses was estimated for 2022, assuming a successful implementation of the new initiative.

The costs have been calculated following the same methodology as described in Annex 3 and Annex 14, on the ICF Study. The costs for medium-sized companies are the following:

Costs medium businesses (in EUR million)	
Implementation Costs (TOTAL)	EUR 438.8 million
(1) One-off cost of interpreting new legislation	EUR 122 million

329 Commission Implementing Directive (EU) 2015/2392 of 17 December 2015 on Regulation (EU) No 596/2014 of the European Parliament and of the Council as regards reporting to competent authorities of actual or potential infringements of that Regulation

330 more than 5000 replies have been received by stakeholders and a targeted consultation has been designed to acquire businesses' views

331 Businesses' associations of France and Sweden.

(2) One-off cost of establishing reporting channels	EUR 113.6 million
(3) One-off cost of development training	EUR 203.3 million
Operational costs (TOTAL)	EUR 348 million
(1) Additional recurring cost of training, €m/yr, 2022	EUR 199.1 million
(2) Additional recurring cost of reporting channel provision and support, €m/yr, 2022	EUR 148.9 million
Total	EUR 786.8 million
Average implementation cost per medium sized business in the EU (€/employer)	EUR 1,374
Additional average annual operational cost per medium sized business in the EU, €/employer/yr 2022	EUR 1,054.6
TOTAL	EUR 2,428.6

Average costs per medium-sized companies can be broken down into two types: average implementation cost (one-off) amounting estimated at EUR 1,374 and average annual operational cost estimated at EUR 1,054.6. This is estimated to amount to a total average of EUR 2,500 per medium-sized business.

While overall costs appear significant, the individual cost per business does not appear to be highly burdensome in economic terms (with incremental annual costs estimated at less than 0.01% for the average EU added value medium-sized enterprise turnover in all Member States)[332]. Geographical distribution of expenses is expected to vary from Member State to another. Lowest levels of costs are expected in countries with relatively high whistle-blower protection measures in place. These include France, Malta, Sweden and the UK.

Benefits:

Creating an EU system also including medium sized companies is not only cost–effective but also has a large scale of benefits, which have been largely reported in the various Member States which already have effective legislation on whistleblowing. Among other factors, *increasing competitiveness* at EU level: effective whistleblower protection makes it harder for companies to acquire competitive advantages through malpractice. Legitimate and law-abiding companies will, therefore, find it easier to compete and would increase their *attractiveness for investors*.

Moreover, it reinforces the protection of the *reputation* of the companies, i.e. companies will be able to repair damage to their reputation to a significant extent by addressing concerns before the malpractice actually takes place or by describing steps taken to address the issue following the whistleblowing.

It should be noted that the measures envisaged to protect whistleblowers under EU regime would also ensure that workers have a *better working environment*.

4. Assessment of alternative mechanisms and mitigating measures

There are several sets of mitigating measures that could be applied. As explained in Section 1, mitigating measures have been introduced for small companies performing activities in the financial sector or receiving EU funding. For those companies an obligation to establish

[332] Added value of medium-sized companies is estimated according to the Commission to amount up to EUR 5.568.737. The EU28 data on SME (non-financial business economy) is available at http://ec.europa.eu/DocsRoom/documents/22382/attachments/10/translations

internal channels could be discharged by means of a risk assessment of businesses and partly via appropriate measures – in the light of said risk assessment – to make it easier for workers to expose cases of malpractice within the business.

The economic costs for medium sized companies could also be compensated through certain beneficial policies such as the producing of a "anti-corruption certification" through which businesses could benefit from additional support when, for example, participating in tendering processes with large corporations (for example to be selected as a supplier to large multinationals in their supply chain) or in procurement procedures.

Case Study: Swedish Impact assessment on establishing horizontal whistleblowing legislation[333]

The Impact Assessment in preparation of the legislation concerning whistleblower protection in Sweden contains a detailed SME test. While the assessment does not break down the companies as per the definition of businesses at EU level (i.e. less than 250 and more than 50 employees), it proposes to calculate costs for organisations with (i) from 20 to 100 employees and for organisation (ii) having more than 100 employees. It does not take into account the resources required to deal with reporting, because the companies deal with internal reports anyway, even *ex ante* the legislative proposal.

In scenario (i) the Swedish Impact assessment costs are calculated as follows:

Businesses with a range between 20 and 99 employees have a greater need for measures to facilitate the launching of an alert than the smallest businesses[334]. The duration of the research of implementing actions due to new legislation is estimated at 2 hours. Companies may also need to follow up and evaluate the situation and possibly make a new assessment where circumstances change. The frequency is estimated to be twice per year. In addition, these types of businesses have to generally set up an internal procedure for reporting or any other action. The duration is estimated at 4 hours. Companies may also need to take further action after a follow-up. The frequency is estimated to be twice per year. The costs are calculated on the basis of the number of companies with between 20 and 99 employees in November 2013, which amounted to 16. 750 companies.

Activity	Number	Frequency	Hours	Hourly rate	Result
Examine needs	16 750	2	2	400	26 800 000
Apply measures		2	4		53 600 000

In scenario (ii) the costs are calculated as follows:

Companies with more than 100 employees will generally require a lot of measures to facilitate whistleblowing. They need to thoroughly investigate their operation's need of measures, and this can be assumed to require more work than for smaller companies. The time needed is

333 http://www.regeringen.se/rattsdokument/statens-offentliga-utredningar/2014/05/sou-201431/

334 The Swedish Impact Assessment further develops that this type of businesses would need first to consider the need for action, which is likely to require more work in terms of time and costs than for small businesses.

estimated at 10 hours. Companies often need to follow up and evaluate their measures and might need to make a new assessment if circumstances change. The frequency of this, therefore, can be estimated at 2. Besides this, such companies as a rule will need to establish a special internal procedure for reporting. The time for this is estimated at 10 hours and it is estimated that it will be done once. The companies might also need to take further steps. The time for this is estimated at 5 hours and the frequency at 3. The table sets out a calculation for the number of companies which had more than 100 employees in November 2013 (3. 690).

Activity	**Number**	**Frequency**	**Hours**	**Hourly rate**	**Result**
Examine needs	3 690	2	10	400	29 520 000
Apply measures		1	10		14 760 000
Other measures		3	5		22 140 000

The total implementation costs of a new system of whistleblowing protection in Sweden for medium-sized businesses was estimated to amount per company SEK 4800, i.e. about €500 and for large businesses SEK 18 000, i.e. €1.875.