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HOW WELL DO EU COUNTRIES PROTECT WHISTLEBLOWERS?

Assessing the transposition of
the EU Whistleblower Protection Directive

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How well do EU countries protect whistleblowers?

Assessing the transposition of the EU Whistleblower Protection Directive

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EXECUTIVE SUMMARY

Whistleblowers play an essential role in exposing corruption and other wrongdoing that threaten the public interest. By disclosing information about such misdeeds, whistleblowers have helped save countless lives and billions of euros in public funds. Whistleblowers often put themselves at high personal risk. They may be fired, sued, blacklisted, arrested, threatened or, in extreme cases, assaulted or killed. Protecting whistleblowers from unfair treatment, including retaliation, discrimination or disadvantage, can empower people to report wrongdoing, which increases the likelihood that wrongdoing is prevented, uncovered and penalised. Whistleblower protection is therefore a key means of enhancing enforcement of legislation.

To protect whistleblowers from retribution, a strong legal framework is an important precondition. Until 2019, only 11 member states of the European Union (EU) offered comprehensive legal protection to whistleblowers, and even in these countries, loopholes remained and enforcement was lacking.¹ To address this issue, in 2019, after several years of advocacy from civil society, the European Union adopted the “Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law” (the Whistleblower Protection Directive). The directive contains many ground-breaking provisions. For instance, it prohibits retaliation against whistleblowers, safeguards their identities in most circumstances and offers them several reporting avenues. It sets obligations for many organisations to create internal reporting channels and requires companies, public institutions and authorities who receive information on wrongdoing to follow up on these reports. However, the directive also contains a number of loopholes and weaknesses.²

The 27 EU member states had until 17 December 2021 to comply with the directive. Most of them did not meet the deadline, with several adopting laws to transpose the directive only this year. Estonia and Poland have yet to do so. This position paper reviews the whistleblower protection laws in 20 of the 25 EU member states that have adopted such laws,³ assessing whether they comply with the minimum requirements of the directive and best practice in selected areas.⁴ Most of these laws have been adopted quite recently, and this paper does not look at their application in practice.

KEY FINDINGS

We are very concerned to find that 19 of the 20 countries reviewed do not meet the requirements of the directive in at least one of the four key areas covered by the paper: the whistleblowers' rights to report information on wrongdoing directly to the authorities, to access remedies and full compensation for damage suffered, and to obtain free and easily accessible advice, as well as penalties for those violating whistleblower protection. These countries will need to amend their legislation to conform with the directive. In addition, while many member states have closed loopholes in the directive by adopting provisions that provide stronger protection for whistleblowers, weaknesses and gaps remain. None of the 20 countries reviewed has chosen higher standards in each instance where the directive specifically offered this option.

Compliance with the directive

Of the 20 countries reviewed:

- Four countries fail to allow whistleblowers to report wrongdoing directly to the authorities without any restrictions.

- Seven countries' whistleblower protection laws do not ensure that whistleblowers receive full compensation for the damage they suffered, and another five do not offer to reinstate the whistleblower in their previous position.
- Eight countries' whistleblower protection laws do not establish penalties for all violations of whistleblower protection– that is, retaliation, vexatious proceedings against a whistleblower, interference with whistleblowing and breach of confidentiality over the whistleblowers' identity. In contrast, in 19 of the 20 countries reviewed, the whistleblower protection laws establish penalties for knowingly reporting false information. In three countries, the penalties for knowingly reporting false information are even significantly higher than those provided for some of the violations of whistleblower protection.
- Three countries do not provide, in their whistleblower protection law, for free and easily accessible advice to (potential) whistleblowers.

Meeting best practice

Of the 20 countries reviewed:

- Only eight countries protect whistleblowers reporting a broad range of wrongdoings.
- Only 10 countries require their national authorities to accept and follow up on anonymous reports, and only nine require public and private organisations to do so as well.
- Only 10 countries require all public entities to implement internal whistleblowing systems, regardless of their size.
- Sixteen countries establish penalties for organisations that fail to implement internal whistleblowing systems in line with legal requirements.
- Only seven countries' whistleblower protection laws provide for legal or financial support for whistleblowers in legal proceedings.

KEY RECOMMENDATIONS

To ensure that whistleblowers are effectively protected and enabled to speak up about wrongdoing – so that such wrongdoing can be detected and addressed promptly – EU member states should:

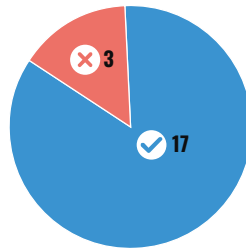
- amend their legislation to ensure compliance with the Whistleblower Protection Directive
- use the opportunity to review the areas where their laws do not follow best practice
- ensure that the legislative process is prompt and transparent, and involves all key stakeholders, including civil society.

ISSUES OF NON-CONFORMITY WITH THE DIRECTIVE

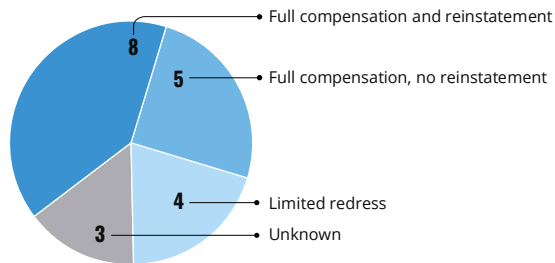


19 of the 20 countries reviewed do not comply with the directive

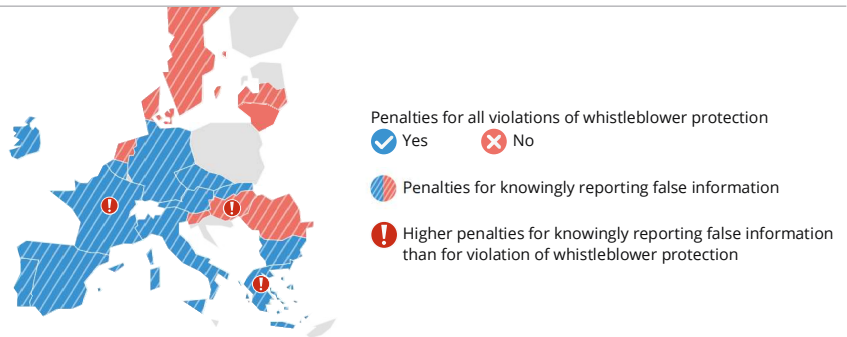
Right to report directly to authorities without any restriction



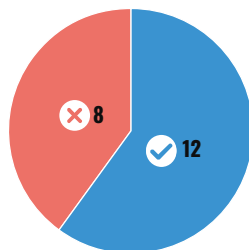
Remedies for whistleblowers foreseen in the national whistleblower protection law



Penalties established by the national whistleblower protection law

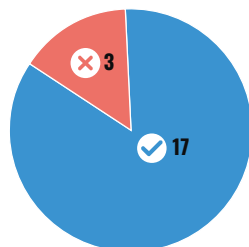


Penalties for all violations of whistleblower protection*



*established by the national whistleblower protection law

Free and easily accessible advice for whistleblowers

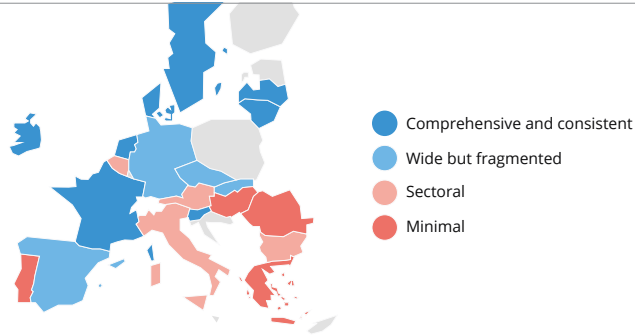


MEETING BEST PRACTICE?

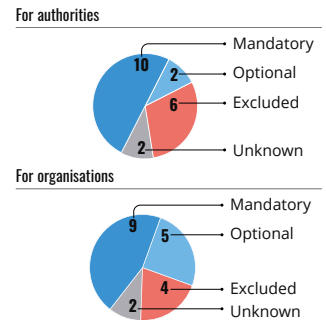
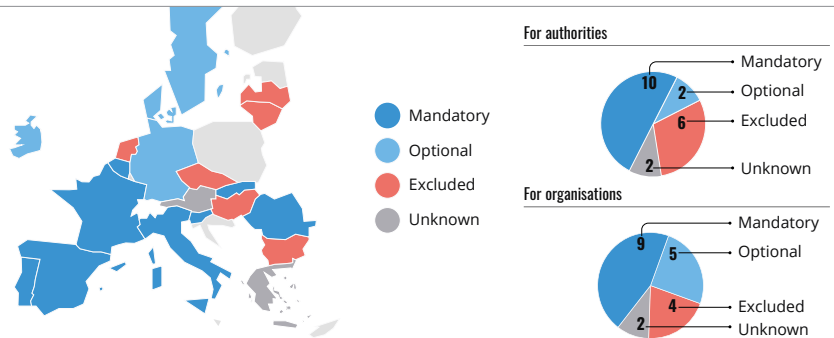


None of the 20 countries reviewed fully meets best practice

Scope of what whistleblowers can report

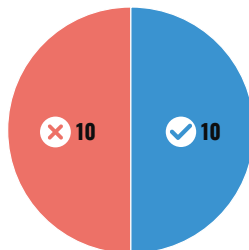


Accepting and following up on anonymous whistleblowing reports: obligations of organisations and authorities

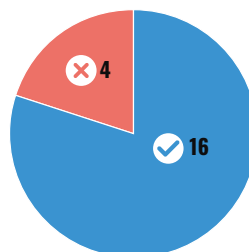


*For the countries with mixed rules, the lowest standard is shown (Hungary, Ireland, the Netherlands and Sweden)

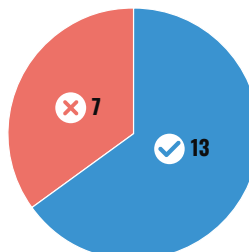
Obligation for all public entities to implement internal whistleblowing systems



Penalties for failure to meet obligations on internal whistleblowing systems



Provision of legal and/or financial support to whistleblowers



ISSUES OF NON-CONFORMITY WITH THE DIRECTIVE

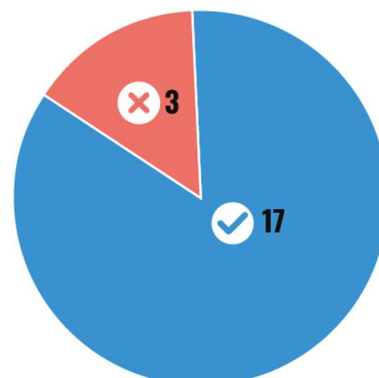
After the EU Commission issued its proposal for a Whistleblower Protection Directive, Transparency International, alongside many civil society organisations (CSOs), trade unions, journalists’ associations, members of the European Parliament and member state governments, advocated to improve the text proposed. The text provided a strong foundation for the protection of whistleblowers in Europe, but also contained significant weaknesses and loopholes.⁵ We were successful in many instances, and the text of the directive that was adopted includes four key aspects of whistleblower protection: the whistleblowers’ rights to report information on wrongdoing directly to the authorities, to access remedies and full compensation for damage suffered, and to obtain free and easily accessible advice, as well as penalties for those violating whistleblower protection.

We are therefore very concerned to now find that 19 of the 20 countries reviewed do not meet the requirements of the directive in these four key aspects of whistleblower protection. Member states will need to amend their legislation to conform with the directive.

RIGHT TO REPORT DIRECTLY TO AUTHORITIES

The main objective of whistleblowing is to prevent or stop and remedy wrongdoing. It is therefore important that the recipient of a whistleblower’s report is in a position to address the reported wrongdoing. Sometimes, competent authorities are better placed than the whistleblower’s organisation to do so. Whistleblowers also need to trust the reporting system and feel comfortable using it. There are many valid reasons why a whistleblower might prefer to report wrongdoing directly to the authorities rather than using their own organisation’s internal reporting channels – for example, if they fear or have reason to believe that they would experience retaliation, that their identity cannot be protected or that the wrongdoing might be covered up. It is therefore best practice to allow equal access and protection to reporting within the workplace and to the authorities. There should be no restrictions or extra burden for whistleblowers who wish to report to regulators and the authorities. In particular, whistleblowers should have the right to report directly to competent authorities without having to first report internally to their organisations.⁶

Right to report directly to authorities without any restrictions



It is therefore extremely worrying that in four countries – Italy, Lithuania, Portugal and Slovenia – the law places conditions on reporting to competent authorities which do not exist for reporting internally.⁷ Although, in most cases, these conditions seem to allow for external reporting in many situations, they do not cover all possible situations, and it is too early to tell how they will be interpreted by the courts. If a court decides that a whistleblower’s situation did not meet the conditions, the whistleblower will be left unprotected, exposed to retaliation and legal proceedings. This uncertainty might deter whistleblowers not wishing to report internally from reporting to the authorities.

REMEDIES AND PENALTIES

The directive distinguishes between remedies for whistleblowers who suffer detriment⁸ and penalties for those who violate whistleblower protection⁹ – and requires member states to provide for both. Similarly, it requires member states to provide for penalties for persons who knowingly report false information, as well as for measures to compensate for damage resulting from such reporting.¹⁰

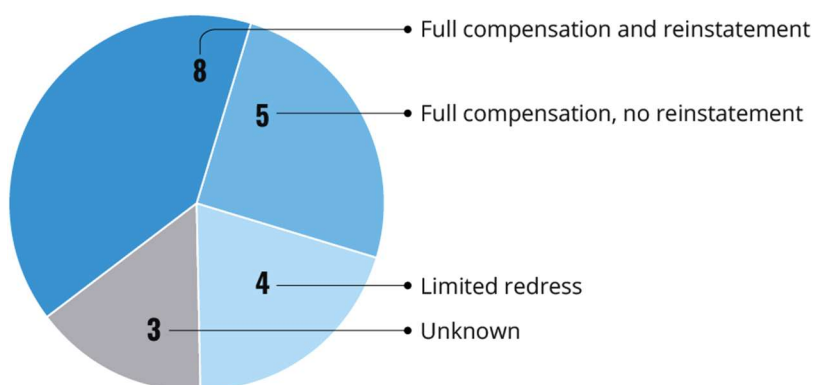
Remedies for whistleblowers

Retaliation exposes whistleblowers to loss – financial loss, loss of status or even emotional hardship.¹¹ The directive states that whistleblowers, as well as individuals assisting them (facilitators) and individuals and legal entities connected with them,¹² should have access to remedial measures against retaliation as appropriate. It requires member states to take the necessary measures to ensure that both full compensation and other remedies are provided to whistleblowers for damage suffered.¹³ The directive explains in its recitals that suitable remedies are determined by the kind of retaliation suffered and the damage caused, to ensure relief and compensation for all the whistleblower’s losses.¹⁴

Where possible, remedies should allow the whistleblower and other protected persons to be restored to a situation that would have been theirs had they not suffered retaliation. Best practice includes making all retaliatory measures – including dismissal, demotion and transfer – null and void, allowing reinstatement of the whistleblower in their organisation, or restoration of a cancelled permit, licence or contract, for instance. The whistleblower should also receive full compensation for other losses and harms, including indirect and future losses, as well as all financial and non-financial losses.

Remedies for whistleblowers*

*foreseen in the national protection law



Of the 20 member states covered by this study, only eight explicitly provide for full reparation to whistleblowers in their whistleblower protection laws, through both financial and non-financial remedies. Of those eight countries, six provide for the cancellation of retaliatory acts (Austria, France, Greece, Italy, Romania, Spain). Two provide for more limited non-financial remedies: Denmark’s whistleblower protection law includes the possibility of reinstating the whistleblower in their previous employment position, and Lithuania’s the right for public employees to challenge administrative decisions.¹⁵

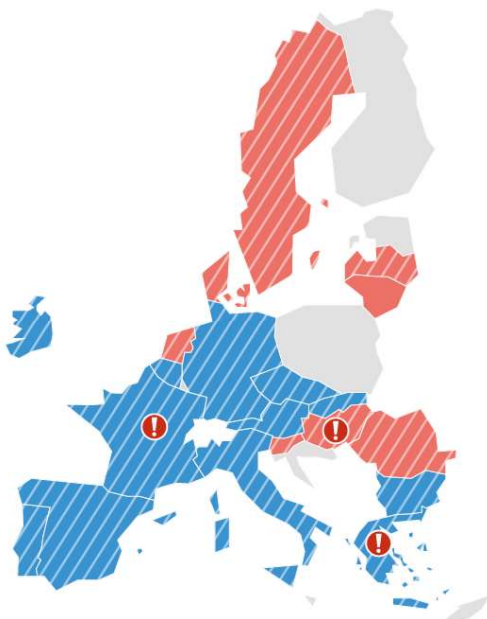
The whistleblower protection laws in five additional countries foresee compensation for all damage suffered, but only through financial remedies (Bulgaria, Czech Republic, Germany, Latvia, Portugal). Providing for compensation as an alternative to reinstatement might give rise to a systematic practice, in particular by larger organisations, which will have a dissuasive effect on future whistleblowers.¹⁶ This is why the directive requires both compensation and other remedies.

The whistleblower protection laws in Hungary, the Netherlands and Slovenia are simply silent on the issue of remedies, so unless this issue is adequately addressed by other national legislation, they fail to comply with the directive. This also falls short of best practice, which recommends that the national whistleblower protection law itself should specify what remedies are available, or at least expressly refer to the applicable legislation.

In the remaining four countries, the remedies contained in the whistleblower protection laws do not always allow full reparation for actual damage suffered by the whistleblower. The laws in Belgium, Ireland and Sweden put caps on compensation for employees suffering workplace retaliation.¹⁷ While the laws in Ireland and Belgium foresee reinstatement for employees,¹⁸ this is not always possible and might still not suffice to cover actual damages suffered. The whistleblower protection law in Slovakia states that an act taken by an employer against a whistleblower without the consent of the national whistleblowing authority is invalid. However, the law does not mention financial compensation, which raises the question of remedy for non-administrative retaliatory measures, such as harassment, and for intangible damage, such as emotional harm. Unless other laws address this issue and allow full reparation for the damage suffered by the whistleblower, these countries fail to comply with the directive.

Penalties established by the whistleblower protection laws

The directive requires member states to provide for effective, proportionate and dissuasive penalties for violation of whistleblower protection, more specifically for natural or legal persons who (1) hinder or attempt to hinder reporting, (2) retaliate against whistleblowers, (3) bring vexatious proceedings against whistleblowers and (4) breach the duty to maintain confidentiality over the whistleblower's identity.¹⁹ The directive also provides for effective, proportionate and dissuasive penalties for individuals who knowingly report false information, as part of the protection of the person(s) referred to in a report as responsible for the suspected breach ("person concerned").²⁰



Penalties established by the national whistleblower protection laws

Penalties for all violations of whistleblower protection

✓ Yes ✗ No

⚡ Penalties for knowingly reporting false information

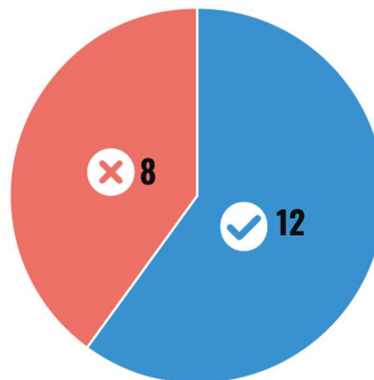
⚡ Higher penalties for knowingly reporting false information than for violation of whistleblower protection

Penalties for violations of whistleblower protection

Penalties for breaches of the directive are pivotal to ensuring proper enforcement of whistleblower protection laws. They can also have a preventive effect. Where violations against whistleblower protection occur, this can send a message to other potential whistleblowers that they will suffer the same treatment if they decide to speak up. To deter repeated violations, it is important that those responsible are held accountable and sanctioned.

Penalties for all violations of whistleblower protection*

*established by the national whistleblower protection law



It is therefore very concerning that only 12 countries – Austria, Belgium, Bulgaria, Czech Republic, France, Germany, Greece, Ireland, Italy, Portugal, Slovakia and Spain – have established in their whistleblower protection laws penalties sanctioning the four types of violation of whistleblower protection listed in the directive.²¹

The whistleblower protection laws in the remaining eight countries – Denmark, Hungary, Latvia, Lithuania, the Netherlands,²² Romania,²³ Slovenia and Sweden – fail to establish penalties for one or more of these violations. In Hungary, penalties for these four specific wrongdoings are provided, but in another law. Unless the missing sanctions are covered by separate laws in the remaining seven countries, these countries fail to comply with the directive. And while the directive does not specify whether the national whistleblower protection laws themselves should provide for these penalties, it is considered good practice that they do, or that they at least expressly refer to the applicable legislation, to enhance their dissuasive effect and ensure that all relevant stakeholders have easy access to this crucial information.

Penalties for knowingly reporting false information

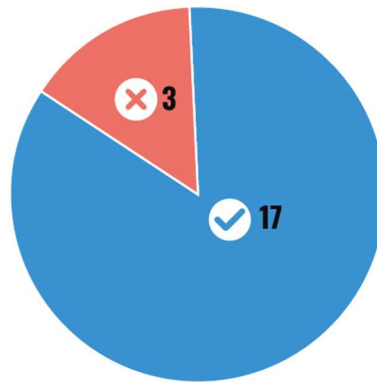
By contrast, in almost all member states reviewed – bar Lithuania – the whistleblower protection law expressly sanctions individuals knowingly making false reports. In three countries – France, Greece and Hungary – the penalties provided in the whistleblower protection law for knowingly reporting false information are significantly higher than for wrongdoing against whistleblowers, including retaliation, with Greece going as far as setting a minimum penalty of two years imprisonment. In many countries, libel or defamation laws apply, with high fines and sometimes prison sentences.

Such imbalance between the sanctions aimed at protecting whistleblowers and those aimed at protecting persons concerned should be regarded as a case of non-conformity with the directive. The directive applies the criteria “effective, proportionate and dissuasive” to all penalties foreseen, and states in its recitals that “the proportionality of such penalties should ensure that they do not have a dissuasive effect on potential whistleblowers”.²⁴ Providing for higher penalties for knowingly reporting false information than for retaliating against a whistleblower sends the message that dissuading knowingly false reporting is more important than dissuading wrongdoing against whistleblowers. It can be a serious deterrent to whistleblowing and aligns neither with the directive nor with best practice.

COMPREHENSIVE AND INDEPENDENT ADVICE TO THE PUBLIC

Even where whistleblower protection legislation, policies and guidelines exist, questions about how such rules apply to individual cases always remain. Access to individual advice is key to ensure that reports are made through the appropriate channels, in a timely and responsible manner, ensuring that the wrongdoing is dealt with in the best way possible and, most importantly, that the whistleblower is protected, along with facilitators and individuals and legal entities connected with them. Individuals who are not sure about how to raise a concern or whether they will be protected will often decide not to speak up, which defeats the purpose of whistleblower protection laws. This is why the directive requires member states to ensure that whistleblowers and other protected persons have “access to comprehensive and independent information and advice,²⁵ which is easily accessible to the public and free of charge”.²⁶

Free and easily accessible advice for whistleblowers



While all countries reviewed require competent authorities to publish on their website information such as procedures and remedies available and protection against retaliation, only 15 – Austria, Belgium, Bulgaria, Czech Republic, France, Germany, Greece, Italy²⁷, Latvia, Lithuania, the Netherlands, Portugal, Romania, Slovakia, Slovenia and Spain – require one or more authorities to provide advice to individuals – although in some instances in rather vague and general terms.²⁸ In Latvia, the law also foresees the provision of advice by civil society organisations and trade unions. Sweden’s law does not give this responsibility to any entity, but a concomitant regulation provides for state grants for employer and employee associations and CSOs to fulfil the role.

In the remaining three countries – Denmark, Hungary and Ireland²⁹ – the law is silent on the issue of advice. This does not comply with the directive. The mere publication of information on an official website should not suffice to meet this requirement.

MEETING BEST PRACTICE?

Some of Transparency International's recommendations to improve the proposal for a Whistleblower Protection Directive were only partially taken on board by EU policymakers. In several instances, the directive has set a minimum requirement that falls short of best practice, while expressly allowing – even pressing – member states to set higher standards. This is the case for five areas of the directive: the breadth of the material scope of national laws, the possibility to allow and follow up on anonymous reports, the range of public entities obliged to establish internal whistleblowing systems, the provision of legal and financial support to whistleblowers, and the establishment of penalties for failure to fulfil legal obligations under whistleblower protection laws.

More generally, the directive expressly asserts that member states may introduce or retain provisions more favourable to the whistleblower.³⁰ The EU Commission also encouraged member states to apply the Council of Europe's recommendation on whistleblower protection as well as the European Court of Human Rights case-law on the right to freedom of expression,³¹ all EU member states also being members of the Council of Europe and under the jurisdiction of its court.

We were encouraged to find that many member states have chosen to adopt provisions that provide stronger protection for whistleblowers than the minimum requirement of the directive in at least one of the above-mentioned five areas. However, none of the 20 countries covered by this study meets best practice in all five areas, even when the directive explicitly invited them to do so.

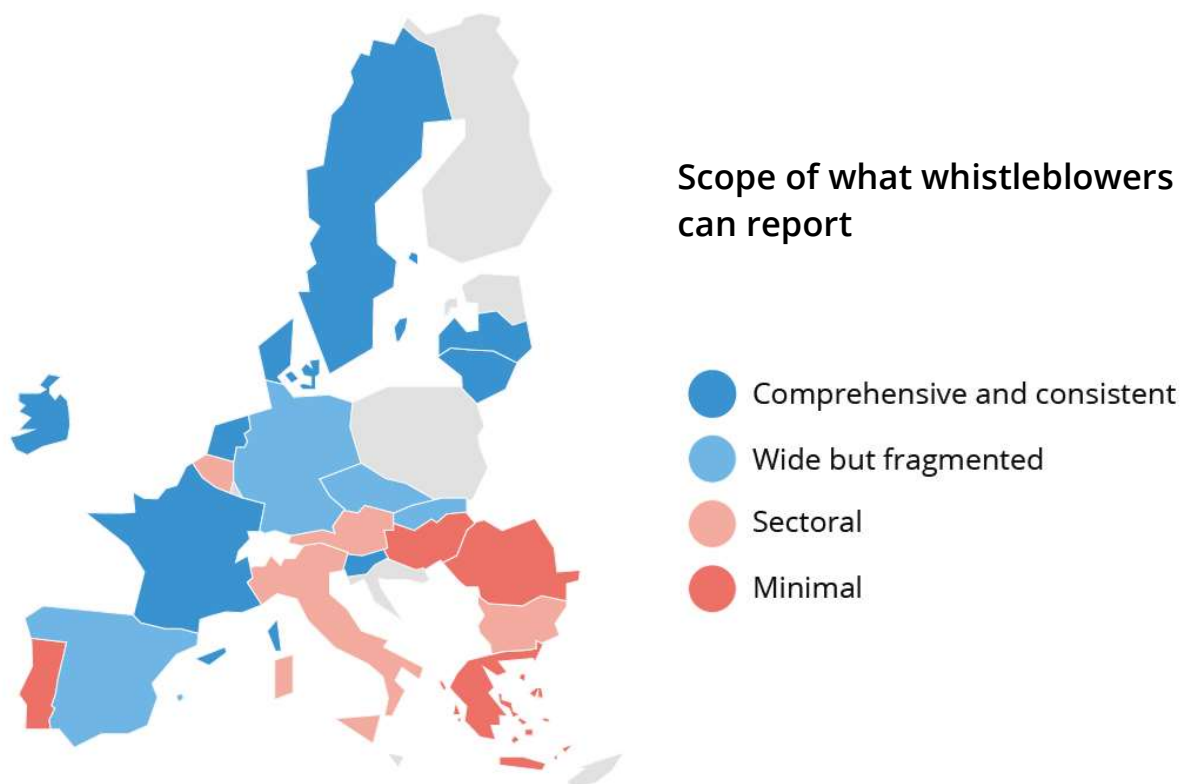
WHAT CAN BE REPORTED (THE MATERIAL SCOPE)

The material scope is a crucial element of whistleblower protection law. It determines what types of wrongdoing fall under the law – that is, what kind of information a whistleblower can report to benefit from the protection of the law, and which will trigger a response from the organisation or authority that receives it.

International standards recommend that whistleblower protection laws have a comprehensive and coherent material scope. A whistleblower protection law that follows best practice in every other aspect but has a limited scope will be ineffective, as it will only apply to a handful of specific situations. If the material scope is fragmented, potential whistleblowers may be unable to understand whether the misconduct they want to report falls under the law or not, and may prefer to stay silent as a consequence. If they speak up but are not protected, the negative consequences they suffer will serve as a warning to others to stay silent. In practice, this means that wrongdoing that can harm the public interest, or the interest of an organisation, will stay undetected.

As a result of the EU's limited legislative competence, the material scope of the directive is limited and fragmented. It only covers reports of breaches of EU law in certain areas. Reports of wrongdoing in other areas are not protected, and neither are reports of breaches of national law in the areas of the directive. Organisations or authorities receiving such reports do not have to take any action.

To mitigate this inherent limitation, the directive expressly allows member states to extend protection under national law to areas and acts it does not cover. The European Commission also encouraged member states to do so and to adopt a “comprehensive and consistent” national whistleblower protection framework.³²



Only eight member states – Denmark, France, Ireland, Latvia, Lithuania, the Netherlands, Slovenia and Sweden – have adopted legislation with comprehensive and consistent material scope.³³ It is worth noting that, with the exception of Denmark and Slovenia, all these countries had pre-existing laws with comprehensive and consistent material scope.

The other 12 countries have adopted legislation with fragmented or limited scope, to various extents, which will create many implementation challenges for whistleblowers, public institutions, companies, competent authorities and judges. This also raises the ethical issue of generally encouraging people to speak up about wrongdoing who might, in the end, be left unprotected.

In Belgium and Italy, for example, what can be reported in the private sector and the public sector differs, with a narrower scope for the private sector. In Austria, the already restricted scope of the law becomes even narrower for small entities. These dual approaches raise many questions in terms of practical application. What can a whistleblower who is working for a (small) private contractor of a public entity report? Will it depend on the organisation to which they report the wrongdoing – be it their private employer or the public entity they work with? And which scope will apply if they make an external report to a competent authority?

In the Czech Republic, Germany, Slovakia and Spain, whistleblowers can only report breaches of law in the areas of the directive, (most) serious administrative offences and criminal offences – and only serious criminal offences in the cases of Slovakia and Spain.³⁴ This raises the question of how a whistleblower without advanced legal training and with limited information on the suspected wrongdoing can determine whether what they wish to report constitutes a serious criminal or administrative offence. Similar issues could arise in Bulgaria, which adopted a sectoral approach, leaving many sectors out of the scope of protection, including for serious criminal offences.

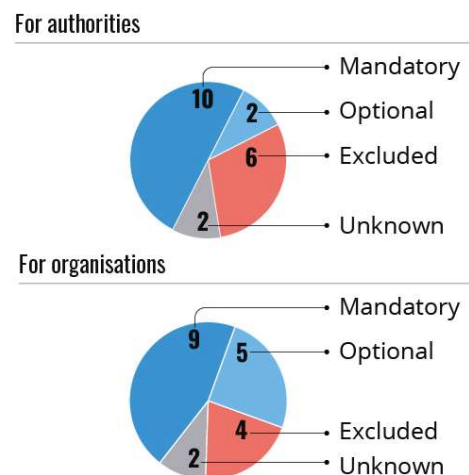
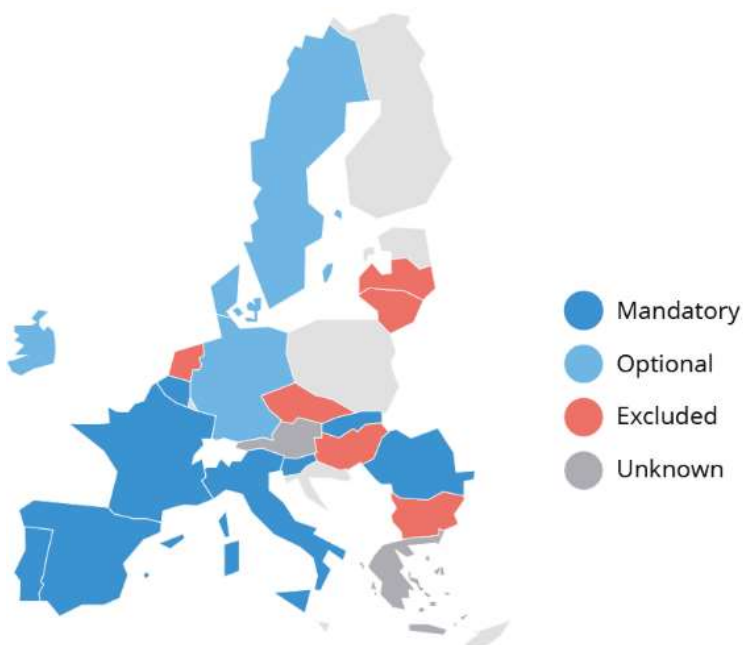
Greece, Hungary, Portugal and Romania adopted a very minimalistic approach, covering only the breaches required by the directive – which will result in very few cases falling within the scope of the law.³⁵

ANONYMOUS REPORTING

Welcoming anonymous reports helps build trust in whistleblowing systems. It tells potential whistleblowers and other stakeholders that addressing wrongdoing is more important than identifying who is blowing the whistle. It also encourages people to speak up by enabling individuals who would not do so otherwise for fear of negative consequences or that insufficient care will be taken to protect their identity.³⁶ Anonymous reports can provide valuable information about wrongdoing that puts an organisation or the public interest at risk.³⁷ Trivial or false reports are uncommon, including when anonymous reports are allowed, and in practice, anonymous whistleblowers often reveal their identity after a few exchanges with the person handling their report. The possibility of reporting anonymously can encourage individuals who would otherwise turn directly to the authorities or make a public disclosure to use internal channels first.

Despite these benefits, while the directive provides for the protection of anonymous whistleblowers identified subsequently to their reporting, it leaves member states the power to decide whether public and private entities and competent authorities are required to accept and follow up on anonymous reports.³⁸

Accepting and following up on anonymous whistleblowing reports – obligations of organisations and authorities



*For countries with different mixed rules, the lower standard is shown (Hungary, Ireland, the Netherlands and Sweden)

Anonymous reports to competent authorities

Of the 20 member states reviewed, only 10 require competent authorities to accept and follow up on anonymous external reports – Belgium, France, Ireland, Italy, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden.

Denmark and Germany give competent authorities the power to decide for themselves whether or not to accept external anonymous reports, without setting any obligation to follow up on anonymous reports received.

In Bulgaria, Czech Republic, Hungary, Latvia and Lithuania, anonymous reports to competent authorities are not considered whistleblowing reports. In the Netherlands, the Whistleblowers Authority does not accept anonymous reports.

Laws in Austria and Greece do not address the issue of accepting and following up on anonymous reports.

Anonymous reports to public and private organisations

Of the 10 countries that require competent authorities to accept and follow up on anonymous external reports, eight also require public and private entities to accept and follow up on anonymous internal reports – Belgium, France, Italy, Portugal, Romania, Slovakia, Slovenia and Spain.³⁹ In the Netherlands, public and private entities are also required to accept and follow up on anonymous internal reports.⁴⁰

In five member states – Denmark, Germany, Hungary, Ireland and Sweden – organisations are free to decide whether to accept anonymous reports, without any obligation to follow up on anonymous reports received.

In Bulgaria, Czech Republic, Latvia and Lithuania, anonymous whistleblowing reports are not accepted by public and private entities.

Laws in Austria and Greece do not address the issue of accepting and following up on anonymous reports.

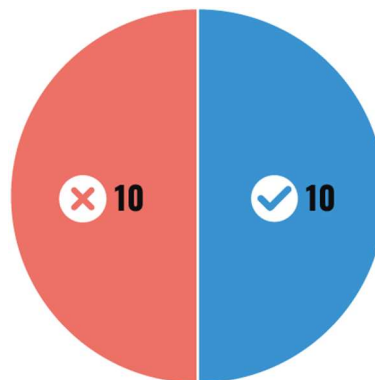
INTERNAL REPORTING SYSTEMS

Obligation for public entities to establish internal whistleblowing systems

The directive places an obligation on all public entities to establish internal whistleblowing systems, including publicly owned or controlled entities, such as state-owned enterprises. Yet it allows member states to exempt public entities with less than 50 employees and municipalities with less than 10,000 inhabitants from this obligation.

However, even small municipalities routinely take decisions in high-risk areas such as public procurement, environmental protection and public health, making internal whistleblowing systems critical. This is why all public entities at local, regional and national levels, without exception and regardless of size, should implement internal whistleblowing systems in ways appropriate to their size.

Obligation for public entities to establish whistleblowing systems



Ten member states follow best practice and require all public entities to implement internal whistleblowing systems – Bulgaria, Greece, Ireland, Italy, Latvia, Lithuania, the Netherlands, Romania, Slovakia (for entities with five or more employees) and Spain.

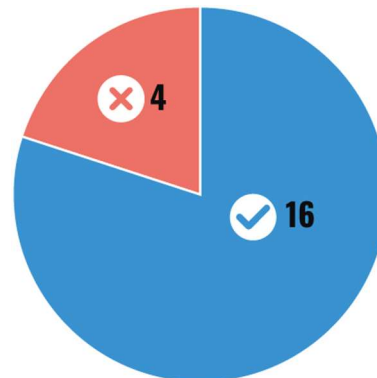
The other 10 member states have used part or all the exemption offered by the directive – Austria, Belgium, Czech Republic, Denmark, France, Germany,⁴¹ Hungary, Portugal, Slovenia and Sweden.

Penalties for failure to meet legal obligations on internal reporting systems

The directive places a number of obligations on public and private organisations, such as the obligation to implement internal whistleblowing systems following certain requirements, to follow up on reports received and to provide feedback on follow-up to whistleblowers. To ensure that obligations are met, organisations or

individuals who fail to fulfil these obligations should incur penalties. However, the directive does not foresee penalties for failure to implement internal whistleblowing systems in compliance with legal requirements.

Penalties for failure to meet obligations on internal whistleblowing systems

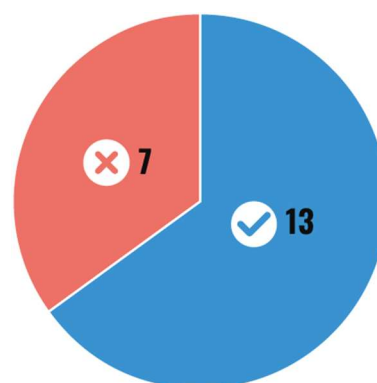


Despite this shortcoming in the directive, a large majority of member states reviewed (16) have, in line with best practice, set penalties in their whistleblowing legislation for persons who fail to implement internal whistleblowing systems.⁴² Most expressly require such whistleblowing systems to be in line with national legal requirements. Unfortunately, the fines in case of failure to fulfil these obligations are very low in some instances, especially for legal persons. The whistleblower protection laws in four countries – Austria, France, Latvia and Hungary – do not include such penalties.

LEGAL AND FINANCIAL SUPPORT TO WHISTLEBLOWERS

Without making it an obligation, the directive invites member states to provide for financial assistance to whistleblowers in the context of legal proceedings.⁴³ Legal costs can be significant for whistleblowers, whose incomes often depend on the organisation which is retaliating against them. While whistleblowers can sometimes recover these fees at the end of the case, they might not be able to cover the costs upfront, especially if they are unemployed and blacklisted. If whistleblowers are not able to afford the costs to enforce their rights, the reality of those rights is brought into question.

Provision of legal or financial support to whistleblowers*



*foreseen in the national protection law

This makes it regrettable that only seven of the 20 member states reviewed – Belgium, France, Greece, Latvia, Romania, the Netherlands⁴⁴ and Slovenia – have taken the opportunity to meet best practice and offer free legal assistance for whistleblowers or financial support to cover their legal costs, in addition to legal aid for those eligible due to their financial situation. In France, a judge can order the whistleblower’s legal costs to be covered, as an advance or definitely, by the other party. This could prove an effective measure to prevent organisations or individuals with greater legal and financial resources from disregarding whistleblower protection because they can afford to.

MEMBER STATES

This section highlights, for each of the 20 member states reviewed, several best practices and weaknesses identified in their laws.⁴⁵ In some cases, those weaknesses did not exist in the national law before the transposition of the directive. Any such regression should be deemed contrary to the directive, which explicitly states that “the implementation of the Directive shall under no circumstances constitute a ground for a reduction in the level of protection already afforded by member states in the areas covered by the directive”.⁴⁶

Legend

- (+) Positive highlights where the national law goes beyond the minimum requirement of the directive to meet best practice.
- (-) Need for improvements where the national law does not meet best practice or even comply with the directive.

AUSTRIA

(+) **Remedies:** The law provides for full reparation of the detriment suffered by whistleblowers through financial and non-financial remedies. The legal or natural person responsible for retaliation against a whistleblower is obliged to “restore the lawful state of affairs, to compensate for the financial loss and to compensate for the personal damage suffered”. Retaliatory measures such as dismissal, disciplinary action or revocation of a licence or permit are deemed legally ineffective.

(-) **Fragmented and limited material scope:** The law does not cover most criminal offences, and the material scope differs depending on the size of the entity involved. For entities with fewer than 50 employees that do not have an internal whistleblowing system, whistleblowers are only protected for reporting breaches of the EU legislation listed in the directive’s annex,⁴⁷ while larger entities can report breaches of EU and national law in the areas of the directive and corruption-related criminal offences.

(-) **Limited protection of identified anonymous whistleblowers:** Whistleblowers who have made a report or public disclosure anonymously, but are subsequently identified and suffer retaliation, are only protected if their identity becomes known “through no fault of their own”. This condition violates both the EU Directive and international standards.⁴⁸

(-) **Enforcement:** There is no penalty for organisations that fail to fulfil their legal obligations to implement an internal whistleblowing system, to follow up on reports and to provide feedback to whistleblowers.

See Transparency International Austria [Statement on the draft Whistleblower Protection Act](#) – HSchG (2023, in German).

BELGIUM

(+) **Extensive support measures for whistleblowers:** The law provides for technical, psychological, media and social support, as well as financial assistance for whistleblowers in the context of legal proceedings, provided by the Federal Institute for the Protection and Promotion of Human Rights, an independent authority.

(+) **Oversight and enforcement:** Two independent authorities have oversight and enforcement responsibilities: the Ombudsman, whose role includes handling complaints of retaliation, and the Federal Institute for the

Protection and Promotion of Human Rights, whose functions include reporting to Parliament on the protection of whistleblowers in Belgium, and promoting the protection of whistleblowers' rights and a legal and social culture that favours the reporting of offences.

(-) Fragmented material scope: What can be reported in the private sector and the public sector differs. In the public sector, whistleblowers can report any violation, while in the private sector they can only report breaches in the areas of the directive.⁴⁹

(-) Limited redress in case of retaliation: Reinstatement of the whistleblower is only provided for employees in the financial sector and there is a cap on financial compensation available to employees, but not for other workers.

BULGARIA

(+) Small public entities and municipalities: The law requires small public entities and municipalities to implement internal whistleblowing systems.

(+) Oversight and enforcement: Two authorities have oversight and enforcement responsibilities. The Commission for Personal Data Protection is responsible for collecting, analysing and publishing data on external reports, for facilitating knowledge exchange among authorities responsible for following up on external reports, and analysing the application of the law at least once every three years and updating rules where necessary. The Ombudsperson's Office is responsible for the external audit of the Commission for Personal Data Protection and for complaints against the commission about the handling of a report, for not ensuring protection and for breaches of confidentiality.

(-) Fragmented material scope: Only breaches of EU and national law in certain sectors are covered, namely the areas of the directive, and in the fields of labour law, civil service law and taxes. In other areas, even the reporting of serious criminal offences is not protected.

(-) Limitations to follow-up: The law states that there should be no follow-up of reports relating to breaches committed more than two years ago. This is not in line with the directive, and is shorter than the statutes of limitations regulated by other legislative acts applicable to most of the breaches in the material scope of the whistleblower protection law.

See Transparency International Bulgaria's [Position on the secondary legislation regulating whistleblower protection](#) (2023) and [Opinion on the whistleblower protection bill](#) (2023).

CZECH REPUBLIC

(+) Multiple internal reporting channels: Public and private entities must provide whistleblowing channels that enable both verbal and written reports, and must provide multiple safe whistleblowing channels that ensure accessibility by addressing individual factors such as language barriers, gender, illiteracy, disabilities, internet access and people's need to be able to submit reports within and outside regular office hours.

(+) Comprehensive sanctions: The law provides for sanctions for not fulfilling the obligation to establish and operate an internal whistleblowing system in compliance with set requirements.

(-) Limited and fragmented material scope: Whistleblowers can only report breaches in the areas of the directive, criminal offences and serious administrative offences.

(-) Anonymous reports excluded: Organisations and competent authorities cannot accept and follow up on anonymous reports.

See Transparency International Czech Republic, [Overview of the Czech Whistleblowing Law](#) (2023).

DENMARK

(+) Data collection: Public entities with a whistleblower system are required to publish an annual report on its implementation.

(+) Enforcement: The law provides for penalties for public and private organisations that implement internal whistleblowing systems not following set requirements, including for failure to follow up on reports and to provide feedback to whistleblowers.

(-) Enforcement: The law does not provide for penalties for natural or legal persons who (1) hinder or attempt to hinder reporting, (2) retaliate against whistleblowers or (3) bring vexatious proceedings against whistleblowers.

(-) Advice and support: The law does not provide for individual advice or free legal assistance for whistleblowers.

For an analysis of public entities' whistleblowing activities in 2022, see Transparency International Denmark, [Whistleblowing in the wind](#) (2023, in Danish).

FRANCE

(+) Protection for civil society organisations: CSOs can be facilitators and therefore be protected from, for example, vexatious suits brought against them in retaliation for supporting a whistleblower.

(+) Financial support to whistleblowers: The courts can award (presumed) whistleblower engaged in legal proceedings – to seek protection against retaliation or because of vexatious suits – a provision for the costs of the proceedings or even a provision to cover their living expenses where their financial situation has seriously deteriorated because of whistleblowing. This provision is paid by the other party and the judge may decide at any time that it is acquired, regardless of the outcome of the case.

(-) Whistleblower motives as a criterion for protection: The French whistleblower protection law requires whistleblowers to report “in good faith” and “without direct financial benefit”. These conditions, which pertain to the motives of the whistleblower, do not conform with the directive and are against international standards. They create a dangerous loophole in the protection provided to whistleblowers, legitimising retaliatory investigations targeting the whistleblower, rather than investigations into the reported breaches and attacks on their integrity.

(-) Deterrent to whistleblowing: Knowingly reporting false information to competent authorities is a criminal offence, punishable by up to five years' imprisonment and a €45,000 fine. Wrongdoing against whistleblowers is sanctioned by similar fines, but not by prison sentences. Such a severe penalty can be a strong a deterrent for whistleblowers.

GERMANY

(+) Evaluation: The German government must prepare an evaluation report by mid-2025 on whether the objective of improving whistleblower protection has been achieved.

(-) Limited and fragmented material scope: Whistleblowers can only report breaches in the areas of the directive, criminal offences and some administrative offences – that is, violations of health and safety regulation and of regulations protecting the rights of employees or their representative bodies that are subject to fines.

(-) Competent authorities: Key authorities have not been designated as competent to handle external reports, including the public prosecutors' offices.

(-) Oversight and enforcement: No authority has been tasked with any oversight and enforcement responsibilities.

GREECE

(+) Legal and psychological support: The law provides for free legal assistance, regardless of whether whistleblowers meet the conditions for legal aid, and free psychological support. The Ministry of Justice is tasked with drawing up a list of lawyers to provide legal assistance to whistleblowers, in collaboration with the bar associations, and the Ministry of Health is tasked with creating a list of psychiatrists and psychologists to provide psychological support to whistleblowers, in collaboration with medical and psychologist associations.

(-) Narrow, fragmented and complex material scope: The law covers only what is required by the directive – breaches of EU law in certain areas. This means in practice that very few whistleblowing cases will be covered, and the fragmented and complex material scope will be a serious deterrent to the few whistleblowers that are covered.

(-) Whistleblowers motives as a criterion for follow-up: The law does not require follow-up on internal reports that are submitted “abusively”. The term “abusively” is not defined in the law, leaving interpretation to the person handling reports in an organisation. It can easily be interpreted as pertaining to the motives of the whistleblower and used as an excuse not to investigate certain reports or even to legitimise retaliatory investigative proceedings against whistleblowers themselves.

(-) Deterrent to whistleblowing: The law sets a minimum penalty of two years’ imprisonment for individuals who knowingly report or publicly disclose false information. Such a severe penalty, without room for a judge to adjust it to the particular circumstances of a case, can be a strong a deterrent for whistleblowers.

HUNGARY

(-) Fragmented whistleblower protection regime: Instead of amending its existing whistleblowing protection law to align it with the directive’s requirements, Hungary adopted a new law for the sole purpose of transposing the directive, creating a special regime for reports of breaches of EU law in the areas of the directive. Most other reports by private-sector whistleblowers are not protected, and other reports by public-sector whistleblowers are still governed by provisions originating from the pre-existing 2013 law, which proved insufficient both in terms of protection of reporting persons and investigation of reports.

(-) No protection for disclosures to the press: The law expressly states that disclosures to the press are not covered by whistleblower protection. The only protection available to whistleblowers going to the press is the protection of sources under the Press Act, which is only guaranteed if invoked by the journalist.

(-) No stringent provisions on enforcement: The government employment agency’s mandate to monitor implementation is limited. The agency lacks the ability to impose a fine or issue a banning order in case of non-compliance with requirements under the directive.

IRELAND

(+) Security, defence, international relations and intelligence-related information is covered by the whistleblower protection law: whistleblowers can report involving such information internally to their employer, to a Minister or to a special body established by the law.

(+) Right to redress for third parties: If a person or a third party suffers detriment because they made a whistleblowing report, the person or third party suffering detriment can sue the person who caused that detriment under tort (civil) law. This could allow civil society organisations which have aided or assisted whistleblowers and experienced loss due to some form of retaliation to sue those who retaliated.

(-) Whistleblower’s motives as a criterion for compensation: In addition to the cap, compensation can be reduced by 25 per cent if “the investigation of the relevant wrongdoing concerned was not the sole or main motivation for making the disclosure”. Limiting a whistleblower’s protection based on their motive is not in line with international standards.

(-) Regression with the transposition of the directive: Under Ireland's 2014 whistleblower protection legislation, a public servant could report to a minister covering their organisation under the same conditions as reporting internally to that organisation. The 2022 transposition law set additional conditions for reporting to a minister. The whistleblower must have first made an internal or external report and received no feedback, or must reasonably believe there is no follow-up or there is complicity. In addition, ministers must now transmit reports received to the authority responsible for whistleblowing.

See Transparency International Ireland, [Recommendations on the Protected Disclosures \(Amendment\) Bill 2022](#) and *Speak up Safely Guide 2023* (forthcoming).

ITALY

(+) Resources for the designated competent authority: The law provides the National Anti-Corruption Agency (ANAC) with a significant budget dedicated to its new role as competent authority for whistleblower protection. The budget covers 22 additional staff and provides €1 million over the next five years for the development of an encrypted reporting platform. However, the ANAC announced that it will only follow up on reports relating to corruption, and other reports will be forwarded to different authorities, which are not provided with additional resources.

(-) Limited and fragmented material scope: What can be reported in the private sector and the public sector differs. While the scope for the public sector is quite comprehensive, the scope for the private sector is very narrow, mostly limited to reporting breaches of EU law in the areas of the directive.

(-) Restrictive personal scope: According to the ANAC's official mandatory guidelines for external reporting, an individual who wants to report a breach – which otherwise falls within the scope of the law – involving a private company that does not have a legal obligation to establish an internal whistleblower system (that is, most companies with fewer than 50 employees) “is not considered a *whistleblower*” and cannot report externally. Beside the impossibility of reporting externally – and, by extension, an additional limit to public disclosures – this raises questions regarding the protection of such whistleblowers, and is clearly not in compliance with the minimum requirement of the directive.

(-) Conditions for reporting externally: Whistleblowers can report directly to the competent authorities only if one of the following conditions is fulfilled: (1) relevant internal channels are not mandatory or, if mandatory, are not provided or not compliant, (2) the whistleblower has already reported internally and there was no follow-up, (3) the whistleblower has reasonable grounds to believe that an internal report would not be followed up or could cause retaliation or (4) the whistleblower has reasonable grounds to believe violation may constitute an imminent or obvious danger to the public interest. This does not comply with the directive.

See Transparency International Italia's [First Commentary on the Whistleblowing Legislative Decree](#) (2023, in Italian) and [Whistleblowing 2022](#) report (in Italian).

LATVIA

(+) Role for CSOs: The law expressly foresees a role for CSOs, which can provide support, including consultations, for whistleblowers and persons who wish to report. Without special authorisation, they can also apply to an institution (authority) or a court on behalf of a whistleblower who is a member of the CSO or a person whose interests it represents according to the articles of association, to protect the rights and lawful interests of the whistleblower.

(+) Oversight and implementation: The State Chancellery has oversight and implementation responsibilities, such as (1) providing support and consultations to potential whistleblowers and those suffering from retaliation, (2) raising public awareness, (3) providing methodological support to entities and authorities, and (4) compiling and publishing annual information on whistleblowing and protection of whistleblowers.

(-) Enforcement: The law does not provide for penalties for natural or legal persons for:

- breach of the duty to maintain confidentiality over the whistleblowers' identity.

- failure to establish and operate an internal whistleblowing system in accordance with legal requirements, including follow-up of reports and feedback to whistleblowers.

(-) Anonymous reports: The law does not allow entities and authorities to recognise anonymous reports as whistleblower reports, meaning they do not have to accept and follow up on anonymous reports or provide feedback.

See Transparency International Latvia (Delna) on [The New Whistleblowing Law](#) (2022) and [Guidelines for Handling Whistleblower Reports](#) (2023, in Latvian).

LITHUANIA

(+) Data collection and oversight:

- All public entities must collect and publish data, such as reports received, reports investigated, reports sent to a competent authority, and resources allocated to administering the internal reporting channel.
- The General Prosecutor's Office is tasked with summarising the practice of applying this law, developing recommendations for improving whistleblower protection, and collecting and publicly publishing statistical data and information about violations revealed via information provided by whistleblowers.
- The General Prosecutor's Office advises individuals and institutions free of charge on the application of this law.

(-) Enforcement: The law does not provide for penalties for natural or legal persons who hinder or attempt to hinder reporting and who bring vexatious proceedings against whistleblowers.

(-) Anonymous reports: The law requires whistleblowers to clearly identify themselves, by name, surname, personal identification number or date of birth, and contact details when reporting internally, externally or publicly.

See Transparency International Lithuania, [Protection of whistleblowers in Lithuania: How well are whistleblowers protected?](#) (2023, in Lithuanian) and [How public institutions implement the whistleblower protection law](#) (2020, in Lithuanian).

THE NETHERLANDS

(+) Support to whistleblowers: The Dutch Whistleblowers' Authority provides individual advice to potential whistleblowers. In addition, the government is working on the establishment of a fund for free legal and psychosocial support for whistleblowers.

(+) Anonymous reports: The law will require public and private entities to accept and follow up on anonymous reports. However, it has not yet entered into force, as the relevant provision will be further elaborated in a General Administrative Order.

(-) Delayed transposition: Some provisions regarding anonymous reporting and enforcement of the law, such as penalties for retaliating against a whistleblower, still need to be further elaborated and will come into effect later, meaning that the Netherlands has not yet completed its transposition of the directive.

(-) Material scope: A report that does not concern a breach of EU law is only considered a whistleblower report if the public interest is at stake. Transparency International Netherlands considers that, under the former act on whistleblower protection, the "public interest" criterion was often applied too rigidly, and as a result many reports of wrongdoing were not classified as whistleblowing reports, meaning the whistleblower received no protection.

See Transparency International Netherlands, ["Watchdogs of democracy better protected under the Whistleblowers Protection Act?"](#), 26 January 2023 (in Dutch) and [How to implement an effective reporting program](#) (2023, in Dutch).

PORTUGAL

(+) Enforcement: The law provides for the imposition of significant penalties for failure to establish a whistleblowing system in line with legal requirements.

(-) Narrow and fragmented material scope: The law covers only what is required by the directive: breaches of EU law in certain areas, and violent and highly organised crimes.

(-) More stringent condition for protection: The whistleblower is required to report in good faith and have “serious” ground to believe that the information reported is true, which is a higher threshold than the “reasonable” ground required by the directive.

(-) Limited external reporting: Expect for crimes and very serious administrative offences, external reporting is only possible if (1) there is no internal reporting channel available to the whistleblower, or (2) the whistleblower has reasonable grounds to believe that the breach cannot be addressed known or resolved internally, or that there is a risk of retaliation, or (3) the whistleblower has initially lodged an internal complaint without being notified of the measures envisaged or adopted following the complaint within the time limits provided for in the law. This does not comply with the directive’s requirements.

(-) Reversal of burden of proof: Retaliatory acts are only presumed motivated by internal or external denunciation or public disclosure if they occurred up to two years after the whistleblower’s report or public disclosure.

See Transparency International Portugal, [Support Guide for Whistleblowers](#) (2023).

ROMANIA

(+) Remedies: Whistleblowers are entitled to full reparation for the detriment suffered, through financial and non-financial remedies, including abolition of the detrimental measure, restoration of the parties to their previous situation, reparation of the damage, termination of the measure and its prohibition in the future, as well as any other measures to stop the forms of reprisal.

(+) Small public entities and municipalities: All public entities are required to implement internal whistleblowing systems.

(-) Material scope: The law covers only what is required by the directive: breaches of EU law in certain areas.

(-) Enforcement:

- Penalties for persons who hinder or attempt to hinder reporting only apply to the person responsible for handling reports. This is not in line with the directive.
- Penalties for persons who retaliate against whistleblowers are limited to cases where the order of retaliation was repeated at least twice. This is also not in line with the directive.

SLOVAKIA

(+) Oversight and enforcement: An independent authority is fully dedicated to oversight and enforcement of the whistleblower protection law, and protects the rights and legitimate interests of whistleblowers. It has extensive responsibilities, including (1) controlling application of the law, (2) providing advice and consultation to (potential) whistleblowers, (3) providing advice, guidance and training to entities and those handling reports and (4) overseeing the way in which an employer or the person concerned behaved towards the whistleblower after they reported.

(+) Small public entities and municipalities: The law requires all public entities with five or more employees to establish internal whistleblowing systems, including municipalities with fewer than 10,000 inhabitants.

(-) Material scope: The material scope is somewhat limited and fragmented. Whistleblowers can report serious criminal and administrative offences in addition to breaches of national and EU law in the areas of the directive.

(-) Remedies: The whistleblower protection law states that an act taken by an employer against a whistleblower without the consent of the national whistleblowing authority is invalid, which is good practice. However, the law does not mention financial compensation, which raises the question of remedy for non-administrative retaliatory measures, such as harassment, and for intangible damage, such as emotional harm. While other remedies allowing full reparation for the damage suffered by the whistleblower might be covered by other laws, it is considered good practice that the national whistleblower protection law itself specifies these penalties, or at least expressly refers to the applicable legislation.

SLOVENIA

(+) Publication of data: The Commission for the Prevention of Corruption is tasked with collecting data on whistleblowing and whistleblower protection from entities, competent authorities and the Supreme Court, and publishing it in an annual report.

(+) Support to whistleblowers:

- The Anti-Corruption Commission provides advice to whistleblowers and assistance in administrative and judicial proceedings related to retaliation.
- Whistleblowers are entitled to legal aid in proceedings relating to retaliation, regardless of their financial situation.

(-) Time-bound scope: The law does not apply to breaches that occurred over two years before the report is made. If a whistleblower reports a violation of the law that occurred more than two years previously, they will not receive protection and there will not be follow-up of the report. This is not in line with the directive and far from best practice.

(-) Remedies: The whistleblower protection law is silent on the issue of compensation in case of retaliation.

SPAIN

(+) Enforcement: Penalties for failing to fulfil an obligation to implement an internal whistleblowing system in line with legal requirements are significant. It is a “very serious infraction”, punishable by €30,001 to €300,000 for natural persons and by €600,001 to €1 million for legal persons.

(+) Oversight and enforcement: The law established an Independent Authority for the Protection of Informants, responsible for handling external reports, adopting protection measures for the whistleblower, processing disciplinary procedures and imposing sanctions for violations of the whistleblower protection law, and fostering and promoting a whistleblowing culture.

(-) Limited and fragmented material scope: Whistleblowers can only report breaches of EU law in the areas of the directive, as well as serious or very serious criminal or administrative offences.

(-) Protection against judicial proceedings: The protection provided to whistleblowers against judicial proceedings regarding breaches of restrictions on disclosure of information does not apply to criminal responsibility. This is not in line with the directive.

SWEDEN

(+) Multiple internal reporting channels: The law requires public and private entities to provide whistleblowing channels that enable both verbal and written reports. Providing multiple whistleblowing channels helps ensure accessibility to diverse whistleblowers.

(+) Support to whistleblowers: Business associations, trade unions and CSOs can apply for public funds to provide information and advice to whistleblowers.

(-) Enforcement: The whistleblower protection law does not establish penalties for natural or legal persons who (1) hinder or attempt to hinder reporting, (2) retaliate against whistleblowers and (3) bring vexatious proceedings

against whistleblowers, as required by the directive. While these sanctions might be covered by other laws, it is considered good practice that the national whistleblower protection law itself specifies these penalties, or at least expressly refers to the applicable legislation.

(-) Reparation: The law puts a cap on compensation for employees suffering workplace retaliation. As a result, whistleblowers might not be entitled to full reparation for actual damage suffered. This is not in line with the directive.

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NATIONAL EXPERTS

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The Czech Republic	Jan Dupák, Chief Lawyer, Transparency International Czech Republic
Denmark	Lars Wriedt, Board Member, Transparency International Denmark
Germany	Julia Auf dem Brinke, Policy Adviser, Transparency International Germany Sebastian Oelrich, Deputy Head of Whistleblowing Working Group Transparency International Germany
Greece	Angelos Kaskanis, Executive Director, Transparency International Greece
Hungary	Miklos Ligeti, Head of Legal Affairs, Transparency International Hungary
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Spain	David Martínez García, Executive Director, Transparency International Spain
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ENDNOTES

¹ Croatia, France, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, the Netherlands, Slovakia and Sweden.

² See Transparency International's analysis of the directive and recommendations for the transposition in *Building on the EU Directive for Whistleblower Protection*, 2019, <https://www.transparency.org/en/publications/building-on-the-eu-directive-forwhistleblower-protection>.

³ In this paper, unless otherwise specified, the term "law" loosely covers acts, regulations, administrative provisions and mandatory guidelines.

⁴ The five countries that have adopted laws to transpose the directive but are not covered this paper are Croatia, Cyprus, Finland, Luxembourg and Malta. The development of this paper relied on assessments and knowledge of Transparency International national chapters which have been actively advocating for stronger whistleblowing legislation in their country.

See Transparency International, *Whistleblower Protection in the EU: Analysis of and Recommendations on the Proposed EU Directive*, 2018, <https://www.transparency.org/en/publications/whistleblower-protection-in-the-eu-analysis-of-and-recommendations>.

⁶ Article 10 of the directive.

⁷ For more details, see the Member States section.

⁸ Articles 21(6) and 21(8) of the directive.

⁹ Article 23(1) of the directive.

¹⁰ Article 23(2) of the directive.

¹¹ See, for example, Kate Kenny, Marianna Fotaki and Alexis Bushnell, *Post-Disclosure Survival Strategies: Transforming Whistleblower Experiences*, National University of Ireland, Galway, 2019.

¹² Article 4(4) of the directive.

¹³ Articles 21.6 and 21.8 of the directive.

¹⁴ Recitals 94 and 95 of the directive.

¹⁵ Belgium also provides for reinstatement, but only for employees in the financial sector.

¹⁶ Recital 95 of the directive.

¹⁷ In Ireland, there is a cap on financial compensation for certain types of retaliation claims, depending on the forum chosen by the whistleblower. It is the equivalent to the value of five years of a worker's salary for penalisation and unfair dismissal in cases coming before the Workplace Relations Commission.

¹⁸ The law in Belgium provides for reinstatement only for employees in the financial sector. In Ireland, reinstatement is not regulated by the whistleblower protection law, but by referring to another law.

¹⁹ Article 23.1 of the directive.

²⁰ Article 23.2 of the directive.

²¹ Whether these penalties are effective, proportionate and dissuasive is not evaluated here.

²² In the Netherlands, the government is working on new revisions to empower the competent authority to pronounce sanctions for retaliation, following an amendment adopted by Parliament. However, the amendment does not provide for penalties for breach of confidentiality or bringing vexatious proceedings against a whistleblower.

²³ The law in Romania sanctions the four types of wrongdoing, but with significant restrictions.

²⁴ Recital 102 of the directive.

²⁵ The Oxford English Dictionary defines information as "Knowledge communicated concerning some particular fact, subject, or event", and advice as "Opinion given or offered as to what action to take; counsel; recommendation".

²⁶ Article 20(1)(a) of the directive.

²⁷ In Italy, the law also foresees the creation of a register of CSOs that provide such advice, but without corresponding funding.

²⁸ While it seems that at least one of the authorities responsible for providing advice in a country is an independent authority, in many cases they are also competent to receive external reports, which raises concerns regarding their perceived or actual impartiality.

²⁹ In Ireland, Transparency International has received state grants to provide advice to whistleblowers, but they are subject to renewal every year and depend on available government budget.

³⁰ Article 25(1) of the directive.

³¹ Council of Europe, *Protection of Whistleblowers, Recommendation CM/Rec(2014)7 of the Committee of Ministers to member States on the protection of whistleblowers*, <https://rm.coe.int/16807096c7>.

³² Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee, *Strengthening whistleblower protection at EU level*, COM (2018) 214 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018DC0214>.

³³ It should be noted that in the cases of Denmark, the Netherlands and Sweden, a report that does not concern the areas of the directive should concern serious matters (Denmark) or be of public interest (the Netherlands, Sweden).

³⁴ In Spain, whistleblowers cannot report breaches of national law in the areas of the directive, only breaches of EU law.

³⁵ In Portugal, whistleblowers can also report cases of violent and highly organised crime.

³⁶ For example, a 2015 survey of French employees found that 20 per cent of workers would blow the whistle only anonymously (Harris Interactive, *"Lanceurs d'alerte": quelle perception de la part des salariés?* 2015, p.9).

³⁷ The overall substantiation rate for anonymous reports is lower than reports from whistleblowers who identify themselves, but it is still comparable (see for example Navex, *2022 Risk & Compliance Hotline & Incident Management Benchmark Report*), and it can be improved with the use of communication channels that enable exchanges between anonymous whistleblowers and the persons handling their report.

³⁸ Articles 6.2 and 6.3 of the directive.

³⁹ With an exception for SMEs in Belgium.

⁴⁰ Implementation order still pending.

⁴¹ Some of the states in Germany might decide otherwise, but the current draft local legislation does not indicate they will.

⁴² In the Netherlands, the government is working on new revisions to empower the competent authority to impose administrative sanctions (including a fine) for failure to meet legal obligations regarding internal reporting systems, following an amendment adopted by Parliament.

⁴³ Article 20(2) of the directive.

⁴⁴ In the Netherlands, the government is working on the establishment of a fund to support whistleblowers, following an amendment adopted by Parliament.

⁴⁵ This section of the study is not meant as an exhaustive account of the national laws' strengths and weaknesses, and does not reflect an overall assessment of these laws. For more comprehensive assessment, please see the Transparency International chapter publications referenced for a specific country.

⁴⁶ Article 25(2) of the directive.

⁴⁷ This is narrower than the material scope of the directive, which also includes breaches affecting the financial interest of the EU and relating to the internal market, and raises the question of conformity with the directive.

⁴⁸ See, for example, Transparency International, *International principles for whistleblower legislation*, principle 13.

⁴⁹ This raises many questions in terms of practical application. What can whistleblowers working for a private contractor of a public entity report? Will it depend on which organisation they report violation to – their private employer or the public entity they work with? What if they report to the authorities?

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