WHISTLEBLOWING AND FREEDOM OF EXPRESSION IN WORKING LIFE

Comparative Perspectives

Edited by David Lewis, Sissel C. Trygstad and Wim Vandekerckhove

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COMPARATIVE SOCIAL RESEARCH VOLUME 38

WHISTLEBLOWING AND FREEDOM OF EXPRESSION IN WORKING LIFE: COMPARATIVE PERSPECTIVES

EDITED BY

DAVID LEWIS
Middlesex University, UK

SISSEL C. TRYGSTAD
Fafo, Norway

AND

WIM VANDEKERCKHOVE
EDHEC Business School, France

United Kingdom – North America – Japan
India – Malaysia – China

Emerald Publishing Limited
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Dale Southerton	University of Bristol
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Terhi-Anna Wilska	University of Jyväskylä

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ABOUT THE EDITORS

David Lewis is a Professor of Employment Law and the Head of the Whistleblowing Research Unit at Middlesex University. He is also the Convenor of the International Whistleblowing Research Network. David has been researching the subject of employment protection for whistleblowers since 1993. He has published internationally in law, business ethics, information technology and human resource management journals. David has considerable experience as a consultant for the European Commission, Council of Europe, OECD, Transparency International and UN Office on Drugs and Crime. He has given expert evidence (inter alia) to the Budgetary Control Committee of the European Parliament and the UK Committee on Standards in Public Life.

Sissel C. Trygstad is a Sociologist and a Research Professor at Fafo, Institute for Labour and Social Research in Oslo, Norway. She also holds a professorship at Nord University, Norway. Trygstad has conducted research and published nationally and internationally on topics such as institutional change, workers' voice, participation, freedom of expression and whistleblowing. She is currently leading two major international projects on freedom of expression, whistleblowing and workers' voice.

Wim Vandekerckhove is a (Full) Professor of Business Ethics at EDHEC Business School in France. His expertise is in business ethics, trustworthiness and whistleblowing. Wim has provided advice to various organisations, including Council of Europe, United Nations Office on Drugs and Crime (UNODC), the International Olympic Committee (IOC), Transparency International and the British Standards Institute (BSI). He led the development of ISO-37002:2021, the international standard for Whistleblowing Management Systems, and participated in developing BSI-25700 Organizational Responses to Modern Slavery. As part of an EU-funded project, he developed SUSA, a free online tool for speak-up self-assessment. Wim also serves as a consulting editor for the *Journal of Business Ethics*.

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LIST OF CONTRIBUTORS

Fredrik Engelstad	Institute for Social Research, Norway
María Cristina Fernández-González	*Universidad Europea de Valencia*, Spain
Nkosana Sithole kaMiya	University of the Witwatersrand, South Africa
David Lewis	Middlesex University, UK
Kim Loyens	Utrecht University, The Netherlands
Natalie Videbæk Munkholm	University of Southern Denmark, Denmark
Anne-Mette Ødegård	Fafo, Norway
Alessia Rizzo	Transparency International, Italy
Sissel C. Trygstad	Fafo, Norway
Wim Vandekerckhove	EDHEC Business School, France
Kristien Verbraeken	Agency for Government Personnel, Belgium

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INTRODUCTION

David Lewis[a], Sissel C. Trygstad[b] and Wim Vandekerckhove[c]

[a]*Middlesex University, UK*
[b]*Fafo, Norway*
[c]*EDHEC Business School, France*

Over the past few decades, an increasing number of countries have introduced legal provisions granting employees a statutory right to blow the whistle (International Bar Association et al., 2022). In 2021, the European Union adopted the Whistleblower Protection Directive (Directive (EU) 2019/1937), which establishes common minimum standards for the protection of individuals who report breaches of EU law. Significantly, the Council of Europe has urged its 47 Member States to adhere to the principles set out in the Directive (Council of Europe, 2024). However, while there is no International Labour Organisation Convention or Recommendation on whistleblowing, there are United Nations Resolutions addressing the issue, but these largely focus on anti-corruption measures (United Nations Conference of the States Parties to the United Nations Convention against Corruption, 2023). More generally, the International Organization for Standardization has published guidelines for *establishing, implementing and maintaining an effective whistleblowing management system* (International Organization for Standardization, 2021).

These developments have emerged in response to numerous examples demonstrating the risks associated with whistleblowing. Prior to the adoption of the EU Directive, it was widely acknowledged that whistleblower protection across the EU was fragmented and that employees who spoke out were often inadequately shielded from retaliation. Stories of workers who choose voice over silence when witnessing or uncovering wrongdoing, and the personal and professional costs they pay, have inspired a wide range of films, books and media coverage (MacCarthy, 2020).

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One of the earliest portrayals of a modern whistleblower can be found in Henrik Ibsen's (1882) play *An Enemy of the People*. Here Dr. Stockmann finds himself in a whistleblower position when he discovers that the town's new public baths, its main source of income, are contaminated. His efforts to expose the truth lead to a bitter conflict with both the authorities and the local bourgeoisie. In this play, Ibsen explores the tension between truth and vested interests, illustrating how whistleblowing activates power dynamics and societal forces that challenge the individual's right to think and act against established truths. The fact that freedom of speech extends beyond working life is also illustrated in Chapter 2. This discusses whistleblowing as a revolutionary and liberating practice and reminds us that sometimes it can be a life and death issue.

In this book, we and our nine co-authors examine whistleblowing as a phenomenon and how the right to blow the whistle is regulated across various national contexts. Our main focus is working life, and we are particularly interested in the factors that influence how different countries design and implement their whistleblower protection laws. The book's geographical scope is diverse. While most contributions focus on comparisons between European countries, the volume also includes data from the United States and Australia, and one chapter explores how whistleblowing unfolds in Burkina Faso. The authors approach whistleblowing from a range of academic perspectives, including labour law, political science and sociology. The contributions also operate at different levels of analysis and employ a variety of methodological approaches, such as comparative institutional mapping, legal analysis, qualitative interviews and surveys.

PATTERNS OF WHISTLEBLOWING: VOICE, SILENCE AND LOYALTY

In any organisation, situations, events or practices that are questionable or problematic will inevitably arise. This means that employees may find themselves in a whistleblower position while managers may become potential recipients of reports concerning such issues. Three key questions arise: i) what do those who uncover or observe wrongdoing do about the situation? ii) how do those who receive such reports handle the information disclosed? iii) what happens to the disclosers and recipients of the concerns and others affected by the whistleblowing process?

Over the past decades, numerous books and scholarly articles have addressed these and related questions from various disciplinary perspectives. A widely used definition in whistleblowing research is as follows:

> The disclosure by organization members (former or current) of illegal, immoral, or illegitimate practices under the control of their employers, to persons or organizations that may be able to effect action. (Near & Miceli, 1985, p. 4)

A distinction is commonly made between internal and external whistleblowing. Internal whistleblowing refers to reporting within the organisation to

someone with the authority to take action while external whistleblowing involves reporting outside of the organisation. A public disclosure is whistleblowing to the public and/or the media. As Vandekerckhove (2010) has pointed out, there is an intermediate step between internal reporting and public disclosure – namely, reporting to societal authorities or oversight bodies, such as regulatory agencies.

Research shows that when workers blow the whistle externally, they have often first attempted to report the issue internally (Bosua et al., 2014, p. 252; Near & Miceli, 2016; Vandekerckhove & Phillips, 2019). This suggests that external whistleblowing is frequently a last resort, taken when internal mechanisms fail or are perceived as ineffective.

There are many reasons why whistleblowing is important. Fasterling (2014) argues that whistleblowing involves two distinct dimensions:

> One is centered on guaranteeing the individual right of the discloser, with particular regard to the whistleblower's freedom of expression, and the other towards a more effective prevention and detection of violation of the law and danger to health and safety. (p. 331)

Thus, whistleblowing is closely linked to freedom of expression and can be justified as a democratic right. Being able to speak out about workplace issues without fear of reprisal is now recognized as both a human and labour right (Fasterling, 2014; Trygstad & Ødegård, 2022). Moreover, whistleblowing is connected to well-being. Employees who report wrongdoing may help improve the welfare of colleagues exposed to serious and harmful conditions (Fasterling, 2014). For service recipients, whistleblowing can highlight inadequate care or abuse. For customers, it may lead to the withdrawal of dangerous products or the cessation of harmful production processes. Whistleblowing is also related to organisational efficiency. Reports of embezzlement, theft, waste, or poor-quality products and services can contribute to improved profitability and quality (Miceli et al., 2012). Despite these potential benefits, whistleblowing can be risky.

So, what do whistleblowers actually do? The short answer is: it varies. Drawing on a range of cross-national and cross-organisational studies, Jane Olsen (2014) has sought to systematise whistleblowing behaviour. She found that approximately half of those who had experienced or observed wrongdoing chose to report it. Thus, her findings suggest that roughly equal proportions of individuals opt for 'voice' or 'silence' as their strategy. Similar results have been observed in Norway, where the proportion of employees who report wrongdoing has remained remarkably stable over a 10-year period (Trygstad & Ødegård, 2022).

The strategies chosen by workers who uncover or witness misconduct can be illustrated through Albert O. Hirschman's concepts of *exit*, *voice* and *loyalty*. According to Hirschman, the choice between exit and voice can be explained by the individual's level of loyalty to the organisation (Hirschman, 1970, p. 77). An employee with low organisational loyalty may choose exit – leaving the organisation either because they do not believe whistleblowing will be effective or because they do not wish to remain part of an organisation engaged in

questionable practices. Conversely, a loyal employee may choose voice, reporting the misconduct to someone with the authority to act.

In this context, it is noteworthy that Near and Miceli (2016), in their summary of nearly three decades of research, found that whistleblowers tend to be older employees with long tenure and higher education. They are typically familiar with internal reporting channels and feel a sense of responsibility to report wrongdoing (Near & Miceli, 2016, p. 111). Length of service might also be associated with the building of trust and the perception of psychological safety. Conversely, it can be argued that those who are new to an organisation may be inclined to raise concerns about inefficient working methods or dubious ethical practices that they observe.

Whether loyalty actually leads to whistleblowing is, however, not straightforward, as loyalty is a multidimensional concept. The perception of loyalty can be directed towards the employer and organisation, to colleagues or other stakeholders such as professions, users/customers and society generally (Arvidson & Axelsson, 2014; Lewis, 2011; Skivenes & Trygstad, 2010). The loyalty ties a potential whistleblower has to individuals with power and influence within the organisation may therefore be decisive. If the employee is loyal to those responsible for the wrongdoing, he/she may choose silence – either by ignoring or downplaying the issue, or by refraining from reporting owing to personal interest in the continuation of the practice, or simply as a result of uncertainty about how to act. Choosing voice may place the employee in a vulnerable or high-risk position.

STANDING UP FOR A CAUSE

Research indicates that the decision to blow the whistle is correlated with the perceived severity of the wrongdoing. Employees who report misconduct often believe that management will appreciate their disclosure, as it enables errors to be corrected or practices to be improved (Near & Miceli, 2016, p. 111). At the same time, there are numerous examples of whistleblowers challenging individuals in positions of power within the organisation (Brickley, 2003). These may include employers or managers or even a collective of colleagues. These actors may have a vested interest in ensuring that the misconduct is neither stopped nor results in consequences for those responsible. A common strategy in such cases is to silence or discredit the whistleblower.

If the wrongdoing is serious, top management may also have strong incentives to prevent the information from reaching the public, in order to protect the organisation's reputation and legitimacy. (Nyrerod, 2025). In some organisations, there may also be disagreement about whether a particular issue constitutes misconduct or whether the employee had the right to report it.

As previously discussed, the purpose of whistleblower protection laws, both at national and international level, is to encourage employees to choose 'voice' when they witness or uncover wrongdoing. However, for such legal provisions to be effective, they must offer genuine safeguards against retaliation. Retaliation

may be overt or subtle, immediate or delayed (Lewis, 2022). It can take many forms including dismissal, relocation, bullying and boycotting and often has long-term consequences (Kenny & Fotaki, 2021). Moreover, other contextual factors within the organisation or country may also influence the effectiveness of whistleblower protections.

MANAGERIAL PREROGATIVE AND POWER ASYMMETRY

The relationship between employer and employee is inherently characterised by a power imbalance. Entering into an employment relationship entails accepting the employer's right to organise and direct the work and the organisation. This means that employees relinquish a certain degree of autonomy (Svalund, 2003). However, the extent of this relinquishment varies across countries and labour market models, depending on whether the power balance is labour-oriented or employer-oriented (Gallie, 2007; Visser, 2009).

Legal provisions granting employees the right to blow the whistle can be seen as an attempt to reduce this asymmetry and, in doing so, to limit the managerial prerogative. In this context, Walter Korpi's (1978, p. 35) definition of power resources is relevant: 'the properties of an actor that provide the ability to reward or punish another actor.' The stronger the employer is relative to the employee, the more power resources they can deploy, and vice versa.

The regulation and practice of managerial authority vary across countries. Mitchell (2014) has noted that in the EU, Nordic trade unions tend to prioritise negotiation, British and German unions focus on lobbying while Italian and French unions are more inclined to demonstrate. While this is a simplification, the Nordic countries are indeed characterised by high collective agreement coverage and high union density. This gives trade unions both power and legitimacy, and there is a long-standing tradition of collective voice in these countries. Institutional arrangements are in place to balance the inherently unequal relationship between labour and capital (Korpi, 1978, p. 35; Visser, 2009). Furthermore, elected employee representatives at the enterprise or organizational level aim to protect their members against unfair treatment, and multiple channels exist for employee participation, influence and voice (Trygstad et al., 2018). These arrangements appear to foster trust between employees and employers at the national, sectoral and organisational levels (Dølvik et al., 2014). Norway and Denmark are examples of such countries.

Elsewhere, collective agreement coverage and union density are significantly lower. This affects the legitimacy of trade unions in the eyes of employers and public authorities. The employer–employee relationship is often more unbalanced and employer-oriented (Visser, 2009). Moreover, the absence of local union representatives may leave employees without protection against unfair treatment and place whistleblowers in a more vulnerable position. In many countries employment protection is weak, making whistleblowers particularly vulnerable. In such contexts, robust whistleblower protection laws are especially

important, as they can shield employees from sanctions before, during and after a disclosure.

However, as Fasterling (2014) argues, weak labour rights may also limit the effectiveness of whistleblower laws:

> If the employer can terminate employment contracts for any reason, absent any legal presumption that would shift the burden of evidence to the employer, it will become even more complicated for the whistleblower to prove that the termination of the employment was predominantly motivated by his or her disclosure. (Fasterling, 2014, p. 336)

It is therefore relevant to consider other institutional arrangements that may influence the climate for whistleblowing, arrangements that can either facilitate or complicate the institutionalisation of whistleblower protections that offer real safeguards. As several contributors to this volume demonstrate, for employees to report wrongdoing, they must have trust in the practical effectiveness of whistleblower provisions.

BETWEEN INSTITUTIONS, REGULATION AND PRACTICE

This book explores, among other things, the strength of legal protections for whistleblowers and the potential impact of the EU Whistleblowing Directive on workers who find themselves in whistleblower positions. The Directive can, in many ways, be seen as a watershed moment in Europe (Abazi, 2020). While it is still too early to assess its full consequences –much will depend on how its transpositions are implemented across different countries– it has already sparked considerable interest among social scientists. The Directive is discussed in five chapters of this volume, each with a distinct thematic and methodological approach. Together, these chapters underscore the importance of both legal design and institutional credibility in fostering a whistleblower-friendly environment. However, we begin from a different standpoint, both geographically and thematically.

Chapter 2 reconceptualises whistleblowing not as a procedural safeguard within liberal democracies but as a radical act of resistance against systems of surveillance, exploitation and authoritarian control. Drawing on the critical theories of Michel Foucault, Antonio Gramsci and Frantz Fanon, Nkosana Sithole kaMiya frames whistleblowing as a dialectical struggle between freedom and power, particularly within neoliberal and post-colonial contexts. kaMiya advocates a reframing of whistleblowing as a collective, transnational act of democratic renewal. The chapter calls for solidarity frameworks that protect whistleblowers and challenge the complicity of state and corporate actors in suppressing dissent.

The diversity of perspectives in this volume is perhaps best illustrated by the contrast between Chapter 2 and Chapter 3. While kaMiya focuses on whistleblowing as a deeply political and emancipatory act, Vandekerckhove and Loyens in Chapter 3 explain how whistleblowing is institutionalised differently

across liberal and coordinated market economies in seven countries on three continents. Using Hall and Soskice's (2001) 'Varieties of Capitalism' (VoC) framework, the authors examine how whistleblower protection is operationalised and how institutional arrangements, particularly the degree of centralisation and civil society engagement, shape the effectiveness and transformative potential of whistleblowing regimes. They argue that while institutionalisation is necessary for effective protection, it may also neutralise whistleblowing's transformative potential by reinforcing existing institutional structures. Their analysis offers a valuable framework for understanding how national contexts shape whistleblowing systems and provide practical insights for policymakers and advocates.

The importance of institutional arrangements is also highlighted in Chapter 4, where Trygstad, Ødegård and Engelstad examine the role of managers in creating whistleblower-friendly environments within organisations across different employment regimes. While Vandekerckhove and Loyens adopt a macro-institutional lens, Trygstad, Ødegård and Engelstad focus on the organisational level. Drawing on survey data from England, Ireland, Denmark and Norway, they explore how managers perceive and respond to whistleblowing. Although institutional structures such as collective agreements and formal procedures appear to support whistleblower protection, the authors find that these do not necessarily influence managerial attitudes. Their chapter underscores the importance of both institutional context and employment regimes in shaping whistleblowing outcomes.

Chapter 5 marks a shift in focus towards the EU Directive. Lewis explores how EU Member States have incorporated trade unions into their national frameworks when transposing the Directive, which came into force in 2021. The Directive adopts a three-tiered model of disclosure, internal, external, and public, creating multiple entry points for trade union involvement. By reviewing national legislation across the EU, Lewis identifies significant variation in how trade unions are integrated. While some countries, such as Sweden and the Netherlands, explicitly recognise unions in whistleblowing procedures, others offer only minimal or symbolic roles. The analysis also highlights best practices from non-EU countries like Norway and New Zealand, where unions are more actively involved in shaping and monitoring whistleblowing frameworks. In line with Trygstad et al. in Chapter 4, Lewis emphasises the importance of institutional arrangements such as collective bargaining and social dialogue in improving procedural fairness.

In Chapter 6, Munkholm and Ødegård compare how Denmark and Norway have approached the transposition of the EU Whistleblowing Directive (Directive 2019/1937), highlighting the legal, institutional and stakeholder dynamics in each country. Despite their similar labour market models and legal traditions, the two countries differ significantly in their whistleblower protection frameworks. Denmark had no general whistleblowing legislation prior to the Directive and introduced a new Whistleblower Act in 2021. Norway, by contrast, has had whistleblower protections embedded in its Working Environment Act since 2007 but has yet to fully implement the Directive. The chapter

analyses public consultation responses in both countries, focusing on how stakeholders, particularly employers and trade unions, assessed the need for the legislation and its scope. The chapter explores broader tensions between managerial prerogative and employee freedom of speech. It concludes that while both countries aim to protect whistleblowers, their approaches reflect differing legal traditions, stakeholder influence and interpretations of the Directive's purpose.

The transposition of the EU Directive is also addressed in Chapter 7. By focusing on how Ireland, Belgium and the Netherlands have transposed the sanctions aspect of the Directive, Verbraeken reveals significant divergence in the nature, scope and severity of sanctions across the three jurisdictions. While all the countries under consideration have implemented penalties for the core infringements outlined in the Directive, they differ in legal frameworks, enforcement mechanisms and the authorities responsible for imposing sanctions. Notably, all three have gone beyond the Directive by introducing penalties for failing to establish internal reporting channels, despite this not being explicitly required. A key concern raised in this volume is the practical effectiveness of legal sanctions. In many cases, whistleblowers themselves must initiate legal proceedings, an often burdensome and discouraging process. Verbraeken concludes that while legal sanctions are essential, their actual impact depends heavily on enforcement practices, judicial discretion and the broader institutional and cultural context in which whistleblowing takes place.

There are clear parallels between Chapters 6 and 7, both of which examine the implementation of the EU Whistleblower Directive, albeit from distinct perspectives. Together, these chapters highlight that legal frameworks, when combined with institutional arrangements, political will and organisational culture, are crucial in shaping effective whistleblower protection.

Chapters 8 and 9 also adopt a comparative lens, focusing on the transposition of the Directive in Southern Europe. In Chapter 8, Rizzo contrasts the Italian and French approaches, noting that France has exceeded the Directive's minimum standards while Italy has imposed restrictive conditions on external reporting and introduced weak enforcement mechanisms. Italy's whistleblowing framework has evolved from a fragmented, public-sector-focused system to a more comprehensive regime. However, the new legislation places significant limitations on access to external reporting channels and introduces sanctions that are often ineffective in practice. These shortcomings may contravene the Directive's non-regression clause, which prohibits Member States from lowering existing levels of protection. In contrast, the French approach aligns more closely with the spirit of the Directive. It allows whistleblowers to choose freely between internal and external reporting channels and imposes strong sanctions, including imprisonment for retaliatory actions. Rizzo argues that Italy's transposition undermines the Directive's objectives by subordinating external reporting and failing to ensure effective deterrence against retaliation. The chapter calls for urgent reforms to align Italy's framework with EU standards and to uphold whistleblower protection as a cornerstone of democratic accountability and anti-corruption efforts.

In Chapter 9, Fernández-González offers a comparative analysis of Italy and Spain, combining legal review with insights from interviews with 15 whistleblowers. The chapter identifies several key disincentives to reporting, including fear of retaliation, lack of anonymity, absence of independent reporting channels and potential legal liability. Cultural norms such as omertà (code of silence) and workplace mobbing further discourage whistleblowing. Conversely, motivations to report include strong ethical convictions, a commitment to public service and the presence of secure and trusted reporting mechanisms. While both countries have introduced compliance programmes and legal protections, neither provides financial or psychological support to whistleblowers, and both fall short in fully addressing the risks they face. In line with other contributors to this volume, Fernández-González concludes that while legal frameworks are indispensable, they must be accompanied by cultural change, institutional trust, and comprehensive support systems to ensure that whistleblowing is both safe and effective.

At this juncture, we must acknowledge that there are several important issues that we have been unable to explore in detail in this book. For example, we have not examined whistleblowing in Asian or Latin–American contexts, discussed technological or digital aspects of reporting processes or explained how intersectionality and diversity might influence the whistleblowing experience. It is also appropriate to draw the attention of readers to the existence of three specialist organisations operating in the field with which the authors are very familiar. Members of the International Whistleblowing Research Network have been exchanging information and meeting at conferences since it was established in 2009. Those who are in need of practical advice and assistance might contact the Whistleblowing International Network. Since 2018 this global body has been 'connecting and strengthening civil society organisations that defend and support whistleblowers'. Most recently, the European Whistleblowing Institute was established in 2022 and focuses mainly on education, research and policy advice.

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SEIZING THE MEANS OF EXPRESSION: WHISTLEBLOWING AS THE DIALECTIC OF FREEDOM AND POWER

Nkosana Sithole kaMiya

University of the Witwatersrand, South Africa

ABSTRACT

This chapter argues that whistleblowing, rather than being a procedural safeguard, constitutes a radical form of resistance against the systemic suppression of freedom of expression in working life. Drawing on Michel Foucault's theories of surveillance and disciplinary power, Antonio Gramsci's concept of the organic intellectual, and Frantz Fanon's call for decolonial rebellion, this chapter situates whistleblowing as a praxis that disrupts exploitative labor regimes and exposes the complicity of state and corporate institutions in perpetuating workplace injustice.

Through a comparative analysis of two key cases, Athanase Serge Ouanre's whistleblowing against military corruption in transitional Burkina Faso and Frances Haugen's critique of Facebook's exploitative practices, the chapter explores how whistleblowing intersects with workplace dynamics, labor rights, and democratic accountability. Ouanre's actions underscore the precariousness of whistleblowing within post-colonial governance structures that replicate exploitative labor systems while Haugen's revelations expose how corporate workplaces suppress employee expression under the guise of professional ethics, thereby enabling global harm.

Foucault's concept of biopolitics illustrates how whistleblowers disrupt the mechanisms of control that permeate workplaces while Gramsci's organic

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intellectual reframes whistleblowers as leaders of workplace resistance. Fanon's decolonial lens positions whistleblowing in post-colonial contexts as a necessary act of liberation against labor systems rooted in colonial domination.

The chapter concludes by advocating for the creation of transnational solidarity frameworks that empower workers as whistleblowers and shield them from retaliation. By reframing whistleblowing as a collective act of resistance, it envisions a global labor movement that reclaims workplaces as spaces of freedom, equity, and radical accountability.

Keywords: Biopolitics; corporate-state complicity; democratic renewal; freedom of expression; revolutionary praxis

Whistleblowing has long been framed as a necessary mechanism for ensuring transparency and accountability within institutions. However, this conventional framing conceals its radical potential as an act of subversion against the entrenched structures of power that shape workplace relations under global capitalism. This chapter argues that whistleblowing is not merely a function of liberal democracy but a disruptive force that exposes the contradictions of neoliberal governance, where the rhetoric of transparency masks authoritarian control over workers and citizens alike. Far from being an isolated ethical choice made by courageous individuals, whistleblowing represents a broader dialectical struggle between power and resistance, surveillance and exposure, and domination and subversion. The act of whistleblowing is inherently revolutionary because it fractures the ideological apparatuses that sustain capitalist accumulation. It disrupts the smooth functioning of institutions by revealing their complicity in exploitation, state violence, and corporate greed. In a world where surveillance has become the backbone of governance, whistleblowing forces into public view the hidden mechanisms of control that sustain exploitation.

Drawing on Michel Foucault's concept of disciplinary power (Foucault, 1977, p. 200), this chapter positions whistleblowing as an act that disrupts the mechanisms of surveillance and self-regulation that keep workers in compliance. It operates as a moment of rupture in what Foucault termed the panoptic gaze, a gaze that compels obedience through internalized fear rather than direct coercion. Whistleblowing is thus a radical assertion of agency in spaces where agency is deliberately curtailed, a direct confrontation with the technologies of domination that mold workers into docile subjects. Antonio Gramsci's notion of the organic intellectual (Gramsci, 1971, p. 5) provides the foundation for understanding whistleblowers as agents of workplace resistance, individuals who rise from within oppressive systems to challenge hegemonic power structures. Gramsci argued that the war of position, the slow, grinding struggle against ideological dominance, must be fought not only through overt political movements but also through the infiltration and subversion of institutions. Whistleblowers represent precisely this form of resistance: they weaponize knowledge against power, undermining the legitimacy of the institutions they once served.

Further, Frantz Fanon's theory of decolonial struggle (Fanon, 1961, p. 23) situates whistleblowing in the broader fight against post-colonial forms of

economic and social subjugation. Fanon's work reminds us that power is not merely coercive but also epistemic; it governs not only bodies but also ways of knowing and articulating reality. Whistleblowers, by exposing hidden truths, engage in a form of epistemic insurrection. Their revelations destabilize the carefully crafted myths that sustain modern capitalist democracies, myths of corporate benevolence, government accountability, and institutional neutrality. In post-colonial contexts, whistleblowing becomes even more radical, as it lays bare the persistence of colonial violence in contemporary governance structures.

Through a comparative analysis of two key cases, Athanase Serge Ouanre and Frances Haugen, this chapter examines how whistleblowing functions as a dialectical struggle between power and resistance. Ouanre's disclosures on military corruption in Burkina Faso illustrate the dangers faced by whistleblowers operating within post-colonial states where democratic institutions remain weak (Harsch, 2017, p. 75). His case highlights the continuity between colonial administrative violence and the modern authoritarian state, showing how whistleblowers in the Global South face not only institutional retaliation but also direct physical threats. Ouanre's revelations about the military's involvement in economic crimes disrupted the fragile balance of power in a state still grappling with the legacies of colonialism and military rule, marking whistleblowing as a revolutionary act of defiance against post-colonial authoritarianism.

Frances Haugen's critique of Facebook reveals how multinational corporations weaponize workplace ethics to stifle internal criticism while exploiting users on a global scale (Cadwalladr, 2021, p. 14). Facebook's unchecked monopolization of the digital sphere exemplifies the predatory nature of platform capitalism, where user data are extracted and commodified while internal dissenters are silenced. Haugen's whistleblowing exposes the corporation's deliberate prioritization of profit over ethical concerns, demonstrating that corporate governance is not merely about efficiency but about control and ideological enforcement.

Taken together, these case studies illustrate that whistleblowing is not simply an appeal to the conscience of institutions but a radical act of rupture that exposes the systemic nature of exploitation and control. This chapter contends that whistleblowers are not merely individuals acting on moral conviction but insurgents within bureaucratic machines, individuals who momentarily reclaim the means of expression in an otherwise silenced landscape. By situating whistleblowing within broader theoretical and political frameworks, this chapter underscores its revolutionary potential as an act of resistance against neoliberal, neo-colonial, and authoritarian structures.

THEORETICAL FOUNDATIONS

Foucault and the Panopticon of Capitalist Workplaces

The Panopticon as a Model of Workplace Surveillance

Foucault's concept of the *panopticon* (Foucault, 1977, p. 215) serves as a foundational lens for understanding how workplaces function as sites of surveillance,

discipline, and control under capitalist economies. Originally conceptualized by Jeremy Bentham as an architectural design for prisons, the panopticon ensures compliance through the internalization of an omnipresent, yet often invisible, gaze. Foucault expands this notion to illustrate how modern institutions, including workplaces, schools, and hospitals, cultivate self-regulating subjects who internalize mechanisms of discipline, rendering overt coercion unnecessary. The panoptic mechanism is particularly effective in contemporary workplaces where hierarchical structures and technological surveillance converge to create an environment of constant observation. Employees are not only subject to managerial oversight but also peer monitoring, performance assessments, and automated surveillance through workplace technologies. This leads to a state of hyper-vigilance in which workers pre-emptively adjust their behavior to conform to expected standards, even in the absence of direct supervision (Foucault, 1977, p. 201). The psychological effects of this internalized surveillance are profound, fostering an atmosphere of compliance where deviation from corporate norms is minimized.

Neoliberalism and Self-Policing in Capitalist Workplaces

In contemporary capitalist workplaces, power operates through both structural and psychological mechanisms. The neoliberal labor market, characterized by precarious employment, performance-based evaluations, and digital monitoring, intensifies Foucault's panoptic model. Employees, aware of potential scrutiny from supervisors, colleagues, or algorithmic management systems, engage in self-policing to align with managerial expectations. This is particularly evident in workplaces governed by surveillance capitalism, where data analytics and algorithmic oversight further entrench self-discipline (Zuboff, 2019, p. 130). Workers internalize not only the disciplinary gaze of their superiors but also the pressure to conform to corporate values that prioritize productivity, efficiency, and brand loyalty over ethical considerations. The fear of being perceived as non-compliant or disruptive leads to an environment of silent complicity, where individuals suppress dissent to maintain job security and career progression.

This dynamic is exacerbated by performance management systems that reward efficiency and penalize perceived underperformance. Employees often feel pressured to overextend themselves, normalize unpaid labor, and avoid actions that could place them in conflict with management. Consequently, corporate environments foster a culture where self-surveillance and disciplinary conformity become naturalized behaviors rather than imposed regulations (Foucault, 1977, p. 222).

Whistleblowers pose a fundamental challenge to this disciplinary structure. By exposing unethical practices, they disrupt the internalized compliance that neoliberal capitalism demands. Their act of revelation fractures the illusion of corporate accountability and transparency, unveiling the exploitative dynamics hidden beneath polished public relations narratives. In this sense, whistleblowing is more than a legal or ethical issue; it is a radical act of defiance that reclaims autonomy from the omnipresent gaze of managerial oversight. It embodies an

epistemic rupture, challenging the hegemonic discourse that legitimizes corporate governance while exposing the contradictions between stated ethical commitments and actual institutional practices (Alford, 2001, p. 17).

The act of whistleblowing also brings to light the mechanisms through which corporations attempt to silence dissent. Retaliation against whistleblowers, through legal action, dismissal, or character defamation, demonstrates the lengths to which institutions will go to protect their power structures. In doing so, these reactions reaffirm the deeply entrenched panoptic control within capitalist workplaces, as organizations seek to neutralize disruptions and restore compliance (Near & Miceli, 1985, p. 10).

Biopolitics and the Management of Workers

Foucault's concept of *biopower*, the control over bodies and populations, further illuminates the disciplinary role of workplaces. If workplaces function as sites where biopower is exercised, then whistleblowing disrupts this control by undermining the normalization of corporate misconduct. The act of speaking out destabilizes managerial authority, creating counter-discourses that challenge the dominant ideological structures sustaining neoliberal capitalism (Foucault, 2003, p. 243). Corporate governance increasingly extends beyond workplace productivity to influence employees' personal lives, particularly in sectors where performance expectations demand high levels of emotional labor and constant availability. The expectation that employees demonstrate corporate loyalty beyond working hours reinforces workplace discipline, illustrating how biopolitical control shapes not only professional conduct but also identity formation (Rose, 1999, p. 87).

Whistleblowers, in revealing these mechanisms of control, expose the broader structures of corporate power that govern contemporary labor relations. They highlight the contradictions within corporate rhetoric, revealing how institutions prioritize profit over ethical considerations while simultaneously promoting narratives of corporate social responsibility.

With the rise of digital surveillance, the panoptic model has evolved beyond the physical workplace into virtual spaces where employees are constantly monitored through keylogging software, productivity trackers, and AI-driven analytics. This shift intensifies workplace discipline, as employees not only fear direct managerial oversight but also the impersonal yet pervasive gaze of machine intelligence. Algorithmic decision-making further deepens the asymmetry of power, as workers are subjected to opaque performance evaluations that can determine promotions, pay raises, or even termination (O'Neil, 2016, p. 42). Digital surveillance technologies reinforce panoptic control by ensuring that every action is recorded, assessed, and potentially used against employees who fail to conform to prescribed standards.

The expansion of panoptic surveillance into remote workspaces further exacerbates this dynamic. Even in work-from-home environments, employees remain under constant scrutiny through productivity software and communication tracking systems. This omnipresent surveillance eliminates traditional

boundaries between work and personal life, extending capitalist discipline into private spheres (Lyon, 2006, p. 56).

Gramsci and the Whistleblower as the Organic Intellectual

Antonio Gramsci's concept of the *organic intellectual* (Gramsci, 1971, p. 7) provides a compelling framework for understanding the role of whistleblowers within capitalist workplaces. Traditionally, intellectuals have been perceived as academics, theorists, or cultural figures detached from the material conditions of labor. However, Gramsci challenges this notion by arguing that every social class generates its own intellectuals, individuals who emerge from within the workforce, not only to provide technical expertise but to articulate a counter-hegemonic vision that challenges the dominant ideology. From this perspective, whistleblowers function as organic intellectuals because they expose the ideological apparatuses that sustain exploitation, reveal the contradictions within corporate governance, and disrupt the mechanisms through which consent is manufactured in the workplace.

Gramsci (1971, p. 12) argues that ruling classes maintain dominance not merely through coercion but through the manufacture of consent, what he calls *hegemony*. Institutions such as the media, education systems, and corporate workplaces function as ideological state apparatuses that normalize capitalist exploitation, creating an illusion of fairness and meritocracy. Within this framework, workers are often conditioned to accept power asymmetries as natural and to internalize corporate values that prioritize efficiency, competition, and brand loyalty over ethical considerations.

Organic intellectuals emerge within the working class to contest this manufactured consent. Unlike traditional intellectuals, who may serve the interests of the ruling elite, organic intellectuals derive their knowledge from lived experience and use it to challenge hegemonic narratives. They articulate the grievances of their class, expose hidden forms of exploitation, and construct alternative ways of organizing labor and governance. In this sense, whistleblowers embody the role of organic intellectuals by breaking the silence imposed by corporate power and offering counter-discourses that reveal the realities of workplace injustice.

Whistleblowing as Counter-Hegemonic Praxis

To understand whistleblowing as a form of counter-hegemonic praxis, it is necessary to examine how workplaces function as sites of ideological production. Within the capitalist labor structure, corporate governance relies on the systematic reproduction of dominant ideologies that obscure exploitative practices. Management constructs narratives of corporate social responsibility, ethical leadership, and financial necessity to justify profit-maximizing decisions, often at the expense of worker rights and public accountability. These narratives create a hegemonic order that discourages dissent by framing whistleblowing as an act of disloyalty rather than as a legitimate challenge to systemic corruption.

Whistleblowers disrupt this hegemonic order by exposing the contradictions within corporate ideology. For instance, when employees reveal financial fraud, environmental violations, or human rights abuses within an organization, they challenge the corporate rhetoric of transparency and social responsibility. By bringing hidden truths to light, whistleblowers weaken the legitimacy of corporate hegemony and create space for alternative modes of governance rooted in accountability and ethical responsibility. Gramsci (1971, p. 20) emphasizes that counter-hegemonic struggle is not spontaneous but requires conscious effort to organize and sustain resistance. This is particularly relevant for whistleblowers, who often face severe retaliation for their actions. The legal and institutional barriers designed to silence dissent, such as non-disclosure agreements, corporate surveillance, and strategic lawsuits against public participation (SLAPP) illustrate the extent to which ruling elites seek to neutralize organic intellectuals. Despite these obstacles, whistleblowers contribute to the formation of collective resistance by mobilizing workers, journalists, and civil society organizations to challenge corporate impunity.

The Role of Whistleblowers in Class Struggle

Gramsci's analysis of class struggle highlights the centrality of intellectual labor in sustaining and contesting capitalist dominance. While traditional intellectuals often serve the ruling class by legitimizing its policies and reinforcing capitalist ideology, organic intellectuals emerge from within the proletariat to advance the cause of working-class emancipation. Whistleblowers fit this mold by utilizing their insider knowledge to critique the contradictions of capitalist governance and advocate for systemic change. One key aspect of Gramsci's thought is the notion that hegemony operates not only in the economic and political spheres but also in the cultural domain. Capitalist enterprises invest heavily in shaping public perceptions through corporate propaganda, philanthropic initiatives, and strategic partnerships with media outlets. This cultural hegemony creates a climate where whistleblowers are vilified as disgruntled employees or traitors rather than as principled individuals seeking justice. The demonization of whistleblowers serves to discredit their revelations and maintain the illusion of corporate integrity.

However, Gramsci (1971, p. 34) also notes that counter-hegemonic forces can challenge this narrative by constructing alternative discourses that resonate with the working class. Whistleblowers who expose labor abuses, financial misconduct, or environmental crimes play a crucial role in disrupting capitalist cultural hegemony. Their testimonies humanize the abstract statistics of corporate malfeasance, transforming hidden injustices into tangible social issues that demand collective action. Through media engagement, legal advocacy, and grassroots mobilization, whistleblowers contribute to the broader struggle for workplace democracy and corporate accountability.

Gramsci distinguishes between two forms of revolutionary struggle: the *"war of maneuver"* and the *"war of position."* The *war of maneuver* refers to direct confrontations with the ruling class, such as strikes, protests, and armed uprisings. In contrast, the *war of position* is a prolonged ideological and cultural struggle aimed

at eroding the foundations of capitalist hegemony (Gramsci, 1971, p. 57). Whistleblowing aligns with the war of position because it challenges the ideological justifications that sustain corporate power. Rather than engaging in immediate, large-scale disruption, whistleblowers initiate gradual shifts in public consciousness by revealing corporate malpractices. Their disclosures serve as catalysts for regulatory reforms, organizational restructuring, and shifts in consumer behavior. In some cases, whistleblower revelations lead to the emergence of new labor movements and policy changes that strengthen worker protections. This incremental erosion of corporate hegemony aligns with Gramsci's vision of a long-term struggle to transform social structures from within.

Challenges and Contradictions in Whistleblowing as Organic Intellectualism

Despite its revolutionary potential, whistleblowing as a form of organic intellectualism is full with contradictions. First, whistleblowers often operate within the very institutions they seek to challenge, which means they are subject to corporate influence and legal constraints. Unlike traditional activists who position themselves entirely outside the system, whistleblowers must navigate complex power dynamics that shape the effectiveness of their actions.

Second, not all whistleblowers adopt a class-conscious perspective. Some individuals expose corporate wrongdoing out of personal grievances rather than a broader commitment to social justice. While their actions may still disrupt corporate hegemony, they do not necessarily contribute to a transformative political movement. This highlights the need for organized networks that can harness whistleblower revelations for sustained resistance rather than isolated acts of defiance.

Third, the commodification of whistleblowing presents a challenge to its radical potential. In some cases, corporate entities co-opt the language of transparency and accountability to maintain their legitimacy while suppressing genuine dissent. Whistleblowing hotlines, internal compliance programs, and ethics training initiatives often serve as mechanisms to manage and contain resistance rather than to empower workers. Gramsci warns against such passive revolution, where ruling elites incorporate elements of dissent to neutralize their impact without fundamentally altering power structures (Gramsci, 1971, p. 60).

Fanon, Decolonial Struggle, and the Whistleblower: Decolonization as Rupture

Frantz Fanon, one of the most prominent theorists of *decolonization*, conceptualized the process as an inherently violent rupture. Decolonization, for Fanon, was not merely a transfer of power from colonizers to colonized but a radical, irreversible dismantling of the colonial order, an order deeply entrenched in the political, economic, social, and psychological structures of the colonized world. In his seminal work, *The Wretched of the Earth*, Fanon contends that decolonization is a complex process involving the reorganization of society and the uprooting of colonial power structures that perpetuate exploitation and domination. The violence of this rupture is, in Fanon's view, a necessary response to

the dehumanizing effects of colonialism, and it marks the beginning of true liberation for colonized peoples (Fanon, 1961, p. 37). Within this framework, the role of whistleblowers in post-colonial states can be understood as a form of revolutionary resistance. Whistleblowers, those who expose corruption, systemic injustices, and human rights abuses within government agencies, corporations, or military establishments, play a crucial role in challenging the enduring colonial bureaucracies that persist under the guise of neoliberal governance. Despite formal political independence, many post-colonial states remain structurally tied to global capitalist networks that continue to sustain neocolonial domination. In this context, whistleblowers become agents of rupture, breaking the silence around ongoing exploitation and revealing the deep connections between contemporary systems of power and the colonial past.

Fanon's analysis of post-colonial states emphasized that national independence did not automatically result in genuine liberation. In fact, many former colonies found themselves trapped in the cycle of internalized oppression. The ruling elite, whom Fanon terms the *"national bourgeoisie,"* often mimicked the colonial administrators they had replaced. Rather than dismantling the structures of colonial rule, these elites maintained exploitative systems that concentrated power and resources in the hands of a small minority while the majority of the population continued to suffer from economic, political, and social marginalization (Fanon, 1961, p. 122).

In many post-colonial states, the bureaucracies inherited from colonial regimes remain in place. These institutions, rather than serving the needs of the people, function as instruments of surveillance, discipline, and repression. They ensure that power remains concentrated in the hands of a few while the masses are kept subjugated through corruption, economic inequality, and the suppression of dissent. Whistleblowers, in this context, serve as disruptors of the neocolonial order. By exposing the ways in which state institutions and multinational corporations continue to extract resources, exploit workers, and suppress democratic freedoms, whistleblowers challenge the legitimacy of these systems. Their actions bring to light the enduring colonial logic that underpins these post-colonial bureaucracies and reveal the persistence of colonial patterns of exploitation and domination.

In this sense, whistleblowers engage in an act of resistance that mirrors the broader decolonial struggle Fanon described. Just as anti-colonial fighters sought to disrupt the colonial system and establish new political and economic structures, whistleblowers confront the neocolonial systems that perpetuate inequality and exploitation. By revealing the hidden workings of these systems, they force society to reckon with uncomfortable truths about the persistence of colonialism in the present day.

The Psychological Cost of Speaking Truth: The Coloniality of Power

Fanon's work on the psychological effects of colonialism offers an important lens through which to understand the psychological costs borne by whistleblowers. The colonial order, according to Fanon, operated not only through

direct economic and political domination but also through the internalization of fear, obedience, and alienation among the colonized (Fanon, 1952, p. 18). Colonization functioned through a complex web of psychological mechanisms that reinforced the inferiority of the colonized and the superiority of the colonizer. Similarly, whistleblowers face immense psychological pressure in their struggle for truth and justice. They are often isolated, marginalized, threatened with violence, or criminalized for exposing institutional wrongdoing. The fear of persecution, job loss, and social ostracization mirrors the mechanisms of control that colonial regimes used to suppress resistance and maintain their dominance.

Fanon's concept of the *"colonial mentality"* remains highly relevant in understanding why many individuals within post-colonial institutions choose silence over resistance. The colonial mentality is a form of internalized colonialism, where individuals internalize the values, norms, and authority of the colonizer. This mentality leads to a culture of compliance and submission, where individuals avoid challenging authority due to fear of punishment or an ingrained sense of subservience (Fanon, 1952, p. 22). Whistleblowers, in defying this psychological conditioning, engage in an emancipatory act. In speaking truth to power, they break the mental shackles of colonial domination and assert their agency in the struggle for justice and liberation.

The psychological costs of whistleblowing are immense. Whistleblowers often experience profound emotional and mental distress due to the pressure placed upon them by the institutions they seek to expose. They face threats to their career, their reputation, and their personal safety. Yet, in choosing to speak out, they perform a revolutionary act, resisting the coloniality of power that seeks to keep them silent. This aligns with Fanon's vision of liberation as a struggle for both physical and psychological freedom. Whistleblowers, in their defiance of the status quo, contribute to the dismantling of the psychological chains that bind them to oppressive systems.

Whistleblowing as Decolonial Praxis

Within the Fanonian framework, whistleblowing can be understood as a form of *decolonial praxis*, an act of resistance that goes beyond merely exposing individual instances of corruption or injustice. Whistleblowers challenge the very structures of exploitation that sustain neocolonial power, seeking to dismantle the systems that perpetuate colonial forms of domination and exploitation. As Fanon argued, true liberation requires the creation of new structures that reflect the interests of the oppressed rather than maintaining the political and economic frameworks established by colonialism (Fanon, 1961, p. 176). In this sense, whistleblowing serves as a form of counter-colonial resistance. Whistleblowers, by revealing systemic injustices and demanding accountability, contribute to the creation of new political and social structures that are more just and equitable. Their actions challenge the legitimacy of the colonial apparatus that continues to operate under the surface of post-colonial governance. Whistleblowing, then, is not simply an act of exposure; it is an act of defiance against the colonial and neocolonial systems of power that continue to dominate and exploit.

The struggles of prominent whistleblowers such as Edward Snowden, Chelsea Manning, and the many African activists who have exposed state corruption and corporate malfeasance underscore the global significance of whistleblowing as a form of anti-colonial resistance. These figures have revealed how former colonial powers continue to exert influence over post-colonial states through military alliances, economic policies, and surveillance operations. By exposing these hidden relationships, they bring attention to the ways in which neocolonialism operates on a global scale.

Whistleblowers who operate within the context of post-colonial states often find themselves at the forefront of struggles against entrenched power. These individuals, much like Fanon's anti-colonial fighters, force society to confront uncomfortable truths about the nature of power, sovereignty, and oppression. Through their courage and resistance, whistleblowers contribute to the ongoing decolonial struggle, challenging the systems of exploitation that continue to shape the world in the wake of colonialism.

CASE STUDIES

Athanase Serge Ouanre and Military Corruption in Burkina Faso: The Reproduction of Colonial Exploitation and Repression

In the shadows of Africa's post-colonial landscape, where the aftershocks of imperial conquest continue to reverberate through neocolonial economic structures, militarized governance, and elite domination, the figure of the whistleblower is emerging as a radical disruptor of entrenched systems of power. These individuals, often imperiled by the very institutions they once served, seek not merely to correct administrative wrongdoing but to challenge the political economy of repression itself. Among such figures, Athanase Serge Ouanre stands as a compelling example of the dangers and emancipatory potential of whistleblowing in post-colonial Africa (Harsch, 2017).

Ouanre's decision to expose military corruption in Burkina Faso transcends the boundaries of internal institutional critique. His whistleblowing, carried out at great personal risk and eventually leading to his exile, represents a form of external reporting that challenges not only bureaucratic malpractice but the foundational logics of military authoritarianism (Harsch, 2017). As such, Ouanre's actions are not merely managerial or reformist; they are politically subversive. His case invites us to reframe whistleblowing not just as a regulatory mechanism within neoliberal capitalism or statecraft but as a radical act of decolonization, especially when it confronts institutions whose authority is rooted in the reproduction of colonial violence. To understand the revolutionary potential of Ouanre's dissent, we must first situate Burkina Faso within its historical matrix of colonial exploitation. Under French rule, the colony (then known as Upper Volta) was subjected to extractive labor regimes enforced by a repressive military apparatus. The colonial military was not merely a security force; it was a coercive structure designed to safeguard imperial accumulation and to pacify resistance (Zongo, 2015, p. 57).

After formal independence in 1960, many of these colonial institutions were inherited intact. Rather than being dismantled, they were retooled by post-colonial elites, often trained within the same military and administrative frameworks, to consolidate their own power (Harsch, 2017, p. 80). Far from representing a rupture with the colonial order, the post-independence state in Burkina Faso, like many others on the continent, reproduced the same coercive logics under the banner of nationalism. The military remained central to this postcolonial regime. Its role was no longer to protect a European empire but to ensure regime stability through surveillance, violence, and resource capture. This entanglement of military and state interests laid the groundwork for a military-industrial complex that would become increasingly opaque and unaccountable (Ouedraogo, 2016, p. 112).

Ouanre's Whistleblowing: Beyond Internal Complaint to Public Exposure

Athanase Serge Ouanre, a former soldier, did not raise his concerns through institutional channels or within the command structure (Harsch, 2017). His revelations were not part of an internal reporting mechanism aimed at enhancing the military's efficiency or organizational integrity. Instead, his whistleblowing constituted external reporting, a public denunciation of state-sanctioned corruption and violence. In doing so, he rejected the role of loyal functionary and assumed that of political dissenter.

This distinction matters. While whistleblowing in many bureaucratic and corporate contexts is framed as a loyalist act, aimed at preserving institutional efficiency or shareholder value, Ouanre's whistleblowing challenges the entire *raison d'être* of the military in Burkina Faso. It is not the malfunction of the military he exposes but its functioning as a mechanism of elite enrichment and popular repression. This moves the act of whistleblowing out of the domain of procedural compliance and into the terrain of revolutionary praxis.

Moreover, whereas internal whistleblowing may be encouraged or even mandated in neoliberal governance systems as a form of managerial control, Ouanre's external disclosure aligns more closely with *public interest whistleblowing*. This form of whistleblowing appeals to a higher sense of justice, one that may transcend both employer loyalty and national allegiance. In contexts where the state itself has become an instrument of exploitation, such whistleblowing becomes an act of radical rupture rather than reform.

Ouanre's revelations must be read within the broader critique of the *coloniality of power*, a term that describes how colonial structures continue to shape post-independence institutions. In Burkina Faso, the military has remained a key site through which this coloniality is expressed. Ostensibly national in character, it functions as an apparatus for the protection of elite interests and the suppression of dissent, precisely as it did under colonial rule (Harsch, 2017, p. 79; Zongo, 2015, p. 67).

Ouanre's account exposed a range of corrupt practices: the embezzlement of military funds, illegal arms deals, and the deployment of force to crush civil resistance. These were not isolated deviations but emblematic of the systemic rot

within an institution that had never been fundamentally transformed. In this sense, the whistleblower's act was not a call for better governance but an indictment of an entire system built on coercion.

Compliance, Control, and the Illusion of Reform

A deeper theoretical point raised by Ouanre's case concerns the ambivalence of whistleblowing itself. In corporate and bureaucratic settings, whistleblowing may be framed as a mechanism of organizational self-regulation. Employees are encouraged, or compelled, to report wrongdoing as part of compliance regimes designed to preserve the legitimacy of the system. In this context, whistleblowing is less an act of dissent than one of discipline; it sustains the very structures it appears to challenge.

This co-optation is important to recognize. The imposition of a duty to report wrongdoing may function as a form of managerial surveillance, where employees are both subjects and enforcers of institutional norms. Far from being subversive, such whistleblowing may enhance the system's resilience. Ouanre's case resists this paradigm. His actions cannot be reduced to a compliance function. His refusal to remain silent constituted a rejection of the entire architecture of military power and its complicity in the ongoing exploitation of the Burkinabe people. In this, his whistleblowing aligns more with Fanon's call to decolonize the state and less with liberal calls for transparency within the existing order.

Whistleblowing in post-colonial contexts is full with peril. States built upon colonial scaffolding often retain the repressive capacities of their predecessors. Dissenters are routinely subjected to imprisonment, torture, exile, or assassination. Ouanre's exile is part of a broader pattern wherein those who challenge the security apparatus are branded enemies of the state or agents of foreign powers (Harsch, 2017, p. 84). These dangers are compounded by the complicity of international actors. Post-colonial militaries often depend on foreign aid, arms, and training from former colonial powers and global hegemonies. In this sense, whistleblowers like Ouanre are not only challenging domestic elites but also the global structures that enable their violence.

Conclusion

Athanase Serge Ouanre's case challenges us to rethink the political meaning of whistleblowing. His act was not one of managerial oversight or institutional repair; it was a direct confrontation with the colonial logic embedded in the post-independence military state. In this context, whistleblowing becomes an act of decolonial praxis: a refusal to comply with the systems of control, exploitation, and surveillance that continue to define African political life.

To call whistleblowing "radical" in such settings is not rhetorical excess. It is an acknowledgment of the existential risks undertaken by those who expose truth in conditions of authoritarianism. Ouanre's whistleblowing is both a political act and a moral call, a reminder that the fight for justice in post-colonial

Africa is ongoing and that exposing state violence remains a crucial step toward building a decolonized future.

Frances Haugen and Corporate Supremacy: The Authoritarian Control of Corporate Power and the Undermining of Democratic Accountability

Corporate Whistleblowing and the Struggle for Democratic Accountability

In the contemporary era, corporations, especially transnational tech giants like Facebook, wield enormous influence over our daily lives and political systems. Unlike state institutions, which are subject to mechanisms of democratic accountability, corporations operate in opaque, hierarchical ways that often escape public scrutiny. Frances Haugen's whistleblowing in 2021 is an important intervention in exposing the authoritarian dimensions of corporate power and its impact on democratic institutions, revealing the inadequacy of existing regulatory frameworks to govern these entities.

However, in understanding Haugen's intervention, it is critical to distinguish between *internal* and *external* forms of whistleblowing, as well as the divergent implications of *public* versus *private* sector contexts. Haugen initially engaged in internal reporting within Facebook, alerting leadership to the dangers posed by the platform's algorithmic structures and societal impacts. But when internal efforts were ignored, she took the radical step of going public, testifying before Congress and leaking internal documents. This shift from internal to external whistleblowing marks a rupture: while internal whistleblowing may be aligned with organizational loyalty and procedural compliance, external whistleblowing constitutes a more profound challenge to institutional authority, especially when it involves public disclosure of malfeasance in defiance of corporate non-disclosure agreements.

Haugen's case thus highlights a broader point: external whistleblowing can become an act of political resistance, particularly when the information revealed exposes systemic harms facilitated by corporate secrecy. Unlike whistleblowing that merely enhances organizational efficiency, Haugen's disclosures dismantled the façade of corporate ethics, unveiling Facebook's complicity in the erosion of mental health, political stability, and democratic discourse.

Internal Versus External Whistleblowing: Navigating Corporate Structures

Whistleblowing, broadly defined as the disclosure of organizational wrongdoing by individuals from within the institution, can be analytically distinguished into internal and external forms, each with its own implications for power, ethics, and accountability.

Internal whistleblowing occurs when employees report misconduct through mechanisms sanctioned by the organization itself, such as reporting hotlines, ethics committees, or line managers. From an organizational theory perspective, this practice can be interpreted as an attempt to preserve institutional integrity and self-correct through internal feedback mechanisms. It may seem aligned with the ideals of corporate social responsibility and ethical governance.

However, a critical lens, particularly from Foucauldian perspectives on power and surveillance, suggests that internal whistleblowing mechanisms often function as instruments of disciplinary control rather than genuine platforms for accountability (Miceli & Near, 1992; Vandekerckhove, 2006). In many instances, these mechanisms are designed less to resolve systemic issues and more to contain dissent, pre-empt reputational damage, and surveil the boundaries of employee loyalty (Alford, 2001).

The danger here is that internal whistleblowing may reinscribe corporate hegemony under the guise of ethical practice. Employees may be co-opted into a culture of silence and complicity, especially when the hierarchical power dynamics discourage upward feedback or retaliation is subtly sanctioned. In such settings, whistleblowing is rendered performative, allowed insofar as it does not challenge the fundamental logic of the institution (Perry, 1995).

In contrast, external whistleblowing involves disclosing information to parties outside the organization, such as the media, regulatory agencies, civil society organizations, or the broader public. This form is often framed within organizational discourse as an act of betrayal, an affront to corporate loyalty and confidentiality. Yet, from a socio-political and ethical standpoint, external whistleblowing can be crucial in exposing systemic and deeply entrenched malpractices that internal channels are either unwilling or incapable of addressing (Grant, 2002; Kenny, 2019). In capitalist political economies, where corporate actors possess increasing influence over regulatory regimes, media ecosystems, and even legal frameworks, external whistleblowing may be the only available pathway to public accountability and democratic oversight.

Notably, public interest whistleblowing (a subset of external whistleblowing) functions as a form of counterpower. It disrupts the privatization of knowledge within corporations and asserts the collective right to transparency, particularly when corporate practices endanger public health, safety, civil liberties, or democratic norms (Glazer & Glazer, 1989). Here, whistleblowers occupy a liminal space between moral agent and political dissenter, often at great personal cost.

Legal frameworks such as the UK's Public Interest Disclosure Act (PIDA) of 1998 were enacted in recognition of this function. PIDA offers protections for individuals disclosing information deemed in the public interest, including corruption, environmental damage, or gross negligence. However, the effectiveness of such legislation is uneven. As scholars have noted, statutory protections are often procedurally burdensome, narrow in scope, and contingent on complex evidentiary requirements (Devine & Maassarani, 2011; Lewis, 2001). Moreover, legal protection does not insulate whistleblowers from retaliation, career sabotage, psychological distress, or social ostracism, common consequences documented across multiple jurisdictions (Alford, 2007; Dworkin & Baucus, 1998).

Further complicating the terrain is the neoliberal restructuring of work, which has intensified job precarity, individualized risk, and diminished collective protections like unionization. These conditions disincentivize whistleblowing and reinforce a culture of fear and managerial supremacy. In this context, whistleblowing becomes not only a moral act but a political one, a challenge to

the foundational logics of neoliberal capitalism that prioritize profitability over justice, loyalty over truth, and opacity over accountability.

Thus, the distinction between internal and external whistleblowing is not merely procedural, it is ideological. It reflects divergent visions of accountability: one rooted in institutional containment and image management and the other in democratic transparency and resistance to corporate authoritarianism.

Whistleblowing as a Radical Act

Frances Haugen's decision to leak a cache of internal Facebook documents and provide testimony before the US Congress in 2021 constitutes not merely an act of dissent but a radical rupture with the normative expectations of corporate loyalty, confidentiality, and internal compliance. Within the discursive architecture of Silicon Valley, employees are often valorized for innovation but simultaneously subjected to strict regimes of information control and ideological conformity. Haugen's actions, therefore, should be understood as a deliberate challenge to *corporate authoritarianism*, a term that encapsulates the hierarchical, opaque, and increasingly transnational power wielded by technology firms over public life and democratic processes (Morozov, 2014; Zuboff, 2019).

Crucially, Haugen's whistleblowing illuminates the limitations of internal reporting mechanisms in environments where corporate governance is shaped less by ethical deliberation and more by algorithmic opacity, investor interests, and user commodification. The internal channels available to her, as she herself testified, proved structurally inadequate for addressing Facebook's systemic disregard for user safety, democratic integrity, and mental health, especially among adolescents (Haugen, 2021). By choosing to act externally, she transformed whistleblowing into a political act of resistance, one that exposed the ideological contradiction between Facebook's public commitments to "community" and "connectivity" and its operational realities of platform harm and profit-driven inaction.

From a critical theoretical standpoint, Haugen's disclosures function as a counter-hegemonic intervention (Gramsci, 1971). They challenge not only Facebook's internal culture but the broader capitalist logic of surveillance capitalism, which commodifies human experience for behavioral prediction and profit extraction (Zuboff, 2019). Whistleblowing in this context becomes a praxis of *truth-telling (parrhesia),* in the Foucauldian sense, a courageous act of speaking truth to power despite the potential for personal risk and retaliation (Foucault, 2003). It disrupts the epistemic monopolies corporations construct through public relations, selective transparency, and algorithmic governance.

Furthermore, Haugen's case exemplifies how whistleblowing serves as a form of democratic reclamation. It contests the informational asymmetry between corporations and the public, rupturing the corporate-state nexus that has increasingly come to define digital governance. In doing so, it demands a re-politicization of ethics in technological development, a move away from voluntaristic corporate codes toward robust, rights-based, and democratically accountable regulatory frameworks.

The Broader Implications for Democracy and Accountability

The implications of Haugen's revelations extend far beyond Facebook. They cast into sharp relief the governance crisis in the digital age, wherein states struggle to regulate corporations that operate with transnational reach and quasi-sovereign power. Tech giants like Meta (Facebook's parent company), Google, and Amazon function not merely as economic actors but as informational infrastructures that mediate public discourse, electoral processes, and knowledge production itself (Couldry & Mejias, 2019). The lack of enforceable oversight mechanisms, combined with lobbying power and regulatory capture, creates conditions in which corporate priorities, namely, user engagement and profit maximization, often override societal welfare.

Haugen's testimony before US and European lawmakers galvanized global discussions on algorithmic accountability, platform governance, and the protection of digital publics. Her disclosures provided empirical evidence for long-standing civil society claims about social media's role in facilitating polarization, misinformation, and political violence (Gillespie, 2018). More importantly, they reignited the normative question of who governs the digital sphere, corporate boards or democratic societies.

In this light, whistleblowing emerges as a democratic safeguard, a means through which individuals can circumvent institutional inertia and catalyze public discourse. It is not merely reactive but constitutive of democratic renewal, especially in a context where technological acceleration has outpaced legal and ethical deliberation. Haugen's actions thus illuminate the urgent need for legislative reforms, including comprehensive whistleblower protections, mandatory transparency obligations for tech companies, and independent oversight bodies with transnational jurisdiction.

Conclusion: Reframing Whistleblowing as Democratic Praxis

Frances Haugen's intervention should be understood not as an anomaly but as part of a broader genealogy of technological dissent, a lineage that includes figures like Chelsea Manning, Edward Snowden, and Christopher Wylie. Her case demonstrates that when internal mechanisms of accountability are structurally foreclosed or complicit, external whistleblowing becomes a moral imperative and a political necessity. It affirms the idea that whistleblowing is not merely an act of disloyalty or deviance, as corporations often frame it, but a form of radical democratic praxis, one that asserts the primacy of public interest over private capital.

To meaningfully support such acts, societies must resist the individualization of whistleblowing and instead locate it within collective struggles for transparency, accountability, and justice. As Haugen's disclosures reveal, safeguarding democracy in the digital age will require more than ethical codes and voluntary compliance, it will demand a transformation in how we conceptualize power, truth, and responsibility in the corporate-technological complex.

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VARIETIES OF CAPITALISM AND THE INSTITUTIONALIZATION OF WHISTLEBLOWING: CENTRALIZATION AND CIVIL SOCIETY ENGAGEMENT

Wim Vandekerckhove[a] and Kim Loyens[b]

[a]*EDHEC Business School, France*
[b]*Utrecht University, The Netherlands*

ABSTRACT

Efforts to institutionalize whistleblowing have increased since the beginning of the 21st century. While comparative law studies exist, there is little extant research on what operational forms are used to make whistleblower protection real.

This chapter uses a 'varieties of capitalism' (VOC) approach to provide theoretical insight into observations for seven countries about (1) centralization in governmental agencies of private sector whistleblowing handling roles and (2) the engagement of civil society actors in those handling roles. The authors use data from 2018 to provide baseline findings for future studies. The authors find that overall, in coordinated market economies (CME) whistleblowing institutionalizes through centralization of handling roles and low civil society engagement whereas in liberal market economies (LME) civil society is highly engaged in handling roles that interact in a decentralized way. The authors distinguish different types of institutional emulation that corroborate with the proximity of a nation to a particular VOC idealtype.

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The authors question the desirability of the neutralizing effect institutionalization seems to have on whistleblowing. To assist practice and whistleblowing campaigners, the authors develop a positional matrix that indicates where institutionalization would 'naturally' lead in terms of centralization of handling roles and civil society engagement and which of these two dimensions needs to be strengthened to obtain whistleblowing institutions that are capable to bring about change.

Keywords: Civil society; institutionalization; regulators; varieties of capitalism; whistleblowing

The scholarly definition of whistleblowing in a work context is 'the disclosure by organization members (former or current) of illegal, immoral or illegitimate practices under the control of their employers to persons or organizations that may be able to effect action' (Near & Miceli, 1985, p. 4). Efforts to institutionalize whistleblowing have increased since the beginning of the 21st century, at least in a regulatory sense. Calland and Dehn (2004) count only six countries with whistleblowing legislation prior to the year 2000. In 2004, Vandekerckhove (2006) counted seven countries with legislation and a further six where legislative bills were being discussed. A decade later, Thüsing and Forst (2016) included 23 countries in their review of whistleblowing legislation. And as recent as 2025, the ILO published an analysis of national laws containing whistleblowing provisions in the public sector across 67 ILO Member States (ILO, 2025).

Comparative studies of whistleblowing have focused either on individual intentions to blow the whistle and values around whistleblowing (for an overview see Vandekerckhove et al., 2014) or on what legal protection for whistleblowers is in force, i.e. 'who is protected, what kind of behaviour is protected, and what kind of behaviour whistleblowers are protected against' (IBA, 2021; Thüsing & Forst, 2016). Such legislation increasingly converges on a three-tiered model, as articulated in Vandekerckhove (2006, 2010) and taken up in the Council of Europe Recommendation (CM/Rec(2014)7), and the EU Directive on whistleblowing (EU2019/1937), which implies that protection measures are in place for whistleblowers in relation to their reporting of wrongdoing (1) inside their organization, (2) to regulatory agencies and (3) to the wider public.

However, comparative law studies do not exhaust institutional analysis. In the context of whistleblowing, Vandekerckhove (2010, p. 31) notes:

> In terms of policy recommendation, we need to emphasize the need for public knowledge about how whistleblower schemes are or are not working, as well as the desirability of civil society acting as a deterrent to retaliation against whistleblowers and cover-ups. Perhaps this is the most important aspect of the three-tiered model, charactizing its normative content [. . .].

In this chapter, we are interested in the 'operational forms' taken to make whistleblower protection real. We deem that gaining insight into different 'operational forms' of institutionalization is relevant to current debates on whistleblowing, in particular within the European Union. The EU's principle of subsidiarity stipulates that horizontal legislation (i.e. an EU Directive) needs to

be justified by evidencing that leaving a particular intervention to the member states would harm the interests of the European Union. DG GROW (2017) and DG JUST (ICF, 2017) provided these justification studies, and the EU Directive 'on the protection of persons who report breaches of Union law' (EU2019/1937) entered into force on 16 December 2019. The European Commission published in 2024 a first report on the transposition of the Directive into Member States' national legislation (EC, 2024), finding many differences remain and we are far removed from horizontal legislation. The Directive nevertheless includes stipulations for institutional arrangements, which is the focus of our analysis in this chapter. The EU Directive stipulates that member states need to mandate new or existing organizations and agencies to handle whistleblower reports (Art 12, Recital 64) and provide support measures (Art 20, Recital 89). Given that countries (also within the EU) have different institutional histories and make-ups, the research question this chapter answers is: what differences between countries can we expect in institutionalization of whistleblowing?

Loyens and Vandekerckhove (2018a, 2018b) carried out a comparative study of institutional landscapes. They observe two main points of difference: (1) in what government agencies do and (2) in civil society activism. However, Loyens and Vandekerckhove (2018a) provide description only for a limited sample (n = 11), without any attempt to provide a theoretical explanation. This chapter uses a 'varieties of capitalism' (VOC) approach to provide a theory driven explanation of these observations.

VOC denotes a new body of work (Hall & Soskice, 2001) within comparative political economy. The theory stipulates that within a political economy, two or more institutions will be complementary to each other. The theoretical contribution of our study is first to provide a further confirmation of VOC, extending empirical work into yet another sphere of political economy, namely whistleblowing. A second theoretical contribution of our chapter is to use our findings to provide a discussion on institutional emulation, which is something Hall and Gingerich (2009) speculate on. However, our main aim of the analysis in this chapter is practical rather than theoretical. We seek to use VOC as a theoretical lens to generate a critical discussion of institutional reforms currently debated in Europe, in the context of whistleblowing.

To that end, the chapter is structured as follows. The next section puts forward the main tenets of VOC. The section after that operationalizes the VOC model to explore the institutionalization of whistleblowing. We formulate propositions and explain our sample and measurements. The section after that, presenting and discussing our findings, is the longest one of the chapters and contains the contributions: corroboration of the propositions, discussing emulation and drawing a positional matrix with regard to institutionalization of whistleblowing in Europe. We conclude by summarizing our study and pointing out its limitations.

VARIETIES OF CAPITALISM

Historically, comparative political economy has concerned itself with how national variations in institutions affect economic performance. An important

line of work consists of looking for interaction effects among institutions across different spheres of the political economy. For example, interaction effects have been found between monetary institutions and institutions that govern wage coordination. Soskice (1990, 1991) started to develop a theory based on neo-corporatism and regulation scholarship, which became known as 'varieties of capitalism' (Hall & Soskice, 2001).

VCO is a theory about the nature of institutional complementarity that can be found in the political economies of the developed world. Paradigmatically, VOC is based on the notion that political economies are characterized by how firms and other actors coordinate their endeavours. It starts from the observation that countries have very different institutions but are nevertheless capitalist economies. Theoretically, its two propositions (Hall & Gingerich, 2009) are that (1) countries cluster into identifiable groups based on the extent to which firms rely on market or strategic modes of coordination and (2) complementarities exist between institutions in different spheres of the political economy. VOC distinguishes two idealtypes although other have been suggested (e.g. Nölke & Vliegenthart, 2009; Schneider, 2009): in liberal market economies (LME), relations between firms and other actors are primarily coordinated by competitive markets and in coordinated market economies (CME), more strategic interaction with trade unions, financial institutions and other actors can be found. Institutional landscapes rather than one particular institution is the object of VOC research. The main assumption of VOC seems to be that either institutions aim at market perfection (LME) or institutions do what markets don't (CME) and hence why institutional complementarities can be found.

Most research using VOC theory was conducted as comparative qualitative case studies (e.g. Campbell & Pedersen, 2007; Feldmann, 2006). Hall and Gingerich (2009), however, have provided some quantitative testing of VOC. They test VOC's two propositions for what they argue are the two most important institutional spheres of the political economy: labour relations and corporate governance. Hall and Gingerich (2009) note a difficulty in obtaining comparable measurements and resort to calculating factor scores based on OECD data, which limits the number of countries that can be included in the sample. They find measures for labour relations and corporate governance correlating strongly and significantly and find that a plot of those measures shows countries in LME and CME clusters.

Hall and Gingerich (2009) then go on to hypothesize systematic variation across other spheres. For example, they argue that organizations that coordinate wages can also be used to coordinate training systems and provide confirmatory analysis for this. They are furthermore able to confirm that institutionalized practices in the spheres of social protection, and product market regulation vary across countries in correlation with measures for labour relations and corporate governance and hence in correspondence with the characterization of the political economy across the LME–CME spectrum. Hall and Gingerich's (2004) quantitative confirmation of VOC was an important milestone in the development of the VOC research stream. However, the authors note that whilst it is

important to quantitatively confirm that uniformity exists for countries, how such uniformities come about remains an open question:

> It may well be conditioned by processes of institutional emulation in which analogous institutions in multiple spheres 'diffuse' together or by broader political processes that we do not address here. (Hall & Gingerich, 2004, fn18)

This chapter will explore how differences in institutionalization of whistleblowing can be understood through VOC. In the discussion of our findings, we will have a closer look at institutional emulation.

OPERATIONALIZING VOC FOR WHISTLEBLOWING

Loyens and Vandekerckhove (2018a, 2018b) made the (to our knowledge) first comparative study of institutionalization of whistleblowing. As legislation protecting the employment status of whistleblowers is enacted, Loyens and Vandekerckhove (2018b) note that an emerging policy question is what institutions will implement the legislation. Their research question does not relate to what court will be hearing claimants but rather which organizations and actors will take up roles in handling the whistleblowing throughout a whistleblower's journey, from innocuously raising a concern with their employer to then approaching an external agency that might effect action, to seeking protection from retaliation, to perhaps approaching journalists and eventually seek vindication in a court (Kenny, 2019; Rothschild & Miethe, 1999; Vandekerckhove & Phillips, 2019). For Loyens and Vandekerckhove (2018a), the question of institutionalizing whistleblowing is: who does what? They distinguish 8 roles, summarized in Table 1.

Table 1. Institutional Roles in Handling Whistleblowing (Loyens & Vandekerckhove, 2018a).

Function	Role	Description
Advisory	Awareness	General awareness-raising of the importance of whistleblowing in detecting and deterring wrongdoing
	Training	Dissemination of information, skill development and capacity-building targeted at specific stakeholder groups
	Legal support	Access to free legal advice tailored to the specific and individual needs of whistleblowers. Can be pre and/or post reporting and can include legal representation
	Psychosocial support	Access to career coaching and mental health services
Investigative	Investigation of wrongdoing	Investigation of the alleged wrongdoing aimed at fact finding and causal allocation of facts to outcomes
	Investigation of reprisal	Investigation of alleged reprisal against a whistleblower
Adjudicative	Corrective action	Action taken to remediate and sanction wrongdoing
	Protection	Action taken to redress and compensate harm done whistleblowers

Yet, Loyens and Vandekerckhove (2018a) remain descriptive; they do not attempt to theoretically explain their findings or derive further implications. We assert in this chapter that what Loyens and Vandekerckhove (2018a) observe is not a coincidence. Rather, the institutionalization of whistleblowing – i.e. the uptake of roles in handling whistleblowing – happens in an already existing institutional context. As can be seen from Table 1, the handling of whistleblowing requires several professional skills and mandates (cf. advisory, investigative and adjudicative functions), which require coordination. VOC posits that coordination within a political economy can be characterized as either competitive (LME) or strategic (CME) and that there is congruency across institutional spheres (Hall & Gingerich, 2004). Thus, if VOC is a valid theory, institutionalization of whistleblowing will be similar to other institutional spheres in the political economy. We therefor believe it is possible to explore to what extent VOC corroborates the observations of Loyens and Vandekerckhove (2018a).

In order to formulate propositions, let us first consider the constructs and sample Loyens and Vandekerckhove (2018a) used. They selected countries that had whistleblowing legislation in place and where there is at least one government agency that has at least one role in handling whistleblowing. They arrived at a sample of 11 countries: Australia, Belgium, France, Ireland, Israel, Netherlands, Norway, Republic of Korea, Serbia, the United Kingdom and the United States. Loyens and Vandekerckhove (2018a) used a sample of countries that had institutionalized whistleblowing – although in some, this was very recent (e.g. the Irish and Serbian legislation was from 2014, the French and Dutch was from 2016).

In nearly all of the countries included in the sample, recent legislative changes are still being implemented into institutional mandates as we write this chapter. Hence, an important limitation of our research presented here is that we arguably use outdated data. We acknowledge this but remain confident about our analysis on these two points. First, we are still seeing a lot of institutional mandates changing as we are writing this chapter (end of 2024). If we would have done a new data collection, it would also have been outdated by the time the book goes to print. Second, because the data we use are pre-transposition of the EU Directive, we position our research here as the baseline measurement for future studies.

How do Loyens and Vandekerckhove's (2018a) observations corroborate with VOC characterizations of political economies as LME or CME? They observe that although every country had at least one government agency with an explicit mandate to take up a handling role, in some countries government agencies would take up and combine more roles than in other. They also observe that in some countries, there would be one or a few government agencies with a vast market scope whereas in other countries, many government agencies would take up the same role but each for a distinct part of the economy. For example, ASIC (Australian Securities and Investment Commission) in Australia can receive whistleblower reports and investigate wrongdoing on any breach of law by any private sector corporation. In France, the Defender of Rights (*Défenseur*

des Droits, the national ombudsman) is mandated to do so for both public and private sector. In contrast, the SEC (Securities and Exchange Commission) in the United States, well known for its whistleblower-reward scheme mandated by the Dodd-Frank Act, is one of 23 Federal regulatory agencies and only occupies itself with fraud by companies noted on the stock exchange. Hence, what Loyens and Vandekerckhove (2018a) observe here are different degrees of centralization of whistleblowing handling roles. A higher degree of centralization implies a more strategic coordination (CME) of different handling roles.

Loyens and Vandekerckhove (2018a) also observe that in some countries, civil society organizations (CSOs) take up handling roles whereas in other countries, CSOs hardly play any role in the handling of whistleblowing. Hence, what they observe here are different degrees of civil society engagement. They understand CSOs as non-governmental organizations that receive whistleblower disclosures and – often in a more activist way – try to enhance whistleblower protection; journalists and media organizations are not included. Bair and Palpacuer (2012) found that activist CSOs in the United States and Europe had different structures and campaigned differently, corresponding to VOC characterizations. They observe 'NGOs substituting for the state' and 'raw struggle' in CME contexts (Bair & Palpacuer, 2012, p. 538). In line with their reasoning, we deem that a high degree of civil society engagement stems from weak formal strategic coordination power and thus that more civil society engagement implies more competitive coordination (LME) of whistleblowing handling roles.

We further note that Hall and Gingerich (2009) argue that labour relations and corporate governance are the two most important institutions in the political economy. They also confirmed that measures for these two institutions correspond with LME and CME characterizations.

We thus formulate the following propositions for our VOC model of whistleblowing institutionalization.

P1. *Strong coordination of labour relations and corporate governance enhances the centralization of whistleblowing handling roles.*
P2. *Weak coordination of labour relations and corporate governance coincides with high civil society engagement in whistleblowing handling roles.*
P3. *High civil society engagement in whistleblowing handling roles coincides with low centralization of whistleblowing handling roles.*

METHODOLOGY AND MEASURES

Hall and Gingerich (2004) point out that obtaining measures for institutions in different spheres of the political economy is difficult and error prone. They obtain measures from OECD data. We will use Hall and Gingerich's (2004) measures for the coordination of labour relations and corporate governance to test our hypotheses. Hall and Gingerich (2004) further assert that obtaining measures requires 'intense observation' of a particular sphere. We will therefore

use Loyens and Vandekerckhove's (2018b) observations to calculate measures for centralization of handling roles and civil society engagement.

One implication of our approach to measurements is that our sample is limited to countries used in both Hall and Gingerich (2004) and Loyens and Vandekerckhove (2018a, 2018b). We further do not include Belgium because the whistleblowing legislation only covers the public sector (in 2018) whereas in the other countries, both public and private sectors are covered by the whistleblowing legislation. This leaves us with a sample of seven countries: Australia, France, Ireland, Netherlands, Norway, the United Kingdom and the United States. We acknowledge that this small sample size poses a limitation to our research, especially with regard to the testing of our hypotheses.

As a measure for centralization of whistleblowing handling roles, we use:

CTR = (highest #roles by one organization/total #roles performed) x private sector coverage

This is the ratio of the highest number of whistleblowing handling roles taken up by a single governmental actor, per the total number of roles performed in that nation, taking into account the scope of that the organization's mandate.

As measure for civil society engagement, we use:

ENG = #roles by civil society organizations/total #possible roles

This is the ratio of the number of whistleblowing handling roles taken up by CSOs in a nation, by the total number of possible roles, which is 8 (cf. Loyens & Vandekerckhove, 2018a; 2018b). Table 2 gives an overview of the resulting measures.

Table 2. Measures Used in This Chapter.

Nation	Highest #Roles by One Gov Actor	Total #Roles in Nation	#Roles by Civil Society	Total #Roles Possible	Ctr	Eng	LRel	Gov
Australia	2	6	1	8	0.33	0.12	0.29	0.47
France	5	7	3	8	0.71	0.37	0.6	0.82
Ireland	2	6	3	8	0.33	0.37	0.28	0.35
Netherlands	8	8	1	8	1	0.12	0.53	0.74
Norway	2	4	0	8	0.5	0	0.81	0.74
UK	2	8	4	8	0.25	0.5	0.04	0.14
USA	4	7	4	8	0.03	0.5	0	0

LRel = Labour relations (taken from Hall & Gingerich, 2004).
Gov = Corporate Governance (taken from Hall & Gingerich, 2004).
#roles variables taken from country descriptions in Loyens and Vandekerckhove (2018b).
Ctr (Centralization) and Eng (Engagement) calculated based on formulas provided in the text the other variables.

FINDINGS AND DISCUSSION

We mapped our variables along our three propositions. The results are shown in Figs. 1–3. For labour relations and governance, we used measures from Hall and Gingerich (2009) as discussed in the previous section. The other two variables – centralization and engagement – are our own measures for institutionalization of whistleblowing, based on observation of Loyens and Vandekerckhove (2018b).

Looking at the plot in Fig. 1 for centralization and corporate governance, we can discern three groups. The LME group consisting of the United States and the United Kingdom; the CME group consisting of France, Netherlands and Norway; and a third 'middle' group of Ireland and Australia. This grouping corroborates with how these countries are often characterized in the VOC literature (Schneider & Paunescu, 2012). What we can thus say is that in countries that tend towards the CME idealtype, institutionalization of whistleblowing tends to occur through governmental agencies and actors whose mandate combines many of the whistleblowing handling roles and with civil society actors performing very few of those handling roles. In contrast, in countries that tend towards the LME idealtype, institutionalization of whistleblowing tends to occur through civil society actors who take up a number of whistleblowing handling roles and governmental actors with a limited mandate for handling roles.

Looking at the plot for engagement and labour coordination (Fig. 2), we see that most countries in our sample are where we expect them to be, i.e., high labour relations coordination (CME idealtype) coincides with low engagement

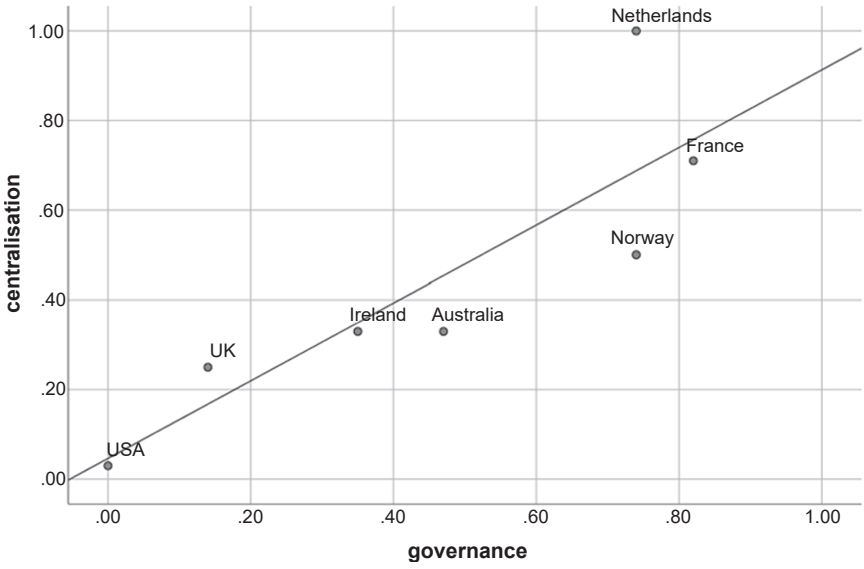

Fig. 1. Scatter Plot for Governance and Centralization Variables.

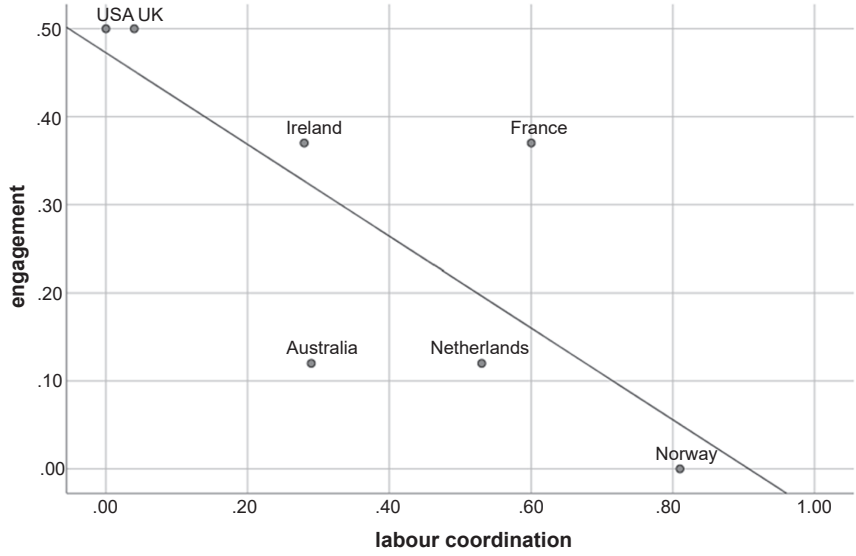

Fig. 2. Scatter Plot for Engagement and Labour Coordination.

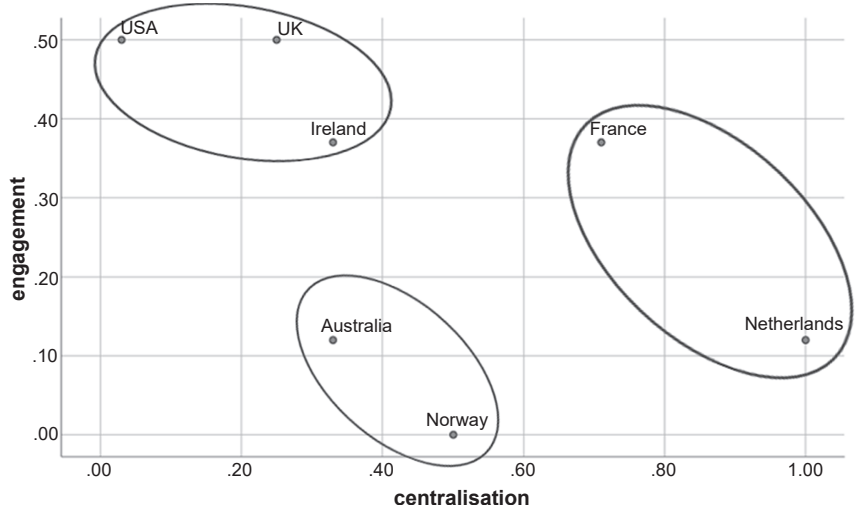

Fig. 3. Scatter Plot for Engagement and Centralization.

from civil society, whereas low labour relations coordination (LME type) coincides with high engagement from civil society, taking up handling roles. France and Australia are the exceptions here. Our findings suggest that whistleblowing in Australia may be under-institutionalized whereas in France, we see

both strong labour relations coordination (CME) as well as a high level of civil society engagement with whistleblowing.

An important observation from Fig. 3, where we plot our measures for engagement and coordination, is we can discern three groups. The first (the United States, the United Kingdom, Ireland) is placed within the expectations of the VOC model. The second group (Australia and Norway) suggests a lack of institutionalization of whistleblowing, i.e., given the low level of centralization of handling roles, we would expect more CSOs picking up those handling roles. A third group (France and Netherlands) is most exceptional because these countries score high on both centralization and civil society engagement in handling roles. Given that VOC is an idealtype approach – i.e. CME and LME are two idealtypes defining a range (Hall & Gingerich, 2004, 2009; Hall & Soskice, 2001) – the truly interesting cases are those that turn out not to be as expected. Empirical phenomena are never fully in line with an idealtype, rather, reality more or less approximates an idealtype. It is precisely where a particular case deviates from the 'rational' idealtype that we can reach understanding (Vandekerckhove, 2006) and explanation of social reality (Ringer, 1997). What does that mean for our findings and what insights can we derive with regard to institutional emulation?

Institutionalization in Countries Close to the LME and CME Idealtypes

In the United States, institutionalization of whistleblowing happened in a piecemeal way (Vaughn, 2012). There are more than 40 laws that have whistleblowing provisions, each with a specific scope and jurisdiction. At the federal level, there are 23 regulatory agencies that have a mandate to fulfil a handling role. The most well-known one in the context of whistleblowing is the SEC, mandated through the Dodd-Frank Act to carry out investigation of wrongdoing, retaliation, offer protection, and de facto through settlements, issue corrective actions. In some cases, the SEC also issues financial rewards for whistleblowers. The SEC has an internal team called the 'Office of the Whistleblower'. Yet, the SEC only handles whistleblower reports that concern possible violations of the federal securities law. There is no strategic coordination with other regulators that handle whistleblowing reports for other laws. In the United States, a number of non-profit CSO focus on whistleblowing. Perhaps, the best known one is Government Accountability Project (GAP), which is also the oldest whistleblowing CSO in the world, established in 1977 (Vaughn, 2012). GAP takes up a number of handling roles, mainly the ones that regulators do not (Loyens & Vandekerckhove, 2018b).

The United Kingdom did not take a piecemeal approach, at least not in its approach to legislation. It enacted in 1998 one whistleblowing legislation (Public Interest Disclosure Act 1998) that covered all sectors. It was one of the first 'stand-alone' whistleblowing laws. However, it was fully implemented through existing organizations and amending existing legislation (Employment Act), without any strategic coordination. There are more than 50 regulatory agencies mandated to receive whistleblowing reports. Adjudication on the retaliation is

separate from that on the alleged wrongdoing. A dedicated CSO became active in 1993 and has more recently been joined by others, readjusting the handling roles taken up between them.

If we look at the other side of the spectrum, we find Norway as the most pronounced CME nation in our sample. Its whistleblowing legislation was also implemented through existing organizations, mandates the labour inspection to take up handling roles rather than spread these across regulatory agencies. However, very few handling roles are actually performed in Norway. Thus, Norway is characterized by a strategic coordination of a limited number of roles, without CSOs taking up other handling roles.

Hence, in the countries in our sample that most resemble the LME and CME idealtypes, institutionalization of whistleblowing seems to have happened through emulation, i.e. 'adoption [...] of a programme already in effect in another jurisdiction' (Rose, 1991, p. 22). Importantly however, we see auto-emulation, i.e. not making any institutional change by copying what other countries do but rather expanding one's own existing procedures and mandates. In other words, 'business as usual', which is surprising for a phenomenon that is claimed to seek effecting change (cf. the definition of whistleblowing, Near & Miceli, 1985) – it does so by maintaining the status quo.

Institutionalization Between LME and CME

Ireland and Australia are considered to be countries in the middle of the LME–CME range. How is whistleblowing institutionalized in these countries? Ireland has one of Europe's more progressive whistleblowing legislation, yet its implementation very clearly is an emulation of that in the United Kingdom: mandating existing regulatory agencies with limited handling roles and without any strategic coordination. In terms of CSO engagement, we also see similar handling roles taken up as in the United Kingdom but more concentrated across fewer CSOs.

We also see international emulation in Australia where the Australian Securities and Investments Commission (ASIC), mandated through the Corporations Act to take up handling roles. Loyens and Vandekerckhove (2018b, p. 72) note that ASIC was 'built on SEC model' but takes up slightly different handling roles than the SEC. Further, international emulation in Australia has not finished although Australia now seems to take its cue from Europe, more precisely Netherlands and France. We will now discuss these countries and their emulation.

Institutionalization in Countries That Deviate From the Idealtypical Range

Our exploration of the institutionalization of whistleblowing perceived through a VOC lens suggests the Netherlands and France are interesting precisely because we are not seeing what we would expect. In the Netherlands, a new specialist agency was created. In 2012, an 'advice centre for whistleblowers' was created as an independent government agency. In 2016, new whistleblowing

legislation created the House for Whistleblowers (*Huis voor klokkenluiders*, hereafter House). The agency represents the highest possible centralization of whistleblowing handling roles (cf. Fig. 1), namely all eight (Loyens & Vandekerckhove, 2018b). This centralization involved the usurpation of roles that were previously performed in a slightly more decentralized way. For example, the Bureau of Public Sector Integrity (*BIOS*) saw its budget and personnel go to the House. Another example is psycho-social support, which was initially taken up by a CSO (the *Expertgroep*). However, in 2016 that CSO stopped its activities and took a seat on the governing body of the House.

Loyens and Vandekerckhove (2018b) note that during their research on whistleblowing institutions in 10 other countries than the Netherlands, many of their interviewees were awe-stricken about the Dutch House. No one seemed to know how exactly (or even whether) the House worked, yet many of their interviewees regarded the House as the new template for institutionalizing whistleblowing: one specific governmental organization with a more or less holistic provision of whistleblowing handling roles. There are indications of international emulation of this institutional template in our sample, which we will briefly comment on.

The French whistleblowing legislation – known as Sapin II – also dates from 2016 but did not create a new agency. Rather, the parliamentary ombudsman (*Défendeur des Droits*) was mandated to take up varied whistleblowing handling tasks. However, a parliamentary ombudsman usually mediates in interactions between citizens and government agencies. Interventions in private sector organizations is not straightforward. In the Netherlands, this was sufficient reason to create a new organization. France decided to give the mandate to the parliamentary ombudsman, yet it took a while to figure out how these new mandates could be incorporated. The executive decree shaping the operation of new mandates was not signed until late 2018. The emphasis of the French parliamentary ombudsman seems to be less on carrying out its own investigations – it does not have a budget for that – but rather ensuring strategic coordination (Loyens & Vandekerckhove, 2018b). Another difference between Netherlands and France is that in France the legislation did not result in the usurpation of CSO engagement but instead gave it a boost. Before the 2016 legislation, a small number of CSOs provided support and advice to whistleblowers on an ad-hoc basis without any of these perceiving themselves as a dedicated whistleblowing CSO (Vandekerckhove & de Graaf, 2017). It was TI-France who around 2014 started to campaign for whistleblowing legislation and the Dutch model of the House (which was then at the stage of law proposal). After the French executive decree in 2018, a new CSO was created – called the House of the Whistleblowers (*Maison des lanceurs d'alerte*) – and functions as a coordination of almost 20 other CSOs who can provide whistleblowing handling roles. Thus, the French emulation of the Dutch model amounts to a strategic coordination rather than usurpation of actors' roles and a stronger CSO engagement.

The emulation of the Dutch House model – or at least attempts to emulate that model – can also be seen in Australia and the United Kingdom. Brown

(2019, pp. 40–41), an influential voice in Australian whistleblowing policy making, advocates a stronger centralization of handling roles in the Australian ASIC, based on the Dutch model. In the United Kingdom, an All Party Parliamentary Group (APPG) was established in 2018. One of its central points of discussion is an 'Office for the Whistleblower', modelled on the Dutch House. There is also a new Bill, which would entail an overhaul of the 1998 legislation and which includes more strategic coordination of handling roles through a central agency – again a key tenet of the Dutch House model.

However, we are also seeing a potential reverse-emulation. The Dutch House has recently published a document that entails its new strategic vision (House, 2020), formulated on the basis of an independent evaluation (Ruys, 2017) and a letter of the national ombudsman (Van Zutphen, 2019). In its renewed vision text, the House announces that it will move away from a full centralization of all handling tasks towards a French-like emphasis on strategic coordination. The upshot of this change in direction was that *Expertgroep*, the CSO that had ceased its activities when the House was launched, has now reactivated itself. If this reverse-emulation materializes – i.e. if the House indeed puts down some handling roles, then updated measures for the Netherlands would make our correlations stronger, thus making the institutionalization of whistleblowing more in line with what we would expect from a VOC perspective or indeed, 'business as usual'. Is that what we should hope for?

Before we go into that, let's first summarize what we discussed so far. We can explain institutionalization of whistleblowing in our sample through emulation, but the countries in our sample suggest there are different kinds of emulation at play. In our sample, countries that were closest to one of the idealtypes (LME or CME) institutionalized whistleblowing through auto-emulation, i.e. emulation of existing institutional arrangements within the nation. This is done through piecemeal legislation (USA), expanding mandates of investigative and adjudicative agencies (regulators in the United Kingdom, labour inspection in Norway). In contrast, countries that are in the middle range, in-between LME and CME, institutionalize whistleblowing by emulating institutional arrangements of other countries (Ireland and Australia), i.e. international emulation. We also saw some institutional innovation (the House in the Netherlands), which was emulated in France, and will not potentially get reverse-emulated back into the Netherlands. Hence, what our study suggests is that (1) it might be useful to distinguish types of emulation and (2) type of emulation can corroborate with the proximity of a nation to a particular VOC idealtype. However, is this what we should hope for if we want whistleblowing to lead to systemic change?

What Can We Hope For?

Whistleblowers disclose wrongdoing to others 'who may be able to effect action' (cf. definition of Near & Miceli, 1985). Thus, whistleblowers call upon others to bring about a change which they themselves cannot make happen (Kenny et al., 2020; Moberly, 2014). It follows that the way in which recipients handle the whistleblowing determines whether change will occur (Rothschild & Miethe,

1999; Vandekerckhove, Brown, & Tsahuridu, 2014). Our findings suggest that the institutionalization of whistleblowing, i.e. the configuration of handling roles across different actors, happens in ways that are no different from how institutionalization usually happens. That is to say, our VOC approach suggests that CME type countries institutionalize whistleblowing through centralization of handling roles and low civil society engagement whereas LME type countries have high civil society engagement in handling roles that interact in a decentralized way.

But how can institutional change – which whistleblowers strife for – come about through institutions that need to change? Near and Miceli (1995, p. 681) defined effective whistleblowing as 'the extent to which the questionable or wrongful practice (or omission) is terminated at least partly because of whistleblowing and within a reasonable time frame.' Note that according to this definition, effective whistleblowing means bringing about change rather than winning a court case. Near and Miceli (1995) however only considered internal whistleblowing for developing a model. They regard external whistleblowing channels as one of the variables but worked with the assumption that external whistleblowing would be effective and thus drive effective internal whistleblowing. However, research suggests that whistleblowing escalates to public disclosures in the media because external whistleblowing to regulatory agencies is not effective. Thus very often, systemic or institutional change is precisely what is required to make whistleblowing effective (Andrade, 2015; Kenny, 2019; Weiskopf & Tobias-Miersch, 2016). Here then is the problematic nature of institutionalizing whistleblowing: the configuration and coordination of handling roles that is supposed to make whistleblowing effective in bringing about change tends to occur in ways that stabilizes the existing institutional spheres within a political economy. Theoretically worded, VOC predicts an institutional status quo. That might be desirable for a political economy in general or for its economic productivity specifically, but it is perhaps less desirable in the context of whistleblowing. Thus, we can posit that institutionalization tends to neutralize whistleblowing. The example of the Dutch House suggests that international emulation does offer opportunities to institutionalize a-typically and non-neutralizing, but this is not self-evident, and there remains always a tendency to, through reverse-emulation, revert to the status quo. If we want whistleblowing to be effective in bringing about change, then the way we institutionalize it matters, and we need to somehow 'go against the grain', as presented in Fig. 4.

Fig. 4 is a contingency matrix of institutionalization of effective whistleblowing along two dimensions, centralization of handling roles in a dedicated government agency and civil society engagement in handling roles. The LME and CME idealtypes can be found in the top left (LME) and the bottom right (CME) quadrant, as hypothesized from VOC and confirmed in our findings. The bottom left quadrant – low centralization and low civil society engagement – points at a lack of institutionalization of whistleblowing. If there are any actors performing whistleblowing handling roles, these are not strategically coordinated nor are there any civil society groups who 'calls out' regulatory agencies

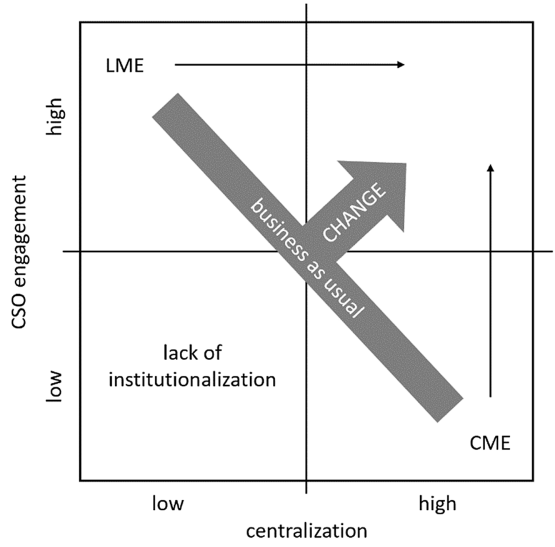

Fig. 4. Contingency Matrix for Institutionalization of Effective Whistleblowing.

that neglect whistleblowers or fail to prevent retaliation, campaign for better whistleblower protection, provide support, etc.

The institutionalization of whistleblowing to hope for, within the contingency matrix, is the top right quadrant. It is the institutionalization characterized by a high level of centralization and a high level of civil society engagement. Handling tasks are extremely well coordinated strategically, and there is a body of CSOs that holds government agencies to account for how handling roles are performed. It follows that because in LME type countries, it is likely that institutionalization happens through a high CSO engagement and a low centralization, whistleblowing will be more effective if effort is made to increase centralization of handling roles. It also follows that because in CME type countries it is likely that institutionalization happens by centralizing handling roles, whistleblowing will be more effective if also CSOs engage in handling roles.

CONCLUSION

In this chapter, we used a 'varieties of capitalism' approach to provide insight into how institutionalization of whistleblowing is taking place. We used existing observations of institutional particularities and institutional measures to formulate propositions around the congruency of the institutionalization of whistleblowing with institutionalization in other spheres of the political economy. For whistleblowing, we distinguished eight different handling roles. We calculated measures for how many handling roles for private sector whistleblowing are

taken up by government agencies and for to what extent CSOs engage with these handling roles.

Our findings suggests that overall, CME type countries institutionalize whistleblowing through centralization of handling roles and low civil society engagement whereas LME type countries have high civil society engagement in handling roles that interact in a decentralized way. However, from our discussion of how institutionalization takes place in countries that closely resemble VOC idealtypes, compared to countries that are more in-between, we were able to discern different types of emulation. We suggest that: (1) it might be useful to distinguish types of emulation (auto-emulation, international emulation, reverse-emulation) and (2) the type of emulation can corroborate with the proximity of a nation to a particular VOC idealtype. We believe further research would be useful into how distinct phenomena or issues involving private sector employers, government agencies and civil society actors have institutionalized across countries.

Our discussion also led to a questioning of the institutional status quo when it comes to whistleblowing. Our findings, in line with our VOC hypotheses, suggest that institutionalization tends to neutralize whistleblowing. On that basis, we developed a positional matrix for campaigners, indicating where the status quo will lead in terms of centralization of handling roles and civil society engagement and which of the two dimensions needs to be strengthened to obtain whistleblowing institutions that are capable to bring about change.

Given that the new EU Directive on whistleblowing triggered institutionalization of whistleblowing in EU Member States and that these countries diverge on their VOC characterization, we believe this chapter offers both a framework for research as well as for practice.

Our findings are however subject to limitations of the research. First, we used a small sample ($n = 7$) because we used extant measures and observations. This small sample size poses a limitation to the validity of our exploration of the model. Further research could collect primary data on whistleblowing institutions in more countries for which VOC characterizations exist. A second limitation is that we used two VOC idealtypes (LME and CME) whereas there might be other idealtypes. Where these have measures for certain institutional spheres of the political economy, further research could expand our hypotheses. Third, institutionalization of whistleblowing is quite recent. The observations for a number of countries in our sample had been made during, shortly after, or even with announced institutional reform. The implication is that what currently looks like reverse-emulation could end up looking very differently.

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DO INSTITUTIONAL ARRANGEMENTS MATTER FOR A MORE FRIENDLY WHISTLEBLOWING ENVIRONMENT?

Sissel C. Trygstad[a], Anne-Mette Ødegård[a] and Fredrik Engelstad[b]

[a]*Fafo, Norway*
[b]*Institute for Social Research, Norway*

ABSTRACT

This chapter investigates how employers and managers protect whistleblowers and assess the impact of whistleblowing on their organisations, drawing on survey data from Denmark, England, Ireland and Norway. All four countries included in this study have legislation protecting whistleblowers. Norway and Denmark belong to so-called inclusive employment regimes, while England and Ireland have more market-based employment regimes. Factors that may contribute to fostering a more whistleblower-friendly environment are identified, and the authors examine how institutional arrangements and employment regimes shape these dynamics.

The findings suggest that institutional arrangements and employment regimes play a certain role in promoting environments conducive to whistleblowing, but the findings are not conclusive.

However, neither collective agreements nor whistleblowing procedures do affect managerial attitudes towards whistleblowing. This suggests that other

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factors, beyond institutional frameworks, such as personal experiences and interests, organisational culture or sector-specific dynamics, influence how managers perceive and respond to whistleblowing.[1]

Keywords: Employment regime; institutional framework; organisational climate; whistleblower protection; attitudes towards whisleblowing

For employers and organisations, whistleblowing can be a decisive factor in preventing malpractice and avoiding hazardous situations. It can also play an important role in maintaining service quality, enhancing efficiency and safeguarding welfare structures – for example, by protecting vulnerable groups.

Managers often occupy a pivotal role when employees raise concerns about unacceptable conditions in the workplace. First, empirical research shows that employees commonly direct their initial disclosures to a manager. The managerial response is therefore critical – not only for the whistleblower but also for addressing the issue at hand and the individuals involved (Brown et al., 2014; de Graaf, 2015).

Second, as representatives of the employer, managers are typically responsible for developing and/or implementing formal procedures for receiving and handling whistleblowing disclosures. Third, senior executives, in particular, carry the responsibility of fostering an organisational climate in which employees feel psychologically safe to report potentially unethical or improper practices. Survey data from the four countries included in this chapter show that there are challenges in getting employees who observe wrongdoing to report it. Around half of those who have witnessed wrongdoing choose not to report it to someone with the authority to take action. The most important reason is the discomfort associated with whistleblowing, which is consistent with global research indicating that the main reasons for not reporting are fear of retaliation and a belief that the wrongdoing will not be addressed (Trygstad, 2024a, 2024b, p. 2).

In other words, employees' opportunities to report wrongdoing largely depend on how employers facilitate such processes.

At the same time, from a managerial perspective, whistleblowing can challenge employers' right to manage. The potential tensions between managerial prerogatives and whistleblowing protections at the organisational level may trigger power struggles (Loyens & Maesschalck, 2014). We examine whether this possible tension is related to institutional arrangements and employment regimes by analysing survey data from Denmark, England, Ireland, and Norway. These four countries have different institutional frameworks. While Denmark and Norway can be described as inclusive employment regimes, England and Ireland are characterised as market-based employment regimes. Our aim is to identify arrangements that can help foster a more supportive whistleblowing environment in the workplace.

According to Mrowiec (2022, p. 161), the most important factors supporting internal whistleblowing are ethical leadership, supportive policies, and clearly

defined procedures. A more whistleblower-friendly organisational climate is dependent on employers that actively encourage reporting while also ensuring robust protections against retaliation. Specifically, our analysis considers the presence of whistleblowing procedures, whether managers investigate potential retaliation or sanctions against whistleblowers, and managerial attitudes towards whistleblowing as a means of improving organisational practices.

We adopt the widely used definition of whistleblowing by Near and Miceli (1985, p. 4):'the disclosure by organization members (former or current) of illegal, immoral or illegitimate practices under the control of their employers to persons or organizations that may be able to effect action.'

Previous research has shown that the risk of retaliation has a chilling effect on employees' willingness to speak up (Fladmo & Steen-Johnsen, 2017; Noelle-Neumann, 1974; Trygstad & Ødegård, 2022). Retaliation can be broadly defined as *'unwanted action against the whistleblower as a direct response to the whistle-blowing'* (Regh et al., 2008). Retaliation can include both formal and informal sanctions and may occur openly or covertly (Bjørkelo, 2010) and can take place before, during or after the whistleblowing process.

Factors known to increase the risk of retaliation include a lack of support from leadership and situations where the whistleblower challenges powerful actors or threatens the organisation's survival (Brown et al., 2014; Near & Miceli, 1985, 1995). Organisational whistleblowing procedures also play a crucial role. Previous research highlights that such procedures both protect individuals and improve the effectiveness of whistleblowing by ensuring reported misconduct leads to action (Dworkin & Brown, 2013; Skivenes & Trygstad, 2017; Vandekerckhove & Lewis, 2011). In addition, combining legal protections with financial incentives and access to multiple reporting channels has been shown to increase the likelihood of reporting (Near & Miceli, 2016, p. 7).

In relation to the question of what constitutes a whistleblower-friendly environment, institutional settings and employment regimes are likely to be influential. Institutional settings refer to the structures, rules, norms, and practices that shape how organisations and individuals operate. These are shaped by legal, cultural, political and economic factors and vary considerably across countries, sectors and organisations (Gallie, 2011; Visser, 2009). Legal reforms and new procedures may either alter established norms or reinforce existing ones (Mahoney & Thelen, 2010).

All four countries in our study have whistleblowing legislation though they differ in the timing of implementation and in the legal requirements for organisational procedures. They also represent different employment regimes. Drawing on Gallie (2007) and Appelbaum and Schmitt (2009), we categorise Denmark and Norway as inclusive employment regimes whereas England and Ireland represent market-based regimes. These models differ in employment regulation and protection, trade union density, collective agreement coverage, and employee participation in workplace decision-making (see Table 1). Compared to Denmark and Norway, England and Ireland lack institutional mechanisms aimed at balancing power between employers and employees.

RESEARCH QUESTIONS

While there is a substantial body of literature comparing whistleblowing legislation and its consequences for whistleblowers, there remains limited comparative knowledge regarding managerial involvement in, and attitudes towards, whistleblowing. Yet these factors can significantly influence how cases unfold and what outcomes whistleblowers face. Moreover, such processes and attitudes are likely to vary across national contexts, shaped by differences in legislation and employment regimes.

The decision to report wrongdoing typically represents a voluntary act of responsibility by the employee – an act that can carry considerable consequences not only for the whistleblower but also for the organisation and those it serves. For whistleblowing to be effective, employees must be strongly motivated to act ethically and must trust that the organisation will respond appropriately without retaliating (Chordiya et al., 2020).

A fundamental condition for regulations to function effectively is that they are known – by both workers and managers. The development of organisational cultures that support and protect whistleblowers also depends on how legal provisions and procedures are implemented and internalised within organisations (Trygstad, 2017).

This brings us to our research questions: Do institutional arrangements across national contexts influence:

(1) How managers facilitate whistleblowing?
(2) The extent to which employers or managers protect whistleblowers from retaliation?
(3) Employers' and managers' attitudes towards whistleblowing in the workplace?

To address the first question, we examine whether institutional arrangements are associated with the presence of whistleblowing procedures within organisations. The second question focuses on employers who have received whistleblowing reports. These managers were asked whether they shared the whistleblower's concerns and took steps to determine whether the whistleblower had experienced retaliation or sanctions during or after the process. The third question concerns managerial attitudes – specifically, how whistleblowing is perceived in terms of its impact on the organisation and its alignment or conflict with managerial authority.

Finally, knowledge and awareness of whistleblowing legislation may also affect how such cases are handled in practice. Our discussion will explore how these findings can be interpreted in light of institutional differences and varying labour market regimes. Ultimately, this analysis may provide a basis for broader reflection on how to foster more supportive whistleblowing environments across varying institutional contexts.

INSTITUTIONAL ARRANGEMENTS AND POWER

Since the 1990s, a global movement advocating for human rights, accountability and transparency has contributed to what some scholars describe as a 'legal revolution' in the protection of whistleblowers (Vaughn 2007, 2012, cited in Chordiya et al., 2020). From a managerial perspective, the increasing need to address organisational malpractice has heightened awareness across sectors, given the potential financial and reputational risks involved (Bhargava & Madala, 2014, p. 47). Over recent decades, whistleblowing policies and procedures have been widely promoted as tools for strengthening public integrity, enhancing corporate governance and combating corruption and fraud (Vandekerckhove et al., 2014).

Institutional arrangements in the labour market inherently involve power dynamics, which can either reinforce or reduce asymmetries between employers and employees. While mechanisms such as collective agreements and whistleblowing legislation do not dictate specific actions but 'influence outcome through their mediation role on the agents', in our setting the management (Hinterleitner et al., 2024, p. 26). As Mahoney and Thelen (2010) argue, institutions have distributive effects, creating both winners and losers. Those disadvantaged by a given arrangement may, if they possess sufficient power, attempt to alter or circumvent it. This type of resistance is often more common when there are few sanctions associated with only partially implementing a national policy or law (Mahoney & Thelen, 2010). The effectiveness and direction of such strategies often depend on the broader institutional context, including the extent to which employees are consulted or participate in organisational decision-making. Collective agreements can empower workers by providing them with the 'power to' act (Lévesque & Murray, 2010). Such institutional arrangements not only enable but also reinforce action, making them an important vehicle for employee voice.

Firms, management and owners – whether acting on legitimate or illegitimate grounds – may have vested interests in either suppressing or facilitating the disclosure of wrongdoing. Any arrangement perceived as a challenge to managerial authority may encounter resistance from employers (Engelstad & Trygstad, 2024). In such contexts, power can be mobilised in competing directions: either to support the whistleblower and address the wrongdoing or to pressure the employee to remain silent or withdraw.

Different Legal Systems and Organisational Transposition

The legal protection of whistleblowers varies across the four countries included in this study. The United Kingdom was the first to adopt general whistleblower protection, with the implementation of the Public Interest Disclosure Act (PIDA) in 1999. Over two decades later, Denmark introduced a national whistleblowing law while Norway and Ireland fall in between, having enacted comprehensive legislation in 2007 and 2014, respectively. According to Transparency International, 'dedicated legislation – in order to ensure clarity and seamless application of the whistleblower framework – stand-alone legislation is preferable to a piecemeal or sectoral approach' (cited in Roche, 2025, p. 14).

Roche (2025) classifies national whistleblowing legislation based on its breadth in the public sector. One key indicator is whether the law encourages individuals working in oversight bodies to report a broad range of wrongdoing. Laws with broad definitions are labelled as *comprehensive*, as opposed to *limited* or *absent*, where 'the law has a narrow focus on specific irregularities or is limited to very serious crimes' (Roche, 2025, p. 19). Based on this classification, all four countries in our study fall into the comprehensive category.

Vandekerckhove (2010) outlines a three-step whistleblowing model based on European regulatory frameworks. The first step involves internal reporting within the organisation (e.g., to a supervisor). The second step involves reporting to external bodies, such as public authorities or ombudsmen. If the second step does not help, it may be necessary to report to the public. Effective whistleblowing legislation should support all three steps. In this regard, the frameworks in Denmark, Norway, Ireland, and the United Kingdom meet this standard.

The United Kingdom's whistleblowing provisions are embedded in the Employment Rights Act, which came into force in 1999. It protects workers who report specified types of wrongdoing to appropriate recipients from being subjected to detriment. Those who prevail in tribunal claims may receive unlimited compensation. In Norway, whistleblower protection was incorporated into the Working Environment Act (WEA) in 2007. The Act prohibits retaliation and places the burden of proof on the employer. Employees subjected to retaliation are entitled to redress and compensation. The law was revised in 2020 to include a clearer definition of wrongdoing and to impose a legal duty on employers to act in response to whistleblowing.

Ireland's Protected Disclosures Act (2014) grants workers similar protections, shielding them from penalisation when reporting wrongdoing to appropriate recipients. Successful claimants may receive compensation through the Workplace Relations Commission or civil courts. In Denmark, the national Whistleblower Protection Act came into force in December 2021, following the implementation of the EU Whistleblower Directive (EU 2019/1937), supplemented with a Danish addition. While Denmark previously had several sector-specific reporting schemes (Lewis et al., 2023),[2] the new legislation introduced broader protections. Whistleblowers must have had reasonable grounds to believe the reported violations were genuine, and those facing retaliation or obstruction are entitled to compensation.

However, legal provisions must be interpreted and implemented at the organisational level through internal procedures. Several factors influence this transposition, as well as managers' experiences and attitudes towards whistleblowing. First, the timing of legal implementation differs across countries, creating variation in organisational experience with the laws. Second, the reception of the laws varied: in Ireland and Norway, the legislation was initially met with controversy, particularly from employers who viewed it as unwarranted interference in managerial prerogatives (Kierans, 2015; Trygstad, 2017). In Denmark, the EU Directive was transposed into national law by the Ministry of Justice, rather than the Ministry of Labour, because it did not fall under traditional labour law. As a result, no formal debate took place within the

labour ministry's implementation committee. Danish employer organisations criticised the legislation for having too broad a scope, for lacking clarity, and for interfering with the industrial relations system. In contrast, the legislation in England has been relatively uncontroversial.

Third, there are substantial differences in how key legal concepts are interpreted and translated into organisational procedures. In Ireland, Denmark and Norway, organisations are legally required to establish internal whistleblowing procedures although the thresholds vary: the requirement applies to workplaces with 50 or more employees in Ireland and Denmark and to those with just five or more in Norway. UK law does not mandate formal procedures, but the Department for Business, Innovation and Skills issued non-statutory guidance and a Code of Practice in 2015.[3] Furthermore, the degree of employee involvement in implementing these procedures varies. For instance, in Norway, employers are legally required to develop procedures in collaboration with employees and their elected representatives.

The Balance Between Whistleblowing and the Right to Manage

Employer resistance to whistleblowing legislation – particularly in the private sector – can be understood through the lens of two fundamental yet potentially conflicting democratic principles: the right to property (which underpins managerial authority) and freedom of speech (which underpins whistleblowing). Property rights are foundational to democratic systems and essential for the functioning of modern economies (Fligstein, 2001). At the same time, limiting managerial authority by strengthening whistleblower protections is itself a democratic imperative (Engelstad & Trygstad, 2024; Evju, 2003; Sinzheimer, 1927).

If the balance tips too far in favour of managerial control, workers may be discouraged from reporting serious wrongdoing. Conversely, if the balance tilts too far towards whistleblower protection, it may impede employers' ability to manage effectively and safeguard their interests. The boundaries of managerial authority differ between countries and can be understood as the scope of discretion left after accounting for employment protections and other worker rights (Evju, 1990).

Retaliation can be seen as a means by which management seeks to reassert authority and restore perceived balance (Bjørkelo, 2011). Therefore, both knowledge of whistleblowing legislation and the presence of organisational procedures may be critical in safeguarding whistleblowers and supporting a more democratic workplace environment (Engelstad & Trygstad, 2024).

Collective Agreements and Labour Market Regimes

Collective agreements prevent unilateral employer decisions and provide workers with institutionalised channels for voice and access to decision-making processes at the workplace. At the same time, they offer employers and managers reduced risk of industrial disputes and greater predictability in their

interactions with employees. However, from the employer's perspective, strengthened worker rights or an expanded union presence may be perceived as a threat – potentially undermining competitiveness and challenging managerial prerogatives.

The balance of power between labour and capital varies across countries, shaped by differing industrial relations systems and employment regimes. Key indicators include collective agreement coverage, union density, and the level of employment protection afforded to workers.

These indicators are relevant to the discussion of how employers manage and assess whistleblowing. Our assumption is that in countries with less power asymmetry, i.e. belonging to inclusive employment regimes, managers will facilitate whistleblowing and protect whistleblowers in a better way than in countries belonging to market-based employment regimes.

Table 1 outlines selected institutional characteristics across the four countries included in our study. These indicators are relevant to the discussion of how employers manage and assess whistleblowing. As shown, the countries differ with regard to union density, collective bargaining coverage, levels of individual employment protection, participation structures and whistleblowing legislation. The European Participation Index (EPI) is particularly informative, as it summarises the extent of formal rights and actual participation across three levels: board representation, workplace-level involvement and collective bargaining.

Table 1. Labour Market Characteristics in Countries Covered by the Project.

Regimes	Country	Union Density (%)	Collective Bargaining Coverage (%)	Individual Employment Protection	European Participation Index (EPI)[b]	WB Legislation
Inclusive	Denmark	67	82	1.53	8.34	EU Directive with Danish addition
Inclusive	Norway	50	69	2.33	NA	National
Market-based	UK	23	27	1.35	2.49	National
Market-based	Ireland	26	34	1.23	4.31	National & EU directive
Source		OECD[a]	OECD[a]	OEDC Indicators of Employment Protection, 2019	De Spiegelaere & Vitols	

[a]Most recent figures.
[b]2019, 1 = low, 10 = high.

As Table 1 shows, Denmark ranks highest in both union density and collective bargaining coverage while the United Kingdom ranks lowest on these measures.[4] With regard to employment protection, Norway provides the strongest legal safeguards against dismissal for permanent employees. In contrast, Denmark,[5] Ireland and the United Kingdom offer comparatively

weaker protections. As a result, dismissal – a severe form of retaliation – is likely to be more difficult to pursue in Norway than in the other countries.

There is also marked variation in the EPI. Denmark scores highest, indicating robust formal and informal channels for worker participation while the United Kingdom scores lowest. Norway is not included in the index but based on comparable institutional structures; it can reasonably be placed close to Denmark.

Comparative research at both the sectoral and organisational levels has demonstrated that the power afforded to unions and workers through institutional arrangements is strongly associated with successful efforts to improve working conditions (Dorigatti & Pedersini, 2021; Gallie, 2007). On this basis, we hypothesise a positive correlation between the presence of collective agreements and how managers handle whistleblowing cases, as well as their attitudes towards whistleblowing more generally.

Inclusive employment regimes – such as those in Denmark and Norway – are typically characterised by high employment levels, universal employment rights and a strong social safety net that supports workers during job transitions (Gallie, 2011, p. 9). Moreover, such regimes have regularly institutionalised employee voice and promote social dialogue between the parties and are less hierarchical.

In contrast, England and Ireland represent market-based employment regimes that is characterised by decentralised and individualised employment relations, prioritising labour market flexibility, with limited employment regulation and low job security. In these systems, employers hold greater power, and trade unions are often viewed as inflexible and have limited influence over management decisions. Moreover, there are in general limited formal mechanisms for workers' voice and participation.

Hypotheses

Based on the preceding discussion, we propose the following six hypotheses:

H1: Managers in organisations that have established *whistleblowing procedures* are more likely to protect whistleblowers from retaliation than managers in organisations without such procedures.

H2: Managers in organisations with *employee representation and covered by collective agreements* are more likely to protect whistleblowers from retaliation than managers in organisations without these institutional arrangements.

H3: Managers operating within *inclusive employment regimes* are more likely to protect whistleblowers from retaliation than managers in market-based regimes.

H4: Managers in organisations with *whistleblowing procedures* are more likely to hold positive attitudes towards whistleblowing than those in organisations without such procedures.

H5: Managers in organisations with *employee representation and collective agreements* are more likely to hold positive attitudes towards whistleblowing than their counterparts in organisations without such arrangements.

H6: Managers in *inclusive employment regimes* are more likely to view whistleblowing positively than those in market-based regimes.

METHODOLOGY

This chapter draws on survey data collected in spring 2022 from a range of sectors and industries in Denmark, Ireland, Norway and England. The survey was distributed to a sample of workers and managers/employers aged 18–65 (see Table 2), using the TNS Kantar access panel.

Sampling procedures varied somewhat across countries due to differences in data collection methods. In Norway, the panel consists of a pre-recruited, random sample of individuals who have agreed to participate in surveys (approximately 40,000 people at the time of data collection). A total of 14,700 invitations were sent to workers aged 18–65, yielding contact with 3,959 individuals and resulting in 3,268 completed responses – a response rate of 22% of total invitations.

In the other three countries, respondents were drawn from Kantar Profile's access panel, which recruits individuals through a variety of sub-panels. In these countries, surveys are made available in a digital 'shop', where panel members choose which surveys they wish to complete. As a result, response rates for these samples are not available.

Some sample biases are present. In both the Danish and Norwegian samples, workers in the public sector are somewhat overrepresented. Additionally, respondents with lower levels of education are underrepresented relative to the general workforce. The proportion of unionised workers is also higher than

Table 2. Share of the Total That Holds a Formal Managerial Position (Percent).

	Managerial Position Percent			
	Top Manager (n = 1,163)		Mid-level Manager	
Country	*N*	%	*n*	%
Denmark (n = 1,800)	178	10	211	12
Norway (n = 3,364)	243	7	469	14
England (n = 3,001)	520	18	589	20
Ireland (n = 1,000)	222	23	194	20
Total	1,163	13	1,463	16

reported in OECD data. Furthermore, there is a general tendency for respondents to over-report their level of education, particularly with regard to short courses beyond upper secondary education. Definitions of educational attainment may differ between official statistics and the survey, potentially causing confusion among respondents about how to classify their qualifications.

In the Irish sample, there is a gender imbalance, with women being over-represented. We considered applying weighting adjustments to correct for these biases but ultimately chose not to. Instead, variables such as sector, gender and education – which could have been used for weighting – will be included as control variables in the multivariate analyses (Trygstad, 2024a,b).

This chapter focuses specifically on respondents in formal managerial positions, including both senior executives and middle managers with personnel responsibilities (see Table 2).

We observe a higher proportion of respondents holding managerial positions in England and Ireland compared to Norway and Denmark. We do not have a definitive explanation for this discrepancy. To address this imbalance, we include managerial level as a control variable in the multivariate analyses.

Variables Used in the Study

Dependent Variables

In the multivariate analysis, we use three dependent variables. The first captures what we refer to as a *whistleblower-friendly climate*. Managers who had received a whistleblowing report were asked: 'Did you check whether the notifier/reporting person was subject to sanctions during or after the process?' Respondents could choose from the following options: (1) Yes, I checked during the process, (2) Yes, I checked after the process, (3) Yes, I checked both during and after the process, (4) No, the process has just started, (5) No, and (6) Not sure. Responses selecting option 4 were excluded from the analysis. A binary (dummy) variable was then created: (0) No/Not sure and (1) Checked during the process, after the process or both.

The second and third dependent variables measure managerial attitudes towards whistleblowing. The second variable is based on agreement with the statement: 'Whistleblowing cases challenge management's right to manage'. The third is based on agreement with the statement: 'Whistleblowing cases make it possible to correct wrongdoing'. For both questions, responses were recorded on a six-point Likert scale: (1) Totally agree, (2) Partly agree (3) Neither agree nor disagree, (4) Partly disagree, (5) Totally disagree and (6) Not sure. Responses marked 'Not sure' were excluded from the multivariate analysis.

Independent Variables

The independent variables are intended to capture institutional arrangements and employment regimes. In addition, several control variables are included.

Institutional Arrangements: Employee Representation: (0) Yes, (1) No; Collective Agreement Coverage: (0) No, (1) Yes; Formal Whistleblowing

Procedures: (0) No, (1) Yes; Employment Regime: Although countries can be grouped into two regime types (inclusive vs market-based), the analysis uses individual country dummies: Denmark: (1) Denmark, (0) Other; England: (1) England, (0) Other; Ireland: (1) Ireland, (0) Other; Norway: (1) Norway, (0) Other.

Control variables: Nationality: (1) Nationals, (2) Non-nationals; Gender: (1) Man, (2) Woman; Age: Continuous variable (range: 18–65); Educational Attainment: Low – Less than primary, primary or lower secondary education, Medium – Upper secondary or post-secondary non-tertiary education and High – Tertiary education (universities and other higher education institutions). Each education level is included as a dummy variable. Management Level: (0) Mid-level managers, (1) Top-level managers; Sector: (0) Private sector, (1) Public sector; Organisation Size (number of employees): $<$50: (0) No, (1) Yes, No. 50–199: (0) No, (1) Yes, No. 200–999: (0) No, (1) Yes $\geq$ 1,000: (0) No, (1) Yes, Concern Sharing: Did the manager share the notifier's concern? (1) Yes, (0) No; Receipt of Whistleblowing Reports: (0) No, (1) Yes; Knowledge of the Law: (0) No, (1) Yes.

In the multivariate analyses, we use linear regression. However, we have examined whether logistic regression yields different results, which it does not.

FINDINGS

The survey findings presented in this section highlight managers' and employers' experiences with, and attitudes towards, whistleblowing. Given that whistleblowing procedures are largely shaped by legal requirements, knowledge of national legislation is a key prerequisite for effective implementation. We begin by examining whether managers are familiar with the relevant regulations and whether formal whistleblowing procedures are in place at their workplaces.

Next, we present responses from managers who have received whistleblowing reports. These findings indicate whether the managers shared the concerns raised by the whistleblower and whether they investigated whether the whistleblower faced any retaliation or sanctions during or after the process.

Finally, we report on how managers and employers assess the broader consequences of whistleblowing, including their attitudes towards its impact on the organisation.

Whistleblowing Legislation and Procedures

As noted earlier, England, Ireland and Norway have had whistleblowing legislation in place for several years, with Norway revising its legal framework in 2020. Denmark, by contrast, implemented the EU Whistleblower Directive – with national additions – in December 2021.

Table 3 reveals only minor differences between countries in terms of managers' knowledge of whistleblowing legislation. However, more substantial

Table 3. Knowledge of Whistleblowing Legislation and Presence of Whistleblowing Procedures (Percent).

	Knowledge of the WB Legislation			Presence of WB Procedures or in the Making		
	Top Management	Mid-level Manager	Total	Top Management	Mid-level Manager	Total
Norway (n = 712)	76	71	73	70	79	76
Denmark (n = 389)	71	71	71	65	47	55
England (n = 1,109)	80	68	74	78	62	70
Ireland (n = 416)	76	61	69	77	49	63
Total (n = 2,626)	77	69	72	74	64	68

variation is observed in the proportion of managers who report having whistleblowing procedures in place or under development at their workplace.

In our sample of managers, nearly three out of four reports that they are familiar with the whistleblowing regulations in their respective countries. Differences between countries are relatively minor, with the highest level of reported awareness in England and the lowest in Ireland. However, distinctions emerge between managerial levels: in all countries except Denmark, top-level managers are more likely than mid-level managers to report familiarity with the legislation. When it comes to whistleblowing procedures, almost 70% of managers, regardless of their level, report that such procedures are either already in place or currently under development at their workplace. The highest proportion is found in Norway (76%) while Denmark reports the lowest (55%). In comparison, 70% of managers in England and 63% in Ireland indicate the presence or development of procedures. The high rate reported in Norway can likely be attributed to the legal requirement mandating that organisations with five or more employees must establish whistleblowing procedures. In contrast, Denmark's threshold is significantly higher, applying only to organisations with 50 or more employees.

Again, we observe consistent differences between managerial levels: top-level managers are more likely than mid-level managers to report the presence of whistleblowing procedures. The analysis presented in Table 4 further suggests that institutional arrangements have a measurable impact on both of our dependent variables although the explanatory power of the first analysis is limited.

The analysis in Table 4 shows that managers in workplaces with employee representation and collective agreements report higher levels of knowledge than those in organisations without such institutional arrangements. This suggests a connection between institutions for collective representation and voice *and*

Table 4. Knowledge of the Law (0 = No, 1 = Yes) and the Presence of WB Procedures (0 = No, 1 = Yes) Where the Managers work. Linear Regression.

	Knowledge to the WB Legislation			Presence of WB Procedures		
	B	Std. Error	Std. Beta	*B*	Std. Error	Std. Beta
Constant	1,426***	0.088		1,267***	0.087	
No employee representation	−0.142***	0.023	−0.133	−0.185***	0.022	−0.166
Collective agreement	0.046**	0.020	0.051	0.133***	0.019	0.140
Denmark	−0.005	0.028	−0.004	−0.241***	0.026	−0.184
England	0.039	0.023	0.043	−0.086***	0.021	−0.091
Ireland	−0.002	0.029	−0.002	−0.157***	0.027	−0.124
Knowledge of the law				0.229***	0.019	0.220
Born in another country	−0.049	0.031	−0.031	−0.023	0.029	−0.014
Woman	−0.029	0.018	−0.032	0.009	0.017	0.009
Age	0.003***	0.001	0.089	−0.006***	0.001	−0.156
Education: Level 1	−0.131***	0.034	−0.076	−0.009	0.033	−0.005
Education: Level 2	−0.039**	0.018	−0.042	7,812E-5	0.017	0.000
Managerial position	0.098***	0.018	0.109	0.107***	0.017	0.114
No. of employees: Up to 49	−0.043	0.026	−0.047	−0.100***	0.024	0.027
No. of employees: btw 50–199	0.013	0.027	0.013	−0.071***	0.025	0.082
No. of employees: 1,000 and more	0.000	0.028	0.000	0.027	0.026	0.111
Sector (0 = private, 1 = public)	−0.001	0.001	−0.034	−0.00	0.000	−0.043
N	2,608			2,597		
Adjusted R2	0.06			0.22		

Constant: employee representation, no collective agreement, no whistleblowing procedures, Norway, no knowledge of the law, nationals, man, education: level 3, managerial position: mid-level manager, numbers of employees: 200 to 999, private sector. $^{**}p < 0.05$, $^{***}p < 0.01$.

managers' awareness of whistleblowing provisions in their respective countries. However, we do not find any correlation between countries or employment regimes and knowledge of the law.

Regarding our control variables, we find that age plays a significant role: older managers tend to report greater knowledge of whistleblowing regulations compared to their younger counterparts. Similarly, those with higher levels of education demonstrate better awareness than those with lower educational attainment. We also find that mid-level managers generally report lower levels of knowledge than top-level managers.

Several factors influence the presence of whistleblowing procedures within organisations. Turning first to institutional arrangements, we find that managers working in organisations with employee representation and collective agreements are more likely to report the existence of whistleblowing procedures. Nor does this analysis reveal any systematic relationship between employment regimes and the presence of such procedures. Managers in Norway stand out, as they report significantly more often than managers in other countries that whistleblowing procedures have been established in their workplace.

As for our control variables, younger managers are more likely than their older counterparts to report the existence of such procedures. Additionally, mid-level managers are less likely than top-level managers to confirm the presence of whistleblowing procedures, and these procedures are less commonly found in organisations with fewer than 200 employees.

Our analysis shows that awareness of whistleblowing legislation emerges as the most influential factor. The findings suggest that managers who are familiar with whistleblowing regulations and who work in organisations with formalised institutional arrangements are more likely to facilitate whistleblowing than those without such knowledge or support structures.

Managers' Protection of Whistleblowers

A key component of whistleblowing legislation in all four countries studied is the protection of whistleblowers from retaliation or sanctions. To assess managers' ability and willingness to uphold this protection within their organisations, we asked whether they shared the whistleblower's concern and whether they had investigated if the whistleblower had been subjected to retaliation.

These questions were posed only to managers who had experience with whistleblowing cases. As a starting point, respondents were asked whether they had received any whistleblowing reports in the past 12 months. 'Wrongdoing' was defined in the survey as unethical and/or illegal actions, incidents or practices that should have been stopped. Examples provided included financial fraud, theft, property damage, violations of health and safety regulations, harassment, bullying, neglect and mistreatment of users or customers. Managers with experience handling whistleblowing cases accounted for 36% of the total sample (see Table 5).

Managers in England and Ireland reported the highest frequency of receiving whistleblowing notifications within the past 12 months while Norwegian

Table 5. Share of Managers That had Received Notifications the Last 12 months and Proportion That Shared the Whistleblower's Concern (Percent).

	Denmark (n = 240/78)	England (n = 845/340)	Ireland (n = 319/144)	Norway (n = 430/105)	Total (n = 1,834/667)
Have received notifications	33	40	45	24	36
Completely shared the WBs concern	56	61	61	53	59
Partially shared the WB's concern	28	33	31	39	33

Note: n refers to (1) the proportion of managers overall who have received notifications in the last 12 months and (2) the proportion of those who have received notifications and who shared the notifier's concern. In this table, we choose not to split the sample according to management level due to the small sample from Denmark.

managers reported the lowest. This disparity may reflect the fact that employees in England and Ireland have fewer formalised channels for voicing concerns compared to those in Norway and Denmark. Consequently, more issues may be raised through whistleblowing mechanisms in the former. This interpretation is further supported by the lower Employee Participation Index (EPI) scores in England and Ireland (see Table 1).

Among managers who had received a report, six out of 10 fully shared the whistleblower's concern, and approximately, three out of ten partially shared the concern. The highest level of full and partial agreement was found in England (94%) while Denmark reported the lowest (85%).

The next question addressed whether the manager had checked if the whistleblower had been subjected to any form of sanctions or retaliation as a result of their disclosure (see Table 6). Retaliation can take various forms, ranging from overt actions such as dismissal to more subtle measures, including denial of expected salary increases, removal of work responsibilities or social exclusion from the workplace community. Such reprisals may occur immediately after the

Table 6. Did You Check Whether the Whistleblower was Subject to Sanctions During or After the Process? Percent.

	Denmark (n = 78)	Norway (n = 105)	England (n = 340)	Ireland (n = 144)	Total (n = 667)
No/not sure	15	14	6	4	8
The process has just started	4	7	3	7	4
Checked during the process	35	12	49	47	41
Checked after the process	21	16	22	14	19
Checked during and after the process	26	50	22	28	28

report or emerge over time. Subtle forms of retaliation are often more long-lasting and significantly more difficult to detect and substantiate.

The results show that most managers reported having investigated whether the whistleblower was subjected to sanctions – either during the process, after it concluded or both. Only 8% of respondents answered 'no' or 'not sure' while an additional 4% indicated that they had not conducted such an investigation because they had only just received the whistleblowing report.

Managers in Norway and Denmark stand out as less likely to check for sanctions or retaliation, with 14% and 15%, respectively, responding 'no' or 'not sure'. At the same time, 50% of Norwegian managers reported investigating both during and after the process, compared to 26% in Denmark, 22% in England and 28% in Ireland. In this respect, one could argue that Norwegian managers are simultaneously the most and least proactive, depending on the specific action measured.

Among the managers who reported investigating potential sanctions (Table 7), we examined the factors influencing whether such checks were made. A new variable was included in the model: whether the manager shared the whistleblower's concern. As outlined in the methodology section, respondents who

Table 7. What Increases the Chances of Checking Whether the Whistleblower is Subjected to Sanctions or not? Linear Regression (1 = did Not Check, 2 = did Check).

	B	Std. Error	Std. Beta
Constant	1,059***	0.147	
No employee representation	−0.034	0.037	−0.037
Collective agreement	0.059**	0.027	0.093
Whistleblowing procedures	0.160***	0.034	0.193
Denmark	−0.002	0.042	−0.002
England	0.088**	0.033	0.160
Ireland	0.095**	0.038	0.141
Knowledge of the law	0.011	0.027	0.016
Shared the WBs concern	0.143***	0.039	0.139
Born in another country	0.033	0.039	0.031
Woman	−0.054**	0.022	−0.096
Age	−0.002	0.001	−0.071
Education: Level 1	−0.034	0.040	−0.033
Education: Level 2	0.020	0.022	0.035
Managerial position	0.078***	0.024	0.130
No. of employees: Up to 49	0.004	0.031	0.006
No. of employees: btw 50–199	−0.032	0.030	−0.053
Numbers of employees: 1,000 and more	−0.051	0.034	−0.068
Public sector	0.000	0.001	0.017
N	635		
Adjusted R2	0.16		

Constant: employee representation, no collective agreement, no whistleblowing procedures, Norway, no knowledge of the law, did not share the WBs concern, nationals, man, education: level 3, mid-level manager, numbers of employees: 200–999, private sector. $^{**}p < 0.05$, $^{***}p < 0.01$.

indicated that the process had only just begun were excluded from this part of the analysis.

The model confirms that even after controlling for individual characteristics and the presence or absence of institutional arrangements within the organisation, Norwegian managers are less likely than their counterparts in the other countries to investigate whether whistleblowers were subject to retaliation.

The analysis once again confirms that institutional arrangements make a difference. The presence of a collective agreement and formal whistleblowing procedures increases the likelihood that managers will investigate whether the whistleblower was subjected to sanctions.

At the country level, managers in England and Ireland (market-based employment regimes) are more likely to report having checked for retaliation against whistleblowers. This finding is somewhat unexpected. As discussed further in the following section, there are at least three potential explanations. First, it may be that managers in more inclusive regimes are less attuned to the risks employees face when reporting wrongdoing, possibly due to the availability of other formalised voice channels. Second, due to laws and agreements, there are more actors responsible for safeguarding employees who blow the whistle, including, for example, local union representatives and health and safety delegates. Third, managers in market-based regimes may be more vigilant – or feel more compelled – to investigate such cases as part of their formal responsibilities.

We also find that those who stated that they did not share the whistleblower's concern are more likely to have neglected to investigate whether any sanctions were imposed while male and top-level managers are more likely to report conducting such checks.

Managers Attitudes Towards Whistleblowing

One of the key questions in this study is whether institutional arrangements influence employers' attitudes towards whistleblowing within the workplace. To explore this, we asked managers to evaluate two statements:[6] (a) 'Whistleblowing cases challenge the management's right to manage' and (b) 'Whistleblowing cases allow us to correct wrongdoings.' Table 8 presents the proportion

Table 8. How Managers Assess Different Statements on Whistleblowing. Top and Middle Management. Percent, Totally/Partly Agree.

	Denmark (n = 386)		Norway (n = 710)		England (n = 1,102)		Ireland (n = 413)		Total (n = 2,376)	
WB Cases...	Top	Middle	Top	Middle	Top	Middle	Top	Middle	Top	Middle
...challenge the managements' right to manage	42	29	31	31	53	37	57	43	47	35
...allows us to correct wrongdoings	68	66	80	83	73	77	70	74	73	77

of managers who responded that they totally or partially agree with each statement.

Managers in the Nordic countries are less likely to agree with the statement that whistleblowing challenges the employer's right to manage, compared to their counterparts in England and Ireland. In all countries except Norway, there is a noticeable discrepancy between top-level and mid-level managers in their responses to this statement. Senior managers are generally more inclined to agree, with the difference particularly pronounced in England, where the gap reaches 16% points.

Regarding the second statement – that whistleblowing contributes to correcting wrongdoing – managers in Norway are the most likely to express agreement. Conversely, Danish managers report the lowest level of agreement among the four countries.

Table 9. Indicators That Impact on Managers' Attitudes Towards Whistleblowing. Linear Regression (1 = Totally Disagree, 5 = Totally Agree).

	Right to Manage			Correct Wrongdoings		
	B	Std. Error	Std. Beta	*B*	Std. Error	Std. Beta
Constant	1,958***	0.363		4,411***	0.350	
No employee representation	0.254	0.073	0.095	−0.158	0.071	0.095
Collective agreement	0.125	0.074	0.047	−0.029	0.072	0.045
Whistleblowing procedures	−0.108	0.079	−0.034	0.108	0.076	−0.032
Denmark	0.155	0.112	0.040	−0.333***	0.108	0.038
England	0.295***	0.088	0.113	−0.162**	0.084	0.111
Ireland	0.476***	0.109	0.140	−0.182**	0.106	0.138
Know the law	0.078	0.081	0.026	−0.008	0.077	0.026
Born in another country	0.191	0.112	0.041	0.071	0.109	0.041
Woman	−0.025	0.067	−0.010	−0.013	0.064	−0.011
Age	−0.005	0.003	−0.050	0.006***	0.003	−0.051
Education: Level 1	0.039	0.128	0.008	−0.223**	0.124	0.006
Education: Level 2	0.140**	0.068	0.052	−0.123**	0.066	0.053
Managerial position	0.235***	0.068	0.090	−0.086	0.066	0.089
No. of employees: Up to 49	0.1	0.1	0.04	0.090	0.083	0.006
No. of employees: btw 50–199	−0.118	0.1	−0.04	0.160**	0.092	−0.041
No. of employees: 1,000 and more	−0.06	0.11	−0.02	0.085	0.091	−0.059
Sector (0 = private, 1 = public)	−0.001	0.002	−0.008	−0.002	0.002	−0.009
Received WB cases	0.018***	0.093	0.005	0.006**	0.089	0.004
N	1,653			1,706		
Adjusted R2	0.06			0.05		

Constant: employee representation, no collective agreement, no whistleblowing procedures, Norway, no knowledge of the law, nationals, man, education: level 3, mid-level manager, numbers of employees: 200–999, private sector, not received WB cases. **$p < 0.05$, ***$p < 0.01$.

In Table 9, we present two linear regression models to identify the variables that appear to influence managers' attitudes towards whistleblowing.

The models presented in Table 9 demonstrate limited explanatory power. Somewhat surprisingly, the results show that institutional arrangements have no significant impact on managers' attitudes towards whistleblowing.

Nevertheless, the analysis reveals that managers in market-based regimes are more likely to perceive whistleblowing as a threat to managerial prerogatives, compared to their counterparts in Denmark and Norway. However, no similarly clear-cut differences were found regarding whether whistleblowing is considered important for correcting wrongdoing. Managers in Denmark, England and Ireland are less likely to agree with this statement than those in Norway. The variables for Ireland and England show the strongest negative association with the dependent variable in this model.

Turning to our control variables, top-level managers are more likely to agree that whistleblowing challenges the employer's right to manage. The same applies to managers with medium levels of education. This group also tends to disagree more strongly with the statement that whistleblowing may help correct wrongdoing. Conversely, managers in organisations with between 50 and 199 employees are more likely to agree with this statement than those in organisations with between 200 and 999 employees.

Notably, managers who have not received whistleblowing reports in the past 12 months are significantly less inclined to view whistleblowing as a challenge to managerial authority. This suggests that whistleblowing may be perceived as controversial, as there appears to be a link between having received a report and viewing whistleblowing as a threat to the employer's right to manage.

DISCUSSION

This chapter set out to examine whether, and how, institutional arrangements and labour market regimes influence the creation of a whistleblowing-friendly environment. We focused on several key indicators: managers' knowledge of national whistleblowing regulations, the presence of whistleblowing procedures in the workplace, whether managers investigate potential sanctions against whistleblowers and their overall attitudes towards whistleblowing.

Our underlying premise is that power is embedded in institutional frameworks and employment regimes, which in turn shape the organisational climate for whistleblowing. We regard the presence of employee representation, collective agreements and whistleblowing procedures as key institutional factors. Collective agreements, in particular, help to redress the inherent power imbalance between employers and employees, potentially making management more receptive to employee voice, including whistleblowing. Managers who take steps to investigate possible retaliation against whistleblowers demonstrate a concrete form of protection in line with legal expectations.

Moreover, we hypothesise that inclusive employment regimes – characterised by higher job security, stronger institutionalised participation and broader

employment protections – are more likely to support positive managerial attitudes towards whistleblowing. While our findings do not offer conclusive evidence, they do reveal patterns that support some of these assumptions. These results merit further investigation and contextual interpretation, which we explore in the next section.

What Makes Managers More Caring?

Knowledge of the Law and Whistleblowing Procedures

All four countries in our study have national whistleblowing legislation. However, the time of implementation varies: while England introduced such legislation as early as 1999, Denmark only did so in 2021. We assume that knowledge of these regulations influences the presence of whistleblowing procedures in the workplace – a hypothesis that is confirmed by our findings.

Whistleblowing procedures are critical for ensuring predictability – for both employees who report wrongdoing and for those tasked with addressing the concerns. When we ask managers whether such procedures exist in their workplace, we observe considerable variation. Knowledge is highest in Norway and lowest in Denmark despite both countries being part of the same employment regime. England and Ireland fall in between.

Although Denmark had several sector-specific mechanisms in place before 2021, the absence of comprehensive national legislation likely contributes to the lower prevalence of formal procedures. Moreover, the legal thresholds differ: in Denmark, only organisations with 50 or more employees are required to implement procedures whereas in Norway, the threshold is five employees.

Multivariate analysis reveals that institutional arrangements – such as employee representation and collective agreements – increase the likelihood that whistleblowing procedures are in place. This may be because unionised environments place greater emphasis on legal compliance and employee voice. Alternatively, it may reflect the ability of employee representatives to advocate for protective measures.

Among all variables, however, knowledge of whistleblowing legislation appears to be the most influential, underscoring the importance of awareness-raising initiatives. Still, the presence of whistleblowing procedures is not limited to any particular employment regime – it spans across different contexts.

Protection From Retaliation

We hypothesised a correlation between institutional arrangements and how managers respond to whistleblowing cases. In our sample, managers in Ireland (45%) and England (40%) report more notifications in the past 12 months than those in Denmark (36%) and Norway (24%). This may be due to more widespread use of traditional voice channels in the Nordic countries, such as union representatives or health and safety officers. These countries also have a strong tradition of workplace participation.

As reflected in Table 1, the EPI is significantly lower in England and Ireland. Additionally, employees in Denmark and Norway may raise concerns informally, for example in conversations with their manager, or they may raise the issue with employee representatives, without considering this as whistleblowing. This may be related to the fact that working conditions in inclusive regimes are less hierarchical.

Across all countries, most managers who have received a whistleblowing report indicate that they share the whistleblower's concern – a crucial precondition for offering protection. Indeed, our analysis confirms that such managers are significantly more likely to investigate whether the whistleblower was subject to retaliation.

Managers in organisations with whistleblowing procedures and collective agreements are also more likely to investigate retaliation, supporting H1 and H2. However, it is surprising that managers in Norway and Denmark are less likely to take such steps compared to their counterparts in England and Ireland. Thus, our data do not support H3 – that managers in inclusive regimes are more likely to protect whistleblowers from retaliation. In fact, 15% of Danish and 14% of Norwegian managers report that they either did not check or did not know if retaliation had occurred, compared to only 6% in England and 4% in Ireland.

There are several possible explanations for this unexpected pattern. Norwegian and Danish managers may underestimate the risk of retaliation, relying on collective agreements as safety net. Second, some may see monitoring for retaliation as the responsibility of employee representatives, such as trade union representatives. In either case, this suggests a degree of complacency or naivety. Existing Norwegian research indicates that whistleblowers do in fact face considerable risks (Trygstad & Ødegård, 2022). Meanwhile, managers in market-based regimes may be more alert to potential retaliation, either due to legal obligations or more explicit organisational policies. However, our data do not allow us to confirm this.

Interestingly, the Norwegian findings are somewhat contradictory. While a higher proportion of managers report taking no action, 50% also say they investigated retaliation both during and after the process – more than in any of the other countries. Continuous monitoring may offer the most effective protection, as retaliation is often covert and delayed.

What Affects Managers' Attitudes?

Whistleblowing can be viewed both as a mechanism for correcting wrongdoing and as a potential challenge to managerial authority. Managers were asked to respond to two statements reflecting these perspectives. Attitudes matter because they can shape how whistleblowing cases are handled and influence the outcomes for those involved.

H4 and H5 proposed that the presence of collective agreements and whistleblowing procedures would foster more positive managerial attitudes. However, our multivariate analysis does not support these assumptions. Neither variable shows a significant effect on attitudes. This suggests that while

institutional frameworks may shape organisational behaviour, they may not influence individual-level beliefs.

With regard to H6 – that inclusive employment regimes foster more positive attitudes – the findings are mixed. Managers in Denmark and Norway are more likely to reject the idea that whistleblowing threatens managerial authority, which may reflect less hierarchical work environments and stronger traditions of employee voice. However, the results are less clear for the statement on correcting wrongdoing. Norwegian managers are more likely to agree while Danish managers show lower levels of agreement – similar to their English and Irish counterparts. Again, one explanation can be that the legislation is new in Denmark.

It is important to note that the explanatory power of the regression models is limited. This implies that factors beyond our measured variables – such as personal experience with whistleblowing cases – may play a significant role in shaping attitudes. Indeed, managers who have handled whistleblowing cases are more likely to agree both that whistleblowing challenges authority and that it helps correct wrongdoing. This indicates that whistleblowing is perceived as controversial.

Overall, our findings provide partial support for the hypothesis that institutional arrangements such as collective agreements and the presence of employee representation seems to contribute to facilitating whistleblowing. Together with whistleblowing procedures, the same arrangement seems to foster a more protective behaviour. Institutional arrangements do however not seem to shift the managers' personal beliefs. Likewise, managers in inclusive regimes do not uniformly exhibit more whistleblower-friendly attitudes or actions. Further research is needed to understand the role of individual experiences, organisational cultures, and sectoral dynamics in shaping how whistleblowing is perceived and handled.

CONCLUSION

The main research question in this paper has been whether institutional arrangements and employment regimes influence the development of a more whistleblower-friendly environment in work organisations. Specifically, we examined managers' efforts to protect whistleblowers from retaliation, as well as their attitudes towards whistleblowing, across four countries: Denmark and Norway – characterised as inclusive employment regimes – and England and Ireland – classified as market-based regimes. Our analysis aimed to identify systematic differences between these two regime types in fostering supportive environments for whistleblowing.

The findings are mixed and not fully conclusive. Managers who are familiar with legal provisions, operate within organisations that have employee representation and are covered by collective agreements are more likely to report having whistleblowing procedures in place, suggesting that institutional arrangements do matter. However, the presence of whistleblowing procedures is

not exclusive to any one regime type, as they are found across both inclusive and market-based contexts.

Institutional arrangements also appear to increase the likelihood that managers are aware of potential sanctions faced by whistleblowers. At the same time, and somewhat unexpectedly, managers in countries with market-based regimes are more likely to have investigated whether whistleblowers were subjected to retaliation than those in inclusive regimes, contradicting our initial assumption.

With regard to managerial attitudes, the picture is similarly nuanced. Our analyses provide only partial support for the hypothesis that employment regimes shape attitudes in favour of whistleblowing. Managers in Denmark and Norway are less likely to view whistleblowing as a threat to managerial authority compared to their counterparts in England and Ireland. However, attitudes concerning the positive role of whistleblowing in correcting wrongdoing and improving services do not differ significantly between the regimes. Moreover, neither collective agreements nor the presence of whistleblowing procedures appears to significantly influence these attitudes.

This suggests that other, unmeasured factors – such as personal experiences, organisational culture or sector-specific dynamics – may play a significant role in shaping managers' attitudes towards whistleblowing. While the institutional framework may regulate actions, it does not necessarily shape managers' perceptions and interests related to whistleblowing.

NOTES

1. This chapter has been funded by the Research Council of Norway, project number 325442.

2. This was the case in the financial sector, in money laundering, offshore security, trade secrets, auditors and for abuse of markets, abuse of social services, occupational health and safety, environmental matters, defense, and the criminal justice system.

3. https://assets.publishing.service.gov.uk/media/5a819ef5e5274a2e87dbe9e3/bis-15-200-whistleblowing-guidance-for-employers-and-code-of-practice.pdf

4. The survey comprises England, but the numbers on trade union density are from the United Kingdom since we don't have numbers for England specifically.

5. In Denmark, white-collar workers are covered by the Law on Salaried Employees (Funktionærloven) or collective agreements with terms fairly equal to the law, stipulating stricter terms than among workers, where employers generally can dismiss easily, without much advance notification (Svalund (2013, p. 128).

6. This question was asked to the total sample of managers, regardless of their own experience with whistleblowing cases.

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THE TRANSPOSITION OF THE EU WHISTLEBLOWING DIRECTIVE: WHAT ROLE DOES NATIONAL LEGISLATION IN THE MEMBER STATES ENVISAGE FOR TRADE UNIONS?

David Lewis

Middlesex University, UK

ABSTRACT

This chapter examines the role that Member States(MS) envisaged for trade unions when they implemented the EU Directive on Whistleblowing (EUD), which came into force in 2021. The EUD adopts a three-tiered approach to disclosures of information about wrongdoing, namely, internal, external and public. Such an approach facilitates the involvement of unions in a range of matters, for example: ensuring that employers have appropriate whistleblowing policies and agreed procedures; the provision of advice and representation to members who are actual or potential whistleblowers or are the subject of allegations; checking that identified wrongdoing is dealt with; protection against victimisation and the monitoring and review of arrangements To provide context for the discussion which follows the chapter starts by providing some definitions and a short review of the literature on trade union involvement in whistleblowing prior to the EU Directive coming into force. It then examines in detail the extent to which EU MS have implemented whistleblowing legislation in ways that give trade unions a role at collective

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and individual level. The chapter concludes with a discussion about international best practices and suggests what might be needed to ensure that countries adopt them.

Keywords: Trade unions; transposition; whistleblowing[1]; directive; role of trade unions

The potential role of trade unions in the whistleblowing process has been explored elsewhere (Frieze & Jennings, 2001; Lewis & Vandekerckhove, 2018; Phillips, 2020), and this chapter attempts to explore how much of that potential has been fulfilled since the EU Directive on Whistleblowing (EUD) came into force in 2021. Before focusing on the way in which the EU Member States (MS) have implemented the EUD, it is important to remind ourselves why workers join trade unions and the possible levels at which unions might operate. Historically, workers have become union members in order to obtain the benefits of collective power. Subsequently they have had more personal reasons for doing so, for example, to access individual representation at disciplinary and grievance, etc. hearings and to utilise legal, financial and insurance services. In terms of collective involvement in industrial relations, trade unions might be active at local, industry, national or supranational levels. However, in the whistleblowing context attention concentrates on the following tiers of disclosure, i.e. internal, external or public (see Vandekerckhove, 2006). The EUD acknowledges the tiered approach, and this facilitates the involvement of unions in a range of matters, for example: ensuring that employers have appropriate whistleblowing policies and agreed procedures; the provision of advice and representation to members who are actual or potential whistleblowers or are the subject of allegations; checking that identified wrongdoing is dealt with; protection against victimisation and the monitoring and review of arrangements (Transparency International, 2022).

This chapter will examine the extent to which EU MS have implemented whistleblowing legislation in ways that give trade unions a role at collective and individual level. Having done so, it will refer to laws in a couple of non-EU countries in order to identify best practices and suggest what might be needed to ensure that countries adopt them. To provide context for the discussion which follows, we start by providing some definitions and a short review of the literature on trade union involvement in whistleblowing prior to the EU Directive coming into force.

CONTEXT FOR THE DISCUSSION

Research Background

Before offering a short literature review and research background, we will provide some definitions of key terms that are used. For the purposes of this chapter, the following definition of 'whistleblowing' in the International Organisation for Standardisation (ISO) guidelines (2021) is adopted: 'reporting of

suspected or actual wrongdoing by a whistleblower' (Paragraph 3.1). 'Wrongdoing' is defined as 'action(s) or omission(s) that can cause harm', and a 'whistleblower' is a 'person who reports suspected or actual wrongdoing, and has reasonable belief that the information is true at the time of reporting' (see ISO Paragraphs 3.8 and 3.9, respectively). It is important for our purposes that Note 2 to Paragraph 3.9 of the ISO document gives examples of whistleblowers that include union representatives. One of the aims of the EUD is to protect 'relevant interested parties', and Note 2 to Paragraph 3.4 of the ISO guidelines states that such parties 'can include, but are not limited to, those who make reports, any subjects of those reports, witnesses, personnel, worker representatives, suppliers, third parties, public, media, regulators and the organization as a whole'. In outlining who should be protected from detriment, Paragraph 8.4.5 specifies 'others assisting or involved in a report of wrongdoing, internal investigators, family members, trade union representatives or others supporting the whistleblower, or those who are wrongly suspected of reporting wrongdoing'. It will be noted that all of these definitions refer to concerns which are raised internally, externally or publicly.

Other terms that are invoked in this chapter are unlikely to need explanation. However, it might be useful at this stage to distinguish whistleblowing policies from procedures. Although in practices such policies and procedures may appear in the same document, the former display 'the intentions and direction of an organization as formally expressed by its top management' (ISO Paragraph 3.7) whereas the latter provide a mechanism for raising and handling concerns about wrongdoing. Many key expressions are likely to be defined in national legislation on whistleblowing and/or social partnership generally, for example, trade unions, worker representatives, collective agreement, consultation, employer organization, employer and employee. 'Social partners' is a term widely used in Europe to refer to representatives of management and labour. These will normally be employer organisations and trade unions or other representatives of employees. 'Social dialogue' is the process whereby the social partners negotiate on work-related matters. Supporters of such a process maintain that the collective bargains that result from it can promote a culture of integrity by institutionalising the exchange of information and building trust between the parties.

Research has consistently demonstrated that the two main reasons that deter people from reporting perceived wrongdoing are fear of retaliation and a belief that the wrongdoing is unlikely to be rectified (see Lewis et al., 2014). Historically, attention has focused on making it safe for people to raise a concern, but it is just as important to make whistleblowing 'effective'. Near and Miceli (1995) define this as 'the extent to which the questionable or wrongful practice (or omission) is terminated at least partly because of whistleblowing and within a reasonable time frame'. More recently, Vandekerckhove et al. (2014) defined 'successful' whistleblowing as raising a concern that results in 'managerial responsiveness to the primary concerns aired by the whistleblower about wrongdoing; and managerial ability or willingness to refrain from, or protect the whistleblower against, retaliation or reprisals for having aired those concerns'.

Subsequently, Lewis and Vandekerckhove (2012) suggested that trade unions have been neglected as organisations that can not only receive concerns but may also be able to take action to stop wrongdoing at industry/sector level as well as the workplace.

In terms of individual representation, we might expect whistleblowing to trade unions to be more successful than other routes because of their unique position in being able to support their members. Indeed, a union may be willing to assist a non-member in order to attract new members. Addison and Bellfield (2004) argue that rather than collective voice, it is individual voice that lowers the risk of workers quitting, i.e. individual rights are more valuable than collective representation. By way of contrast, Frieze and Jennings (2001) maintain that the task and value of trade union involvement is precisely the protection of whistleblowing workers. In their UK study of 1,000 cases from the Public Concern at Work (now Protect) advice line data, Vandekerckhove and James (2013) discovered that those who raised their concern with a trade union had aired it with others beforehand. One obvious explanation is that they have been advised to do so. More negatively, workers may turn to a union because of the adverse reactions they receive from people in their organisation when raising a concern internally. In relation to how successful whistleblowing to a union was, their findings showed that it was safer for whistleblowers to raise a concern with a union than it is to other recipients. However, they also revealed that raising a concern with a union was less effective than using other external or internal recipients. It follows that the task for unions is not simply to show that they can protect their members but to demonstrate to wider society that they are capable of ensuring that allegations of wrongdoing are taken seriously and that malpractices are dealt with appropriately. Indeed, while acknowledging the factors that limit the scope for trade unions to support whistleblowers, Kenny (2024) draws attention to their potential role in 'collective bricolage'. This term 'describes the organizing practices of public whistleblowers and their allies, working together outside the official channels to disrupt the status quo, and bringing information about serious wrongdoing to those who can address it'.

As regards collective representation, Lewis and Vandekerckhove (2012) identified the involvement of trade unions as a key element in their framework for reviewing international guidelines on whistleblowing policies. However, at that time they found that only the guidelines issued by the British Standard Institute advised organisations to consult with trade unions. Transparency International (2018) asserts that experience demonstrates that legislation developed after consultation with relevant stakeholders, including trade unions, is more likely to be effective (see also Abazi, 2021). Stakeholder engagement can ensure that the needs and concerns of all parties that will be affected and their expertise in handling concerns are taken into account. In turn, this should help build the trust and support of those who will have a role in implementing whistleblowing measures. Additionally, broad consultation can be useful as part of a publicity campaign to promote whistleblowing as a matter of public as well as private interest. Such awareness will be particularly important in nations

where the cultural perception of whistleblowing is negative (See Council of Europe, 2014).

Having conducted some empirical research as part of his doctoral thesis, Phillips (2020) asserts that one explanation for the limited engagement of UK trade unions in whistleblowing is that they view whistleblowing as an individual act but regard their role as collective. It might also be observed that whistleblowing laws tend to provide individual rights and remedies, which do not fit easily with the collective nature of trade unions. Indeed, Phillips points to the paradox that trade unions 'want to collectivise whistleblowing but do not put whistleblowing on the collective bargaining table' (p. 7). In comparing the United Kingdom with the Netherlands and Norway, Phillips notes that the latter two countries have much greater coverage of collective bargaining and collective agreements are more prominent at sectoral level than in the United Kingdom. Another problem identified by Phillips is that trade unions want to support whistleblowers, but 'at all levels, they seem not to understand what whistleblowing is'. It follows that, if trade unions cannot identify a whistleblowing situation, they cannot make it a collective issue or protect a whistleblowing member from reprisals. With some regret, he concludes that unions 'do not currently play an effective role in supporting members who wish to make a whistleblowing disclosure' (p. 227). This chapter aims to build on previous research by investigating the role that MS have envisaged for trade unions when transposing the EU Directive into their national legislation.

Pressure From International Institutions

In terms of European institutions, in 2014 the Council of Europe published its *Recommendation of the Committee of Ministers of the Council of Europe to States on the Protection of Whistleblowers*. Paragraph 16 of this document states that 'Workers and their representatives should be consulted on proposals to set up internal reporting procedures, if appropriate'. Turning now to the EUD, Paragraph 29 of the Recital and Article 3.4 make clear the desire to uphold the participative role of trade unions in national labour relations systems while guaranteeing minimum levels of protection for workers. The Recital states: 'This Directive should not affect national rules on the exercise of the rights of employees' representatives to information, consultation, and participation in collective bargaining and their defence of workers' employment rights. This should be without prejudice to the level of protection granted under this Directive'. Article 3.4 provides that: 'This Directive shall not affect national rules on the exercise by workers of their rights to consult their representatives or trade unions, and on protection against any unjustified detrimental measure prompted by such consultations as well as on the autonomy of the social partners and their right to enter into collective agreements. This is without prejudice to the level of protection granted by this Directive'. This form of words is consistent with both the overarching EU principles of subsidiarity and proportionality (see Article 5(3) of the Treaty on European Union, EU (2012)) as

well as the autonomy of the social partners as a fundamental right (see Article 28 of the European Union's Fundamental Rights Charter (EU, 2000).

Another key provision is Article 8.1 of the EU Directive which states that: 'MS shall ensure that legal entities in the private and public sector establish channels and procedures for internal reporting and for follow-up, following consultation and in agreement with the social partners where provided for by national law.' The word 'agreement' suggests that a collective bargain may be the ultimate outcome. However, the words 'where provided for by national law' make it clear the process will depend on the legislation in MS and reflects the principle of subsidiarity in legislating at EU level. Unsurprisingly, the European Trade Union Confederation (2018) had made representations to the effect that it must be obligatory that the establishment of reporting channels is done in consultation and through negotiation with the worker representatives and/or the trade unions and that the right to be represented is ensured. Indeed, the Council of European Professional and Managerial Staff (2020) pointed out that unions are ideally placed to negotiate best practices and hold organisations to account. Unfortunately, with the decline in membership since the 1980s in many EU countries, questions have been raised about whether unions are representative enough of the workforce and if they have the power to make changes in this field. Nevertheless, as institutions they are likely to have more resources and experience than non-union representatives.

Other roles are envisaged for representatives in Recitals 41, 45 and 54 of the EU Directive. Recital 41 provides that trade union and employees' representatives 'should enjoy the protection provided for under this Directive both where they report in their capacity as workers and where they have provided advice and support to the reporting person'. Recital 54 identifies trade union representatives and employees' representatives as third parties who could be authorised to receive reports of wrongdoing. Recital 45 states that protection should be made available to people who make information about wrongdoing publicly available inter alia via trade unions:

> Protection against reprisals as a means of safeguarding freedom of expression and media freedom and pluralism should be granted both to persons who report information about acts or omissions in an organisation ('internal reporting') or to an external authority ('external whistleblowing') and to persons who make such information, officials, civil society organisations, trade unions, or professional and business organisations.

Interestingly, the International Labour Organisation (2025) Working Paper 135 does not mention the role of trade unions as potential *internal* recipients of concerns. The function of Recitals is to explain how the objectives of the Directive are to be achieved as well as how particular terms used in it should be understood. Although they are not legally binding in themselves, courts can use them to interpret the Directive's Articles. Consistent with this function, the words 'should' and 'could' that are used here are legally weak and can be contrasted with the word 'shall' which is used in both Article 3.4 and 8.1 of the Directive (see above).

At the global level, it should be noted that the International Labour Organisation (2025) is a keen advocate of social dialogue and collective bargaining and claims that these processes can: help define corruption and whistleblowing in specific national contexts; encourage research into the causes of corruption and motivations for whistleblowing; provide effective protections for whistleblowers; create awareness among staff of the value of whistleblowers and the protections afforded to them; strengthen integrity programmes; develop the specialised knowledge of staff and close loopholes identified through consultations. More generally, it is asserted that 'social dialogue and collective bargaining can help change the organizational culture by bringing out workers' interests, building trust in the change process itself between the parties, and empowering workers to contribute to the goals of the organization'. Rather disappointingly, the subsequent United Nations Convention Against Corruption (2023) resolution on the Protection of Reporting Persons adopts many of the principles accepted by the Council of Europe and European Commission but goes no further than a call to States Parties 'to continue to develop appropriate measures to fully and effectively provide protection. . ..'

A NOTE ON METHODOLOGY

The author only felt confident to scrutinise the transposed legislation in the English language. In some MS, official translations were available, but in others, reliance was placed on DEEPL and Google Translate language conversion software. What emerged from this process was of variable quality, so caution needs to be exercised with the results when endeavouring to conduct a forensic exercise. A further complication is that some MS do not have self-contained whistleblowing statutes but have relevant provisions in other general or specific legislation or constitutional rights to freedom of expression. Thus, what follows may not present a totally accurate picture about how the Directive has been implemented in some countries. It should also be noted that the legislative materials scrutinised for each country are not referred to in the main text but are listed in alphabetical order in Appendix A.

NATIONAL LEGISLATION ON THE ROLE OF SOCIAL PARTNERS

Autonomy, Consultation and Collective Bargaining

In the light of Article 3(4) of the EUD, it is unsurprising that specific mention is made of the autonomy of the social partners in several countries, e.g. Bulgaria Article 3(4); Cyprus Article 4.5(5); Greece Article 5; Italy Article 1(4); Luxembourg Article 1(4); Malta Article 2.5; Portugal Article 3.5 and Romania Article 1(7). Similarly, Paragraph 29 of the Recital may have caused a number of MS to state explicitly that their whistleblowing legislation does not affect the right of workers to consult their representatives or the right to conclude

collective agreements, e.g. Bulgaria Article 3(4); Cyprus Article 4.5(5); France Article 8; Italy Article 1(4); Luxembourg Article 1(4); Malta Article 2.5; Poland Article 24 (which is noteworthy for specifying both a minimum and maximum period in which the consultation must take place); Portugal Article 3.5; Romania Article 1 and Spain Article 5. Several countries expressly provide that the rules on protection against damage resulting from such consultation are unaffected: Article 3(3.) Bulgaria; Article 4.5 (5) Cyprus; Article 1. 4 Italy; Luxembourg Article 1(4); Malta Section 2(5); Poland Article 9 and Romania Article 1. Significantly, both the Netherlands Section 2(7) and Sweden Chapter 1 Section 7 expressly acknowledge that a whistleblowing procedure can be set out in a collective labour agreement. In other MS where social dialogue is well established, it might be assumed that negotiation and/or consultation will take place about the introduction of whistleblowing arrangements at the workplace.

Limitation of Rights

Some MS emphasise the mandatory nature of their statutory provisions by outlawing the waiver or limitation of rights. For example, in Hungary Article 44 of Act XXV of 2023 imposes a blanket ban on declarations, contracts or regulations which restrict or exclude rights in the whistleblowing legislation. In other countries, collective or individual agreements are referred to in a variety of ways. For example, Denmark Article 4, Finland Section 28, Germany Article 39, Ireland Section 23, Portugal Section 23, Romania Article 27 and Spain Article 6 state that rights and guarantees provided by its whistleblowing laws cannot be waived or limited by agreement. Estonia Article 7 and Austria Section 4(4) render deviations from their whistleblowing statutes void unless the derogation is provided for in the legislation whereas other countries are more specific in outlawing provisions which offer less favourable rights and remedies (See Denmark Article 4; Finland Section 28; Germany Section 39; Greece Article 5(2)(e); Hungary Article 44; Ireland Section 23; Malta Section 2(5); Romania Article 27(1); Spain Article 63 and Sweden Chapter 1 Section 7).

Retaliation

In relation to the prohibition of retaliation, Article 19 of the EU Directive provides 15 illustrations of the forms that retaliation might take. This includes: '(l) blacklisting on the basis of a sector or industry-wide informal or formal agreement, which may entail that the person will not, in the future, find employment in the sector or industry'. Clearly, this covers boycotting provisions that might be contained in a collective agreement although it is hard to imagine that a trade union would agree to such provisions. EU MS commonly deal with agreements to boycott, for example, Austria Section 20(2)5; Belgium Article 15; Bulgaria Article 33(1); France Article 10; Ireland Section 3; Poland Article 12; Portugal Article 12; Romania Article 22 and Slovenia Article 19. Indeed, several of the countries adopt wording which is very close to that contained in Article 19 of the EUD.

Advice, Support and Representation

As indicated above, Recitals 41 of the Directive specifies that trade union and employee representatives should be protected 'where they report in their capacity as workers and where they have provided advice and support to the reporting person.' In France, Article 9 refers to trade unions acting in their capacity as 'whistleblower, facilitator or person in connection with the whistleblower'. In Greece, Article 5(2)(e) deals with the rights of employees to advice from their representatives or trade unions and provides protection against 'any unjustified harmful measure which results from said consultations'. In Ireland, Article 9 specifically protects disclosures made by workers 'in the course of obtaining legal advice (including advice relating to the operation of this Act)' from a trade union official. In Sweden, Chapter 3 Section 2 states that 'An operator must not take retaliatory action because someone consults their employee organisation for advice on reporting. The operator must also refrain from obstructing or attempting to obstruct such consultation'. Chapter 1 Section 8(3) of the legislation defines an 'operator' as follows: 'in the private sector, a physical or legal person; in the public sector, a central government administrative authority, a court or a municipality'. Additionally, in Sweden, business associations, trade unions and civil society organisations can apply for public funds to provide information and advice to whistleblowers. Specific mention of assistance is made in Portugal where Article 6(4) stipulates that statutory protection is afforded to natural persons (including trade unions or workers' representatives) who confidentially assist whistleblowers in the procedure.

In relation to support, Section 9 (1) in Latvia states that trade unions can 'provide support, including consultations, for whistleblowers' and Section 9(3) provides that unions may 'without special authorisation, apply to an institution (authority) or a court on behalf of such whistleblower who is a member'. Similarly, in the Netherlands, Section 5 allows an authorised representative of a reporting person to make a request to the Investigation Department. In Ireland, if a trade union has the consent of a member who is an employee, Schedule 2 of the Protected Disclosures Act 2014 specifically empowers it to complain on their behalf to the Rights Commissioner and, subsequently, to appeal to the Labour Court. In Italy where there has been as dismissal referred to in Article 22, a worker and his/her trade union can make a joint application to a judge for reinstatement.

Recipients of Concerns

Recital 54 of the EU Directive identifies trade union representatives and employees' representatives as third parties who could be authorised to receive reports of wrongdoing. In Latvia, Section 4 of the Whistleblowing Law 2022 stipulates that a trade union can be used by as a whistleblowing mechanism and Section 10 affords whistleblowers and related persons an individual right to consultation about the protection of their rights. In Romania, Article 19 identifies trade unions as potential recipients of a public disclosure, and Article 26

requires a trade union representative to be invited to a disciplinary investigation if so requested by a whistleblower who is under investigation.

DISCUSSION

In some countries, trade unions are limited in their engagement in wider society and have adversarial relationships with government and business. However, in contrast with liberal market economies, it might be expected that, in nations with more coordinated economies (see Hall & Soskice, 2001) and more cooperative systems of industrial relations, trade unions might be more willing to establish, operate and monitor effective whistleblowing arrangements. Phillips' (2020) doctoral research suggests that while coordinated economies are more proactive and liberal economies reactive to engagement with whistleblowing law, there is little difference when it comes to pushing for and undertaking a role. Our review of the legislation shows that in many countries, there is no acknowledgement in whistleblowing statutes that collective bargaining has a role to play in facilitating whistleblowing but in a small number (for example, Sweden and the Netherlands), such a role is explicit. Looking outside the EU for a moment, in Norway Section 2 A-2 of the Work Environment Act makes it clear that employees can report concerns internally via a safety or union representative. Section 2 A-6 obliges undertakings that regularly employ at least five employees to have procedures for internal whistleblowing and those with fewer employees must have such procedures 'if the conditions at the undertaking so indicate'. These procedures must be 'prepared in connection with the undertaking's systematic health, environment and safety activities in cooperation with the employees and their elected representatives'. The word 'consultation' is used in other sections of this legislation, so it can be inferred that the requirement for 'cooperation' here suggests that something close to agreement should be sought. Indeed, Section 2.3 of the Working Environment Act (as amended 2024) spells out the employees' general duty to cooperate in the operation of the Act in some detail.

The question then arises as to how open trade unions are to collaborate with other organisations at national, sectoral and local levels and how equipped they are to represent the interests of the workforce in relation to whistleblowing issues. While it is assumed that collaboration is a positive thing, one negative aspect is that it can lead to distrust in the ability of trade unions to handle concerns appropriately. For example, if it is alleged that an employer is polluting the environment, a union may cooperate in phased remediation in order to avoid a total plant closure and safeguard the employment of the majority of the workforce. However, a whistleblower who has another job (or is confident about obtaining one) may feel that immediate rectification is required and that the public interest should prevail over the private interests of the organisation, trade unions and workers. Union collaboration with the media can be particularly problematic. Media reaction is difficult to predict, and journalists have their own interests to serve, so unions may have to work hard to ensure that the legal

protection of whistleblowers is not compromised. In terms of unions being equipped to handle concerns about wrongdoing, it is an unfortunate corollary that where collective bargaining about whistleblowing is less prevalent or confined to very local arrangements, there is more likely to be a lack of expertise and resources invested in the process.

We now turn to unions as recipients and makers of disclosures. Again, the union role will depend on resources and/or the extent to which it has voice within a work organization. Those that have negotiating rights with employers might ensure that union officials are designated as internal recipients of concerns and are permitted to make disclosures themselves on behalf of workers (Unless otherwise stated, reporting wrongdoing to a regional or national official is most likely to be considered to be an external disclosure). One advantage of collective voice is that it amplifies that of an individual, but it can also focus attention on the concern rather the person raising it (Abazi, 2021). If lodging concerns with union representatives is permitted under an agreed whistleblowing procedure, those who do so should be protected and may also choose to have their identity concealed as an extra safeguard against retaliation. Reporting to union officials will be particularly attractive to members as they may be used to approaching them in other circumstances, and in turn, this may increase the general willingness to raise concerns. If trade unions are designated receivers and/or makers of disclosures, they should be in a position to resolve ambiguities about whether wrongdoing has occurred and is covered by the procedure and/or the law. Indeed, the fact that the union makes the disclosure adds weight to the concern, and this might also encourage members to report wrongdoing to it. Although there may be difficulties in practice, unions should try to ensure that reprisals are not imposed by work colleagues who might feel that the concern should not have been raised. For example, because loyalty has been interpreted to mean that workers should not get members of the group into trouble or the group norm is to turn a blind eye to the particular form of wrongdoing. However, one matter that is sometimes raised in relation to trade union representatives serving as recipients of concerns is the question of confidentiality. It could be argued that information supplied by a member could only be used for the purposes agreed by that person and not generally in dealings with the employer. Thus if a discloser of safety failings decided not to proceed with the matter, without additional information the union might be unable to pursue the issue even though other members might be at risk.

Where there is distance between the worker who originally suspected wrongdoing and the person investigating it, the opportunity for management to retaliate may be reduced. Additionally, if there are good industrial relations at the workplace, it would be anticipated that the union will able to ensure that concerns are properly investigated and that any wrongdoing identified is corrected. When an organisation is properly held to account, trust in the procedure will be bolstered, and this, in turn, may reduce the likelihood of inappropriate external disclosures being made in the future. Where the trade union is unable to secure a right to receive or make a disclosure, they could aim to secure a safe a communication channel to senior management. Ideally, open discussions would

ensure that top managers are aware of and are acting on allegations of wrongdoing and accept responsibility for ensuring that whistleblowers are immune from reprisals. In the absence of effective formal communication channels, at the very least trade unions should be able to advise and represent their members at any meetings about the disclosure.

In terms of the advisory role of trade unions, it should be noted that in some countries independent organisations have been established to provide advice about what can be disclosed under national legislation, how a concern can be raised and what support is available during the whistleblowing process. Where this is the case, trade unions may feel that they can serve their members best by engaging with the specialist bodies. However, where there are competing advice agencies, it may well be the task of trade unions to point potential or actual whistleblowers in the direction of the one that they think is most appropriate in the particular circumstances. Clearly, this would require officials to have some knowledge about what services are available. It almost goes without saying that a statutory right to both physical and digital access to the workforce would be valuable not only to facilitate the provision of advice and support but also for monitoring the impact of whistleblowing arrangements. In this respect, it is again worth noting the approach taken in New Zealand where Section 20 of the Employment Rights Act 2000 grants union representatives reasonable access to workplaces in order to monitor compliance with both collective agreements and statutory employment-related rights.

CONCLUSION

Our focus here will be on the best practices that have emerged in the transposition process. However, before identifying them it is important to remember that not all MS have been enthusiastic about introducing or amending their whistleblowing legislation. This is illustrated by the fact that the European Commission has felt obliged to bring proceedings against a small number of MS in order to ensure compliance with the EUD. It is also evident that a few countries appear to have reproduced some of the wording in both the Directive and its Recitals without really applying it to their national context. More positively, some MS have gone beyond the EU minimum requirements in relation to trade union involvement and have adhered to best practice guidelines contained in the ISO document and elsewhere. While the overall picture may not be encouraging for trade unions, this is hardly surprising since it reflects the union movement's weakness in many MS as well as the strength of social dialogue in others.

It is now widely acknowledged that consultation with trade union or employee representatives is the minimum requirement for introducing adequate whistleblowing procedures. However, if co-operation is genuinely desired, it might be argued that receiving representations is insufficient and that employers should be obliged to use their best endeavours to negotiate whistleblowing arrangements with trade unions. Put crudely, collective bargaining can promote

effective communication, allow employers to plan better and ensure that the workforce is treated equitably. From a trade union perspective, it might be observed that negotiating good whistleblowing agreements and displaying efficiency in the handling of concerns may well assist them in recruiting new members. Thus, it is asserted that MS should be put under more pressure to recognize that whistleblowing is a legitimate subject for collective bargaining. Underpinning this should be a legal right of workers to consult representatives and not suffer damage for doing so.

The role of trade union representatives in the whistleblowing process can be widely drawn but is likely to be limited by resource constraints as well as the approach of employers. For example, it might cover advising and supporting members, receiving individual concerns and raising them collectively, ensuring rectification of wrongdoing and that disclosers of information do not suffer reprisals. Ideally, MS should be obliged to make public funds available to enable trade unions (and non-governmental organisations) to provide specialist advice to both actual and potential whistleblowers. If union representatives are to serve as recipients of concerns, there would also seem to be great advantage in legislation and/or collective agreements specifying that, with the consent of the member, such representatives can act on their behalf in referring matters to external investigating agencies and the courts.

Finally, the EU Commission's key rationale for the Directive is that effective national legislation on whistleblowing is critical to combating fraud and other financial irregularities. However, there is also a compelling business and societal case for protecting for those who raise concerns about other forms of wrongdoing. Employers need to know about problems and inefficiencies in their organisation at the workplace so that they can deal with them as soon as possible and certainly before there is external scrutiny of their activities. It also important for workers as, even today, so-called 'gagging clauses' exist and staff are criticised for endeavouring to uphold high standards and safe practices. More generally, society must strive to achieve an open culture where whistleblowers are valued for their role in making the public more secure and free from corruption. Indeed, as noted by the Organization for Economic Cooperation and Development (1999), the more corrupt countries tend to be those without union representation.

NOTES

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APPENDIX A

LIST OF RELEVANT LEGISLATION CONSIDERED

Austria: Whistleblower Protection Act 2023 (HSchG) 2023.
Belgium: Parlement de la communauté française session 2022–2023 3 Juillet 2023 proposition de décret1 and décret et ordonnance conjoints relatifs au médiateur bruxellois.
Bulgaria: Protection of persons who report or publicly disclose information on Breaches Act 2023.
Croatia: Law on the protection of reporters of irregularities 2022.
Cyprus: Law providing for the protection of persons who report breaches of EU and National Law 2022.
Czech Republic: Act amending certain acts in connection with the adoption of the Whistleblower Protection Act. Act no. 172/2023.
Denmark: Whistleblower Protection Act 2024.
Estonia: The act on the protection of whistleblowers of work-related breaches of European Union law 2024.
Finland: Law on the protection of persons reporting violations of European Union and National Law 2022.
France: Law no. 401 aimed at improving the protection of whistleblowers 2022.
Germany: Law for better protection of whistleblowers (Whistleblower Protection Act – hinschg) 2023.
Greece: Protection of persons who report violations of Union Law - Incorporation of directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 (l 305) and other urgent regulations 2022.
Hungary: Act on complaints, whistleblowing and reporting of abuse 2023.
Ireland: Protected Disclosures Act 2014 Ed Disclosures Act 2014.
Italy: Legislative decree no. 24. Implementation of 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 and laying down provisions regarding the protection of persons who report breaches of national law 2023.
Latvia: Whistleblowing law 2022.
Lithuania: Law on protection of whistleblowers 2021.
Luxembourg: Law transposing 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 2023.
Malta: An Act to Amend the Protection of the Whistleblower Act. Cap. 527. 2021.
Netherlands: Whistleblower Protection Act 2023.
New Zealand: Employment Rights Act 2000.
Norway: Working Environment Act 2005; as amended 2024).
Poland: Act on the protection of whistleblowers 2024.
Portugal: Whistleblower protection proposal. Law No. 93. 2021.
Romania: Law NR. 361 on the protection of whistleblowers in the public interest 2022.
Slovakia: Act on the Protection of Whistleblowers and on Amendments to Certain Acts 2023.
Slovenia: Reporting Persons Protection Act 2023.
Spain: Law 2/2023, of February 20, 2023, regulating the protection of persons who report regulatory and anti -corruption breaches.
Sweden: The act on the protection of persons reporting irregularities 2021.

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EU DIRECTIVE ON WHISTLEBLOWING AND THE TRANSPOSITION PROCESS IN DENMARK AND NORWAY

Natalie Videbæk Munkholm[a] and Anne-Mette Ødegård[b]

[a]*University of Southern Denmark, Denmark*
[b]*Fafo, Norway*

ABSTRACT

Denmark and Norway share similar labour market models and legal systems yet differ significantly in whistleblower protection. Norway introduced whistleblower provisions in the Working Environment Act (WEA) in 2007 but has not fully implemented the European Directive (EU) Whistleblowing Directive (WB Directive). Denmark, by contrast, lacked general whistleblowing legislation until transposing the WB Directive in 2021. In both countries, statutory adaptation involves public consultation prior to legislative proposals. This chapter analyses these consultation rounds to examine stakeholder positions on the necessity and scope of whistleblower legislation and the mobilization of interests, particularly among employers and employees. Employer responses in both countries emphasized delimiting the material scope during transposition. Nevertheless, Denmark's Whistleblowing Act, shaped by the WB Directive, significantly strengthened employee protection. Its scope extends beyond EU requirements to include breaches of Danish law and other 'serious matters,' such as sexual harassment. Norwegian trade

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unions, conversely, advocated leveraging national discretion to enhance protections beyond the WB Directive's minimum standards. Danish employers expressed concerns about restricting the whistleblowing scheme to traditional employee–employer relations to avoid disrupting established systems – a position absent from Norway's consultation. These findings illustrate contrasting approaches to balancing EU obligations with domestic priorities and highlight how stakeholder engagement influences legislative outcomes in whistleblower protection.

Keywords: Transposition; labour law; Denmark; Norway; stakeholder consultation[1]

The Whistleblower Directive (WB Directive) was adopted on 23 October 2019 (European Parliament & Council, 2019). The purpose of the WB Directive is to strengthen the enforcement of European Union (EU) law by protecting individuals who report violations of specifically designated EU law, by laying down common minimum standards. The Member States had until 17 December 2021 to implement the WB Directive into national law.

The WB Directive entails, among other things, the establishment of reporting mechanisms in various private and public entities, as well as the designation of external competent authorities to receive and handle reports of violations of EU legislation in specific listed areas, including procurement law, financial services, transport security, environmental protection, consumer protection and data privacy. The purpose of the WB Directive is to enhance the enforcement of Union law and policies in specific areas for a high level of protection of persons reporting breaches of Union law. The preamble points out that whistleblower protection legislation in the EU is fragmented and that whistleblowers do not have sufficient protection against retaliation. This may discourage potential whistleblowers from reporting illegal or objectionable practices out of fear of reprisals. Effective protection of whistleblowers is therefore a means to ensure the effective enforcement of EU law. Whistleblowers shall be protected from unfair dismissal, unfair treatment, coercion, intimidation, harassment and civil and criminal liability in respect of the disclosure of confidential information.

The WB Directive is a so-called minimum-directive, meaning that it sets minimum standards and that the Member States have the right to set higher standards when implementing the regulation (EUR-Lex, n.d.). The Member States have the opportunity to allow the social partners to enter into agreements on matters covered by the WB Directive, as long as the collective agreement provisions do not lower the level of protection provided by the WB Directive.

The need for legal amendments will depend on existing national provisions. This chapter compares the transposition process of the WB Directive in Denmark and Norway.[2] These countries are quite similar as regards to labour market models and legal systems. On the other hand, when it comes to national legislation aimed at protecting whistleblowers, the two countries differ. In Norway, employees have had whistleblower protection in the Working Environment Act (WEA) since 2007 but has still not finalized the implementation of

the EU Directive into national law. In Denmark, there has been no general whistleblowing legislation until the transposition of the EU Directive in 2021. This major difference in the need for legal amendment involves different approaches to the process in the two countries. Another reason why this is an interesting topic is that the whistleblower legislation was highly controversial when it was introduced in Norway almost 20 years ago, and it remains a subject of considerable debate. The question, therefore, is whether this has also influenced attitudes towards the transposition of the EU Directive. A common feature for the two Nordic countries is the high degree of autonomy for the social partners in negotiating working conditions and resolving disputes. This might raise concerns that this type of legislation could disrupt workplace social dialogue and lead to the development of parallel systems. Moreover, the Nordic labour market model is characterized by a high degree of participation and involvement from the employees in the day-to-day business. Combined with a strong protection for workers' freedom of speech, a relevant question is whether there is a need for whistleblowing legislation and how this will be combined with the constitutional rights of freedom of expression.

In both countries, the process of adapting a statutory act involves a preliminary consultation with the public before proposal of the act. A long list of stakeholders, including public authorities, social partners and NGOs, are consulted as part of the process. The response from the consultation rounds in Denmark and Norway form the basis for the analysis in this chapter. A comparison of transposing new legislation processes will contribute to the overall analysis of conflicts of interests and power relationships between the stakeholders in the two countries. This can be specified in two questions: How do the stakeholders assess the need for this legislation and its scope? Do we see a mobilization of different interests and power by key stakeholders, especially from employers and employees?

We then discuss whether the WB Directive affect the existing mechanisms for balancing the managerial prerogative and the freedom of speech of workers. From a power perspective, it can be argued that the whistleblower provisions provided employees with new tools to further reduce the inherent asymmetry in the relationship between employers and employees. The whistleblower provisions can therefore also be seen as an attempt to limit the employer's managerial prerogative and thereby indirectly, property rights in the private sector (Engelstad, 2015). Thus, the property rights, as a basis for the employers' right to manage, and freedom of speech, as a basis for whistleblowing and the protection of whistleblowers, are two possible conflicting democratic principles.

THE TRANSPOSITION PROCESS IN DENMARK

In Denmark, the WB Directive was transposed in the Statutory Act on Whistleblower Protection (the Whistleblower Act). The proposal for the Act was submitted by the Minister of Justice on 14 April 2021, and the Act was adopted on 29 June and came into force on 17 December 2021 (Justitsministeriet, 2021a;

2021b). It was the Ministry of Justice that was responsible for the transposition process, which is unusual for EU law affecting the labour market. In a labour law perspective, this means: no preliminary debate/negotiations in the Ministry of Labour's 'implementation committee' with representatives from the social partners and very few comments on the relationship with existing employment law and industrial relations systems for handling disputes at the workplace.

The Whistleblower Act, Section 1, covers reports concerning breaches of EU law within the scope of the WB Directive, as well as reports that otherwise concern serious violations of law and other serious matters. The Danish Act thus expands the material scope of the Whistleblower Protection to violation of rules and regulations originating in Denmark, e.g. criminal law and public administrative law, as well as 'serious matters' such as sexual harassment or harassment.

The consultation process revealed several points of interest. One issue concerned the risk of limiting the existing freedom of speech and freedom of opinion for employees and, more specifically, for public employees. A second issue concerned the expansion of the scope of the Danish Act going beyond the WB Directive. A third issue, following up on the expansion of the scope, concerned the delimitation between topics regulated by the normal mechanisms in employment relations and topics falling under the Whistleblower Act.

The freedom of speech of public employees has been the centre of much attention over the last decade or so, with several expert committees and reports, ombudsman cases and guides, as well as guidelines issued by the Ministry of Justice (Ytringsfrihedskommissionen, 2020; Ombudsmanden, 2016–2018). The notion is that freedom of speech for public employees is under pressure and that public employers are restricting or sanctioning employees who exercise their freedom of speech. For this reason, several stakeholders found it important to clarify that the Whistleblower Act in no way limits the freedom of speech of public employees. This topic has a dedicated section in the consultation document. The Ministry emphasized that the Whistleblower Act establishes a high level of protection for whistleblowers in both private and public sectors. The act does not restrict the freedom of speech for public employees. It is stated in the comments to Section 13 in the Act that employers in the public sector should give information that internal and external whistleblower schemes do not limit the freedom of speech of public employees. The existing rules on freedom of speech and the right of public employees to inform the public continues to apply. This is also addressed in the guidelines published alongside the Act. Moreover, the Ministry underlined that the freedom of speech of employees is protected in Section 77 of the Danish Constitution and in Article 10 of the European Convention of Human Rights (Justitsministeriet, 2016).

On the matter of freedom of speech, two take-away points can be deduced. First, a concern raised by stakeholders and NGOs, that the existing right to freedom of speech of public employees was at risk of being confused, stifled, or otherwise hindered by the Whistleblower Act. This resulted in clarifications in

several places as well as a continued focus. Second, for employees in private sector, the protection offered in the Whistleblower Act is new and moves the protection of private employees significantly forward in relation to their existing lack of right to inform, as well as in relation to their existing limited freedom of speech.

The Scope of the Danish Act Going Beyond the WB Directive

As mentioned, the scope of the Whistleblower Act is expanded beyond the scope of the WB Directive. Several stakeholders commented on the expansion of scope. The comments fall in three categories – those supporting the expansion, those criticizing it and those concerned with the delimitation towards employment law and industrial relations.

The trade unions welcomed this broader scope, advocating that the act to be extended to all cases of sexual harassment and offensive behaviour not only 'grave' situations. The argument is that distinguishing between serious and non-serious offences can be challenging, thus supporting a more inclusive approach. One trade union suggested expanding the scope even further with breaches of professional norms and standards. It was also argued by one NGO that protection should include all violations of laws, professional standards, collective agreements, international obligations and other significant matters. Some of the employers' associations argued against the significant expansion of the WB Directive's scope, suggesting the expansion should be limited to 'serious offences or sexual harassment' (Dansk Arbejdsgiverforening, 2021). Concerns were raised regarding the lack of clarity in the scope due to the expansions. Some stakeholders called for more precise definitions and examples to ensure clarity and certainty for the whistleblowers. The lack of clear definitions of 'serious offences' and 'other serious matters', creating uncertainty for whistleblowers who must distinguish between EU and national rules. A solution could be that protection should cover all employees reporting any suspected violations in good faith. Also, employer associations called for detailed examples, comprehensive lists and guidelines to define 'grave' and 'serious' breaches to ensure legal certainty and avoid ambiguity. Lack of clarity could make it difficult for companies and whistleblowers to determine what falls within the scope and lead to legal uncertainty.

The Relationship Between the Whistleblower Act and Labour and Employment Regulations

Those opposed to the expansion were employer associations, who were concerned with disrupting the balance between employment law and whistleblowing or with disrupting the existing employment and industrial relations systems. Several employers' associations underlined that it should be clarified that the act does not cover industrial or employment disputes. They advocated for adding explicit exclusion provisions to the Whistleblower Act, ensuring that labour and employment regulations take precedence in cases that can be addressed through

these systems. Others called for clear guidelines to avoid undermining the legal certainty and the existing labour law system. This separation is crucial to maintain system integrity (Finanssektorens Arbejdsgiverforening, 2021; Kommunernes Landsforening, 2021). It was also emphasized that whistleblowing should not be used to gain an advantage in employment disputes, preserving trust in the Danish system.

The comments from the Ministry underlined that the normal rules in employment relations apply in situations concerning reporting on types of matters outside the material scope of the Whistleblower Act (Justitsministeriet, 2021b). This would be the case for information about breach of internal guidelines of a less serious nature, such as guidelines on sick leave, alcohol, dress code, private use of office supplies, etc., and information about less severe personnel-related conflicts in the workplace. Such information can instead be submitted to the supervisor, personnel/HR department or a shop steward. As a clear general rule, reports about conflicts between two or more employees and reports about a person's own employment conditions will fall outside the intended scope, except in cases of sexual and severe harassment. Specific disputes between employees, etc., are generally handled in the workplace or within the industrial dispute resolution system. However, there may be exceptional cases where even minor conflicts and challenges with cooperation can pose significant risks and thus constitute serious matters under the Whistleblower Act, i.e. in sectors where critical functions are performed, including health, defence or transport sectors. In such circumstances could cases fall under the scope of 'other serious matters' covered by the Whistleblower Act.

It is also clarified from the Ministry that conflicts under the scope of the industrial relations system as a starting point falls outside the scope of the Whistleblower Act. This cover disputes concerning interpretation and administration of collective agreements, the lawfulness of industrial actions including work stoppages or lockouts, the role and protection of shop stewards, the lawfulness of dismissals, etc.

The concerns raised in the consultation process underlined the need to delimitate the material scope of the Whistleblower Act more clearly, as the protection of whistleblowers is an exception to the regular set of rules for how to settle disputes or disagreements at the workplace. The legitimization for the cross-cutting protection of whistleblowers goes against the duty of loyalty towards the interests of the employer to keep business to themselves.

Another issue raised in the consultation process as well as during the negotiation in the Danish parliament concerned whistleblower schemes in groups of companies. The proposal stated that groups of companies with more than 250 workers in total were obliged to establish individual whistleblower schemes in each legal unit and could not use a joint whistleblower scheme. The issue was put forward by major stakeholders among the employers' associations, large private companies and also among the NGOs. These stakeholders saw it as a major challenge that the act would dispose of the current opportunity to have a joint whistleblower scheme in groups of companies. This would, according to the stakeholders, result in a de facto weakening of the companies' advantages of the

whistleblower schemes, a weakening of compliance with the legislative acts that the Whistleblower Act aimed to protect, as well as increasing some of the risks the Whistleblower Act tried to protect against.

The Ministry made an amendment proposal, allowing employers covered by the act to establish joint whistleblower schemes within corporate groups, in both private and public sector. In the remarks, the Ministry recognized the challenges faced by larger corporate groups and public employers due to the lack of shared whistleblower schemes (Folketinget, 2020–2021). The Ministry has engaged in discussions with the EU Commission and other EU Member States on how to interpret the WB Directive's rules on internal whistleblower schemes since the amendments depend on changes to the WB Directive. Additionally, the Danish amendment includes provisions for outsourcing whistleblower functions to affiliated companies within a corporate group. The question of the legality under the EU Acquis of joint whistleblower schemes, as well as the question of outsourcing a whistleblower scheme to a company in a group of companies, is still unanswered.

THE TRANSPOSITION PROCESS IN NORWAY

More than three years after the implementation deadline, the EU Directive is still not implemented in Norwegian law. The responsibility for the transposition is divided between the Ministry of Justice and Public Security and the Ministry of Labour and Social Inclusion. A report on how to implement the WB Directive was outsourced to a law firm (Lund & Co. DA, 2022), commissioned by the Ministry of Labour and Social Inclusion, while the consultation round was arranged by the Ministry of Justice and Public Security.

Unlike Denmark, Norway has had whistleblower provisions in the WEA since 2007. It is broadly established that employees have the right to report wrongdoings and that whistleblowers should be protected against retaliation. Moreover, in Section 1.1, it is stated that one of the purposes of the Act is to facilitate a satisfactory climate for free speech in the undertaking. Employees' freedom of speech is protected by the general rules set out in Article 100 of the Norwegian Constitution, Article 10 of the European Convention on Human Rights (ECHR) and Article 19 of the UN International Covenant on Civil and Political Rights (ICCPR). The clear starting point is that employees have the same protection of freedom of speech as all other citizens. The whistleblowing regulations in WEA can be seen as a prolonging of the freedom of speech stated in the Constitution.

An important piece of background information is that the whistleblowing regulations in the WEA have been, and continue to be, highly contested. During the law-making process before 2007, there was a mobilization of interests around two camps, the employers' and the employees' side. Put simply, when the first bill was sent to consultation in 2004, the employers' associations expressed concern that the whistleblowing provisions could pave the way for disloyal acts by the employees and challenge the managerial prerogative. The regulation,

interpretation and effect of the provisions remained controversial, and this resulted in further revisions in 2017 and 2020.

In the consultation process on the EU Directive, we don't find the same arguments from the employers' side that were emphasized in connection with the national legislation. However, it is possible to find arguments that are related to these attitudes, i.e., the support of minimum implementation and the arguments for a separate law on breaches of EU/EEA-law. On the other side, some of the trade unions view this implementation process as an opportunity to reintroduce claims to establish a whistleblowing ombud and investigate the possibilities for a new law that goes beyond the regulations in the WEA.

The Question of Minimum Implementation

As mentioned, the Member States can choose to implement the WB Directive according to the minimum standards set in the regulation. The employers' associations support a minimum implementation of the WB Directive (Regjeringen, 2022). One central argument is that the duty to act in whistleblowing cases often entails an administrative burden, as it frequently requires the involvement of legal or other professional expertise. Thus, the implementation of the WB Directive into Norwegian law should result in as little additional work and bureaucracy for employers as possible.

From the trade union side, it is argued that the available room for action should instead be used to strengthen whistleblower protection beyond the minimum requirements of the WB Directive. This could create a legal framework that is robust, easy to understand, considers the needs of all parties involved and functions as intended. A directive-based minimum implementation does not sufficiently meet these objectives (Yrkesorganisasjonenes Sentralforbund, 2022).

The Need for a Single Law

The proposal to transpose the WB Directive into a single law is supported by both some of the trade unions and the employers' associations. The circle of people included in the WB Directive is much wider than in the WEA.[3] This is one of the important arguments for a separate law. Furthermore, the matters that can be reported are regulated differently in the WEA and in the WB Directive. The right to blow the whistle under the WEA relates to 'censurable conditions' in general. The WB Directive, on the other hand, applies to breaches of specific areas of EU law, not including labour law.

However, one of the trade unions emphasize that it is unfortunate that the proposed implementation involves a supplementary law that applies exclusively to EEA-related matters, rather than seeking a comprehensive legal framework within a single law, with provisions that clearly specify the whistleblower protection covers and to whom it applies in different contexts. The main argument is that it currently exists significant uncertainty regarding the boundaries of whistleblowing (Norsk Journalistlag, 2022). Some of the other trade unions see

the need for a closer examination of the necessity for a new and wider whistleblowing regulations in areas beyond those covered by the WEA, and the government is encouraged to consider, in the long term, establishing a committee to explore how this can be addressed.

The report from Lund & Co DA (2022) points out that the whistleblowing provisions in the WEA seek to balance the interests of the employee and the employer, among other things, by weighing the employee's freedom of speech against the unwritten duty of loyalty in employment relationships. On the other hand, the WB Directive is an instrument aimed at ensuring the effectiveness of EU/EEA law. Hence, a common whistleblowing act would disrupt the balance that the legislator has sought to achieve in the WEA between the protection of employees and the interests of employers. Additionally, the whistleblowing provisions in the WEA are also designed to uncover violations of the law, but the regulations are primarily intended to protect employees rather than to serve as a mechanism for exposing wrongdoing in the public interest. Although a unified whistleblowing framework has the advantage of avoiding difficult boundary issues, the report emphasizes that there are strong reasons to leave the provisions of the WEA unchanged. Since the purpose serves as a guideline for interpretation, this suggests that the whistleblowing provisions under the WB Directive do not naturally belong in the WEA (Lund & co DA, 2022). However, it is underlined that the intention of the new law is not to lower the level of protection that an employee or hired worker has under the provisions of the WEA. The new Act will therefore explicitly state that it does not entail any limitations on the protection whistleblowers have under other legislation or legal grounds.

The suggestion on a separate law to implement the WB Directive implies that there will be two parallel systems for whistleblowing. In general, it is a fear that two laws might be confusing and pedagogically unwise. One concern was that one cannot expect a whistleblower to know whether a violation within the organization constitutes a breach of national law/guidelines or EEA law. The complexity may result in fewer people coming forward, which is contrary to the intention of the WB Directive (Transparency International Norge, 2022). Another concern from the consultation process is the different requirements for supervision and handling of reports. This can make it unclear and challenging for businesses to understand what applies, which set of regulations they need to follow, and when (Arbeidstilsynet, 2022). Thus, it is necessary that the new Act has references to the WEA and vice-versa and that the concept of employee must be identical in both sets of regulations.

It is also pointed out by the Norwegian Bar Association in the consultation process that the regulation requires high competence on EEA regulation (Advokatforeningen, 2022).

The obligation to establish internal reporting channels should apply to all legal entities in the private sector that employ at least 50 workers or have done so during the past 12 months. Both permanent and temporary employees in full-time and part-time positions should be included. The same applies to workers hired in from external companies. This means that it is just a small

proportion of businesses in Norway that will be affected by this legislation (Næringslivets Hovedorganisasjon, 2024). As in Denmark, the question of joint whistleblower schemes within corporate groups is highlighted in the consultation process. The proposed legislation can be understood to mean that companies with more than 249 employees will not be able to share an internal reporting channel. Such an interpretation may become problematic in corporate groups that have established reporting channels and a robust compliance programme to handle whistleblowing cases across group companies. It is thus argued to use the Danish solution, allowing companies that are part of a corporate group to establish a shared whistleblowing system (Advokatforeningen, 2022).

Moreover, several of the trade unions want to establish a national whistleblowing ombud to enhance the sense of security for the most vulnerable employees and assist both employees and employers in preventing and managing challenging whistleblowing cases.

DISCUSSION

In our introduction, we posed the questions of whether the stakeholders see a need for legislation on whistleblower protection, and whether we see a mobilization of different interests from the employees and the employers' representative. These two question have been answered in the proceeding sections.

In this final section, we will discuss the second question raised in the introduction, namely whether the transposition affected the existing balances between the managerial prerogative and the freedom of speech of workers.

The main difference between Denmark and Norway in this implementation process is that Denmark is introducing whistleblowing regulations for the first time whereas Norway has had such regulations in place since 2007. This means, among other things, that the Danes have adopted a law that goes beyond the minimum requirements of the WB Directive in order to ensure whistleblowing provisions in some key areas of working life, such as harassment. Such provisions are already in place in Norway. In other words, the provisions on scope largely shape the views expressed during the consultation process, especially among employers.

The issue of expanding the material scope of the Whistleblower Act was opposed by the employers, both in Denmark and Norway. The WB Directive's mechanism of giving protection to employees for certain behaviours can be perceived as an interference and limitation of the employer's prerogative. In Denmark, the employers did not see the function of whistleblowing per se as an advantage to the company or society. This follows the same lines of argumentation that was seen from some of the Norwegian employers when the original whistleblowing regulations were proposed in 2004. As such, the opposition against the expansion of the material scope, as well as a strong focus on the delimitation of the protection when employees are acting outside the WB Directive, indicates that the employers assess that these regulations can contribute to interfere or limit the managerial prerogative.

Since a minimum implementation of the WB Directive does not affect labour law, it was more convenient for the Norwegian employers' associations to accept this regulation but still emphasizing that it should be held on a minimum and separate from the regulations in the WEA. The consultation paper that formed the basis for the input was also careful to point out that the balance of interests between employers and employees in the WEA should not be disturbed, for example by proposing a joint law with an extended scope in connection with the transposition of the WB Directive.

Moreover, in Denmark, those opposed to the expansion of the scope were employer associations, who were concerned with disrupting the balance between employment law and whistleblower protection or with disrupting the existing employment and industrial relations systems. More specifically, on the broadening of the scope in relation to the employment law regulation, in the consultation process, several employers' associations underlined that the act should clarify that it does not cover industrial disputes or employment disputes. This was a quite traditional point of view taken by the employers' side. The benefits of whistleblower protection to the overall society, the market as well as for the individual businesses were not in focus for the employers. The focus from the employers' side was to protect the status quo in the existing labour law framework, allowing sanctioning of employees for any revelations or statements that may negatively affect the employer's market position – even when the critique is true.

As in Denmark, there is a long-standing tradition in Norway for union representatives and management to discuss and resolve matters through social dialogue, without interference from legislation. The absence of labour law in the WB Directive is likely the reason why Norwegian employers have not emphasized the importance of ordinary channels for cooperation between the social partners in their consultation responses. They do not mention possible disruption or replacing of the existing industrial relations, unlike the Danes. The same goes for the Norwegian trade unions, where, as shown, some also argue for more extensive legislation in this area. This may be related to experiences of negative feedback and retaliation faced by workers who have blown the whistle in the past decade (Trygstad & Ødegård, 2022). Although Norway and Denmark share similar labour market models, trade union density and collective agreement coverage are higher in Denmark than in Norway. This means that the social partners are not equally equipped to handle conflicts of interest in the workplace, e.g., the Norwegian workers will to a higher degree be depended on legislation to protect their interests.

The employee side in Denmark did not in the same way as the employers oppose the mechanism of legislation protecting the workers. However, the fact that in Denmark the Whistleblower Act was passed by the Ministry of Justice, and not he Ministry of Employment as would be usual for rules affecting labour relations at the work place, could be seen as the entire issue of whistleblowing not being perceived as a 'usual' employee right but more concerned with freedom of speech per se, a fundamental right a topic organized by the Ministry of Justice. The concern about the effect of the WB Directive on the current weak

protection of the freedom of speech of public employees in Denmark was raised, not only by trade unions but by the Ministry of Justice itself.

As such, the discussions were concerned with limiting the effects of the whistleblowing scheme to the 'ordinary' employee–employer systems to not disrupt or interfere in this. And, so as to not prepare a path where new dispute resolution mechanisms would find their way into the existing labour market relations. And, perhaps further, that the protection of a fundamental right of workers in general is not placed in the hands of the Ministry of Justice but should continue to be balanced by the bargaining procedures of the social partners supported by the Ministry of Employment. In this, the WB Directive is perhaps wisely placed in the Ministry of Justice, as a way to signal, that the topic is unusual and odd and does not affect the usual measures available in the labour market.

In Norway, the public debate about the WB Directive has been virtually absent, likely for the same reasons mentioned earlier: it does not concern labour law, and there is already comprehensive legislation on whistleblowing in place. The question of consequences for free speech has also been more or less absent in connection with the transposition of the EU Directive. One explanation might be that there has been a substantial debate on free speech in working life during the last years, among other things in connection with a public commission on free speech, that published their report in 2022 (NOU, 2022, p. 9).

The absence of public debate may also be explained by a similar situation to that in Denmark, namely that the responsibility for the report on the transposition of the WB Directive in Norway was assigned by Ministry of Labour and Social Inclusion, while the Ministry of Justice and Public Security was responsible for the consultation round. This division may have contributed to less discussion among the social partners than normal.

Another common feature between Denmark and Norway in the consultation round was the fear of unclarity and the provided room for interpretation and increased bureaucracy connected with the new regulations, especially from the employers' side. This is understandable since it is the employers and managers that are responsible for establishing legal channels for whistleblowing as well as investigating cases in a thorough and fair way. The preoccupation from employers in both countries on the requirements of reporting channels is a clear indicator on this.

CONCLUSION

Whistleblowers often challenge powerful actors inside the organization. This is the backdrop for the growing recognition of the need to strengthen the protection of workers' freedom of speech and whistleblowing in many countries during the last 20 years. And this is also some of the background for the EU Directive on whistleblowing.

The main difference between Denmark and Norway in this implementation process is that Denmark is introducing whistleblowing regulations for the first time to adhere to EU requirements whereas Norway has had such regulations in place since 2007. The transposition processes of the EU WB Directive in Denmark and Norway have revealed conflicting interests, especially between the social partners. The concerns raised from the employers' side in both countries underlined the need to delimitate the material scope when transposing the EU Directive. The transposition in Denmark goes beyond the minimum requirements. The protection offered in the Whistleblower Act is new and moves the protection of private employees significantly forward in relation to their existing lack of right to inform, as well as in relation to their existing limited freedom of speech.

From the trade union side in Norway, it is argued that the available room for action should be used to strengthen whistleblower protection beyond the minimum requirements of the WB Directive, in addition to the already existing regulations in the WEA. According to the employee side, this could create a legal framework that is robust, easy to understand, considers the needs of all parties involved and functions as intended. A directive-based minimum implementation does not sufficiently meet these objectives.

On the matter of freedom of speech, another take-away point can be deduced from the Danish experience. First, the concern raised by stakeholders and NGOs in the consultation rounds concerned the risk that the Whistleblower Act would stifle, confuse or otherwise become a new hindrance for the exercise of the freedom of speech, which was already enjoyed by public employees. This resulted in clarifications in several places as well as a continued focus on freedom of speech of public employees. Indeed, a new statutory Act on Freedom of Speech of Public Employees has been adopted in 2025. Free speech has not been a matter of discussion in Norway in connection with this transposition process.

Another point could be that the choice in both countries of placing the transposition of the WB Directive in the hands of the Ministry of Justice signalled that whistleblowing is not a regular mechanism in the labour market and as such, placing it in the Ministry of Justice not only can smooth the transposition of the WB Directive but also limits the effects of the legislation becoming a model for future interferences in the labour market balances and interests of the social partners.

In Denmark, it was also very clear that the stakeholders aimed to demarcate that the WB Directive did not affect the existing labour market mechanisms for breaches of employee duties or for dispute resolutions. By this, the scope/use of the WB Directive is kept in place, and the potentials for expansion of the material scope, as well as the risk of 'overflow' of the mechanisms into other areas of labour law, were strongly discouraged. As the labour market in Denmark is considered well-regulated and balanced, the social partners are well-respected and collaborate in finding solutions that are balanced for companies and workers and societies. Alas, the trade unions were not the drivers of the expansion; this was the Ministry of Justice. The trade unions agreed that

concepts, etc. needed clarification so as to give a high level of legal certainty for the whistleblower.

The WB Directive is still not implemented in Norway, for unknown reasons. It is therefore not known whether this regulation will spark any political debate when the final proposition is presented in the Parliament. Given past controversies surrounding whistleblowing in Norwegian society, it is not unlikely that some politicians will seek to make their mark by advocating for new and stronger regulations in connection with the implementation of the WB Directive.

NOTES

1. This chapter has been funded by the Research Council of Norway, Project number 325442.

2. Norway is not a member of the EU but is part of EU's inner market regime through the Agreement on the European Economic Area (EEA).

3. The personal scope in the WB Directive includes former employees, workers not begun, contractors, self-employed, board members, shareholders, trainees and volunteers, persons who provide assistance and third parties connected to the reporting person. The WEA covers employees and hired workers, students, conscripts, patients (in healthcare or rehabilitation institutions), individuals undergoing training and participants in labour market measures.

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CRITICAL COMPARISON OF THE TRANSPOSITION OF SANCTIONING MEASURES IN THE DIRECTIVE (EU) 2019/1937 INTO THE NATIONAL LAW OF IRELAND, BELGIUM AND THE NETHERLANDS

Kristien Verbraeken

Agency for Government Personnel, Belgium

ABSTRACT

This chapter analyses the transposition of Article 23 of the EU Whistleblower Directive into the national legislation of Ireland, Belgium and the Netherlands. Article 23 requires Member States to establish effective, proportionate and dissuasive penalties for obstructing reporting, retaliating against whistleblowers, initiating vexatious proceedings and breaching whistleblower confidentiality.

The analysis reveals significant differences between the three countries in terms of both the nature and severity of penalties. Despite the Directive not mandating sanctions for failing to set up internal reporting channels, all three countries have incorporated such penalties into their laws. The authority to impose penalties varies between courts, administrative bodies and regulatory agencies.

The chapter raises concerns about the effectiveness, proportionality and dissuasive impact of the sanctions, especially as whistleblowers often bear the burden of initiating legal action. The existing legislative differences could pose

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compliance challenges for cross-border companies and may lead to forum shopping. Further harmonisation at the EU level, such as through a regulation, may be necessary in the future.

Legal sanctions should be proportionate and fair, but current measures in countries like Belgium, the Netherlands and Ireland leave considerable room for judicial discretion, which may reduce their effectiveness. Whistleblowers facing retaliation may struggle to take legal action due to the power imbalance between them and their employer, despite the presence of legal sanctions. It seems that other supporting measures, such as collective enforcement, mediation and promoting a positive speak-up and integrity culture in organisations, are necessary to complement legal sanctions to safeguard whistleblowers from harm.

Keywords: Transpositions; sanctions; whistleblowing; EU Whistleblower Protection Directive; comparison national legislation

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 (henceforth called the Directive) recognises the importance to offer effective protection against whistleblower reprisals.

The Directive imposes obligations on all EU member states to better protect people who report on breaches of Union law. All Member States are obliged to transpose the Directive into their national legislation. Enforcement is an important aspect of compliance with legislation.

With regard to enforcement, the Directive contains an article on sanctions, Article 23, which states that Member States must take proportionate, effective and dissuasive measures to counter and punish infringements. The Directive specifies the infringements for which these measures should be taken but does not say what measures they should be or how they can be imposed. It is up to the Member States to implement this.

This chapter compares Irish, Belgian and Dutch legislation[1] to identify whether and how they have transposed the sanctioning of breaches under the Directive. It examines how the national legislations in these three countries differ from each other and what questions this raises. Furthermore, the chapter discusses how the sanctions can be imposed in the three Member States, insofar as this has already been determined. Finally, a number of critical questions and comments are addressed, along with the challenges this entails on a legal and practical level.

SANCTIONS IN THE EU DIRECTIVE

Recital 102 of the Directive States That

Criminal, civil or administrative penalties are necessary to ensure the effectiveness of the rules on whistleblower protection. Penalties against those who take retaliatory or other adverse actions against reporting persons can discourage

further such actions. Penalties against persons who report or publicly disclose information on breaches that is demonstrated to be knowingly false are also necessary to deter further malicious reporting and preserve the credibility of the system. The proportionality of such penalties should ensure that they do not have a dissuasive effect on potential whistleblowers.

This is further specified in Article 23 of the Directive.

(1) Member States shall provide for effective, proportionate and dissuasive penalties applicable to natural or legal persons that:
   a. hinder or attempt to hinder reporting;
   b. retaliate against persons referred to in Article 4;
   c. bring vexatious proceedings against persons referred to in Article 4;
   d. breach the duty of maintaining the confidentiality of the identity of reporting persons, as referred to in Article 16.

(2) Member States shall provide for effective, proportionate and dissuasive penalties applicable in respect of reporting persons where it is established that they knowingly reported or publicly disclosed false information. Member States shall also provide for measures for compensating damage resulting from such reporting or public disclosures in accordance with national law.

It is remarkable that although Article 8 of the Directive obliges all legal entities in the public sector and all legal entities in the private sector with 50 or more workers to establish channels and procedures for internal reporting, Article 23 does not oblige Member States to ensure penalties can be imposed on entities that do not comply with this obligation.

As the national laws of Ireland, Belgium and the Netherlands do have the possibility to impose sanctions on entities that fail to establish and maintain such internal reporting channels, I have included it as a point of comparison.

COMPARISON OF SANCTIONS IN IRISH, BELGIAN AND DUTCH LAW

In Table 1, I compare the transposition of the article on the imposition of sanctions, as stated in Article 23 of the Directive, in the Irish, Belgian and Dutch laws. As Belgium is a federated state, the Directive has been transposed into federal and regional law. To be able to compare the laws on the same level, the table below contains the Belgian transposition on the federal level for the public and private sectors.

First, the table indicates whether the different aspects as listed in Article 23 have been transposed into the respective national laws by means of a check mark (✔). If there is only a partial transposition, it is indicated with a plus-minus symbol (+/−). Secondly, the table includes a summary of the possible sanctions for a breach of the different aspects. Finally, I consider what this comparison teaches us and what important differences we notice.

Table 1. Comparison of the Transposition of Sanctioning Measures in the Directive (EU) 2019/1937 Into the National Law of Ireland, Belgium and The Netherlands.

Sanctions Listed in Article 23 of EU Directive	Transposition in Irish Law	Transposition in Belgian Federal Law: Public Sector[a]	Transposition in Belgian Law: Private Sector	Transposition in Dutch Law
(a) Hinder or attempt to hinder reporting; (App. 1)	✔ (Apps. 2–3) Sanctions: a. on summary conviction: • class A fine • or imprisonment for maximum 12 months, • or both OR b. on conviction on indictment: • a fine of maximum €250,000 or imprisonment for maximum two years • or both.	✔ (Apps. 13–14) Sanctions: • prison sentence of six months to three years • a fine of €600 to €6,000 • or both	✔ (Apps. 15–16) Sanctions: • prison sentence of six months to three years • a fine of €600 to €6,000 • or both	+/− (App. 31) Sanctions for wrongful act for which the court may impose conditional fines.[2]
(b) Retaliate against persons referred to in article 4; (App. 1)	✔ (Apps. 3–4) Sanctions: a. on summary conviction: • class A fine • or imprisonment for maximum 12 months, • or both OR b. on conviction on indictment: • a fine of maximum €250,000 or imprisonment for maximum 2 years • or both.	✔ (Apps. 17–18) Sanctions: • prison sentence of six months to three years • a fine of €600 to 6,000 • or both	✔ (App. 19) Sanctions: • prison sentence of six months to three years • a fine of €600 to 6,000 • or both	+/− (App. 32) Sanctions: The investigation division of the Dutch Whistle-blowers authority shall have the power to impose administrative (conditional) fines, the details of which will be laid down in Secondary legislation.[3]

(c) Bring vexatious proceedings against persons referred to in article 4; (App. 1)	✔ (Apps. 3, 5) Sanctions: a. on summary conviction: • class A fine • or imprisonment for maximum 12 months, • or both OR b. on conviction on indictment: • a fine of maximum €250,000 or imprisonment for maximum two years • or both.	✔ (Apps. 20–21) Sanctions: • prison sentence of six months to three years • a fine of €600 to €6,000 • or both	✔ (App. 22) Sanctions: • prison sentence of six months to three years • a fine of €600 to €6,000 • or both	✔ (App. 31) Sanctions for wrongful act for which the court may impose conditional fines.[4]
(d) Breach the duty of maintaining the confidentiality of the identity of reporting persons, as referred to in article 16. (App. 1)	✔ (Apps. 6–7) Sanctions: a. on summary conviction: • a class A fine • or imprisonment for maximum 12 months • or both OR b. on conviction on indictment: • a Fine of maximum €75,000 • or imprisonment for maximum two years • or both.	✔ (Apps. 23–24) Sanctions: • prison sentence of six months to three years • a Fine of €600 to €6,000 • or both	✔ (App. 25) Sanctions: • prison sentence of six months to three years • a Fine of €600 to €6,000 • or both	✔ (App. 33) Sanctions: • prison sentence of maximum one year • or a fine of the fourth category (with a maximum of € 22,500).[5]

Table 1. *(Continued)*

Sanctions Listed in Article 23 of EU Directive	Transposition in Irish Law	Transposition in Belgian Federal Law: Public Sector[a]	Transposition in Belgian Law: Private Sector	Transposition in Dutch Law
Not included in article 23 of the EU Directive: Failing to establish, maintain and operate internal reporting channels and procedures	(Apps. 3, 8, 12) Sanctions: a. on summary conviction: • class A fine • or imprisonment for maximum 12 months, • or both OR b. on conviction on indictment: • a Fine of maximum €250,000 or imprisonment for maximum two years • Or both. • Summary proceedings may be brought and prosecuted by the workplace relations commission.	Not included	(App. 26) Sanctions: In accordance with Art. Article 101(5) of the social penal code a level 4 penalty consisting either of • a prison sentence of six months to three years • And a criminal fine of €600 to €6,000 • Or of one of those penalties alone • Or an administrative fine of €300 to €3,000.	(App. 34) Sanctions: The investigation division of the Dutch Whistle-blowers authority shall have the power to impose administrative (conditional) fines, the details of which will be laid down in Secondary legislation.[6]
Member states shall provide for effective, proportionate and dissuasive penalties applicable to natural or legal persons (App. 1)	✔ (Apps. 11–12) Both the body corporate and individuals working on behalf of the body corporate with their consent or connivance of or to be attributable to any neglect are liable on their part.	✔ (App. 27) • A disciplinary measure may be imposed on the statutory staff member of a federal public authority • With a prison sentence of six months to three years and with a fine of €600 to €6,000 or with one of those	✔ (App. 26) A level 4 sanction shall be imposed on: 1° The employer, his appointee or his agent, who has committed a violation of Chapter 3 of the aforementioned law;	✔ (App. 35) Member states shall provide for effective, proportionate and dissuasive penalties applicable to natural or legal persons.

		penalties alone is punished the federal government agency, the members of its staff, as well as any natural or legal person.	2° The employer, his appointee or his agent, the competent authority or the federal coordinator who has infringed article 22 of the of the aforementioned law. A level 4 sanction consists of: • prison sentence of six months to three years • a criminal fine of €600 to €6,000 • or both • or an administrative fine of €300 to €3,000	
(App. 10) 2. Knowingly report or publicly disclose false information and provide for compensation for damage resulting from such reporting or public disclosures	✔ (Apps. 9–10) Sanctions: a. on summary conviction: • a class A fine • or imprisonment maximum 12 months, • or both OR b. on conviction on indictment • a Fine of maximum €100,000 • or imprisonment for maximum two years • or both.	✔ (Apps. 28–29) Sanctions: • a prison sentence from eight days to a maximum of one year • or a fine of €26 to a maximum of €1,000 • or a combination of both.	✔ (App. 30) Sanctions: • a prison sentence from eight days to a maximum of one year • or a fine of €26 to a maximum of €1,000 • or a combination of both.	✔ (App. 36) Sanctions: • a prison sentence of maximum two years OR • a fine of the fourth category (with a maximum of €22,500)[7]

a. Under the Act of 5 March 1952 concerning additional tenths on criminal fines (Belgian Official Gazette, 3 April 1952), criminal fines must be increased by a certain number of additional tenths. In accordance with Article 59 of the Programme Act of 25 December 2016 (Belgian Official Gazette, 29 December 2016), for offences committed after 1st of February 2026, this involves an increase of ninety additional tenths, which means applying a multiplier of 10.

The comparison of whether and how Ireland, Belgium and the Netherlands have transposed Article 23 of the Directive shows a number of striking differences. I will briefly look into the main differences per section.

Hinder or Attempt to Hinder Reporting

All three countries have transposed this aspect into national law. Whereas Ireland and Belgium have included it in their Whistleblower Protection Acts, the Netherlands has not. The Dutch law makes use of the possibility to hold the employer liable for a wrongful act for which a conditional fine can be imposed.

The penalties vary greatly for hindering or attempting to hinder reporting between countries. In Ireland, it can be punished on summary conviction with a class A fine, amounting up to €5,000 and imprisonment up to 12 months or both. In case of an indictment conviction the fine can amount up to €250,000 and imprisonment up to two years or both.

In Belgium, the sanction consists of six months to three years imprisonment or a fine of €600 to €6,000 or both. In the Netherlands, no amounts are mentioned, as it will be the judge, when this breach is brought before the court, who will determine the amount of the conditional fine. In this sense, the Dutch law offers no legal certainty for this infringement.

Retaliation Against Persons Referred to in Article 4 of the Directive

This aspect has been transposed in the three member states. In Ireland and Belgium, the same penalties apply as for hindering or attempting to hinder reporting. At face value, it may seem a bit illogical that sanctions for retaliation are put on a par with sanctions for hindering or attempting to hinder reporting, but obviously the court has a wide range of penalties it can impose in both countries, according to the severity of the infringement.

In the Netherlands the Dutch Whistleblowers Authority has been granted an administrative sanctioning power for a number of infringements, including retaliation. The further details relating to the administrative sanctioning power will be laid down in a law, which is still to be discussed and adopted.

Bring Vexatious Proceedings Against Persons Referred to in Article 4 of the Directive

Also, this aspect has been transposed by the three countries. Ireland and Belgium have the same range of penalties for this aspect as for hindering/attempting to hinder and retaliation. The Netherlands makes use of the penalties for unlawful acts, the same as for hindering or attempting to hinder reporting persons.

That the same penalties are applicable as for retaliation seems logical, as bringing vexatious proceedings against reporting persons and others as referred to in Article 4 can be considered as a form of retaliation.

Breach the Duty of Maintaining the Confidentiality of the Identity of Reporting Persons as Referred to in Article 16 of the Directive

The three countries have all transposed this aspect into national law. In Ireland, the summary conviction is the same as for the previous infringements, viz., a class A fine (up to €5,000) and imprisonment up to 12 months, or both. But the penalties for conviction on indictment are different: a fine of up to €75,000 or a prison sentence of up to two years, or both.

Whereas the penalties in Belgium are the same as for previous infringements: six months to three years imprisonment or a fine of €600 to €6,000 or both. The Netherlands has penalties that can amount to one year imprisonment or a fine of category 4 (up to a maximum of € 22,500).

Failing to Establish, Maintain and Operate Internal Reporting Channels and Procedures

Even though Article 23 of the Directive does not list the obligation for member states to provide penalties for entities that do not comply with having internal reporting channels and procedures, Ireland, Belgium and the Netherlands have included it in their laws. In Belgium, it is only included in the law for the private sector, not for the public sector. It raises the question of whether this was an oversight or whether the legislator takes it for granted that entities in the public sector will comply with it, as they have an exemplary role. Or do they rely on the fact that both legal and natural persons can be held liable, as shall be discussed in the next section?

The penalties for the private sector in Belgium are the same as for the infringements above. In Ireland, the penalties are the same as for the first three infringements.

In the Netherlands, the Dutch Whistleblowers Authority is granted administrative sanctioning powers for failing to (correctly) establish a reporting channel and/or informing workers about this procedure, in case of retaliation, and when entities do not act upon the recommendations in the investigation reports of the Dutch Whistleblowers Authority. In all these cases, the Dutch Whistleblowers Authority will have the possibility to impose a (conditional) administrative fine.

Member States Shall Provide for Effective, Proportionate and Dissuasive Penalties Applicable to Natural or Legal Persons

The Irish, Belgian and Dutch laws all included that both legal and natural persons can be held liable, but the way of transposing this requirement is different. The Dutch law mirrors the wording of the Directive without any further specification. As we can infer from the sanctions foreseen for the different aspects of the breaches mentioned in Article 23 of the Directive, Dutch law can impose sanctions on individuals and legal entities.

In Ireland, not only legal entities can be held accountable, but there is also personal liability for anyone working for an organisation for an offence

committed or where a matter can be attributed to any neglect on their part towards a discloser.

In Belgium in the public sector the employer, his appointee or his agent, the competent authority or the federal coordinator can be held liable. In the public sector the federal government agency, the members of its staff, as well as any natural or legal person are punishable. In addition statutory staff of the federal government can be punished with a disciplinary measure.

Knowingly Report or Publicly Disclose False Information and Provide for Compensation for Damage Resulting From Such Reporting or Public Disclosures

All three countries have transposed this aspect, but there are again rather big differences between the possible sanctions. Ireland has the most severe penalties out of the three countries on summary conviction, ranging from a class A fine or imprisonment of maximum 12 months, or both, to a fine of maximum €100,000 or imprisonment for a maximum of two years, or both. In Belgium and the Netherlands, this infringement is punished on the basis of slander in the penal code. In the Netherlands, this is punishable with a prison sentence of maximum two years or a fine of a maximum of €22,500. In Belgium, the sanctions for slander seem rather light in comparison, with prison sentences from eight days to a maximum of one year, or a fine of €26 to a maximum of €1,000 or a combination of both.

CRITICAL QUESTIONS AND CONCERNS ON A LEGAL AND PRACTICAL LEVEL

Looking at the differences in transposition of Article 23 of the Directive regarding sanctions into the national laws of Ireland, Belgium and the Netherlands, it raises some significant questions and concerns.

Big Differences in Transposition

The comparison between the three countries already shows many differences. These differences are likely to be even greater if the legislation of all EU Member States is compared. Given the large differences, it might be difficult for companies that are established in several Member States to comply. Also, employers that do not have their workers' best interest at heart might want to set up their entity in the law that has the least severe penalties (forum shopping).

It remains to be seen whether further harmonisation, for example by the adoption of a Regulation, will be necessary in the future.

Sanctioning the Lack of (Adequate) Internal Reporting Channels

The Directive does not explicitly oblige member states to ensure that entities that do not have a (proper) reporting channel are sanctioned. The countries that are compared in this chapter have included a sanction for this in their laws. It raises

the question though how it will be determined whether there was indeed an infringement and what criteria are used. Will it be up to competent authorities to determine infringements? Or is it up to the workers to report the lack or inadequacy of an internal reporting procedure to an authority or bring it to court?

In the Netherlands, the Dutch Whistleblowers Authority will have the administrative power to sanction organisations, the details of which are still to be determined by law. In Ireland, summary proceedings for this infringement may be brought and prosecuted by the Workplace Relations Commission (WRC).

Who Is Competent to Impose Sanctions?

Based on the legislation, it seems that the sanctions will usually be determined and imposed by the court. In some cases, other competent authorities such as the WRC (Ireland) or the Dutch Whistleblowers Authority (the Netherlands) could impose penalties. It is also not clear whether the fines will be imposed immediately or if conditional fines would be used. Because the legislation is still very recent and not yet applicable in the Netherlands, it is not completely known how this will be applied in practice.

Are the Sanctions Effective and Dissuasive?

If competent authorities do not sanction infringements or bring them to court, it will, in practice, mean that the reporting person will have to go to court to request sanctions and seek compensation for any harm or damage. This puts a lot of pressure on the reporting person, especially if there will not be any accompanying measures. Without legal, financial and psychological support, the threshold may be too high for reporting persons to go to court. The question is whether the sanctions foreseen, especially given the lack of supportive measures, are effective and dissuasive enough to meet the requirements set by the Directive.

Are the Sanctions Proportionate?

In the laws of Ireland, Belgium and the Netherlands, it is stated that both legal and natural persons can be held liable and punishable by law. The penalties can be heavy for an individual, but for certain organisations, such as multinationals, certain fines might not be very deterrent.

Personal liability is meant to be dissuasive for the committing of breaches, specifically aimed at persons deliberately breaching someone's identity seeking retribution. But in certain cases, it might be counterproductive to the whistleblowing investigative process, as there are dangers and penalties for the persons who are investigating matters on behalf of the discloser, which slows investigations down.

In Ireland, the maximum fine for knowingly reporting false information is €100,000, whereas the maximum fine for not maintaining the confidentiality of the identity of reporting persons is €75,000. Where both breaches can be very damaging for a legal entity and for a reporting person, the maximum fine for the

person who intentionally reports false information is greater than for the legal or natural person who discloses the identity of the reporting person without their consent. For this reason, these sanctions do not seem proportionate.

In the national laws that I have compared, certain infringements are sanctioned based on previously existing legislation. For instance for knowingly reporting false information or depicting a person in a bad light, the penal code on defamation and slander is applicable in Belgium and the Netherlands. To stop slander or seek compensation for damages resulting from slander, both legal entities and individuals must bring the matter to court. But legal entities usually have more resources to go to court than individual reporting persons, so this does not seem like a proportionate measure.

The Importance of Legal Sanctions in a Work Relations Context

In the workplace, where there are inherent power imbalances between employers and employees, sanctions play a crucial role in safeguarding rights and deterring misconduct. They provide a structured means of enforcing legal standards, ensuring that violations are met with tangible consequences.

Sanctions are the ultimate measure for employers who fail to meet their legal obligations. They form part of a broader supervision and enforcement strategy, within which the competent authority also has other means of intervention to encourage employers to comply with the regulations. The ability of a supervisory or enforcement body to impose sanctions makes compliance with these obligations more enforceable.

For employees, the existence of enforceable sanctions fosters a sense of security and trust. Knowing that the law provides a mechanism to address unjust treatment encourages individuals to speak up against wrongdoing, without fear of unchecked retaliation. In this way, sanctions complement whistleblower protections and help promote a transparent and accountable workplace culture.

From the employer's perspective, sanctions incentivise compliance with labour laws and whistleblower protection laws. They act as a risk management tool, deterring negligent or intentional breaches that could result in financial, reputational or legal damage. Consistent and proportionate application of sanctions can help build a culture of integrity and reinforce organisational values.

Importantly, the value of sanctions lies not just in their punitive function but also in their capacity to restore justice and promote behaviour change. When proportionate and fairly applied, sanctions can support conflict resolution, uphold the rule of law and ultimately contribute to a more respectful and equitable working environment.

However, for sanctions to be truly effective in the workplace, they must be accessible, enforceable and accompanied by adequate support mechanisms – such as legal aid, mediation, internal reporting systems and awareness-raising about the obligations. Without these, even the most well-designed sanctions risk becoming symbolic rather than impactful. For this reason, supervisory and enforcement authorities play a crucial role – particularly when they also focus on

advice, awareness and preventive support. Enforcement powers cannot be viewed in isolation from supervisory powers if they are to have a truly (preventive) effect.

Sanctions that are anchored in the law may provide more legal certainty for parties involved. However, in the current sanctioning measures in Belgium, the Netherlands and Ireland, there are wide ranges of possible penalties which leaves a lot of room for judicial discretion. As stated above, these legal sanctions may not always the most effective, dissuasive and proportionate measures.

If an employee is disadvantaged by their employer as a result of making a report, taking legal action requires considerable effort and resilience from the whistleblower. Not all employees are capable of doing so. Even with legal sanctions in place this does not always change the imbalance of power between employee and employer.

In the Netherlands, when the decision was made to extend the mandate of the Dutch Whistleblowers Authority to include supervisory and enforcement powers, it was taken into account that compensation or damages awarded by a court to a disadvantaged whistleblower is not the same as imposing a sanction for violating the law (in this case, the Dutch Whistleblowers Protection Act, Wbk).

In an individual case, for example, a disadvantaged employee may receive financial compensation, which must be paid by the employer. This addresses the individual's interests, but it does not yet enforce the public interest underlying the Whistleblowers Protection Act. The public interest lies in ensuring that employees are able to report breaches of Union law and socially significant wrongdoing in a simple and accessible manner, thereby protecting society from (potential or further) misconduct with societal impact.

Imposing sanctions for non-compliance with obligations under the Whistleblowers Protection Act (Wbk) is currently not yet possible. The Dutch Whistleblowers Authority should be able to enforce compliance with legal obligations through the use of sanctions. In this way, a societal response is created, along with a preventive social effect, when an employer fails to meet the obligations set out in the Wbk.

If, for example, an employer fails to comply with the Wbk by neglecting to establish an internal reporting procedure within their organisation, the employer must also be held accountable for this, and statutory sanctions are necessary.

Such sanctions do not automatically arise from the Wbk. Moreover, in each individual case, it must be carefully assessed whether administrative measures are appropriate. Therefore, it is important that, in the Netherlands, for example, the legislator has granted the Dutch Whistleblowers Authority supervisory and enforcement powers, which are currently being prepared.

At present, it is up to the individual whistleblower to take the initiative to bring a case before the civil court in order to enforce their legal protection in relation to their employer (i.e. to seek compensation for damages suffered). This places a significant burden on the individual's capacity to act. Furthermore, the civil court does not respond on behalf of society towards the employer; for this reason, the Dutch Whistleblowers Authority must fulfil that role.

Because certain sanctions – such as a small fine – tend to have less impact on larger organisations than on smaller ones, it may be worthwhile to tailor the sanctions to the specific circumstances of the parties involved. In doing so, sanctions can be designed to have a primarily preventive effect, as the (pressure of) sanctions can help enforce compliance.

To encourage employers to comply with the applicable legislation protecting whistleblowers, it may be useful to apply sanctions in a strategic and graduated manner. For example, in the case of an initial but not overly serious breach of the law, the employer could be given a period of time to remedy the situation and bring their practices into compliance. If this does not occur, administrative fines or penalty payments could follow.

The imposition of such measures can be carried out by supervisory and enforcement authorities, as is currently being developed in the Netherlands. In the absence of such an authority, the employee, a group of employees or another interested party would have to take the matter to court.

Alternatives for Legal Measures to Impose Sanctions

In order for the statutory sanctions to take effect, a court decision is sometimes required. As previously mentioned, the employee is frequently in a weaker position than the employer, and there is no certainty in advance about the outcome of legal proceedings. Moreover, taking such steps demands a significant degree of agency and perseverance from the whistleblower.

By going to court, the employer and employee's relationship will be strained and possibly damaged beyond repair. Even if the court would rule that the employer has to re-employ the employee, if the employer dismissed or suspended the employee, the question remains whether this would be a safe and positive work environment for the employee to return to.

Mediation or other forms of ADR (Alternative Dispute Resolution) seem to offer better possibilities for employers and employees to stay on speaking terms and leave the possibility to continue to work together in the future. According to Lancksweerdt and Verbraeken (2023):

> often, a purely legal approach does not lead to a sustainable solution, as the underlying issues (e.g. communication breakdowns) remain unaddressed and tend to resurface as conflicts over time. Many forms of ADR (Alternative Dispute Resolution), such as mediation, are specifically designed to address the conflict in its entirety. [...] There are many different ADR methods. [...] These often share the following characteristics: the parties participate voluntarily and mutually agree on a specific form of ADR; they retain control over the final outcome; they strive to preserve their relationship as much as possible; the approach prioritises flexibility and tailor-made solutions (e.g. a combination of methods); disputes are addressed constructively; the focus is on the future rather than dwelling on the past; confidentiality is maintained; and there is an emphasis on cooperation. (pp. 13–14)

Competent bodies in the Netherlands, Belgium and Ireland make use of tailor-made mediation or non-judicial approaches to find solutions that are acceptable for both employer and employee. The Dutch Whistleblowers

Authority has had the ability to refer whistleblowers to the Legal Aid Board/ Council for free legal advice and mediation since February 2024.

> In February 2024, a long-held aspiration was realised: free legal assistance and mediation for individuals who have been disadvantaged, transferred or dismissed by their employer after making a whistleblowing report. There is no means or income test; what matters is that individuals have spoken out in good faith and in the public interest (Dutch Whistleblowers Authority, 2024, p. 3).

In addition, the Dutch Whistleblowers Authority will try to de-escalate conflicts between employees and employers or help to resolve the wrongdoing if it is assessed that an intervention of the authority could be helpful. In consultation with the employee/whistleblower, the authority will initiate an intervention by engaging in dialogue with the employer. According to the Dutch Whistleblowers Authority (2024, p. 20, *own translation*), this 'involves more than simply requesting information. We refer to this as 'tailored intervention' or 'customised support'. This approach has, among other things, led to employers taking the report seriously and/or resolving the issue, implementing improvements within the organisation, or reaching a mutually satisfactory settlement agreement. In 2024, eight tailored intervention cases were handled, of which five were concluded'.

The Belgian federal Ombudsman also offers mediation in the form of an extrajudicial protection procedure but regrets that employers in the private sector seem to choose the judicial procedure rather than giving mediation a fair chance:

> If a report has negative consequences for whistleblowers, the Federal Ombudsman can mediate between the employer and the whistleblower through an extrajudicial protection procedure. This allows a conflict to be resolved mutually without the need for court proceedings. In practice, cooperation with the organisations involved in these extrajudicial protection procedures is often quite difficult. This is particularly true in the private sector, where there is a tendency to quickly shift to legal proceedings without giving the extrajudicial process a fair chance. Yet this procedure could offer significant added value precisely because of its conciliatory approach. In the short term, and without additional costs, a conflict over potential retaliation can be resolved and the employment relationship may even be continued. For this reason, the Federal Ombudsman will place extra emphasis in 2025 on raising awareness and promoting the extrajudicial protection procedure. Belgian Federal Ombudsman, 2024, p. 67, *own translation*

In Ireland the Workplace Relations Commission (WRC) also provides mediation services to help relevant parties reach a mutually acceptable agreement or outcome in a dispute or claim. This often allows for the avoidance of participation in a formal adjudication or other third-party process. The WRC website explains that.

> The mediation service affords employees appropriate access to its mediation service in circumstances where assistance is sought in respect of claims of infringements to employment rights; it also provides access to the public in respect of claims involving unequal treatment and discrimination claims in the civil and public service. This form of mediation seeks to arrive at a solution through an agreement between the parties, rather than

> through an investigation or hearing or formal decision where a formal complaint has been lodged with the WRC for Adjudication. Workplace Relations Commission, n.d.

In addition, the WRC also offers conciliation assistance to help resolve industrial relations disputes. Conciliation is a voluntary process in which the parties to a dispute agree to avail of a neutral and impartial third party to assist them in resolving their industrial relations differences. The WRC provides a conciliation service by making available Industrial Relations Officers of the Commission to chair 'conciliation conferences'. These officers are sometimes referred to as 'IROs' or as 'Conciliation Officers'. Conciliation conferences are essentially an extension of the process of direct negotiations, with an independent chairperson present to steer the discussions and explore possible avenues of settlement in a non-prejudicial fashion. Participation in the conciliation process is voluntary, and so are the outcomes. Solutions are reached only by consensus, either through negotiation and agreements facilitated between the parties themselves or by the parties agreeing to settlement terms proposed by the Conciliation Officer.

The Role of Collective Enforcement

The weaker power position of an employee in relation to their employer can be somewhat strengthened when employees join forces. For example, they may take collective legal action or join a trade union that defends the interests of its members.

When multiple reports are made about the same issue, the urgency for employers to investigate and address the situation will increase.

Trade unions can be vital actors in the collective enforcement of whistleblower protections. Their involvement strengthens individual resilience, enhances organisational accountability and contributes to the development of a culture of integrity. However, to fully realise this potential, unions themselves must be equipped with the legal authority, institutional capacity and organisational will to actively engage in whistleblower protection efforts. Although trade unions can exert sector-wide pressure on employers, this pressure remains limited in the absence of legal sanctions that employers risk if they fail to comply with whistleblower protection legislation.

Trade unions can support whistleblowers in the following domains:

Representation and advocacy: trade unions can represent whistleblowers in internal and external procedures, including disciplinary hearings, administrative complaints and legal proceedings. This representation helps to balance power dynamics between individual workers and employers and ensures whistleblowers are not left to navigate complex processes alone. Moreover, unions can advocate for the whistleblower's interests within the workplace, pressing for appropriate remedial action, policy changes or protections against retaliation.

Support and protection: whistleblowers often face isolation, fear of reprisal and emotional distress. Unions provide an essential source of moral and organisational support. This includes helping members understand their rights, offering guidance on how to report wrongdoing and ensuring that employers

follow due process when handling whistleblowing disclosures. Trade unions may also help ensure that reports are made through appropriate channels to qualify for legal protection under whistleblower laws.

Collective monitoring and pressure for compliance: unions can monitor employers' compliance with whistleblower protection laws, internal procedures and broader ethical standards. Through collective bargaining, they can push for the inclusion of stronger whistleblower safeguards in collective agreements, such as clear reporting procedures, anti-retaliation clauses and training for both employees and management. Furthermore, unions are well-placed to identify patterns of retaliation or systemic failures in handling disclosures, allowing for a more structural response than what an individual whistleblower might achieve alone.

Policy development and legal reform: at a broader level, trade unions play an important role in shaping national and EU-level whistleblower policies. They often participate in consultations, advocate for stronger protections in legislation and press for the proper transposition and implementation of directives such as the EU Whistleblower Protection Directive (Directive (EU) 2019/1937). Unions can also raise awareness of deficiencies in current laws, for instance, where protections are too narrow or where enforcement mechanisms are weak.

Enhancing legitimacy and credibility of whistleblowing: when supported by a trade union, whistleblowing is more likely to be perceived as a legitimate act in defence of public interest rather than a disruptive or disloyal gesture. Union involvement can thus help to destigmatise whistleblowing and normalise it as a form of responsible employee conduct.

While employees who are not union members may also benefit from agreements negotiated by trade unions, in individual cases, unions will generally only act on behalf of their members. However, the purpose of whistleblower protection legislation is to provide enhanced protection for all employees who report breaches of union law or (suspected) wrongdoing in the public interest. The law also aims to better shield society from misconduct with societal impact, and it does so by offering (potential) whistleblowers stronger safeguards against retaliation – and by requiring employers to establish internal reporting procedures. In many countries NGOs take up many of the roles described above and also play an important role in the protection of whistleblowers.

Order of Re-Employment as a Possible Sanction in Case of Unfair Dismissal

Under Dutch labour law, in cases of summary dismissal where the employee holds a permanent contract, the subdistrict court must approve the termination of the contract. Even if such approval is granted, the decision can be reversed if the employee objects and appeals, and the appellate court then rules differently.

An employee with a permanent contract may initiate legal proceedings to be reinstated or to opt for compensation if returning to the same employer is not possible or desirable.

If the employee has a fixed-term contract and the employer chooses not to renew it as a form of retaliation for a report made by the employee, the employee

will again need to take legal action to challenge this in court. Importantly, the EU Directive provides for a reversal of the burden of proof: it is then up to the employer to demonstrate that the termination had nothing to do with the employee's report.

When the employer has already proceeded with dismissal, tensions are typically high and trust may have been broken. In such a situation, it is questionable whether it is desirable for the employee to return. This will depend on the employee's wishes but also on the concrete circumstances within the organisation. Sometimes, conditions at the employer may have changed to such an extent that reinstatement in a suitable role is no longer feasible. Legal proceedings can take a long time, during which the employee may already have been out of work for an extended period. If the employee reported (suspected) wrongdoing on principle, there may no longer be a moral or ethical alignment between the employee and employer. To assess such situations appropriately, the court must have a clear understanding of the positions of both parties before ordering reinstatement.

Van Eijbergen and Siebers (2020) describe in their study the importance of a swift conclusion, re-integration and acknowledgement of the whistleblowing process:

> Furthermore, a reintegration process to support the whistleblower's proper return to their role, a swift resolution of the case, and recognition of their actions are all important elements that contribute to an effective whistleblowing process. Whistleblowing cases often take years to resolve. Therefore, clear communication to keep the whistleblower informed of developments, thorough documentation, and support from colleagues, friends, and partners are crucial in bringing the process to a successful conclusion. It is also important to understand where the people with whom the whistleblower discusses the wrongdoing stand – particularly how they relate to the report and whether they support the whistleblower. This plays a key role in building trust and ensuring that the report is properly followed up and handled appropriately. Van Eijbergen & Siebers, 2020, p. 20, *own translation*

For this reason, it seems advisable to avoid dismissal whenever possible and for both parties to remain in dialogue, seeking a joint, out-of-court resolution.

In Ireland if an employee suffers penalisation as a result of making a protected disclosure, the employee can apply to the Circuit Court for interim relief within 21 days immediately following the date of the last act of penalisation by the employer.

According to the Protected Disclosures (Amendment) Act 2022, Chapter 5, S21, inserts Section 12(7A) 'An employee who claims to have suffered penalisation wholly or mainly for having made a protected disclosure may apply to the Circuit Court for interim relief within 21 days immediately following the date of the last instance of penalisation or such longer period as the Court may allow.' (Irish Statute Book, 2022).

With this interim relief order, the court prevents the dismissal of the whistleblower pending a claim for unfair dismissal for having made a protected disclosure.

If the Court finds that there are 'substantial grounds for contending that the dismissal results wholly or mainly' from the making of a protected disclosure the

Court can order the reinstatement or reengagement of the worker with full salary. An employee can be awarded up to five years' salary if they are successful in a WRC claim for unfair dismissal by virtue of a protected disclosure.

Belgian labour law provides various protections against unfair dismissal, with the aim of safeguarding employees from arbitrary or unjust termination of their employment contracts.

Unlawful dismissal refers to the termination of an employment contract that does not comply with legal requirements or the terms of the employment agreement. In Belgium, there are strict rules and procedures that employers must follow when dismissing an employee. Unlawful terminations may occur, for example, when an employee is dismissed without a valid reason, without following the required procedures, or in cases of discrimination or arbitrariness.

Unlawful dismissal can occur for several reasons, which include the following:

- Lack of valid reason: Employers may only dismiss an employee for a justified reason. This could include underperformance, a workplace conflict or economic necessity.
- Discrimination: Dismissal on the grounds of gender, age, race, sexual orientation or other personal characteristics is in breach of anti-discrimination laws in Belgium.
- Breach of the employment contract: If the employer fails to comply with the contract or does not follow the correct procedures, this can result in an unlawful dismissal.

Dismissing an employee because they made a report and were protected under the Act on Reporting Channels and Protection of Whistleblowers of Integrity Violations in Federal Public Authorities and the Integrated Police, or under the Act of 28 November 2022 concerning the protection of whistleblowers of breaches of Union or national law identified within a legal entity in the private sector, constitutes an unlawful dismissal without a valid reason.

In cases of unlawful dismissal, employees in Belgium are entitled to several protections and remedies, such as:

- Reinstatement: In certain cases, the employee may have the right to return to their job. Reinstatement can be requested if the dismissal occurred without a valid reason.
- Compensation: If reinstatement is not feasible, the employee may be entitled to financial compensation. The amount will vary depending on the type of dismissal, the length of employment and the circumstances surrounding the dismissal.
- Notice compensation: In many cases of unlawful dismissal, the employee is entitled to a notice indemnity. This is calculated based on their salary and the length of their employment contract.

Employers may defend the dismissal by stating it was due to a workplace conflict. If an employee reports a possible wrongdoing in the workplace, this often leads to work-related conflicts. However, the EU Directive protects whistleblowers from unfair dismissal as a result of whistleblowing by the reversal of the burden of proof.

Reinstatement of a dismissed employee is a possible ruling that a judge might impose on an employer if the dismissal was unlawful such as in the case of dismissal as a consequence of a report made by the employee. The employer may claim that the dismissal was due to a work conflict but the law obliges the employer to prove that the dismissal has no link to the report that was made.

A ruling in the Netherlands on the seventh of February 2025 by the Dutch Supreme Court shows that the reversal of the burden of proof is taken seriously by the court. In the ruling we find the following legal argument (Hoge Raad der Nederlanden, 2025, *own translation*):

> From several passages in the legislative history of Article 17eb of the Whistleblowers Protection Act (Wet bescherming klokkenluiders, Wbk), it is clear that the legislator intended that, in response to the statutory presumption that the detriment suffered was a consequence of the report or disclosure (hereinafter: 'report'), it is the employer who imposed the detrimental measure who must demonstrate that the detriment was not the result of the report (i.e. the absence of a causal link). Accordingly, it is for the employer to prove that the detrimental treatment occurred on grounds other than the report.
>
> This intention aligns with Recital 93 and Article 21(5) of the Whistleblowing Directive and is consistent with the objective of both the Directive and the Wbk to strengthen the legal position of whistleblowers. The evidentiary rule set out in Article 17eb Wbk must therefore be interpreted to mean that the employer cannot rebut the statutory presumption merely by casting doubt on the existence of a causal link between the report and the measure, but must instead prove the contrary.
>
> This is not altered by the fact that the legislative history of Article 17eb Wbk also uses the term 'diffuse' ('ontzenuwen') in this context. There can be no reasonable doubt as to this interpretation. It is therefore unnecessary to submit preliminary questions to the Court of Justice of the European Union on this matter.

Although reinstatement is a possible outcome if an employee has been unfairly dismissed as a result of reporting a (possible) wrongdoing, in practice, this does not always seem feasible or desired. Very often, a compensation will be awarded to the employee instead. Therefore, avoiding an unfair dismissal maybe more preferable. In Ireland, this can be achieved through interim relief until the court reaches a decision.

Reinstatement or compensation are restorative measures aimed at alleviating the harm suffered by the whistleblower and covering incurred costs. The question is whether these can truly be considered sanctions. A sanction is intended as a penalty for failing to comply with legal regulations.

Possibly the best protection for whistleblowers is preventing possible adverse treatment from happening. This means that employers should invest in setting up a well-functioning reporting procedure and supporting integrity and a positive speak-up culture in their organisations.

The Importance of Prevention

Next to legal sanctions that also have a preventative effect, the organisational culture and the way employers look at reports and reporting persons are crucial for the way whistleblower reports are handled and how the whistleblower is treated.

In the Netherlands laws are assessed after coming into force by a so-called implementation assessment ('invoeringstoets'). The implementation assessment is a concise examination of how new legislation functions in practice, with particular attention to its impact on the target group and its practical implementation. This assessment is carried out at the earliest possible stage at which meaningful observations can be made about the legislation's practical effects, and it differs from more extensive and in-depth legislative evaluations.

In 2024, a report was published on the implementation assessment of the Dutch Whistleblowers Protection Act (Wbk). In this report (SEO, 2024) the researchers underline the importance of organisational culture for the protection of whistleblowers. They note that reporting a suspected wrongdoing can be an extremely difficult process for the whistleblower. Whether this is the case largely depends on the attitude and organisational culture of the institution where the suspected wrongdoing has occurred. When the organisation turns against the report and the whistleblower, a challenging and burdensome process often follows. In such situations, making a report usually results in the breakdown of the employment relationship and can negatively affect the whistleblower's personal life.

This picture was confirmed on several occasions during the course of the implementation assessment (SEO, 2024). In practice, it is difficult for the legislator to provide effective protection for employees. One of the key conclusions of this assessment is therefore that the most important form of protection lies in the organisational culture itself. Although the law does not directly regulate this, the legal obligations that aim to ensure a careful and independent reporting process do contribute to fostering such a culture.

The report also indicates that the Wbk does help to protect whistleblowers but cannot avoid adverse treatment of whistleblowers by their employers: 'conversations with various stakeholders, including lawyers, confidential advisers, and whistleblowers, reveal that companies or public bodies that turn against the whistleblower often find ways to do so within the boundaries of the law. One common approach is to create or emphasise a disrupted working relationship, with the aim of initiating dismissal proceedings' (p. 31). However, more subtle forms of retaliation are also possible, including transferring an employee to a more monotonous or less meaningful role, a manager deliberately ignoring the employee, or commissioning an external report on the whistleblowing case that downplays the issue and portrays the whistleblower in a negative light. Hence, while the law offers support, in practice, it can remain difficult for legislators to fully safeguard employees from such treatment.

Based on interviews with confidential advisers, the researchers identify different elements that help to safeguard whistleblowers.

- Handle reports, whistleblowers and follow-up processes with care – not just as a formality or box-ticking exercise.
- Foster a culture where people feel able to speak up and where constructive challenge is encouraged, based on the belief that it leads to better decision-making.
- Promote an open culture, role-modelling by leadership and psychological safety – where critical feedback is welcomed rather than punished.
- Ensure the availability of a code of conduct or integrity code, and actively continue to communicate it throughout the organisation.
- Encourage and demonstrate ethical behaviour at all levels of management and leadership. Implement strong preventive integrity policies and ensure people feel safe to speak up. Provide for (independent) investigations and ensure a clear investigation protocol is in place.
- Maintain a flat hierarchy, with open and accessible leadership at board, executive and management levels. Avoid a blame culture and instead focus on learning from mistakes together.
- We must move towards a culture in which organisations recognise whistleblowers as 'heroes' – individuals who dare to speak up and share something that could ultimately benefit the organisation.
- Create a safe culture with a strong emphasis on prevention and proactive advice to avoid unsafe working environments and integrity breaches. This should not be left solely to confidential advisers or legal departments – it is a shared responsibility across the entire organisation, where bystanders also feel empowered to report concerns. Clear communication and strong leadership by example are essential in this regard.
  (SEO, 2024, p. 34)

The Dutch Whistleblowers Authority has a threefold task. Next to offering advice to (potential) reporting persons and conducting investigations into (possible) wrongdoings with societal impact and into adverse treatment of whistleblowers, it also offers support and practical advice to employers to set up a strong integrity management and a positive speak-up culture.

The Dutch Whistleblowers Authority collects, generates, publishes and disseminates knowledge and expertise in the field of integrity and breaches of integrity. In doing so, it aims to encourage governments, semi-public institutions and businesses to safeguard and promote integrity within their organisations. The Dutch Whistleblowers Authority plays a role in the prevention of wrongdoings with societal impact in the Netherlands.

CONCLUSION

Comparing the transposition of Article 23 of the Directive into the national laws of Ireland, Belgium and the Netherlands has been rather difficult for a number of reasons. First and foremost, the legal framework in the three countries is different.

In Ireland, the legislation is based on the Common Law system. Regarding penalties, a distinction is made between summary conviction and conviction on indictment, which is not present in Belgian or Dutch law. In Belgium, the Directive has been transposed into various federal and regional laws. At the federal level, there are two laws that apply: one for the public sector and one for the private sector. In the Netherlands, the Whistleblower Protection Act (Wbk) must be read together with other laws and documents such as the Parliamentary paper, the Civil Code and Penal Code to get a clearer overview of the penalties. In addition, the supervision and sanctioning powers of the Dutch Whistleblowers Authority are still to be laid down in law. Although the transpositions in the three compared countries are still quite recent, the following conclusions can be drawn from the analysis presented in this chapter.

The possible penalties for breaches of Article 23 of the Directive vary significantly in the laws of Ireland, Belgium and the Netherlands. Not only are there differences in the specific amounts of fines and lengths of prison sentences between the three countries but there is also a big difference between the minimum and maximum fines and prison sentences in all three countries. It will be up to the court to determine an appropriate penalty for the specific infringements and their severity. It will be interesting to see how judges will rule in future cases and how case law can provide guiding precedents and more legal certainty.

Across the transpositions of the three compared countries, we find that the reporting person will mostly have to bring his case to court himself. As this is often emotionally and financially difficult for workers, it raises the question of whether this will be an effective way to offer reporting persons real protection.

In Ireland a reporting person suffering from retaliation as a result of having made a protected disclosure can turn to the Courts or the WRC for interim relief. For example, if a judgement is awarded in favour of the discloser, it means that the reprisals may have to be stopped and undone for a limited time such as the dismissal of a worker involved in making a disclosure, until the employer has demonstrated that their actions are not linked to the protected disclosure or until the investigation into the wrongdoing has been concluded. If the reporting person also suffers from a criminal offence committed by the employer, for example disclosure of the reporting person's identity without his or her consent, the reporting person can report this to the relevant authorities and the persons responsible could be brought before the court. A court in Ireland can decide if it has jurisdiction to deal with a matter and a judge in the District Court can elevate a matter to the Circuit Court if necessary. As the legislation is very new, it still remains to be seen which cases will be ruled by the lower and higher courts and how this will occur.

In all three countries both natural and legal persons can be held liable. While certain penalties can be very severe for individuals, they may be less severe for (large) legal entities with significant resources that can afford good lawyers to defend their interests. If the impact on certain legal entities could be relatively small, whereas for individuals it can be significant, it could be argued that these measures are not always proportionate or dissuasive.

It remains to be seen if the European Commission will deem that the three countries have transposed the Directive correctly or if they need to make amendments Especially, the Netherlands seems to be lacking in some aspects and still has to work out the supervision and sanctioning powers of the Dutch Whistleblowers Authority.

The current practice in the Netherlands, Belgium and Ireland seems to suggest that having legal sanctions is necessary but does not always offer protection to safeguard whistleblowers from harm. In addition to legal penalties, support and collective enforcement from competent bodies, trade unions and NGO's are vital. Recent studies and reports underline the importance of organisational culture and employers' attitudes towards whistleblowers. The prevention of wrongdoing and the proper handling of reports, as well as the correct treatment of reporting persons, are essential to protect whistleblowers.

Supporting employers in setting up a positive speak-up culture and investing in strong integrity management is very valuable to create safe working environments where employees feel confident to make reports.

NOTES

1. Legislation taken into consideration for this chapter includes:
Ireland: Protected Disclosures (Amendment) Act 2022. Irish Statute Book. Cf. http://www.irishstatutebook.ie/eli/2022/act/27/enacted/en/html
Belgium:
• Wet betreffende de verhoging van opdecimes en de verzwaring van de geldboete voor inbreuk op het Sociaal Strafwetboek met een verzwarende factor (19 December 2025).
• Wet betreffende de meldingskanalen en de bescherming van de melders van integriteitsschendingen in de federale overheidsinstanties en bij de geïntegreerde politie. Belgisch Staatsblad (8 December 2022)
• Wet betreffende de bescherming van melders van inbreuken op het Unie-of nationale recht vastgesteld binnen een juridische entiteit in de private sector. Belgisch Staatsblad (8 November 2022).
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TRYING TO BLOW THE WHISTLE: ITALY'S STRUGGLES WITH THE TRANSPOSITION OF THE EU DIRECTIVE

Alessia Rizzo

Transparency International, Italy

ABSTRACT

This chapter aims to examine the main critical issues in Legislative Decree no. 24/2023, which transposes European Directive no. 1937/2019 into the Italian legal system. The analysis is conducted through a comparative approach with the national legislation of other European Union Member States, such as France, which, in this regard, has adopted pioneering regulations.

A detailed assessment of national legislation reveals inconsistencies with certain provisions that may need to be disapplied at the EU level due to procedural delays that undermine the protection regime provided for whistleblowers. In this context, it is important to mention Article 6, concerning "Conditions for Making External Reports," and Article 21, concerning "Sanctions," of the Italian regulation, which, in contrast to the regulatory standards established by the EU legislator, introduce a diversified range of protections. These are just some of the main critical issues encountered at the national level, largely due to misinterpretations or difficulties in applying key principles set out in the European Directive. Such challenges stem from the existence of a previous national legal framework which, though incomplete and fragmented, failed to establish uniform regulatory standards and often conflicts with Article 25 of the European Directive.

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What happens if Member States blatantly ignore EU provisions? What if the process of verifying the correct transposition of EU Directives by Member States takes so long that it undermines the rights of EU citizens?

Keywords: European directive; external reporting channel; non-regression clause; retaliation sanctions; whistleblowing

A comparative analysis of the protection framework provided in the field of whistleblowing, as implemented in Italy and France, allows for the identification of best practices and critical issues within their respective legal systems. Such an in-depth examination requires the contextualization of whistleblowing within both the national and supranational systems.

The initial Italian legislative formulation, dating back to 2012, was initially limited in scope to the public sector. This regulation was subject to subsequent revisions in 2017 and, more significantly, in 2023 following the transposition of the 2019 European Directive. The latter delineates a uniform and harmonized framework developed by the EU, applicable to all Member States.

Recent Italian legislation has been found to exhibit characteristics that could be interpreted as potential violations of the non-regression clause of Article 25 of the relevant EU Directive, particularly in relation to the conditions for accessing the external reporting channel, which is managed by the National Anti-Corruption Authority (ANAC), and the sanctions imposed on individuals who engage in retaliatory or discriminatory actions against whistleblowers as a consequence of their reports (Cantone, Fraschini, Parisi, Parisi, & Ubaldi, 2023). In particular, Article 6 of Legislative Decree No. 24/2023 is a provision that outlines the conditions under which access to the external reporting channel, established by ANAC, is permitted. This regulation stands in clear contrast to the European provision, which encourages the use of internal reporting channels and permits whistleblowers to choose between internal or external reporting options. Additionally, Article 21 of Legislative Decree No. 24/2023 introduces administrative pecuniary sanctions aimed at ensuring the criteria of proportionality, effectiveness, and deterrence. However, the sanctions provided under the national framework appear neither proportional nor effective and are rarely enforced by ANAC.

The Legislative Decree No. 24/2023 has been analyzed in order to provide a comprehensive understanding of the provisions included therein, highlighting any weaknesses in the Italian system and providing a basis upon which the advanced nature of French legislation can be compared. In contrast, Italy has undergone a discernible regression in its regulatory framework, prompting civil society organizations and third-sector entities to petition the European Commission to ensure the implementation of minimum protection standards for all EU Member States (Transparency International Italy, 2024a).

WHISTLEBLOWING IN THE ITALIAN SYSTEM: HISTORICAL AND CULTURAL CONTEXT

Whistleblowing is an institution that can be traced back to Anglo-Saxon traditions, and it enables individuals employed within both the public and private sectors to disclose suspected irregularities or potential illegal activities of which they become aware in the course of their employment (Holdsworth, 1923; Notes, 1972; Pizzuti, 2019, p. 2). The purpose of this practice is to encourage the exposure of unhealthy work environments characterized by corruption and maladministration.

Within the Italian legal system, this tool assumes a dual role, serving both a preventative and repressive function. The primary objective of the institution is the protection of the public interest and the integrity of public administration or private entities. The reporting of wrongdoing constitutes the fulfillment of the non-derogable duties, as provided for under Article 2 of the Italian Constitution. (Corso, 2020, pp. 15–22; Italian Republic, 1948). The system is multitiered in nature (Damiri, 2024), serving as a form of social control used by society members and organizational production structures within companies. Its primary aim is to prevent and counter the proliferation of corruption and the mismanagement of administration within the public sector (Gargano, 2016, pp. 6–10).

It is noteworthy that the initial formulation of the national whistleblowing legislation focused on the public sector. Consequently, the competent authority that wields regulatory and sanctioning powers is the National Anti-Corruption Authority (ANAC). This public-focused characteristic is consistent with other national legal systems that are at an advanced stage in this area, such as France, where the institution emerged in response to financial scandals linked to the global economic crisis and, therefore, from irregularities related to alleged illegal activities involving so-called white-collar crimes.

The advent of whistleblowing legislation in the Italian legislative framework is largely attributable to the concerted efforts of political initiatives and support proposals articulated by civil society organizations, culminating in the enactment of an anti-corruption law. Law No. 190 of 2012, the so-called anti-corruption law, was named after the Minister of Justice at the time—Paola Severino—who served under the relevant government and is therefore also referred to as the "Severino Reform."

This legislative measure was designed to combat corruption in all its forms and to implement a radical reform of laws pertaining to crimes against public administration (Fraschini, Parisi, & Rinoldi, 2011; Lattanzi, 2010; Martone, 2016; Parisi, 2016; Riccio, 2017). Thus, the Italian legislator, through the creation of a detailed framework of substantive and procedural protections, seeks to protect and safeguard the rights of potential whistleblowers who choose to report irregularities or illegal activities they have become aware of. As a result, under no circumstances can they be targeted by discrimination or retaliation on account of the act of reporting illicit activities.

National and Supranational Regulatory Framework in Italy

The initial introduction of whistleblowing into the Italian legal system was due to the Severino reform, which refers to Law No. 190 of November 6, 2012, concerning preventive and repressive measures to combat corruption in public administration (Italian Republic, 2012). This law allowed workers in the public sector to report potential irregularities or alleged illegal activities discovered during the course of their work (Belsito, 2013; Cantone, 2013; Garofoli, 2013; Monzani, 2016). The 2012 anti-corruption law forms part of the provisions contained in the consolidated text on public employment (Legislative Decree No. 165/2001; Italian Republic, 2001a), which, through the introduction of Article 54-bis concerning the protection of public employees who report wrongdoing, outlines the scope of application and the protection regime provided for whistleblowers who are public employees (Carinci, 1974; Cerri, 1989; Pizzuti, 2019, p. 88; Ricciardi, 1984; Santoro, 1968, p. 609; Ventura, 1994). The rationale behind this legislative provision lies in the legislative intent to safeguard the public worker who, in the interest of the public administration's integrity, makes a report, either to their hierarchical superior, the ANAC, or the competent judicial authority. Article 54-bis, paragraph 1, of Legislative Decree No. 165/2001 provides that the report may be submitted by a worker in the public sector (a public employee) and identifies as recipients either the Prevention of Corruption Officer (RPCT) of the relevant public administration—understood as the hierarchical superior—or, alternatively, the competent judicial authority, which, depending on the irregularity or wrongdoing being reported, may be either the ordinary judicial authority or the court of auditors. (Buratti, 2013; Corso, 2016; De Rosa, 2017; Jazzetti & Bove, 2014).

The legislative provision set out in Article 54-bis of Legislative Decree No. 165/2001 allows us to affirm that the reporting of wrongdoing by a public employee cannot, in any way, lead to the adoption of measures that may be classified as any form of sanction against the whistleblower. Paragraph 1 of the same article, in this regard, highlights the role played by the ANAC in cases where unlawful measures are adopted as a consequence of the report.

The unlawful adoption of a measure that is discriminatory and/or retaliatory measures enables the public employee to appeal to the National Anti-Corruption Authority (ANAC) in order to protect the violation of the alleged right (Gelmini, 2018).

The regulations outlined in Article 54-bis of Legislative Decree 165/2001 provide clear directives regarding the protection of whistleblower's identity. A balance is struck between the conflicting interests of the whistleblower and the reported person, identified respectively as the right to confidentiality for the former and the right to defense for the latter—understood as the opportunity to be informed of the allegations made against them in order to demonstrate their lack of foundation. (Bassetti, 2023).

In paragraph 3, the legislator expressly states that the identity of the whistleblower cannot be disclosed, while outlining the procedural limits that apply

within the context of a criminal proceeding and within the context of an accounting procedure before the Court of Auditors.

The limitations also apply, albeit in a different manner, within the context of disciplinary proceedings where the identity of the whistleblower cannot be disclosed, except in cases where the disciplinary charge is based on the report. In such cases, therefore, the identity of the whistleblower constitutes an essential element for the defense of the accused, and the report may be used only with the whistleblower's consent.

In such cases, the identity of the whistleblower must be protected and kept confidential if the charge is based on findings other than those contained in the report.

The national legislator, while respecting the right to privacy of the whistleblower's identity, permits the disclosure of their personal details only in necessary circumstances for defending the accused individual. The verification of the facts contained in the whistleblower's report enables the assessment of its validity and allows the use of the report's content to initiate a potential disciplinary procedure against the reported individual. In this case, the reported individual must be able to know the identity of the whistleblower, though such disclosure is still subject to the whistleblower's consent (Borgogelli, 2009; Mainardi, 2010).

The recognition of the key principle underlying the institution of whistleblowing, namely the right to confidentiality, may, however, be waived in exceptional cases based on the use of the whistleblower's report in a disciplinary procedure. It is important to note that this exception does not apply in the context of a criminal or accounting procedure.

An analysis of the scope of protections offered by the anti-corruption law to public employees soon reveals the lack of protection for workers in the private sector. This situation prompted the legislator to intervene with Law No. 179 of November 30, 2017, concerning the protection of individuals who report crimes or misconduct of which they became aware during their employment relationship (Italian Republic, 2017).

It is important to further examine, in this regard, Bill No. 3365/2015 and Bill No. 3433/2015, which address the legal institution of whistleblowing, with the aim of introducing a legal framework intended to protect an instrument still unknown to the Italian state (Corso, 2020, pp. 157–162).

The 2017 legislative intervention can be considered a development of the anti-corruption legal framework established previously by the 2012 anti-corruption law. In particular, the 2017 law modified the provisions of the preceding Article 54-bis of Legislative Decree 165/2001 with regard to public sector workers. Additionally, the 2017 intervention introduced protection for private sector workers who wish to report irregularities discovered during the course of their employment. The amendments introduced by Law No. 179 of 2017 to Article 54-bis of Legislative Decree No. 165/2001 are primarily observed in relation to the subjective scope of application, considering the expansion of the category of potential whistleblowers, aimed at including employees of public administrations, employees of public economic entities, and those of private law entities subject to public control, as well as workers and collaborators of companies that

supply goods or services and perform work for the public administration. (Pizzuti, 2019, pp. 99–104; Palla, 2018; Bosnari, 2016).

In particular, Law No. 179 of 2017 provides for the introduction of paragraphs 2-bis, 2-ter, and 2-quater in Article 6 of Legislative Decree 231/2001—the legislative decree that regulates the administrative liability of legal persons, companies, and associations, thereby specifying the existence of new requirements related to the organization, management, and control model (so-called MOG 231) for the prevention and repression of the underlying crimes provided therein (Italian Republic, 2001b). In light of the recently introduced regulatory provisions, private entities and companies are obligated to review the MOG 231. This revision involves the formulation of a policy, either as an integral component of the model or as a standalone procedure, with the objective of explicitly delineating the functions and responsibilities entrusted to the individuals responsible for the managing the reporting of illegal activities. This policy outlines the measures adopted to protect the confidentiality of the whistleblower's identity, the content of the report, and the protection regime against potential discriminatory measures.

The regulation introduced for the private sector, although structured for the needs of companies with the 231 organizational, management, and control model, cannot be assimilated to the legal framework established for the public sector (Avio, 2018). It was not until 2017 that the Italian legal system provided a comprehensive protection framework for whistleblowers in the private sector, seeking to harmonize the two sectors of reference according to the preexisting internal limits.

The legislative framework established between 2012 and 2017, with the appropriate legislative amendments, also allowed Italy to align with the protection regime already provided by individual Member States within the European Union. The legislation developed at the national level, including the 2012 anti-corruption law and the amendments introduced by Law No. 179 of 2017 allow us to assert that the provisions for the public sector are in line with the requirements set out in the EU Directive. However, the same statement cannot be made for the private sector, where the regulation appeared to be significantly different. Nonetheless, the heterogeneity of the individual EU States and the inconsistency of their treatment gave rise to the intervention of the supranational legislator with Directive No. 1937 of 2019, concerning the protection of people who report violations of Union law. In 2018, the European Parliament and the Council put forward a proposal for Directive 2018/0106, "on the protection of persons reporting on breaches of Union law," consisting of as many as 86 recitals and 23 articles, in which whistleblowing is considered a "tool useful for providing information and prosecution of cases of violations and lack of effective protection can negatively impact the protection for whistleblowers."

The proposal presented was amended, and the adjustments made were incorporated into Directive 2019/1937, the final text of which consists of 110 recitals and 29 articles. (Andreis, 2019; Coppola, 2018; Nicolicchia, 2023, p. 23).

The EU legislator sought to create common minimum legal standards for all Member States, with the aim of establishing a uniform protection framework

within the European Union. The fragmented and uneven nature of the protection framework developed by individual Member States is explicitly addressed in Recital 4 of the Directive under examination, given that:

> Whistleblower protection currently provided in the Union is fragmented across Member States and uneven across policy areas. The consequences of breaches of Union law with a cross-border dimension reported by whistleblowers illustrate how insufficient protection in one Member State negatively impacts the functioning of Union policies not only in that Member States, but also in other Member States and in the Union as a whole. (Recital 4)

The final deadline for national regimes to comply was set as December 17, 2021; the significant delay in the transposition procedure of the EU Directive by the Italian State is addressed by the NGO Transparency International Italy. (Fraschini, 2022; Parisi, 2020).

Due to its mandatory nature, this deadline was not met by most of the Member States, resulting in the initiation of numerous infringement procedures. In this regard, on July 3, 2024, the European Commission published an explanatory report outlining the current status of the EU Directive's transposition by individual Member States, highlighting the main issues encountered in the related transposition process. The European Commission's report, titled "Report on the transposition of the Whistleblower Protection Directive (Directive 2019/1937 (EU)) on the protection of persons who report breaches of Union law." (European Commission, 2024; Transparency International Italy, 2024b).

It is important to note that the nature of the act chosen by the EU legislator, such as the adoption of a Directive, does not, by itself, make the normative provisions contained within it binding. These provisions must be transposed through a specific domestic legal source by each Member State. Moreover, the transposition of these provisions must comply with Article 25 of the Directive, which prescribes more favorable treatment and the non-regression clause for Member States. This clause stipulates that the EU States may maintain internal provisions that are more favorable, even at the expense of transposing supranational provisions. The adoption of a protection regime that is detrimental, although compliant with the Directive, undoubtedly constitutes a reduction of the protections already provided by the Member States and, therefore, an explicit violation of Article 25 of the EU Directive.

The European Directive has been transposed into the Italian legal system through Legislative Decree No. 24/2023, concerning the "Implementation of 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 and containing provisions regarding the protection of persons who report breaches of national regulatory provisions." This decree introduces significant innovations, particularly regarding protections in the private sector, where its applicability is conditioned by factors such as the number of employees within the company and the adoption of an organizational, management, and control model pursuant to Legislative Decree No. 231/2001. It is only through this legislative intervention, therefore, that the protections for employees, both

public and private, have been effectively established in Italy, ensuring safeguards for individuals who report misconduct encountered during their professional activities (Magri, 2022).

THE WHISTLEBLOWING SYSTEM IN FRANCE

The introduction of whistleblowing in France can be traced back to the financial scandals that occurred in the 2000s and the economic crisis of 2008, which emphasized the need for a cohesive legal framework to protect individuals who report unlawful activities in the public interest.

A protection regime that can be defined as rudimentary for potential whistleblowers, although not strictly falling under the category of whistleblowing, was provided by the "*Loi Le Pors*," contained in the French Labor Code, which sought to safeguard the interests of workers who report violations of their rights. This was followed by the "*Loi pour la Confiance dans l'Économie Numérique*," which offered cross-cutting protection for personal data, imposing transparency obligations on the use of digital platforms and the processing of sensitive data.

The fragmented nature of the protections provided, which were further articulated in multiple sector-specific regulations, appeared inadequate to offer a uniform protection system for whistleblowers in a strict sense, as these protections appeared limited to specific areas, such as workers' rights and personal data protection.

A significant turning point in this area was marked by the 2016 enactment of the "*Loi Sapin II*," legislation which, within the context of corruption prevention and corporate compliance, established reporting channels (both internal and external), accompanied by measures to protect against discrimination or retaliation following the report. The development of a comprehensive framework of protections for whistleblowers contributes to addressing the issue of transparency and combating the phenomenon of corruption.

The peculiarities of the Sapin II Law are addressed in a newsletter titled "*La lotta alla corruzione in Francia: brevi note sulla legge Sapin II*." (Pavia & Ansaldo, 2018).

The French Anti-Corruption Agency (AFA) was established under the same law, operating as an institutional body within the jurisdiction of the Ministry of Justice. The AFA assumed the functions of the erstwhile Central Service for Corruption Prevention (SCPC), an interministerial entity entrusted with the responsibility of preventing corruption and overseeing the efficacy of corruption prevention mechanisms implemented by public authorities and private enterprises.

French legislation has been regarded as "pioneering" in the field of whistleblowing due to the strict protection mechanisms contained in the Loi Sapin II, which allowed the country to align with the best international anti-corruption standards. However, it was also necessary to conform to the EU regulations set out in the European Directive 1937/2019. This Directive was transposed with the *"LOI n° 2022-401 du 21 mars 2022 visant à améliorer la protection des lanceurs*

d'alerte," which significantly innovates the scope of protection granted to whistleblowers. The law was formally recognized under the appellation "the Waserman law." France is the eighth country to have transposed the EU Directive into its legal system. For a detailed examination of the legislative journey from the bill proposal to the enactment of the well-known "Waserman" law. (La Maison des lanceurs d'alerte, 2021); Assemblée nationale, 2020, 2021; Défenseur des droits, 2020). The legal text developed by the French legislator has been crafted with the objective of extending the scope of the regulation beyond the minimum standards set out in the EU Directive. It identifies immunities that can apply within both civil and criminal proceedings, economic support and psychological assistance, and establishes a precise and strict sanctions regime designed to deter potential offenders from taking retaliatory and/or discriminatory actions. The imposition of a substantial fine or a prison sentence of up to three years is also a possibility (Loi Waserman, 2022).

COMPARISON OF THE TRANSPOSITION OF THE EUROPEAN DIRECTIVE 2019/1937: THE ISSUES IN LEGISLATIVE DECREE NO. 24/2023 AND IN LOI NO. 2022-401

The European Directive—the first specific regulatory act developed by the EU on whistleblowing—has been transposed into the Italian legal system through the recent Legislative Decree No. 24/2023. This legislative act aims to establish a protection regime for whistleblowers in accordance with supranational provisions. The main innovations or challenges of the (future) whistleblowing legislation within the Italian legal system are highlighted in the draft transposition of the EU Directive (Matarise, 2023, pp. 10–11).

In order to achieve a more complete and nuanced comprehension of the regulatory regression that has transpired within the Italian framework, a comparative analysis of the EU Directive and the recently adopted national legislative decree is deemed a valuable exercise. This comparison will facilitate the identification of issues in the latter text, thereby enabling the determination of any violation of the non-regression clause outlined in Article 25 of the Directive. It can be argued that the objectives set by the national legislator in certain provisions have created significant contrasts with the original spirit of the regulation. This is particularly evident in the conditions that have been introduced for making a report through the external reporting channel and in the imposition of administrative fines in cases of discriminatory or retaliatory actions following a report.

The regulation will then be compared with the provisions of the recent Loi Wassermann of 2022, adopted in France, a Member State of the EU, which has a solid legislative framework designed to protect whistleblowers in a broad sense.

The decision to undertake a comparative analysis with the legislation in the French legal system, as opposed to selecting another EU Member States, is attributable to the analogous regulatory evolution that has transpired in France, paralleling the developments observed in Italy. The countries under consideration are characterized by the same socioeconomic conditions, rendering the comparison both meaningful and relevant. This text aims to compare and contrast the recent whistleblowing laws that have been adopted in the aftermath of the transposition of the EU Directive. The purpose of this comparison is to highlight the best practices that France has adopted, practices which, unfortunately, Italy has not yet adopted.

The External Reporting Channel

The European Union Directive facilitates the reporting of misconduct by public and private sector workers. Firstly, the Directive encourages workers to utilize the internal reporting channel or, alternatively, to directly use the external reporting channel established with competent authorities designated at the national level. See Recital 33 of the EU Directive under examination, which states that:

> Reporting persons normally feel more at ease reporting internally, unless they have reasons to report externally. Empirical studies show that the majority of whistleblowers tend to report internally, within the organisation in which they work. Internal reporting is also the best way to get information to the persons who can contribute to the early and effective resolution of risks to the public interest. At the same time, the reporting person should be able to choose the most appropriate reporting channel depending on the individual circumstances of the case. (Recital 33)

The EU legislator, therefore, encourages potential whistleblowers to first use the internal reporting channel, while maintaining the right to use the reporting channel deemed most suitable to serve the interests underlying the report of wrongdoing.

It is necessary, in this regard, to provide a definition of external reporting. As stated in Article 5, paragraph 1, point 5, this consists of "oral or written communication of information on breaches to the competent authorities."

Article 10 of the Directive, found in Chapter III titled, "external reporting and follow-up," states that "reporting persons shall report information on breaches using the channels and procedures referred to in Articles 11 and 12 (reference to the subsequent regulatory provisions regarding the external reporting channel), after having first reported through internal reporting channels, or by directly reporting through external reporting channels," thus, it leaves to the whistleblower the discretion to freely choose whether to use the internal or external reporting channel.

This provision has been adopted by the Italian legislator in Legislative Decree No. 24/2023 (Italian Republic, 2023). Despite the discretion granted at the European level to the whistleblower to choose the preferred reporting channel, the legislation requires the use of the external reporting channel under certain

conditions. This requirement can also be observed from the title of the relevant article (Transparency International Italy, 2023).

Article 6 of Legislative Decree No. 24/2023, concerning the conditions for making an external report, enables the whistleblower to submit a report through the (external) channel established at ANAC when there is a failure to activate an internal reporting channel, in the event of an internal report not being followed up on, or if there are well-founded reasons to believe that the whistleblower may face personal repercussions, or in the event of there being well-founded reasons to believe that there is an imminent or obvious threat to the public interest, the whistleblower is entitled to report to ANAC. The absence of these alternatives, however, precludes the whistleblower from reporting to ANAC, as there is no legitimate basis for doing so.

Within the Italian regulatory framework, the external reporting channel is thus subordinate to the internal reporting channel. This configuration conflicts with the rationale of EU legislation (Nicolicchia, 2023, pp. 39–45). This contradiction highlights a regulatory regression, since under the previous national framework, while the whistleblower was provided with specific guidance to use the external reporting channel at the ANAC, they were not required to first make an internal report and then an external one.

This regulatory regression not only contravenes Article 10 of the EU Directive but also conflicts with the non-regression clause of Article 25 of the same text. The transposition of supranational provisions should not result in the application of a protection regime that is inferior to the previous regime outlined in the national legal system.

Conversely, the provision in Article 10 of the EU Directive has been correctly transposed into the French legal system, since the subsidiary or alternative nature of the external reporting channel, established by the Loi Sapin II of 2016, has been fully superseded.

Article 3 of the 2022 *Loi Waserman* is expressly an amendment to the preceding Article 8. The latter, having undergone reformulation, establishes the legal principle that the utilization of the internal reporting channel is permissible on the condition that this course of action does not result in any detrimental impact on the personal or professional sphere of the individual exercising it. Article 8-I-A permits the whistleblower to use the internal reporting channel on the condition that doing so does not make them vulnerable to the prospect of facing potential retaliation, which could have an impact on their personal and professional life.

According to the current legal framework in France, the whistleblower may alternatively and freely use the external reporting channel established at the competent national authority, the Defender of Rights, the judicial authority, or the institutions and bodies of the European Union designated to receive information concerning violations.

The regulatory provisions outline a more protective framework for potential whistleblowers compared to the 2016 regulation, as they no longer establish a subsidiarity requirement for resorting to external reporting channels. The current formulation in force in France authorizes the individual who discloses

wrongdoing to select the most suitable reporting channel. Nevertheless, the prevailing inclination within the legal system remains toward the utilization of the internal reporting channel, with a view to facilitating a more expeditious and prioritized resolution pertaining to the purportedly infringed interest. Consequently, the sequential requirement for whistleblowers to first utilize the internal reporting channel before resorting to the external reporting channel has been eliminated. This represents a substantial change and innovation in the realm of whistleblowing, as it grants whistleblowers the discretion and, consequently, the freedom to select the reporting channel they perceive as most effective in safeguarding their interests.

Sanctions for Discriminatory Acts

The European legislator, in an effort to develop a uniform framework of protection for whistleblowers within the individual Member States of the European Union, fully safeguards the interests of whistleblowers who, as a result of making a report of wrongdoing, become subject to discriminatory and/or retaliatory measures.

The implementation of such measures can be seen as a detrimental outcome within the context of the whistleblowing framework, as it has the potential to dissuade individuals from coming forward, due to the possible ramifications for their personal and, consequently, professional lives. In this regard, supranational legislation establishes a strict framework of sanctions against those who implement measures against whistleblowers. See Recital 88 of the EU Directive under examination, according to which "Where retaliation occurs undeterred and unpunished, it has a chilling effect on potential whistleblowers. A clear legal prohibition of retaliation would have an important dissuasive effect, and would be further strengthened by provisions for personal liability and penalties for the perpetrators of retaliation." In addition to this recital, Recital 102 is also relevant, as it expresses the same legal principle, stating that:

> Criminal, civil or administrative penalties are necessary to ensure the effectiveness of the rules on whistleblower protection. Penalties against those who take retaliatory or other adverse actions against reporting persons can discourage further such actions. Penalties against persons who report or publicly disclose information on breaches which is demonstrated to be knowingly false are also necessary to deter further malicious reporting and preserve the credibility of the system. The proportionality of such penalties should ensure that they do not have a dissuasive effect on potential whistleblowers. (Recital 102)

Article 23 of the European Directive, titled "Sanctions"—included in Chapter VI dedicated to the "Protective Measures" provided in favor of the whistleblower—states, in paragraph 1, the imposition of effective, proportionate, and dissuasive sanctions against those who obstruct or attempt to obstruct the reporting of wrongdoing, take retaliatory measures, initiate vexatious proceedings, or violate the obligation of confidentiality regarding the identity of whistleblowers. The EU Directive, in this regard, states that:

> Member States shall provide for effective, proportionate and dissuasive penalties applicable to natural or legal per sons that: (a) hinder or attempt to hinder reporting; (b) retaliate against

> persons referred to in Article 4; (c) bring vexatious proceedings against persons referred to in Article 4; (d) breach the duty of maintaining the confidentiality of the identity of reporting persons, as referred to in Article 16. (Article 23, paragraph 1)

The Directive, in the cases mentioned above, provides for the imposition of sanctions that are defined as "effective, proportionate and dissuasive," without specifying the meaning of the terms related to the effectiveness, proportionality, and dissuasiveness of the imposed sanctions.

The protection framework established at the EU level is also applicable to individuals who submit a report subsequently determined to be inaccurate or flawed.

Paragraph 2 of the same article states that such sanctions shall also be imposed on those who have knowingly made false reports, also providing for measures that may take the form of compensation for damages. Paragraph 2 of Article 23, in fact, provides that:

> Member States shall provide for effective, proportionate and dissuasive penalties applicable in respect of reporting persons where it is established that they knowingly reported or publicly disclosed false information. Member States shall also provide for measures for compensating damage resulting from such reporting or public disclosures in accordance with national law. (Article 23, paragraph 2)

The content of this provision has been faithfully transposed by the Italian national legislator into Article 21 of Legislative Decree No. 24/2023, which, under the same title as the Directive's article, provides in paragraph 1 for the application of administrative pecuniary sanctions ranging from €10,000 to €50,000 in cases where retaliation is established, the obligation of confidentiality is breached, or reporting channels have not been established. Furthermore, the legislation stipulates the imposition of administrative pecuniary sanctions, ranging from €500 to €2,500 in the event of a conviction for the offenses of defamation or slander (Transparency International Italy, 2023).

The Italian State, in accordance with the regulatory provisions outlined, grants the sanctioning power recognized therein to the ANAC. Once the existence of a violation or the adoption of a discriminatory measure has been established, the ANAC can impose an administrative financial penalty on the authors of retaliatory measures, within the statutory limits provided for the specific cases indicated (ANAC, 2023). These sanctions, although theoretically described as proportionate, effective and dissuasive, in practice suffer from limited enforceability, as their enforcement is restricted to public entities and private entities that have implemented MOG 231. Individuals belonging to these entities rarely receive financial penalties, which, when imposed, are generally close to the statutory minimum. This suggests that such penalties do not have a deterrent effect against the commission of unlawful conduct.

The sanctions that, in practice, have been imposed by the ANAC, moreover, do not consider the economic and professional repercussions that affect the whistleblower. The sanctioning measures issued by the Authority appear to be

entirely redacted, as they contain numerous "*omissis*" to protect the confidentiality of both the whistleblower and the reported party, and also lack a moral sanction for the author of the retaliatory measure.

The imposition of financial penalties within the stringent statutory limits in the Italian system does not, in any way, fulfill the requirements of effectiveness, proportionality, and deterrence set by the supranational legislator. This is evidenced by the fact that the sanctions, if imposed, seem to be considered part of a risk-management strategy by a public entity or a private company (D'Amora & Uletto, 2023).

In contrast, the implementation of the same European legal provision in the legislative context adopted in France appears to be different, as the legal formulation developed more effectively meets the criteria of effectiveness, proportionality, and deterrence.

In this regard, the French legislator, through Article 8 of the recent legislation, amends Article 13 of the previous *Loi Sapin II* by providing for the application of a custodial sentence of up to three years or a fine of €60,000, for those who adopt discriminatory or retaliatory measures against the whistleblower.

The French system therefore provides for the imposition of a penalty of up to 3 years' imprisonment or a fine of €60,000 for those who adopt discriminatory and retaliatory measures against the whistleblower. The provision of such a measure creates a real deterrent against potential perpetrators of such actions, who, in the event of a positive finding, will be subject to or will be the recipients of a prison sentence and/or a very high fine. The significant legal limits provided for in France seem, at least in theory, to be sufficient to deter perpetrators from committing discrimination and/or retaliation as a result of a whistleblowing report, given the potential consequences they could face.

Article 25 of the European Directive and the Non-Regression Clause

The main problem found in Italian legislation is the result of an incorrect and incomplete transposition of the provisions contained in the European Whistleblowing Directive, which, in contradiction with the content of the Directive, leads to a possible violation of the provision in Article 25, titled "More favourable treatment and non-regression clause" (Transparency International Italy, 2024a). According to Article 25, paragraph 1, "Member States may introduce or retain provisions more favourable to the rights of reporting persons than those set out in this Directive, [. . .]" and continues in paragraph 2, stating that "the implementation of this Directive shall under no circumstances constitute grounds for a reduction in the level of protection already afforded by Member States in the areas covered by this Directive." What this means is that the principles contained in the EU Directive in question may not be transposed into national legal systems if the transposition of these principles leads to regulatory regression and, consequently, to the recognition of a lower level of protection than the existing one (Transparency International Italy, 2023).

The considerations made in the previous paragraphs, in particular with regard to the external reporting channel established with the ANAC (paragraph

4.1), outline a real regression, given that the whistleblower can only resort to ANAC upon the verification of the conditions set out in Article 6 of national legislation. This circumstance, however, was not present under the previous regime, where the choice between internal or external reporting channels was left to the discretion of the whistleblower.

FINAL CONSIDERATIONS

The transposition of the European Whistleblowing Directive was carried out through Legislative Decree No. 24 of 2023 in Italy and Law No. 401 of 2022 in France. However, the provisions of these national legislations only partially align with the provisions developed by the EU legislator. It is possible to consider individual national legislations as compliant with the supranational one. A comparison between Italian and French legislation has revealed the respective issues and peculiarities, particularly with regard to internal and external reporting channels and the protection regime for whistleblowers who have become the subject of unlawful discriminatory or retaliatory measures.

According to the provisions of the EU Directive, the whistleblower may freely choose either the internal or external reporting channel to report wrongdoing, while retaining the option to encourage the use of an internal channel to ensure a timely response and potential immediate correction of the flawed procedure. The alternative nature of the channels has been correctly transposed into French legislation—modifying the previous regime—but not into Italian legislation, where resorting to the external reporting channel is subject to certain conditions and the prior use of the internal reporting channel.

A parallel argument can be made regarding the imposition of administrative financial penalties on those who adopt discriminatory or retaliatory measures against the whistleblower who has reported wrongdoing. The EU legislator prescribes the adoption of effective, proportionate, and dissuasive sanctions, a principle that has been correctly implemented in France and, once again, not in Italy.

The (illegitimate) adoption of a discriminatory measure, according to the French approach, can result in a prison sentence or the imposition of a high-value fine. These parameters differ sharply from the sanctioning regime in the Italian system, where, instead, the verification procedure conducted by the ANAC may, at most, lead to the imposition of a modest penalty. These seemingly modest penalties appear to be a component of the risk management strategy employed by public entities and private companies. A comparative analysis of French and Italian legislation reveals that the former offers a more advanced level of protection. Italian legislation requires numerous corrections in order to be considered compliant with the minimum standards required by the European Union. It will be interesting to understand the progress of infringement procedures initiated by the European Union against states that did not meet the December 17, 2021, deadline for transposing the EU Directive. This is a salient point, as it contributes to the evaluation to be conducted by the European Commission regarding

national requests made by third-sector entities and civil society organizations. Through the preparation of a letter addressed to them, these entities have highlighted the issues and regressions observed at the national level.

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COMPARATIVE ANALYSIS OF THE INCENTIVES AND DISINCENTIVES TO REPORT CORRUPTION: A COMPARISON BETWEEN THE SPANISH AND ITALIAN CASES

María Cristina Fernández-González

Universidad Europea de Valencia, Spain

ABSTRACT

This chapter aims to examine the legal frameworks adopted in Italy and Spain to address the incentives and obstacles faced by whistleblowers. The authors find notable differences between the two countries, particularly regarding the progress and delays in the implementation of the European Directive EU 2019/1937 on the protection of whistleblowers. Resistances and motivations are elements that should be studied from a psychosocial and sociological perspective, so it will be necessary to conduct interviews to verify the most representative causes based on the theoretical review. It would be appropriate to conduct interviews with whistleblowers who reported corruption after the Directive and its implementation.

Keywords: Corruption; culture; omertà; public employee; silence; whistleblowing

We could begin by defining the concept of whistleblower or whistleblowing, but given the abundance of existing definitions and the extensive information covered in these pages, doing so would be redundant. However, it is crucial to

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examine whistleblowing from a criminological perspective, recognizing it as an established strategy and a valuable tool for those who witness cases of corruption (Fernández González, 2025a, p. 312).

This strategy serves as a mechanism for facilitating access to information that would otherwise be extremely difficult to obtain without the whistleblower's testimony. Beyond this definition, whistleblowing also involves an act of disclosure, in which current or former members expose practices that may not only be illegal but also unethical, carried out by employers, employees, or affiliated organizations (Near & Miceli, 1996, p. 508). More recent authors speak of ethical informants and even of the "deliberate disclosure of information about non-trivial activities considered dangerous, illegal, unethical, discriminatory or illicit, generally by current or former members of the organization" (Hersh, 2002, p. 243). However, unlike the previous concepts, this is not considered a normative concept but rather one used for academic research purposes. The legal definition we must adhere to is found in Directive (EU) 2019/1937 on the protection of whistleblowers, which defines a whistleblower as a natural person who reports or publicly discloses information on breaches acquired in the context of their work-related activities. Similarly, in the Spanish version of ISO 37002:2021, a whistleblower is defined as a person who reports suspected or actual wrongdoing and has reasonable grounds to believe that the information is true at the time of reporting (Altés Tárrega, 2024, p. 17).

The objective of this chapter[1] is to analyze the factors that increase the likelihood of whistleblowers reporting criminal activities, as well as the concerns that may hinder the filing of such reports. To gather relevant information, a comprehensive literature review was conducted, along with the compilation of data from various regional authorities across Spain.

Considering the Spanish case and its relevance within the European Union, as well as the need for an effective response to corruption, the Italian case has been incorporated into the study. The selection of Italy is based on the similarities between the two countries in terms of their Roman-Germanic legal systems, as well as the historical challenges they have faced regarding political corruption. There is a notable connection between political corruption and organized crime in both nations. Furthermore, Italy was particularly noteworthy in this study due to its distinctive approach to managing an anti-corruption authority prior to the implementation of Directive 2019/1937. This contrasts sharply with Spain's experience in this regard. Additionally, Spain has sought Italy's expertise in the establishment of other authorities, such as the Valencian anti-corruption authority.

INCENTIVES AND HESITATIONS FOR WHISTLEBLOWERS TO REPORT[2]

Reluctance to Report

According to rational choice theory,[3] it is important to highlight that both entities and organizations are made up of individuals who make decisions aimed

at maximizing their objectives, needs, or desires, often by avoiding obligations or negative consequences. On the other hand, whistleblowing is viewed as a control mechanism that ensures proper checks and balances, framing it as a rational act in which individuals expose situations that threaten public welfare (Valentine & Godkin, 2019, p. 278).

In most cases, whistleblowers are not part of the corrupt scheme and have not engaged in illicit activities. However, there are instances where individuals who were previously involved choose to withdraw from such activities and become informants, expressing remorse for their past actions.

As if it were a fruit vendor, Trevino and Youngblood (1990) describe "bad apples" as individuals who promote unethical behavior and intentions, using their environment to further their own interests. In other cases, we refer to a "bad barrel," where several team members benefit from corrupt actions, while dissenters refuse to participate and face various consequences. In both cases, "bad apples" are linked to individual factors that can increase unethical behavior, while "bad barrels" refer to situational factors that may lead to unethical decisions, as noted by Pintor (2019, p. 136).

Various studies have suggested that these eventualities, or contextual variables, have a stronger influence than the whistleblower's individual characteristics or personality (Mesmer-Magnus & Viswesvaran, 2005, p. 280). Among the key variables are threats of retaliation, the availability of reporting channels—especially anonymous ones—the organizational climate, independent oversight entities, and others.

Kenny et al. (2019) also identify additional reasons for whistleblowers' silence, highlighting the culture of silence as an influential factor. They also mention the potential lack of investigation into reported cases, retaliation against employees who raise concerns internally, and social isolation of these employees by their colleagues and supervisors. While the authors focus on these factors within the banking sector, they can be extended to other contexts such as the public sector, academia, or private businesses. In this regard, Fernández-González (2025b) provides a bibliographic review that addresses the various reasons why whistleblowers may hesitate to take the step of reporting.

High Likelihood of Retaliation

There is a significant link between corruption networks and mafia-like practices. In large-scale corruption schemes, silence is one of the prevailing rules that dominates the interpersonal dynamics within the "bad barrel" (Collins, 1998), representing one of the greatest obstacles to conducting investigations into corruption. Violating these codes within an organization or administration leads to a series of retaliatory actions, which often complicate the effective resolution of cases.

The code of silence, known in Italy as *omertà*, is present in many organizations. Breaking this code not only generates rejection and ostracism, but in many cases, threats and fears arise toward employees who choose to report an act of corruption. Among the various responses an organization may have upon

receiving a report, it could either ignore the information or take appropriate action in response to the facts, rewarding or punishing the whistleblower (Mesmer-Magnus & Viswesvaran, 2005, p. 281).

A large number of whistleblowers admit that they prefer to avoid work and try not to encounter colleagues or supervisors, as well as avoid social situations with them (Garrick & Buck, 2022, p. 61). In this regard, these attitudes are a consequence of the phenomenon of mobbing.

Mobbing is one of the most prevalent elements when discussing the fears related to reporting. It refers to situations that encourage ridicule, the display of hostile attitudes toward the whistleblower, and the use of harassment as a tactic to intimidate the individual who raises the alert. Zapf (2007) emphasizes that psychiatric disorders frequently arise from or are linked to the work environment, manifesting as generalized anxiety and other conditions such as post-traumatic stress disorder (Zapf, 2007, p. 61).

Retaliation can take various forms, ranging from attempts to pressure the whistleblower into withdrawing the allegations to the complete expulsion of the whistleblower from the organization. Other actions may include organizational measures that undermine the complaint process, isolation of the whistleblower, defamation of their reputation, the imposition of difficulties or misfortunes, exclusion from meetings, the removal of benefits, and other forms of discrimination or harassment related to mobbing (Mesmer-Magnus & Viswesvaran, 2005, p. 28). These actions may be driven by the organization's desire to enforce the code of silence on the whistleblower, prevent the complaint from becoming public, discredit the whistleblower, and/or discourage other potential whistleblowers from acting (Miceli & Near, 1994). This occurs even when reporting can be beneficial to the organization or administration, preventing irregularities from continuing and safeguarding the reputation of the corporation or public trust in the institution (Valentine & Godkin, 2019, p. 280).

Consequently, according to the perspective of Mesmer-Magnus and Viswesvaran (2005), individuals who perceive an immediate threat of retaliation, whether from the organization or their supervisors, are less likely to report compared to those who do not perceive an unsatisfactory environment or the possibility of retaliation.

Absence of Anonymous Reporting Channels

The availability of anonymous reporting channels is also crucial in encouraging whistleblowing, especially when it is difficult to identify the individual who could be retaliated against. Although there may be cultural reluctance to implement such channels and procedural guarantees in criminal law that favor confidential but not anonymous reporting, the general trend is toward increasing anonymous reporting channels and ensuring that the whistleblower's identity remains unknown.

Effects of anonymizing reports are significant due to the perceptions and importance these have on decision-making. If retaliation or other similar situations have been perceived in the workplace or social environment, the intention

to report is stronger when anonymous reporting channels are available (Kaplan et al., 2012, p. 94). Studies have shown that anonymous reporting occurs in cases where direct and certain retaliation is perceived, as well as a sense of impunity regarding the reported actions.

Through the necessary inclusion of anonymity, as Oller (2023, p. 189) indicates, it adds a "bonus to the communication of dangerous circumstances for making objective decisions." Its absence creates a sense of insecurity in cases where the perception of danger is real and likely, which can serve as a disincentive for potential whistleblowers. In contrast, its presence becomes a decisive factor in the decision to report (Keil et al., 2010, p. 795). This is because by protecting the whistleblower's identity, anonymity reduces the risk of retaliation, the primary disincentivizing element. In this way, the negative costs are lowered.

Unavailability of External and Independent Entities

When internal channels cannot be anonymous and secure, the lack of external and independent entities has often resulted in a failure to gather information. If the internal environment is delegitimized, external reporting becomes a much safer option for making a report.

Studies indicate that reporting misconduct within the company is often more effective than external reporting, as it allows whistleblowers to provide information quickly and in a timely manner. This helps avoid potential collateral effects, such as damage to the company's reputation or exposure to lengthy public processes, thereby enabling the organization to self-regulate and resolve the issue internally. According to Near and Miceli (1996), the likelihood of retaliation through the first channel used, the internal one, is a significant deterrent for the whistleblower. Through internal channels, it is highly likely that the organization itself will decide to expel and retaliate against the whistleblower, particularly if the internal report involves actions carried out by senior management or higher-ranking officials within the administration (Dworkin & Baucus, 1998, p. 1295).

Furthermore, other research has suggested that whistleblowers who choose to externalize their reports to independent entities trigger more successful investigations. This is because, for internal reporting to be effective, as Keil et al. (2010, p. 795) state, the entity to which the report is made must be willing to address the issues. When there are expectations of an effective resolution through the internal channel, the willingness to report is positive; conversely, if these expectations are not met, the willingness to report decreases.

Based on this premise, the goal is to have external and independent authorities available for cases where internal reporting has failed or where the first signs of retaliation have occurred, thus providing protection from the independent authority. In this context, external channels are also valid in scenarios where there is distrust toward the supervisor and a negative organizational climate (Keil et al., 2010, p. 798).

Criminal Responsibility for the Report

Another significant deterrent to reporting is the potential criminal or administrative responsibility that may arise from whistleblowing. Without a clear procedure in place, individuals who report may commit crimes, such as obtaining information illegally or disclosing confidential data, as well as revealing information to the media or third parties who are not authorities (Nieto Martín & García Moreno, 2019, p. 186 et seq.).

These practices often occur when, despite lacking sufficient evidence or information, individuals resort to questionable methods to support the known information (Miceli & Near, 1985, p. 538).

Public references to cases like Hervé Falciani or Ana Garrido, as well as the lengthy processes faced by whistleblowers, serve as clear disincentives to reporting. As Rodríguez Celada (2020, p. 83) correctly points out, the numerous cases where actions of this nature have been criminalized are crucial in shaping the perception of employees who, as witnesses of wrongdoing, fear reporting and suffering the consequences experienced by others.

Although criminal case law on these matters is generally resolving cases in favor of protecting information, the duration of cases and involvement in criminal proceedings is a significant deterrent to participating in reporting. These processes can not only be criminal but also involve the opening of disciplinary files in the workplace or administrative procedures used as retaliation. The mere existence of this possibility, along with the length of such processes, represents a disincentive for the whistleblower when considering reporting, especially when the temporal and economic costs may be higher for them, as discussed in terms of costs and benefits in behavior (Keil et al., 2010, p. 795).

As applied in learning theories, individuals act based on the perceived outcomes of behaviors demonstrated by others. Thus, if they witness reprisals for reporting or legal actions taken against a whistleblower, following Bandura's (1977) premise, the informant may refrain from reporting, fearing to face similar legal scenarios due to the observed experience.

While there may be other resistances, such as lack of knowledge about how the reporting channel works or its existence, as well as fear of social rejection outside the workplace (family or friends), these are the most notable and significant barriers according to the literature review conducted in this research.

Motivations for Reporting

Considering the previous ideas, despite the potential disincentives, many whistleblowers, upon perceiving these obstacles, choose to report due to the significant weight of the associated benefits. These benefits can be both personal and collective, but they serve as a positive stimulus to act.

As noted by Mbago et al. (2018), there are three steps involved in making a report: recognizing criminal behavior, evaluating the behavior, and making a judgment about its responsibility to stop it. In the first step, moral standards are applied, but also legal (ethical and compliance) standards, through which the

behaviors are recognized as irregular. In the following steps, the need for action is established and whether the whistleblowers themselves should take that action. Silence may be maintained based on the previously mentioned factors while positive action has other dimensions.

Among the various reasons motivating reporting, a strong commitment to public service or the preservation of private assets derived from a deeply rooted ethical sense stands out. Additionally, the availability of external and secure resources that ensure the confidentiality or anonymity of the information plays a crucial role. Institutions also provide resources such as free legal advice and the possibility of receiving financial or social rewards for reporting.

Ethical and Moral Considerations

According to Nayir et al. (2018), personal ethics plays a significant role in the decision to report or not. Whistleblowers who oppose dominant forces tend to act according to their personalities rather than situational variables, giving more weight to acting according to what they consider ethically correct based on their learning.

Reporting presents ethical dilemmas for both employees and employers, involving motivation, fairness, loyalty, and moral obligation. How an individual develops morally influences their behavior, and their personal philosophy will guide them to make ethically correct decisions. The primary ethical dilemma in understanding the act of reporting lies in the conflict of balancing values, loyalties, and obligations to the organization but also to society (Hersh, 2002). In prosocial behaviors, where the collective well-being is sought, deeply rooted loyalties within organizations may dissuade reporting if the importance of individual morality is limited. In other words, when an individual lacks strong ethical principles, they are less likely to report, unlike those whose ethical principles are significant and who see the perpetration of criminal acts as harmful to their core values. In other words, those who do not feel morally obligated to report a crime are less likely to do so (Miceli et al., 2001)

According to the study conducted by Nayir et al. (2018), there are two distinctions: relativists and idealists. The studies indicate that idealistic individuals are more likely to report wrongdoing compared to more relativistic individuals, precisely because relativists tend to choose the lesser harm. Regarding this lesser harm, there is also a relationship between the need to prevent abuses that may affect minority groups or individuals, especially when the actions being carried out may be related to the environment or public services in underprivileged areas (Hersh, 2002). In this regard, many studies link philosophical values, the utilitarianism or selfishness of society, and their relation to the commitment to report (Mbago et al., 2018).

Considering the context, the severity of the information, and the relationships within the entities, the propensity to report is not only determined by the individual but also by the situational factors surrounding the whistleblower. While personal characteristics linked to whistleblowing (such as age, gender, education, or culture) may play a role, it is primarily the circumstances that drive the report.

These circumstances define whether whistleblowing is perceived as deviant or prosocial behavior (Hersh, 2002).

Promoting Reporting Through (Public or Corporate) Compliance

Following the previous lines, a proper organizational climate is also an unquestionable element that influences the decision to report misconduct. The extent to which an organization encourages whistleblowing through communication channels is also a significant factor in motivating employees to participate in the prevention or detection of irregularities (Miceli & Near, 1985).

The effective implementation of internal whistleblowing channels significantly facilitates the process for both the whistleblower and the organization in addressing internal issues. Moreover, the establishment of such channels is not solely crucial; the whistleblowing process must also be guided by the compliance code adopted by the organization or the internal regulations of the administration (Puyol, 2017). Through these compliance programs, the behavior of both the organization and potential whistleblowers is steered toward a conduct or culture that fosters improved relationships while also laying the foundation for initiatives that promote secure and reliable whistleblowing from a variety of perspectives.

As Puyol (2017) observes, when compliance programs are properly designed to encompass all individuals within an organization, it is typical for employees—regardless of their position or function—to be highly cognizant of the importance of utilizing these channels when necessary.

Social or Economic Rewards

Another, albeit less common, form of incentive is the provision of rewards, whether monetary or social in nature. While such rewards have not been integrated within European frameworks, they are widely recognized in the United States, where monetary rewards are a well-established practice aimed at combating corporate fraud and public corruption (Teichmann & Falker, 2021).

Although there are certain ethical dilemmas regarding the rewarding of prosocial behavior, in many cases, whistleblowing is incentivized through rewards precisely because reprisals, such as dismissal or institutional retaliation, undermine the financial stability of the whistleblower. Additionally, such rewards are valuable because they serve as compensation for internal reprisals within institutions, which often go unverified as retaliatory actions (Teichmann & Falker, 2021). Consequently, access to these rewards is typically seen as a benefit rather than a cost. Moreover, incentives function as an additional means of mitigating the negative costs incurred due to retaliation (Rose et al., 2018).

Regarding social rewards, which are noteworthy due to the perception of behavior as deviant, they stem from a public policy need to highlight the heroism of whistleblowing. This approach aims to foster social acceptance of whistleblowing and to increase the visibility of such actions, thereby encouraging others to engage in similar behaviors.

APPROACH TO LEGISLATIVE MANDATES ON THE MATTER

Council of Europe Instruments (GRECO)

Aware of the issues generated by corruption, the GRECO was established in 1999 by the Council of Europe to monitor the compliance of member states with the organization's anti-corruption standards. Its objective is to assist member countries in strengthening and improving their efforts to combat corruption. Through the same Convention that created GRECO, Article 20 established the obligation for member states to create specialized bodies dedicated to combating corruption (Treaty No. 173, 1999), a requirement that was later also adopted in the United Nations Convention against Corruption (UNCAC).

According to Nieto-García & García-Moreno (2019), the Penal and Civil Conventions on corruption adopted by the Council of Europe in 1999 included the first references to this framework. The first Convention stipulates in Articles 21 and 22 that each state party must take the necessary measures to ensure that authorities and public officials cooperate, in accordance with their domestic law, with authorities responsible for investigating and prosecuting criminal offenses. This includes reporting to the competent authorities either on their own initiative or when required, as well as the obligation to protect whistleblowers. The Civil Convention, in turn, sets forth in Article 9 the obligation to provide effective legal protection to whistleblowers acting in good faith.[4]

Subsequently, in 2010, following various reports from GRECO and the Commission on Legal Affairs, Recommendation 191,611 and Resolution 172,912 were adopted, emphasizing the importance of whistleblowing in enhancing accountability and fighting corruption. They called on member states to review their legislation on this matter. The Recommendation urged the Committee of Ministers to consider drafting a framework convention on the protection of whistleblowers and suggested the creation of an internal reporting mechanism for irregularities within the Council of Europe.

In 2014, the Council of Europe adopted a new Recommendation—Recommendation CM/Rec (2014)7 on protecting whistleblowers—which outlines how a robust framework should be designed to facilitate the reporting of irregularities and protect whistleblowers. The Recommendation sets out a series of key principles, including a broad understanding of protected reporting, the availability of multiple channels for making a report, prompt responses, the confidentiality of the whistleblower and the prohibition of reprisals (García Moreno, 2022, p. 54).

United Nations Convention Against Corruption

In 2003, with the Mérida Convention, the United Nations introduced the need for attention to individuals who, in good faith and with reasonable motivation, report any acts related to crimes defined under the Convention. Protection for

whistleblowers was established as a consideration or suggestion in the context of the Convention, rather than an obligation, as suggested by Article 6 regarding the bodies responsible for preventing corruption. In this regard, Article 6 states that each state party, in accordance with the fundamental principles of its legal order, will ensure the existence of bodies involved in the fight against corruption. However, in Article 33 and Article 8.4, the intention shifts toward possibility and consideration but not mandatory establishment. It is possible to understand at this point that the effective protection of whistleblowers was not initially a priority for states, nor even for the conventions themselves.

Nonetheless, despite the suggestion rather than urgency proposed by the Convention, many countries adopted Articles 6 and 33, with Spain and Italy serving as prominent examples. It is of great interest to analyze these two countries due to their differing approaches, as well as the distinctions between the established agencies and the incentives for the protection of whistleblowers.

Directive (EU) 2019/1937 on the Protection of Whistleblowers

On October 23, 2019, Directive (EU) 2019/1937 of the European Parliament and the Council on the protection of people who report violations of Union law were finally approved. This Directive has provided a definitive boost to such strategies, as it is not limited to a specific sector and mandates the creation of whistleblowing channels within competent authorities and internal channels in most public and private organizations.

Among other measures, the Directive requires Member States to establish external, independent, and autonomous alert channels within competent authorities to receive and process information provided by whistleblowers (Article 11). It also promotes the creation of internal whistleblowing channels for all companies with 50 or more employees, regardless of the nature of their activities. In the public sector, the Directive imposes the creation of whistleblowing channels for all national, regional, and local public administrations, including entities with state participation or those controlled by the state. However, it allows Member States to exempt municipalities with fewer than 10,000 inhabitants or fewer than 50 employees, as well as other public entities with fewer than 50 employees (Article 8).

Considering the previously mentioned incentives and resistances, the Directive includes measures such as ensuring anonymity for whistleblowers, the need for external agencies or offices to receive alerts, the imposition of sanctions in the case of retaliation, the requirement for each state to regulate the responsibility arising from whistleblowing, and access to information, among others.

Contemplating the focus of this study, we are particularly interested in analyzing whether there are similarities or differences between Spain and Italy in their legislative approaches to the effective protection of corruption whistleblowers, considering the perceived costs of whistleblowing.

STUDY OF THE SITUATION IN SPAIN

In compliance with Directive 2019/1937, Spain implemented a series of measures in 2021—albeit belatedly—to avoid sanctions for failing to transpose the Directive on time. Temporary measures for direct transposition and application of Directive 2019/1937 were introduced, such as the incorporation of internal whistleblowing channels in private entities, public companies with more than 50 employees, and public entities with fewer than 50 employees. These internal information systems, as the first step in this initial framework due to the delay in implementing the regulation, were adopted with a significant lack of training, information, and urgency (Sierra-Rodríguez, 2025, p. 58). This has led to the situation where, despite Spain adopting these plans, it is difficult to assess whether they have been entirely effective.

However, it is important to note that Directives do not have direct applicability to States in the same way as Regulations do, meaning they require legislative intervention by the States. Nevertheless, it was not until 2023 that an official national law was approved, due to the particularities of Spain's legislative regime and its system of autonomous communities. In this regard, it is necessary to at least mention the initial steps taken at the regional level, which should be recognized as innovative and positive developments in the Spanish context.

Protection at the Regional Level: Regional Anti-Corruption Offices

Since the UNCAC, which established the obligation to create authorities or bodies responsible for preventing corruption, Spain ratified this Convention in 2006 through Article 96 of the Spanish Constitution. From that point on, the Convention produced effects and required public authorities to enforce its provisions (Clemente-García, 2022, p. 98).

In Spain, at the level of the Autonomous Communities, as we have noted, the models are varied. The majority have opted for the creation of new specialized entities or agencies (Andalusia, Aragon, Castile and León, Catalonia, Valencia, and Navarre), under various denominations and generally under the dependence or affiliation of the respective legislative body, typically of an administrative nature. In all of them, requirements of solvency and professional experience for their members are demanded, with qualified majorities required for their election (those affiliated with legislative bodies), and the permanence and immovability of their members are guaranteed, except for specified causes (García & Rodríguez, 2022, p. 159). All these entities are assigned functions related to investigation and inspection, protection of whistleblowers, prevention, and even evaluation, extending to the local level.

As we have mentioned, and in relation to the UNCAC, Catalonia, the Balearic Islands, and the Valencian Community were the first to comply with the Convention's mandate. Subsequently, others followed, but the pioneers were the three previously mentioned. In the case of Catalonia, in 2008, not only was the initiative adopted at the regional level but an ethical and good governance channel was also established within the City Council of Barcelona, aimed at

reporting conduct carried out within municipal administration. Later, in 2016, both the Balearic Islands and the Valencian Community took the step of passing their laws to create anti-corruption offices, responding not only to the CNUCC mandate but also addressing the outbreak of corruption in Spain since2013.[5]

The creation of these autonomous regions stands out for their novelty but also for its impact. Given the self-government capacity of the various autonomous communities, authorities were created— developed through legislation— as specialized agencies with the purpose of preventing, investigating potential cases of corruption, and training public employees to avoid potentially corrupt behavior (Clemente-García, 2022, p. 109). In general, the three authorities with sanctioning powers over public administrations follow a model of authority that, as mentioned by the OECD (2013), at the time of their creation, were situated in agencies with exclusively preventive functions. In all cases, the detection of infractions is referred to the competent authorities (Benítez-Palma, 2017, p. 11).

Finally, it is important to highlight the functions of the Valencian Anti-Fraud Agency (AVAF). Until 2023, with extensive activity and recognition at the European level,[6] it had competences in advising corruption whistleblowers, providing technical assistance to public administrations and entities within its scope, and conducting awareness-raising programs for the effective protection of whistleblowers. As a novelty, and in relation to the Italian authority, AVAF requested collaboration and information from Italy, which is why both authorities share the same system (GlobaLeaks) for implementing the whistleblower channels (Clemente-García, 2022, pp. 108–111). However, due to the lack of material independence of these autonomous authorities, the Balearic Office was abolished, and its functions were terminated. Currently, AVAF is heading down the same path, although similar authorities are emerging in other autonomous communities such as Andalusia or Castilla y León.

With the regional landscape in mind, and in the absence of a national entity responsible for protecting whistleblowers to avoid territorial inequalities, the belief that the approval of the Directive at the European level would lead to a regulatory "tsunami," as Sierra-Rodríguez (2025) rightly points out, turned out to be incorrect. In the Spanish case, the regions have taken on the responsibility of providing protection to whistleblowers to the extent that they have been able to, but in some cases, this has been insufficient due to the need for a common framework and more comprehensive national legislation.

Law 2/2023 Regulating the Protection of Individuals Who Report Regulatory Violations and the Fight Against Corruption

Following the same line of thought as Sierra-Rodríguez (2025), the processing of Law 2/2023 was delayed and characterized by discontinuous rhythms, which led to the expectation that its contents would be sufficiently well thought out. However, the transition from intention to action reveals several inconsistencies that may continue to foster a negative perception among whistleblowers.

Although Spain had already established a duty to report under the 1882 Criminal Procedure Law, and other obligations such as Article 48.4 of Law

10/2010, dated April 28, on the prevention of money laundering and the financing of terrorism, which favors reporting as both a citizen's right and a public employee's duty, the situation was quite different from the perspective of administrative offenses.[7] No generic duty to report by citizens, even in relation to individuals connected with the affected entity, was established until the approval of the Directive and, consequently, Law 2/2023. Even with the autonomous communities that already had anti-corruption authorities, the existing protection system was not sufficient, highlighting the need for the approval of a specific law that would create an Independent Whistleblower Protection Authority (AIPI).

Regarding the sanctioning system, the AIPI establishes a regime where the application of sanctions corresponds to different bodies depending on the sector in which the infringement occurred. In the criminal field, offenses will be referred to the courts, with the AIPI potentially intervening as an authority or expert in the investigation. In this regard, the AIPI, according to Article 61 and its sanctioning powers, is responsible for sanctioning infringements or reprisals[8] within the public sector at the national level, as well as within the private sector that receives public funds across the entire national territory. However, this responsibility is excluded in cases where regional legislation has assigned this competence to specific autonomous bodies, as mentioned previously. This division ensures that local regulations maintain jurisdiction over specific regional matters while the AIPI holds broader authority over the national public and certain private entities.

In relation to anonymous reporting, and in accordance with Directive (EU) 2019/1937, as well as a notable ruling by the Supreme Court, the latter validates its use in detecting criminal offenses, provided that they are properly corroborated, as occurred in STS 272/2020,[9] through subsequent internal investigations within the company and by the relevant authorities. In this regard, Law 2/2023, in Article 7 concerning internal reporting channels, allows for anonymous communication; in Article 17, regarding the reception of information through the external channel of the AIPI, it also includes, as the first aspect, the acceptance of anonymous information. In cases where information is provided with identification, the identity of the whistleblower will be kept confidential, except in the case provided for in Article 33 of the law, which establishes that the identity will only be disclosed to the judicial authority, the Public Prosecutor, or the competent administrative authority in the context of a criminal, disciplinary, or sanctioning investigation. It should be noted that the AIPI, within its responsibilities, is tasked with verifying the credibility of the reported facts, meaning that there is a twofold verification process before the case enters the judicial system to confirm the truthfulness of the facts.

Although we have already mentioned the AIPI in previous paragraphs, Law 22023 responds, five years later, to the need to create an independent authority for the protection of whistleblowers. Following Sierra-Rodríguez (2025) and Fernández-Ajenjo (2023), as well as the literal interpretation of the law, the creation of this authority represents an important pillar in the transposition of the Directive. With this public law body, endowed with its own legal personality

and full capacity to act in both the public and private sectors, the aim is to establish an organization to fight and combat corruption that, among its functions, also provides protection to whistleblowers. However, at the time of writing this article, the necessary steps for its effective creation have not yet been taken, except for the Government's recommendation of a Director. At this point, it loses any condition of independence, so it remains to be seen whether, in its execution, the proposed person can act with sufficient independence[10].

Among the various criticisms in the doctrine regarding the AIPI, the necessary independence of these authorities is included. If we observe Article 42 of the Law itself, it is indicated in its first section as "Independent Authority for the Protection of Whistleblowers." However, as the saying goes, "the habit does not make the monk" because although it is formally labeled as an independent authority, in practical terms, it is not. The proposal for the appointment of its presidency, as continued in Article 53, is made through the Ministry of Justice, turning it into an opportunity for partisan colonization of this authority.

Finally, the AIPI has not regulated economic rewards or special recognition that could be considered incentives, so we lack information that could provide a more extensive analysis of the Spanish case.

ANALYSIS OF THE ITALIAN CONTEXT

As we have previously pointed out, Italy met certain standards for the creation of an authority, as indicated by GRECO, and had elements included in Directive 2019/1937. Since 2012, and considering that the first measures began in 2009, the *Autorità Nazionale Anticorruzione* (ANAC) was created. However, it was not sufficient because it was exclusively directed toward the public sector, leaving aside the private sector and failing to align with promoting the whistleblowing strategy from this sector.

Italy fulfilled its international obligations to protect whistleblowers, as noted by Gamberini (2013), through the enactment of Law No. 112/2012, which was informed by the recommendations of the Council of Europe Convention. With the introduction of Article 54-bis of Legislative Decree No. 165/2001, amended by Law No. 190/2012, the primary provisions concerning the National Anti-Corruption Authority (ANAC) were established. This legislation represented a significant step in introducing, for the first time, a systematic approach to combating corruption within Italian public administrations, making the implementation of a whistleblowing system mandatory for all public administrations across the country. However, while this framework provided protection to public employees reporting misconduct, shielding them from retaliation and sanctions, it did not extend such protection to the consequences of any unlawful conduct they may have engaged in to access the information. Subsequently, Law No. 179/2017 was introduced, which delineated specific measures to safeguard the whistleblower's identity and provided guidance on handling reports (Previtali & Cerchiello, 2022, p, 3). This law also extended the mandatory

requirement for whistleblowing systems to the private sector. In this regard, reports are directed through the Court of Auditors, judicial authorities, and ANAC, with retaliation against whistleblowers expressly prohibited.

On another note, we also see how Article 20 of Legislative Decree 81/2008 established another obligation for workers to "immediately inform the employer, the responsible person, or the supervisor about deficiencies in the means and devices mentioned in items c) and d), as well as any potential dangerous situation they are aware of, and act directly, in case of urgency, within their competences and possibilities, without prejudice to the obligation set out in item f) to eliminate or reduce risk situations" (Fraschini, 2009, p. 7). In this way, we observe that there were obligations to report but no establishment of secure and independent channels that would ensure a certain level of security for making the report.

As indicated by Clemente-García (2022), the Italian legislator, even before the Directive, paid attention to this regulation, modifying it both in 2014 and in 2017. The key point of these modifications is that the ANAC was created with the purpose of establishing control over public bodies, but in 2017, a department was added to protect whistleblowers. According to Feldman (2020), the common agreement on the need to fight corruption and protect whistleblowers is precisely due to the country's political history and its ties to the Italian mafia.

However, the landscape prior to 2012 was based on obligations for public servants or workers. As Fraschini (2009) rightly points out, Italy ratified the OECD Conventions related to the fight against corruption of public officials and that of the United Nations, in accordance with the Italian Constitution, which in Article 10, just as in the case of Spain, requires that Italian law be aligned with international legal principles, respecting part of the sovereignty of Italian law. Until this point, Italy operated through obligations for public servants and their reporting, but these obligations were not channeled through secure channels, only reaching external whistleblowing channels with the inclusion of ANAC as the authority for receiving external reports.

Subsequently, in 2017, the modification of Law 179/2017 amended both Law 190/2012, regarding the public sector, and Legislative Decree 231/2001, which evaluated the responsibility of Italian legal entities in relation to private entities. In this way, through the creation of prevention, management, and control models (MOG), the authorities are required to create compliance models where informational obligations (the so-called information channels) are institutionalized in relation to and toward the monitoring body "responsible for overseeing the functioning and compliance of the models" so that those who have observed inappropriate behavior can report it in a permanent and controlled manner (Corso, 2018, p. 107; Mongillo, 2023, p. 12).

It seems, therefore, that Italy had a very robust and adequate framework for the protection of whistleblowers, which, in the case of the transposition of the Directive, would be, as they say, "well thought out and done." However, as we will see in a very limited manner, it generated certain problems in its application.

Decree 24/2023 Implementing the EU Directive

Although Italy has made significant strides in the fight against corruption and in the protection of whistleblowers much earlier than other neighboring countries, as Fraschini (2009) pointed out, until the transposition of the Directive, Italy did not have an exclusive whistleblowing law.

In our view, it seems that the transposition of the Directive follows a "copy and paste" approach of the provisions of Directive 2019/1937 since neither the scope of application nor the subjective scope of protection was modified in the Decree. In the public sector, and in compliance with the nonregression clause, all public entities or equivalents are fully obligated to guarantee the protection of the whistleblower. The whistleblower can file complaints both through internal and external channels, whether for violations of Union law or national law, without the numerical criterion established in the European directive applying. Regarding the private sector, Law 179/2017 imposed this obligation only on entities that had adopted a compliance model in accordance with "Law 231." Although the transposition of the regulation could not overlook this protection for the whistleblower, it was based on a quantitative criterion—50 employees—to exclude certain cases of small companies.

In relation to anonymous reports, there is an obligation of confidentiality but not anonymity (Gardini, 2023, p. 312). The regulation text seems to limit complaints only to those submitted via an IT platform, raising the question of whether this represents a step backward compared to what was established in Article 54-bis of Legislative Decree 165/2001. In that article, the whistleblower's right to choose the method they deemed most suitable for reporting was expressly recognized. Contrary to what Clemente-García (2022) mentions about the connections of the Valencian authority with ANAC, the Italian authority and its legislator believe that anonymous whistleblowers should not be protected, as anonymity itself can obscure the identity of the person making the report. Thus, confidential reports are protected, the identity of the known whistleblower is protected, but anonymous reports, while processed, remain in a void of protection.

Concerning the powers of ANAC, it maintains certain criteria of independence regarding the sanctioning power of the entity. Before the Directive, sanctions, under the guarantees established by the law, depended on a prior judicial decision in line with the judicial branch's functions. Currently, as Cossu and Valli (2023) indicate, ANAC has administrative sanctioning powers, as required by the Directive.

Regarding its powers, it is important to note that although ANAC operates as an independent body in charge of corruption prevention, its independence does not imply absolute autonomy. As Carloni (2017) points out, the appointment of the members responsible for the leadership is made by the Government. However, this appointment requires the favorable opinion of the relevant parliamentary committees, with majority guarantees, to ensure institutional balance and avoid direct political interference in its functioning. Among the Council

members is a President, who plays a key role in the direction and representation of the entity.

Finally, the decision not to establish financial and psychological support measures for whistleblowers is questionable, an aspect that the Directive only recommends in its Article 20.2 (Gardini, 2023, p. 312).

Discussion on the Common Agreements and Differences Between the Countries

Considering the previous information, it becomes evident that Italy had already taken significant steps toward consolidating a more advanced anti-corruption framework compared to Spain. However, a substantial part of this divergence can be attributed to Spain's autonomous system, in which regional governments hold legislative powers in this area. Thus, while at the national level Spain has only recently begun implementing whistleblower protection measures, at the regional level, significant progress had already been made since 2008 with the establishment of the Catalan Anti-Fraud Office, which laid the groundwork for anti-corruption plans and whistleblower protection mechanisms.

From an expository perspective, prior to Directive 2019/1937, Italy had surpassed Spain in the implementation of anti-corruption measures, including effective whistleblower protection. Nonetheless, a series of conditions were met to ensure the existence of incentives for whistleblowers to come forward, considering the factors previously discussed in the review of resistance and incentives for reporting corruption (Table 1).

Both in Spain and Italy, the competent authorities have the power to directly sanction reprisals against whistleblowers within the administrative sphere. In Spain, Law 22023 grants these authorities sanctioning powers in administrative and economic matters, allowing them to impose corrective measures in cases of infringement. Similarly, in Italy, authorities can intervene to ensure whistleblower protection and penalize any reprisals by public administrations in the same manner. In cases of more severe sanctions, both authorities have the competence to refer them to criminal jurisdiction, demonstrating that in both countries, protection is enforced through deterrent sanctions to prevent retaliation against whistleblowers.

Involving anonymous reports, as previously mentioned, Spain already has case law on this matter, with rulings from the Spanish Supreme Court. Additionally, the preamble of the law explicitly advocates for the protection of anonymous reporting. Article 35 of the law establishes the conditions for protection and includes cases where anonymous complaints have later been identified—without specifying whether the identification was voluntary or imposed—provided they meet the protection criteria. In Italy, with the reform of the decree transposing the Directive, whistleblower protection extends to those anonymous reporters who have been identified and suffered retaliation. However, unlike Spanish law, there is no explicit provision specifically addressing anonymous reports. This approach introduces a degree of discretion in the admission of complaints but not in their protection.

Table 1. Synopsis of Comparison Between Italy and Spain.

	Italy	Spain
Sanction of reprisals	The capacity to directly sanction public administrations through administrative means.	Sanctioning authority in administrative and economic matters (Law 2/2023).
Anonymous whistleblowing	Extension of the protection for anonymity, but without an express regulation in the Decree.	Extension of protection for anonymity.
External independent agencies	Since 2012 Functions are exercised by a collegiate body, the ANAC Council, composed of five members *appointed by the Government*, following a favorable opinion (with guaranteed majorities) of the relevant parliamentary committees, including a president (Carloni, 2017).	From 2025 Creation of the AIPI but not functioning at the moment. Not completely independent, attached to the Ministry of Justice. The government recommends a president.
Public or corporate compliance	Yes, with the creation of control models and ANAC.	Yes, in Article 43: Encouragement and promotion of the culture of information. Control models as a cause of attenuation or criminal exemption from liability for legal people (criminal nature).
Criminal liability arising from whistleblowing	There is no protection for those who have committed unlawful acts in obtaining them (54.bis).	A legal vacuum remains there will be no protection in cases of criminal offense for access to information (art. 38).
Social or financial rewards	No, neither economic nor social.	No, neither economic nor social.

Observing trust as an incentive, both countries exhibit a noticeable disparity that can be observed externally. The level of trust that whistleblowers experience when reporting misconduct is a crucial factor in the effectiveness of reporting channels, as highlighted by Vandekerckhove et al. (2025). The literature indicates that when whistleblowers perceive these channels as inconsistent in their objectives or unable to guarantee protection, their trust in the system diminishes, ultimately reducing the likelihood of reporting wrongdoing. This lack of trust not only undermines the effectiveness of the reporting mechanism but may also reinforce an organizational culture where opacity and impunity prevail.

As Benítez-Palma (2017) and Sierra-Rodríguez (2025) argue, institutions must actively foster trust as external reporting channels by ensuring consistency in their actions, demonstrating effectiveness in whistleblower protection, and maintaining independence in their operations. Otherwise, anti-corruption agencies or offices that lack impartiality or appear dependent on the government are unlikely to be the preferred reporting channels, thereby discouraging whistleblowing.

In terms of experience, Italy's ANAC has over a decade of consolidation as an external reporting channel and serves as a reference point for Italian municipalities with internal mechanisms. As an indicative factor, Previtali and

Cerchiello (2022) emphasize that the whistleblowing process requires a couple of years, along with concrete guidance and recommendations from authorities, to instill confidence and a sense of security among whistleblowers, as well as to enhance public perception of institutional effectiveness. Additionally, public compliance elements, such as anti-corruption education programs and the publication of annual reports, serve as incentives for reporting by demonstrating an effectively functioning system. In this regard, Spain's AIPI can look to the Italian model as a guide for national action, but it must first establish genuine independence in the eyes of the public and allow time to demonstrate its effectiveness.

Regarding compliance programs in both the public and private sectors, Spain and Italy have fulfilled their commitments by establishing recommendations for both public compliance and corporate compliance. This serves as an incentive for whistleblowers, as it provides them with a clear understanding of how reporting channels function and offers ethical codes—alongside legal provisions—to help them identify which behaviors are subject to reporting.

Concerning criminal liability arising from whistleblowing, both countries limit protections for whistleblowers who have engaged in illicit activities to obtain the reported information. In Italy, Article 54 bis explicitly denies protection to individuals involved in unlawful acts during this process. In Spain, Article 38 of Law 2/2023 creates a legal gap by not addressing protections for cases where the information was accessed improperly. This omission may act as a disincentive to whistleblowing, particularly in cases where restrictive regulations on information access could be modified, potentially increasing opacity between potential whistleblowers and the information they intend to report.

One shared aspect in both countries is the apparent difficulty in implementing incentive programs based on financial rewards. In Italy and Spain, employee whistleblowing incentives rely primarily on two key guarantees: confidentiality of the informant's identity and protection against sanctions, dismissal, or any other form of retaliation or discrimination, whether directly or indirectly linked to their report of illicit activities (Ortiz, 2024, p. 52).

However, other crucial incentives—such as psychological, financial, and security-related protection—remain largely unaddressed. The legislation prohibits reprisals, but its provisions remain ambiguous, and while external reporting channels exist, the institutions overseeing them have yet to achieve full independence. As Vandekerckhove and Demuijnck (2025) also highlight, protecting whistleblowers should not be limited to shielding them from legal or workplace retaliation; it is equally essential to ensure that they do not suffer negative consequences affecting their psychological well-being, financial stability, or personal security. To address these gaps, beyond incorporating a retroactive causality clause in legislation, it is crucial to strengthen comprehensive support mechanisms, including psychological assistance, financial protection, and stronger institutional safeguards. Only by doing so can a culture be fostered in which whistleblowers do not fear reprisals and feel supported in fulfilling their professional duty.

Therefore, it is advisable to consider publicly recognizing the person who files the complaint, regardless of whether they have suffered reprisals, as is occasionally done by organizations such as *HayDerecho* or *Transparency International*. This approach can serve as an indirect reputational rehabilitation strategy, aimed at reframing the concept of the "snitch" in terms more aligned with legal and ethical standards, like a whistleblower.[11]

CONCLUSION

The comparative analysis between Spain and Italy reveals both similarities and differences in their approaches to whistleblower protection, yet the divergences appear more pronounced. While both countries have developed legal frameworks to prevent retaliation and sanction reprisals, Italy's system has a more consolidated trajectory, with the ANAC operating independently for over a decade. Spain, on the other hand, has only recently established the AIPI, which remains dependent on the Ministry of Justice, raising concerns about its effectiveness and independence. This institutional disparity reflects a fundamental difference in how both nations approach anti-corruption policies—Italy through a centralized and well-defined mechanism and Spain through a fragmented system influenced by its autonomous governance model.

The legal frameworks of both countries offer protection for anonymous whistleblowers, yet Spain provides a clearer regulatory framework while Italy relies on discretionary application. Additionally, compliance programs have been introduced in both the public and private sectors, reinforcing ethical and legal awareness regarding whistleblowing. However, a significant divergence arises in criminal liability, as Spain presents a legal gap regarding whistleblower protection in cases of unauthorized information access whereas Italy explicitly denies protection in such situations. These differences highlight the need for Spain to refine its legislation to ensure clearer guidelines on the boundaries of protection, avoiding legal uncertainties that could discourage potential whistleblowers.

While Spain could benefit from Italy's experience in institutional consolidation, both countries still need to strengthen their frameworks to build a culture of trust and ensure that whistleblowing is not only legally protected but also practically encouraged as a crucial tool in combating corruption.

NOTES

1. This work is developed within the framework of the agreement between the University of Salamanca (Master's in Anti-Corruption Strategies and Integrity Policies) and the Valencian Anti-Fraud Agency, continuing the academic and institutional collaboration between both administrations. During a doctoral research stay, protected interviews were conducted under a confidentiality agreement and verified by the institution with 15 whistleblowers of corruption from the Valencian community. This publication is part of the project "Supervisory authorities in matters of transparency, data protection, artificial intelligence and whistleblowers: From current isolation towards necessary cooperation,"

funded by the Directorate General for Science and Research, Valencian Government. Reference: CIGE/2024/69.

2. This section is based on interviews with 15 corruption whistleblowers in the Valencian Community, conducted under a confidentiality agreement between the author and the entity (Valencian Anti-Fraud Agency), supplemented by an extensive bibliographical review of the various reasons for making a complaint and the fears surrounding whistleblowing. The interviews, which are not included in this chapter, can be found in Fernández González (2025a).

3. From the perspective of rational choice theory, the employee would make the decision that maximizes their personal benefits and minimizes risks, but in a context of economic threat, such as the loss of employment, rationality is compromised. Instead of a free cost-benefit analysis, the decision may be primarily influenced by the need to ensure economic survival, which reduces the options for reporting and favors silence, even if reporting would be the more ethical or moral choice. This is all particularly aligned with the concepts established by Becker in his theory. See: Becker (1993).

4. The concept of good faith is reiterated throughout many academic writings, such as in García Moreno (2022) and others, being more of an academically considered concept than a legal one, under the perspective of Directive 2019/1937. These elements are indeed mentioned, for instance, in the United Nations' final technical guide against corruption, which includes among its various recommendations the promotion of whistleblowing when carried out in good faith. However, no provision within Directive 2019/1937 mentions good faith as a condition; thus, it is not established as a *sine qua non* requirement for whistleblowing to be made in *bone fide*.

5. Between 2004 and 2015, Spain experienced an increase in the perception of corruption, as measured by Transparency International, due to the cases emerging from various political parties at the national level. Villoria Mendieta and Jiménez Sánchez (2024) assessed this rise in the perception of corruption, concluding that the perceived corruption was much higher in perception surveys than in victimization surveys. In other words, corruption is perceived due to distrust, but not in the everyday life of citizens, considering that, in surveys conducted by the Sociological Research Center over several years, corruption consistently emerged as one of the main problems for Spaniards. In this context, it is important to note that the autonomous regions where anti-corruption measures were implemented are precisely those most affected by political corruption, as the authors highlight.

6. Since its creation in 2016, the Valencian Anti-Fraud Agency (AVA) has played a key role in the prevention, detection, and reporting of irregularities in public administration, with a particular focus on protecting whistleblowers and promoting transparency. Until 2023, the Agency has carried out extensive activities, investigating numerous cases of corruption and contributing to strengthening public ethics in the Valencian Community. Its work has been recognized at the European level, especially by the European Commission, which has highlighted its efforts in reports on the Rule of Law in the European Union. In particular, the Commission has emphasized the importance of agencies like AVA in the context of Directive (EU) 2019/1937 on the protection of whistleblowers.

7. While it is true that our legislation establishes a duty to report for citizens under the Criminal Procedure Law, in the case of public officials there is indeed a series of obligations established for them, according to Articles 52 and 53 of Royal Legislative Decree 5/2015, of October 30, which approves the revised text of the Basic Statute of Public Employees. Although these articles do not explicitly impose a reporting obligation, they do imply certain duties and principles of public officials related to the care and protection of the public administration.

8. Article 36 states the absolute prohibition of retaliation against those who report irregularities in accordance with the law. Retaliation is considered any action or omission that causes harm to the whistleblower in the workplace or professional environment, either directly or indirectly. By way of example, retaliation includes dismissal, demotion,

the imposition of disciplinary measures, discrimination, reputational damage, harassment, inclusion on blacklists, or any other unfavorable treatment.

9. Supreme Court, Criminal Chamber (February 6, 2020). Judgment No. 35/2020 (STS 272/2020), where the court emphasized: "The report made is of special importance, as, in the absence of an internal compliance program, it is particularly relevant that, during the period of the proven facts, an 'ad intra' mechanism has been carried out within the company. This practice has been recently regulated in the so-called 'internal whistleblowing channel,' incorporated into Directive (EU) 2019/1937 of the European Parliament and of the Council, of October 23, 2019, on the protection of persons who report breaches of Union law," thus highlighting the importance of anonymous reporting, despite the fact that, at that time, Spain had not yet made sufficient progress in incorporating the Directive.

10. The news regarding this recommendation was published during the production of this work. https://www.lawandtrends.com/noticias/penal/manuel-villoria-el-elegido-para-presidir-la-autoridad-independiente-de-proteccion-a-los-informantes-un-paso-clave-en-1.html#gsc.tab=0.

11. In this regard, reference should always be made to the awards granted by organizations committed to combating corruption. One such organization is Transparency International, which in 2018 awarded a prize to the whistleblower of one of the largest corruption scandals in Spain: Ana Garrido, linked to the Gürtel case. More information on: https://www.publico.es/politica/denunciante-guertel-gana-premio-anticorrupcion-transparencia-internacional.html.

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