

## Transparency International Anti-Corruption Helpdesk Answer

# Institutional arrangements for whistleblowing: Challenges and best practices

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Robust legislation is essential to protect whistleblowers against retaliation and other injustices, and to ensure their reports are addressed. But once adopted, such legislation needs to be effectively implemented and enforced. National authorities often have a key role to play in implementation and enforcement, from receiving and addressing whistleblowing reports about wrongdoing, advising and protecting whistleblowers, raising awareness and monitoring implementation by stakeholders.

Institutional arrangements for whistleblower protection vary considerably across countries, from centralised models, with one authority in charge of whistleblowing related matters, to highly decentralised models, where over a hundred authorities have whistleblowing related responsibilities. Literature about the existing institutional arrangements, their challenges and potentially emerging best practices is rather scarce.

All institutional arrangements presented in this paper have their own challenges – gaps, overlaps, poor implementation, unclear procedures, insufficient resources and weak protection mechanisms for whistleblowers – and some lessons have already emerged regarding the cause of these challenges and potential solutions. This includes the need for adequate resources and powers to allow authorities to fulfil their responsibilities, clear information for whistleblowers and the need for a central agency to oversee implementation and to provide protection to whistleblowers.

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## Query

What institutional arrangements ensure effective implementation and enforcement of whistleblowing legislation? What are the challenges and lessons learned?

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## Introduction

Whistleblowers play an essential role in uncovering corruption and other wrongdoing that threaten the rule of law, public health and democracy in general (Terracol 2018). Having effective protection in place for whistleblowers is essential for encouraging a speak-up culture which can lead to uncovering illegal practices and behaviour (OECD 2011).

Whistleblowing refers to “the disclosure of information related to corrupt, illegal, fraudulent or hazardous activities being committed in or by public or private sector organisations – which are of concern to or threaten the public interest – to individuals or entities believed to be able to effect action” (Transparency International 2013).

A robust institutional framework is a key element in effective whistleblowing protection. Failures to adequately respond to whistleblowers’ disclosures and to provide them necessary protection are key challenges that prevent whistleblowers from coming forward with their disclosure (Savage and Hyde 2015).

## Main points

- There are many possible institutional arrangements for whistleblowing, from rather centralised models, where one authority plays a key role, to decentralised models, without an authority responsible for whistleblowing.
- A specialised authority can be established, or whistleblowing roles and responsibilities can be given to one or several authorities.
- Main challenges: lack of resource and capacity to fulfil tasks; weak monitoring and oversight of competent authorities; expectation gap with regard to whistleblowing authorities’ responsibilities and powers; inadequate protection for whistleblowers; a general lack of legal, financial and psychological support.
- Lessons: adequate resources and powers is key; clear information and guidance for whistleblowers; need a central agency for oversight of implementation and to provide protection to whistleblowers.

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While there is a decent body of comparative work on whistleblowing legislation as well as numerous international standards (Brown et al. 2014; Transparency International 2013; OECD 2011), much less is known about the institutional framework needed to ensure effective implementation and enforcement of this legislation.

This is an especially important and timely topic to address considering that more and more countries are adopting whistleblowing legislation. In the EU, the 27 member states have until December 2021 to implement the 2019 EU Directive on the Protection of Persons Reporting on Breaches of Union Law.<sup>1</sup> When adopting whistleblowing legislation, policymakers need to consider the institutional arrangement needed for implementation and enforcement. This Helpdesk answer offers a review of several existing institutional arrangements and provides insights into the key challenges and lessons of existing models.

## Overview of possible institutional arrangements

According to international standards and best practice, whistleblowing legislation should foresee two main roles for national authorities: i) participating in implementation by receiving and addressing external whistleblowing reports; and ii) ensuring oversight and enforcement of whistleblowing legislation (Transparency International 2013).

Institutional arrangements for whistleblowing legislation vary a lot across countries. In many countries with an established whistleblowing institutional framework, the authorities in charge or

receiving and addressing external whistleblowing reports are distinct from those responsible for oversight and enforcement. For this reason, institutional arrangements for both roles will be looked at separately. However, in some countries, the same authority is responsible for both roles, notably in Australia and Israel (for the public sector) and the Netherlands.

The role, responsibilities and powers of the authorities involved vary a lot, both across countries and across authorities within countries. Some authorities' responsibilities extend to both the public and private sector, while others are only responsible for public sector whistleblowing, or for a particular area (for example, health and banking). Some authorities have large investigative powers, can take binding decisions and can pronounce sanctions. Others can only make non-binding recommendations.

## Institutional arrangements for dealing with external whistleblowing reports

Most whistleblowing legislation foresees the possibility for whistleblowers to report wrongdoing to the authorities, either after having first made a report internally to their organisation or directly. One or several authorities should thus be competent for receiving and addressing these *external* whistleblowing reports.

In the context of receiving and addressing whistleblowing reports, this paper looks at the role of authorities regarding *external* whistleblowing only. Many authorities also have to address internal whistleblowing with regards to alleged wrongdoing within the authority itself, but this is not

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<sup>1</sup> See: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32019L1937>

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the focus of this query, and different mechanisms often apply in these cases.

Existing institutional arrangements to receive and address external whistleblowing reports can be grouped under three categories: centralised models, decentralised models and mixed models.

The centralised approach is characterised by one authority – a specialised whistleblowing agency or an existing body which is assigned this role – in charge of receiving and addressing external whistleblowing disclosures. This is the case, for example, in Australia and Israel, but only for the public sector.

Many countries have adopted a decentralised institutional framework for receiving and addressing external whistleblowing reports, meaning that several authorities are competent to do so, usually within the remit of their area or work. They often include regulatory authorities and law enforcement or investigative agencies. In a few countries, whistleblowing legislation specifically foresees the designation of the authorities competent to receive and address external whistleblowing reports under the whistleblower protection legislation – this is the case of the “prescribed persons” model of the UK and Ireland. In other countries, the whistleblowing legislation refers to competent authorities in general terms, without providing further details about how they will be identified.

In mixed approaches, several authorities are competent for receiving and addressing external whistleblowing reports, as in decentralised models, but a central whistleblowing authority also plays a role; for example, it can be responsible for directing disclosures to the appropriate recipient,

either directly (in the Republic of Korea) or by advising the whistleblower (in France). In the Netherlands, the Whistleblowers Authority can both direct whistleblowers to other competent authorities and receive and investigate external whistleblowing reports itself.

In countries where a central authority is involved, either directly or indirectly, with external whistleblowing reports, this authority also has tasks related to oversight and enforcement of whistleblowing legislation.

## Institutional arrangements for oversight and enforcement of whistleblowing legislation

According to international standards, one or several independent agencies should be responsible for the oversight and enforcement of whistleblowing legislation (McDevitt and Terracol 2020; Transparency International 2013; Loyens and Vandekerckhove 2018a, 2018b). This entails:

- providing individual confidential advice to whistleblowers, free of charge
- providing support to whistleblowers (e.g. legal, financial and psychological)
- receiving, investigating and addressing whistleblowers’ complaints of retaliation (which may include ordering of protective measures, such as freezing employment situation)
- dealing with complaints about improper investigation of whistleblowing reports by public and private organisations and competent authorities
- providing guidance and advice to employers and competent authorities on how to set up effective whistleblowing mechanisms

- controlling implementation by employers and competent authorities (and imposing sanctions if they fail to fulfil their obligations)
- monitoring and reviewing the functioning of whistleblowing laws and frameworks including by regularly collecting and publishing data
- raising public awareness about whistleblowing and whistleblower protection

The Netherlands is the only country with one single agency covering both the public and private sectors which is responsible for most of the tasks involved in oversight and enforcement of whistleblowing legislation. In Australia and Israel, the whistleblowing authorities only deal with the public sector.

In several countries, such as Ireland and the UK, no authority was designated to oversee and enforce whistleblowing legislation. Some tasks, such as providing advice and support to whistleblowers, are carried out by civil society organisations (CSOs).

Slovakia moved from a rather decentralised model (both at the national and local levels) toward a very centralised approach to oversight and enforcement. In France, two authorities are assigned oversight and enforcement responsibilities.

Dealing with whistleblowers' complaints of retaliation are often solely (for example, in Australia, Ireland and the UK) or partly handled by the courts, even in countries with designated whistleblowing authorities (such as France).

## Examples of institutional arrangements

The country examples presented below were selected because they illustrate different institutional arrangement options and have been functioning long enough to give rise to assessments of their functioning.

### Institutional arrangement in Australia (for the public sector)

In Australia, legislation on whistleblower protection covering federal level public sector (Commonwealth public sector) – [the Public Interest Disclosure Act \(PID\)](#)<sup>2</sup> – was adopted in 2013. It designates the [Commonwealth Ombudsman](#),<sup>3</sup> which is accountable to the parliament, as responsible for receiving and addressing whistleblowers' external disclosures and gives it a key role in oversight and enforcement.

### Dealing with external whistleblowing reports

The role of the Commonwealth Ombudsman in receiving and addressing external whistleblowing reports is rather limited. First, it only concerns

<sup>2</sup> *Public Interest Disclosure Act of 2013*, <https://www.legislation.gov.au/Details/C2019C00026>.

<sup>3</sup> *Commonwealth Ombudsman webpage*, <https://www.ombudsman.gov.au/Our-responsibilities/making-a-disclosure/information-for-disclosers>.

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disclosures about wrongdoing within federal public bodies.

Second, the Commonwealth Ombudsman can directly receive whistleblowing reports about wrongdoing but only if it is not appropriate to make an internal disclosure ([when there is a conflict of interest, confidentiality or a retaliation issue the agency cannot manage](#)).<sup>4</sup> In most cases, the Commonwealth Ombudsman will work with the whistleblower and the agency to return the issue to the relevant agency for investigation (Annakin 2011; Loyens and Vandekerckhove 2018a).

In the limited cases where the Commonwealth Ombudsman investigates a whistleblowing report about wrongdoing, it has the authority to hear witnesses, visit premises of relevant agencies and require documents from either persons or agencies (Loyens and Vandekerckhove 2018b: 72).

Third, the Commonwealth Ombudsman can also receive whistleblowers' complaints about the outcome of an agency's handling of a disclosure. However, in that case, it only reviews whether the agency's handling of the report and decision was lawful, reasonable and fair. It does not re-investigate the matter.<sup>5</sup>

### **Oversight and enforcement of whistleblowing legislation**

The Commonwealth Ombudsman is responsible for:

- providing general information to whistleblowers with regards to where and how they can make a disclosure and public agencies
- providing advice to relevant public agencies on implementing whistleblowing processes
- overseeing and reporting on the operation of the PID Scheme, including through collection of data from public agencies and the publication of an annual report (Terracol 2018)
- promoting awareness and understanding of the PID Act.<sup>6</sup>

The Commonwealth Ombudsman does not provide individual advice to whistleblowers, nor does it investigate retaliation. In case of complaint of retaliation, whistleblowers are directed back to the agency that was dealing with their disclosure, which can then do an investigation. Once the case of retaliation is referred to the agency, the Commonwealth Ombudsman has no jurisdiction to monitor the investigation of retaliation. Another option at whistleblowers' disposal in cases of retaliation are the courts (Loyens and Vandekerckhove 2018b). However, the court process is costly for whistleblowers, creating a power imbalance in terms of resources available to a public sector agency on the one hand and to the whistleblower on the other (Parliamentary Joint Committee 2017).

Transparency International Australia and a 2017 parliamentary inquiry highlighted the need for a

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<sup>4</sup> See: [www.ombudsman.gov.au/Our-responsibilities/making-a-disclosure](http://www.ombudsman.gov.au/Our-responsibilities/making-a-disclosure)

<sup>5</sup> See: [www.ombudsman.gov.au/Our-responsibilities/making-a-disclosure](http://www.ombudsman.gov.au/Our-responsibilities/making-a-disclosure)

<sup>6</sup> See: [www.ombudsman.gov.au/Our-responsibilities/making-a-disclosure](http://www.ombudsman.gov.au/Our-responsibilities/making-a-disclosure)

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whistleblower protection authority to assist whistleblowers, investigative agencies and regulators with advice, case support, enforcement action and remedies for retaliation. Several draft laws have proposed the creation of a national whistleblower protection commissioner with such powers and responsibilities.<sup>7</sup> (TI Australia and Griffith University 2020).

## Institutional arrangement in Israel (for the public sector)

In Israel, the State Comptroller and Ombudsman is responsible for receiving and addressing whistleblowers' external disclosures and plays a key role in oversight and enforcement of whistleblower protection through the Office of the National Ombudsman<sup>8</sup> (State of Israel, the Ombudsman 2009). The Office of the Ombudsman is a special unit within the Office of the State Comptroller and Ombudsman. The institution is responsible to the parliament (the Knesset).

### Dealing with external whistleblowing reports

The State Comptroller and Ombudsman investigates whistleblowers' disclosures about wrongdoings in public bodies which are subject to its audit. It has wide investigative powers which include full access to relevant materials, information, documents, as well as the power to subpoena witnesses.<sup>9</sup> In case the ombudsman finds a whistleblower's disclosure about wrongdoing justified, it may make recommendations to rectify the issue and the public institution must inform the ombudsman of the steps taken in that regard. However, in cases

of failures to comply with its recommendations, the ombudsman has no enforcement mechanism, other than notifying the relevant minister or the State Audit Affairs Committee about the matter. For criminal matters, the ombudsman must alert the attorney general, who will notify the state comptroller within six months about the matter (Loyens and Vandekerckhove 2018b).

The Office of the Ombudsman has regional offices whose aim is to increase the accessibility throughout the country and to make the investigation more efficient in cases when investigators deal with complaints against regional bodies (State of Israel, the Ombudsman 2009: 17).

### Oversight and enforcement of whistleblowing legislation

The ombudsman is responsible for many of the tasks involved in oversight and enforcement of whistleblowing legislation, but only regarding the public sector.

It has extensive powers when it comes to whistleblower protection. It can investigate whistleblowers' complaints of retaliation and issue temporary protective orders for whistleblowers, until the end of the investigation or until the ombudsman makes another decision, which is binding (State of Israel, the Ombudsman 2009: 30). The breach of the protective order may be a criminal or a disciplinary offence (Office of the State Comptroller and Ombudsman of Israel no date).

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<sup>7</sup> See for example the Australian Federal Integrity Commission Bill 2019-2020: <https://admin.helenhaines.org/wp-content/uploads/2020/10/AFIC-Bill-2020.pdf>

<sup>8</sup> See: [www.mevaker.gov.il/En/About/Pages/MevakerTafkid.aspx](http://www.mevaker.gov.il/En/About/Pages/MevakerTafkid.aspx).

<sup>9</sup> See: [www.mfa.gov.il/mfa/aboutisrael/state/democracy/pages/state%20comptroller%20and%20ombudsman.aspx](http://www.mfa.gov.il/mfa/aboutisrael/state/democracy/pages/state%20comptroller%20and%20ombudsman.aspx).

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If a complaint is filed by a whistleblower who was dismissed, remedies include enforcement of employment which existed prior to submitting the complaint, a compensation to the whistleblower (financial or other), or the transfer of the whistleblower to another position within their workplace (State of Israel, the Ombudsman 2009). The decision on the appropriate remedy depends on the ombudsman's assessment of the situation. The ombudsman also encourages parties involved to come to an agreement through mediation or negotiation (Office of the State Comptroller and Ombudsman of Israel no date).

Officially, the State Comptroller and the Ombudsman do not provide advice to potential whistleblowers but they do respond to their inquiries with respect to procedures and risks (Loyens and Vandekerckhove 2018b). Recent developments in Israel show a trend towards enabling more support to whistleblowers, specifically to provide psychological support for whistleblowers and their family members, as well as to provide legal aid (Loyens and Vandekerckhove 2018b; Office of the State Comptroller and Ombudsman of Israel no date). In case whistleblowers receive threats to their safety or suffer actual harm, the ombudsman can refer them to the Israel Witness Protection Authority (Office of the State Comptroller and Ombudsman of Israel no date).

The regional offices of the ombudsman engage in raising public awareness by circulating information about the ombudsman's authority and the ways to submit a complaint in several languages in newspapers several times a year and through flyers (State of Israel, the Ombudsman 2009).

## Institutional arrangement in the UK and Ireland

In the UK, the Public Interest Disclosure Act (PIDA) was adopted in 1998. Ireland adopted the Protected Disclosures Act (PDA) in 2014. Both countries have similar institutional arrangements, with a decentralised approach to handling external whistleblowing reports and the absence of designated authorities to ensure oversight and enforcement of whistleblowing legislation.

### Dealing with external whistleblowing reports

The UK relies on "prescribed persons" to receive and investigate external whistleblowing disclosures about alleged wrongdoings (PIDA section 43F). "A prescribed person is someone who is independent of the employee's organisation, but usually has an authoritative relationship with the organisation, such as a regulatory or legislative body" (National Audit Office (NAO) 2015: 4).

The prescribed person is not under statutory obligation to act on the submitted disclosure, but they decide, based on the submitted information, whether they will act on it (Savage and Hyde 2015; UK Government no date). They can recommend rectification for any issues they find with regards to the employer's whistleblowing policies and procedures, or with regards to the substance of disclosure (NAO 2015; BIS 2017: 6). So far as the statutory functions of prescribed persons beyond whistleblowing legislation allow, some may also be able to take enforcement actions (BIS 2017: 6).

Ireland adopted a similar institutional arrangement. The PDA of 2014 provides that the persons competent to receive and address external disclosures about alleged wrongdoings are "prescribed" by Minister Order (PDA, Section7).

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## Oversight and enforcement of whistleblowing legislation

In the UK and Ireland, no authority was given responsibility for the oversight and enforcement of whistleblowing legislation, with the exception, to some extent, of the National Guardian, a sectoral whistleblowing agency specifically for health sector in the UK. Prescribed persons in Ireland and the UK do not provide advice or protection to whistleblowers or oversee implementation of the law by employers. Whistleblowers need to turn to the courts in cases of retaliation.

General information and guidance for whistleblowers, public and private organisations, as well as prescribed persons are available on government websites. However, individual support and advice is provided by specialised CSOs, such as Protect<sup>10</sup> in the UK and TI Ireland, filling the gap in the institutional framework. They operate advice lines for whistleblowers, free of charge.<sup>11</sup>

Transparency International provides legal assistance as well through its Transparency Legal Advice Centre. In addition, both CSOs provide direct support to employers to set up internal whistleblowing mechanisms through membership packages, training, consultancy and bespoke options. Protect supports over 3,000 whistleblowers and hundreds of organisations every year, which tends to indicate a need for such support.

This need is further illustrated by the establishment in the UK in 2016 of the National Guardian, a sectoral whistleblowing agency specifically for the National Health Service (NHS), to address the fact that the health sector was particularly plagued by whistleblowing scandals. This office engages in

training and supporting a network of Freedom to Speak up Guardians in England. It provides awareness raising and training courses to encourage a speak-up culture (Loyens and Vandekerckhove 2018b). It also does case reviews of organisations when speaking up has not been handled in accordance with best practices. The body does not have a regulatory or investigative role and it cannot provide remedies. Rather, when it identifies cases where best practices are not followed, it formulates recommendations for improvement.<sup>12</sup>

## Institutional arrangement in France

In France, the legislative framework which provides whistleblower protection in both public and private sectors was adopted in 2016 under the so called Sapin II Law. The institutional arrangement is mixed when it comes to handling external whistleblowing reports. Oversight and enforcement of the whistleblowing law is the responsibility of two authorities.

### Dealing with external whistleblowing reports

An external disclosure can be made to several types of competent authorities:

- competent administrative authorities, which may include those authorities that have supervision over the whistleblowers' organisation
- a competent professional order, such as the order of lawyers, notaries and others
- a competent judge (Défenseur des Droits 2017: 15).

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<sup>10</sup> Former Public Concern at Work.

<sup>11</sup> See: <https://protect-advice.org.uk/> and <https://transparency.ie/helpline/TLAC>.

<sup>12</sup> See: [www.nationalguardian.org.uk/about-the-ngo/](http://www.nationalguardian.org.uk/about-the-ngo/).

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Unlike the prescribed persons approaches, the law does not foresee to “prescribe” specific bodies. To help whistleblowers identify the appropriate recipient for their external report, the Defender of Rights (French Ombudsman), an independent government authority, was assigned the responsibility to receive whistleblowers’ disclosures and direct the whistleblower to the appropriate authority or organisation for making their report. The ombudsman does not investigate whistleblowers’ disclosures about alleged wrongdoings itself (Défenseur des Droits 2017; Stolowy, Paugam and Londero 2019).

### **Oversight and enforcement of whistleblowing legislation**

In addition to guiding whistleblowers, the Defender of Rights is responsible for protecting their rights and freedoms. The Defender of Rights has wide powers to investigate whistleblowers’ complaints of retaliation, from simple requests for explanations and documents to more restrictive means, such as summoning the accused person to a hearing or carrying out an “on-site verification” (under the supervision of the judge). Refusing to respond to a request of the Defender of Rights is a criminal offence.

The Defender of Rights can facilitate a negotiated settlement and make a recommendation, which is an official request that the issue be resolved and/or that a measure be taken by a specific deadline. While the Defender of Rights does not have a direct power of sanction, the person implicated is required to report on the follow-up given in its recommendations. In the absence of a response, the Defender of Rights can decide to

publish a special report, in which the name of the accused person is revealed. It can also apply to a disciplinary body with power to take proceedings against a defaulting officer or professional. When legal action has been taken, the Defender of Rights can make observations to the court.<sup>13</sup>

Originally, there was another mission planned for the Defender of Rights – providing financial aid to whistleblowers to help them take legal action. This provision was rejected by the constitutional council, which, however, did acknowledge that financial support for whistleblowers may turn out to be necessary in the future (Stolowy, Paugam and Londero 2019; Loyens and Vandekerckhove 2018b). Legal, financial and psychological support is currently offered by the House for Whistleblowers, a CSO.<sup>14</sup>

In addition to handling individual situations, the Defender of Rights works to improve whistleblowers’ rights and freedoms generally. It has the power to put forward proposed amendments to laws or regulations and to give its opinion on draft or proposed laws relating to whistleblower protection, which it has done on several occasions (Défenseur des Droits 2019).

The French Anti-Corruption Agency (AFA) plays a role in ensuring that public and private organisations set up adequate internal whistleblowing mechanisms. In France, all public and private organisations with more than 50 employees are obliged to establish internal whistleblowing mechanisms (Stolowy, Paugam and Londero 2019). The AFA is responsible for providing them with advice in that regard, including

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<sup>13</sup> See: [www.defenseurdesdroits.fr/fr/institution/moyens/protection](http://www.defenseurdesdroits.fr/fr/institution/moyens/protection)

<sup>14</sup> See: <https://mlalerte.org/accompagnement-des-lanceurs-dalerte/>

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through the dissemination of information and good practices.

The AFA also has a mission to control the quality and effectiveness of the procedures in place in public entities and large companies (with more than 5,000 employees), but only in so far as they relate to anti-corruption. In cases of non-compliance by a large company, the AFA can issue a warning or pronounce sanctions, including an injunction to adapt their procedures according to its recommendations, impose financial penalty of up to €200,000 for natural persons and up to €1 million for legal persons and order the publication, dissemination or display of its decision.<sup>15</sup> This sanctioning power does not extend to public entities.<sup>16</sup>

## Institutional arrangement in the Republic of Korea

The Korea Independent Commission Against Corruption (KICAC), established in 2002, was tasked with receiving disclosures as well as protecting and rewarding whistleblowers.<sup>17</sup> In 2008, it was combined with the ombudsman and the Administrative Appeals Commission and became the Anti-Corruption and Civil Rights Commission (ACRC). The ACRC deals with both public and private sector whistleblowing. Housed under the prime minister, it is mandated to receive external whistleblowing reports and play a key role in oversight and enforcement.

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<sup>15</sup> See: <https://www.agence-francaise-anticorruption.gouv.fr/fr/commission-des-sanctions>

<sup>16</sup> See: <https://www.agence-francaise-anticorruption.gouv.fr/fr/missions>.

<sup>17</sup> See: <https://www.acrc.go.kr/en/board.do?command=searchDetail&method=searchList&menuId=02031602>.

## Dealing with external whistleblowing reports

External whistleblowing reports are addressed by a number of competent authorities. The ACRC receives external whistleblowing reports and allocates them to the relevant competent authorities for investigation. It does not investigate external whistleblowing reports itself. Once the investigation is concluded, the competent authority informs the ACRC about the outcomes of the investigation, and then the ACRC informs the whistleblower about the outcome.<sup>18</sup>

The ACRC does not merely serve to forward the disclosure to the appropriate body but retains the oversight of the investigation (UNODC 2015: 37). An agency has 60 days from receiving the report to complete its investigation. This deadline can be extended for justifiable reasons, and the ACRC has to be notified. Reasons are often found to prolong these deadlines, which leads to poorer implementation and a lack of efficiency (Loyens and Vandekerckhove 2018b).

## Oversight and enforcement of whistleblowing legislation

The ACRC provides information and consultation, protects and rewards whistleblowers, formulates recommendations, does follow ups, and engages in various preventive and awareness raising activities<sup>19</sup> (Loyens and Vandekerckhove 2018b).

The ACRC is responsible for investigating whistleblowers' complaints of retaliation. It may request people (whistleblower, employer, relevant

<sup>18</sup> See: <https://www.acrc.go.kr/en/board.do?command=searchDetail&method=searchList&menuId=0203160605>.

<sup>19</sup> See: <https://www.acrc.go.kr/en/data/1.0.ACRC%20Act.pdf>.

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institutions) to appear before the ACRC and request documents (Act on ACRC Article 62-2). The ACRC can order protective measures to remedy retaliation and ensure continued employment of whistleblowers, such as reinstatement to their original position, their transfer to another post, and cancellation of any disadvantageous measures against them. It can impose fines in cases of non-compliance with protected measures and is even mandated to check whether these measures were implemented and whether the whistleblower faced any further retaliation (Terracol, 2018). As an additional protective measure, ACRC may request the police to take steps to protect whistleblowers and their family members in cases of danger to their lives (Act on ACRC Article 64-2).

The ACRC is responsible for rewarding whistleblowers if their report has contributed directly to recovering or increasing revenues or reducing expenditures for public agencies or has served the public interest.<sup>20</sup>

With regards to raising public awareness, the Anti-Corruption Training Institute (ACTI), which was established under ACRC in 2012, works on changing the attitudes to integrity and improving ethical standards of public officials.<sup>21</sup>

The ACRC does not provide free legal aid or financial aid to whistleblowers. This gap is in part filled by CSOs (Loyens and Vandekerckhove 2018b).

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<sup>20</sup> See: [www.acrc.go.kr/en/board.do?command=searchDetail&met hod=searchList&menuId=02031607](http://www.acrc.go.kr/en/board.do?command=searchDetail&met hod=searchList&menuId=02031607).

## Institutional arrangement in the Netherlands

In the Netherlands, the law on whistleblower protection adopted in 2016 – the Whistleblower Authority Act – established the Whistleblowers Authority.<sup>22</sup> The Netherlands is the only country with one single agency covering both the public and private sectors which is responsible for most of the tasks involved in implementation, oversight and enforcement of whistleblowing legislation, namely: advice, psychosocial support, investigation of alleged wrongdoing, investigation of alleged retaliation and prevention (Loyens and Vandekerckhove 2018b).

The Dutch Whistleblowers Authority is an independent governing body, accountable to the parliament. It responds to the Ministry of Interior and Kingdom Relations for its budget, but the ministry cannot determine the authority's policy, nor can it reverse decisions made by the board.<sup>23</sup>

### Dealing with external whistleblowing reports

When it comes to receiving and addressing external whistleblowing reports, the Netherlands adopted a mixed approach as the Dutch Whistleblowers Authority is not the only authority in the Netherlands competent to receive and address external whistleblowing reports. Other administrative authorities or agencies are also competent to do so under other laws and regulations, such as the police, the public prosecution services, inspection services, regulators and other supervisory authorities.

<sup>21</sup> See: [www.acrc.go.kr/en/board.do?command=searchDetail&met hod=searchList&menuId=02031604](http://www.acrc.go.kr/en/board.do?command=searchDetail&met hod=searchList&menuId=02031604).

<sup>22</sup> See: [www.huisvoorklokkenluiders.nl/english](http://www.huisvoorklokkenluiders.nl/english).

<sup>23</sup> See: [www.huisvoorklokkenluiders.nl/organisatie](http://www.huisvoorklokkenluiders.nl/organisatie).

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The investigation department of the Whistleblowers Authority deals both with external whistleblowing reports about alleged wrongdoing and whistleblowers' complaints of retaliation. The investigation of whistleblowers' disclosures about alleged wrongdoings includes a desktop research and conducting interviews with witnesses. Employer and the employees of the concerned organisation are obliged to cooperate in the investigation. Each party involved has the chance to provide their views, after which the final report is written and published on the Whistleblowing Authority's website (Whistleblowers Authority 2018: 10). The report provides conclusions and recommendations to prevent repeating the wrongdoing in question. The Dutch Whistleblowers Authority cannot impose penalties in cases of non-compliance, and its findings and recommendations are not binding, and thus cannot be legally enforced (TI Netherlands 2020: 6). However, the organisation concerned is obliged to inform the House of how they are following up on the recommendations.

The Whistleblowers Authority's advisory department is responsible for referring whistleblowers to other competent authorities to make their external report (section 3a of the act), and the investigative department of the Whistleblowers Authority can refuse to initiate an investigation if it determines that another competent authority is dealing with or has dealt properly with the report of wrongdoing (section 6 of the Act).

Seemingly going further than the law's requirements, the Whistleblowers Authority indicates on its website that whistleblowers should report first both internally within their organisation and to an appropriate external authority before submitting a report of wrongdoing to the Whistleblowers Authority.<sup>24</sup> It appears that, when it comes to receiving and addressing whistleblowing reports of wrongdoing, the Dutch Whistleblower Authority consider itself responsible to address improper investigation of external whistleblowing reports by other authorities, rather than an authority competent to receive and address external whistleblowing reports directly.

### **Oversight and enforcement of whistleblowing legislation**

The Whistleblowers Authority in the Netherlands has the authority to provide advice and psychosocial support to whistleblowers, investigating whistleblowers' complaints of retaliation and promoting integrity in organisations. It does not seem to conduct public awareness raising campaigns.

As previous explained, the investigation department of the Whistleblowers Authority deals with both whistleblowing reports about wrongdoing and whistleblowers' complaints about retaliation, following the same procedure. The Whistleblowers Authority does not have the authority to order protective measures, such as freezing an employment situation.

As for investigations into wrongdoing, the findings and opinion contained in the investigation report

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<sup>24</sup> [www.huisvoorklokkenluiders.nl/onderzoek-naar-een-misstand](http://www.huisvoorklokkenluiders.nl/onderzoek-naar-een-misstand)

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are not binding. The authority can formulate recommendations to the employer with regards to improving the way they treat employees who report wrongdoing, but does not provide opinions with regards to any civil law liability (Whistleblowers Authority 2018). Whistleblowers can submit the report in potential legal proceedings but it is up to the judge whether it will be included in the judgment.<sup>25</sup>

The advisory department provides individual, free and confidential advice to potential whistleblowers on how to make a report and explains what risks there may be and how the law protects them after they report. Since 2019, the Whistleblowing Authority can also provide a letter confirming that the reporting person fits the legal criteria of a whistleblower, which can be presented to the employer so that the matter is taken seriously and to prevent retaliation. They also can ask an organisation about the status of an internal whistleblowing report. In certain cases, with the consent of the whistleblower, the Whistleblower Authority can facilitate a discussion with the employer to find a solution. Finally, the advisory department can refer whistleblowers to legal experts and provide psychosocial support (Huis Voor Klokkenuiders 2021).

The knowledge and prevention department promotes integrity in public, semi-public and private organisations, which include informing employers and preparing materials about integrity management and to conduct research on different aspects of whistleblowing (Loyens and Vandekerckhove 2018b).

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<sup>25</sup> [www.huisvoorklokkenuiders.nl/onderzoek-naar-een-misstand](http://www.huisvoorklokkenuiders.nl/onderzoek-naar-een-misstand)

<sup>26</sup> Act on the protection of whistleblowers notifying activities undermining the functioning of society and the amendment

## Institutional arrangement in Slovakia

In Slovakia, the first law on whistleblowing came into force in 2015. It was replaced by a new law which came into force in March 2019, which modified the institutional arrangement, especially regarding oversight and enforcement, by creating a new independent whistleblowing authority, the Whistleblower Protection Office.<sup>26</sup>

### Dealing with external whistleblowing reports

Until 2019, Slovakia had a decentralised model regarding external whistleblowing reports. Whistleblowers were to make disclosures about criminal and administrative offences to the police, the prosecutor's office or another relevant regulatory body (Tholtová and Nechala 2016)

With the new whistleblowing legislation, the institutional arrangement became mixed as reports can now also be addressed to the Whistleblower Protection Office, which will then forward them to the relevant criminal or administrative authority (Kinstellar no date)

### Oversight and enforcement of whistleblowing legislation

Until 2019, oversight and enforcement of whistleblower protection legislation was decentralised at the national and local levels. The regional labour inspectorates, working under the national labour inspectorate (Tholtová and Nechala 2016) were in charge of overseeing the implementation of the law, including whether employers introduced internal whistleblowing

of certain other acts (hereafter: Whistleblower Act), available at: <https://transparency.sk/wp-content/uploads/2021/03/Slovak-Act-on-Whistleblowing-2019-1.pdf>.

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mechanisms. They could impose fines in cases of non-compliance.

Regarding whistleblower protection, they were responsible for preventing retaliation by reviewing requests from employers to take any employment action against a whistleblower, giving their approval only if the employer could demonstrate the absence of causal relationship between the action and the whistleblowing (Terracol 2018). They were also in charge of dealing with whistleblowers' complaints of retaliation and were authorised to suspend retaliatory employment actions against whistleblowers. Finally, they could offer protection to whistleblowers who made external disclosures to relevant authorities (Dančíková, Nechala and Skácal 2015).

Another body, the Slovak National Centre for Human Rights was responsible for evaluating the implementation of the whistleblowing law by collecting data and publishing relevant information on a regular basis (Tholtová and Nechala 2016).

With the newly established Whistleblower Protection Office, Slovakia is moving to a centralised approach to oversight and enforcement of whistleblowing legislation. The Whistleblower Protection Office will take over the responsibilities of regional labour inspectorates and, it seems, the Slovak National Centre for Human Rights. It also received several new responsibilities, such as raising public awareness, providing training courses to persons responsible for receiving and addressing whistleblowing disclosures, providing expert opinions and advice on the application of the law (Štarha and Černaj 2019, The Slovak Spectator 2021). Although the office was established in 2019, it got its head of office only in February 2021. Thus, it is still early to talk about

any lessons learned from this new, more centralised model of whistleblower protection in Slovakia.

## Challenges and lessons learned

Some of the challenges identified are common to authorities receiving and addressing external whistleblowing reports and to those in charge of oversight and enforcement. Other challenges and lessons learned are specific to these two roles.

### Common challenge: Lack of awareness and capacities within the authorities

In countries where existing authorities were given whistleblowing related responsibilities in addition to their existing ones, issues regarding awareness and staff capacity emerged.

A study in the UK found that the staff working in the prescribed persons system were often unaware of their role and responsibilities regarding whistleblowing. Almost half of surveyed staff (47 per cent) who were at high risk of receiving whistleblowing reports said they did not know what was meant by prescribed person (NAO 2015: 16).

A study in Slovakia involving a mystery shopping exercise found that none of the eight regional labour inspectorates who were then responsible for whistleblower protection managed to reply to a request for information in time for a potential whistleblower to file a protection request. Five out of eight inspectorates did not even recognise that incoming queries were related to whistleblowing and as a result did not provide adequate information on how to proceed to obtain protection (Dančíková, Nechala and Skácal 2015).

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In both situations, this lack of awareness highlights a need for proper staff training. The Transparency International chapter in Slovakia, pointed out the fact that the regional labour inspectorates did not receive any additional financial resources to increase their capacities when they were entrusted with their new whistleblowing related missions (Tholtová and Nechala 2016).

Similarly, in the Netherlands, the very challenging debuts of the Whistleblowers Authority – in its first the years, the authority concluded only two investigations – were in part attributed to a lack of staff capacity and resources (The Minister of the Interior and Kingdom Relations 2019).

## Institutional arrangements for dealing with external whistleblowing reports

Some of the challenges identified are inherent to approach chosen – centralised versus decentralised institutional arrangements – but most apply to both approaches. The mixed approach is sometimes presented as a solution to some of the issues identified in centralised and decentralised models.

### Difficulties to identify the appropriate competent authority

The first challenge for potential whistleblowers is to identify the correct recipient (prescribed person or competent authority) for their disclosure, which can discourage them from speaking out (Phillips and Lewis 2013). For example, in the UK, a study showed that there is sometimes a multitude of potentially relevant bodies regulating a particular sector, which can be a source of confusion for

whistleblowers (they provide an example of the health sector which is regulated by a multitude of bodies) (NAO 2015).

Placing a list of all prescribed persons or competent authorities in one place (for example, a government website), with a clear description of their area of competence and their contact information, would help whistleblowers select the appropriate recipient for their external disclosure. Ireland applied this lesson from the UK<sup>27</sup> and published such list on a government website in 2020.<sup>28</sup>

Research in Ireland also pointed to the need for a regular updating of such a list as there were situations in the past where some of the designated authorities ceased to exist, while the list was not updated. (Kierans 2019: 138).

Having an independent body tasked to direct whistleblowers to the appropriate authority, such as in France and Korea, goes a step further in addressing difficulties to identify the appropriate competent authority. However, even in countries where such a body exists, having a list of competent authorities is considered good practice, as illustrated by the recommendation of the French Defender of Rights to create such a list (Défenseur des Droits 2020: 8).

The French Defender of Rights further recommended to be enabled to directly allocate external whistleblowing disclosures that it receives to responsible authorities, as is done by the ACRC in Korea (Défenseur des Droits 2020: 8). This is also a solution to the issue of a lack of information

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<sup>27</sup> See: <https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies>.

<sup>28</sup> <https://www.gov.ie/en/collection/41798-protected-disclosures-whistleblowing-list-of-prescribed-persons/>

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on the procedure to follow to make a disclosure once the appropriate competent authority has been identified.

In Serbia, if an authority receives a whistleblowing report outside of its competence, it has the obligation to refer the disclosure to the appropriate authorised body (Stojanović, Matović and Radomirović 2015). This obligation is also found in the EU directive on whistleblower protection. While referral systems can indeed ensure that a disclosure reaches the appropriate recipient, Transparency International recommends that such referrals require the explicit consent of the whistleblower (Transparency International 2019).

### **Lack of information on the competent authorities' procedures and powers**

The available empirical evidence suggests that there is often a lack of clarity about the procedure of making an external whistleblowing report, especially in a decentralised model. This lack of clarity can discourage whistleblowers from using channels that are otherwise available to them (NAO 2014).

In addition, there can be a gap between whistleblowers' expectations and what an authority can and will do to address a report. This issue was identified in decentralised models, such as in the UK and Ireland, as authorities' powers can vary a lot (BIS 2017; Van Portfliet et al. 2020), but also in centralised models, such as in Australia (Parliamentary Joint Committee 2017).

To address this issue, authorities should provide clear information on their own website about their policies and procedures for receiving and handling external whistleblowing reports, as well as a clear explanation of their statutory powers.

Additionally, clearly explaining how confidentiality and anonymity can be achieved with regards to making a disclosure and providing feedback to whistleblowers can further help in building trust in the system (BIS 2017: 7).

Evidence from Ireland suggests a low level of compliance of prescribed persons with regards to providing information on their roles and responsibilities (Kierans 2019). Thus, one suggestion is that making this information publicly available should be a statutory obligation for prescribed persons, with potential sanctions imposed on bodies who do not comply (Van Portfliet et al. 2020: 14).

The EU directive on whistleblower protection integrated some of these lessons and includes a rather detailed list of the type of information that competent authorities must publish on their websites regarding the receipt of reports and their follow-up, "in a separate and easily identifiable and accessible section" (Article 13).

### **Gaps in the list of competent authorities**

In Ireland, institutions that appear essential for a particular type of disclosure have been omitted from the list of prescribed persons. To address this, a clear criteria for including authorities on the list would ensure consistency (Kierans 2019: 138).

Another suggestion is to allow an independent body to designate an authority which is not on the list to address a particular report (Défenseur des Droits 2020).

### **Weak oversight in the handling of external whistleblowing reports**

The absence of oversight of the competent authorities' handling of external whistleblowing

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reports is common to many existing institutional arrangements, whether centralised or decentralised. There is often a lack of information in that regard.

In 2017, the UK introduced an obligation for each prescribed person to publish an annual report which would address the number of employees' disclosures that they had received in the previous year, the number of disclosures where further action was taken, a summary of the action taken and the impact of disclosed information on the prescribed persons' ability to fulfil their functions and meet their objectives (BIS 2017: 9). The report must also provide a summary of the action taken in each case, including information about contact with the employer, the investigation and its findings, if applicable, and the outcomes in case enforcement actions were taken (BIS 2017).

TI Ireland recommends the introduction of a similar legal obligation for prescribed persons in Ireland to submit yearly reports, using a set template to ensure uniformity in reporting and easier analysis (2020: 6).

Regarding oversight on individual cases, a solution could come from the Korean model, as suggested by the Defender of Rights' recommendation to be given an oversight role similar to the ACRC's to follow up on the competent authorities' investigation and to ensure that responses are provided to whistleblowers in a timely fashion (Défenseur des Droits 2020: 8).

In the Netherlands, the Whistleblowers Authority does not have such oversight power, but it can receive and address whistleblowing reports that other competent authorities have not dealt with properly.

## Regarding oversight and enforcement of whistleblowing legislation

Many of the challenges highlighted below relate to gaps in the institutional framework. The lessons and proposed solutions tend to confirm the recommended best practice identified by international standards (and described in second section above).

In Ireland, where whistleblowing legislation has been in effect since 2014, the Transparency International chapter recommended establishing a statutory authority to oversee implementation of whistleblowing legislation by both prescribed persons and public organisations. Such an authority would be in charge of monitoring and reporting on the effectiveness of prescribed persons, of receiving and addressing whistleblower's complaints about retaliation, about organisations' improper investigations of whistleblowing reports, and covering wrongdoing and failures to comply with whistleblowing legislation. Such an authority could have powers to investigate and set administrative fines (Transparency International Ireland 2020: 6). A similar recommendation was made for Australia (see above).

### **Weak oversight on implementation by employers and competent authorities**

In the previous section, many of the proposed solutions to challenges relating to proper implementation of whistleblowing legislation by competent authorities involved devolving to a distinct authority the responsibility to oversee and support them (Van Portfliet et al. 2020; Défenseur des Droits 2020) .

This solution was also proposed to improve implementation of whistleblowing legislation by

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public and private employers. In France, despite a legal obligation for public and private organisations with more than 50 employees to set up internal whistleblowing mechanisms since 2017, a 2020 survey found that only 61 per cent of companies had an internal whistleblowing system, this number falling to 41 per cent in SMEs.<sup>29</sup> In the public sector, less than 30 per cent of bodies had internal whistleblowing mechanisms in place in 2018. Considering these findings, the Defender of Rights suggested extending the control mission and sanctioning powers of the French Anti-Corruption Agency to ensure employers fulfil their obligations (Défenseur des Droits 2020: 7).

Besides control and enforcement, the need for more support to employers is illustrated by CSOs stepping in to provide such support where it is not (sufficiently) provided by the authorities (for example, in Ireland and the UK).

In the UK, the CSO Protect proposes the establishment of a whistleblowing commissioner as an independent body which would set standards expected of employers and regulators. It would also investigate whistleblowers' complaints in cases when the employer or prescribed persons did not properly (or at all) investigate disclosures about alleged wrongdoings. They also argue for introducing a civil penalty regime which would be administered by the commissioner (Protect 2020: 12).

### **Lack of monitoring of the effectiveness of whistleblowing legislation**

The lack of information on how competent authorities are handling external whistleblowing

cases was highlighted above as a challenge. This challenge extends to the handling of internal whistleblowing cases by public and private organisations, and more generally about the general implementation of whistleblowing legislation. The obligation for organisations to publish data is only one step (for example, for public bodies in Ireland).

To ensure that such data is regularly collated and analysed, TI Ireland suggested, in the absence of a whistleblowing authority, that the Department of Public Expenditure and Reform, the ministry in charge of designating prescribed persons, could be responsible for such a task to ensure the effectiveness of the whistleblowing legislation is monitored. If a whistleblowing authority were to be created, it should assume this responsibility.

### **Lack of individual advice to whistleblowers**

Providing individual advice to whistleblowers has been identified as essential to ensure effective whistleblower protection. In Israel, it appears that the ombudsman informally provides this advice, even though it is not part of its tasks. In Australia, it was suggested to establish an independent oversight agency which would provide such advice to whistleblowers (Parliamentary Joint Committee 2017). In Ireland and the UK, CSOs have stepped in to fulfil that role. While this is a potential solution, it does not address issues of resources and sustainability.

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<sup>29</sup> See [www.agence-francaise-anticorruption.gouv.fr/files/files/Diagnostic%20entreprises%20anglais.pdf](http://www.agence-francaise-anticorruption.gouv.fr/files/files/Diagnostic%20entreprises%20anglais.pdf)

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## **Lack of powers to effectively protect whistleblowers**

There can be a gap between the actual protection powers of whistleblowing authorities and whistleblowers' expectations. In Australia, a parliamentary inquiry found that, in light of the whistleblowing law, whistleblowers thought that the investigation into their retaliation complaint would be conducted by an independent agency, while the ombudsman only refers such complaints back to the agency which conducted the initial investigation or advises whistleblowers to look for remedies in the courts.

The expectation gap can be addressed by clear, transparent and easily accessible communication about the actual powers of relevant agencies. However, it does not address the fact that the lack of capacity of a whistleblowing authority to investigate retaliation, coupled with obstacles to pursue protection through the court system can be strong barriers to whistleblowing (Parliamentary Joint Committee 2017).

Considering these challenges and collected evidence, the parliamentary inquiry in Australia also suggested establishing a new whistleblower protection authority with the powers to investigate criminal retaliation and make recommendations to the Australian Federal Police. For non-criminal retaliation, it would have the power to investigate and to oversee investigation in any public agency. The authority would take non-criminal matters to court on behalf of whistleblowers to remedy retaliation (Parliamentary Joint Committee 2017; see also Transparency International Australia 2020).

In the Netherlands, the chairman of the Whistleblowers Authority and TI Netherlands

suggested that the authority should have the powers to freeze the employment situation of the whistleblower during the investigation process, with sanctioning powers to ensure enforcement, to prevent retaliation, as the ACRC in Korea can do (Raat 2020, TI Netherlands 2020).

## **Limited support to whistleblowers**

Legal and financial aid are especially important in countries where whistleblowers must seek redress through the courts. Considering what some whistleblowers have to go through because of retaliation (losing jobs, isolation at work, harassment), proper psychological support is also important. A small number of countries' whistleblowing authorities provides some of these types of support for whistleblowers (for example, Israel and the Netherlands), while in some other countries, this support is provided as part of employment assistance programmes (Loyens and Vandekerckhove 2018b). These programmes, experts suggest, are not appropriate for the specific challenges that whistleblowers face (Loyens and Vandekerckhove 2018b: 11). Sometimes, CSOs will step in to fill the gap (as in France and Korea).

The chairman of the Dutch House for Whistleblowers suggested establishing a fund to provide appropriate support to whistleblowers throughout the process (Raat 2020). Similarly, in France, the Defender of Rights proposed that fines imposed on public and private organisations for non-compliance with the legislation could be used for a whistleblower support fund – a fund that the Defender of Rights proposes to be set up (Défenseur des Droits 2020: 7).

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## **Lack of public awareness**

Many experts consider that the low use of whistleblowing and whistleblower protection mechanisms is partly due to the lack of awareness among citizens about whistleblowing legislation. (Tholtová and Nechala 2016; Défenseur des Droits 2020: 12). In the UK, the CSO Protect proposes the creation of a whistleblower commissioner whose function would be, among others, to improve public awareness and education of people's rights regarding whistleblowing (Protect 2020).

## **When one authority assumes both roles**

The centralisation of many different missions in one authority has been criticised on several grounds, in particular in the Netherlands, where the competences of the Whistleblower Authority are quite broad. In Australia and Israel, the fact that these were not identified as a major challenge might be due to the fact that their competences are limited to the public sector.

## **One authority investigating whistleblowing reports about wrongdoing and complaints of retaliation**

In the Netherlands, investigation of whistleblowing reports about wrongdoing and whistleblowers' complaints about retaliation are considered by the same authority, and even the same department. Some experts suggest that having one authority handling both missions creates two problems. First, there is a risk of conflicts of interest as it is expected that the investigation of alleged wrongdoing requires more neutrality towards the whistleblower than the investigation of retaliation (Loyens and Vandekerckhove 2018a: 5). Second, some consider that the investigation of disclosures

and retaliation requires different expertise and specialised knowledge (UNODC 2015).

In Israel, investigations of external disclosures about alleged wrongdoings and complaints of retaliation are done by the same authority, but by different departments. However, more empirical evidence is needed to be able to assess the benefits and risks of combining or separating the two types of investigations.

## **One authority advising whistleblowers and conducting investigations**

Some consider that having one authority in charge of advising whistleblowers and of investigations (even in different departments, as in the case of the Netherlands) may be a source of bias and does not seem to function in practice (Rooijendijk 2017; Transparency International Netherlands 2020: 4). To address this issue, separate protocols were created for advice and investigation (Whistleblowers Authority 2018: 16). However, the Dutch Ombudsman as well as the TI Netherlands consider that these two roles should be placed in different institutions (Transparency International Netherlands 2020: 5).

## **Conclusion**

A limited body of empirical evidence on the effects of the various institutional models with regards to whistleblowing prevents us from making strong conclusions about the best institutional arrangements. Nevertheless, the existing evidence suggests several main lessons.

First, there are many different institutional arrangements, which tends to show that there is no one-size fits all model. Second, authorities with whistleblowing related missions should be

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provided with sufficient resources and powers to fulfil them. Third, when it comes to handling external whistleblowing reports, the centralised approach is in the minority and is restricted to the public sector. The mixed approach, where an independent authority oversees implementation of whistleblowing legislation by multiple competent authorities, seems to be favoured by many stakeholders. Fourth, protection of whistleblowers against retaliation should not be left to the courts alone, especially where whistleblowers do not have access to legal and financial support. Individual advice to whistleblowers can be provided by CSOs, but the issue of resources needs to be addressed.

More research on the topic is needed as many countries across the world have adopted whistleblowing legislation in the last few years. With the transposition of the EU Directive, more institutional models are likely to appear, which would need to be assessed with regards to their functioning in practice.

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