

# ANTI-CORRUPTION HELPDESK

PROVIDING ON-DEMAND RESEARCH TO HELP FIGHT CORRUPTION

## RECENT TRENDS IN BEST PRACTICES IN WHISTLEBLOWER PROTECTION LEGISLATION

### QUERY

What are the new trends of best practices in whistleblower protection legislation? Have there been recent assessments or in-depth reviews of whistleblower legislation? Is there legislation regarding whistleblower protection in place in the Western Balkan countries?

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### REMARK

This answer is an update to the U4/TI Expert Answer on “Good Practice in Whistleblowing Protection Legislation” from 2009 (available here: <http://www.u4.no/publications/good-practice-in-whistleblowing-protection-legislation-wpl/>)



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### SUMMARY

Attention towards whistleblower protection has grown considerably in recent years. More countries worldwide are considering adopting, or have adopted, laws aimed at protecting whistleblowers.

A consensus is being developed in the international community regarding what constitutes basic best practices and principles in whistleblower legislation. Emerging principles include a broad definition of whistleblower that protects public and private sectors as well as volunteers, contractors and trainees; and protection from all forms of retaliation and discrimination against whistleblowers. Clearly communicated internal and external disclosure channels, including anonymous reporting, should also be made available to all employees. Whistleblowers should be granted the right to confidentiality, to receive advice on their rights, to receive appropriate compensation from damages resulting from retaliation, including interim remedy, as well as to a fair review of retaliation cases against them.

South Korea, Slovenia and Ireland recently adopted or are discussing new laws on whistleblower protection that are generally perceived as good practice. In the Western Balkan region, only Albania currently has some provisions for protecting public sector corruption whistleblowers. Kosovo, Macedonia, Serbia and Montenegro have opted for mentioning whistleblower protection in sector-specific laws.

## 1 RECENT TRENDS IN BEST PRACTICES IN WHISTLEBLOWER LEGISLATION

Encouraging public and private sector employees to blow the whistle on wrongdoing carried out in their company or organisation has proven to be a successful way to avoid the loss of large amounts of corporate and public funds. For example, from 2002 to 2012, the South Korean Anti-Corruption and Civil Rights Commission recovered about US\$50m from whistleblowers reporting corruption (Transparency International, 2013).

Whistleblowers are well placed to detect fraud and corruption cases inside their companies and organisations. Their role is crucial in increasing accountability, strengthening the fight against corruption and spreading a culture of transparency. This has been particularly evident in recent corporate scandals linked to the financial crisis. Furthermore, research has revealed that occurrences of fraud and corruption were discovered mostly thanks to whistleblowers, rather than to other sources such as investigative journalism and auditing (Transparency International, 2009).

Since whistleblowers are often employees, they often risk repercussions in their professional and personal lives, such as dismissal, harassment, discrimination, physical and verbal attacks, and other forms of retaliation. Therefore, comprehensive and strong legal protection norms are essential to prevent retaliation and encourage further whistleblowing.

Intergovernmental organisations and NGOs worldwide have dedicated growing attention to the protection of whistleblowers, setting new trends in whistleblower protection legislation principles. For example, the [OECD](#) and the [Council of Europe](#) have recently published whistleblower principles and developed recommendations. Transparency International updated in 2013 its [International Principles for Whistleblower Legislation](#) (for a list of sources of best practices and principles, see “Recommended reading” below), which outlines key

principles to include in a strong whistleblower protection legislation. The main features of these principles are discussed in the next section.

### Definition and scope of whistleblower protection

#### *Sectoral versus standalone whistleblower legislation*

There are different approaches in regulating whistleblower protection. Many countries only have laws protecting some categories of employees or relating to a specific sector, such as laws on corruption, public servants, labour, criminal codes, etc. Other countries have opted for adopting standalone laws dedicated specifically to the protection of whistleblowers, for example the USA, Australia, Japan, South Africa, the UK, Romania, Hungary, and more recently South Korea. The option of having standalone whistleblower legislation is preferable to a sectoral approach, since this usually ensures the most complete coverage and provides whistleblowers with a more accessible overview on their protection rights and reporting channel options (Stephenson-Levi, 2012).

#### *Scope of whistleblowing*

There is no common definition of what exactly constitutes whistleblowing. The International Labour Organisation (ILO) defines it as “the reporting by employees or former employees of illegal, irregular, dangerous or unethical practices by employers”. What is generally entailed in the definition of whistleblowing is the existence of a public interest at risk, including dangers to public safety, health and the environment.

Reportable misdeeds should include any violation of the law, but also other actions which are not necessarily illegal, such as gross mismanagement or waste of funds, abuse of authority and other corrupt acts, as well as, in some cases, human rights violations (Transparency International, 2013).

The chronological dimension is also important, as the act of blowing the whistle is more valuable as a warning before the wrongdoing has taken place, to prevent damage and harm to those who are not in a position to protect themselves (Stephenson-Levi,

2012).

Most legislation and international standards require that the reporting be carried out “in good faith” and “on reasonable grounds” (see for example the United Nations Convention against Corruption (UNCAC) Article 33, and Council of Europe Civil Law Convention on Corruption). Reporting on reasonable grounds implies that the individual makes the disclosure based on his or her belief that the information is true at the time it is disclosed.

The reference to “good faith” has been criticised for being too broad and unnecessary, since the reason for disclosing should be irrelevant to the act of whistleblowing (Transparency International, 2013). In this regard, Norwegian law provides that bad faith does not rule out reporting; furthermore, under Romanian law, it is presumed that the individual is acting in good faith unless the contrary is shown.

However, a number of laws provide that if an individual makes deliberately false disclosures, he or she will not be allowed protection (as is the case in South Korea), with some laws reaching the point of criminalising such acts (see India Public Interest Disclosure draft bill of 2010). In such instances, the burden of proof of the false reporting should be on the subject of the disclosure, and those who were wrongly accused should be appropriately compensated (Transparency International, 2013).

### *Definition of whistleblower*

The definition of whistleblower varies greatly in scope across legislation. International guidelines and other instruments typically provide for the broadest definition in this regard, such as the UNCAC Article 33 which states that protection should be provided to “any person”.

Although traditionally the term “whistleblower” refers to employees, some national laws as well as international principles of whistleblowing provide for a broader definition. Increasingly, it is recognised that protection should be awarded not only to full-time workers but also to consultants, contractors, volunteers, part-time workers and job applicants. For example, the UK law also covers contractors, including those working overseas, while the Australian Public Service Act provides protection for

persons performing functions “in or for any [government] Agency”.

Another important aspect of the definition of whistleblower is the distinction between private and public sector employees. Some laws explicitly provide for protection of both private and public sector employees (Norway, UK, Luxembourg and Slovenia); however, a single law covering both sectors would ensure consistency and avoid confusion in the event of overlap between the two sectors (see paragraph “The protection of whistleblowers in the private sector”).

“Intending” and potential whistleblowers are also protected under Norwegian law. According to some analysts, more efforts should be made to also protect individuals wrongly perceived as whistleblowers, and those who assist or support whistleblowers (Devine-Walden, 2012).

### **Main features of whistleblower protection**

In order to make protection effective, whistleblower laws should offer comprehensive protection against all forms of retaliation and discrimination in the workplace. Clear forms of retribution, such as dismissal, probation and other job sanctions should be included in the list; it should also include any form of passive or attempted retaliation, such as refusal to promote or provide training (see, for example, draft Irish law, South Korea ACA law Article 33 and South Africa Protection Disclosure act (PDA), section vi). In this context, Article 33 of the UNCAC offers the broadest protection to corruption whistleblowers, granting them protection against “any unjustified treatment”.

Below are some of the main features that are recognised as best practices in whistleblower protection mechanisms.

### *Burden of proof*

International standards of whistleblower protection legislation request that the employer has to prove that action taken against the employee is not linked to his or her whistleblowing. This is particularly important because, as mentioned above, many forms of retaliation can be subtle and difficult to

establish (Transparency International, 2009). This principle is, for example, granted to Federal employees by the USA Whistleblower Protection Act of 1989, which establishes that the burden of proof shifts to the employer if the whistleblower fulfils a number of requirements. This provision has proven to be successful, as whistleblowers, when defending their case, have increased their rate of success from between one to five per cent annually to between 25 and 33 per cent since the adoption of the Act (Devine-Walden, 2012).

### *Confidentiality and anonymity*

A number of whistleblower laws provide for protection of the identity of whistleblowers, requesting that this should not be revealed without the individual's consent. The South Korean Anti-Corruption Act requires, for example, that whistleblowers provide their names, but forbids the release of their names without the individual's consent. India's draft of the Public Interest Disclosure Bill of 2010 is particularly protective as it would impose sanctions, including imprisonment, to anyone who reveals the identity of whistleblowers.

Many national laws do not protect anonymous disclosing, with the rationale that it is impossible to protect whistleblowers if their identity is unknown. Also, their identity may be discovered from the circumstances, as it will be easy to find their identity from the department subject to the disclosure. However, since anonymity can be a strong incentive to blow the whistle, instances of anonymous disclosing should be protected and channels allowing this should be provided (see the Model Law developed by the Organisation of American States, Articles 10, 11, 49: 2013).

### *Liability and confidential data*

Workers are often subject to confidentiality obligations with their employers, the breach of which can bring sanctions, including in some cases imprisonment. Based on the principle that disclosure of wrongdoing overrides confidentiality issues, whistleblowing laws should waive liability and grant whistleblowers immunity from sanctions (Stephenson-Levi, 2012).

However, given states' reluctance to reveal

information on national security and foreign affairs, whistleblower legislation should consider referring these disclosure cases to a relevant internal and independent authority. This is the case in US law, which imposes that such cases are not provided protection unless referred to the Inspector General or the Office of Special Counsel (Title 5 of the United States Code).

A principle recognised as best practice and linked to confidentiality restrictions forbids rules or private agreements between the whistleblower and his or her employers when these obstruct protection, such as loyalty oaths and confidentiality agreements. The UK has recently set the example in banning such "gagging orders" in the context of national health care<sup>1</sup>.

### *Right to refuse violating the law*

Employees who refuse to take orders from superiors on the grounds that they are illegal often risk retaliation, and have to take responsibility for proving in court or other authority that the order was illegal. Therefore, international principles on whistleblower protection recommend that the same protection rights apply for these employees as for whistleblowers (Devine-Walden, 2012).

## **Disclosure mechanisms and procedures**

One of the main challenges to having effective whistleblowing channels in place is the lack of communication on protection rights and reporting channels, as whistleblowers will be more incentivised to take action if they know how they can be protected and what means they have to disclose wrongdoing (Stephenson-Levi, 2012).

### *Internal and external reporting channels*

Domestic laws dedicated to whistleblowing usually mention the option of disclosing wrongdoing to channels inside the individual's organisation or company, and outside it to an external body or to the public. It is generally agreed that internal reporting should be encouraged as the first option, as this allows for faster and more appropriate measures against the wrongdoing, and external

<sup>1</sup> see <http://www.guardian.co.uk/society/2013/mar/14/ban-onnhs-gagging-orders>

disclosing should be allowed if internal attempts fail or there is no infrastructure enabling this to take place (Stephenson-Levi, 2012). Additionally, a recent [survey](#) by the UK Public Concern at Work group reported that internal channels are the preferred option of whistleblowers (Public Concern at Work, 2013). The UK 1998 Public Interest Disclosures Act (PIDA) sets the best practice in establishing a three-level approach, with each level requiring a higher threshold of conditions.

Reporting to an external body usually takes the form of disclosure to authorised law enforcement, investigative or regulatory agencies such as anti-corruption commissions, ombudsmen and dedicated agencies; or to an intermediary body that refers the whistleblower to the relevant agency, as in the case of the 2008 South Korea anti-corruption law. The whistleblower law in Romania is particularly progressive in this context, as it includes an extensive list of the authorities employees can choose for their disclosing, including the police, judicial authorities, unions, NGOs, media and others.

Given legal restrictions on classified information, whistleblowing to the public remains a controversial area. Some researchers on this issue note that governments have the right to confidentiality in some matters, and that the public interest, which is implied in whistleblowing, does not necessarily mean interest of the public (Stephenson-Levi, 2012). Also, the media are not considered to be the most appropriate recipient of reports, since they do not have the executive powers to address the issues raised (Transparency International, 2013). Nevertheless, several whistleblower laws provide for the right to report to the media and civil society organisations. For example, the Canada Public Servants Disclosure Protection Act (PSDPA) allows for disclosures to be made to the public where there is not sufficient time to make disclosures under other sections of the law, and where the public servant believes on reasonable grounds that the subject matter of disclosure represents a serious offence, or constitutes an imminent risk to the life, health, or safety of a person or to the environment (Section 16 of the PSDPA).

Under the 1998 UK PIDA act, whistleblowers are entitled to protection when reporting to the wider

public if they fulfil a number of requirements, including: “he reasonably believed he would be victimised if he had raised the matter internally or with a prescribed regulator; he had previously made an internal disclosure of substantially the same information; he believed that the evidence was likely to be concealed or destroyed; or (...) the concern was of an exceptionally serious nature”.

### *Advisory mechanisms*

Individual and confidential advice to whistleblowers at an early stage is an important step in encouraging the reporting of wrongdoing, as it allows employees to understand what options and rights are available to them. Some countries empower anti-corruption commissions to give this kind of advice (for example, Indonesia); whereas others opt to establish telephone hotlines or online platforms to receive whistleblower reports (for example, South Korea). In the Netherlands, the Parliament is currently discussing a new law that would create a public “House of Whistleblowers” to provide legal advice to whistleblowers.

### *Rewards*

In the USA, the False Claims Act allows whistleblowers to take claim on behalf of the government where it is being defrauded, and receive a percentage of the money recovered. This incentive has enabled the recovery of US\$35 billion of public funds since 1986 (Transparency International, 2013). Monetary as well as social incentives are therefore being introduced by an increasing number of countries to encourage more whistleblowers to act. In South Korea, the law not only provides monetary refunds but in some cases also offers awards if the whistleblowing has served the public interest.

### **The protection of whistleblowers in the private sector**

International organisations and NGOs have dedicated growing attention to the issue of whistleblowing in private companies, as many national laws still do not provide (or provide only partial) protection for disclosing wrongdoing in this sector. Traditionally, whistleblowing has been dealt with as a public sector issue, given its more

immediate link to risks to the public interest.

Nevertheless, private companies increasingly recognise that setting up internal whistleblowing mechanisms may bring advantages. As in the public sector, a functioning whistleblowing practice can deter wrongdoing and prevent loss of money, and functioning internal procedures in a private company can avoid damaging reports being made to the media. To enhance corporate social responsibility, companies can create formal or informal internal reporting channels, enhance control measures and establish whistleblower policies to encourage their workers to blow the whistle (for more information, see OECD, *G20 Action Plan 7: Protection of Whistleblowers – Whistleblower Protection frameworks, Compendium of best practices and guiding principles for legislation*, 2011, page 28). The Council of Europe recommended in this regard that internal disclosures are investigated properly and that information reach senior management in good time when necessary (Council of Europe Parliamentary Assembly, *Resolution 1729 (2010): Protection of “whistle-blowers”*, 2010, accessible [here](#)).

Strong legislation can create the basis for effective protection of whistleblowers in the private sector by requesting and encouraging companies to create effective internal whistleblower protection mechanisms.

In international frameworks, the previously mentioned Article 33 of the UNCAC provides for broad definition of whistleblowers, thereby including in its definition private sector workers. Other international and regional tools provide for similar protection (for example the Council of Europe Criminal Law on Corruption and the Inter-American Convention against Corruption).

At the national level, several countries explicitly protect private sector employees and public servants through dedicated whistleblowing legislation (UK). More commonly, countries mention private sector whistleblowing in criminal codes or sectoral laws (Australia, USA, South Korea). However, much remains to be done to effectively protect private sector workers through stronger regulations for companies.

When providing for whistleblower protection in the private sector, the same requirements of speedy and efficient reporting channels as well as the protection mechanisms that many laws apply to the public sector, need to be applied (Stephenson-Levi, 2012).

## Enforcement mechanisms

Whistleblowers can only be protected if there are legal provisions and institutions in place that allow them to ensure enforcement of their protection. In this regard, international whistleblower principles state that whistleblowers should have the right to defend their case in court or in other appropriate entities when it comes to proving the link between the retaliation suffered and their act of whistleblowing.

Some research shows that employers as well as regulators have the opportunity to put whistleblowing policies into practice effectively, irrespective of legislation, if there is a common will; and that in some cases the existence of legislation does not necessarily mean that persons have real rights (see P. Roberts, J. Olsen and A.J. Brown, *Whistling While they Work*, 2011).

### *Right to a fair day in court*

The right to a judicial review of whistleblowing cases is an established best practice and is implemented in many countries. At best, the hearing should be fair, timely, include clear rules of procedure and the option of presenting witnesses and, especially in the public sector, be free from institutional conflict of interest.

A right to appeal should also be provided for (Devine-Walden, 2012). These rules should apply both to internal protection through informal or authorised review mechanisms and in courts. South Africa’s PDA law is particularly protective in this regard, as it grants employees subjected to detriment the right to approach any kind of court (Section 4 of PDA). An alternative to formal judicial review is the option to go to a third-party forum agreed on mutual consent, such as labour management arbitrations, as provided for by the USA Whistleblower Protection Act.

### *Institutions overseeing retaliation cases*

An independent reviewing body focusing on whistleblower protection cases, especially in countries where the legal framework is fragmented, is likely to facilitate the effectiveness of the review. Moreover, victims of retaliation often have to wait for a long time before the case is decided and have to pay for legal costs autonomously. Therefore a number of countries, as well as or instead of providing for the right to access to court, offer the opportunity to review whistleblowing cases to a specific, dedicated body. This is the case of the well-known US Office of Special Counsel (OSC), which has proven to be successful since its establishment, in reviewing cases in favour of whistleblowers (see OSC [website](#)). These entities should have both the right to investigate whistleblowers' complaints on retaliation cases as well as to seek corrective action from the employer, as recommended by the Council of Europe in 2010 and implemented in Canada's PSDPA law.

Whistleblower laws have often given these authorities other relevant responsibilities besides the review of whistleblowing cases, such as developing recommendations on how to improve and provide for legal advice (see above).

The intention to give these agencies the role of raising public awareness on whistleblowing issues is clear in the case of the recently established South Korean anti-corruption commission. This best practice is particularly relevant, since informing the public on the importance of whistleblowing in fighting corruption and preventing wrongdoing is an effective way to implement whistleblower legislation.

Oversight bodies also play a vital role in granting the right to information on whistleblowing rights, through training and individual advice: as Devine and Walden said, "whistleblowers will not be protected by any law if they do not know that it exists" (Devine-Walden, 2012).

### *Remedies and penalties for retaliation*

Compensation systems are a vital tool to ensure that whistleblowers who requested a review of their retaliation cases are given remedy for losses when their case is found to be justified. Most whistleblower laws include mentions of remedies,

with South Korea, the UK and the USA giving the broadest lists of compensation available. In order to be effective, the compensation model should be extensive enough to include all direct and indirect consequences of the reprisal, including relocation, attorney fees and other litigation costs (again, see USA and South Korea laws). The Council of Europe further mentions the need for "interim relief" pending a full hearing, and appropriate financial compensation if the effects of the retaliatory measures cannot be effectively undone (Council of Europe, 2011).

Employers who have been found to retaliate against whistleblowers should be sanctioned appropriately under the relevant legal regime (Transparency International, 2013). Some countries, such as South Africa, impose criminal penalties against those who retaliate against whistleblowers.

### *Other enforcement mechanisms*

Although there are doubts on its implementation status, Japan's law offers further suggestions on how to enforce whistleblower laws, including a provision that the government reviews its whistleblower protection system every five years and takes appropriate measures based upon the review.

### *The role of civil society*

The encouragement of more citizens to take action is an important objective of the implementation of whistleblower protection. Undoubtedly, the role of civil society is pivotal in pursuing this objective. NGOs have often had a central part in successfully promoting the adoption of whistleblowing reforms, as seen in the USA, the UK and South Korea. Moreover, they often developed specific recommendations on how to improve the laws and how to effectively enforce them.

Best practice showed that governments should find ways to cooperate with NGOs, journalists and similar actors to encourage citizens to blow the whistle. The advantages of this approach are multifold: civil society has a broader and more immediate contact with the wider public; it can help in overcoming cultural or historical factors that hinder the promotion of whistleblower legislation; and it can allay feelings of mistrust towards

authorities (Transparency International, 2013).

Some countries provide good examples on how cooperation between authorities and civil society can yield good results. For example, TI Serbia made a substantial contribution in working with the Serbian government to draft a proposed whistleblower law. In other cases, civil society organisations may participate in awareness-raising campaigns as well as provide for alternative legal advice to whistleblowers, as happened in South Korea after the adoption of the Whistleblowing Act of 2011, and in the UK with Public Concern at Work. Transparency International chapters, such as in Morocco, Liberia, Ireland and the UK, as well as through numerous “Advocacy and Legal Advice Centres” have played important roles in supporting and promoting the work of whistleblowers worldwide.

## 2 EXAMPLES OF GOOD PRACTICE IN WHISTLEBLOWER PROTECTION

In the last few years, dozens of countries worldwide have expressed the intention to pass, or have started parliamentary discussions on passing, new laws regarding whistleblowing. Other countries, such as Australia and the USA, have updated their laws, making important progress in protecting whistleblowers.

Since 2009, a few countries such as South Korea have adopted new, comprehensive laws dedicated to the protection of whistleblowers. The case of Slovenia is mentioned here as an example of sector-specific law providing for whistleblower protection; the Irish Parliament is currently discussing the adoption of its Public Disclosures Bill, announced by the government in 2013. This draft law is particularly protective and deserves some attention.

### South Korea

In the last decade, South Korea has passed provisions on whistleblowing through its law on anti-corruption of 2001 and its update in 2008. These laws are particularly strong as, similarly to UNCAC Article 33, they offer protection for “any person” who

becomes aware of acts of corruption. The “Act on the Protection of Public Interest Whistleblowers” adopted in 2011 complements these provisions by expressively granting protection to whistleblowers in the private sector.

The Whistleblowing Act further enables workers to report to a comprehensive list of authorities, including the National Assembly (although disclosures to the media are not covered).

Another important provision brought by South Korean laws regards the role given to the Anti-Corruption and Civil Rights Commission (ACRC). As mentioned earlier, through this body, the law grants rewards – as a percentage of the recovered money or saved costs – to whistleblowers, thereby effectively encouraging new whistleblowing.

The ACRC also has a facilitating role in investigating and resolving whistleblower protection cases. The agency does not investigate cases itself but passes them to other relevant bodies, keeping an important oversight role. In particular, the ACRC receives investigation findings, makes the relevant decision and, if the retaliation allegations are deemed justified, may order compensatory measures from the responsible persons. The 2008 Anti-Corruption Act also prohibits and considers a criminal offence the disclosure of the identity of a whistleblower without his or her consent. The law also considers retaliation itself as a criminal offence. The retaliation is presumed to be a consequence of the whistleblowing, under the 2011 act, if it took place within two years after it.

The text of the 2011 whistleblowing act can be found [here](#).

### Slovenia

Slovenia’s “Integrity and Prevention of Corruption Act” of 2010 offers whistleblowers a number of protection provisions in disclosing corruption cases.

The most relevant aspect of the law is that whistleblowers may report to the Anti-Corruption Commission (KPK) and to other competent

authorities. The KPK analyses disclosure cases and, if the whistleblowers suffered retaliation, may ask for compensation from the employer. Although the disclosed protection is limited to corruption acts, in practice the KPK does not reject other cases but refers them to a different competent authority.

The law also protects whistleblowers from disclosing their identity and from infringing the laws on classified information, if the disclosure is made to the KPK or to law enforcement agencies.

The text of the Slovenian anti-corruption law may be found [here](#).

## Ireland

Although it is unclear if or when the “Public Disclosures Bill” will finally be adopted, the draft law is worth mentioning since its passing would provide Ireland with one of the strongest whistleblowing protection laws in the world (Worth, 2013). Drawing on international standards as well as the UK Public Interest Disclosures Act of 1998, the draft law would provide whistleblowers with strong legal protections both in the public and private sectors. It would enable them to report wrongdoing to a large number of entities, internally (to employers) and externally (to government authorities and Parliament).

A more extended type of wrongdoing would fall under the protected disclosures, including “oppressive, improperly discriminatory and grossly negligent acts or omissions by a public official”.

Whistleblowers would be granted the right to seek remedies for retaliation resulting from the disclosure. Finally, the draft law would offer whistleblowers the right to protection of their identity and would enable the reporting of acts regarding confidential data to a third-party independent body.

The text of the Irish Public Disclosures Bill can be found [here](#).

## 3 OVERVIEW OF WHISTLEBLOWER LEGISLATION IN THE WESTERN BALKANS

At present, of the five countries in the Western Balkans (Serbia, Bosnia and Herzegovina, Montenegro, Macedonia and Albania) only **Albania** has some form of comprehensive legislation in place to protect whistleblowers. A 2006 Albanian law protects public sector whistleblowers from retaliation when they report corruption cases, granting them identity protection and legal “immunity” against administrative, civil or criminal proceedings, even if the suspicion of the wrongdoing turns out to be unfounded.

**Montenegro** and **Macedonia** included some provisions regarding whistleblowing in public bodies in their Freedom of Information Acts of 2006. Macedonia’s freedom of information law provides in particular that “(a)ny responsibility shall be removed from an employee within the state administration that shall disclose protected information, in case such information be of significance for the disclosure of abuse of power and corruptive behaviour, as well as for the prevention of serious threats to human health and life and the environment”.

**Serbia** in 2011 passed a law on Business Entities which requires private companies to protect employees who report to the relevant authorities a business secret, when the employee is reporting an illegal act. Although not binding, the Anti-Corruption Commission in Serbia published in 2011 a detailed *Rulebook on Protection of Whistleblowers*, which tells citizens how and to which authority they can report any suspicion of a corruption case. A draft law on whistleblower protection is part of the government’s new national strategy to combat corruption, a joint effort by the anti-corruption agency, the judiciary and civil society.

A draft law on whistleblower protection is also being discussed in **Bosnia and Herzegovina**.

In **Kosovo**, according to Article 19 of the Law on Anti-Corruption Agency, public officials must refer to the agency when they become aware of corruption cases. The agency should take measures to protect the identity of the whistleblower. As of 2011, Kosovo

was also discussing the possibility of developing a comprehensive whistleblower law.

## 4 REFERENCES AND RECOMMENDED READING

### Assessments on whistleblowing legislation

M. Worth, *Whistleblowing in Europe: Legal protection for whistleblowers in the EU*, Transparency International, 2013, available at: [http://files.transparency.org/content/download/697/2995/file/2013\\_WhistleblowingInEurope\\_EN.pdf](http://files.transparency.org/content/download/697/2995/file/2013_WhistleblowingInEurope_EN.pdf)

P. Stephenson, M. Levi, *The protection of whistleblowers: A study on the feasibility of a legal instrument on the protection of employees who make disclosures in the public interest*, prepared for the Council of Europe, CDCJ(2012)9 FIN, 2012

Transparency International, *Whistleblower protection and the UN Convention against Corruption*, 2013, available at: [http://www.europarl.europa.eu/meetdocs/2009\\_2014/documents/libe/dv/ti\\_report/ti\\_report\\_en.pdf](http://www.europarl.europa.eu/meetdocs/2009_2014/documents/libe/dv/ti_report/ti_report_en.pdf)

T. Guyer, N. Peterson, *The current state of whistleblower law in Europe: a report by the Government Accountability Project*, Government Accountability Project (GAP), 2013, available at: <http://www.whistleblower.org/storage/documents/TheCurrentStateofWhistleblowerLawinEurope.pdf>

Within its country reviews on the implementation of the Anti-Bribery Convention, the OECD provides assessments on whistleblowing legislation of its member states. The list of country reviews is available at: <http://www.oecd.org/daf/anti-bribery/countryreportsontheimplementationoftheoecdanti-briberyconvention.htm>

Public Concern at Work, a UK NGO that supports whistleblowers and promotes legislation reform, publishes regular updates on the review of the UK PIDA law. Available at <http://www.pcaw.org.uk/law-and-policy>

Similarly, the US National Whistleblower Center (NWC)

provides overviews on the whistleblower protection laws provided in USA and how to improve them. See NWC's website : <http://www.whistleblowers.org/index.php>.

### Principles and best practices

OECD, *G20 Action Plan 7: Protection of Whistleblowers – Whistleblower Protection frameworks, Compendium of best practices and guiding principles for legislation*, 2011 (available <http://www.g20.org/load/781360580>)

Transparency International, *International principles for whistleblower legislation: Best practices for laws to protect whistleblowers and support whistleblowing in the public interest*, 2013, available at: [http://files.transparency.org/content/download/696/2991/file/2013\\_WhistleblowerPrinciples\\_EN.pdf](http://files.transparency.org/content/download/696/2991/file/2013_WhistleblowerPrinciples_EN.pdf)

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

Council of Europe, *Draft Recommendation on Protecting Whistleblowers*, 2013, available at: <http://www.coe.int/t/dghl/standardsetting/cdcj/Whistleblowers/CDCJ%282013%29Misc7E.pdf>

OECD (CleanGovBiz Initiative), *Whistleblower protection: encouraging reporting*, 2012, available at: <http://www.oecd.org/cleangovbiz/toolkit/50042935.pdf>

T. Devine, S. Walden, *International best practices for whistleblower policies*, Government Accountability Project (GAP), 2012, available at: [http://www.whistleblower.org/storage/documents/Best\\_Practices\\_Document\\_for\\_website\\_March\\_13\\_2013.pdf](http://www.whistleblower.org/storage/documents/Best_Practices_Document_for_website_March_13_2013.pdf)

### Model laws

Organization of American States (OAS), *Draft model law to facilitate and encourage the reporting of acts of corruption and to protect whistleblowers and witnesses*, 2011, available at: [http://www.oas.org/juridico/english/draft\\_model\\_reporting.pdf](http://www.oas.org/juridico/english/draft_model_reporting.pdf)

### Surveys

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