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Gaps in the System: Whistleblower Laws in the EU

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Gaps in the System: Whistleblower Laws in the EU

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Preface

The Opportunity Cost of Failing to Protect Whistleblowers

Corruption experts agree that whistleblowing is one of the most effective ways to expose fraud. More useful information on financial crimes is frequently unearthed and reported by employees and citizens than by managers, accountants, police and surveillance combined.

Worldwide, whistleblowers have saved many lives, helped recover billions of dollars in stolen and wasted funds, preserved environmental resources, and protected communities from public health dangers.

To name just a few:

- UBS banker Bradley Birkenfeld helped authorities in several countries recover at least USD 10 billion by exposing one of the world's largest tax evasion schemes.
- The anonymous "Panama Papers" whistleblower disclosed 11.5 million documents on 215,000 offshore companies, implicating prominent political and business figures in dozens of countries worldwide.
- Biochemist Jeffrey Wigand exposed how a major tobacco company was lying about the addictiveness of cigarettes, manipulating the strength of nicotine in tobacco, and adding flavour enhancers that cause cancer.

These are three of the countless people who have made significant or even sea-changing contributions to the public interest, but who nonetheless were fired, harassed, threatened or prosecuted – legally so, and without any consequences for those responsible for the retaliation.

Despite the unquestioned value of whistleblowing in deterring, exposing and remedying crime and public health dangers, only about one-fifth of countries have laws to protect whistleblowers from reprisals and persecution.

In the EU, 19 of 28 EU countries have enacted at least partial legal protections for whistleblowers. Yet none of these laws fully meet European and international conventions and standards.

Though the EU is considered a world leader in open government, citizen participation and human rights, nearly every country fails to provide the rights and protections whistleblowers need. The result is career, financial and personal ruin for many employees who speak up while others remain silent.

Whistleblowers are deterred from coming forward and can be retaliated against with impunity. They lack safe reporting channels, access to justice and assurances that their disclosures will be acted upon.

There is a correlation between the inadequacy of whistleblower rights and protections, and the ability of guilty parties to continue their criminal and corrupt activities without the fear of being exposed. With the scales weighted against whistleblowers, regulators and law enforcement officials miss opportunities to investigate and prosecute guilty parties, and to take corrective actions. The main victim of this imbalance is society itself.

Executive Summary

Despite making formal pledges through a number of agreements to strengthen legal rights for whistleblowers, EU countries as a whole do not rate as well as they should when it comes to protecting whistleblowers from retaliation and persecution.

The UN Convention against Corruption, OECD Anti-Bribery Convention and the European Criminal Law Convention on Corruption are among the agreements that bind EU countries to protect whistleblowers from reprisals.

A Closer Look

Breaking down the numbers in detail, it is plain to see that the situation for whistleblowers in Europe is far from secure.

In this report, the whistleblower laws and policies for all EU countries were measured against nine key European and international standards. Out of a maximum possible score of 756 points, EU countries totalled 173 – or a score of 22.9 per cent.

Only four countries – France, Ireland, Malta and the UK – scored more than 50 per cent, with Ireland scoring the highest at 66.7 per cent. Only 13 of the 28 countries scored above 25 per cent.

Seven countries – one-fourth of the EU – met none of the standards, in whole or in part, and scored 0 per cent across all categories: Czech Republic, Denmark, Estonia, Finland, Lithuania, Poland and Spain.[1]

Importantly, the results show that the piecemeal approach to protecting whistleblowers is largely ineffective, and that enacting a standalone law leads to better results. Of the nine highest-scoring countries, eight have a standalone law covering public and private sector employees. All of these countries scored more than 25 per cent.

Encouraging Signs

Of 16 countries with specific provisions in place, 12 have passed their laws since 2011. Three of the four highest-scoring countries passed their laws since 2013.

This is a clear result of several positive trends:

- The recent development of standards and principles by the Council of Europe, OECD, UN and other international organizations, and by NGOs specializing in whistleblower protection.
- Increased media coverage of whistleblower cases, including high-profile political, banking, financial and national security scandals.
- Enhanced appreciation among policy-makers and citizens of whistleblowing as a highly effective tool to expose and correct crime and corruption.
- Significantly greater attention on whistleblower policies and practice within civil society, academia, journalism organizations and the human rights community.

This report explores why each of the nine standards is important toward shielding whistleblowers from reprisals. It presents real-life examples of how employees and citizens have suffered career and personal ruin because the laws in their country did not provide comprehensive protections.

The report also presents a way forward for policy-makers to improve their laws and practices – to help ensure that people who take action in service of the public interest do not suffer as a result of doing the right thing.

The Whistleblower Protection System

Whistleblower Protection Across the EU Community

This report evaluates EU member countries' whistleblower protection legislation against a matrix of international standards. These standards, which make up the key components of whistleblower protection, were developed from a range of sources (see Annex 2). The list of standards is set out more detail in Annex 1, but the key criteria are:

1. Specific whistleblower protection provisions for employees in public and private sectors.
2. A full range of disclosure channels: internal, regulatory, public.
3. Protection from all types of retaliation.
4. A full range of retaliation protection mechanisms.
5. A full range of relief types and mechanisms.
6. Immunity from prosecution for disclosing sensitive information.
7. Penalties for whistleblower retaliation and other mistreatment.
8. Appointment of a designated whistleblower agency.
9. Transparent administration and data.

Each selected standard forms a foundation stone in the fight against corruption, which the European Commission estimated in 2014 to cost EUR 120 billion per year.[2] The social 'goods' provided by reducing this corruption include improved security and trust for all of society.

To successfully establish these social goods, it is not sufficient for a nation's parliament to only apply a few international standards in new legislation, and thus declare their job protecting whistleblowers is done.

Whistleblower protection is an ecosystem. These standards are necessary, but each alone is not sufficient to make the ecosystem function well.

The importance of a holistic approach to this ecosystem is vital. Whistleblowers will not step forward if they don't believe there is protection. For every high-profile case we see in the media, there are others who simply did not feel safe

enough to step forward.

One example of how this ecosystem works is legislation that provides immunity from prosecution for disclosures. This is important, but whistleblowers must also be confident they will not lose their jobs even if they do not face prosecution. Thus, retaliation protection complements immunities. Even if all these are in place, the failure to appoint a designated agency to handle whistleblower matters may mean there are no resources to advise and support the whistleblower through the disclosure process. Such an agency is core part of the ecosystem.

First generation whistleblower laws often only focus on public sector disclosures. In other cases, early laws only cover certain sectors. Yet, for the ecosystem to be healthy, coverage must be across all industries, all of the public and most of the private sector. There are positive indications of the growing awareness of this need for a comprehensive ecosystem by some legislators and stakeholders in European countries. A public consultation run by the European Commission in March 2017 received submissions from a wide range of stakeholders, including political coalitions, explicitly calling for whistleblower protection at the EU level to be cross-sectoral.

A particularly encouraging outcome is progress in the push for legislation that protects disclosure in both the public and the private sector. A recent example is a law passed by the Italian Parliament November 2017 which covers those who report wrongdoing in both sectors. While there is still progress to be made, the new Italian law provides the option of making anonymous disclosures.

Instituting better data collection and publication by suitable agencies across all of Europe would make it easier for civil society to measure progress. Yet more than 80% of EU countries received a score of zero in this specific standard of transparent administration and reporting of information (see Standard 9). Unless there is a stronger requirement for transparency in this area, the citizenry will find it difficult to determine how well the implementation of whistleblower protection laws are working in practice.

The table 'Table 1: How Does the EU Perform as a Community Compared Against Nine Whistleblower Protection Legal Standards?' (see below) provides a meta-analysis of the data. Key findings are:

- The EU community of countries has made a genuine start at bringing in whistleblower protections, as evidenced by the facts that:
    - every category of standard appears, at least minimally, somewhere

in the community of EU countries;
- in fact, every category of standard appears in some fashion in the laws of 5 or more EU countries. This provides wide opportunity for countries to learn and adopt from others in the EU community;
- even the standard with the lowest prevalence appears in some form in 18% of EU countries respectively (Standards 9 - Countries with scores above zero);
- the two standards with the strongest presence are achieved, at least in part, in 16 countries, or 57% of the EU (Standards 1 and 2 - Countries with Scores above Zero);
- the next most prevalent standard across the EU - protection from retaliation - is present in some form in 54% of EU countries. This standard in particular is critical for creating the right ecosystem for whistleblowers to begin making disclosures. (Standard 3)

· However, there is still much work to be done:
- 79% of EU countries score a zero on providing immunity from prosecution for disclosing sensitive information (Standard 6);
- 75% of EU countries score a zero on penalties for whistleblower retaliation and other mistreatment (Standard 7);
- 43% of EU countries merit a zero on providing a range of disclosure channels (Standard 2). This standard reflects EU countries' commitment to freedom of expression.

While the results are mixed, it is notable that there has been progress in building an EU-wide ecosystem of protection.

Table 1: How Does the EU Perform as a Community Compared Against Nine Whistleblower Protection Legal Standards?

	Standard 1 (max 4)	Standard 2 (max 3)	Standard 3 (max 3)	Standard 4 (max 3)	Standard 5 (max 3)	Standard 6 (max 3)	Standard 7 (max 3)	Standard 8 (max 2)	Standard 9 (max 3)
EU wide average score	1.71	1.18	0.86	0.61	0.50	0.39	0.25	0.36	0.362
	57%	39%	29%	20%	17%	13%	8%	18%	11%
Countries with score above zero	16	16	15	13	12	6	7	9	5
	57%	57%	54%	46%	43%	21%	25%	32%	18%
Countries with zero score	12	12	13	15	16	22	21	19	23
	43%	43%	46%	54%	37%	79%	75%	68%	82%
Countries with perfect score	8	5	3	1	0	2	0	1	2
	29%	18%	11%	4%	0%	7%	0%	4%	7%

Standard One

Specific whistleblower protection provisions for employees in public and private sectors

8 of 28 EU countries fully meet this standard
Overall score for EU countries: 1.71 out of 4

To understand the importance of having strong whistleblower protection laws in place, one need look no further than the stories of the many men and women throughout Europe who have experienced retaliation and persecution after reporting crime, corruption and public health threats.

Antoine Deltour, Ana Garrido, Stéphanie Gibaud, Raphael Halet, Brigitte Heinisch, Raj Mattu, Constanin Bucur, Srećko Sladoljev and Sascha Lex are just some of the names behind cases.

The importance of enacting comprehensive whistleblower rights for all government and company employees is plain: in the absence of strong laws, managers and co-workers can punish whistleblowers with impunity. Victimized employees have no recourse to be reinstated to their jobs, compensated for their financial losses, and shielded from civil and criminal actions. Criminals and corrupt organizations can break the law knowing that they can fire, threaten, harass, assault, and kill employees who dare to report the misconduct – and that employees have no rights to protect themselves from reprisals.

In short, countries that lack strong laws to protect all whistleblowers may enable corruption and public health threats to persist, while depriving employees and citizens of the right to report information in the public interest without the fear of personal harm or career and personal ruin.

Prevailing European and international standards recommend that countries pass and implement a standalone whistleblower law – a separate piece of legislation with a complete set of mechanisms for disclosures, protection, compensation and investigation. The Council of Europe recommends a "national framework" that establishes a "comprehensive and coherent approach" to empower and protect whistleblowers.

This comprehensive and coherent approach requires passing a standalone whistleblower law that gathers all key provisions within a unified legislative and regulatory framework. Folding whistleblower provisions into labour or civil service laws nearly always results in gaps and loopholes that expose employees to reprisals, prosecution and other hazards. In practice, this "band-aid" solution has not been shown to adequately protect whistleblowers and lead to action based on their disclosures.

For this standard, each EU country was scored on scale of 0-4 points, depending on the type of law and its range of coverage. The composite score for all 28 countries on this standard is : 1.71 out of a maximum possible score of 4.

Of the 28 EU countries, 9 have passed a standalone whistleblower protection law that covers employees in the public and private sectors:

1. France
2. Hungary
3. Ireland
4. Malta
5. Netherlands
6. Slovakia
7. Sweden
8. UK
9. Italy

Only two countries – Hungary and the UK – have had such a law in place for more than three years.

Eight countries have specific but lesser provisions: seven countries have embedded their provisions within other laws, and Romania has a designated law that only covers the public sector.

Sixteen countries – 57 per cent of the EU – have specific whistleblower provisions in place. Other countries – including the likes of the Czech Republic, Denmark, Germany and Spain – have no specific provisions.

Encouragingly, several laws passed in recent years contain many, if not most, European and international standards – namely, those in France, Ireland, Malta, Italy and Slovakia. These laws, however, have not been in effect long enough to make a long-term assessment of how well they are providing reliable disclosure channels and protecting employees from reprisals.

Protections in Italy's 2017 law may apply to private companies if, among other reasons, they choose to adopt 'Model 231', a compliance programme. Strong '231' legal incentives seem likely to make adoption widespread, though it is not mandatory. Thus, private sector coverage is not complete, but it is expanded and therefore included for discussion in this section.

Several EU countries that have undergone severe financial hardship and political uncertainty in recent years still lack strong whistleblower rights, despite the fact that these difficulties have been exacerbated by pervasive corruption within government and companies. Among these are Croatia, Greece, Portugal and Spain, though efforts by policy-makers and civil society to pass laws have been underway in Spain.

Germany still lacks a whistleblower law despite losing a high-profile case at the European Court of Human Rights. Judges in Strasbourg ruled in 2012 that Germany violated the freedom of expression rights of caregiver Brigitte Heinisch, who was fired after telling authorities about persistently unsanitary conditions in a Berlin nursing home.

Finland, which consistently ranks among the most-transparent and least-corrupt countries in the world, also has not passed a whistleblower law. Lawmakers have taken no action despite an admission by a Justice Ministry working group in June 2016 that current protections are "fragmented and often indiscernible," and that in the absence of a framework some whistleblower cases were resolved by simply suspending investigations.

These and other EU countries that lack laws have failed to act despite being signatories to numerous agreements that call on them to enact whistleblower protections, including the European Convention on Human Rights, UN Convention against Corruption, European Civil Law Convention on Corruption and the European Criminal Law Convention on Corruption.

Standard Two

A full range of disclosure channels: internal, regulatory, public

5 of 28 EU countries fully meet this standard
Overall score for EU countries: 1.18 out of 3

Once an employee decides to report a crime or act of corruption, their next consideration is to identify a safe and reliable recipient for the information. These employees are in need of a person or an organization that will honour their confidentiality, protect them from retaliation, thoroughly investigate their disclosure, and take steps to stop the wrongdoing and hold guilty parties to account.

Each whistleblower is in a unique position with unique facts, facing a unique set of circumstances and risks. Whether the person should report the information to managers, a public regulator, a journalist or an NGO depends on many factors – including the breadth and gravity of the information, and the potential fallout from releasing it.

Reporting misconduct internally may be unrealistic or even impossible if the whistleblower believes or has evidence that management is involved with the wrongdoing, or if there is a hostile work environment with no support systems. By the same token, citizens in many countries have little faith in police, prosecutors or the judiciary. These agencies may be corrupt themselves or be involved with the very misconduct that the whistleblower wishes to expose.

Given the risks and complexity of making a report, whistleblowers are best served if a range of disclosure channels are available.

Employees should be able to choose whether to report internally, to a public authority, or to the public via the media, an NGO, the parliament, or directly to the public. Only when these three "layers" are available do whistleblowers have the ability to choose the safest and most appropriate recipient of their report, which may include sensitive or classified information.

Accordingly, the Council of Europe recommends that whistleblower frameworks allow employees to report information: 1) within an organisation or enterprise. 2) to public regulatory bodies, law enforcement agencies or supervisory bodies. or 3) to the public (for example, via a journalist or parliament member).

For this standard, each EU country was scored on scale of 0-3 points, depending on the range of disclosure channels available. The composite score for all 28 countries is 1.18 out of a maximum possible score of 3.

Of the 28 EU countries, only 5 have passed laws that include all three layers of disclosure channels:

1. France
2. Ireland
3. Romania
4. Sweden
5. UK

Four of these five countries, however – Ireland, Romania, Sweden and the UK – have no designated government agency to receive and investigate whistleblower disclosures and retaliation complaints. (The problems and risks associated with lacking a whistleblower agency are covered in the section, "Standard 8: Designated whistleblower agency.)

Passing a standalone whistleblower law does not guarantee that it will be comprehensive. A full range of disclosure channels is missing in four countries with standalone laws covering the public and private sectors:

1. Hungary
2. Malta
3. Netherlands
4. Slovakia

The law that pioneered the three-layer system is the UK's Public Interest Disclosure Act, which allows employees to choose any disclosure channel, though with certain restrictions. Under the Romanian Whistleblower's Law, employees may choose any channel under any circumstances.

The importance of offering a range of channels, as well as educating employees on how to use them, is supported by recent research.

In a 2017 Ernst & Young survey of 4,100 employees in 41 European and other countries, only 21 per cent of respondents said they know how to contact their company's hotline. Seventy-three per cent said that if necessary they would

bypass internal reporting channels and contact regulators or other external parties. A 2014 report by the UK House of Commons said more than one-third of all civil servants do not know how to make a report.

Many whistleblowers throughout Europe have suffered career and personal ruin because they did not know who to contact, or there was simply no appropriate person or agency to call. (See case, below.) This often leads to workplace retaliation, civil or criminal proceedings, their disclosures being ignored, or their names being made public against their will.

Nowhere to turn: German whistleblowers punished after reporting health concerns

The cases of Brigitte Heinisch and Sascha Lex illustrate the importance of having safe and reliable disclosure channels in place for employees to report misconduct in the workplace.

Heinisch had been working as a geriatric nurse for Vivantes Netzwerk für Gesundheit ("Network for Health") in Berlin for five years when, in February 2005, she was fired after exposing unhygienic conditions. According to media reports, under trained workers tied residents to their beds, left them in their own faeces for hours and falsified treatment documents at the chronically understaffed nursing home.

With Germany lacking adequate disclosure channels – or any whistleblower protections – Heinisch had little choice but to call the police. Prosecutors decided against filing criminal charges against Vivantes. Because no other investigations into the mistreatment of patients were conducted, and no other official outlets were available to her, Heinisch distributed flyers about the poor care.

Heinisch was fired and lost several retaliation cases in German courts before eventually being awarded EUR 90,000 in damages by the European Court of Human Rights in 2011.

Berlin paramedic Sascha Lex also suffered in part because of Germany's lack of specialized reporting channels for whistleblowers. Lex was fired in 2014 after telling a judge about unhygienic conditions and poor maintenance of ambulances. He said a lack of proper equipment may have caused the death of a premature baby.

Lex filed a retaliation case with a Labour Court but the status was not known at the time of printing. The ambulance company has threatened to sue Lex if he speaks publicly about the case, which has received very scant media coverage in Germany.

Both Heinisch and Lex first reported the problems to managers but they were ignored. Lacking specialization in workplace whistleblower issues, the public authorities who they eventually contacted were unable to properly investigate their reports or protect them from retaliation.

Standard Three

Protection from all types of retaliation

3 of 28 EU countries fully meet this standard
Overall score for EU countries: 0.86 out of 3

According to nearly every survey conducted in the past 10 years, people say the fear of retaliation is among the top reasons they would not report crime or corruption. Being disciplined, fired, sued or prosecuted – or all of these carried out in unison – are among the strongest chilling effects that deter people from disclosing inside information.

In a UK opinion poll, fear for their personal safety was a top reason people said they would not blow the whistle.[3] In Croatia 34 per cent of respondents agreed – and only per cent strongly agreed – that their managers are "serious about protecting people who report wrongdoing."[4] In the US, "I feared reprisal" was the top reason people hesitated before reporting misconduct internally, cited by 35 per cent of respondents.[5]

Protection is at the very heart of any sound whistleblower framework. Simply put, there can be no whistleblower protection system without strong protection from retaliation and persecution. Lacking this, the framework is an empty set of rights.

These rights are more critical than ever, given that employers and co-workers have grown more creative in how they go about punishing employees who expose misconduct. Throughout Europe, workers have been ordered to undergo psychological tests, been locked out of their offices, had their e-mail accounts blocked, been subjected to organized bullying campaigns, and faced contrived disciplinary charges.

Additionally, anecdotal evidence suggests that the use of civil actions and criminal prosecution against whistleblowers is on the rise. More avenues for these proceedings may be on the horizon. Several secrecy laws have been debated, proposed or passed in Europe in recent years.

In the UK an "Espionage Act," which was under discussion as of spring 2017, lacks exemptions for whistleblowers and journalists' sources. The EU Trade Secrets Directive, passed in 2016, places the burden on whistleblowers and journalists who expose inside information to show they were "protecting the general public interest," lest they face criminal or civil proceedings.

In order to prevent all forms of retaliation, and in the process, remove chilling effects that deter whistleblowing, European and international standards recommend protection from all workplace reprisals and complete immunity from criminal proceedings (unless the whistleblower was personally involved with the misconduct.)

For this standard, each EU country was scored on scale of 0-3 points, depending on the adequacy of protection from workplace retaliation and criminal prosecution. The composite score for all 28 countries is 0.86 out of a maximum possible score of 3.

Of the 28 EU countries, only 3 have laws that provide these comprehensive protections:

1. Ireland
2. Malta
3. Italy

The blanket immunity in Malta's Protection of the Whistleblower Act (2013) is among the strongest in the world on paper: "Notwithstanding the provisions of the Criminal Code or of any other law, a whistleblower who makes a protected disclosure is not liable to any civil or criminal proceedings or to a disciplinary proceeding for having made such a disclosure."

Similarly, Ireland's Protected Disclosures Act (2014) states, "In a prosecution of a person for any offence prohibiting or restricting the disclosure of information it is a defence for the person to show that, at the time of the alleged offence, the disclosure was, or was reasonably believed by the person to be, a protected disclosure."

France, Hungary, the Netherlands, Slovakia, Sweden and the UK lack comprehensive protections even though they have passed standalone laws that cover public and private sector employees.

France, Greece (public sector employees only) and the UK have comprehensive protections from workplace retaliation but not from criminal prosecution.

The UK's Public Interest Disclosure Act, long has considered among the strongest laws in Europe if not the world, states that a person is not protected if he or she "commits an offence" by making a disclosure. The law is unspecific in this regard, opening risks for whistleblowers and tipsters. Among the secrecy- and privacy-related laws under which a whistleblower could be criminally liable in the UK are the Official Secrets Act and the Data Protection Act.

Thirteen of the 28 EU countries – nearly half – have no specific protections for workplace retaliation or criminal prosecution. These include Hungary, which recently passed a standalone law that covers the public and private sectors.

In these 13 countries – including the likes of Denmark, Germany, and Spain – whistleblowers have no specific legal basis for being re-instated if they are fired, compensated for financial losses, or shielded from criminal prosecution.

A Portrait in Retaliation: Ana Garrido

The Gürtel case, Spain's largest corruption scandal in decades, may never have come to light if not for the efforts of Ana Garrido. Though considered a hero in Spain and throughout Europe, Garrido's career was destroyed because of a lack of whistleblower protections in her country.

Garrido was heading the youth department for the municipality of Boadilla del Monte near Madrid when, in 2007, she discovered that certain firms were winning public contracts under suspicious circumstances. When she refused to sign illegal documents, and reported the scandal to Magistrate Baltasar Garzón, she was mobbed, harassed and eventually fired. She has been "hunted," received death threats and was the subject of "fake news".

Garrido's disclosure led to the resignation of People's Party Mayor Arturo González Panero in 2008. But that was just the beginning. More than 150 politicians, business owners and others since have been put on trial, after being linked to a massive kickbacks-for-contracts scheme that spans the country. Accusations range from bribery and money laundering, to tax evasion and illicit political party financing. It has been estimated that EUR 120 million in public funds has been lost.

Because Spain does not have a whistleblower law, Garrido was virtually helpless to fend off the harassment and dismissal. In 2014, she won EUR 96,000 in moral damages in an out-of-court settlement, but it wasn't until late 2017 that she

had received the funds, following a decision by the Spanish Supreme Court. Garrido reportedly has rented out her home and sold many of her possessions.

Standard Four

A full range of retaliation protection mechanisms

1 of 28 EU countries fully meets this standard
Overall score for EU countries: 0.61 out of 3

Retaliation against whistleblowers is commonplace – and on the rise in some countries. In 2011, 22 per cent of American workers who reported misconduct suffered retaliation – up from 15 per cent two years earlier. The retaliation rate in the US climbed 83 per cent from 2007-11, while disclosures rose by only 12 per cent.[6]

Among UK employees who received a response from managers after making a report, the response in 24 per cent of cases was dismissal.[7] Likewise at Fortune 500 companies, 24 per cent of employees said they were punished after making a report.[8]

In many European countries, officials claim employees are protected from retaliation under labour laws, civil service codes and other policies. Most of these laws, however, are vaguely worded and do not list whistleblowing as a category of unfair dismissal or workplace discrimination.

This lack of clarity typically disfavours whistleblowers. When victimized employees go to court to seek reinstatement and compensation, they often lose because judges elevate the rights of employers over those of workers. Courts are prone to question employees' motives, challenge how they went about making a report, and allow managers to engage in character assassination.

In Poland whistleblowers must convince judges that they did not damage their employer's reputation, improperly disclose trade secrets, or perform poorly at work. German judges often enforce employees' duties of loyalty and secrecy.[9] This was among the reasons caregiver Brigitte Heinisch lost her retaliation case in several German courts. With judges finding that she did not provide enough information to police about the persistently poor care she witnessed at a Berlin nursing home (see Standard 2).

Moreover, lawsuits can be costly and time-consuming. The UK illustrates how court proceedings place another layer of challenges onto whistleblowers who already have experienced a range of difficulties. Cases heard by UK Employment Tribunals take an average of 20 months to resolve. Legal costs for employees range from GBP 8,000 to GBP 25,000. Workers who file cases increasingly are being ordered to pay court costs.[10] Whistleblowers with lawyers have won 44 per cent of Tribunal cases, compared to 32 per cent of those who represented themselves.[11]

Given the difficulties and unknowns of court proceedings, establishing an administrative process to protect and compensate whistleblowers is increasingly being seen as a necessary companion or backup to judicial remedies. Executive branch agencies typically can act quicker and more effectively, and they commonly have the authority to order workplace hazards to cease without needing to obtain a court order.

For this standard, each EU country was scored on scale of 0-3 points, depending on whether and the ease by which whistleblowers can obtain protection from a court, an administrative agency or both. The composite score for all 28 countries is 0.61 out of a maximum possible score of 3.

Of the 28 EU countries, only Slovakia has such a system in place.

Under Slovakia's whistleblower law,[12] employers may take no action against a "protected reporter" without the employee's consent as well as permission from the Labour Inspectorate. Employers must demonstrate there is no link between the action and the employee having reported misconduct. The Inspectorate must decide on cases without "undue delay," or within a maximum of 30 days. Employers and employees have the right to appeal. The law also allows for judicial relief and remedies.

Additionally, Slovakia's Ministry of Justice may reward whistleblowers 50 times the minimum wage if their disclosure leads to a criminal conviction or administrative violation.

Slovenia receives a score of 2. Its Integrity and Prevention of Corruption Act empowers the Commission for the Prevention of Corruption to order employers to immediately discontinue retaliation against a whistleblower. The law, however, provides for no specific judicial remedies.

Fifteen countries – slightly more than half – provide no specific access to courts or administrative agencies. Theoretically, victimized whistleblowers

in these countries can file a lawsuit against the companies, organizations or people who retaliated against them – either in a labour court or a civil court of general jurisdiction. However, these countries lack a specific legal basis for whistleblowers to prevail in unfair dismissal cases.

Seven countries do not fully comply with this standard even though they have passed standalone laws that cover public and private sector employees: France, Hungary, Ireland, Malta, the Netherlands, Sweden and the UK.

Netherlands is the only EU country that has established a designated whistleblower agency – the Huis voor Klokkenluiders, or Whistleblowers Authority (see Standard 8). However, the agency has no specific legal authority to protect, reinstate or compensate victimized whistleblowers.

A prime example of a strong administrative agency can be found in a non-EU country. Under the Law on Whistleblower Protection in the Institutions of Bosnia-Herzegovina, state-level employees can apply for whistleblower status with the Agency for Prevention of Corruption (APIK). The Agency must grant or deny the request within 30 days. If approved, the Agency can order the employer to stop the retaliation or reinstate the employee. Failure to follow the order within three days can result in the director being personally fined EUR 5,000 to EUR 10,000.

UK health care whistleblowers highlight need for protection measures

The cases of two UK health care workers illustrate the importance of effective, timely and fair mechanisms to protect whistleblowers from retaliation.

"Sarah"[13] had been working at a home for troubled children near Leeds for three years when, in 2011, she told a manager that she believed two colleagues were abusing children. The colleagues were suspended but later cleared and reinstated. Managers then turned around and disciplined Sarah for several minor issues, including using a household cleaning agent to remove hair dye from a teenage patient. Using the dubious allegations as a pretext, managers fired Sarah in 2012.

Thirteen months after the retaliation, an Employment Tribunal agreed with Sarah by ruling she was fired for being a whistleblower and was protected under the UK's whistleblower law. The judge, however, citing the cleaning incident, said

she was partially to blame for losing her job and reduced her unfair dismissal compensation by 25 per cent. Sarah was awarded GBP 19,350.

Cardiologist Raj Mattu suffered bullying, suspension, firing and "merciless hounding" before winning his whistleblower case – 15 years after first reporting that patients were dying needlessly in a Coventry hospital's overcrowded cardiac unit. Rather than listening to and addressing Mattu's concerns, the UK's National Health System reportedly spent GBP 6 million to fight the case – including by hiring private investigators in an apparent effort to discredit him.

An Employment Tribunal awarded Mattu GBP 1.22 million in compensation in February 2016. Though this is one of the highest whistleblower awards ever granted in the UK, Mattu's career and reputation have been irreparably damaged. He says he been virtually blacklisted within his profession.

Standard Five

A full range of relief types and mechanisms

0 of 28 EU countries fully meet this standard
Overall score for EU countries: 0.50 out of 3

Employees who report crime and misconduct being committed in their workplace are vulnerable to retaliation and punishment. This can range from dismissal and demotion, to transfer and bullying, to verbal threats and physical abuse.

In a survey of 296 UK employees who received a response from managers after making an initial report, only 20 said they were supported or taken seriously. [14] Among the others:

- 97 were demoted, suspended, transferred or disciplined
- 71 were fired
- 64 were harassed, ostracised or more closely monitored
- 44 were denied work-hours or access to training, information or emails

This means that 93 per cent of these employees suffered a reprisal necessitating a specific remedy to reverse or compensate them for a punitive action taken against them.

Employees who report crime, corruption or public health threats are acting in the public interest. There is a corresponding public interest in ensuring that they do not suffer for assuming the personal responsibility to expose wrongdoing, warn of dangers, and hold guilty parties to account.

In order to be made whole, victimized whistleblowers are entitled to a full range of remedies and relief to compensate them for financial and other losses. This includes open and affordable access to courts and administrative agencies where they can file claims for compensation and reinstatement.

According to European and international standards, victimized whistleblowers should be fully be compensated for their losses. The Council of Europe recommends that "the goal should be to provide as full a remedy as is possible."

Standards developed by Blueprint for Free Speech call for remedies that cover all direct, indirect and future consequences, including:

1. Interim relief
2. Lost past and future wages
3. Transfer without diminished salary and status
4. Pain and suffering damages
5. Attorney and mediation fees
6. Education, training, relocation and other occupational support
7. Physical protection if needed, including for family members

For this standard, each EU country was scored on scale of 0-3 points, depending on the types and range of remedies and relief available. The composite score for all 28 countries on this standard is 0.50 out of a maximum possible score of 3.

This is one of only two standards that are not fully met by any EU countries (along with Standard 7).

Of the nine countries with standalone whistleblower laws that cover the public and private sectors, Hungary and the Netherlands have no specific access to remedies. France and the UK scored a 2. Ten countries in total scored a 1 in this category

The UK has among the broadest range of remedies in Europe, including a standard unfair dismissal award, lost wages, aggravated damages, injury to feelings, loss of rights, legal fees, court costs and – in at least one case – "stigma loss." In 2000 an employee known as "Phillip" was working at a UK subsidiary of an Indian bank when he alleged a manager had falsified profit-and-loss figures. After reporting the case to the UK Financial Services Authority, he was transferred to India. An Employment Tribunal awarded him GBP 21,960 in compensation, including GBP 8,000 for "stigma loss."[15]

Sixteen countries have no specific access to remedies for victimized whistleblowers. In these countries, whistleblowers who have been fired, demoted, transferred or suffered other consequences at work must file lawsuits in civil or labour courts.

Whistleblowers do not typically fare well in court because labour laws typically do not classify whistleblower retaliation as a category of unfair dismissal, courts often overvalue the rights of employers, compensation typically is low or poorly defined, and whistleblowers often cannot afford to hire a lawyer or wait months or years for cases to be resolved. Retaliation cases heard by UK Employment

Tribunals were found to take an average of 20 months.[16]

In another disadvantage to whistleblowers in the UK, Employment Tribunals can reduce a whistleblower's compensation if a judge believes he or she was partially responsible for being fired – even if the judge finds the dismissal was unfair. A judge ruled in 2013 that a whistleblower known as "Sarah" was wrongly fired for reporting misconduct yet reduced her compensation by 25 per cent – costing her GBP 3,450.

Croatian vaccine whistleblower helpless against retaliation

Biologist Srećko Sladoljev was a long-time member of the Croatian Institute of Immunology's supervisory board when in 2010 he raised strong concerns about how the organization purchased large amounts of swine flu vaccine. Also a member of the institute's works council, Sladoljev questioned the transparency of the EUR 45 million purchase, as well as the safety of the vaccine itself.

He was suspended the same day an article reporting his concerns was published. The official reason: "revealing a business secret." He was bullied by managers and colleagues, and even physically banned from entering the institute by security guards.

Sladoljev eventually was reinstated, but not before enduring several years of harassment and pressure. Despite his ordeal, and despite a lack of legal remedies in Croatia for victimized whistleblowers, he said he would do the same thing if presented with a similar situation.

Standard Six

Immunity from prosecution for disclosing sensitive information

2 of 28 EU countries fully meet this standard
Overall score for EU countries: 0.39 out of 3

Throughout the world, many whistleblowers who exposed major corruption scandals and public health dangers in recent years have faced criminal investigation, prosecution or imprisonment.

Some have become well-known public figures: Edward Snowden, Chelsea Manning, John Kiriakou, Herve Falciani, Antoine Deltour and Thomas Drake.

Many others are lesser-known, though their cases are no less illustrative of the phenomenon:

- Romanian intelligence staffer Constanin Bucur was prosecuted and convicted in 1998 after exposing widespread government wire-tapping of journalists, politicians and business people.
- Liechtenstein computer technician Heinrich Kieber was prosecuted and convicted in 2003 after exposing systemic tax evasion at LGT Bank.
- Kosovo bank cashier Abdullah Thaci was prosecuted, convicted and fined EUR 5,000 in 2015 after reporting embezzlement of public funds.

Prosecution and imprisonment are chilling effects on whistleblowing and, more generally, on the free flow of information that the public has a right to know. Criminal cases punish whistleblowers who arguably are exercising their right to freedom of expression. Threats of prosecution deter employees and citizens from coming forward with critical information that could assist regulators and law enforcement.

Prosecution has become a more frequent response by authorities as more whistleblower cases have emerged from the political, financial, banking, national security, military and intelligence spheres.

European and international standards recommend that whistleblowers not face criminal proceedings if they report sensitive information in a responsible manner, such as military and official secrets, proprietary information and personal data. The OECD suggests "waiver of liability/protection from criminal…liability, particularly against…breach of confidentiality or official secrets laws."

For this standard, each EU country was scored on scale of 0-3 points, depending on the types of immunity granted to whistleblowers. The composite score for all 28 countries on this standard is 0.39 out of a maximum possible score of 3.

Given the growing importance of shielding whistleblowers from punitive and vindictive prosecution – especially those who disclose sensitive information – this low score is of particular concern.

Only two countries fully meet this standard, both of which have a standalone whistleblower law that covers the public and private sectors:

1. Ireland
2. Malta

Ireland's law provides protection from "any offence prohibiting or restricting the disclosure of information." Malta's law provides protection from criminal proceedings including "calumnious accusations."

Greece has provisions for this standard. Under Law 4254, public employees who report bribery or influence peddling by public officials are eligible for immunity from prosecution for perjury, defamation, false accusations and official secrets violations.[17] This applies only if the whistleblower is not personally involved with the misconduct, did not report the misconduct for personal benefit, and their disclosure contributes significantly to revealing and prosecuting the misconduct. However there are still gaps in the listed protections.

Twenty-two EU countries provide no specific forms of criminal immunity for whistleblowers, including six of the eight countries with standalone law covering the public and private sectors.

Among the few narrow provisions in Europe that include protection from prosecution are the UK's Data Protection Act, which exempts disclosures made for "the purposes of journalism," and the EU Trade Secrets Directive, which exempts disclosures of "wrongdoing or illegal activity" that "serve the public interest."

Criminal prosecution as a tool to persecute whistleblowers

Two recent, high-profile cases in Europe illustrate how authorities can use criminal prosecution to persecute whistleblowers who expose wrongdoing – even when a disclosure is in the public interest.

In 2014 newspapers and TV stations in several countries published tens of thousands of internal documents and 548 tax rulings leaked to the media by PricewaterhouseCoopers employees Antoine Deltour and Raphaël Halet. In what became known as LuxLeaks, the documents exposed favourable tax deals between government authorities in Luxembourg and more than 300 multinational companies. The likes of Amazon, Apple, Deutsche Bank, Heinz, IKEA and Pepsi secretly were granted tax rates of less than 1 per cent.

Rather than being protected from prosecution, Deltour and Halet were charged with theft, disclosing trade secrets, breach of professional secrecy, money laundering and computer fraud. In June 2016 they were convicted and given suspended prison sentences. Journalist Edouard Perrin was also charged but acquitted. In March 2017 a Luxembourg appeals court reduced Deltour's and Halet's sentences but upheld their criminal convictions. Subsequent proceedings in the Court of Cassation, the highest court in Luxembourg, annulled the convictions of theft, fraudulent access to a computer system, and laundering acquired data against Deltour despite the appeal convictions being upheld against Halet. On 11 January 2018, Luxembourg's Court of Cassation threw out Deltour's conviction, ruling that he is a whistleblower and applying the criteria set up by the European Court of Human Rights. However, the court found Halet did not meet the European Court's criteria for whistleblowing and upheld his conviction.[18] The European Commission has officially condemned such favourable tax arrangements.

Four years earlier the European Court of Human Rights ruled that the Romanian government violated the freedom of expression rights of Constantin Bucur. Bucur was fired from the Romanian Intelligence Service in 1998 after revealing that journalists, politicians and business people were being secretly wire-tapped. He was convicted of disclosing official secrets and given a two-year suspended prison sentence. In 2013 the Court ruled that Bucur's right to freedom of expression, granted by Article 10 of European Convention on Human Rights, had been violated. Still, his criminal conviction remained on his record.

Standard Seven

Penalties for whistleblower retaliation and other mistreatment

0 of 28 EU countries fully meet this standard
Overall score for EU countries: 0.25 out of 3

Legal consequences can be effective in deterring managers from abusing workers and allowing hazardous conditions to persist. From factories and construction sites to hospitals and restaurants, public authorities routinely penalize workplaces that maintain unhealthy or unsafe conditions. Many countries also have sanctions for harassing, bullying or discriminating against employees.

In the case of whistleblowing, though cases of retaliation have been reported in every EU country, there are no known instances of managers being fined or charged with victimizing a whistleblower. Reprisals thus can be directed at whistleblowers with impunity.

There are also no known cases in the EU of people being penalized for blocking a whistleblower from making a report, violating a whistleblower's confidentiality, failing to properly investigate a whistleblower's disclosure or other wrongdoing.

In the UK, which is widely considered to have one of the strongest whistleblower laws in Europe, a lack of penalties has corresponded with all manner of reprisals being meted out against employees: bullying, reduction of duties, legal threats, trumped-up disciplinary charges, verbal abuse and orders to undergo psychological examinations.

Gaps in the UK's Public Interest Disclosure Act enable and can even institutionalize retaliation, rather than penalizing it. The law also permits managers and co-workers to engage in a practice known as "reason shopping" – contriving phony rationales to discredit, fire and ultimately defeat whistleblowers in court.[19]

European and international standards recommend various types of penalties for retaliation, interference, exposing a whistleblower's identity, and failing to follow up on whistleblower disclosures.

The OECD recommends disciplinary, civil or criminal penalties for people who retaliate against a whistleblower. The Council of Europe suggests empowering courts and regulators to directly sanction, fine or penalize employers or other responsible persons for "failing to conduct a prompt and adequate investigation in light of the information received."

For this standard, each EU country was scored on scale of 0-3 points, depending on the range of penalties for mistreating a whistleblower. The composite score for all 28 countries on this standard is 0.25 out of a maximum possible score of 3.

This is lowest composite score among the nine standards, and one of only two standards that is not fully met by any EU countries (the other is Standard 5). Seven countries have penalties for one type of violation. Twenty-one countries have no penalties of any kind.

These three countries with standalone whistleblower laws covering the public and private sectors have partial penalties for violations:

- In France hampering a person from making a report is a crime punishable by one year in prison and/or a fine of EUR 15,000.
- In Malta a person can be jailed for three months and/or fined up to EUR 1,200 for preventing a person from making a report, or for threatening or stalking a whistleblower or his/her family.
- In Slovakia a person can be fined up to EUR 20,000 for failing to set up an internal disclosure system, examine disclosures within 90 days, notify whistleblowers of the outcome, or keep records for at least three years.

The strongest penalties of any European country can be found in Bosnia and Herzegovina, a non-EU member. Directors of state-level agencies can be personally fined up to EUR 10,000 for failing to comply with an order to reinstate or stop retaliation of a whistleblower, or failing to implement whistleblowing procedures. The threat of a fine was a key factor in Danko Bogdanović being reinstated to his customs position in June 2015, following a two-year suspension for reporting corruption within the Indirect Taxation Authority.

Montenegro, also a non-EU country, has outlawed retaliating against a whistleblower. This charge reportedly has been brought against 17 people, though all of these cases have been dropped.[20]

UBS harasses, fires and sues whistleblower with impunity

The story of Stéphanie Gibaud exemplifies how, in the absence of penalties, companies, organizations and managers are free to retaliate against whistleblowers with impunity.

Gibaud joined UBS, Switzerland's largest bank, in 1999 to develop partnerships with luxury companies and organize events with clients in France. In 2008, shortly after Bradley Birkenfeld exposed widespread tax evasion at UBS, the bank ordered Gibaud to erase her hard drive in order to conceal information on clients and advisors in Belgium, France, Luxembourg, Monaco, Switzerland and elsewhere. She refused to comply and told authorities about UBS' alleged role in encouraging tax evasion and money laundering in complicity with UBS France.

After a three-year harassment campaign against her, Gibaud was made redundant in 2012. A year later UBS France was fined EUR 100 million – the most possible under French law – over lax internal controls that enabled the bank to help French clients evade taxes.

In 2014 Gibaud published a book on the scandal, La Femme qui en savait vraiment trop (The Woman who Knew Too Much), for which UBS sued her for defamation. In March 2015 a labour court ruled in favour of Gibaud and ordered UBS to pay EUR 30,000 damages for harassment. As of mid-2017, nearly 10 years after Gibaud's initial report, the defamation case against her was still pending. Aside from being ordered to pay her EUR 30,000, UBS has faced no consequences for persistently retaliating against Gibaud.

In 2017, Belgium added a whistleblower protection scheme for some private sector financial services firms, in execution of the 'Market Abuse Regulation of 2014'.

Standard Eight

Appointment of a designated whistleblower agency

1 of 28 EU countries fully meets this standard
Overall score for EU countries: 0.36 out of 2

Whistleblowers are not typical crime witnesses. Employees who discover crime, corruption or public health dangers from within their workplace are extremely vulnerable to all manner of retaliation – from firing and demotion, to harassment and lawsuits, to prosecution and physical violence.

Managers and co-workers can be innovative in how they plan and orchestrate retaliation campaigns. Often, bogus allegations of misconduct are levelled against the whistleblower, leading to sham disciplinary proceedings that culminate with the employee being fired, demoted or transferred. Their work record and reputation are tarnished, creating long-term career difficulties from which they may never fully recover.

All countries have police, prosecutors and various oversight agencies that investigate citizens' reports of wrongdoing. Typically, these are the organizations that people first think to contact when they witness or have information about a crime or public health threat.

However, law enforcement, regulatory and judicial agencies generally do not have the expertise, legal authority, capacity or even the willingness to provide the specialized attention required to protect whistleblowers from reprisals and follow up on their disclosures thoroughly and appropriately. Supporting whistleblowers and investigating insider information – especially in sensitive or dangerous situations – are specialized tasks that often do not fit within the toolbox of these agencies.

Whistleblower support organizations report that many whistleblowers come to them with stories of being serially referred from one public agency to the next, none of which are able to provide advice and support. Imperilled employees need a unique set of resources – legal, investigative, financial, career and sometimes physical protection – that rarely if ever can be found

within traditional public agencies.

Anecdotal evidence shows that simply adding whistleblower protection to the portfolio of an existing agency rarely is effective. In many countries, whistleblowing has become a "hot potato" that officials seek to avoid due to its sensitive and sometimes politically delicate nature.

Most European and international standards therefore recommend that countries establish an independent public agency that specializes in whistleblower cases and issues.

For this standard, each EU country was scored on scale of 0-2 points, depending on whether the country has a whistleblower agency and, if so, whether it is independent or part of another agency. The composite score for all 28 countries on this standard is 0.36 out of a maximum possible score of 2.

Only the Netherlands has a designated whistleblower agency, the Huis voor Klokkenluiders – literally the "House for Whistleblowers," but known as the Whistleblowers Authority. The agency was established with the passage of the Whistleblowers Authority Act in March 2016. The Authority, which officially opened on 1 July 2016, works autonomously and independently, has five board members appointed by Royal Decree, and as of spring 2017 it had an annual budget of EUR 3 million with a staff of 13.

Apart from The Netherlands with its own whistleblower agency, eight countries have given existing agencies the responsibility to receive whistleblower reports and/or oversee whistleblower rules and policies:

1. Belgium
2. Bulgaria
3. France
4. Hungary
5. Italy[21]
6. Malta
7. Slovakia
8. Slovenia

Among these, Hungary, Malta and Slovakia have a standalone whistleblower law but no specialized agency.

Twenty EU countries do not have a designated agency or office to receive and investigate whistleblower disclosures and retaliation complaints.

Lacking a designated agency with expertise in how to properly care for disclosures, the UK passed on the name of a whistleblower to the very company that the whistleblower had accused of corruption (see box, below). These and other cases throughout Europe illustrate the need for specialized agencies staffed by trained experts who have the knowledge and commitment to intervene on behalf of whistleblowers and ensure their rights are upheld.

UK officials violate whistleblower's confidentiality

In 2009 a Nigerian anti-corruption campaigner reported that funds from the UK's Commonwealth Development Corporation (CDC) had been invested in companies suspected of money laundering. He made the report on the condition of confidentiality to the UK Department for International Development (DfID), which oversees foreign aid.

The UK lacks a designated whistleblower protection agency, so DfID handled the matter itself. Instead of conducting an independent investigation into the man's disclosure, DfID and CDC alerted the very companies that were accused of wrongdoing. The companies learned the man's identity because his name was listed in the electronic properties of the files.

The man (who is not being identified here even though his name is public) became the victim of an orchestrated harassment campaign. He and his family were surveilled by private investigators in Nigeria and the UK. He was secretly photographed at home and in church. His children were followed on the way to school.

In 2012 then-DfID Secretary Andrew Mitchell publicly admitted that his department "inadvertently" passed on the man's name to the companies and issued an unconditional apology. It is not known whether the man received compensation for damages.

As of mid-2017 the UK still lacked a designated agency to protect the identity of whistleblowers and shield them from retaliation.

Standard Nine

Transparent administration and statistics

2 of 28 EU countries fully meet this standard
Overall score for EU countries: 0.32 out of 3

It is said that a public accountability system cannot be fully accountable unless details of its operations are made known to the public. In the case of a whistleblower protection system, these details would be the number and type of disclosures and retaliation complaints filed with public authorities each year, and the outcomes of these reports.

Police and judicial agencies routinely release information on the number and types of crimes, arrests, investigations, prosecutions, convictions and sentences. By having regular access to this information, the public can observe trends, determine how well justice is being served, and identify the cost effectiveness of the system.

Though whistleblowing is not a new phenomenon, a vast majority of countries in Europe and elsewhere do not distinguish – publicly, at least – whistleblowing cases originating in workplaces from crime and corruption reports in general. Therefore there is little or no way of knowing how many whistleblower cases are filed each year, let alone their outcomes and impacts.

Democracy depends not just on integrity and efficiency, but also the transparency of all of its functions. European and international standards call for whistleblower protection systems to operate in a transparent manner, including by releasing statistics on reports and cases. The OECD recommends that countries "monitor and periodically review the effectiveness of the whistleblowing framework, [and] collect and disseminate data."[22]

For this standard, each EU country was scored on scale of 0-3 points, depending on the amount of information made available to the public and how transparently whistleblower laws and programs are administered. The composite score for all 28 countries is 0.32 out of a maximum possible score of 3.

Of the 28 EU countries, only 2 release comprehensive information to the public:

1. Ireland
2. Netherlands

Both countries have standalone laws covering the public and private sectors.

The Netherlands has by far the most transparent system in Europe. The Whistleblowers Authority (Huis voor Klokkenluiders), established under the 2016 Whistleblowers Authority Act, released its first annual report in 2017.[23] The report includes detailed statistics on many indicators, including requests for advice, whistleblower cases, types of retaliation, and the types and status of investigations requested. The report also explains in detail how the Authority operates, the services it provides, and financial and administrative information (see box, below).

Passed in 2014, Ireland's Protected Disclosures Act requires all public agencies to publish an annual report that includes the number of disclosures and any actions taken in response. As of spring 2017, these reports mainly consisted of brief summaries with limited details from various agencies.

The other six countries with established standalone laws covering the public and private sectors release little or no information about their whistleblower systems: France, Hungary, Malta, Slovakia, Sweden and the UK.

In the UK, the London-based NGO Public Concern at Work publishes detailed statistics on the number and outcomes of cases filed with Employment Tribunals under the Public Interest Disclosure Act.[24] According to the organization, the statistics were provided by the Department for Business, Energy and Industrial Strategy.

In February 2017 a searchable online system was made available for UK Employment Tribunal rulings issued in England, Wales and Scotland. The system has cases dating from February 2016. [25] Paper files of cases heard by Employment Tribunals in England and Wales, including judges' rulings and compensation awards, are available for public review at the Bury St. Edmunds Courthouse. Only cases from the past six years are available.

Twenty-three EU countries release no official information on the number and outcomes of whistleblower disclosures and retaliation complaints, nor do they inform the public in detail about their whistleblower policies and mechanisms.

Dutch public reporting a model for Europe

Released to the public in March 2017, the inaugural Annual Report of the Netherlands' Whistleblowers Authority has established a new standard for how countries should inform the public on the functioning of whistleblower protection systems.

The report covers the first six months of the agency's work, from 1 July to 31 December 2016. During this period 532 people contacted the agency, which the report says was "considerably" more than had been anticipated. Of the calls, 33 per cent involved the private sector, 32 per cent involved the public sector and 23 per cent involved the semi-public sector.

Of the 532 reports, 70 were classified as whistleblower cases. Most private sector cases were about alleged abuses in the financial sector. The largest category in the public sector was violations in municipalities and ministries, and for the semi-public sector the top category was care and welfare services.

One of the main benefits of the report is the tracking of retaliation. Sixty-five of the 70 whistleblowers said they previously had reported their concerns, and of these 50 said they had been retaliated against. Twenty-three were fired, 11 were bullied or pressured, 3 were denied a transfer or promotion, and 3 were suspended. Eight resigned and two went on sick leave. Twelve whistleblowers requested investigations.

Conclusions and Recommendations

Levelling the Scales

This report is the first independent, public assessment of how the whistleblower protection laws of all 28 EU countries measure up against recognized European and international standards.

Importantly, four of the nine standards that were chosen relate to protections and remedies for whistleblowers.

Without airtight legal protections from all types of retaliation – including from lawsuits and prosecution – as well as institutions to enforce these protections reliably and speedily, employees and citizens who report wrongdoing will continue to suffer career and financial ruin. All the while, crime and corruption will persist as guilty parties have little reason to fear being exposed, leaving the concept of whistleblower protection as a contradiction in terms.

For these four critical standards, the composite score for all EU countries is 0.55 out of 3. It is little wonder that stories of victimization far outweigh stories of redemption.

Among the other significant findings:

- Seven EU countries score 0 out of 27 points
- Countries including Austria, Germany and Spain score poorly
- No countries fully meet the standards for providing access to remedies, and for penalizing retaliation and other violations
- Six other standards are met by two countries or fewer
- Only nine countries have a designated public agency to oversee whistleblower issues, casting significant doubt on their ability and willingness to support and protect vulnerable employees.

Whistleblower laws and policies in all EU countries have a long way to go before providing the mechanisms, protections and remedies needed. The real-life examples presented here confirm that protections throughout Europe are inadequate.

These other cases illustrate that whistleblowers start out at a great disadvantage. In most instances, they are the only people within a government agency or private company willing to report misconduct. Others may know about the misconduct, but more often than not it is a single employee who steps forward.

From the very outset, this places the whistleblower in a position of isolation and powerlessness. They are professionally and often personally ostracised, typically with no access to expert advice, legal support or other resources – even from their own human resources department, whose job it is to ensure fair employment practices.

This report finds that actual protections are missing from the whistleblower protection laws of most EU countries. These laws lack the elements and concepts to shield whistleblowers from the moment retaliation begins. They do not mitigate for the fact that whistleblowers are automatically and fundamentally starting out in a position of weakness – often going up against powerful political or business interests, or both.

Typically, employees must wait until they are fired, demoted or serially bullied before they can seek remedies and relief in court. By this point, many if not most whistleblowers have lost their job, professional status and financial security.

The mechanisms in most European laws do not give whistleblowers the fighting chance to be made whole again. Retaliation compounds upon itself, forming a barrier to justice and relief that is very difficult to overcome. Even more than this, most laws are incapable of protecting employees from reprisals in the first place.

The scales can made even only by enacting and enforcing laws and policies that recognize the inherent vulnerability of reporting wrongdoing from within an organization.

Experience throughout Europe also has shown that political and social change can be difficult. Reforms have been, and continue to be, thwarted by strong historical forces – particularly in countries with a legacy of dictatorial regimes, where whistleblowers to this day often are termed spies and snitches. Policy-

makers in many countries have pledged to strengthen whistleblower rights, only to abandon these promises.

Weak laws can no longer be attributed to a lack of knowledge on the part of policy-makers. Numerous European and international standards are available on which comprehensive laws can be based. This report documents and presents the legal gaps that should and must be closed.

Appendix 1: Table 2 - part A

COUNTRY	STANDARD 1	STANDARD 2	STANDARD 3	STANDARD 4	STANDARD 5	STANDARD 6	STANDARD 7	STANDARD 8	STANDARD 9		SCORE
	Specific whistle-blower provisions 0-4	A range of disclosure channels 0-3	Types of Retaliation protection 0-3	Retaliation protection mecha-nisms 0-3	Types and mecha-nisms of relief 0-3	Immunity from secrecy and privacy laws 0-3	Penalties for a range of violations 0-3	Designat-ed whis-tleblower agency 0-2	Transparen-cy, statistics and reporting 0-3	Country score (maximum score: 27)	% of 27 points
Austria	0	1	0	0	0	0	0	0	0	1.0	3.7%
Belgium	1	2	1	1	1	0	1	1	0	8.0	29.6%
Bulgaria	0	1	1	1	0	0	0	1	0	4.0	14.8%
Croatia	0	0	0	0	0	0	1	0	0	1.0	3.7%
Cyprus	0	0	0	0	0	0	1	0	0	1.0	3.7%
Czech Republic	0	0	0	0	0	0	0	0	0	0.0	0.0%
Denmark	0	0	0	0	0	0	0	0	0	0.0	0.0%
Estonia	0	0	0	0	0	0	0	0	0	0.0	0.0%
Finland	0	0	0	0	0	0	0	0	0	0.0	0.0%
France	4	3	2	1	2	0	1	1	0	14.0	51.9%
Germany	0	0	0	0	1	0	0	0	0	1.0	3.7%
Greece	1	0	2	1	0	2	0	0	0	6.0	22.2%
Hungary	4	2	0	0	0	0	0	1	0	7.0	25.9%
Ireland	4	3	3	1	1	3	0	0	3	18.0	66.7%

COUNTRY	STANDARD 1	STANDARD 2	STANDARD 3	STANDARD 4	STANDARD 5	STANDARD 6	STANDARD 7	STANDARD 8	STANDARD 9		SCORE
	Specific whistle-blower provisions 0-4	A range of disclosure channels 0-3	Types of Retaliation protection 0-3	Retaliation protection mecha-nisms 0-3	Types and mecha-nisms of relief 0-3	Immunity from secrecy and privacy laws 0-3	Penalties for a range of violations 0-3	Designat-ed whis-tleblower agency 0-2	Transparen-cy, statistics and reporting 0-3	Country score (maximum score: 27)	% of 27 points
Italy	3	2	3	2	1	0	1	1	0	13.0	48.1%
Latvia	2	1	1	0	0	0	0	0	0	4.0	14.8%
Lithuania	0	0	0	0	0	0	0	0	0	0.0	0.0%
Luxembourg	2	2	1	1	1	1	0	0	0	8.0	29.6%
Malta	4	2	3	1	1	3	1	1	0	16.0	59.3%
Netherlands	4	2	0	0	0	0	0	2	3	11.0	40.7%
Poland	0	0	0	0	0	0	0	0	0	0.0	0.0%
Portugal	2	0	1	0	0	0	0	0	0	3.0	11.1%
Romania	3	3	1	1	1	0	0	0	0	9.0	33.3%
Slovakia	4	1	1	3	1	0	1	1	1	13.0	48.1%
Slovenia	2	2	1	2	1	1	0	1	1	11.0	40.7%
Spain	0	0	0	0	0	0	0	0	0	0.0	0.0%
Sweden	4	3	1	1	1	0	0	0	0	10.0	37.0%
UK	4	3	2	1	2	1	0	0	1	14.0	51.9%

Appendix 2: Methodology

Whistleblower protection laws for all 28 EU countries were identified and assessed against nine European and international standards. The nine standards were developed based on those presented in Annex 2, and on research and experience of the authors. Reviewed national laws or parts of laws are also listed in Annex 3. [26]

For each of the nine standards, countries were given points based on the following system. The maximum score for each country is 27. The total maximum score for all 28 EU countries is 756.

1) Specific whistleblower protection provisions for employees in public and private sectors
0: none
1: public or private sector – part of other law
2: public and private sectors – part of other law
3: public or private sector – standalone law
4: public and private sectors – standalone law

2) A full range of disclosure channels: internal, regulatory, public
0: none
1: 1 of 3
2: 2 of 3
3: all 3

3) Protection from all types of retaliation
0: none
1: basic protection from workplace retaliation or prosecution
2: comprehensive protection from workplace retaliation or prosecution
3: comprehensive protection from workplace retaliation and prosecution

4) A full range of retaliation protection mechanisms
0: none
1: judicial or weak administrative protections
2: judicial or strong administrative protections
3: judicial and strong administrative protections

5) A full range of relief types and mechanisms
0: none
1: few
2: intermediate
3: comprehensive

6) Immunity from prosecution for disclosing sensitive information
0: none (official/military secrets, trade secrets, data privacy)
1: 1 of 3
2: 2 of 3
3: all 3

7) Penalties for whistleblower retaliation and other mistreatment
0: none
1: few
2: intermediate
3: comprehensive

8) Appointment of a designated whistleblower agency
0: none
1: part of existing agency
2: independent agency

9) Transparent administration and statistics
0: none
1: basic
2: intermediate
3: comprehensive

Appendix 3 : National Whistleblower Protection Laws or Parts of Law Reviewed for this Report

Belgium
Law on the Reporting of a Suspected Violation of Integrity in a Federal Administrative Authority by a Staff Member (2013)

France
Law on Transparency, the Fight against Corruption and Modernization of the Economy (2016)

Greece
Law No. 4254: Measures to Support and Develop the Greek Economy (2014)

Hungary
Act on Complaints and Public Interest Disclosures (2013)

Ireland
Protected Disclosures Act (2014)

Italy
Provisions for the protection of whistleblowers who report offences or irregularities which have come to their attention in the context of a public or private employment relationship (2017)

Bill of Law S. 2156-B (2012) Administrative liability rules for legal persons, companies and associations, including those without legal personality. Legislative Decree no. 231/2001 ("Decree no. 231")

Latvia
Labour Law (2001)

Luxembourg
Law Strengthening the Means of Combating Corruption (2011)

Malta
Protection of the Whistleblower Act, 2013

Netherlands
Whistleblowers Authority Act (2016)

Portugal
Law 19/2008 (2008)

Romania
Law on the Protection of Public Officials Complaining about Violations of the Law (2004)

Slovakia
Act on Certain Measures Concerning the Reporting of Antisocial Activities (2014)

Slovenia
Integrity and Prevention of Corruption Act (2011)

Sweden
A Special Protection against Reprisals for Workers Who Report Alarms about Serious Misconduct (2016)

UK
Public Interest Disclosure Act (1998)

Standards for Whistleblower Protection

Standards for Whistleblower Protection

International Organizations

Council of Europe
Recommendation on the Protection of Whistleblowers

OECD
Study on Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation

Organization of American States
Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses

Civil Society

Blueprint for Free Speech
Blueprint Principles for Whistleblower Protection

Government Accountability Project
International Best Practices for Whistleblower Policies

Transparency International
International Principles for Whistleblower Legislation

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1 Lithuania recently enacted a comprehensive legal framework to protect whistleblowers but as it will not come into effect until 1 January 2019, it was not included in the evaluation for this report. The components of this law are however strong across a set of standards, as described here: https://www.oecd.org/corruption/anti-bribery/Lithuania-Phase-2-Report-ENG.pdf
2 Collins, R. *Corruption costs EU 'up to EUR 990 billion a year'*. Reuters. 22 March, 2016. https://www.politico.eu/article/corruption-costs-eu-990-billion-year-rand-study-fraud-funding/
3 *Global Fraud Survey 2016* Ernst & Young http://www.ey.com/uk/en/services/assurance/fraud-investigation---dispute-services/ey-global-fraud-survey-2016---relatedcontent
4 Regional Cooperation Council, 2016.
5 Devine, T. *Why Whistleblowers Wait: Recommendations to Improve the Dodd Frank Law's SEC Whistleblower Awards Program*. GAP. Feb 1, 2016. https://www.whistleblower.org/blog/052001-gap-issues-new-white-paper-–-"why-whistleblowers-wait-recommendations-improve-dodd-frank
6 *Retaliation: When Whistleblowers Become Victims*. Ethics Resource Center, 2012.
7 *Whistleblowing: The Inside Story,* Public Concern at Work and the University of Greenwich, 2013.
8 *National Business Ethics Survey of Fortune 500 Employees,* Ethics Resource Center, 2012.
9 Worth, M. *Whistleblowing in Europe: Legal Protections for Whistleblowers in the EU*. Transparency International, 2013.
10 Wolfe, S., Worth, M. & Dreyfus, S. *Protecting Whistleblowers in the UK: A New Blueprint*. Thomson Reuters and Blueprint for Free Speech, 2016.
11 *Is the law protecting whistleblowers? A review of PIDA claims*. Public Concern at Work, 2015.
12 *Act on certain measures concerning the reporting of antisocial activities and on amendments to certain laws*.
13 Name changed to protect the person's identity.
14 *Ibid*. *Whistleblowing: The Inside Story.*
15 *Ibid*. Wolfe, S., Worth, M., Dreyfus, S. 2016.
16 *Ibid*. Wolfe, S., Worth, M., Dreyfus, S. 2016.
17 Courakis, D, *The Protection of Whistleblowers in Greece following the Introduction of Law-Nr. 4254/2014. Some Critical Remarks*. Speak up Conference, Transparency International, Cyprus. 22 October 2015
18 *Luxleaks whistleblower Antoine Deltour has conviction quashed*. BBC, 11 January 2018. http://www.bbc.com/news/world-europe-42652161
19 *Ibid*. Wolfe, S., Worth, M., Dreyfus, S. 2016.
20 Worth, M. & Dyrmishi, A. *Protecting Whistleblowers in Southeast Europe: A Review of Policies, Cases and Initiatives*. Southeast Europe Coalition on Whistleblower Protection, Blueprint for Free Speech, Romanian Academic Society, 2017.
21 A law passed by the Italian parliament in 2014 established the National Anti-Corruption Authority (ANAC). The new Authority oversees public administrations, subsidiaries and controlled companies, public contracts, and works to implement transparency measures. The ANAC is a separate agency to the public administrations that it oversees, has the force of specific laws to protect whistleblowers that ensure safe reporting channels, and includes penalties for reprisals, interference, or exposure of whistleblowers.
22 *Study on Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation*. OECD, 2012.
23 *Annual Report*. Whistleblowers Authority, 2016. https://huisvoorklokkenluiders.nl/wp-content/uploads/2016/06/HvK_Annual-Report-2016.pdf
24 *PIDA Statistics*. Public Concern at Work, n.d.. www.pcaw.org.uk/law-policy/a-guide-to-pida/pida-statistics
25 *Employment tribunal decisions*. GOV.UK. www.gov.uk/employment-tribunal-decisions
26 There may be additional protections, not evaluated in this report, that are offered via other legal or regulatory mechanisms. This might include, for example, labour or employment laws offering a measure of protection against reprisal toward employees, although such laws may not be specifically recognised as, or described as, whistleblower protection legislation. We welcome any additional information about relevant legal, regulatory or other protections - please email info@blueprintforfreespeech.net.

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