WP 328

Law and practice on protecting whistle-blowers in the public and financial services sectors

Iheb Chalouat,
Carlos Carrión-Crespo and
Margherita Licata

International Labour Office
Geneva

Working papers are preliminary documents circulated to stimulate discussion and obtain comments

First published 2019

Law and practices on protecting whistle-blowers in the public and financial services sectors / International Labour Office, Sectoral Policies Department – Geneva: ILO, 2019

Working Paper No. 328

ISBN: 978-92-2-133859-8 (web pdf)
ISBN: 978-92-2-133858-1 (print)

Published also in French: *Législation et pratique sur la protection des lanceurs d'alerte dans le secteur des services publics et financiers*, ISBN 978-92-2-133860-4 (impreso), ISBN 978-92-2-133861-1 (web pdf); and in Spanish : *Legislación y práctica en materia de protección de denunciantes en el sector público y en el sector de servicios financieros*, ISBN 978-92-2-133862-8 (print), ISBN 978-92-2-133863-5 (web pdf).

Preface

The important labour dimension of fighting corruption, including the protection of whistle-blowers, has emerged as a subject of discussion in various international forums over the past decade. In its General Survey of 2013, the ILO Committee of Experts on the Application of Conventions and Recommendations underscored the need for an effective, efficient public service with a strong ethical culture and transparency. In 2014, the conclusions of a Global Dialogue Forum on Challenges to Collective Bargaining in the Public Service, held by the ILO, included references to the role of legislation, social dialogue and collective bargaining in maintaining the independence and protection of public servants. A year later, the international community adopted the Sustainable Development Goals, including target 16.6, which calls on member States to "develop effective, accountable and transparent institutions at all levels".

A number of recent discussions of international labour standards have also picked up on the fight against corruption. This includes the recently adopted Violence and Harassment Convention, 2019 (No. 190), which calls on member States to take measures to protect whistle-blowers who report violence or harassment at work, as well as the 2016 Resolution of the International Labour Conference concerning decent work in global supply chains, which also urges member States to protect whistle-blowers as a means to fight corruption.

One important aspect in the fight against corruption is the protection of the many alert workers at all hierarchical levels of public and financial institutions who have disclosed information about wrongdoing, often to the detriment of their jobs and careers.

The protection of whistle-blowers contributes to an enabling environment for decent work and sustainable growth. It reduces tolerance of corruption, strengthens oversight bodies that are responsible for ensuring fair and decent working conditions for all workers, and increases transparency in financial transactions that affect both the public and the financial sectors. Protection of whistle-blowers safeguards public investments in infrastructure, which can have a significant multiplier effect on indirect and induced employment. Further, it can encourage investment in quality social services by reducing inequalities of access, promoting enterprise development and increasing educational opportunities.

It is in this spirit that the Sectoral Policies Department presents this paper, which examines national, as well as regional, law and practice protecting whistle-blowers. The selected examples show the scope of protection that member States, with the collaboration of employers' and workers' organizations, provide to these workers. They also attempt to map out possible gaps and challenges in the current legislation, making recommendations for the advancement of a comprehensive protective framework for whistle-blowers. I trust that these pages will contribute to promoting constructive dialogue in this regard.

Alette van Leur
Director
Sectoral Policies Department

Contents

Boxes

Figures

Tables

Acknowledgements

The authors would like to acknowledge the substantive contributions made by David Kapya, Mohammad Taher and Oliver Liang.

Abbreviations

AMF	Financial Markets Authority (Autorité des Marchés Financiers)
APEC	Asia-Pacific Economic Cooperation
EU	European Union
FSMA	Financial Services and Markets Authority
G20	Group of Twenty
ILO	International Labour Organization
NGO	non-governmental organization
OECD	Organisation for Economic Co-operation and Development
SEC	Securities and Exchange Commission

1. Introduction

1.1 Background to and objectives

The protection of whistle-blowers is a necessary element of a coherent strategy to combat corruption, which includes other measures to create an ethical culture in the public and financial sectors. Considering the interplay between public bodies and private actors when corruption occurs, practices in the private sector and public sector on whistle-blowing can be mutually supportive. For the purpose of this study, the financial sector is used as a good example, within the private sector, of where concrete reforms and legislation have been put forward to address the issue of whistle-blower protection. The International Labour Organization (ILO) Committee of Experts on the Application of Conventions and Recommendations has underscored the importance of "qualified and motivated staff and a dynamic and depoliticized public management and administrative culture, with an ethical focus, which combat administrative corruption" (ILO, 2013, paras 224–5, 229, 556–7). The conclusions of the Global Dialogue Forum on Challenges to Collective Bargaining in the Public Service (Geneva, 2–3 April 2014) held that "[s]ocial dialogue should aim at, among other things, creating transparent conditions in which the public service develops an ethical culture that prevents corruption". In addition, the three latest international labour standards adopted – the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), and the Violence and Harassment Convention, 2019 (No. 190) – as well as the 2016 Resolution of the International Labour Conference concerning decent work in global supply chains – all refer to corruption or the protection of whistle-blowers.

This points to the urgency of creating a workplace culture that respects and protects whistle-blowers, supported by adequate policies and regulation. As the Global Commission on the Future of Work stated in its report: "These are collective challenges; they demand collective responses" (Global Commission on the Future of Work, 2019, p. 33).

This paper seeks to map out laws and practices and identify measures in place for the protection of whistle-blowers by analysing a representative sample of laws, regulations and international instruments. The sample covers relevant international and regional instruments and national laws covering public and financial sectors (in full or in part) from 23 countries from four regions: Australia, Belgium, Brazil, Canada (federal and Quebec), Chile, France, Germany, India, Italy, Japan, Mexico, Namibia, the Netherlands, New Zealand, Peru, Republic of Korea, Singapore, South Africa, Sweden, Switzerland (Canton of Geneva), Tunisia, the United Kingdom, and the United States of America. It seeks to reflect the broad diversity of approaches to the issue.

The paper examines the specific tasks carried out by public and financial sector workers which are labelled as whistle-blowing, and which trigger the legal protection that attaches to such a label. The paper does not cover other private sector activities even if they could be covered by the laws examined.

1.2 Rationale for workers' protection

Workers in the public and financial services who report illicit actions – including corruption, money-laundering, tax evasion, drug trafficking, environmental crimes, safety violations and illicit trade – are an important element in improving public or financial sector governance. Such workers are often engaged in an employment relationship that provides them with access to privileged information linked to the management of public or financial sector policies, operational practices or finances. This places them in a unique position to alert authorities or the public and prevent possible harm or damage through an efficient and transparent response to the problem. Public servants are unique in that "in general, they have more information about the institutional mechanisms for receiving and processing complaints of corruption, but at the same time are most vulnerable in the absence of appropriate protection systems for reporting acts of corruption" (Chevarría and Silvestre, 2013, p. 19).

Whistle-blowing is a crucial mechanism in the struggle for integrity and for public interest (Wolfe et al., 2014, p. 10). Its role as a mechanism for reporting misconduct, fraud and other forms of illicit or unethical behaviour allows the public to be aware of violations and breaches that would otherwise remain concealed. This is particularly the case in democratic States where accountability and transparency, heightened by whistle-blowing, are core values that support the functioning of State apparatuses. Accordingly, whistle-blower protection from retaliation, disproportionate punishment, unfair treatment and other challenges is essential, as it allows employees to use appropriate channels to speak out against wrongdoing. For instance, the actions of Dr Jiang Yanyong, a physician who reported the severe acute respiratory syndrome (SARS) virus, directly led to saving millions of lives (Khan, 2004). Major fraudulent financial activities that led to the collapse of companies such as Enron and Barings, for example, could have been halted by the authorities if appropriate whistle-blowing procedures and protection schemes had been put in place.

Similarly, whistle-blowing has proved particularly effective in addressing financial crimes, from tax evasion to securities fraud. However, whistle-blowers have paid a steep price and are in great need of effective protection (OECD, 2009), as demonstrated by the case of Bradley Birkenfeld (United States of America v. Bradley Birkenfeld and Mario Staggl, 2008), who was convicted for fraud conspiracy and sentenced to 40 months in jail, and is subject to arrest in Switzerland for violating Swiss banking law due to his reporting to the United States Government about tax evasion (Browning, 2011). Box 1.1 presents further examples.

Indeed, significant risks and costs are associated with whistle-blowing, specifically for workers whose statutory duty is to report wrongdoing based on their access to privileged information linked to the management of public policies. This is especially the case in the absence of a whistle-blowing protection law safeguarding the rights of this specific class of workers. The Latin American Union of Workers of Oversight Bodies (ULATOC) has noted that "[t]his class of workers are subject to a special type of workplace harassment identified as objective labour violence. . . . We want to highlight that this kind of violence is not based on gender, religion, sex, political or union activity, but on the specific functions they perform; hence we call it objective. The determining factor is the task sensitive to the fight against corruption, inefficiency and lack of transparency, and in support of tax justice. "" (ULATOC, 2018). In

general, for whistle-blowers the risk of being fired is prominent, especially when supervisors are involved in the wrongdoing being reported (Chamorro-Courtland and Cohen, 2017).

Box 1.1 Reprisals against whistle-blowers

The cases of David Munyakei and Jeffrey Wigand illustrate the risks of whistle-blowing, as they both lost their jobs as a result of their actions.

Munyakei was an employee at the Central Bank of Kenya who in 1993, during the performance of his duties, realized that he was processing the payment for the export of diamonds and gold, non-existent in Kenya. After deciding to present sensitive documentation to opposition Members of Parliament, thereby exposing what would become known as the Goldenberg scandal, Munyakei was arrested temporarily, fired, and, fearing for his life, exiled from Nairobi to Mombasa, where he lived precariously for a decade until his death in 2006.

Jeffrey Wigand was an American biochemist and the head of research and development at a major tobacco company. After exposing on television the toxicity of the tobacco produced by his company, Dr Wigand was fired, harassed and received anonymous death threats.

Sources: Kahora, 2009; National Whistleblower Center, 2019.

Additionally, potential whistle-blowers are faced with considerable pressure from supervisors. Direct and indirect physical threats of violence and harassment are the most common forms of pressure confronted by whistle-blowers, including against family members (Alexander, 2005). In the particular case of client information, risks related to legal action linked to breaches of confidentiality are also common and are particularly potent in large corporations. This notably takes the form of so-called gagging clauses, recently even in the public sector, which are used to pre-emptively halt potential whistle-blowers from reporting wrongdoings. These consist of "clauses in employment contracts or settlement agreements which purport to prohibit a worker from disclosing information about his current or former workplace" (Pyper, 2016). Generally speaking, there are three different types of gagging clauses:

- those requiring employees to internally report before going to the appropriate body;
- those requiring an employee to waive any monetary award received from whistle-blowing (notably in the case of the Dodd-Frank Act in the United States, discussed later);
- those claiming a breach of contract by a whistle-blower based on confidentiality clauses in an employment contract.

The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression reported to the United Nations General Assembly that whistle-blowers are often at a disadvantage to prove their cases in the courts of law because of existing secrecy laws (United Nations, 2015). The report specifically recommends in paragraph 58:

> When the right [to seek, receive and impart information and ideas of all kinds] and the restriction clash, as they are often purported to do, Governments and international organizations should not adopt laws and policies that default in favour of the restrictions. Rather, laws should favour disclosures of information in the public

> interest. In cases of source and whistle-blower disclosures, public institutions have most of the power – the power to intimidate, to investigate, to prosecute. They also have greater access to information and, thus, the ability to make their case, while the source or whistle-blower typically has only a window into broader policies and practices, hindered by secrecy laws that preclude an adequate defence. If a disclosure genuinely harms a specified legitimate State interest, it should be the State's burden to prove the harm and the intention to cause harm.

Though several advancements have been made in the field of whistle-blower protection, Transparency International reports that much remains to be done to ensure adequate and effective safeguarding of the rights and safety of whistle-blowers (Transparency International, 2013, 2015a, 2017a). For example, in the past 10 years, occupational fraud[1] referrals to prosecution by organizations have declined by 16 per cent, for fear that the whistle-blower will be identified and suffer bad publicity and retaliation (ACFE, 2018). Evidence suggests that in the absence of an effective legal framework, prosecutions against those accused of corruption may deter whistle-blowing for the same reasons cited above, and should be avoided. As the Special Rapporteur recommends in paragraph 65, prosecutions should only be reserved for "exceptional cases of the most serious demonstrable harm to a specific legitimate interest" (United Nations, 2015). But even in such cases, the State "should bear the burden of proving an intent to cause harm, and defendants [whistle-blowers] should be granted (a) the ability to present a defence of an overriding public interest in the information, and (b) access to all information necessary to mount a full defence, including otherwise classified information". And as such, dedicated whistle-blower protection laws, as well as laws specific to sensitive sectors such as the financial industry and those linked to national security, need to be generalized, as current legislation remains scattered, as is the case in Brazil and Singapore.

Another important risk is related to coverage gaps in the existing whistle-blower protection laws, mainly due to confusion in the legal framework regarding which laws apply, how a whistle-blower is defined and the extent of the scope of protection (Osterhaus and Fagan, 2009).[2] Whistle-blowers also face being potentially blacklisted in their respective industries (Sawyer, Johnson and Holub, 2010). Other risks incurred by whistle-blowers include salary reductions, missed promotions and attacks on their credibility (Chamorro-Courtland and Cohen, 2017).

An associated risk is the cost to public and private employers who may need to respond to the actions of their employees, thus deviating additional funds meant for investing in service delivery. To avoid this, "a clear and understandable whistle-blowing policy which is actively implemented and easily accessible for employees to help them understand the definition of

[1] Occupational fraud is defined as the use of one's occupation for personal enrichment through the deliberate misuse or misapplication of the employing organization's resources or assets (Association of Certified Fraud Examiners).

[2] See Osterhaus and Fagan, 2009, page 2: in Latvia, "The lack of clear reporting channels internally led to confusion about how to investigate and resolve the case."

whistle-blowing and protected disclosures" is needed (Ruane, 2016). This policy "would ensure that:

- workers are aware of the key criteria and deter them from bringing complaints where these criteria have not been met; and
- where there is a genuine whistle-blowing claim, there is certainty for both the employee and the employer as to the steps which need to be taken in order to address the complaint in a practical and timely manner."

In addition, employers should provide training to managers on this policy and investigate complaints promptly.

Unfortunately, while advancements have been made at the national and international levels, national legal frameworks are often not comprehensive, enforcement remains weak and internal procedures are not well applied. In addition, there is a noticeable gap in the literature concerning the distinction between authorities responsible for reporting as part of their job (for example, financial industry regulators and the auditor-general) and employees who report as part of ethical conduct. If adequately implemented, whistle-blower protection can be one of the primary instruments to eliminate all forms of unethical behaviour, bringing to light cases before the State and the public. In this sense, it plays a key role in supporting achievement of Sustainable Development Goal 16, which seeks to "build effective, accountable and inclusive institutions at all levels" and to "substantially reduce corruption and bribery in all their forms" (target 16.5). The Global Commission on the Future of Work referred to the benefits of information sharing on several occasions in its report, for example the right of workers to share information to fight gender-based pay differences, to be informed of workplace monitoring and to be able to share this information with their representatives. Also, the Commission called for limits to be placed on the collection of workers' personal data (Global Commission on the Future of Work, 2019, pp. 34 and 44).

The ILO Termination of Employment Convention, 1982 (No. 158), sets out some basic principles on the protection of whistle-blowers, by establishing that "the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities" (Article 5(c)) does not constitute a valid reason for termination, and by placing the burden of proof on the employer for such dismissal (Article 9). Other international legal instruments on corruption (such as Articles 8 and 33 of the United Nations Convention against Corruption, 2003) (UNODC, 2004), have built on the above-mentioned Convention.

2. Review of laws and practice in whistle-blower protection

2.1 Whistle-blowing definitions

Although there is no standard definition of whistle-blowing, the one most recognized in the academic sphere is that set out by Near and Miceli (1985), which defines whistle-blowing as "disclosure by organization members (former or current) of illegal, immoral, or illegitimate practices under the control of their employers, to persons or organizations that may be able to effect action". The ILO defines it in similar terms as "the reporting by employees or former employees of illegal, irregular, dangerous or unethical practices by employers".[3] Definitions of whistle-blowing or whistle-blowers emanating from instruments of international law include the following examples.

- United Nations Convention against Corruption: "any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention" (UNODC, 2015).
- Civil Law Convention on Corruption (European Union Treaty No. 174, 2003): "employees who have reasonable grounds to suspect corruption and who report in good faith their suspicion to responsible persons or authorities" (Council of Europe, 2003).
- The Council of Europe Recommendation on the protection of whistle-blowers defines a whistle-blower as "any person who reports or discloses information on a threat or harm to the public interest in the context of their work-based relationship, whether it be in public or private sector" (Council of Europe, 2014).
- The 2009 Organisation for Economic Co-operation and Development (OECD) Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (OECD, 2009) does not explicitly define whistle-blowing but introduces the notion of protection in its recommendations, namely protection from discriminatory or disciplinary action for public and private sector employees who report in good faith and on reasonable grounds to the competent authorities. Here, whistle-blowing is understood to mean an act of reporting suspected acts of bribery in international business transactions to competent authorities in good faith and on reasonable grounds by both public and private sector employees.

At country level, there appears to be a similar trend towards adopting broad definitions of a whistle-blower at the national level, as in the following examples.

- Ghana's Whistleblower Act 720 (2006), section 2, extends the definition of a whistle-blower beyond the work-based relationship and qualifies a whistle-blower as an employee making a disclosure in respect of an employer; an employee making a disclosure in respect of another employee; or a person making a disclosure in respect of another person, or an institution.

[3] ILO Thesaurus, http://ilo.multites.net.

- In India, the Whistle Blowers Protection Act of 2014, section 4(1), states that "any public servant or any other person including any non-governmental organisation, may make a public interest disclosure before the Competent Authority".
- In Serbia, the Law on the Protection of Whistle-blowers Act, No. 128/2014, defines a whistle-blower in Article 2(2) as "any natural person who performs whistle-blowing in connection with his employment; hiring procedure; use of services rendered by public and other authorities, holders of public authority or public services; business dealings; and ownership in a business entity". The Act goes a step further to define "employment" broadly in Articles 2(5) and 21 to include volunteers, work performed outside employment, internship, or any other factual work for an employer. These are important provisions, given that corruption in itself is a secret act and it should matter less who makes the disclosure.
- The New Zealand Protected Disclosures Act (2000) defines "employee" to include a former employee; a person seconded to the organization; an individual who is engaged or contracted to do work for the organization; a person concerned in the management of the organization (including a person who is a member of the board or governing body of the organization); and a person who works for the organization as a volunteer without reward or expectation of reward for that work.

Although the definition of Near and Miceli (1985) remains the most widely used, several variations go into further depth, as presented in table 2.1.

Table 2.1 Selected definitions of a whistle-blower and their key features

Definitions and sources	Characteristics
The disclosure by organization members (former or current) of illegal, immoral, or illegitimate practices under the control of their employers, to persons or organizations that may be able to effect action (Near and Miceli, 1985).	Standard academic definition and the most widely used one; dating back to 1985. Key elements presented in the study: • The whistle-blower is an insider of the organization. • His/her relationship to the organization is work related. • The whistle-blower may be a former employee. • The information must be presented to an authority (person or organization) capable of stopping the misconduct.
A whistle-blower, informant, or insider is a person that reports wrongdoing, either internally (notably compliance officers) or externally (particularly to public regulators and auditors) when a business engages in illegal and unethical activities that harm stakeholders, other businesses, the government, or the environment (Chamorro-Courtland and Cohen, 2017, p. 191).	First, a whistle-blower may be a person that has information about wrongdoing committed by the employees or management at a business. Second, a whistle-blower might also be personally engaged in the wrongdoing with other colleagues or with the prior knowledge or direction of management.

Definitions and sources	Characteristics
	An example of the first case is a person who would blow the whistle out of a personal belief that the wrongdoing is unethical, or they are incentivized by the prospect of receiving a financial reward. An example of the second case is a person who would blow the whistle for various reasons: • They may have been unfairly pressured to engage in the wrongdoing. • They personally believe the wrongdoing is unethical. • They fear the repercussions of being caught by law enforcement agencies. • They seek to obtain a personal benefit such as a reward or a reduction in penalties for violating the law (e.g. a reduced prison sentence or fine).
Many [definitions of whistle-blowing] include the following conditions (Brenkert, 2010): • An individual has some privileged status with regard to an organization that permits knowledge of inside, confidential, or private information regarding activities undertaken by individuals within the organization. • This individual reports some activities that he or she considers to be illegal, immoral, or opposed to the basic values or purposes of the organization. • The reporting may be done internally or externally to person(s), not in the direct line of reporting, who is (are) capable and willing to stop or prevent such wrongdoing either directly or indirectly. • The wrongdoing is of a substantive or serious nature. • This wrongdoing affects the public interest, though not necessarily immediately or directly.	This definition particularly focuses on the substantial nature of the information at hand, given its emphasis on the hierarchical status of the whistle-blower, the general public's interest and the explicit mention of the level of the threat to be dealt with.
"[P]eople who no longer silently tolerate illegal activities, maladministration or danger to humans, the environment and the economy, but reveal those abuses within or outside their business, their company, their organization or their bureaucracy" (Strack, 2011).	This definition focuses on the levels of tolerance by individuals, and their willingness to come forward. The author states that this willingness is exceptional, which suggests that a culture of ethics needs to be created.

Definitions and sources	Characteristics
Experts distinguish between whistle-blowers, aggrieved workers, complainants, and bell-ringers. Whistle-blowers are insiders to an institution (e.g. employees, contractors, volunteers, board members), in contrast to complainants or bell-ringers, who might be clients, customers, citizen bystanders, non-governmental organizations (NGOs), campaigners, or journalists. Hence, whistle-blowers are specifically people with inside knowledge about the wrongdoing that happens in an organization (Public Services International, 2016).	Distinguishing between employees, complainants and bell-ringers further clarifies the scope of a whistle-blower's actions. A failure to distinguish someone who discloses wrongdoing as a worker from someone who makes a disclosure as a citizen, client, or customer makes it impossible to provide adequate protection for worker whistle-blowers. It also makes it impossible to prescribe disclosure routes and channels that are appropriate for both (Public Services International, 2016).

2.2 Overview of current legal frameworks on whistle-blower protection

No single international standard for whistle-blower protection exists to date, though several current treaties regarding unethical practices refer to whistle-blower protection.

A number of Conventions, notably those dealing with the fight against corruption, refer to whistle-blower protection, including the following:

- United Nations Convention against Corruption, 2003 (UNODC, 2004),[4] which aims to promote and strengthen measures to prevent and combat corruption, and its corresponding *Resource guide on good practices in the protection of reporting persons* (UNODC, 2015);
- Organization of American States Inter-American Convention against Corruption, 1996, which promotes and strengthens the development of "[s]ystems for protecting public servants and private citizens who, in good faith, report acts of corruption, including protection of their identities, in accordance with their Constitutions and the basic principles of their domestic legal systems" (Organization of American States, 1996);[5]
- African Union Convention on Preventing and Combating Corruption, 2003,[6] which promotes the strengthening and development of mechanisms required to prevent, detect, punish and eradicate corruption and related offences in the public and private sectors.

[4] The United Nations Convention against Corruption has been ratified or accepted by 186 member parties (States and non-metropolitan territories).

[5] The Inter-American Convention against Corruption has been ratified or accepted by 36 governments.

[6] The Convention on Preventing and Combating Corruption has 40 out of 55 possible accessions.

Soft-law instruments such as the following advise and guide countries on possible measures.

- OECD Recommendation on improving ethical conduct in the public service including the principles for managing ethics in the public service, 1998 (OECD, 2000, pp. 75–76). These principles are as follows.
  - Ethical standards for public service should be clear.
  - Ethical standards should be reflected in the legal framework.
  - Ethical guidance should be available to public servants.
  - Public servants should know their rights and obligations when exposing wrongdoing.
  - Political commitment to ethics should reinforce the ethical conduct of public servants.
  - The decision-making process should be transparent and open to scrutiny.
  - There should be clear guidelines for interaction between the public and private sectors.
  - Managers, management policies, procedures and practices should demonstrate and promote ethical conduct.
  - Appropriate procedures and sanctions should exist to deal with misconduct.
- The 2003 OECD Recommendation on guidelines for managing conflicts of interest in the public service establishes a code of conduct for public servants and mentions the need to protect them in cases of disclosure of wrongdoing (OECD, 2003). In Latin America, several summits have been held to consider implementation measures, and Mexico adopted in 2016 a General Law on Administrative Responsibilities to that effect. Currently, Spain is considering such a measure (Congress of Deputies, 2019).
- The Asia-Pacific Economic Cooperation (APEC) adopted in 2004 the Santiago Commitment to Fight Corruption and Ensure Transparency, and the APEC Course of Action on Fighting Corruption and Ensuring Transparency. In 2007, APEC adopted its Anti-corruption Code of Conduct for Business, which advocates internal secure and accessible channels through which employees and others can raise concerns and report suspicious circumstances in confidence. In 2014, APEC adopted the Beijing Declaration on Fighting Corruption, which included a commitment by the member States to the protection of whistle-blowers.
- The International Chamber of Commerce (ICC) Guidelines on Whistleblowing (ICC, 2008) and the ICC Whistleblowing and Whistleblower Protection Policy (ICC, 2014) encourage companies to establish internal reporting mechanisms that promote whistle-blowing and protect whistle-blowers from any form of retaliation.
- In 2018, Heads of State participating in the eighth Summit of the Americas signed the Lima Commitment: Democratic Governance against Corruption, by which they agreed to take a number of measures to combat corruption, several of which involved the

protection of workers who reported on financial misbehaviour (Organization of American States, 2018). These included measures for strengthening channels for reporting possible acts of corruption; protecting whistle-blowers, witnesses and informants of acts of corruption from intimidation and retaliatory actions; protecting public officials, including those involved in law enforcement and the investigation, prosecution, and punishment of acts of corruption; facilitating the work of watchdogs; and consolidating the autonomy of oversight bodies, among other measures.

- The Group of Twenty (G20) adopted its High-Level Principles for the Effective Protection of Whistleblowers on 29 June 2019, which aim to "provide guidance to those responsible for setting up and operating protection frameworks for whistleblowers in the public sector at the national and, consistent with national legal systems, sub-national levels and, as appropriate, the private sector" (G20, 2019). This action had been requested by the civil society organizations and trade unions of the G20 member States (C20 Engagement Group, 2019). It calls, inter alia, for protection for a broad range of reporting persons, a broad definition of retaliation, visible reporting channels and adequate support to whistle-blowers, confidentiality, and effective enforcement of these protections.

At national level, most countries have pieces of legislation directly or indirectly addressing whistle-blower protection. However, only a few have dedicated laws, the rest being characterized by scattered provisions across different codes and laws. Legislative frameworks for whistle-blower protection include labour laws or labour codes, criminal laws or codes, competition laws, anti-corruption laws and civil servants' laws, many of them based on the international instruments listed above (OECD, 2016, p. 4). Some examples are:

- the Swedish Constitution's Fundamental Law on Freedom of Expression, which grants citizens extensive rights to publish information and protects the anonymity and confidentiality of whistle-blowers (Government of Sweden, 1991);
- the Mexican Federal Criminal Code (Government of Mexico, 2010), which criminalizes retaliation against whistle-blowers who present complaints in the public sector, and the General Law of Administrative Responsibilities (Government of Mexico, 2017), which considers the disclosure of a whistle-blower's identity as a serious violation;
- Title 18 of the United States Code of criminal law and procedure, which criminalizes retaliation against whistle-blowers (Government of the United States of America, 1948);
- Italian labour law, which protects whistle-blowers against dismissal (Government of Italy, 2017);
- in India, Sec.11(2) of the Whistle Blowers Protection Act provides for the burden of proof to lie on the public authority (Government of India, 2014).

Additionally, dedicated laws on whistle-blower protection, including sectoral legislation, have been adopted. The OECD cites the following legislations as the most comprehensive in the world (OECD, 2014).

- **Australia.** The Public Interest Disclosure Act, 2013, governs the disclosure and investigation of wrongdoing and maladministration, guaranteeing whistle-blowers immunity from liability and protection from reprisals and identity disclosure (Government of Australia, 2013).
- **Canada.** The Public Servants Disclosure Protection Act, 2005, establishes procedures for the disclosure of wrongdoings in the public sector, including the protection of persons who disclose the wrongdoings from such reprisals as disciplinary measures, demotion, termination of employment, and any measure that adversely affects the employment or working conditions of the whistle-blower (Government of Canada, 2018).
- **Japan.** The Whistle-blower Protection Act No. 122, 2004, protects whistle-blowers from dismissal and puts in place regulations protecting the life, body, property, and other interests of whistle-blowers (Government of Japan, 2004).
- **Republic of Korea.** The Act on the Protection of Public Interest Whistle-blowers, 2011, protects and guarantees the personal safety of whistle-blowers (Government of Republic of Korea, 2017).
- **The Netherlands.** The House for Whistle-blowers Act (Wet Huis voor klokkenluiders), 1 July 2016, makes it obligatory for companies employing 50 or more employees to establish an internal whistle-blowing policy. The Act established a "house for whistle-blowers" where public and private sector employees can report regulatory violations, health and environmental risks, and threats to the functioning of public services or companies. The law bans retaliation if an employee had a reasonable belief the report was accurate. According to the law, employees include freelancers, trainees or volunteers. Dutch law also provides for the compulsory consent of the works council when adopting the policy (Government of the Netherlands, 2016).
- **New Zealand.** Whistle-blowing is covered by the Protected Disclosures Act, 2000 (Government of New Zealand, 2000).
- **United Kingdom.** Whistle-blowing is covered by the Public Interest Disclosure Act, 1998 (see section below) (Government of the United Kingdom, 1998).
- **United States.** The Whistleblower Protection Act, 1989, is complemented by the private sector-focused Sarbanes-Oxley and Dodd-Frank Acts (see section below) (Government of the United States of America, 1989, 2002, 2010).

In addition, Chile adopted in 2007 an Act protecting public servants who denounce irregularities and violations of the principle of probity, forbidding suspensions or dismissals until the report is fully addressed (Government of Chile, 2007). However, this requires that the whistle-blower disclose his or her identity.

Beyond legislation, corporate governance codes and guidelines, though non-binding, are considered as supplementary. Examples include the Dutch Corporate Governance Code, which encourages and regulates whistle-blowing at the company level.

3. Analytical framework to assess regional and national legislations

While a more in-depth analysis of regional and country legal frameworks will be undertaken below (in case studies), an analytical framework is offered to elaborate on the different areas to be covered, using some legislations as examples.

3.1 Scope of protection

3.1.1 Who is protected?

National legislation on whistle-blowing has shifted from single provisions in different types of codes and laws to either overarching stand-alone or sectoral legislations. In terms of protection coverage, a so-called no-loophole approach has become more common, especially among countries with overarching whistle-blower protection laws (OECD, 2014). In essence, protection should be extended on a broad basis to ensure that all types of stakeholders are covered.

For instance, the United Kingdom's dedicated whistle-blower laws for public sector employees are particularly comprehensive, as they explicitly cover contractors, temporary employees, consultants and suppliers (Government of the United Kingdom, 1998). The laws of Australia, Canada, Estonia, France, Germany, Hungary, Ireland, Mexico, New Zealand, Peru, Portugal, Republic of Korea and Slovenia go a step further than the United Kingdom law by also including former employees (OECD, 2014). However, foreign consultants and employees based abroad are not covered. Furthermore, dedicated legislation in some countries, such as Japan, Republic of Korea, South Africa and the United Kingdom, explicitly covers private sector employees. The United States Sarbanes-Oxley Act of 2002 protects employees of publicly traded companies, while the Dodd-Frank Act of 2010 protects individuals who report securities fraud to the Securities and Exchange Commission (SEC) (Zuckerman Law, 2019). This approach is not common as the bulk of legal provisions protecting private sector employees tend to be worded as encouragement measures, as in the case of the Dutch Corporate Governance Code (MCCG, 2016) and the Singapore Code of Corporate Governance (Government of Singapore, 2018). In these codes, companies are simply encouraged to set up internal whistle-blowing policies and mechanisms without making them binding or establishing rewards and incentives.

In particular, Section 2.6.1 of the Dutch Corporate Governance Code states: ""The management board should ensure that employees have the opportunity to file a report without jeopardizing their legal position ." The Singapore Code of Corporate Governance, in turn, states that companies should publicize the existence of whistle-blowing policies and procedures for raising concerns about possible improprieties in financial reporting or other matters. (**Source of 2018 code**)

However, it is important to note that, as a result of the no-loophole approach, no legislation analysed as part of this study explicitly protects public and private sector employees whose responsibility is to report wrongdoings as part of their work duties. These workers constitute

"islands of honesty" and help monitor not only the flow of money in public and financial services but also the ethical character of those entrusted with the responsibility to put public finances to good use (Taub, 2016). These can help ensure that public and private officials do not undertake wasteful expenditure by enforcing strict guidelines and procedures for procurement, as well as accounting for the monies disbursed (including those received from international financing or aid) (Ndikumana, 2006, pp. 26–27). Some of these occupations are listed in table 3.1.

Table 3.1 Illustrative list of occupations constituting "islands of honesty" and related tasks

Occupation	Tasks
Comptrollers, auditors, auditor-generals including any audit agent or specialist consultant authorized by comptrollers, auditors or auditor-generals	Audit financial institutions and present reports to regulatory authorities (e.g. Financial Market Supervisory Authority of Switzerland, Financial Services Board of South Africa) Audit public accounts Report on unauthorized expenditure or other irregularity
Internal and external auditors	Examine and evaluate business processes, financial statements, and related control systems Report on any irregularities or significant control weaknesses and monitor the implementation of audit recommendations Promote effective controls at reasonable cost Review and appraise the appropriateness, adequacy and application of authorization of financial and non-financial controls
Bank inspectors	Carry out inspections of the affairs, or of any part thereof, of a bank or a mutual bank
Accounting officers (i.e. heads of departments, heads of procurement and procurement officers) in various ministries and government departments	Report in writing, upon discovery of any unauthorized, irregular or fruitless and wasteful expenditure, particulars of the expenditure to the relevant treasury and, in the case of irregular expenditure involving the procurement of goods or services, also to the relevant tender board Ensure that the department, trading entity or constitutional institution has and maintains an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective
Accountant-general	Compile and manage accounts, and ensure custody, safety and integrity of public monies Account for tax and non-tax revenues of the government Account for revenues raised from the disposal of excess or obsolete public stores and assets

Controlling officers	Plan and control revenue collection and expenditure of public funds Take immediate and appropriate action on internal and external observations and recommendations Ensure compliance with procurement requirements of national laws Prevent irregular or wasteful expenditure, misapplication of funds, theft, or losses resulting from negligence or criminal conduct and immediately report, in writing, particulars of that wasteful expenditure, misapplication of funds, theft or loss to the relevant authority Prevent government expenditures in excess of monies appropriated by parliament
Accounting officers	Take effective and appropriate steps to prevent any unauthorized, irregular and wasteful expenditure Collect, provide receipts for, and bring to account all public monies Compile and submit monthly, quarterly, biannual and annual financial management reports to the controlling officer
Controller of internal audit	Conduct risk-based financial, compliance, performance, information, communication and technology (ICT), forensic and any other specialized audits in respect of public bodies Audit management systems that relate to the stocks, shares and stores of the government Oversee timely verification of stock and assets in order to ensure accountability and value for money in the management of government assets
Stock verifiers	Verify government stock and assets in order to ensure transparency and accountability
Employees of specialized State institutions such as anti-corruption commissions, for example the Central Vigilance Commission of India	Prevent and take necessary and effective measures for the prevention of corruption in public and private bodies Receive and investigate complaints of alleged or suspected corrupt practices, and prosecute offenders Investigate any conduct of any public officer which, in the opinion of the supervisory body, may be connected with or conducive to corrupt practices

3.1.2 Material scope

As is the case with protection coverage, some countries have also adopted a no-loophole approach regarding the scope of the subject matter. For example, Japan's Whistle-blower Protection Act explicitly lists violations of food, health, safety and environmental laws (Government of Japan, 2004). Similarly, the Republic of Korea's Act on the Protection of

Public Interest Whistle-blowers lists violations related to health, public safety, environment, consumer interests and fair competition (Government of Republic of Korea, 2017).

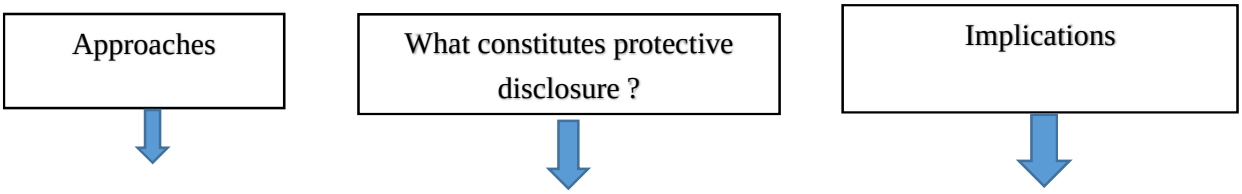
For the sake of striking a balance between preventing false or unfounded reporting and encouraging effective whistle-blowing, some countries, such as the United Kingdom (Public Interest Disclosure Act, 1998)[7] and the United States (Whistleblower Protection Act, 1989)[8] have set minimum requirements to qualify for protection. This is also the case for New Zealand, which defines "serious wrongdoing" by the list of conditions set out in the Protected Disclosures Act, 2000. Canada, in turn, sets out the following criteria for definition of the matter reported by a whistle-blower as "gross mismanagement", thereby qualifying the whistle-blower for protection:

- matters of significant importance;
- serious errors that are not debatable among reasonable people;
- more than minor wrongdoing or negligence;
- management of inaction that creates a substantial risk of significant adverse impact upon the ability of an organization, office or unit to carry out its mandate;
- the deliberate nature of the wrongdoing;
- the systematic nature of the wrongdoing.

3.2 Facts triggering protection

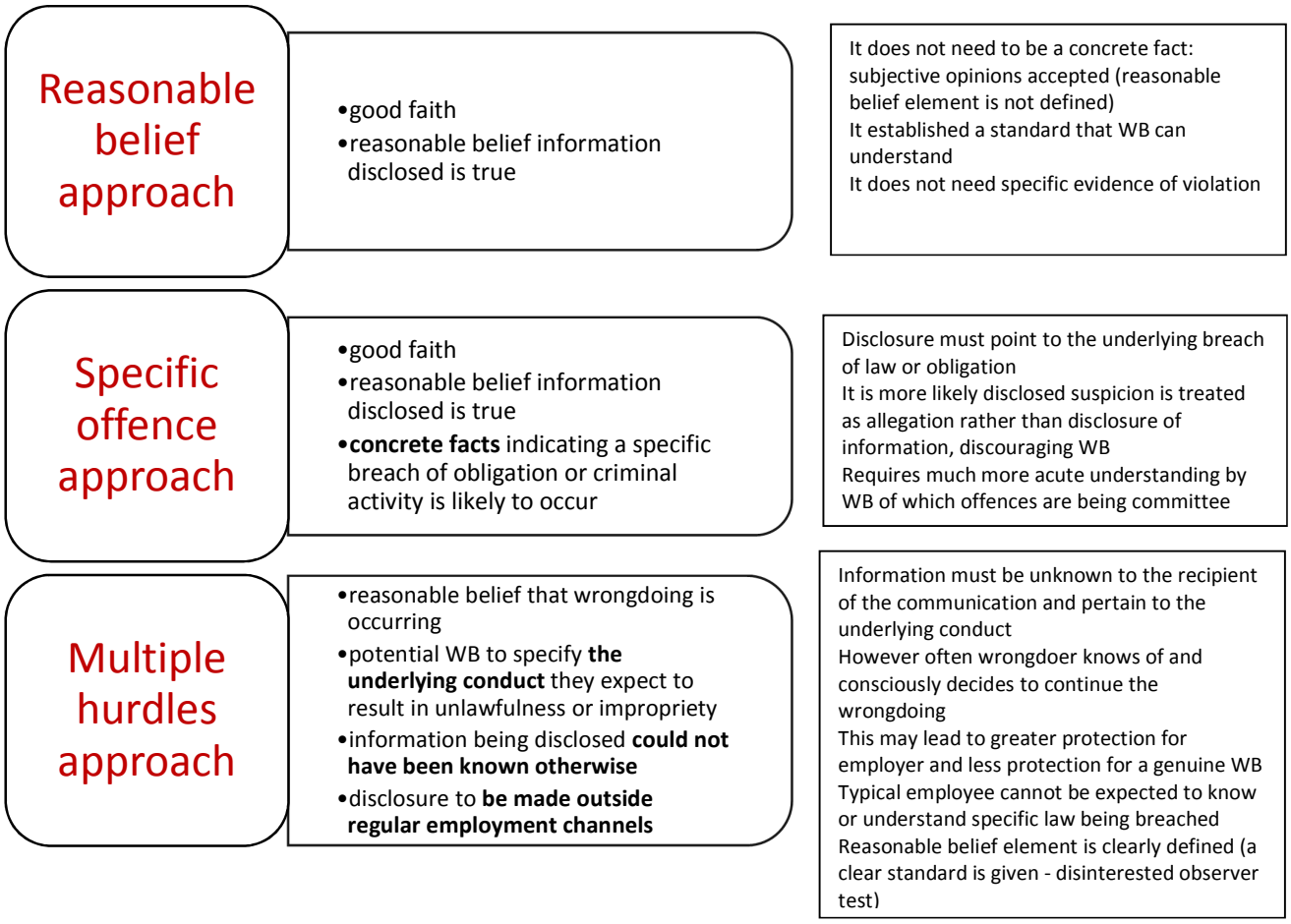
Current discussion on whistle-blower protection tries to find a balance between the need to protect freedom of information on the one side and the need to protect privacy of information, as well as the loyalty expected from employees, on the other side (Soltes, 2012). It is in this context that legislations have tried to define what constitutes a fact triggering protection. Without going into details in this complex debate, an overview is provided in figure 3.1.

Figure 3.1 Facts triggering protection



[7] A qualifying disclosure relates to a criminal offence, a lack of compliance to legal obligations, miscarriage of justice, endangerment of health and safety and environmental damage.

[8] Defined as "gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety" rather than "trivial" violations.



Source: Adapted from Soltes, 2012.

3.3 Elements of protection

The following subsections will describe the most common elements found in the legislation studied, before proceeding in Chapter 4 to an analysis of selected case studies.

3.3.1 Protection from retaliation

Studies have found that fear of reprisal or retaliation has been the main deterrent to whistle-blowing (Public Services International, 2016; Belecky, Singh and Moreto, 2018). To protect whistle-blowers against retaliation, a number of mechanisms have been put in place. Legislation focuses on providing widespread protection against discrimination and retaliatory measures. For example, the United States Sarbanes-Oxley Act, Title 18 of the United States Code, the Republic of Korea Act on the Protection of Public Interest Whistle-blowers, the Irish Prevention of Corruption (Amendment) Act, 2010, and the Canada Public Servants Disclosure Protection Act, 2005 (amended 2018), explicitly criminalize retaliation against whistle-blowers in the form of effective or threat of suspension, demotion, or lay-off. Irish law also outlaws the following forms of retaliation (Government of Ireland, 2010, 2014):

- transfer of duties, change of location of place of work, reduction in wages or change in working hours;
- the imposition or the administering of any discipline, reprimand or other penalty (including a financial penalty);
- unfair treatment, including selection for lay-off;
- coercion, intimidation or harassment;
- discrimination, disadvantage or adverse treatment;
- injury, damage or loss;
- threats of reprisal.

The laws of Australia, the Republic of Korea, and United States also provide protection mechanisms against a comprehensive list of adverse measures that, in addition to those above, include reprimands (in the case of United States law) and financial or administrative disadvantages (in the case of Republic of Korea law).

The most common protection mechanisms are the following.

- Protection against criminal and civil liability (for example Australia, Ireland, New Zealand, Republic of Korea), though important exceptions exist, as in the notable case of the United States, where disclosure of classified information is criminalized (Government of Australia, 2013; Government of Ireland, 2010, 2014; Government of New Zealand, 2000; Government of Republic of Korea, 2017).
- The burden of proof may be reduced, as in the case of Slovenia's Integrity and Prevention of Corruption Act, 2010, or shifted in favour of the employee, as in the case of the United States Whistleblower Protection Act, 1989 (Government of Slovenia, 2010; Government of the United States of America, 1989).
- As a last line of defence, it is common, where retaliation has occurred, to impose remedies or interim relief in the form of short-term help or compensation for loss, damage or injury, provided by a court, either before a claim is heard or while it is still being heard or processed, as court proceedings can take a long time and jeopardize the financial situation of whistle-blowers.

3.3.2 Reporting channels

The protection provided follows mechanisms and procedures that, in theory, should be clearly and explicitly set. In practice, channels for reporting generally include one or more channels, both internal and external, with a general trend towards encouraging prioritization of internal reporting; that is, whistle-blowers would use external channels only after trying the internal ones unsuccessfully. This is the case of the United Kingdom's Public Interest Disclosure Act of 1998, which set up a tiered approach, whereby "each tier incrementally requires a higher threshold of conditions to satisfy for the whistleblower to be protected" (OECD, 2010, para. 29). The same three-tiered system is proposed by the new European Union Directive, with:

- internal reporting channels;
- reporting to competent authorities – if internal channels do not work or could not reasonably be expected to work (for example where the use of internal channels could jeopardize the effectiveness of investigative actions by the authorities responsible);
- "public/media reporting – if no appropriate action is taken after reporting through other channels, or in case of imminent or clear danger to the public interest or irreversible damage" (European Commission, 2018).

The legislation also establishes a feedback obligation for authorities and businesses, who will have to respond and follow up on a whistle-blower's reports in a period of three months for internal reporting channels (European Commission, 2018). Additionally, a number of hotlines have been set up by both companies and governments, such as the SEC's Office of the Whistleblower hotline in the United States, and the Republic of Korea's hotline housed at the Anti-Corruption and Civil Rights Commission. Anonymity is not systematically guaranteed in the aforementioned laws.

3.3.3 Anonymity

The majority of whistle-blower protection laws nonetheless do provide confidentiality clauses to protect the identity of the whistle-blower, going as far as criminalizing deliberate publication of a whistle-blower's name. This is the case in Australia, Tunisia and the Republic of Korea, which impose sentences ranging from six months to three years. On the other hand, lack of or weak anonymity clauses often works against the purpose of whistle-blowing protection, as is the case in the Irish Prevention of Corruption (Amendment) Act, which obliges whistle-blowers to reveal their identities in order for the complaint to be valid; the same is the case when reporting illegal activities to the Central Bank of Ireland. Several NGOs, such as Transparency International, have warned that this provision discourages some potential whistle-blowers and puts whistle-blowers at harm, since their identity can sometimes be deduced from the information reported.

3.3.4 Enforcement mechanisms

To enforce these mechanisms, the establishment of an independent agency, in charge of receiving and investigating whistle-blower grievances and providing redress, is considered good practice. According to Latimer and Brown (2008), these may include:

- "proper authorities", administrative agency or administrative organ, a public interest disclosure agency;
- public employment agencies or a "prescribed person";
- the Auditor-General;
- the Counsel;
- anti-corruption bodies;
- the Ombudsman;

- the police and the Director of Public Prosecutions, when applicable;
- Public Protector,[9] as in the case of South Africa;
- relevant policy agencies;
- trade unions.

For instance, the United Kingdom has established the Civil Service Commission , where civil servants can raise concerns directly if no appropriate measure has been taken by the line department to which the civil servant belongs. The United States Office of Special Counsel has the same role, while the SEC's Office of the Whistleblower, set up as part of the Dodd-Frank Act, handles financial services whistle-blowing and determines, as discussed above, the eligibility of whistle-blowers to receive a financial reward on the basis of the information disclosed.

Similarly, another common measure is the availability of judicial review with a full right of appeal for whistle-blowers. This measure has been adopted by the United Kingdom (Employment Tribunal) and the United States (Merit Systems Protection Board, a quasi-judicial agency that works on protecting federal employees against retaliation). In the case of the United States, the Merit Systems Protection Board ensures the efficiency of the judicial process, given the timely and sensitive nature of the matter, as protection against retaliation is often needed immediately after the whistle is blown.

3.3.5 Incentives and financial awards

Beyond confidentiality, a number of laws, such as the United States False Claims Act (Government of the United States of America, 1863) and Dodd-Frank Act and the Republic of Korea Act on the Protection of Public Interest Whistle-blowers, allow government agencies (the United States SEC and the Korean Anti-Corruption and Civil Rights Commission, respectively) to provide whistle-blowers with financial rewards. In the United States, awards can be given to "eligible individuals who come forward with high-quality original information that leads to a Commission enforcement action in which over $1,000,000 in sanctions is ordered. The range for awards is between 10 and 30 per cent of the money collected."[10] In addition, a person may file a civil action for a violation of the False Claims Act in the name of the government, and the complainant is entitled to a reward of 15 to 30 per cent of the proceeds of the action or settlement of the claim (Government of the United States of America, 2015). The Republic of Korea "award" system provides financial reward for whistle-blowers whose disclosure results in recovering misspent public funds or increasing revenues of public institutions, or contributes to the enhancement of the public interest. The award system grants

[9] "The Public Protector is an independent institution established in terms of section 181 of the Constitution, with a mandate to support and strengthen constitutional democracy. A supreme administrative oversight body, the Public Protector has the power to investigate, report on and remedy improper conduct in all state affairs. The Public Protector must be accessible to all persons and communities. Anyone can complain to the Public Protector" (Public Protector South Africa, 2019).

[10] United States Securities and Exchange Commission, Office of the Whistleblower: https://www.sec.gov/whistleblower.

financial awards of up to 20 per cent of the amount received, but not exceeding 200 million Korean Republic won, to any person who discloses that "he or she received money or other valuables" (OHCHR, 2011).

3.3.6 The notion of "good faith"

The requirement that whistle-blower disclosures are made in "good faith" is a principal component of much of the whistle-blower protection legislation. As such, protection is only provided if the whistle-blower acts with the belief, "on reasonable grounds", that a violation or a breach has occurred. Protection is granted if the above-mentioned condition is met, even if the allegation is unfounded. Allegations of intent to harm the employer or to abuse or misuse the reporting procedures to gain advantage are commonly considered and examined by the courts. People making false claims would not be granted protection, if the falsehood were proven.

The good faith requirement is meant to allow employers to focus on correcting wrongdoing that is alleged mainly with the public interest in mind. In addition, whistle-blowers "should be permitted to provide evidence, when it's available by legal means in the course of their work, but they should not be encouraged to act illegally or improperly to provide evidence" (Chêne, 2009, p. 4).

On the other hand, people with ulterior motives are not necessarily considered as making false claims. For instance, the United Kingdom's national whistle-blower protection system allows protection to people with ulterior motives, when there is no false claim, but does not grant them financial rewards (OECD, 2014).

The Council of Europe's Recommendation on the protection of whistle-blowers did not include a good faith requirement "in order to preclude either the motive of the whistleblower in making the report or disclosure or of his or her good faith in so doing as being relevant to the question of whether or not the whistleblower is to be protected" (Council of Europe, 2014). However, most national whistle-blower legislations include the notion of "good faith" and rely on it, at least partly. The issue here is the confusion between motives and good faith as "the reporting person might fear that 'premature' reporting could be construed as bad faith" (UNODC, 2015).

It is also common for statutes to reverse the burden of proof, so that the employer has to prove allegations of lack of good faith. In cases where this allegation succeeds, some countries – for example, India and the United States – have provided for criminal sanctions.

This analytical framework will be used for the country analysis in Chapter 4. An overview of the framework and relevant criteria are summarized in table 3.2, based on an adaptation from the scheme used by Transparency International (Wolfe et al., 2014).

Table 3.2 Analytical framework

Areas	Criterion	Description
Scope of protection: who is protected	Broad coverage of organizations	Comprehensive coverage of organizations in the sector
	Broad definition of whistle-blowers	Broad definition of whistle-blowers whose disclosures are protected (e.g. including employees, contractors, volunteers and other insiders)
Scope of protection: material scope	Broad definition of reportable wrongdoing	Broad definition of reportable wrongdoing that harms or threatens the public interest (including corruption, financial misconduct and other legal, regulatory and ethical breaches)
Elements of protection: protection from retaliation	Broad protection against retaliation	Protections apply to a wide range of retaliatory actions and detrimental outcomes (e.g. relief from legal liability, protection from prosecution, direct reprisals, adverse employment action, harassment)
	Comprehensive remedies for retaliation	Comprehensive and accessible civil or employment remedies for whistle-blowers who suffer detrimental action (e.g. compensation rights or injunctive relief, with realistic burden on employers or other repressors to demonstrate detrimental action was not related to disclosure)
Elements of protection: reporting channels	Range of internal and regulatory reporting channels	Full range of internal (i.e. organizational) and regulatory agency reporting channels
	External reporting channels (third party, public)	Protections extend to same disclosures made publicly or to third parties (external disclosures e.g. to media, NGOs, labour unions, members of Parliament) if justified or necessitated by the circumstances
Elements of protection: anonymity	Provisions and protections for anonymous reporting	Protections extend to disclosures made anonymously by ensuring that a discloser (a) has the opportunity to report anonymously and (b) is protected if later identified
	Confidentiality protected	Protections include requirements for confidentiality of disclosures
Elements of protection: enforcement mechanisms	Internal disclosure procedures required	Comprehensive requirements for organizations to have internal disclosure procedures (e.g. including requirements to establish reporting channels, to have internal investigation procedures, and to have

Areas	Criterion	Description
		procedures for supporting and protecting internal whistle-blowers from point of disclosure)
	Sanctions for retaliators and incentives for whistle-blowers	Reasonable criminal or disciplinary sanctions against those responsible for retaliation, as well as financial rewards for whistle-blowers
	Oversight authority	Oversight by an independent whistle-blower investigation or complaints authority or tribunal
	Transparent use of legislation	Requirements for transparency and accountability on use of the legislation (e.g. annual public reporting, and provisions that override confidentiality clauses in employer–employee settlements)
Elements of protection: notion of good faith	Thresholds for protection	Workable thresholds for protection (e.g. honest and reasonable belief of wrongdoing, including protection for “honest mistakes”, and no protection for knowingly false disclosures or information)

4. Analysis of selected case studies

The following section examines a number of selected case studies on legislation aimed at protecting whistle-blowers, based on the analytical framework proposed above.

4.1 European Union (EU) regulatory framework on whistle-blower protection in the financial services industry

Current European legislation on the protection of whistle-blowers is fragmented and its application varies significantly between EU Member States, with countries such as the United Kingdom having adopted comprehensive regulatory frameworks while others such as Italy are slowly broadening coverage. The backbone of the EU legal framework on the protection of whistle-blowers is composed of the following texts:

- EU Regulation No 596/2014 on market abuse, pertaining to the financial services industry (European Parliament, 2014);
- Directive 2015/2392 on the above-mentioned EU Regulation 596/2014 as regards reporting to competent authorities of actual or potential infringements of that Regulation (European Parliament, 2015);
- European Parliament Resolution 2016/2224 (INI) on legitimate measures to protect whistle-blowers acting in the public interest when disclosing the confidential information of companies and public bodies, pertaining to both the public and private sectors (European Parliament, 2016);
- Directive on the protection of persons reporting on breaches of Union law, 2019 (European Parliament, 2019).

A clear pattern towards the need for an EU-wide dedicated whistle-blower protection legislation, applying to both the public and private sectors, emerges from the analysis of the above-mentioned texts. This has culminated in the adoption of a new Directive in April 2019, as discussed below.

4.1.1 EU Regulation 596/2014 on market abuse

The regulation establishes "a common regulatory framework on insider dealing, the unlawful disclosure of inside information and market manipulation (market abuse) as well as measures to prevent market abuse to ensure the integrity of financial markets in the Union and to enhance investor protection and confidence in those markets" (European Parliament, 2014).

The Regulation acts as a precursor to whistle-blower protection in the European financial services industry, with an exclusive focus on possible infringements related to the specific context of market abuse, and therefore lacks details on coverage, procedures and protective measures.

Through paragraph 74, it underlines the importance of the role of whistle-blowers, assisting competent authorities in "detecting and imposing sanctions in cases of insider dealing and market manipulation", and briefly stipulates the necessity of setting-up "adequate

arrangements" to allow for whistle-blowing and to protect both parties involved, especially in terms of personal data security and due process guarantees. Additionally, it calls for the adoption of implementing acts to further specify the procedures related to reporting of infringements and the relevant protection of persons[11] and personal data, as mentioned above.

4.1.2 Directive 2015/2392 on EU Regulation 596/2014 as regards reporting to competent authorities of actual or potential infringements of that Regulation

To complement EU Regulation 596/2014 and further detail its provisions on whistle-blower protection, Directive 2015/2392 establishes external procedures applicable to reports of infringements and obliges Member States to establish dedicated staffing and communication channels (i.e. independent and autonomous communication channels, which are both secure and ensure confidentiality), for receiving and following up the reporting of infringements (European Parliament, 2015).

Directive 2015/2392 has a more limited scope and less detail than the above-mentioned proposed directive, and protection of whistle-blower employees only takes the form of an "exchange of information and cooperation between competent authorities involved". Unlike its successor, it does not provide for detailed protection of personal data or of the alleged perpetrator, with unspecified references to the need for "adequate procedures". It does not address internal reporting procedures and coverage. It only allows persons working under a contract of employment to have access to comprehensive information and "advice on the remedies and procedures available under national law" and "effective assistance from competent authorities against unfair treatment". No further provisions on such protection are explicitly outlined. For instance, the directive does not call for protection of whistle-blowers against civil lawsuits due to common non-disclosure agreements.

4.1.3 European Parliament Resolution 2016/2224, October 2017

Given the criticism levelled against Regulation 596/2014 and Directive 2015/2392, and in the face of criminal and civil proceedings brought against whistle-blowers, outlined below as part of case law, the European Parliament adopted a resolution highlighting the need for a unified legal framework and explicitly calling for the submission of an EU-wide horizontal legislative proposal on whistle-blower protection (European Parliament, 2017a). Whereas national whistle-blower protection legislation is often limited to reports on unlawful acts, the European Parliament presented the notion of "breach of the public interest"[12] as an additional motive for blowing the whistle and demanded its coverage in the proposed law.

The Resolution calls on the European Commission "to present before the end of this year a horizontal legislative proposal establishing a comprehensive common regulatory framework which will guarantee a high level of protection across the board, in both the public and private sectors as well as in national and European institutions, including relevant national and

[11] Article 32 vaguely defines these persons as "working under a contract of employment".

[12] This notion includes, but is not limited to, acts of corruption, conflicts of interest, unlawful use of public funds, threats to the environment, health, public safety, national security and privacy and personal data protection, tax avoidance, attacks on workers' rights and other social rights and attacks on human rights.

European bodies, offices and agencies, for whistle-blowers in the EU" (European Parliament, 2017b).

It also notes that "one of the barriers to whistle-blowers' activities is the absence of clearly identified means of reporting" and emphasizes the need for a "coherent system" of internal and external procedures, including through the establishment of an independent report collection body as well as a similar EU one (particularly in cross-border cases). It also asks for the designation of a specific person responsible for collecting reports at the organizational level and for the prioritization of internal reporting mechanisms. Though it expresses concerns about so-called gagging clauses and lists potential retaliation risks associated with whistle-blowing, the resolution does not present comprehensive and concrete suggestions for protection other than supporting measures, namely penalties for retaliation, physical protection including for family members, legal aid, financial aid and compensation for professional damages. Other measures include non-liability for prosecution, civil legal action or administrative or disciplinary penalties, as well as interim relief "to prevent retaliation, such as dismissal, until there is an official outcome of any administrative, judicial or other proceedings".

It is also worth noting that the text is clear in its emphasis on the role of public authorities, trade unions and civil society organizations in assisting whistle-blowers and in raising awareness about existing legal frameworks. In particular, the European Parliament stresses "the role that public authorities, trade unions and civil society organizations play in supporting and helping whistle-blowers in their dealings within their organization" and "highlights the importance of raising employees' awareness of existing legal frameworks regarding whistle-blowing, in cooperation with trade union organizations".

4.1.4 Towards a "horizontal" framework of protection: Directive on the protection of persons reporting on breaches of Union law

In order to move towards an EU-wide law on the subject, and following public consultations (box 4.1), on 16 April 2019 the European Parliament adopted a Directive that establishes "common minimum standards" in the protection of whistle-blowers against retaliation in specific policy areas and industries, including financial services (box 4.2). The Directive is pending approval by EU ministers, after which EU Member States will have two years to comply with it.

Box 4.1 Directive on the protection of persons reporting on breaches of Union law: Implementation issues and challenges

In the public consultation leading to the Directive on the protection of persons reporting on breaches of Union law, only 15 per cent of all respondents had knowledge of existing rules for whistle-blower protection in their country of residence or establishment. A lack of awareness on rights and procedures among potential whistle-blowers constitutes an important obstacle to increasing the rates of reporting.

Another concern is the capacity of EU institutions to enforce the application of protective measures in case of retaliation. Indeed, though the European Commission has the power to sue a government for not complying with EU law, the procedure can be very slow. Implementation difficulties can emanate from structural issues related to the nature of the EU system, and States have not always complied with judgements made by the European Court of Human Rights to protect whistle-blowers.

The Directive defines a whistle-blower as "someone reporting or disclosing information on violation of EU law observed in their work-related activities", and goes beyond the traditional scope of whistle-blower protection by explicitly including self-employed individuals and shareholders.

The Directive "lays down common minimum standards for the protection of persons reporting on unlawful activities or abuse of law" pertaining to breaches in the following activities:

- public procurement;
- financial services, prevention of money-laundering and terrorist financing;
- product safety;
- transport safety;
- protection of the environment;
- nuclear safety;
- food and feed safety, animal health and welfare;
- public health;
- consumer protection;
- protection of privacy and personal data, and security of network and information systems.

It concerns persons working in the private or public sector who acquired information on breaches in a work-related context; sets out procedures for internal and external reporting and follow-up of reports; establishes dedicated staff members to handle reports within competent authorities; outlines conditions for the protection of reporting persons; and details protection measures for reporting persons against retaliation, along with penalties for such retaliation.

Box 4.2 Conditions for eligibility for protection under the proposed Directive on the protection of persons reporting on breaches of Union law

- Information must be reported in good faith, having "reasonable grounds to believe that the reporting or disclosure of such information was necessary for revealing a breach" covered by the Directive, including the disclosure of trade secrets acquired in a work-related context.
- "Member States shall encourage the use of internal channels before external reporting, where the breach can be effectively addressed internally and where the reporting person considers that there is no risk of retaliation", but it is not a requirement for protection.
- "It is necessary to protect public disclosures taking into account democratic principles such as transparency and accountability, and fundamental rights such as freedom of expression and media freedom, whilst balancing the interest of employers to manage their organisations and to protect their interests with the interest of the public to be protected from harm, in line with the criteria developed in the case-law of the European Court of Human Rights."

Measures for the protection of reporting persons against retaliation

- All entities with 50 employees or more, municipal governments with 10,000 or more inhabitants, and entities covered by a separate Union act are required to establish internal reporting channels in consultations with workers' representatives, and are encouraged to establish internal procedures for receiving and following up on reports.
- Member States may "decide whether private and public entities and competent authorities accept and follow up on anonymous reports of breaches".
- External reporting channels should be independent and autonomous, and should accept reporting in writing, through telephone or other voice messaging systems and, if the reporting person so requests, in a meeting within a reasonable time frame.
- "Persons need specific legal protection where they acquire the information they report through their work-related activities and therefore run the risk of work-related retaliation … vis-à-vis the person on whom they de facto depend for work".
- This protection does not depend on whether the information is disclosed internally or externally.
- Accessible, comprehensive and independent information and advice as well as effective assistance should be available from competent authorities.
- In judicial proceedings relating to a detriment suffered by the reporting person, and subject to him or her providing reasonable grounds to believe that the detriment was in retaliation for having made the report or disclosure, it shall be for the person who has taken the retaliatory measure to prove that the detriment was not a consequence of the report but was exclusively based on duly justified grounds.
- Access to remedial measures against retaliation should be available, as appropriate.
- In addition to the exemption from measures, procedures and remedies provided for in Directive (EU) 2016/943, in judicial proceedings, including for defamation, breach of copyright, breach of secrecy or for compensation requests based on private, public, or on collective labour law, reporting persons shall have the right to rely on having made a report or disclosure in accordance with this Directive to seek dismissal.
- Member States may provide for further measures of legal and financial assistance and support for reporting persons in the framework of legal proceedings.
- Identity protection should be provided by the competent authorities.

- Those concerned by the reports shall fully enjoy their rights under the EU Charter of Fundamental Rights, including the presumption of innocence, the right to an effective remedy and to a fair trial, and their rights of defence.

Source: European Parliament, 2019, Articles 5–12, 21.

As for specific measures to protect whistle-blowers, the proposed Directive protects against different forms of discrimination and retaliation in the workplace through the provision of legal advice and remedial measures (such as interim relief and reversal of the burden of proof). It also protects whistle-blowers against legal actions taken against them outside the employment relationship (for example, defamation, breach of copyright or breach of secrecy), ensures that whistle-blowers are not liable for disclosing information (especially in the specific case of gagging clauses), and calls for penalties in case of retaliation.

The proposed Directive relies on the Charter of Fundamental Rights of the European Union to ensure the right of the persons accused by the whistle-blower to a fair trial, and stipulates the need for their identity to be protected, as is the case for reporting individuals and all processing of personal data.[13]

However, though the Directive clearly acknowledges the role of trade unions and other third parties, allowing them to receive external complaints and calling for their consultation when instituting internal reporting mechanisms, it does not establish an EU-wide report-collecting authority, as suggested by Resolution 2016/2224. Furthermore, some issues have been raised about a too strict hierarchy in reporting channels, which prioritizes internal and external channels; its limited scope to specific policy fields, jeopardizing the equal protection of whistle-blowers; and the list of categories of persons covered, which does not explicitly address civil servants (European Broadcasting Union, 2018).

4.2 Application of the EU Regulation

4.2.1 Belgium, Act of July 2017

The Belgian Act on the Supervision of the Financial Sector and Financial Services, 31 July 2017, guarantees protection to whistle-blowers who report wrongdoings to the Financial Services and Markets Authority (FSMA), the Belgian financial regulator. The law explicitly refers to both Directive 2015/2392 and EU Regulation 596/2014 and sets out the principles for whistle-blower protection, to be further detailed by the FSMA. Overall, while the law complies with and follows the recommendations set forth by the Directive and the Regulation, it does not outline internal reporting channels and only provides for protection in the case of reporting

[13] Article 18: "Any processing of personal data carried out pursuant to this Directive, including the exchange or transmission of personal data by the competent authorities, shall be made in accordance with Regulation (EU) 2016/679 and Directive (EU) 2016/680. Any exchange or transmission of information by competent authorities at Union level should be undertaken in accordance with Regulation (EC) No 45/2001. Personal data which are not relevant for the handling of a specific case shall be immediately deleted."

through the FSMA channels (without the creation of a new independent body). Additionally, the law does not explicitly call for the protection of personal data.

Key aspects of the law include:

- Protection from any form of liability including civil, criminal and disciplinary proceedings as well as professional sanctions if the whistle-blower acts in good faith (a condition of all forms of protection established by the law). As such, whistle-blowing in good faith is not considered a violation of non-disclosure agreements under this law (with the exception of lawyers).
- All financial services employees are covered; the law also extends coverage to self-employed providers and employees of subsidiary companies.
- Informant anonymity and protection of the personal data of the whistle-blower is guaranteed by the FSMA.
- Mandatory application (i.e. provisions cannot be waived in advance through, for instance, employment contracts and relevant non-disclosure clauses).
- Any form of retaliation, discrimination, and other types of unfair treatment are prohibited in the case of good faith whistle-blowing.
- Protection measures only apply for a period of 12 months from the time of the whistle-blowing or, "if proceedings are brought during this period, until the court renders a final decision", with protection ensured even after the termination of employment.
- There is an obligation to put in place internal procedures for whistle-blowing at the level of financial institutions.
- Reversal of burden of proof for the whistle-blower; i.e. in the case of unfair treatment after the whistle is blown, the employer will have to prove such treatment is not the result of whistle-blowing.
- Damage claims (or request for reinstatement) can be made in the case of unfair termination of contract.

However, some gaps can be identified:

- No independent body is established; reporting is done through the FSMA.
- There is no mention of unions and employers' organizations in the Act.
- No information is provided on the protection of accused individuals (including protection of personal data).
- There are no financial incentives for whistle-blowers, as encouraged by EU Regulation 596/2014 on market abuse.

4.2.2 Case law of the European Court of Human Rights

The case law of the European Court of Human Rights classifies whistle-blowing as a form of freedom of expression and emphasizes the importance of providing adequate protection to

whistle-blowers against arbitrary interference and retaliation (United Nations, 2015, p. 11). As such, whistle-blowing is considered as an action warranting special protection under Article 10 of the European Convention on Human Rights, which is deemed as extendable to the workplace and to the public service. The court established six criteria for providing a whistle-blower with the protection of Article 10:

- strong public interest;
- public interest strong enough to "override a legally imposed duty of confidence";
- no available alternative to remedy the wrongdoing to be uncovered;
- damage caused should not outweigh the interest of the public in having the information revealed;
- no personal grievance, antagonism or advantage motivating the disclosure;
- acting in good faith and "in the belief that the information was true and that it was in the public interest to disclose it".

Illustrative cases include the following.

Guja v. The Republic of Moldova – No. 14277/04

Iacob Guja, Head of the Press Department of the Prosecutor General's Office, was dismissed after disclosing information about politicians influencing the judiciary. The Court ruled that the dismissal of a civil servant because he blew the whistle on government interference in the administration of criminal justice was a violation of Article 10 of the Convention (European Court of Human Rights, 2018). Since there were no internal reporting mechanisms, there was an evident public interest in disclosure that outweighed the damage suffered by the public authority. The sanction imposed was very severe, especially considering that the whistle-blower's good faith had been established. The Court noted:

> The heaviest sanction possible was imposed on the applicant. While it had been open to the authorities to apply a less severe penalty, they chose to dismiss the applicant, which undoubtedly is a very harsh measure. This sanction not only had negative repercussions on the applicant's career but it could also have a serious chilling effect on other employees from the Prosecutor General's Office and discourage them from reporting any misconduct. Moreover, in view of the media coverage of the applicant's case, the sanction could have a chilling effect not only on employees of the Prosecutor General's Office but also on many other civil servants and employees.

In such circumstances, the Court found that it was "difficult to justify such a severe sanction being applied".

Mr Guja was reinstated in June 2008, but not provided with a badge to enter the premises, not assigned any tasks, and dismissed once again after ten days, with the agreement of the trade union and under the premise that he served at the pleasure of the Prosecutor General, who had been replaced. The national courts sustained the dismissal without reviewing allegations that his dismissal was "in fact an attempt by the authorities to dispose of an employee whom they

deemed inconvenient" (European Court of Human Rights, 2018). Ten years later, the Court ruled that the dismissal once again violated Article 10 of the Convention, and ordered once again his reinstatement. The Moldovan Supreme Court ordered the Prosecutor General to implement the Court's ruling (Bizlaw, Moldova, 2018).

Heinisch v. Germany – No. 28274/08

Heinisch, a whistle-blower working for the Berlin state, was dismissed from her job after lodging a criminal complaint alleging shortcomings in care provided by a private employer; these shortcomings consisted of "insufficient staff and unsatisfactory care and documentation of care". She was refused reinstatement by national courts. The Court ruled that (European Court of Human Rights, 2011):

> Signalling by an employee in the public sector of illegal conduct or wrongdoing in the workplace should, in certain circumstances, enjoy protection. This may be called for in particular where the employee or civil servant concerned is the only person, or part of a small category of persons, aware of what is happening at work and is thus best placed to act in the public interest by alerting the employer or the public at large.

Marchenko v. Ukraine – No. 4063/04

Marchenko was a public servant, a teacher and the head of a trade union at his school, who was sentenced to a suspended prison term for publicly accusing his superior of misappropriating public funds and requesting an official investigation. The Court, on the basis of Guja v. The Republic of Moldova, ruled that (European Court of Human Rights, 2009):

> Signalling by an employee in the public sector of illegal conduct or wrongdoing in the workplace must be protected, in particular where the employee concerned is a part of a small group of persons aware of what is happening at work and is thus best placed to act in the public interest by alerting the employer or the public at large. … In the light of the duty of discretion referred to above, such disclosure should be made in the first place to the person's superior or other competent authority or body. It is only where this is clearly impracticable that the information could, as a last resort, be disclosed to the public.

Bucur and Toma v. Romania – 40238/02

Constantin Bucur, who worked for the telephone communications surveillance and recording department of a military unit, was sentenced to a two-year suspended prison sentence for holding a press conference during which he reported that his department tapped the telephones of a large number of journalists, politicians and businesspersons. Upon assessing whether or not the applicant had other means of imparting the information, the public interest value of the information divulged, the accuracy of the information made public, the damage done to his department and the good faith of the first applicant, the Court ruled that "the interference with the first applicant's freedom of expression, and in particular with his right to impart information, had not been necessary in a democratic society" (European Court of Human Rights. 2013).

4.3 Country-specific regulatory frameworks on whistle-blower protection in the public and financial services sectors

4.3.1 United Kingdom

The United Kingdom has one of the most comprehensive whistle-blower protection legislations in the European Union; it consists of the Public Interest Disclosure Act of 1998 (Government of the United Kingdom, 1998, Chapter 23), the Employment Rights Act of 1996 (Government of the United Kingdom, 1996, Chapter 18), and the rules set up by the United Kingdom's Financial Conduct Authority and Prudential Regulation Authority.

Key provisions of whistle-blower protection legislation

Following the publication of a parliamentary report recommending that banks put in place mechanisms to protect whistle-blowers and that they designate a person in charge of effectively handling allegations of wrongdoing, the United Kingdom's Financial Conduct Authority and Prudential Regulation Authority issued a consultation paper in 2015 proposing the introduction of whistle-blower protection and procedures in the country's financial institutions (FCA and PRA, 2015). This was followed by the issuance of a new rule regulating whistle-blowing that protects the confidentiality of whistle-blowers.

The rules apply to the following entities (Covington, 2016):

- United Kingdom deposit-takers with assets of £250 million or more, including banks, building societies, and credit unions;
- Prudential Regulation Authority-designated investment firms;
- insurance and reinsurance firms within the scope of the Solvency II Directive (2009/138/EC), as well as the Society of Lloyd's and managing agents.

The legal instrument defines a whistle-blower as any person who has disclosed, or intends to disclose, a reportable concern to a firm, the Financial Conduct Authority or the Prudential Regulation Authority, or in accordance with the Employment Rights Act of 1996. The protected disclosure has to explicitly be "made in the public interest". Moreover, the legal instrument does not place a "regulatory duty" on blowing the whistle; in other words, employees do not have a duty to report before whistle-blowing. Additionally, "the United Kingdom removed the term 'good faith' from its law in relation to determining whether a disclosure qualifies for protection, but retained the criteria in relation to deciding the remedial compensation or reimbursement" (Government of Trinidad and Tobago, 2015, p. 41).

The rules require the above-mentioned firms to (Covington, 2016):

- appoint a so-called whistle-blower champion responsible for ensuring and overseeing the integrity, independence and effectiveness of the firm's policies and procedures on whistle-blowing;

- establish, implement and maintain appropriate and effective internal arrangements for the disclosure of "reportable concerns"[14] by whistle-blowers;
- provide appropriate training on whistle-blowing arrangements to United Kingdom-based employees, their managers and employees responsible for operating internal whistle-blowing mechanisms; this includes making them aware of Financial Conduct Authority and Prudential Regulation Authority whistle-blowing services;
- publish a report at least annually to the firm's governing body on the effectiveness of its systems in relation to whistle-blowing;
- include a term in any settlement agreement with a worker that makes clear that nothing in such an agreement prevents a worker from making a protected disclosure; this means that it must be explicitly stated in these statements that workers have a legal right to whistle-blowing.

The 1998 Public Interest Disclosure Act protects whistle-blowers acting in the public interest against retaliation, notably through the right to file a complaint to the Employment Tribunal and through remedies in cases of unfair dismissal. It does not establish an independent body, protects confidential reporting rather than anonymous reporting, and relies on internal procedures in the case of the private sector. Additionally, the law establishes external reporting channels as complaints can be made to a "Minister of the Crown" and to the employment tribunal. The list of protected disclosures (Government of the United Kingdom, 1998, Part IV.A) is comprehensive in nature and includes disclosures when:

- a criminal offence has been committed, is being committed or is likely to be committed;
- a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;
- a miscarriage of justice has occurred, is occurring or is likely to occur;
- the health or safety of any individual has been, is being or is likely to be endangered;
- the environment has been, is being or is likely to be damaged; or,
- information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

The Act also protects whistle-blowers covered by non-disclosure agreements, with exceptions such as lawyers and doctors who are professionally bound to respect confidentiality. This protection takes the form of a "right not to suffer detriment" and relates back to the sanction of "unfair dismissal"[15] under the United Kingdom Employment Rights Act of 1996, with potential reinstatement as well as compensation for such dismissal.

[14] This is defined broadly and is not limited to regulatory matters or criminal offences. It also applies to disclosures by third parties.

[15] "An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure." See Government of the United Kingdom, 1996.

Finally, protection is extended to contractors, temporary employees, consultants and suppliers under the Employment Rights Act of 1996.

4.3.2 United States of America

With a long tradition of protecting whistle-blowers going back to the nineteenth century, the United States is deemed to have the most complete framework on whistle-blower protection and incentivization. This comprises the Whistleblower Protection Act of 1989, amended in 2012, the Sarbanes-Oxley Act of 2002 and the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") of 2010.

The first focuses on federal employees, the second on private companies trading on the stock exchange and their subsidiaries, and the third on financial industry whistle-blowers. The three Acts cover different aspects around whistle-blower protection and, together, they fill in the different gaps. All three Acts include confidentiality of identity and personal data protection.

Relevant regulators also have guidelines and rules on whistle-blower protection, including the United States Commodity Futures Trading Commission and the United States SEC (Freshfields Bruckhaus Deringer, 2017). These regulators act as agencies in charge of the whistle-blowing process (receiving, investigating and awarding financial incentives in the case of the SEC, for instance; similarly, for the Merit Systems Protection Board) (OECD, 2010).

Key provisions of whistle-blower protection legislation

Dodd-Frank Act, 2010:

- defines a whistle-blower as an "individual who provides information relating to a violation of the securities laws to the SEC according to its established procedures";
- direct disclosure to the SEC without a requirement to first go through internal procedures;
- potential financial awards for SEC disclosures;
- criminalization of any type of measures taken in retaliation of whistle-blowing to the SEC; in other words, "employers may not discharge, demote, suspend, harass, or in any way discriminate against an employee in the terms and conditions of employment because the employee reported conduct that the employee reasonably believed violated the federal securities laws";
- invalidation of a non-disclosure agreement found to be in violation of the Dodd-Frank Act (Government of the United States of America, 2010).

Sarbanes-Oxley Act, 2002:

- protection extended to subsidiaries, not just listed companies;
- remedies available to the whistle-blower include, but are not limited to, reinstatement, back pay, and special damages;

- both Sarbanes-Oxley and Dodd-Frank Acts include a requirement to provide independently operated hotlines for anonymous disclosure (Government of the United States of America, 2002).

Whistleblower Protection Act, 1989:

- Private right of action that gives whistle-blowers the right to file a retaliation complaint in federal court (Government of the United States of America, 1989).

In practice, only disclosures presented to the SEC are deemed as valid for protection (according to the Supreme Court). Additionally, the fact that the legislation does not oblige companies to set up whistle-blower programmes has led to various degrees of implementation (Gresko, 2018). More importantly, in response to the common practice of contractual restrictions to circumvent the whistle-blower incentives (Moberly, Thomas and Zuckerman, 2014), notably through gagging clauses, the SEC has issued an order barring these clauses as it took administrative action against one company "for requiring employees to sign confidentiality agreements that could impede employees from reporting violations" (Zuckerman, 2018).

4.3.3 Singapore

Though Singapore boasts strong corporate governance cultures,[16] being ranked sixth in the Corruption Perceptions Index issued by Transparency International in 2017 (Transparency International, 2017b), there is currently no overarching legislation protecting whistle-blowers (Ungki and Aravindan, 2018). While the country's Prevention of Corruption Act is currently being reviewed and is likely to be amended, the government is reluctant to introduce such laws, primarily because it may have repercussions on employment and libel laws as well as potentially raising the cost of doing business (McLaren, Kendall and Rook, 2019).

Key provisions of whistle-blower protection legislation

Provisions across a range of legal texts and administrative policies exist to protect whistle-blowers, and include the following.

- Prevention of Corruption Act (Government of Singapore, 2012): section 36 affords anonymity to whistle-blowers who report to the Corrupt Practices Investigation Bureau.[17]
- Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Government of Singapore, 1993): Mandatory whistle-blowing in the case of drug trafficking and criminal conduct, including for bankers and lawyers concerned with the duty of confidentiality (section 39). Sections 43, 44 and 45 also protect whistle-blowers in the specific cases relevant to money-laundering and provide anonymity.

[16] For instance, the Central Bank recently shut down two banks for alleged money-laundering activities related to Malaysia's 1MDB fund.

[17] This is subject to exception, as the right to anonymity may be revoked by the courts if there is reason to believe that "justice cannot be done without revealing the identity of the informer or that the whistle-blower did not believe that the statement he or she was making was true, or actually knew that the statement was false".

- Workplace Safety and Health Act (Government of Singapore, 2006a): Section 18 prohibits employers from dismissing an employee who "in good faith sought the assistance or made a report to" an inspector, authorized person or any other public authority in health and safety-related matters only; and who assists in the conduct of any inspection or investigation for breach of the Act.
- Competition Act (Government of Singapore, 2006b): The Act establishes a Leniency Programme allowing a whistle-blower reporting to the Competition Commission of Singapore[18] to have anonymity and immunity, or a reduction of up to 100 per cent of the financial penalties.
- Singapore Companies Act (Government of Singapore, 2006c): Auditors have a mandatory duty to report alleged frauds perpetrated by employees against the company audited.
- Penal Code (Government of Singapore, 2008): Chapter 224 protects "all witnesses, including informants, from potential retaliation or intimidation", a standard practice.
- Various incentives and policy programmes are in place, including the whistle-blowing policy of the Monetary Authority of Singapore, geared towards public reporting under the staff code of conduct.
- Additional points are awarded under the Singapore Governance and Transparency Index for anonymity in the whistle-blower protection systems set up by Singapore-listed companies (National University of Singapore, 2018).
- The Singapore Code of Corporate Governance (Monetary Authority of Singapore, 2018): The Code encourages listed companies to create a whistle-blower reporting mechanism and inform employees about its procedures.
- Given the lack of explicit legal provisions protecting whistle-blowers from retaliation,[19] including those involved in the illegal activity reported, the courts have the discretion to determine the extent to which whistle-blowers are liable, primarily based on their motivation and "good faith".

In practice, a lack of explicit protection of whistle-blower personal data has had repercussions on the lives and safety of whistle-blowers, as demonstrated by the publicized case of Tan Keng Hong, who, in 2012, became a victim of "incessant harassment" because "his name, identity card number and address" were made public in a public court document. Hong had blown the whistle on an energy company in 2011 after witnessing an environmental crime while working at the Maritime and Port Authority of Singapore (Othman, 2014).

[18] Renamed the Competition and Consumer Commission of Singapore in 2018.

[19] For instance, no protection is provided to whistle-blowers of security offences in the Securities and Futures Act, Chapter 289, 2006.

4.3.4 South Africa

The Protected Disclosures Act of 2000 is South Africa's whistle-blower protection legislation. It was amended in 2017, modernizing the original Act (Government of South Africa, 2017). It protects paid employees, including "independent contractors, consultants, agents and those rendering services to a client whilst being employed by a 'temporary employment service' (i.e. a labour broker)", in both the public and private sectors. The law also protects against non-disclosure agreements. On the other hand, the Companies Act (Government of South Africa, 2009) provides protection to suppliers, including contractors, as well as shareholders, directors, company secretaries and prescribed officers. It is comprehensive in terms of explicitly mentioning potential types of retaliation, as follows:

a) "being subjected to any disciplinary action;

b) being dismissed, suspended, demoted, harassed or intimidated;

c) being transferred against his or her will;

d) being refused transfer or promotion;

e) being subjected to a term or condition of employment or retirement which is altered or kept altered to his or her disadvantage;

f) being refused a reference or being provided with an adverse reference, from his or her employer;

g) being denied appointment to any employment, profession or office;

h) being threatened with any of the actions referred to [in] paragraphs (a) to (g) above; or

i) being otherwise adversely affected in respect of his or her employment, profession or office, including employment opportunities and work security."

Additionally, the Protected Disclosures Act, 2017, introduces the obligation to establish internal reporting procedures at the company level and the requirement to make employees aware of their existence. It also includes protection against civil or disciplinary proceedings. In terms of due process guarantees, the law states that "any worker who has been subjected, is subjected or may be subjected, to an occupational detriment in breach of section 3,[20] or anyone on behalf of a worker who is not able to act in his or her own name, may approach any court having jurisdiction for appropriate relief". In the past, for example as was prescribed in the Labour Relations Act (Government of South Africa, 1995), the prohibition of unfair dismissal and occupational detriment and the compensation for damages could only be determined by the Commission for Conciliation, Mediation and Arbitration and the Labour Court.

[20] Section 3 of the Protected Disclosures Act, 2017, establishes that "no employee or worker may be subjected to any occupational detriment by his or her employer on account, or partly on account, of having made a protected disclosure" and that "where an employer, under the express or implied authority or with the knowledge of a client, subjects an employee or a worker to an occupational detriment, both the employer and the client are jointly and severally liable".

Disclosures are protected if made in good faith, though this is not defined in the Protected Disclosures Act of 2000, following the established procedures established by the employers, if done through internal channels, and reported to:

- an employer;
- a legal adviser, in the course of obtaining legal advice;
- the South African Police Service, members of Parliament and even the media;
- The Public Protector, the Auditor-General or a person or body prescribed by regulation.

Employees are protected against professional retaliation and employers must protect whistle-blowers or risk liability. Further sanctions for dismissal of a whistle-blower are provisioned by the law and compensation can be provided for damages suffered. Additionally, "any provision in a contract of employment or other agreement between an employer and an employee is void if it purports to exclude any provision of the Protected Disclosures Act, to preclude the employee and to discourage him/her from making a protected disclosure".

The Protected Disclosures Act differs from the legislation previously examined in several ways, among them:

- the lack of specific provisions protecting whistle-blower information;
- the need for whistle-blowers to identify their sources in court according to section 205 of the Criminal Procedures Act;
- the lack of provision of details on internal and external mechanisms and procedures;
- the lack of provision for an independent body.

4.3.5 Tunisia

Tunisia adopted a comprehensive whistle-blowing law in March 2017, which included a section on whistle-blower protection (Government of Tunisia, 2017). This law defines a whistle-blower as "a person who reports reasonable suspicions of wrongdoings either in the public or private sector", including a specific mention of public and State-owned financial institutions. The most important characteristics of the law are as follows:

- explicit protection of personal information, with confidentiality guaranteed if so requested but not anonymity, as whistle-blowers have to declare their identities during the reporting to the independent body;
- reliance on the independent anti-corruption body for external reporting mechanisms (electronic, physical and mail channels are described in detail with special provisions for disabled individuals, and feedback after two months is guaranteed);
- obligation for public entities and State-owned institutions to establish internal reporting mechanisms and the designation of an adequately staffed and financed administrative unit in charge of handling the reports;
- provision for financial rewards to whistle-blowers reporting on illegal financial irregularities in the public sector;

- guaranteed whistle-blower protection through immunity from criminal, civil and administration prosecution;
- security protection, if needed;
- personal data protection;
- exception to duty of confidentiality in specific sectoral cases;
- legal aid and psychological assistance;
- compensation in case of retaliation inflicted;
- prison sentences for individuals divulging the identity of whistle-blowers;
- prison sentences for individuals physically harming whistle-blowers;
- prison sentences for individuals who inflict any form of retaliation on whistle-blowers;
- prison sentences in case of obstruction of justice.

Despite the breadth of the law and its comprehensiveness, it does not protect private sector workers explicitly, and does not detail processes and reporting channels specific to the private sector. Moreover, it does not exempt whistle-blowers from Penal Code provisions against defamation of State leaders and public institutions, often used to undermine protection of whistle-blowers (Government of Tunisia, 2017).

Implementation has been delayed because the necessary institutional framework is yet to be put in place. For instance, nearly 280 public institutions have not yet established administrative units dedicated to receiving and handling reports, and application decrees have not yet been published (La Presse de Tunisie, 2017).

4.3.6 Brazil

Overall, Brazil's whistle-blower protection apparatus is very limited. No specific legislation about the matter exists but a number of laws and other measures partly address the issue. In a context of high public distrust of the government, Brazil adopted new laws and policies to promote transparency (Otto, 2017; Wolfe et al., 2014). The following are the most notable examples.

- Federal Constitution of 1988 (Government of Brazil, 1988): The Constitution provides for protection of personal data and access to moral damages in case of violation.
- Law No. 8.443 of 1992 (Organic Law of the Court of Accounts of the Union) (Government of Brazil, 1992): "Any citizen, political party, association, union or professional association may file a complaint with respect to irregularities and violations of the national audit law" (Wolfe et al., 2014).
- Law No. 12.846 of 1 August 2013 to combat actions prejudicial to public administration (called the "Clean Enterprise Act") (Government of Brazil, 2013): Encourages companies to institute internal disclosure procedures.

- Decree No. 8.420/2015, complementary to Law No. 12.846 (Government of Brazil, 2015): The decree sets up an integrity programme and establishes codes of conduct and ethics codes evaluated on the basis of a number of criteria, including the existence of internal reporting channels and whistle-blower protection mechanisms. The Decree does not detail these channels and mechanisms further.
- Law No. 8.112 of 1990 (Civil Service Act), amended by the Freedom of Information Law No. 12.527 of 2011 (Government of Brazil, 2011): The legislation mandates all civil servants to "bring irregularities of which they have knowledge because of their position to the attention of their higher authority" or "another competent authority", and provides for protection against civil, criminal or administrative liability but not against retaliation.
- Law No. 13.608 of 2018 (Government of Brazil, 2018): The law authorizes Brazilian states, trade unions, federal districts and municipalities to establish reward systems for whistle-blowers. It also authorizes Brazilian states to establish hotlines for whistle-blowers, guaranteeing confidentiality, and creates a National Fund of Public Security to support their implementation and assist in setting up the above-mentioned reward mechanism (da Cruz, 2018).

In practice, the system in place has not been effective, as demonstrated by the case of Marcia Reis, who was imprisoned for whistle-blowing and who criticized, following her release, the content of the legislation as well as the length of the investigative process (Transparency International, 2015b). In essence, given the limited information on, and the confusion related to, protection coverage, i.e. the eligibility for protection against retaliation, the type of protection provided, and non-disclosure agreements, the Brazilian whistle-blower protection system remains very weak.

4.3.7 Namibia

In October 2017, two overarching instruments were signed into law: The Whistleblower Protection Act No. 10 of 2017, and the Witness Protection Act No. 11 of 2017 (Government of Namibia, 2017a, 2017b). The instruments set out specific whistle-blower and witness protection provisions against any form of retaliation, with exhaustive recourse mechanisms.

The Whistleblower Protection Act criminalizes retaliation and imposes a fine of 75,000 Namibian dollars or a jail term not exceeding 15 years, or both, on anyone convicted of retaliation. It also shifts the burden of proving that the retaliation against the whistle-blower was not as a result of the disclosure to the person who has been alleged to have taken the retaliatory action. The Act explicitly specifies when whistle-blower protection should be provided in subsections 45(1), 39(2) and 43(3). According to the said subsections, a whistle-blower is entitled to protection (including any person related to or associated with the whistle-blower) from the date of receipt of a disclosure of improper conduct by an authorized person. The provisions also render void any employment contract provisions that seek to prevent, preclude or discourage employees from making a disclosure. The Act establishes independent dedicated institutions such as the Whistleblower Protection Office, the Whistleblower Protection Advisory Committee and the Whistleblower Protection Review Tribunal, which are

aimed at giving whistle-blowers sufficient mechanisms for redress in cases of infringement and retaliation. The Whistleblower Protection Review Tribunal has the same powers, privileges and immunities as those of a magistrate court in a civil matter.

However, the Whistleblower Protection Review Tribunal lacks the necessary independence, because appointment of members to serve on the Tribunal is under the exclusive power of the President, upon recommendation by the Minister. The provision on the termination of contract in section 11, subsection 9(c), does not define what constitutes "incapacity to perform", and in section 11, subsection 9(d), the Minister has been given the prerogative to come up with "any other reason" he or she "considers good and sufficient" to terminate the employment contract of any member serving on the Tribunal. Though the Act establishes progressive mechanisms towards an environment in which whistle-blowers can exercise their rights and freedoms, these provisions negate the need for guaranteed security of tenure and independence of adjudicators in matters of whistle-blowing.

The Witness Protection Act provides wide-ranging provisions for the effective protection of witnesses and related persons whose safety or well-being may be at risk because of bearing witness, being involved in proceedings or being related to the whistle-blower. The Act proposes the establishment of a Witness Protection Unit, Witness Protection Advisory Committee, Witness Protection Programme, and Witness Protection Review Tribunal as independent bodies tasked with the responsibility of protecting witnesses and their relations who may be targeted.

Any witness can apply to be admitted to the Witness Protection Programme and such admission does not depend on providing evidence. As long as there is reason to believe that "any witness or related person who has reason to believe that his or her safety or wellbeing is or may be threatened by any person or group or class of persons, whether known to him or her or not, because of his or her being a witness or related person", such a person can apply for admission to the programme. The Act has strong provisions on the protection of identity, going so far as to provide new identity to the protected or former protected person when the need arises. It provides strong non-disclosure measures relating to original identity to another person, even in legal proceedings, or any details of the protection agreement and the operations of the Witness Protection Programme. Failure to do so attracts, upon conviction, a fine of not more than 100,000 Namibian dollars or imprisonment not exceeding ten years, or both.

Furthermore, the Act provides in subsection 57(1) that "a person who has, in whatever way, obtained access to information or a document relevant to the Programme may not disclose or communicate such information" to another person:

- about the programme;
- about the identity or location of a protected person, a former protected person or a person who has been or is being considered for admission to the programme;
- that compromises or may compromise the security of any staff member of the Unit or any person who has performed a function for or on behalf of the Unit, or the integrity of the programme.

Failure to do so attracts, upon conviction, a fine of not more than 100,000 Namibian dollars or imprisonment of not more than ten years, or both.

As for the Whistleblower Protection Review Tribunal, the appointment of members to serve on the Tribunal lies heavily on the political authority, but in consultation with the Chief Justice. Security of tenure is also not guaranteed, as the Act in section 61, subsection 10(c), does not define what constitutes "incapacity to perform", and gives powers to the Minister in subsection 10(d) to terminate their contracts for "any other reason" he or she "considers good and sufficient".

4.3.8 France

In France, Law No. 2016-1691 of 9 December 2016 relating to Transparency, the Fight against Corruption and Modernization of Economic Life (Government of France, 2016) places responsibility on the employee to submit notice of complaint to direct or indirect supervisors, or to the employer or any designated representative. The law defines a whistle-blower in Article 6 as "a natural person who discloses or reports, disinterestedly and in good faith, a crime or offence, a serious and manifest violation of an international commitment duly ratified or approved by France, of a unilateral act of an international organization taken on the basis of such commitment, as well as of the law or regulations, or a serious threat or harm to the general interest, of which he or she has been personally aware". The law also provides whistle-blowers with an appeal mechanism through the judicial authority, administrative authority or professional order within a reasonable time. The reasonable time is not defined except in cases of emergency, where the whistle-blower is permitted to bypass administrative procedures and directly report to the judicial authority, administrative authority or professional order and make the information public.

Thus, the law makes provision for the whistle-blower to make the information public, especially if there is no redress after three months of submitting the report. The law encourages companies of not less than 50 employees to set up internal mechanisms for receiving reports from whistle-blowers, which must specify:

- the manner in which the whistle-blower addresses his or her report, providing the facts, information or documents likely to support the report;
- the measures taken by the company to inform the author of the report without delay and to guarantee its confidentiality.

Whistle-blowers are protected against exclusion from a recruitment procedure or access to an internship or a period of professional training. Furthermore, Article 10(1) provides that "no employee may be punished, dismissed or subjected to discrimination, direct or indirectly, particularly with regard to remuneration … training, reclassification, assignment, qualification, classification, professional promotion, transfer or renewal of contract" for filing a report.

The procedures established within the Financial Markets Authority (Autorité des Marchés Financiers, AMF)[21] are only applicable when the suspected facts relate to breaches of the European texts, the Monetary and Financial Code or the General Regulation of the AMF, with which the AMF is charged with ensuring compliance (Financial Markets Authority, 2018). The whistle-blower who has knowledge of these facts, for example in his or her professional life or business relations, can then benefit from guarantees. Upon receipt of the report, the AMF analyses the elements and decides on the follow-up actions within its competence; it cannot deal with reports that would be the responsibility of other authorities (the Prudential Supervisory and Resolution Authority, for example), or compensate the whistle-blower, or provide a solution to a possible dispute with an employer.

4.3.9 Switzerland (Canton of Geneva)

In January 2018, the State Council of the Canton of Geneva presented the draft Law on the Protection of Whistle-blowers (B507) (State Council of the Canton of Geneva, 2018). However, the provisions of the draft Law are not considered adequate to promote whistle-blowing and protect whistle-blowers. For example, the draft Law provides in Article 4(1) for the hierarchical reporting of cases, according to which the report should be examined by the employer as provided for in Article 5(1) in order to establish the facts and take necessary measures with a view to making the unlawful conduct cease. These provisions do not guarantee the independence of the persons tasked with the responsibility to examine the report and do not provide for the establishment of independent internal reporting mechanisms that could guarantee anonymity and confidentiality of the whistle-blower.

While Article 8 requests the employer to put in place procedures for reporting illegal behaviour and for protecting whistle-blowers and witnesses, and for training line managers on procedures related to the reporting and protection of whistle-blowers and witnesses, there is no explicit reference to the establishment of an independent arm of the organization to preside over such reports.

Regarding the protection of whistle-blowers, the draft Law places responsibility solely on the shoulders of the employers, despite the principle enshrined in international law that States, not companies, are obligated to respect, protect, and fulfil human rights – wherein whistle-blowing is included, as classified by the European Court of Human Rights case law cited in section 4.2.2 above. Article 7(1) of the draft Law states that "the protection of whistle-blowers and witnesses of unlawful conduct … shall be provided by the employer".

4.3.10 Canada (Quebec)

The Act to Facilitate the Disclosure of Wrongdoings relating to Public Bodies, 2016, mandates any person to disclose information to the public in urgent situations, if there is "reasonable grounds to believe that wrongdoing has occurred or is about to pose a serious risk to the health

[21] The AMF has a system that enables it to receive and process alerts concerning potential breaches of the regulations it supervises and which guarantees the confidentiality of the notifier and the persons concerned, pursuant to Law No. 2016-1691 of 9 December 2016 on Transparency, the Fight against Corruption and Modernization of Economic Life.

or safety of a person or to the environment" (Government of Quebec, 2016). However, the same person must first communicate these facts to the police or the Anti-Corruption Commissioner.

The Act also encourages any person to make applications to the Quebec Ombudsman seeking information on how to make a disclosure or advice regarding the procedures to be followed. Private and public entities are encouraged to facilitate the establishment of internal mechanisms to allow for disclosures by employees. The Act guarantees confidentiality and protection of whistle-blowers from reprisals. However, protection is not extended to municipal and private sector employees. The Act also makes provision for withdrawal of protection from any whistle-blower who makes a denunciation in the media or fails to address the police first.

4.3.11 Peru

Peru ratified the ILO Labour Relations (Public Service) Convention, 1978 (No. 151), in the 1979 Constitution, citing corruption as a main reason for the instability among public servants (Library of Congress, 1978, p. 407). It was the sixth ILO member State to do so.

In 2010, Peru adopted the Act on Protection of Whistle-blowers in Public Administration and Effective Collaboration in Penal Matters (Government of Peru, 2010). The Act covers any citizen who files a substantiated complaint of arbitrary or illegal actions in public administration, defined as actions or omissions that are counter to legal texts and affect or endanger public administration. The Office of the Controller receives these complaints and addresses those under its purview, channelling others to the competent authorities. However, only complaints about procurement are allowed against activities in national defence, intelligence and foreign relations. It also excludes information obtained in violation of fundamental rights or professional secrets, where the whistle-blower is protected by other laws, or regarding issues that are in litigation in a court of law or administrative body. If covered, the Act guarantees the confidentiality of the complaint; provides for assigning a code to protect the whistle-blower's identity; empowers the Controller to protect the whistle-blower against dismissal or harassment; allows courts or administrative bodies to reduce criminal or administrative penalties of co-conspirators, but not of the main culprits; and awards a percentage of the proceeds of the recovered funds to the whistle-blower.

Specifically for public servants, the Code of Ethics mandates each government entity to establish a mechanism to protect whistle-blowers among their ranks. In addition, the Peruvian Government included the collective agreements signed in the public service in its anti-corruption strategy for 2014 (Government of Peru, Office of Internal Supervision, 2014).

4.4 Checklist of the status of country-specific regulatory frameworks

The country-specific legal instruments analysed using the Transparency International framework shows that there is more that needs to be done to develop overarching legal frameworks that address specific and salient issues faced by whistle-blowers. Most countries analysed either have no or ambiguous minimum thresholds for protection; the meanings of "good faith", or honesty, or the implications of "honest mistakes" are often not clear. Other countries still do not grant protection to those who blow the whistle anonymously, although

their information may be credible and useful in prosecuting the perpetrators. The “islands of honesty” occupations are not comprehensively protected from dismissal and other retaliatory actions, especially in countries where there are no overarching whistle-blower protection frameworks, which are beginning to guarantee protection to “any” person who blows the whistle.

Internal reporting channels are still absent in most of the instruments analysed. Though there are some forms of external reporting channels (anti-corruption commissions, consumer protection commissions, securities and exchange commissions, public protector, the police) in all the countries considered, questions on their independence from political influence and interference are commonplace, and those involved in impropriety are either not prosecuted or are exonerated from prosecution by political authorities, rendering whistle-blowers vulnerable to retaliation and further entrenching the culture of impunity.

Table 4.1 presents a checklist of the status of country-specific whistle-blower protection regulatory frameworks.

Table 4.1 Checklist of the status of country-specific whistle-blower protection regulatory frameworks

Criterion	United Kingdom	United States	Singapore	South Africa	Tunisia	Brazil	Belgium	Namibia	France	Canton of Geneva	Canada (Quebec)	Peru
Broad coverage of organizations	Yes	Yes	Yes	Yes	Yes	?	Yes	Yes	Yes	?	Yes	No
Broad definition of reportable wrongdoing	Yes	Yes	Yes	Yes	Yes	?	Yes	Yes	Yes	No	Yes	Yes
Broad definition of whistle-blowers	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	No		Yes
Overarching whistle-blower protection legislation*	Yes	Yes	No	Yes	Yes	No	No	Yes	Yes	?	Yes	Yes
Range of internal / regulatory reporting channels	Yes	?	?	Yes	Yes	?	No	Yes	Yes	?	Yes	No
External reporting channels (third party / public)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	No
Thresholds for protection	?	?	?	?	?	No	?	Yes	?	No	?	No
Provisions and protections for anonymous reporting	No	?	Yes	?	No	?	Yes	Yes	?	No	?	Yes
Confidentiality protected	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
Internal disclosure procedures required	Yes	?	Yes	?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Broad protections against retaliation	Yes	Yes	Yes	Yes	Yes	?	?	Yes	?	?	?	Yes
Comprehensive remedies for retaliation	Yes	Yes	Yes	?	Yes	No	No	Yes	?	?	?	No
Sanctions for retaliators	?	Yes	?	No	Yes	No	No	Yes	?	?	?	Yes
Oversight authority	Yes	Yes	No	No	No	No	No	Yes	Yes	No	Yes	Yes
Transparent use of legislation	Yes	Yes	Yes	Yes	?	?	Yes	Yes	Yes	?	Yes	?

* Not part of the Transparency International framework.

4.5 Gender considerations in the development and application of whistle-blower protection frameworks

Whistle-blower protection mechanisms need to assess and consider the gender dynamics within workplaces that may incentivize or discourage women's and men's equal participation in reporting misconduct.

The legal frameworks around non-discrimination and equal opportunities, as well as employment relationships, may play an important role in empowering and enabling women to take the decision to report wrongdoing. In fact, women's employment status, especially in the case of unclear contractual arrangements, may influence their willingness to report irregularities.

As far as the specific regulation and legislation around whistle-blowing is concerned, research identifies "gender-effect-conscious whistle-blowing policies" and measures that may help in ensuring that women participate on an equal footing in the reporting of misconduct (Tilton, 2018). In particular, mechanisms integrated in whistle-blower protection policies may have divergent effects depending on gender differences. Some research shows that women and men engage in particular types of reporting in different ways: in particular, women tend to act by observing the misconduct themselves, and less often by collecting evidence that wrongdoing occurred; and they are less confrontational towards the alleged perpetrator and more likely to report to a third party (either internally or externally) (Tilton, 2018, p. 355).

Women also give more importance to anti-retaliation and confidentiality measures, and are more likely to comply with the duty to report when this is contemplated in the policy. National frameworks and regulations should ensure that a more in-depth analysis is provided of the circumstances that make women and men respond to whistle-blower protection measures in different ways. This analysis should include the employment relationships and social dynamics within the workplace, as well as the power dynamics (Tilton, 2018, p. 359).

5. Concluding remarks

A number of countries and international bodies have adopted instruments to protect whistle-blowers since 2015. Several trends in whistle-blower protection frameworks emerge from our analysis. While the European emphasis is on "protection of personal data, due process and a presumption of innocence for those whom a whistle-blower accuses of wrongdoing" (DLA Piper, 2015), others emphasize anonymity and whistle-blowing hotlines. Worldwide, comprehensive coverage, in terms of eligibility for protection, has become the norm, while a move towards criminalization of retaliation, remedies for damages, and the establishment of sanctions against gagging clauses is clear.

While these are important components to take into account when framing national and international legal frameworks protecting whistle-blowers, there is also a lesser trend to shift the burden of proof to the defendant while lowering the standard of proof on the part of the whistle-blower, requiring the establishment of a preponderance of evidence rather than proof beyond reasonable doubt.

Most institutional and national legislation does not distinguish between workers responsible for reporting as part of their job (for example, financial industry regulators and auditor-general) and employees who report as part of ethical conduct. While every employee may have an ethical responsibility to report wrongdoing and should be protected, there is a need to clearly establish distinct roles and responsibilities of those required to report misconduct as part of their job description, so that adequate measures can be provided to mandate them to carry out their functions without fear of retaliation. Research shows that the most common method for the initial detection of corruption is tips, usually provided by employees, followed by internal audit and management review (ACFE, 2018, p. 5).

This suggests that strong internal controls can promote whistle-blowing and motivate the employees of oversight bodies to refer the cases for prosecution. As the United Nations Joint Inspection Unit report points out: "Staff rely on the independence of such functions when reporting sensitive information that can carry significant reputational and operational risks for an organization if unreported, on the belief that they will be protected if they do so" (Joint Inspection Unit, 2018, para. 146). The ACFE report also shows that internal control weaknesses are responsible for nearly half of all fraud cases (ACFE, 2018, p. 5). And in the recommendations to the United Nations General Assembly, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression stressed that "internal institutional and external oversight mechanisms should provide effective and protective channels for whistle-blowers to motivate remedial action. In the absence of channels that provide protection and effective remediation, or that fail to do so in a timely manner, public disclosures should be permitted" (United Nations, 2015, para. 64). A recent study of 1,000 whistle-blowers (50 per cent in the public sector, 7 per cent in financial services) found that most of them attempted to use internal procedures at first, and used external mechanisms if their initial attempts failed, which suggests that the option of reporting to external institutions may improve the safety and effectiveness of whistle-blowing (Public Concern at Work and University of Greenwich, 2013).

Therefore, both internal and external oversight mechanisms appear to be more effective when they not only are independent of any undue political and hierarchical pressure, influence or interference, but also make provisions for additional checks and balances accorded by independent and impartial appeal mechanisms.

As has already been alluded to in many legal provisions analysed, protection of whistle-blowers should not be restricted to particular persons but can be broad enough to cover all types of stakeholders. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression called for legal whistle-blower protection systems that protect:

> … any person who discloses information that he or she reasonably believes, at the time of disclosure, to be true and to constitute a threat or harm to a specified public interest, such as a violation of national or international law, abuse of authority, waste, fraud or harm to the environment, public health or public safety. Upon disclosure, authorities should investigate and redress the alleged wrongdoing without any exception based on the presumed motivations or "good faith" of the person who disclosed the information (United Nations, 2015, para. 63).

In contrast, concepts like "serious wrongdoing" that cannot easily be defined, and whistle-blower protection limited to persons in employment-based relationships, may not make whistle-blowers feel adequately protected.

The legislation analysed in this paper tends to focus on protecting whistle-blowers from retaliation, but not on penalizing those who retaliate. There is further need for research on the possible benefits of these penalties, which the Committee of Experts on the Application of Conventions and Recommendations has stressed are necessary to address other problems, such as anti-union discrimination. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has called for legal frameworks in which:

> … acts of reprisals and other attacks against whistle-blowers and the disclosure of confidential sources must be thoroughly investigated and those responsible for those acts held accountable. When the attacks are condoned or perpetrated by authorities in leadership positions they consolidate a culture of silence, secrecy and fear within institutions and beyond, deterring future disclosures. Leaders at all levels in institutions should promote whistle-blowing and be seen to support whistle-blowers, and particular attention should be paid to the ways in which authorities in leadership positions encourage retaliation, tacitly or expressly, against whistle-blowers" (United Nations, 2015, para. 66).

Social dialogue has also been an important part of this process. For example, European Parliament Resolution 2016/2224 called on Member States to include unions in the development of official reporting channels and dispute resolution processes. The peer review on "Enhancing whistleblower protection through better collaboration between responsible authorities – a tool to prevent and tackle work-related crime", held in Oslo, Norway, in February 2019, also called for employers' organizations to be involved in ensuring the protection of whistle-blowers (European Commission, Directorate-General for Employment, Social Affairs and Inclusion, 2019). Social dialogue and collective bargaining can contribute

by bringing out workers' interests, building trust between the parties and in the change process itself, and empowering workers to contribute to the goals of the organization.

However, social dialogue and collective bargaining can add value beyond these concerns. They can also strengthen the effort to professionalize public employees by institutionalizing the bidirectional exchange of information and mutual agreement to establish collaboration mechanisms for the improvement of services, as well as through clauses for recruitment and selection, performance management, and career development and training. Besides, social dialogue has the potential to harness the expertise that workers develop through their engagement with the public, which is the same expertise that courts defer to when reviewing decisions made by executive branch agencies.

As this paper shows, international organizations – including the ILO – have assumed a larger role in calling on member States to protect whistle-blowers. A 2014 article in the *International Labour Review* argued: "Given the piecemeal nature of the current international Conventions and the uneven protection afforded to whistleblowers by ILO member States, it might be argued that this issue should now be addressed with some urgency" (Fasterling and Lewis, 2014). Furthermore, the authors conclude that "whistleblowing can only be dealt with in a broader context of fundamental rights of employees".

In light of the above, there appears to be a need for further international normative work on whistle-blowing protection in the workplace. Any such work would follow the three threads of logic underlying the ILO's normative system, as outlined by the ILO Director-General when presenting the initiative on the future of work in 2015:

- the need to establish a level playing field between member States on the basis of common standards;
- the shared objective of establishing universal respect for fundamental principles and rights at work, as set out in the 1998 ILO Declaration on Fundamental Principles and Rights at Work;
- the idea that international labour standards – including non-binding Recommendations – should provide a framework of guidance for member States as they seek to marry economic growth with social progress (ILO, 2015, para. 77).

This paper has attempted to shed light on current law and practice in the area of whistle-blower protection, and to identify areas where further elaboration of principles may be needed. We hope it can serve as a useful reference, should ILO constituents choose to pursue further normative work in this field.

References

African Union. 2003. *Convention on Preventing and Combating Corruption*, adopted by the second ordinary session of the Assembly of the Union, 11 July 2003.

Alexander, R. 2005. "The role of whistle-blowers in the fight against economic crime", in *Journal of Financial Crime*, 2005, Vol. 12, No. 2, pp. 131–138.

Association of Certified Fraud Examiners (ACFE). 2018. *Report to the Nations: 2018 global study on occupational fraud and abuse*.

Belecky, M.; Singh, R.; Moreto, W (eds). 2018. *Life on the frontline 2018* (Singapore, World Wildlife Fund).

Bizlaw, Moldova. 2018. "Cazul Guja: Procuratura Generală, obligată să restabilească în funcție fostul șef de secție și să-i achite salariul pentru 10 ani" [The Guja Case: The General Prosecutor's Office, obliged to restore the former head of the section and pay him the salary for 10 years], news report, 29 November 2018.

Brenkert, G. 2010. "Whistle-blowing, moral integrity, and organizational ethics", in G.G. Brenkert and T.L. Beauchamp (eds): *Oxford handbook of business ethics* (New York, Oxford University Press), pp. 563–601.

Browning, L. 2011. "U.S. probes Liechtenstein bank on tax dodge work", in *Reuters*, 9 September 2011.

C20 Engagement Group. 2019. *Civil society and trade unions urge G20 to protect whistle-blowers*, Osaka, C20, 24 June 2019.

Chamorro-Courtland, C.; Cohen, M. 2017. "Whistle-blowing laws in the financial markets: Lessons for emerging markets", in *Arizona Journal of International and Comparative Law*, Vol. 34, No. 2, pp. 187–226.

Chêne, M. 2009. *Good practice in whistle-blowing protection legislation* (Bergen, Norway, Anti-Corruption Resource Center).

Chevarría, F.; Silvestre, M. 2013. *Sistemas de denuncias y de protección de denunciantes de corrupción en América Latina y Europa* [Whistle-blowing and systems for the protection of whistle-blowers in Latin America and Europe] (Madrid, Programa EUROsociAL).

Congress of Deputies. 2019. *Proposición de ley de protección integral de los denunciantes de corrupción* [Proposal for a law on the comprehensive protection of whistleblowers of corruption]. Available online at http://www.congreso.es/public_oficiales/L13/CONG/BOCG/B/BOCG-13-B-35-1.PDF.

Council of Europe. 2003. *Civil Law Convention on Corruption*, European Union Treaty No. 174, entry into force on 1 November 2003.

—. 2014. *Recommendation CM/Rec (2014)7 of the Committee of Ministers to member States on the protection of whistleblowers*, adopted at the 1198th Meeting of the Ministers' Deputies by the Committee of Ministers, 30 April 2014.

Covington. 2016. "Rules requiring UK financial institutions to appoint 'whistleblower champions' enter into force", in *Covington Alert*, 9 March 2016.

da Cruz, A. 2018. "Brazil introduces public hotlines and rewards for whistle-blowers", in *Global Compliance News*, 26 January 2018.

DLA Piper. 2015. *Whistleblowing: An employer's guide to global compliance*.

European Broadcasting Union. 2018. *Policy sheet for effective whistle-blower protection: European public service media's views on the draft Directive, 2018.*

European Commission. 2018. "Whistleblower protection: Commission sets new, EU-wide rules", press release, 23 April 2018.

European Commission, Directorate-General for Employment, Social Affairs and Inclusion. 2019. *Peer review on "Enhancing whistleblower protection through better collaboration between responsible authorities – a tool to prevent and tackle work-related crime"*, Oslo (Norway), 14–15 February 2019.

European Court of Human Rights. 2009. *Case of Marchenko v. Ukraine, No. 4063/04*, 19 February 2009.

—. 2011. *Case of Heinisch v. Germany, No. 28274/08*, 21 July 2011.

—. 2013. *Case of Bucur and Toma v. Romania, 40238/02*, 19 June 2013.

—. 2018. *Case of Guja v. The Republic of Moldova (No. 2), No. 14277/04*, 27 February 2018.

European Parliament. 2014. *EU Regulation 596/2014 on market abuse*.

—. 2015. *Directive 2015/2392 on EU Regulation 596/2014 as regards reporting to competent authorities of actual or potential infringements of that Regulation.*

—. 2016. *Resolution 2016/2224 (INI) on legitimate measures to protect whistle-blowers acting in the public interest when disclosing the confidential information of companies and public bodies*.

—. 2017a. *Draft report on legitimate measures to protect whistle-blowers acting in the public interest when disclosing the confidential information of companies and public bodies (2016/2224(INI)).*

—. 2017b. *European Parliament resolution of 24 October 2017 on legitimate measures to protect whistle-blowers acting in the public interest when disclosing the confidential information of companies and public bodies (2016/2224(INI)).*

—. 2019. *European Parliament legislative resolution of 16 April 2019 on the proposal for a directive of the European Parliament and of the Council on the protection of persons reporting on breaches of Union law* (Strasbourg).

Fasterling, B.; Lewis, D. 2014. “Leaks, legislation and freedom of speech: How can the law effectively promote public-interest whistleblowing?”, in *International Labour Review*, Vol. 153, No. 1, pp. 71–92 (Geneva, ILO).

Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA). 2015. *Whistleblowing in deposit-takers, PRA-designated investment firms and insurers* (London, FCA).

Financial Markets Authority. 2018. *Lanceur d’alerte: Notification de potentielles infractions à la réglementation* [Whistle-blowing: Notification of potential regulatory violations]. Available online at https://www.amf-france.org/Formulaires-et-declarations/Lanceur-d-alerte.

Freshfields Bruckhaus Deringer. 2017 “Whistleblowing in the financial services sector”, briefing, 4 October 2017.

Global Commission on the Future of Work. 2019. *Work for a brighter future* (Geneva, International Labour Office).

Government of Australia. 2013. *Public Interest Disclosure Act No. 133.*

Government of Belgium. 2017. *Loi modifiant la loi du 2 août 2002 relative à la surveillance du secteur financier et aux services financiers, en vue de mettre en œuvre le Règlement n° 596/2014 sur les abus de marché et de transposer la Directive 2014/54/UE relative aux sanctions* [Act to amend the Act of 2 August 2002 on the supervision of the financial sector and financial services, with a view to implementing Regulation No. 596/2014 on market abuse and to transpose Directive 2014/54/EU on sanctions].

Government of Brazil. 1988. *Constitution of the Federative Republic of Brazil.*

—. 1992. *Organic Law of the Court of Accounts of the Union, Law No. 8.443.*

—. 2011. *Law No. 8.112 of 11 December 1990 (Civil Service Act), amended by the Freedom of Information Law No. 12.527.*

—. 2013. *Anti-Corruption Act, Law No. 12.846.*

—. 2015. *Decree No. 8.420/2015, 18 March 2015, complementary to Law No. 12.846.*

—. 2018. *Law No. 13.608.*

Government of Canada. 2018. *Public Servants Disclosure Protection Act, S.C. 2005, c. 46, as amended 6 March 2018.*

Government of Chile. 2007. *Law No. 20.205, 24 July 2007, amending Act No. 29 of 2004 to protect public servants who denounce irregularities and violations of the principle of probity.*

Government of France. 2016. *Law No. 2016-1691 relating to Transparency, the Fight against Corruption and Modernization of Economic Life, 9 December 2016.*

Government of India. 2014. *The Whistle Blowers Protection Act, 2011, Act No. 17 of 2014.* Available online at http://egazette.nic.in/WriteReadData/2014/159420.pdf.

Government of Ireland. 2010. *Prevention of Corruption (Amendment) Act*.

—. 2014. *Protected Disclosures Act, No. 14 of 2014.*

Government of Italy. 2017. *Law No. 179/2017, 29 December 2017.*

Government of Japan. 2004. *Whistle-blower Protection Act No. 122, 18 June 2004.*

Government of Mexico. 2010. *Federal Criminal Code*, consolidated text published in the Official Gazette of the Federation, 19 August 2010.

—. 2017. *Ley General de Responsabilidades Administrativas* [General Law of Administrative Responsibilities], Official Gazette of the Federation, 18 July 2016, as amended on 19 July 2017. Available online at https://declaranet.gob.mx/docs/LGRA.pdf.

Government of Namibia. 2017a. *Whistleblower Protection Act No. 10.*

—. 2017b. *Witness Protection Act No. 11*.

Government of the Netherlands. 2016. *House for Whistle-blowers Act, 1 July 2016.*

Government of New Zealand. 2000. *Protected Disclosures Act, Public Act No. 7 of 3 April 2000.*

Government of Peru. 2010. *Act on Protection of Whistle-blowers in Public Administration and Effective Collaboration in Penal Matters, Act No. 29542, 22 June 2010.*

—, Office of Internal Supervision. 2014. *Seguimiento a las estrategias para la construcción del plan anticorrupción y de atención al ciudadano* [Follow-up on the strategies for the construction of the anti-corruption and citizen assistance plan].

Government of Quebec. 2016. *Act to Facilitate the Disclosure of Wrongdoings relating to Public Bodies*.

Government of Republic of Korea. 2017. *Act on the Protection of Public Interest Whistle-blowers, Act No. 10472 of 29 March 2011, as amended by Act No. 15023 of 31 October 2017.*

Government of Singapore. 1993. *Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act, Chapter 65A, 30 November 1993.*

—. 2006a. *Workplace Safety and Health Act, Chapter 354A of 1 March 2006.*

—. 2006b. *Competition Act, Chapter 50B of 31 January 2006.*

—. 2006c. *Companies Act, Chapter 50 of 31 October 2006.*

—. 2008. *Penal Code, Chapter 224 of 30 November 2008.*

—. 2012. *Prevention of Corruption Act, Chapter 241 of 1960, as amended in 2012.*

—. 2018. *Code of Corporate Governance*. Available online at https://www.mas.gov.sg/-/media/MAS/Regulations-and-Financial-Stability/Regulatory-and-Supervisory-Framework/Corporate-Governance-of-Listed-Companies/Code-of-Corporate-Governance-6-Aug-2018.pdf.

Government of Slovenia. 2010. *Integrity and Prevention of Corruption Act.*

Government of South Africa. 1995. *Labour Relations Act No. 66, 13 December 1995.*

—. 2009. *Companies Act No. 71, 9 April 2009.*

—. 2017. *Protected Disclosures Act No. 5, 2000, amended 2 August 2017.*

Government of Sweden. 1991. *The Constitution of Sweden: The Fundamental Law on Freedom of Expression.*

Government of Trinidad and Tobago. 2015. *First session of the Eleventh Parliament (2015/2016): Second interim report of the Joint Select Committee appointed to consider and report on the Whistleblower Protection Bill, 2015*.

Government of Tunisia. 2017. *Whistle-blower Protection Act No.107, 7 March 2017.*

Government of the United Kingdom. 1996. *Employment Rights Act.*

—. 1998. *Public Interest Disclosure Act.*

Government of the United States of America. 1863. *False Claims Act (FCA), 31 U.S.C. §§ 3729-3733.*

—. 1948. *Title 18: Crimes and Criminal Procedure, title enacted by Act of 25 June 1948, ch. 645, §1, 62 Stat. 683.*

—. 1989. *Whistleblower Protection Act, 1989, 5 U.S.C. 2302(b)(8)-(9), Pub.L. 101-12 as amended.*

—. 2002. *Sarbanes-Oxley Act, Public Law 107–204, 30 July 2002*.

—. 2010. *Dodd-Frank Wall Street Reform and Consumer Protection Act 2010, Public Law 111–203, 21 July 2010*.

—. 2015. *31 U.S. Code § 3730: Civil actions for false claims.*

Gresko, J. 2018. "Supreme Court: Dodd-Frank whistle-blower protection is narrow", in *Voice of America News*, 21 February 2018.

Group of Twenty (G20). 2019. *High-Level Principles for the Effective Protection of Whistleblowers*. Available online at https://g20.org/pdf/documents/en/annex_07.pdf.

International Chamber of Commerce (ICC). 2008. *ICC Guidelines on Whistleblowing* (Paris).

—. 2014. *ICC Whistleblowing and Whistleblower Protection Policy* (Paris).

International Labour Office (ILO). 2015. *The future of work centenary initiative*, Report I of the Director-General to the 104th session of the International Labour Conference (Geneva).

International Labour Office (ILO) Committee of Experts on the Application of Conventions and Recommendations. 2013. *Collective bargaining in the public service: A way forward*, Report III (Part 1B), International Labour Conference, 102nd session, Geneva, 2013 (Geneva).

Joint Inspection Unit. 2018. *Review of whistle-blower policies and practices in United Nations system organizations*, JIU/REP/2018/4.

Kahora, B. 2009. “Goldenburg: Story of a whistle-blower”, in *The East African*, 3 August 2009.

Khan, J. 2004. “China releases the SARS whistle-blower”, in *New York Times*, 21 July 2004.

La Presse de Tunisie. 2017. “Loi sur la protection des dénonciateurs: Il est urgent de publier les textes d’application” [Law on the protection of whistleblowers: It is urgent to publish the texts of application], in *La Presse*, 26 May 2017.

Latimer, P.; Brown, A.J. 2008. “Whistleblower laws: International best practice”, in *UNSW Law Journal*, Vol. 31, No. 3, pp. 766–794.

Latin American Union of Workers of Oversight Bodies (ULATOC). 2018. Intervention by Mr Sergio Daniel Hemsani at the 107th International Labour Conference (Geneva, ILO).

Library of Congress. 1978. *Diario de Debates de la Asamblea Constituyente, Vol. 2* [Journal of Debates of the Constituent Assembly, Vol. 2] (Lima, Peru).

McLaren, J.; Kendall, W.; Rook, L. 2019. “Would the Singaporean approach to whistleblower protection laws work in Australia?”, in *Australasian Accounting, Business and Finance Journal*, Vol. 13, No. 1, pp. 96–97.

Moberly, R.; Thomas, J.; Zuckerman, J. 2014. “De facto gag clauses: The legality of employment agreements that undermine Dodd-Frank’s whistleblower provisions”, in *ABA Journal of Labor and Employment Law*, Vol. 30, No. 1, pp. 87–120.

Monetary Authority of Singapore. 2018. *Code of Corporate Governance*. Available online at https://www.mas.gov.sg/-/media/MAS/Regulations-and-Financial-Stability/Regulatory-and-Supervisory-Framework/Corporate-Governance-of-Listed-Companies/Code-of-Corporate-Governance-6-Aug-2018.pdf.

Monitoring Committee of the Corporate Governance Code (MCCG). 2016. *The Dutch Corporate Governance Code*, unofficial translation (The Hague, The Netherlands). Available online at https://www.mccg.nl/?page=3779.

National University of Singapore. 2018. *Singapore Governance and Transparency Index, 2018*.

National Whistleblower Center. 2019. *Jeffrey Wigand*. Available online at https://www.whistleblowers.org/members/jeffrey-wigand/.

Ndikumana, L. 2006. *Corruption and pro-poor growth outcomes: Evidence and lessons for African countries*, Working Paper Series No. 120 (Political Economy Research Institute).

Near, J.P.; Miceli, M.P. 1985. “Organisational dissidence: The case of whistle-blowing”, in *Journal of Business Ethics*, Vol. 4, No. 1, p. 2.

Office of the United Nations High Commissioner for Human Rights (OHCHR). 2011. *The whistleblower protection and reward system of Korea* (Geneva).

Organization of American States. 1996. *Inter-American Convention against Corruption (B-58)*.

—. 2018. *Lima Commitment: Democratic Governance against Corruption*, VIII Summit of the Americas, Lima, Peru, 2018.

Organisation for Economic Co-operation and Development (OECD). 2000. *Recommendation of the OECD Council on improving ethical conduct in the public service, including principles for managing ethics in the public service* (Paris).

—. 2003. *Managing conflict of interest in the public service: OECD guidelines and country experiences* (Paris).

—. 2009. *Recommendation of the Council for further combating bribery of foreign public officials in international business transactions* (Paris, Working Group on Bribery in International Business).

—. 2010. *G20 Anti-Corruption Action Plan. Protection of whistleblowers: Study on whistleblower protection frameworks, compendium of best practices and guiding principles for legislation* (Paris).

—. 2014. *Revisiting whistle-blower protection in OECD countries: From commitments to effective protection* (Paris). Available online at http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=GOV/PGC/ETH(2014)4&docLanguage=En.

—. 2016. *Committing to effective whistle-blower protection: Highlights* (Paris).

Osterhaus, A.; Fagan, C. 2009. *Alternative to silence: Whistle-blower protection in 10 European countries* (Berlin, Transparency International).

Othman, Z. 2014. "Whistle-blower harassed after court case ended", in *Asia One*, 25 September 2014.

Otto, S. 2017. "Corruption legislation in Brazil and multinational companies", in *Global Compliance News*, 30 March 2017.

Public Concern at Work and University of Greenwich. 2013. *Whistleblowing: The inside story* (Greenwich).

Public Protector South Africa. 2019. *Vision 2023: Taking the services of the Public Protector to the grassroots*. Available online at http://www.pprotect.org.

Public Services International. 2016. *Checkmate to corruption: Making the case for a wide-ranging initiative on whistle-blower protection* (Ferney-Voltaire).

Pyper, D. 2016. *Whistle-blowing and gagging clauses*, Briefing Paper No. CBP 7442 (London, House of Commons Library).

Ruane, N. 2016. *An employer's guide to whistle-blowing* (London, Burnetts Solicitors).

Sawyer, K.R.; Johnson, J.; Holub, M. 2010. "The necessary illegitimacy of the whistleblower", in *Business and Professional Ethics Journal*, Vol. 29, No. 1–4, pp. 85–107.

Soltes, K. 2012. "Facilitating appropriate whistle-blowing: Examining various approaches to what constitutes fact to trigger protection under Article 33 of the United Nations

Convention against Corruption", in *American University International Law*, No. 4, pp. 925–954.

State Council of the Canton of Geneva. 2018. *Draft Law on the Protection of Whistle-blowers (B507)*.

Strack, G. 2011. "Whistle-blowing in Germany", in M. Arszulowicz and W.W. Gasparski (eds): *Whistle-blowing: In defense of proper action* (New Brunswick, Transaction Publishers), pp. 109–124.

Taub, A. 2016. "How 'Islands of Honesty' can crush a system of corruption", in *New York Times*, 6 December 2016.

Tilton, C. 2018. "Women and whistleblowing: Exploring gender effects in policy design", in *Columbia Journal of Gender and Law*, Vol. 35, No. 2, pp. 338–368.

Transparency International. 2013. *Whistle-blowing in Europe: Legal protections for whistle-blowers in the EU* (Berlin). Available online at https://www.transparency.org/whatwedo/publication/whistle-blowing_in_europe_legal_protections_for_whistle-blowers_in_the_eu.

—. 2015a. *Informes de los países iberoamericanos* [Reports from Ibero-American countries]. Available online at https://www.transparency.org/files/content/publication/2015_ExportarCorrupcion_InformesPaisesIberoamericanos_ES.pdf.

—. 2015b. "Brazil needs effective protection for witnesses and victims of corruption". News report, 12 November 2015.

—. 2017a. *People and corruption: Asia Pacific – Global corruption barometer* (Berlin). Available online at https://www.transparency.org/whatwedo/publication/people_and_corruption_asia_pacific_global_corruption_barometer.

—. 2017b. *Corruption Perceptions Index 2017*. Available online at https://www.transparency.org/news/feature/corruption_perceptions_index_2017.

Ungki, F.; Aravindan, A. 2018. "Singapore reviewing anti-graft law amid mounting calls to make it tougher", in *Reuters*, 23 January 2018.

United Nations. 2015. "Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression", in *Promotion and protection of the right to freedom of opinion and expression*, Note by the Secretary-General, seventieth session of the General Assembly, September 2015.

United Nations Office on Drugs and Crime (UNODC). 2004. *United Nations Convention against Corruption*, General Assembly Resolution 58/4 of 31 October 2003 (New York, United Nations).

—. 2015. *The United Nations Convention against Corruption: Resource guide on good practices in the protection of reporting persons* (Vienna).

Wolfe, S.; Worth, M.; Dreyfus, S.; Brown, A.J. 2014. Whistle-blower protection laws in G20 countries: Priorities for action (Melbourne, Transparency International Australia).

Zuckerman, J. 2018. “SEC issues landmark order barring gag clauses”, *Zuckerman Law*, 3 April 2018.

Zuckerman Law. 2019. *SEC whistle-blower protections: Dodd-Frank and Sarbanes-Oxley prohibitions against retaliation* (Washington, DC).