Key features for whistleblowing systems

Wrongdoing and corruption come with high social costs. And no country is immune. Antonino Vaccaro, Gianmichele Potito and Enrique Aznar offer five keys to putting effective whistleblowing policies into place.



March 22, 2018

Key features for whistleblowing systems from **IESE Business School**

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Comparison of the legal framework of the public sector in some EU countries

Benchmarking of Legal Framework Across EU Countries: A Public Sector View	Germany	France	United Kingdom	Italy	Spain	Netherlands	Portugal	Belgium	Ireland
1 Presence of a dedicated whistleblowing protection law		✓	✓			✓		*	*
2 Whistleblowing protection in one or more provisions of related laws	✓	✓	✓	✓	✓	✓		✓	✓
3 Inclusion of anonymity provision		✓		✓		*		✓	✓
4 Whistleblowers protection from retaliation provided for		✓	✓	✓		✓		✓	✓
5 Possibility to report externally	✓	✓	✓	✓	✓	✓		✓	✓
6 Available external channels by law	Public Prosecutors	Judicial, Administrative or Professional Authorities	Any official bodies	Judicial Authorities, Court of Auditors, National Anti-Corruption Authority		Government Integrity Board, Inspectorate, Supervisory Authority		Central Recipient, Flemish Internal Auditor, Flemish Ombudsperson	Prescribed Person, Minister, Legal Adviser
7 Presence of financial incentives for whistleblowers									
8 Main law(s) regulating whistleblowing in the public sector	Federal Civil Service Act, Civil Service Status Laws (in corresponding Länder laws)	Law on Transparency and Anti-Corruption	Public Interest Disclosure Act (PIDA)	Anti-corruption law, Italian Constitution (art.21), Employment Law	Spanish Criminal Procedure Law	Whistleblower Act; Central and Local Government Personnel Act		Flemish Whistleblowing Decree, Civil Servant Statute, Whistleblower Bill (Federal level)	Protected Disclosures Act (2014)
9 Notes		The Law on Transparency and Anti-Corruption (introduced in 2016) also provides for the establishment of the Agence Française Anticorruption (AFA), a national agency charged with detecting and preventing corruption in both the public and private sectors.				*It is the person reporting the wrongdoing who can ask to remain anonymous. The Government Integrity Board is an independent body that investigates reports of suspicions of malpractice and advises the competent authority on the basis of this investigation. In 2012 the central government also established the Advice Center for Whistleblowers; from July 1, 2016, the Advice Center for Whistleblowers was incorporated into the national House for whistleblowers, embedding two departments: the Advice Department and the Investigation Department. The former is involved in providing information, advice and support to employees while the latter's role is to start investigations.		*In Belgium there are different communities (Flemish, Walloon) and parliaments, hence laws are established both at the federal and regional level. At the federal level, a new law was introduced in 2013, defining whistleblowing as notification of suspected breaches of integrity in the federal administrative authorities by their employees; protection is also granted in the Flemish region (Flemish Whistleblowing Decree), whereas there is no legislation in the Walloon area.	*The Act does not prohibit anonymous protected disclosures but also does not set out any specific provisions for these types of reports. What it does make clear, however, is that where a worker's identity is known, employers and other recipients of protected disclosures must protect the identity of the worker making the protected disclosure.

Comparison of the legal framework of the private sector in some EU countries

Benchmarking of Legal Framework Across EU Countries: A Private Sector View	Germany	France	United Kingdom	Italy	Spain	Netherlands	Portugal	Belgium	Ireland
1 Presence of a dedicated whistleblowing protection law		✓	✓			✓			*
2 Whistleblowing protection in one or more provisions of related laws	✓	✓	✓	✓	✓	✓		✓	✓
3 Inclusion of anonymity provision		✓		*		*			✓
4 Whistleblowers' protection from retaliation provided for	*	✓	✓	✓		✓			✓
5 Possibility to report externally	*	✓	✓		✓	✓			✓
6 Available external channels by law	Federal Financial Supervisory Authority	Judicial, Administrative or Professional Authorities	Any official bodies		Judicial or enforcement authorities	Inspectorate, Supervisory Authority			Prescribed Person, Minister, Legal Adviser
7 Presence of financial incentives for whistleblowers									
8 Main law(s) regulating whistleblowing in the public sector	Federal Data Protection Act, Employment Protection Act, German Act on Financial Services Supervision	Law on Transparency and Anti-Corruption	Public Interest Disclosure Act (PIDA)	Italian Constitution (art. 21), Employment Law, Banks Supervisory Provisions	Spanish Criminal Procedure Law, Organic Law, Statute for Workers	Whistleblower Act		Belgium Code of Corporate Governance	Protected Disclosures Act (2014)
9 Notes	*Related to the companies in the financial sector. On July 2, 2016, an amendment of the German Act on Financial Services Supervision came into force. The framework introduced allows protection for employees of financial institutions who report potential or actual breaches of law.	The Law on Transparency and Anti-Corruption (introduced in 2016) also provides for the establishment of the *Agence Française Anticorruption* (AFA), a national agency charged with detecting and preventing corruption in both the public and private sectors.		From December 31, 2015 Italian banks and financial institutions were obliged to adopt procedures enabling their employees to report internally any potential violations of banking laws and regulations. The procedure must allow for the confidentiality of both the reported person and the whistleblower.	In 2014, Spain introduced an anonymous whistleblowing email hotline for whistleblowers to report anti-competitive behavior. The hotline is open for any customer, competitor or employee that suspects this sort of behavior. These emails can be sent anonymously.	*It is the person reporting the wrongdoing who can ask for confidentiality. In 2012, the central government also established the Advice Center for Whistleblowers; from July 1, 2016, the Advice Center for Whistleblowers was incorporated into the national House for whistleblowers, embedding two departments: the Advice Department and the Investigation Department. The former is involved in providing information, advice and support to employees, while the latter's role is to start investigations.			*The Act does not prohibit anonymous protected disclosures but also does not set out any specific provisions for these types of reports. What it does make clear, however, is that where a worker's identity is known, employers and other recipients of protected disclosures must protect the identity of the worker making the protected disclosure.

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