



Southeast Europe
Coalition on
Whistleblower
Protection

Newsletter

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Bridging the gap through civil society action

Southeast Europe, Moldova and the EU – a comparison

In 2019, the European Union passed a legislative act to protect whistleblowers: “reporting persons in 2019, the European Union passed a legislative act to protect whistleblowers: “reporting persons who work for a public or private organization or are in contact with such an organization in the context of their work-related activities.” The Directive proposes an advanced framework for the protection of whistleblowers that is increasingly becoming a reference point for countries that are not EU member states. We have identified four main issues of the Directive for a comparison with the broader Southeast European region and Moldova.



The Directive requires the establishment of resources to assist whistleblowers. In Southeast European countries and Moldova, some EU member states have an immediate requirement to transpose the Directive. However, laws have been passed in almost all countries, and special offices and authorities have been established to assist whistleblowers, even in countries that are not EU member states. In recent years, the Southeast Europe Coalition on Whistleblower Protection has organized joint events with the Regional Anti-Corruption Initiative in the whistleblower protection framework. Bringing together institutions and CSOs from across the region, among which member organizations of the SEE Coalition, facilitates the possibility for exchange between civil society and responsible authorities. For many of our members, this means building bridges among different stakeholders and increased cooperation with institutions to develop further and strengthen whistleblower protection frameworks.

WHISTLEBLOWER

[noun] a person who makes public disclosure of corruption or wrongdoing



The EU framework for whistleblower protection addresses one of the most fundamental problems that whistleblowers experience, retaliation. The Directive foresees measures in the case a whistleblower has been retaliated against, including the restoration of the contract, compensation for loss of income, and other payments, such as legal expenses. The Southeast European countries and Moldova still have to enforce measures against retaliation. According to regional studies, one of the most decisive factors discouraging people from reporting wrongdoings is fear of reprisals and lack of trust in public institutions and the justice system. Coalition members across the region continue to advocate for anti-retaliation measures.

The EU Directive foresees the application of laws in both public and private sectors. The experience of EU member states so far has shown that the

private sector has to act more effectively in establishing their whistleblower channels and authorities. In the Southeast European region and Moldova, some CSOs report that the existing laws do not broadly tackle whistleblowing in the private sector, such as in the case of Bosnia and Herzegovina, raising awareness on legislation gaps and pushing for improvements. On the other hand, some of our members, like Transparency International in Greece, have established networks with big businesses in the country to promote whistleblowing as a healthy and valuable corporate culture, which, in turn, encourages companies to develop channels and responsible offices to handle these cases. A combination of strategies seems to be an effective way forward, and civil society has the potential and resources to build these bridges.

Finally, the EU Whistleblower Directive encourages member states to develop any other tools and mechanisms outside the scope of the Directive if they improve whistleblower protection. However, political will is an essential component of passing this legislation. Contestation may happen, such as in the case of Germany, where the Federal Council (Bundesrat) rejected the current version of the German Whistleblower Act as it goes beyond the requirements of the EU Whistleblowing Directive, in the scope of its application as well as the obligation to set up anonymous reporting lines and places legally (arguably) unnecessary burdens on small and medium-sized enterprises. In the Coalition's annual meeting, members from Romania and Bulgaria, in particular, emphasized anonymous reporting as an additional element of the legislation. Again, civil society can be a valuable advocate for changes that go beyond the Directive. Building on first-hand evidence from public opinion data, civil society can argue strongly in favor of anonymous whistleblowing as a necessity in the face of a justice system that still needs to be reformed and strengthened, especially in candidate and potential candidate countries for EU membership.

The next step:

Mainstreaming of whistleblower protection across all legislation

As awareness of whistleblowing increases and whistleblowing is acknowledged as an anti-corruption tool, the question of mainstreaming whistleblower protection across all areas arises. While there is no single legal framework for whistleblower protection across different countries, redefining the scope of whistleblowing means that a broader range of institutions and sectors should seriously consider setting up offices and internal authorities to handle whistleblower cases. Also, as anti-corruption tools are mainstreamed across different areas, so should whistleblower practices come into the discussion. One interesting case that illustrates the above is the Wildlife Conservation and Anti-Trafficking Act of 2019 in the United States. The first point of the purposes of this Act lists the responsibility of Federal agencies to develop a plan of action to implement authorities under existing law to reward whistleblowers who furnish information that leads to an arrest, criminal conviction, civil penalty assessment, or forfeiture of property for any wildlife trafficking violation (US Congress 2019). The second important point addresses the provision of standardized processes for determining and adjudicating awards to whistleblowers under authorities under existing law. The Act foresees the establishment of whistleblower offices with



One of the most important aspects, along with the legislation, is awareness-raising on the reward opportunities across several wildlife conservation laws. As whistleblowing has not usually come without risks, this is considered a task of all affected institutions and a way to enforce the law's applicability, encouraging employees to 'blow the whistle' as they become aware of the protection mechanisms and rewards to protect them from retaliation.

**MAINSTREAMING
WHISTLEBLOWER
PROTECTION**



precise, step-by-step tasks on responding to whistleblower cases. Section 103 clearly states that: “If a Secretary concerned proceeds with any administrative or judicial action under any of the 19 laws described in section 102(b)(1) based on information brought to the attention of the Secretary concerned by a person qualified to receive an award under this section, the Secretary concerned shall pay that person an award.” The award is based on the substance of the whistleblowing contribution. It should not be less than 15 percent, 8, and not more than 50 percent of the amounts received by the United States as penalties, interest, fines, forfeitures, community service payments, restitution payments, and additional charges (including any related 13 civil or criminal actions). The Act also foresees an annual report that Secretaries conduct and submit to Congress describing the use of authorities, claims filed, awards paid, and outreach (US Congress 2019). One of the most important aspects, along with the legislation, is awareness-raising on the reward opportunities across several wildlife conservation laws. As whistleblowing has not usually come without risks, this is considered a task of all affected institutions and a way to enforce the law's applicability, encouraging employees to 'blow the whistle' as they become aware of the protection mechanisms and rewards to protect them from retaliation. Rewards also create a positive image of whistleblowers and contribute to viewing whistleblowing as a sign of integrity.

1. <https://www.congress.gov/116/bills/hr864/BILLS-116hr864ih.pdf>

Trust in institutions but

also trust in your compliance officer

While several mechanisms are in place to protect whistleblowers, and there is increasing attention to filling in the gaps and improving the legal framework, the question of trust in institutions puts whistleblowing in a challenging spot. Weak justice systems and high levels of corruption are often in line with a lack of will to report wrongdoings. While improvements in the legislation aim to encourage reporting, the question of trust does not end there. In fact, there is a much pressing issue to be addressed, that of confidence in the institution's compliance officer who deals with whistleblower cases. CSOs across the region often express concerns that compliance officers are somewhat unprepared and untrained to handle these cases. We asked representatives across our membership network about the possible causes of mistrust once the offices are established and how to build trust in compliance officers.

“Fundamentally, when an employee at a company or a public institution learns about crime, corruption or other misconduct being committed within the organization, he or she naturally is unsure about what to do. 'Should I tell anyone?' 'How can I be sure I will not be retaliated against?' 'Who do I trust?' 'Is it safer just to stay quiet and pretend I don't know anything?' These are among the many questions people in this position ask themselves. Unfortunately there are no simple or predictable answers.

Research shows that some type of retaliation against witnesses in the workplace is inevitable – whether it is dismissal, demotion, suspension, harassment, bullying, legal action or blacklisting. Such cases are widely reported in



Mark Worth,
Coalition co-coordinator

the media and on social media, and they provide a strong deterrent for employees to report misconduct. Even though more than 55 countries now have whistleblower protection laws in place, there are very few examples of so-called 'internal' whistleblower systems working for the benefit of employees who report corruption.

Our casework and research shows that a range of actions can increase employee trust in these systems and help them protect employees when they come forward with evidence of wrongdoing. First, there needs to be a visible and sincere commitment from top management that employees are free to speak up. This would be the CEO and Board of Directors of a company, and the Director of a public institution. Without the *tone from the top*, whistleblowers will be in danger. In designing the system, all levels of staff should be involved. This will help ensure the system is designed for the benefit of everyone and establish *buy-in* from the staff.

Once the system is functioning, it must be shown that it actually works in real-life cases. If the results – or lack of results – are kept secret, then the staff will have no idea about how well it is functioning, or that it is not functioning well. Information on the system's effectiveness should be shared with all staff on a regular basis. Anti-retaliation policies must be legally binding through employment contracts. Voluntary codes of conduct are not sufficient. Retaliation must be legally prohibited. Employees who successfully report misconduct should be commended, promoted or otherwise recognized for their contribution to the organization's well-being. Finally, people who retaliate against employees should be disciplined, including dismissed when appropriate.”



“In general, Transparency International Slovakia has identified strong links between willingness to report wrongdoing and lower trust in judicial system and police in Slovakia according to Eurobarometer surveys results. There are various reasons of such low trust including charges already filed by police against political appointees and powerful businessmen, while judicial proceedings have barely kicked off in 2021 and 2022. At the same time, allegations of politically motivated decisions to open corruption investigations risk eroding law enforcement cooperation and the effectiveness of the fight against corruption as well as the public's trust in the integrity of the institutions. It is the distrust in investigation, the frustration from not punishing the perpetrators, the fear of revenge or the ignorance of the reporting mechanisms that discourage people who know about unfair practices or corruption in the workplace to speak up.

It is also important to see the links brought by the most common reasons of under-reporting according to a 2022 public opinion poll published by TI Slovakia, in which respondents could list five main reasons: difficulties when proving that wrongdoing happened at workplace (37,3 %); risk of retaliation from employer (34,7 %); concerns about disclosure of whistleblowers identity (29,3 %); distrust towards investigation of reports (28,3 %) and loyalty to employer/aversion to become traitor at workplace (26,5 %).

One of the main reasons hindering trust in compliance officers is the lack of training and qualifications. The qualifications required for handling whistleblower cases were not specified in the Whistleblower Act in Slovakia. Until the end of 2021 there were no formal



Zuzana Grochalová,
TI Slovakia

training courses, seminars nor certificates for responsible persons. Those were carried out only in 2022 by the Whistleblower Protection Office. Despite the fact that the number of trained employees responsible for receiving, verifying and keeping records of notifications in these organizations doubled in the past two years, still in 2019 one in four organizations did not have qualified staff within this field (even though the law imposes such an obligation).“

“Prevention and early disclosure are the most effective ways to fight corruption, which mostly takes place in the dark unless brought to light by people who often stumble upon it by accident. Citizens who reveal abusive practices – the whistleblowers – play an important role in combating it. However, disclosing information in Greece may have significant costs for whistleblowers, as they are exposed to significant risks, such as losing their jobs, becoming involved in litigation, even having their lives threatened.

Consequently, protection of whistleblowers by a strong legislative framework is imperative. The adoption and implementation of an effective legal framework to protect whistleblowers will not only save resources, but in the long run will contribute to everyone's awareness that it is our right and duty as citizens to actively participate in the fight against corruption and demand the punishment of those who violate the law, breaking chronic vicious cycles that are 'tolerated' by gift recipients and gift givers. You can learn more about Transparency International Greece's work on Whistleblowing and Advocacy here: <https://transparency.gr/ti-kanoume/whistleblowing/>”



Dr. Angelos Kaskanis,
TI Greece

The gender dimension of whistleblowing

The risks associated with whistleblowing are the same across all genders. However, what drives people of different genders to report corruption and which corrupt practices specifically very much depends on gender. While in the Balkans, the level of education and income tend to be the main drivers of the will to report corruption, some studies point at certain aspects involving gender that should be taken into consideration across countries and regions.

A. Surveys suggest that women tend to have stronger attitudes about condemning corruption, but when it comes to reporting corruption, they express more fear of retaliation than men.

B. To this end, anonymous reporting channels should be included to encourage more women to start speaking up, as it reduces the anxiety that comes with whistleblowing.

C. Especially large institutions and companies should be mindful of the limited access to information and reporting channels that employees who work remotely or in distant areas may have and provide action plans for awareness-raising and alternative mechanisms to ensure that this information reaches all employees.



71%

THINK SEXTORTION HAPPENS
AT LEAST OCCASIONALLY



Of these, 55% are women



Only 8% of citizens think it
never happens

Women paint a bleak picture



Corruption

Women are less likely to think ordinary people
can make a difference to stop corruption.



Fear

Women are less likely to think people can
report corruption without fear of retaliation.

Global Corruption Barometer 2019
Transparency International

D. Notably, power structures impact relations within institutions and behavior across different genders. Often, women and transgender persons are more exposed to sextortion, the practice of using power to sexually exploit those dependent on that power.

To this end, some mechanisms protecting women and transgender persons should be more specific to these target groups. These can include physical and psychological support, especially following sexual harassment, mindfulness of the use of language, and possible biases while interacting with women and transgender people.

E. Also, women appear more likely to report if they can interact with another woman. One way to encourage women to speak up is to appoint more female compliance officers.



Action

Women are less likely to think appropriate action will be taken once corruption is reported.



Knowledge

Women are less likely to know about their right to request information from public institutions.