A CHANGE OF DIRECTION

FOSTERING WHISTLEBLOWING IN EUROPE IN THE FIGHT AGAINST CORRUPTION

Policy Survey

EUROPEAN COMMISSION INTERNAL SECURITY FUND

PROJECT "A CHANGE OF DIRECTION"

GA: HOME/2014/ISFP/AG/EFCE/7233

Co-funded by the Internal Security Fund of the European Union

TABLE OF CONTENT

ACKNOWLEDGMENTS

The survey is part of the activities of the Workpackage 1 of the Project "A Change of Direction. Fostering Whistleblowing in Europe in the Fight Against Corruption" *with contributions by* University degli Studi di Pavia *(Prof Emanuela Ceva, Dr Michele Bocchiola, Dr Francesco Chiesa) and* Aix-Marseille Université *(Dr Manohar Kumar). The authors are grateful to Dr Daniele Santoro and* Libera *for their contribution in drafting this document.*

INTRODUCTION[1]

Corruption is deeply problematic in any democracy governed by the rule of law. Generally defined, corruption is an abuse of entrusted power to achieve ends different from those demanded by the role obligation. In this regard, it is an unethical conduct that occurs in breaching of the mandate in accordance with which entrusted power ought to be exercised. Corruption can take many forms that involve the misallocation of funds (e.g., bribery), appropriation of public resources (e.g., embezzlement), the promotion of particular private interests (e.g., clientelism), as well as the pursuit of a surreptitious political agenda (e.g., abuse of political influence).

In this regard, an act of corruption does not only run contrary to the ethics of the role assigned to a particular individual; it involves also the betrayal of the trust bestowed upon them by the attribution of that role. Corruption may consist in either unlawful or lawful but unethical behavior. In either case, corrupt individuals act on the basis of their personal assessment of the advantages that may derive from the abuse of the power with which they are entrusted to the detriment of others and in violation of their duty of accountability for the uses they make of their entrusted power (Ceva & Ferretti 2017a, 2017b).

So conceived, corruption is problematic both in itself and for its expected negative consequences. It is problematic in itself because it consists in an alteration of the logic of public accountability with which entrusted power ought to be exercised in a democracy. Corrupt individuals abuse their power in ways that run counter to the mandate with which that power was entrusted to them. In this sense, they avoid public scrutiny of their actions, thus altering the very logic of public accountability with which entrusted power ought to be exercised in any democratic society governed by the rule of law. But corruption is also problematic for its negative consequences, for example because it creates inefficiencies and imbalances in the distribution of public resources. These may be either material resources (e.g. public funds) or immaterial resources (e.g. political influence). In the latter sense, corruption also has the negative effect of advantaging those already powerful and thus exacerbating existing social inequalities. In this twofold sense, corruption is problematic both because it is an abuse of power that alters the nature of the democratic system and also because it has the consequence of decreasing the opportunities of those who want to engage honestly with that system.

Because of its nonpublic nature, corruption is typically surrounded by shrouds of secrecy and a general lack of transparency. Corrupt individuals typically act in a secretive manner often with the complicity of others, who either partake in the same benefit or are conniving in their silence. In these occurrences, corruption is the symptom as well as the outcome of the failure of the institutional control mechanisms to keep abuses of power in check. Such failure can either be at the level of one specific corrupt organization or at a larger systemic level where any such maneuver either goes unnoticed, unchecked, or unpunished. Unchecked corruption at the institutional level risks translating into everyday affairs, especially where incentives for honest behavior do not exist or are too weak.

[1] This policy paper is based upon an earlier campaign report 'Blowing the Whistle on Corruption: Campaign for an European Directive in Defence of Whistleblowers' by Santoro et.al. (2014) in which some of the current authors of the report participated. The current policy paper, while retaining part of the structure of the 2014 report, is detailed and elaborates on many aspects from the previous document which was mainly meant for advocacy purposes. In this regard, the current policy paper has been completely revised, elaborated, and incorporates in detail theoretical, philosophical, practical, and policy aspects of whistleblowing missing from the 2014 report.

When corruption turns systemic, it poses further problems that go beyond the violation of public accountability and the exacerbation of existing social inequalities. Systemic corruption undercuts the trust in institutions and those who hold office within them. In particular, when it is a political institution that is corrupt, this phenomenon risks undermining citizens' trust in the self-correcting nature of the democratic system. Because corruption is surreptitious, it is hidden from public scrutiny and, therefore, may not be the object of democratic deliberation. In this sense, systemic corruption subverts the democratic rationale of the public order and makes citizens cynical towards the appeals that come from authorities thus undermining their reasons for compliance with democratic norms. The culture of openness, deliberation, and public justification is thus compromised.

Proper investigations are, therefore, required in order to bring corrupt practices to the fore. Unfortunately, however, such investigations are often very difficult to carry out, especially when they concern top management officials or in case of entrenched practices that are hard to identify. What is more, when complicity is pervasive, the best prospect to unveil cases of corruption resides in the conscientious revelations of individuals who bear witness of institutional and individual abuses of power and stand testimony to the same, often in the process of exposing such misdeeds to the public for their scrutiny and judgment. In the absence, or for the failing, of established procedures of controls and reporting systems, therefore, whistleblowing seems one of the best practices through which corruption can be reported as a threat to democracy. Whistleblowing is a testimony of the honesty of individuals, who stand against corruption in the name of justice.

Given the role that whistleblowers play in upholding democratic norms of accountability and publicity – often suffering, as a consequence, personal threats to their life, liberty, and job – it is the duty of any democracy not only to protect them against abuses and retaliations, but also to develop safe practices and incentives at the legislative level in order to encourage such acts and make them safe in the fight against corruption (Bocchiola and Ceva 2018). It is in the interest of any democratic government to not only protect but promote such conscientious actions, when they seek to uphold the public interest, ensure accountability against wrongdoing and the quality of democratic institutions in the long run (Santoro and Kumar, forthcoming). But the regulation of whistleblowing is not only a matter of duty; it also conveys the message to corrupt individuals that their actions do not have a place in a democracy.

This is why we believe that the time has come for the 28 member states of the European Union to recognize the crucial role of whistleblowers in the fight against corruption and, most importantly, to establish legal measures for their protection. The right to safe reporting channels for whistleblowers cannot be conditional upon the legislation of individual states; it needs to be adopted at the European Union level because it is central to the very democratic project that underpins the EU as a whole.

The goal of the present policy survey is to assess the existing whistleblowing policies in the European Union member states. To this end, it begins by developing criteria for the assessment of the various whistleblowing and anti-corruption policies in the member states.

1. WHY ASSESS EUROPEAN WHISTLEBLOWING POLICIES?

The need to assess whistleblowing policies arises at the European level given the close interaction that the countries in the EU have with each other. Such interaction is pervasive in all domains of human life including commerce and finance. Increasing interaction heightens the possibilities of the impact that a wrongdoing or a wrong policy in a country can have on the others.

In this regard, it is instructive to note that corruption is an all pervasive phenomenon that is not contingent on borders, but has an interactional nature, with spillovers from one country to the other. The spillovers are greater when the interaction between the nation states and other entities are higher. Given the high rate at which transactions happen in the current globalized world – with movement of goods, people, information, and finance – it is not difficult to see that the domestic scenario in one country can and often does impact also on those who were not its original intended recipients. The volatility of movements, with the uncertainty they bring with themselves, may have a particularly severe impact on those who are at the margins, with little say in policy-making, and with a limited or no access to procedures to seek redress or justice.

When corruption acquires an international dimension it risks debilitating national economies and, particularly, those individuals who have little say in the relevant political, economic, and financial processes. When corruption infests international institutions, global companies, bilateral or multilateral negotiations, it cannot be controlled through individual national efforts at the domestic level. Coordinated action at the international level is necessary. As an illustration, consider the leaks that demonstrated the effects of NSA operations on the privacy rights of individuals globally. The Panama papers and CIA leaks are relevant examples too. Counteracting corruption at an international level requires a sustained effort between and among multiple players, at the level of individual countries, international organizations, and the global civil society.

Because the European Union is one of the most prominent multilateral agencies that has championed democracy, equality, and human rights, both at home and abroad, it seems particularly important that it occupies the forefront in the fight against corruption. To this end, a coordinated European anti-corruption strategy seems necessary above and beyond the individual legislation at the level of domestic policy of each member state. This is especially the case when the negative spillovers of corruption in one country extend to the others.

Certainly, a formal commitment to such a joint anti-corruption strategy has been widely recognized across the EU and within EU institutions. However, it has not been entirely translated into practice. While important transnational initiatives have been inaugurated, for example under the auspices of the GRECO (Group of States against Corruption) and the European Council, a fully blown EU shared anti-corruption strategy is still to be developed. Such a strategy should not only include political initiatives but also, for example, see the active involvement of corporations that work within the EU.

In order to make relevant cases of corruption emerge, an anti-corruption strategy of this sort should include – as argued above – also safe reporting mechanisms of individual and institutional wrongdoing, including the regulation of whistleblowing. An effective regulation of whistleblowing should ensure that adequate provisions are made across all EU member states to make this practice safe for all parties involved, without exposing the protection of their fundamental rights to the variables of domestic rules and policies – if any. A coordinated EU strategy for the regulation of whistleblowing would require each state to learn from the best practices available in other member countries. It would also require familiarity with other best practices around the world, their strengths and their weaknesses.

By advocating a stronger policy on anti-corruption and the regulation of whistleblowing, the EU can take international leadership in demonstrating its democratic commitment to protect those who stand for accountability and publicity against corruption. This mission would not only be an important achievement in itself. It has also the potential of enhancing citizens' trust in European institutions, which is known to be currently at risk, by reducing the perceived distance between the centers of power and the actual needs of citizens. This achievement is important to ensure a culture of openness and cooperation across the EU and also to enhance the durability of democratic institutions in the long run.

As a contribution to this endeavor, we have developed a set of criteria to assess the existing policies on whistleblowing across the EU member states. It is only through an analysis of the gaps in the existing legislation - and by understanding the best practices both within and outside the EU – that a greater chance of mutual learning can be fostered. To this end, a necessary starting point consists in singling out the lacunas in the current legislation in a detailed and analytical manner. In addition, the comparison of legislations of different member states allows for cross learning and implementation of better norms to regulate whistleblowing.

What is Whistleblowing?

Whistleblowing as a term emerged during the 1950s to refer to those individuals who exposed aspects of corruption from within the organization in which they worked. It referred to revelations of an act of foul play, a wrong action, aimed at attracting the attention of those capable of taking action against the wrongdoer. This term has received special attention in business settings and has, therefore, been primarily discussed and theorized from the perspective of business organization and professional ethics. In this context, those individuals who considered that a particular piece of information was in the public interest to trump over their duty of loyalty to their organization and certain obligations to their colleagues were called "whistleblowers". Whistleblowing as a general term has gained momentum in recent years due to the actions of Wikileaks, Edward Snowden, and Chelsea Manning, among many others.

Whistleblowing is an evolving concept and is yet to find a generally accepted definition as it happens with any concept that evolves with practice. Popular definitions of whistleblowing include the following:

> "Whistleblowing is a deliberate non-obligatory act of disclosure, which gets onto public record and is made by a person who has or had privileged access to data or information of an organisation, about non-trivial illegality or other wrongdoing whether actual, suspected or anticipated which implicates and is under the control of that organisation, to an external entity having potential to rectify the wrongdoing." (Jubb 1999:78)

Or, whistleblowers:

> "… sound an alarm based on their expertise or inside knowledge, often from within the organization in which they work. With as much resonance as they can muster, they strive to breach secrecy, or else arouse an apathetic public to dangers everyone knows about but does not fully acknowledge." (Bok 1983: 211)

One of the interesting aspects of whistleblowing is that the information being revealed is not one that the member of an organization is normally supposed to reveal under ideal conditions. The

relevant piece of information may by covered by some confidentiality clauses or, less formally, should not generally be revealed out of loyalty towards the organization and/or its other members. However, sometimes, that piece of information, that ought not generally to be revealed, may concern some wrongful practice or individual behavior that either threaten the public interest or may cause harm to specific individuals without their being aware of it. In these circumstances, whistleblowing becomes a viable, if less than required, course of action. (Kumar and Santoro, 2017)

Normally, potential whistleblowers are expected to sound the alarm within their organization first in order to invite their superiors to take action regarding the foul play within it. But internal whistleblowing may not at times be sufficient, especially when it concerns either top level management officials or deeply entrenched institutional practices. In these cases public disclosures may be required. This is the case of external whistleblowing that may be addressed either towards external authorities (if they are available) or, in fact, the press.

Why Protect Whistleblowers?

Countries often design regulatory procedures in order to keep in check possible abuses of power among and within institutions. This is especially true in a democracy grounded on the principle of checks and balances, whereby no institution is handed more power than the power that can in turn be regulated by other institutions. For example, constitutional checks – aimed at the protection of citizens' fundamental rights and the rule of law – are important measures to counteract corruption. The media also play an important role in ensuring accountability by disclosing information regarding the affairs of the state, while the citizens are also empowered, in most instances, through 'sunshine laws' (like the right to information) to demand information of public interest from the state and its institutions.

In view of these measures, one may wonder why, if at all, democracies need whistleblowers. If the proper check and balances procedures are in place, and if they are functioning well, the room for whistleblowing seems, at most, residual or interstitial, but certainly not pivotal or central to anti-corruption. In fact, we believe that whistleblowing, if appropriately regulated, is not a mere residual addition to these measures. It is in fact one of the best practices to counteract corruption and, as such, should be viewed as one of the fundamental measures that any anti-corruption strategy ought to implement. This is the case because, in many relevant circumstances, whistleblowing is the only strategy that can be pursued to bring corrupt individual behavior and institutional practices to the fore. In virtue of their surreptitious nature, corrupt behavior and institutional practices are typically hidden. Whistleblowing is a powerful instrument in the hands of any member of a corrupt organization to lift the curtain on episodes of wrongdoing that would otherwise remain unnoticed and, therefore, unpunished.

As seen, in the current state of affairs, external whistleblowing is often the last resort, an act done by some insiders to expose acts of corruption happening within their organization. Whistleblowers expose corrupt acts to the public and relevant authorities, which are often unaware of the corrupt practices in question. In this sense, whistleblowers' disclosures do not only seek to re-build public trust in a (partially or totally) corrupt organization. Most notably, they uphold justice in such circumstances. Whistleblowing realizes justice in two ways. First, it contributes to re-establishing the relations of public accountability that corruption disrupts between the holder of entrusted power and those on whose mandate that power ought to be exercised. Second, by holding individuals accountable for their misdeeds, they contribute to ensuring that corrupt acts go punished.

While they perform their justice-enhancing function, whistleblowers currently face personal risks to their jobs, personal security, and liberty. They often face hazards in disclosing information against entities which are much more powerful than them, and they are often discredited publicly for the role they perform. Slander against their behavior and exposure of their personal life is a common reprisal that most whistleblowers currently face. They have been often attacked for their lack of loyalty and integrity; they have been called "spies" and considered a threat to national security. Most often than not, they are regarded as people who cannot be trusted in either their personal or professional capacity. Personal attacks and attacks on their safety and their jobs are common forms of retaliation that whistleblowers currently face. In the absence of proper legal safeguards, they have also been subjected to jail sentences. In most cases, because of their acts of whistleblowing, they are considered unemployable by other organizations and thus they easily become jobless.

This situation is highly problematic and, we believe, it ought to be remedied in consideration of the important role that whistleblowers in fact perform in any democratic society that is affected by the plague of corruption. As seen, corruption has a negative impact on social trust and bonds of social cooperation that occur between an institution and its shareholders and trustees. Any form of social cooperation is grounded in trust and expectations of mutual accountability, which cannot survive any forms of private and surreptitious maneuver. In a democracy, any deviation in the use of entrusted power from its mandate requires public justification and deliberation. As we have seen this is what happens in cases of corruption. When such requirements of public justification go unmet, an injustice occurs and, as a consequence, the trust in institutions is undermined. By reporting otherwise unavailable pieces of information concerning these deviations, whistleblowers offer a direct contribution to the realization of justice and the enhancement of public trust in institutions. From this angle, their revelations can also be seen as appeals to the general public to stand up for justice by opening up new channels of public deliberation on the affairs of the state.

In view of all this, we can see that the contribution of whistleblowers to restoring public and enhancing the accountability of democratic institutions is important indeed and by no means either residual or interstitial with respect to other democratic checks and balances. Therefore, whistleblowing should not only be left to individual goodwill or single act of heroism. Whistleblowing should, in fact, be protected and regulated as one of the best practices to counteract corruption in a democracy.

Any harsh treatment meted out to those who speak up in the name of justice is a symptom of dysfunctional institutions that are unjust and illiberal in character. To stand up for justice through acts of dissent and public disclosure is a very important virtue in a democracy committed to the principle of public accountability. By reporting corrupt individual behavior and institutional practices, whistleblowers attract the attention of institutions and of their fellow citizens towards a potential wrong in need of public attention and deliberation. In this sense, whistleblowing has an important corrective function that any healthy democracy ought to protect and incentivize.

The European Union has a longstanding tradition to be at the forefront in the defence of liberal and democratic institutions Therefore, it is of paramount importance that all EU member states take a unified stand for the regulation of whistleblowing and protection of the rights and duties of whistleblowers. In this sense, the commitment to making whistleblowing safe is an integral part of the commitment to uphold democratic institutions and a democratic public culture. Such a public stand is important both as a contribution to the realization of justice and democracy and to foster public trust in EU institutions. Failure to regulate whistleblowing and make it safe for all parties involved would be a very serious terrible social and political loss, with importance economic

consequences, because it would undercut the fight against corruption, reduce the accountability of democratic institutions, and further weaken public trust in their functioning..

Another important aspect bears emphasizing. The protection of whistleblowing can also be seen as an entailment of the general commitment to protecting individual fundamental rights, including the right to freedom of expression. Whistleblower's revelation may, in this light, be seen as instances of a fundamental human right that enjoys international protection. Notably, the European Charter of Human Rights protects the rights to free speech, information, and political participation, which are all implied in practices of whistleblowing.[2] From this point of view, any failure to ensure protection for whistleblowers could be seen as a violation of the right to free speech of, say, employees in virtue of confidentiality clauses. Such clauses could, therefore, be considered problematic because they impose unwarranted limits to individual freedom of speech as well as because, they limit, as a consequence, public accountability and participation.

In this sense, even when they reveal confidential information on matters of national interest, whistleblowers should not easily be dismissed as snitches, spies, or – even worse – enemies of the state and the public order in the name of public security. They should rather ben seen as agents of justice, who operate within the domain of democracy and in the name of the public interest.

2. THE LEGAL LANDSCAPE ON CORRUPTION AND WHISTLEBLOWING

International Conventions and Recommendations on Whistleblowing

Corruption has been a serious concern internationally. Therefore, legislative measures and procedures to curb corruption have been developed almost anywhere around the globe, which include sometimes provisions for the regulation of whistleblowing. For example, numerous conventions recognize that any fight against corruption is not complete without providing due protection to whistleblowers, who are seen as an important cog in this fight.

To account for these regulations, this section presents the many conventions that have sought to highlight measures for the protection of whistleblowers in the fight against corruption. We can start by mentioning that the *United Nations Convention against Corruption*[3] suggest that:

> "Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for 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." (Article 33).

The convention recommends protection but, it should be noted, it is not binding on the signatories. Its implementation depends entirely on the discretion of individual states.

---

[2] See "Most of Europe has not whistleblower protection", an interview with Mark Worth by Andreas Illmer, *Deutsche Welle,,* 11.07.2013

[3] *United Nations Convention against Corruption,* signed on 9 December 2003.

Similarly, the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*[4] recommends various safeguards for the protection of whistleblowers. It advocates that member states set up proper procedures for disclosures, protect those disclosing in good faith, and suitable measures against officials violating the institution of these norms. Specifically, article 9 of the Convention recommends that member states, in accordance with their legal principles, put in place easy and accessible channels of reporting for public officials, especially those posted abroad, to directly or indirectly report to law enforcement agencies "suspected acts of bribery of foreign public officials in international business transactions". The same article also advocates for protection for public and private sector employees from "discriminatory or disciplinary action". The protection only applies if the disclosures are made in good faith and on "reasonable grounds". The convention also urges companies to develop procedures for disclosures and protection of employees disclosing in good faith and reasonable grounds. In this regard Article 10 of the Convention urges companies

> "to provide channels for communication by, and protection of, persons not willing to violate professional standards or ethics under instructions or pressure from hierarchical superiors, as well as for persons willing to report breaches of the law or professional standards or ethics occurring within the company in good faith and on reasonable grounds, and should encourage companies to take appropriate action based on such reporting" (Article 10, section C - clause (v)).

Article 3 of the *Inter-American Convention against Corruption*[5] also recognizes the requirement for reporting of misconduct by public officials in order to restore trust in public servants and governmental processes.

The *OECD Recommendation on Improving Ethical Conduct in Public Service*[6] also recognizes the need for proper disclosure systems to ensure transparency. It also demands knowledge by the public servants of their rights when disclosing wrong-doing, and proper defined channels of reporting, and ascribing responsibility to officials for proper investigation.

The African Union Convention on Prevention and Combating Corruption[7] requires adoption of "legislative and other measures to protect informants and witnesses in corruption and related offenses, including protection of their identities".

Economic Community of West African States Protocol on the Fight Against Corruption[8] and *The South African Development Community Protocol Against Corruption*[9] also requires effective protection of those who report acts of corruption in good faith.

The G20 Anti-corruption plan *Study on Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation*[10] also argues for protection of whistleblowers when

---

[4] *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions,* signed on 17 December 1997.

[5] *Inter-American Convention against Corruption,* signed on March 29, 1996

[6] *OECD Recommendation on Improving Ethical Conduct in Public Service, Recommendation of the Council on Improving Ethical Conduct in the Public Service Including Principles for Managing Ethics in the Public Service,* 23 April 1998 - C(98)70/FINAL, replaced by 26 January 2017 - C(2017)5

[7] *The African Union Convention on Prevention and Combating Corruption,* adopted by the 2nd Ordinary Session of the Assembly of the Union, signed in Maputo, on July 11, 2003

[8] *Economic Community of West African States Protocol on the Fight Against Corruption* signed on December 21, 2001

[9] *The South African Development Community Protocol Against Corruption,* signed on August 14, 2001, ratified by 8 countries and entered into force in 2005.

disclosures are done in good faith and on reasonable grounds, requires proper definitions of disclosures and robust protections, and clear definition of procedures, and an accountable institution to investigate retaliation complaints.

European Anti-Corruption Conventions

The *Council of Europe Civil Law Convention on Criminal Corruption* (1999)[11], in Article 22, argues for protection of witnesses of justice. In this regard, the article suggests protection for individuals who report criminal offenses, those providing testimony on offenses, and those cooperating with agencies in investigation of crimes. The convention protects against retaliations when such disclosures are backed by a reasonable suspicion.

The Resolution n. 97 on the *Twenty Guiding Principles for the Fight Against Corruption* (1997)[12], adopted by the Council of Europe, recommends criminalization of domestic and international corruption, a free space for investigation of crimes, prevents persons from being used as a shield to protect offenses, urge specialized training to investigative agencies, protection for individuals aiding in fighting corruption, coordinated strategy by fiscal legislation and concerned authorities, transparency in decision making, freedom of media to report corruption, and coordinated international efforts among many other measures to combat corruption.

Recommendation n. 10 E of the *Committee of Ministers to Member States on Codes of Conduct for Public Officials* (2000)[13] suggests, in Article 12, the reporting of those activities when public officials deviate from their duty, especially when such deviation is a product of an influence, it also requires disclosures on breaches of code by public officials, report unlawful, unethical, or improper conduct, maladministration inconsistent with the code, suspicion or evidence of criminal activity. It also demands protection against prejudicial action for those reporting in good faith on reasonable suspicion.

In a 2003 Communication to the Council, the European Parliament and the European Economic and Social Committee on a Comprehensive EU Policy Against Corruption[14], the European Commission has urged member states to adopt, among other ten principles, clear rules for public and private whistleblowing standards for whistleblower protection, and to ensure effectiveness of criminal law instruments with regards to definition, sanctions, and incrimination.

Also the *Additional Protocol to the Criminal Law Convention on Corruption* (2003)[15] prescribes measures (legislative and otherwise) to curb bribery by an arbitrator under domestic law (Article 5), National

---

[10] G20 Anti-corruption plan *Study on Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation*

[11] Council of Europe, *Civil Law Convention on Criminal Corruption,* ETS No.173, entered into force on 01/07/2002

[12] Resolution n. 97 on the *Twenty Guiding Principles for the Fight Against Corruption,* adopted by the Council of Europe Committee of Ministers on 6 November 1997

[13] Recommendation n. 10 Recommendation No. 10 (2000) of the Committee of Ministers to Member states on codes of conduct for public officials, adopted by the Council of Europe Committee of Ministers on May 11, 2000.

[14] (COM(2003) 317 - 2003/2154(INI))

[15] Council of Europe, *Additional Protocol to the Criminal Law Convention on Corruption,* ETS No.191, entered into force on 01/02/2005

Law (Article 4), and Foreign Jurors (Article 6). In particular, Article 2 introduces the following criminal offenses to be included under domestic law: "acts of offering, giving, promising that is committed intentionally, either directly or indirectly, and that gives an undue advantage to the arbitrator in their exercise of their function". Article 3 includes any unfair advantage requested, promised, accepted, or received, either by themselves or for anyone else, or a refrain from their legal functions, by the arbitrator. The protocol also accounts for both active and passive forms of bribery of domestic arbitrators. These are measures that are supposed to be taken at the national level and will be monitored for its implementation by the Group of States Against Corruption (GRECO).

This survey of existing international anti-corruption conventions reveals a strict stance taken internationally in the fight against corruption and the protection of whistleblowers. Such conventions recognize the need for strong anti-corruption laws and penalties for non-compliance. What is more, they also advocate for the crucial role that whistleblowers play in countering corruption.

However, it should be noted also that these conventions are recommendatory in nature and do not bind countries whose legislations may vary, given their national context and their commitment towards whistleblowing protection.

In the next section we will analyze the existing systems of protection for whistleblowing and anti-corruption legislations in the USA, which is considered to be one of the best legislations in terms of protection of whistleblowers and anti-corruption.

Whistleblowing Protection in the United States

The United States is generally considered as a benchmark in terms of anti-corruption legislation against which the efforts in other countries around the world can be measured.

The *False Claims Act* (1863)[16] granted legal protection to whistleblowers under federal laws. Subsequent legislations, including *Sarbanes-Oxley Act* (2002)[17] reinforced this protection. Further legislations like the *Whistleblower Protection Act* (1989)[18] seeks "to protect for the rights of Federal employees, to prevent reprisals, and to help eliminate wrongdoing within the Government by … mandating that employees should not suffer adverse consequences as a result of prohibited personnel practices" (Section 2a). The Office of Special Counsel was established as an independent federal investigative agency that seeks to protect federal employees and applicants from reprisals in cases of whistleblowing and other prohibited practices by the personnel. The authority for this Special Counsel derives from the *Civil Service Reform Act*,[19] the *Hatch Act*,[20] and the *USERRA Act*[21]. A *Whistleblower Protection Enhancement Act* in 2012[22] provides rights to federal workers to report safely. In this regard it compensates for the weakness of the Whistleblower Protection Act, and enhances whistleblowers protection. Notably, it clarifies that a whistleblower would not lose protection if :

[16] *False Claim Act* (31 U.S.C. 3729-3733) of 1863, and subsequent updates (1986, 2009).
[17] *Sarbanes–Oxley Act* of 2002 (Pub.L. 107–204, 116 Stat. 745, enacted on July 30, 2002)
[18] *Whistleblower Protection Act* of 1989, Pub.L. 101-12
[19] *Civil Service Reform Act* of 1978, Pub.L. 95–454, 92 Stat. 1111
[20] *Act to Prevent Pernicious Political Activities* (also called *Hatch Political Activities Act.*) U.S. Public Law 252, of 1939. See also the *Hatch Act Reform Amendments of 1993*. U.S. Public Law 103-94
[21] *Uniformed Services Employment & Reemployment Rights Act* of 1994, *Pub.L. 103–353*
[22] *Whistleblower Protection Enhancement Act* of 2012, Public Law 112-199

"(1) the disclosure was made to a person, including a supervisor, who participated in the wrongdoing disclosed; (2) the disclosure revealed information that had previously been disclosed; (3) of the employee or applicant's motive for making the disclosure; (4) the disclosure was made while the employee was off duty; or (5) of the amount of time which has passed since the occurrence of the events described in the disclosure." (sections 101, 102)

Protection is also granted to scientists who make disclosures related to scientific integrity or challenge the censorship process. (ibid.) In addition the Act also enhances the levels of compensation in cases of prohibited personnel practices. Section 104(b) also prohibits gag orders from an agency that conflicts with whistleblowers' rights and protections. Thus the section "makes it a prohibited personnel practice for an agency to implement or enforce any nondisclosure policy, form, or agreement that fails to notify an employee that the agreement does not supersede, conflict with, or otherwise alter whistleblower rights and protections". Under the Act, the powers of the OSC has also been enhanced to seek remedies in cases of retaliation against whistleblowers.

The protection and rewards for whistleblowers' disclosures are also governed by the Internal Revenue Services (IRS). Disclosures pertain here to false exemptions or deductions, kickbacks, false/altered documents, failure to pay tax, unreported crime, organized crime, and failure to withhold. The incentives amount to up to 30 percent of the tax, penalty, and other amounts collected by the IRS. In this regard, the whistleblower is supposed to provide "solid information" and disclosures cannot be mere guess-work. The Whistleblower Office is responsible for assessing all the information tips that come into its notice. Once the information is assessed for its credibility, it is duly passed on to the relevant IRS office for investigation.

The *Dodd–Frank Act*[23] from 2010 designed measures, including whistleblower protection, to hold Wall Street accountable. Finally, USA has legal measures to protect whistleblowers who report bribery by corporations based in the USA of foreign officials. Such disclosures are protected under the *Foreign Corrupt Practices Act of 1977*[24] (FCPA). The FCPA prohibits:

"the willful use of the mails or any means of instrumentality of interstate commerce corruptly in furtherance of any offer, payment, promise to pay, or authorization of the payment of money or anything of value to any person, while knowing that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly, to a foreign official to influence the foreign official in his or her official capacity, induce the foreign official to do or omit to do an act in violation of his or her lawful duty, or to secure any improper advantage in order to assist in obtaining or retaining business for or with, or directing business to, any person."

The FCPA provisions apply in case of all US persons and certain foreign issues of securities and with the 1998 amendment it also applies to "foreign firms and persons who cause, directly or through agents, an act in furtherance of such a corrupt payment to take place within the territory of the United States."(ibid.)

[23] *Dodd–Frank Wall Street Reform and Consumer Protection Act (Pub.L. 111–203, H.R. 4173)*
[24] *Foreign Corrupt Practices Act* of 1977 (FCPA) (15 U.S.C. § 78dd-1, et seq.)

3. ASSESSMENT OF EU WHISTLEBLOWING POLICIES

In order to evaluate the effectiveness of whistleblowing policies in Europe we need to analyze and assess the existing whistleblowing protection legislations in various European countries against some best practices. In addition, an assessment needs also be made against a set of criteria that provides a standard of how a solid whistleblowing legislation should look like.

The reason for establishing criteria of evaluation of the existing legislation is that even the best practices we have might not be able to cover all dimensions of protection for disclosure that should be granted to whistleblowers. The criteria that set such a standard should not be seen as an ideal construct; they are, rather, based on an assessment of the concrete problems faced by whistleblowers in their efforts to disclose acts of corruption. It is only through an analysis of the bottlenecks faced by whistleblowers that one can construe an alternative, a better scenario that is free from those very same limitations.

The problems faced by whistleblowers can be explained as a product of a general lack of culture of accountability and publicity whereby acts of disclosure are treated with suspicion. Even worse, the revelations of whistleblowers are often seen as a threat to the system of opacity and power that allows vested and particularistic interests to flourish and escape public scrutiny. This state of affairs is reinforced by the lack of an efficacious regulation of whistleblowing, which is currently incapable of creating incentives for acts of disclosure. As things stand, disclosure carries high personal risks and threats of censure. Whistleblowing, in such circumstances, is often an individual act of courage that defies both legal constraints and social prejudices.

A partial or insufficient whistleblowing regulation is one, for example, that fails to specify what reporting channels potential whistleblowers ought to follow; that does not provide for the fair treatment of anonymous revelations; or that commands that disclosures should be addressed only, say, to the top level management of an organization, which may at times, in fact, be the wrong-doer. An insufficient whistleblowing regulation, moreover, is one whose provisions are not specific and leaves too large a margin for arbitrary interpretations. Such arbitrariness is problematic because it is likely to end up strengthening the position of those in power and their capacity to thwart acts of disclosure. Finally, an insufficient whistleblowing regulation is one that lacks concrete instruments for the implementation of the legal provisions it stipulates or that allows for the partial or selective implementation of its constitutive laws. An erratic implementation of whistleblowing regulation is likely to disincentivize and frustrate whistleblowers' conscientious revelations.

This is just a sketch of the many problems that typically arise out of the lacunae in whistleblowing regulation, which many European member states are currently facing. In order to suggest possible ways of improving this regulation, by setting a common standard that all member states should follow, we need to lay down a set of criteria to assess current regulations and bring out the specific problems that whistleblowers do or are likely to face. To this end, we propose to pursue the following questions:

- What are the most common concrete problems whistleblowers face while disclosing information?
- What are the existing institutional bottlenecks that thwart the possibility of whistleblowing?
- Does the institutional culture of an organization promote and incentivize acts of whistleblowing (e.g., in its code of conduct)?

- What are the lacunae in the current legislation in terms of clarity, breadth, and scope of whistleblowing that have a negative impact on disclosures?
- Do support structures exist, in terms of provisions for security, rehabilitation, and counseling, to which whistleblowers can turn in times of need?
- How are the rights and duties of whistleblowers specified and balanced against those who are the object of their revelations?

Following these basic questions allows categorizing the wide variety of reasons why whistleblowing is currently exposed to serious risks for those who engage in it. In particular, it is helpful to categorize such risks as they pertain to different legal, institutional, cultural, and personal spheres.

In the legal sphere, the main problem is the complete or partial failure on the part of law-makers to provide for a full scale regulation of whistleblowing including protective measures, adequate penalties, effective enforcement mechanisms, and provisions for the rehabilitation of the victims of retaliation (e.g, unfair dismissal).

As concerns the institutional sphere, the main difficulties pertain to the commitment of individual organizations to promulgate rules and encourage acts of whistleblowing, for example in their internal code of conduct. Such difficulties may arise even when the legislation on whistleblowing is clear and efficacious because they concern the internal regulations of specific organizations. These latter might be inertial to the application of whistleblowing regulations because of internally entrenched opaque mechanisms and organizational policies that serve particularistic interests. On the other hand, institutions that promote openness, accountability, and publicity though their internal regulations may, in fact, ensure the protection and encouragement of whistleblowing despite the absence of an appropriate general legislation to that effect.

Moving on to the cultural sphere, relevant problems concern the way in which whistleblowing is understood as a practice within the society at large; notably, whether concerns of organizational loyalty and complicity trump over larger considerations of accountability and publicity. Where the society is largely suspicious of disclosures, or when it treats revelations with suspicion in the name of corporate loyalty and obedience, whistleblowing is doomed to be largely discouraged and individual whistleblowers are likely to be unmotivated to come forward thus going against socially accepted norms. A culture of publicity and accountability, on the other hand, would regard whistleblowing as one of the best practices that is at home in a democratic public sphere.

Finally, the personal sphere concerns how moral obligations to disclose information on wrongdoing are understood, whether individuals are prone to take personal risks in the name of justice even when institutional, legal, and cultural factors do not encourage it. But personal factors also play a role as concerns the way in which the members of an organization understand the forms of communication within their institution, whether they feel secure and motivated in disclosing information. Personal motivation for whistleblowing may stem from various factors, including resentment, jealousy, envy, but also from an outright demand of conscience. This array of motivational drives must be analyzed and understood to design whistleblowing regulations that can contain the former and incentivize the latter. What is more, from a policy-driven perspective, it is crucial that any regulation is accompanied by a correct understanding on the part of potential whistleblowers as concerns their rights and duties and a reasonable perception of the costs and consequences of their actions. This perception is inevitably influenced by the environment where potential whistleblowers operate, whether it is friendly and encouraging – because whistleblowing is

not regarded with suspicion – hostile. Under the former circumstances, the individual perception of whistleblowing as a safe and valuable practice is likely to be stronger, besides and beyond the depth and breadth of formal laws and regulations.

These four spheres should not be seen as isolated from one another; they, in fact, interact and overlap such that important synergies can be established. It is often a combination of factors from within different spheres that may either encourage or, in fact, stall acts of whistleblowing. On the basis of how these three spheres play out in different whistleblowing regulations, and influence their success and shortcomings, the current legislation in different countries across the European Union can be categorized as endowed with a complete, partial, or absent whistleblowing regulation..

It should be noted that the criteria we have used in this survey are in part similar to those employed in the report on EU whistleblowing policies prepared by *Transparency International,*[25] which is quite comprehensive in nature. However, the TI report lacks the acknowledgment of the importance of the personal sphere, which is – as we have shown – in fact crucial to assessing whistleblowing regulations in consideration of the impact that these policies can have on the lives of individual actors within institutional settings. As has been argued, laws, institutional rules, and public culture surrounding whistleblowing can and do have an impact on the members of an organization – their safety, conscience, and work conditions – thereby promoting or thwarting acts of disclosure. In order to have a better grasp of the personal motivations and intentions of whistleblowers, as well as of their perception of threats in disclosing information, either individual or group interviews seem sources of important insights. We hope that this report can show the importance of this task and back its performance by appropriately qualified agencies at various levels of institutional action.

Another line of inquiry that this survey supports concerns the understanding of the cultural determinants of a successful whistleblowing regulation. This inquiry can be carried out with special reference to existing coverage of cases of whistleblowing that appear in the media and the public discourse in the civil society.

So both the personal and cultural aspects of whistleblowing regulations are in need of further research and exploration. The survey we hereby present revolves around the legal and institutions spheres but, unlike other reports, it sets an important agenda to complement this analysis with data from the cultural and personal spheres.

Method to Assess Whistleblowing Policy

As anticipated, this survey addresses the legal and institutional determinants of the problems affecting current whistleblowing regulations across EU member states. In this regard, we have considered primarily the effectiveness of current regulations in EU countries in dealing with reports of corruption. The different members states are considered in terms of the comprehensiveness of their regulations in this respect in the light of the legal and institutional determinants mentioned above. Thus the assessment is based on the evaluation of the following aspects:

- A well-defined and comprehensive regulation that accounts for different kinds and manifestations of corruption;

[25] See: Transparency International*, Whistleblowing in Europe: Legal Protections for Whistleblowers in the EU,* released on November 5, 2013

- Methods of redress and provisions for the protection of whistleblowers against retaliation;
- Incentives for whistleblowing;
- Well-defined disclosure channels that are known to the members of an organization employees and the public;
- Clear and accessible channels for both external and internal whistleblowing;
- Regulation that covers both the public and the private sector.

The assessment of these aspects does not consider the contextual difficulties encountered in the actual implementation of each single national whistleblowing regulation because these are extremely volatile to measure and hard to assess. The assessment is, rather, based on a document content analysis of current regulations to see whether all relevant institutional bottlenecks that may make the legislation ineffective have been addressed or not.

This assessment has allowed us to evaluate different EU member states as having comprehensive, partial, or absent whistleblowing regulation. Countries with a comprehensive regulation are those whose legislation covers all aspects of whistleblowing, as identified in the list above. So a comprehensive whistleblowing regulation includes a proper definition of terms and principles, proper procedures for disclosures (internal and external), protection of whistleblowers against retaliation, measures of compensation, provisions for counseling and investigating agencies, provisions for anonymity and confidentiality – which apply both to the private and the public sector. Naturally, countries that have a partial whistleblowing regulation have developed laws and policies that only account for some of these aspects; while those that go under the label of "absent" lack any form of whistleblowing regulation.

The selection of these aspects is consistent with that made in the abovementioned *Transparency International report*, which is based on the following 15 parameters for assessing whistleblowing policies[26]:

- broad definition of whistleblowing
- broad definition of whistleblower
- broad definition of retribution protection
- internal reporting mechanism
- external reporting mechanism
- whistleblower participation
- rewards system
- protection of confidentiality
- anonymous reports accepted
- no sanctions for misguided reporting

[26] *Whistleblowing in Europe,* pp. 9

- whistleblower complaints authority
- genuine day in court
- full range of remedies
- penalties for retaliation
- involvement of multiple actors

For the purposes of this report, and to allow for a cross-country comparison, whistleblowing regulations across EU member states have been ordered and categorized in order to track and capture: the scope and breadth of the whistleblowing regulation; the process of disclosure and the availability of an investigating/ advisory authority; the clarity in the legal definition of the terms of "whistleblowing", "whistleblower", "retaliation", "protection against retaliation", and "available legal remedies"; the kind of protection against retaliation, the availability of incentives for disclosure, the burden of proof upon disclosure, and the intent of disclosure; the provision for confidentiality of the identity of the whistleblowers and their disclosure, possibility for anonymous whistleblowing; possibility for external and third party whistleblowing.

A summary of EU States current legislations and the relevant data are available on the project website, where *Blueprint for Free Speech* provides a qualitative research:

- https://www.changeofdirection.eu/country-facts

Legal Scenario Pertaining to Whistleblowing in EU Member States

On the basis of our criteria for the evaluation of whistleblowing regulation, we can offer an assessment of legal scenario concerning this practice across EU member states. The results are in stark contrast to the commitment to anti-corruption of the EU in international conventions both at the European and the international level.

It is quite surprising that only a few European countries have a comprehensive whistleblowing regulation even though a number of countries do have a legislation pertaining to corruption. It must be said that, since whistleblowing has emerged as a central concern in public debates, civil society, the media, and among citizens, many EU countries have declared a commitment to discussing the possibilities for developing a comprehensive whistleblowing legislation. The European Parliament has called upon the European Commission to have a comprehensive whistleblower protection regime in the EU. The Greens have also proposed a Europe-wide whistleblower protection law and have promoted a draft bill for discussion in this regard. This has especially happened in the wake of the predicament of the Lux leaks whistleblower Antoine Deltour.[27] The European Commission has also proposed tax transparency rules for multinational corporations.[28] A draft report by the

[27] "Greens propose EU law to protect whistleblowers" By Nikolaj Nielsen, *Euobserver,* May 3, 2016, available at: https://euobserver.com/justice/133326

[28] European Commission - Press release "European Commission proposes public tax transparency rules for multinationals" Strasbourg, 12 April 2016, accessible at: http://europa.eu/rapid/press-release_IP-16-1349_en.htm These directives have though been criticized as being ineffective. See " A parody of transparency: the Commission's leaked draft on corporate tax" by Elena Gaita, for *Transparency International -*

Committee on Legal Affairs and Human Rights on Improving the Protection of Whistleblowers has called for protection for national security whistleblowers, and to grant asylum to those national security whistleblowers who face retaliation in their home countries.[29] Whistleblowing legislation has caught up in many countries in the EU. France, the Netherlands, and Sweden have all passed new legislations in 2016, while Hungary and Malta did so in 2013, with Slovakia following in 2014. Latvia has just introduced a whistleblowing legislation in the Parliament. Spain is debating on having a comprehensive legislation. Having said that, the situation is still quite unsatisfactory and piecemeal.[30]

According to the analysis in this report, only 8 out of the 28 EU countries studied have comprehensive whistleblowing regulations. This is less than 30% of the member states of the EU, which makes for a grim scenario. The member states that have comprehensive legislation according to our criteria are Luxemburg, Romania, Slovenia, UK, France, Netherlands, Malta, and Ireland. 7 out of the 28 member states (25%) do not even have partial legislation on whistleblowing. This list includes Spain, Portugal, Bulgaria, Croatia, Finland, Greece, and Lithuania. The remaining 13 member states (more than 45%) have only partial regulations.

Partial coverage indicates that many aspects of whistleblowing regulation relating, most notably, to anonymity, disclosure procedures, investigating agencies, and the definition of terms are left unclear or improperly presented. Partial legislations are problematic because they generally do not incentivize whistleblowing and introduce elements of uncertainty in prospective whistleblowers. Whistleblowers are uncertain whether they can afford to take the risk of putting their personal and professional life at stake in order to disclose the information they posses. The risk of incurring in penalties and fighting long court battles is often frightening, time consuming, and expensive for individuals especially when the institutions on which they report are large and have the ability to engage in protracted legal struggles.[31]

This patchy whistleblowing regulation is not only a problem at the domestic level of single EU member states. It is also verified at the level of EU institutions. Only one (the European Commission) among the nine EU institutions, assessed by the Transparency International for its *European Union Integrity System* report,[32] has some mechanism for the protection of whistleblowers despite the legal obligation to have such mechanisms in place since 2004. Many advocates of a comprehensive whistleblowing regulation at the EU level, among which Transparency International, have also suggested a revision of Articles 22a and 22b of the *Staff Regulations of Officials of the European Communities* for its ambiguity.[33] These articles provide for an obligation of officials within EU institutions to report episodes of corruption, fraud, or presumptions of illegal activity, failures to

---

EU office, March 24, 2016 accessible at: http://www.transparencyinternational.eu/2016/03/a-parody-of-transparency-the-commissions-leaked-draft-on-corporate-tax/

[29] See *Committee on Legal Affairs and Human Rights Improving the Protection of Whistleblowers* - Draft Report Rapporteur: Mr Pieter Omtzigt, available at:http://website-pace.net/documents/10643/1127812/PRESSajdoc0201510032015.pdf/7fa0a0e1-08a1-47c0-9028-9d8f1558eced

[30] See *Whistleblowing in Europe*

[31] See Thad M. Guyer and Nikolas F. Peterson, *The Current State of Whistleblower Law in Europe: A Report by the Government Accountability Project*, American Bar Association Section of Labor & Employment Law Committee, 2013

[32] *European Integrity System 2014*, Transparency International EU Office.

[33] European Integrity System, pp. 12. See also *The Staff Regulations of officials and the conditions of employment of other servants of the European Communities,* March 5 1968 and subsequent 2013 amendments

comply with their legal duties or obligations of office. Such cases ought to be reported to the "immediate superior or his Director-General or, if he considers it useful, the Secretary-General, or the persons in equivalent positions, or the European Anti-Fraud Office (OLAF) direct."[34] If the disclosures are honest, based on reasonable beliefs, and the matter had been previously internally disclosed, then whistleblowers are extended protection from retaliation.[35]

CONCLUSION

Corruption is a phenomenon that seriously undermines democratic structures of public accountability and trust in institutional procedures both at the domestic and international level. The persistence of this phenomenon is a symptom of a moral and ethical failure at an individual level and a legal and policy failure at the institutional level. The benefits that the corrupt promotion of particularistic and surreptitious interests accrues to some threaten social justice and the very foundations of democratic institutions. Incentives to engage in such corrupt endeavors are heightened by the institutional inability to design and implement effective and timely control mechanisms. Actions must be taken in order to discard this system of opacity and complicity that threatens the very roots of the democratic system.

While a considerable step forward has been taken in this regard by the European Union, much still needs to be done to foster the design and implementation of anti-corruption measures capable of realizing the democratic aspirations of publicity, transparency, and accountability. While personal ethical failings can only be addressed at an individual level through, for example, public campaigns of civil education, there is important work to be done at the institutional level to address gaps in the enforcement of anti-corruption measures and to develop an institutional culture that is uncompromisingly inhospitable to corruption.

This work does not only require the refinement of existing anti-corruption policies; it requires also that adequate provisions be made for the protection of those individuals who take personal responsibility, often in isolation and at their own personal risk, to expose acts of corruption within public and private organizations. This is the case of whistleblowing. When carried out in the name of justice and accountability, whistleblowing should not be endured but championed and incentivized as one of the best practices to counteract corruption. Given their commitment to justice and democracy, EU member states and supranational institutions should be at the forefront to answer this wake up call and issue a comprehensive whistleblowing regulation that could make this practice safe for all parties involved.

The present report contributes to this urgent endeavor through an analytical survey of existing whistleblowing regulation across EU member states, capable of singling out the main sources of problems in the development of an effective and comprehensive action for the protection of whistleblowers. In particular, these problems have been identified across four relevant spheres: legal, institutional, cultural, and personal. The removal of these obstacles to safe whistleblowing responds to a demand of justice that, in a democratic context, requires the realization of mechanisms of publicity and accountability that corruption undermines. From this point of view, whistleblowing is

[34] *The Staff Regulations,* Art. 22a
[35] ibid.

a valuable tool in the fight against corruption, which is urgent not only because of the negative economic and social consequences it brings with itself, but also because it threatens the very foundations of a just democratic order.

To this aim, we have highlighted in this report some significant gaps in the current whistleblowing regulation across the EU and gestured at possible way in which they should be filled to develop a satisfactory set of provisions for the protection of whistleblowers. In this sense, we hope that this report has contributed in a substantial manner to enhancing the understanding of the importance of whistleblowing in the fight against corruption and to fostering the discussion of this important tool among state actors and the citizenry at large so as to honor the commitment to a culture of democracy that undergirds the EU political and social project.

REFERENCES

Bocchiola, M., Ceva, E. (2018). *Is Whistleblowing a Duty?*, Cambridge: Polity Press.

Bok, S. (1983). *Secrets: On the ethics of concealment and revelation*. Vintage.

Ceva, E., Ferretti, M. P. (2017a). Political Corruption. *Philosophy Compass*, 2017; e12461. https://doi.org/10.1111/phc3.12461.

Ceva, E., Ferretti, M. P. (2017b). Political Corruption, Individual Behaviour and the Quality of Institutions. *Politics, Philosophy, and Economics*, DOI: 10.1177/1470594X17732067.

Jubb, P. B. (1999). Whistleblowing: A restrictive definition and interpretation. *Journal of Business Ethics*, *21*(1), 77-94.

Kumar, M., Santoro, D. (2017). A Justification of Whistleblowing. *Philosophy and Social Criticism*: 1-16. DOI: 10.1177/0191453717708469

Santoro, D., Kumar, M. (forthcoming). A Right to Protection of Whistleblowers. in Archibugi, D and A, Benli (eds.). *Claiming Rights in Europe: A European Citizenship in Practice*. Routledge, Taylor and Francis.

Santoro, D., Kumar, M., Ferrante, L., Turola, M. and Quaranta, F. (2014) Blowing the Whistle on Corruption. Campaign for an European Directive in Defence of Whistleblowers – Summary Report.

Council of Europe, *Civil Law Convention on Criminal Corruption,* available at https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168007f3f5

Council of Europe, *Additional Protocol to the Criminal Law Convention on Corruption,* ETS No.191, available at https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008370e

Economic Community of West African States Protocol on the Fight Against Corruption and *The South African Development Community Protocol Against Corruption* available at https://www.unodc.org/documents/corruption/publications_compendium_e.pdf

European Integrity System 2014, Transparency International EU Office available at https://transparency.eu/wp-content/uploads/2016/10/EU_Integrity_System_Report.pdf

False Claim Act (31 U.S.C. 3729-3733) of 1863, and subsequent updates (1986, 2009). Available at https://www.usda.gov/oig/webdocs/whistle1989.pdf

Foreign Corrupt Practices Act of 1977 (FCPA) https://www.justice.gov/criminal-fraud/foreign-corrupt-practices-act

G20 Anti-corruption plan *Study on Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation* available at http://www.oecd.org/g20/topics/anti-corruption/48972967.pdf

Inter-American Convention against Corruption available at http://www.oas.org/en/sla/dil/docs/inter_american_treaties_B-58_against_Corruption.pdf

"Most of Europe has not whistleblower protection", an interview with Mark Worth by Andreas Illmer, *Deutsche Welle,,* 11.07.2013 available at http://www.dw.de/most-of-europe-has-no-whistleblower-protection/a-16942870

OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Available at https://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf

OECD Recommendation on Improving Ethical Conduct in Public Service, Recommendation of the Council on Improving Ethical Conduct in the Public Service Including Principles for Managing Ethics in the Public Service available at http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=C(98)70/FINAL&docLanguage=En

Resolution n. 97 on the *Twenty Guiding Principles for the Fight Against Corruption,* adopted by the Council of Europe Committee of Ministers on 6 November 1997 available at https://www.kpk-rs.si/upload/datoteke/ResCM_97_24E_01(1).pdf

Recommendation n. 10 Recommendation No. 10 (2000) of the Committee of Ministers to Member states on codes of conduct for public officials, available at https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016805e2e52

Thad M. Guyer and Nikolas F. Peterson, *The Current State of Whistleblower Law in Europe: A Report by the Government Accountability Project*, American Bar Association Section of Labor & Employment Law Committee, 2013 available at http://www.whistleblower.org/sites/default/files/TheCurrentStateofWhistleblowerLawinEurope.pdf

The African Union Convention on Prevention and Combating Corruption, available at http://www.eods.eu/library/AU_Convention%20on%20Combating%20Corruption_2003_EN.pdf

The Staff Regulations, Art 22a available at http://ec.europa.eu/civil_service/docs/toc100_en.pdf

Transparency International*, Whistleblowing in Europe: Legal Protections for Whistleblowers in the EU,* available at http://www.transparency.org/whatwedo/publication/whistleblowing_in_europe_legal_protections_for_whistleblowers_in_the_eu

United Nations Convention against Corruption available at https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf

Whistleblower Protection Enhancement Act of 2012 available at https://www.gpo.gov/fdsys/pkg/PLAW-112publ199/pdf/PLAW-112publ199.pdf

http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A5-2003-0367+0+DOC+XML+V0//EN&language=et

https://www.americanbar.org/content/newsletter/groups/labor_law/ll_flash/1212_abalel_flash/ll_flash12_2012spec.html

https://www.irs.gov/individuals/how-do-you-report-suspected-tax-fraud-activity

https://www.irs.gov/uac/whistleblower-informant-award

https://www.irs.gov/uac/whistleblower-office-at-a-glance