Whistleblower Protection Rules in G20 Countries: The Next Action Plan

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Contents

Executive Summary 1
Tables of Results 5
Table 1. G20 countries – public and private sector laws 5
Table 2. G20 countries – public sector laws 7
Table 3. G20 countries – private sector laws 8
A. Introduction 9
B. The importance of whistleblower protection in the G20 10
C. Methodology 12
D. Results and analysis 14
E. Conclusions and actions 19
F. Country Analysis 22
1. Argentina 22
2. Australia 24
3. Brazil 26
4. Canada 28
5. China 30
6. France 32
7. Germany 34
8. India 36
9. Indonesia 38
10. Italy 40
11. Japan 42
12. Mexico 44
13. Russia 45
14. Saudi Arabia 47
15. South Africa 49
16. Republic of Korea 51
17. Turkey 53
18. United Kingdom 55
19. United States 58
Acknowledgements 61
Further Reading 62
Appendices 63
Appendix 1 - G20 ACWG – 2013 Progress Report 64
Appendix 2 – European Union whistleblower protection rules 65

Executive Summary

Overview

The G20 countries declared in 2010 that they would have adequate measures in place by 2012 to protect whistleblowers and provide them with safe, reliable avenues to report fraud, corruption and other wrongdoing. Despite significant advances in some areas, as a whole they have fallen short of meeting this commitment. Many G20 countries' whistleblower protection laws fail to meet international standards, and fall significantly short of best practices.

Serious wrongdoing can lead to wasted taxpayer money, unsafe consumer products, public health threats, financial instability and environmental damage. Lacking strong legal protections, government and corporate employees who report wrongdoing to their managers or to regulators can face dismissal, harassment and other forms of retribution. With employees deterred from coming forward, government and corporate misconduct can be perpetuated. This is the larger importance of whistleblowing protection on the G20 countries' agendas.

Research presented in this report reveals important shortcomings in the whistleblower protection laws of most G20 countries. Whilst many of the criteria for a large number of the countries have not been properly satisfied, specific **areas that fall well short and need immediate attention in G20 countries are laws supporting:**

- **A three-tiered system** of reporting channels, including clear external avenues to third parties such the media, MPs, NGOs and labour unions where necessary
- **Anonymous channels** to get those who know about corruption in the door to auditors or regulators, in the first instance.
- **Internal disclosure procedures,** the mechanisms by which organisations public or private adapt whistleblower protection principles to their own environment

The research has also highlighted that there is a particular need to focus on introducing laws to provide better coverage of the private sector, as is explained in this report.

Having made the comparison of each country's performance against the established criteria, and identified some of the shortcomings, we recommend a series of steps for the G20 countries to move forward. Specifically:

1. Whistleblower protection should remain a key priority area in G20 leaders' integrity and anti-corruption commitments;
2. A high level commitment is needed to address weakness, fragmentation and inefficiency in corporate governance and private (e.g. financial and corporate) sector whistleblowing rules, as well as continued work on the public sector laws; and
3. G20 cooperation for more comprehensive whistleblower protection should focus on the three areas of greatest challenge identified by our research:
    a. clear rules for when whistleblowing to the media or other third parties is justified or necessitated by the circumstances;
    b. clear rules that encourage whistleblowing by ensuring that anonymous disclosures can be made, and will be protected; and
    c. clear rules for defining the internal disclosure procedures that can assist organisations to manage whistleblowing, rectify wrongdoing and prevent costly disputes, reputational damage and liability, in the manner best suited to their needs.

However, it should be acknowledged that some progress has occurred since 2010. On the positive side, many elements of public and private sector laws in most G20 countries now reflect international best practice. These include protections from a wide range of retaliation, a broad definition of who can qualify as a "whistleblower," and options to report internally or to government regulators. Further, most laws require employees to have a reasonable belief – not definitive proof – that a disclosure is accurate.

Of particular note, some meaningful progress has occurred in the whistleblower laws of several member countries, including Australia, China, France, India, the Republic of Korea and the US.

Background – the G20 Commitment to whistleblowing

Whistleblower protection has been a priority element of financial, economic and regulatory cooperation between G20 countries since November 2010. When G20 leaders at the Seoul Summit adopted whistleblower protection as a key element of their global anti-corruption strategy, they recognised the crucial value of 'insiders' to government and companies as a first and often best early warning system for the types of poor financial practice, corruption and regulatory failure now proven as critical risks to the global economy. This commitment by the G20 countries has accurately reflected the public mood, which overwhelmingly wants whistleblowers to be protected not punished, as shown in international surveys on public attitudes to the topic.[1]

This report is the first independent evaluation of all G20 countries' whistleblowing laws for both the private and public sectors. This report was researched by an independent international team of experts in the field from both civil society and academia. The last time a similar study was undertaken, it was self-reported with each of the G20 countries scoring their own performance. Their self-reported scores were usually more flattering than scores in this report (see Appendix 1).

Methodology

In order to highlight where the improvement has been made, and where improvement still needs to be achieved, we have conducted a systematic analysis of the performance of the members of the G20 against a set of 14 criteria. These criteria were developed from five internationally recognised sets of whistleblower principles for best legislative practice.

We stress that this report only analyses the actual black letter laws relating to whistleblower protection in each country. The written law is only part of what is necessary to see that those who reveal serious wrongdoing are actually protected in practice. The other half of the equation is how the laws are implemented in practice, and there have been numerous reports of problems with this across G20 and other countries. Therefore we clearly state that a good score in the quality of the protection promised by the law does not mean we assert that in practice a country properly protects whistleblowers. Further, in countries with a low score, there may be cultural or other norms that in fact indirectly protect whistleblowers in practice.

There is significant work to be done yet in making sure the day-to-day application of the protections promised reflect the intent of the law. However this report does provide evidence that there has been progress by G20 countries in this area, illustrating that this is not a hopeless task. It will take time and political will, but it can be achieved.

We strongly encourage the leaders of the G20 to consider the recommendations above and we hope this report will be of use in the pursuit of these goals.

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[1] See World Online Whistleblowing Survey Stage 1 Results Release – Australian adult population sample, June 2012, found at: http://www.griffith.edu.au/__data/assets/pdf_file/0003/418638/Summary_Stage_1_Results_Australian_Population_Sample_FULL.pdf and UK Public Attitudes to Whistleblowing, November 2012, found at: http://gala.gre.ac.uk/10298/1/UK_Public_Attitudes_to_WB_Press_Release_and_Report_20121115.pdf

As a final point, we note that this report is a public consultation draft for the purpose of clarifying whether its identification of major challenges is correct. The authors welcome comments on any of the ratings provided, or the detail on why the ratings are based. Comments or feedback should be directed to the lead author <simon@blueprintforfreespeech.net> by 4 July 2014.

Best Practice Criteria for Whistleblowing Legislation[2]

#	Criterion Short title	Description
1.	Coverage	Comprehensive **coverage of organisations** in the sector (e.g. few or no 'carve-outs')
2.	Wrongdoing	Broad definition of **reportable wrongdoing** that harms or threatens the public interest (e.g. including corruption, financial misconduct and other legal, regulatory and ethical breaches)
3.	Definition of whistleblowers	Broad **definition of "whistleblowers"** whose disclosures are protected (e.g. including employees, contractors, volunteers and other insiders)
4.	Reporting channels (internal and regulatory)	Full range of **internal (i.e. organisational) and regulatory agency reporting channels**
5.	External reporting channels (third party / public)	Protection extends to same disclosures **made publicly or to third parties** (external disclosures e.g. to media, NGOs, labour unions, Parliament members) if justified or necessitated by the circumstances
6.	Thresholds	Workable **thresholds for protection** (e.g. honest and reasonable belief of wrongdoing, including protection for "honest mistakes"; and no protection for knowingly false disclosures or information**)**
7.	Anonymity	Protections extend to disclosures made **anonymously** (if later identified)
8.	Confidentiality	Protections include requirements for **confidentiality** of disclosures
9.	Internal disclosure procedures	Comprehensive requirements for organisations to have **internal disclosure procedures** (e.g. including requirements to establish reporting channels, to have internal investigation procedures, and to have procedures for supporting and protecting internal whistleblowers from point of disclosure)
10.	Breadth of retaliation	**Protections** apply to a wide range of **retaliatory actions** and detrimental outcomes (e.g. relief from legal liability, protection from prosecution, direct reprisals, adverse employment action, harassment)
11.	Remedies	Comprehensive and accessible **civil and/or employment remedies** for whistleblowers who suffer detrimental action (e.g. compensation rights, injunctive relief; with realistic burden on employers or other reprisors to demonstrate detrimental action was *not* related to disclosure)
12.	Sanctions	Reasonable **criminal, and/or disciplinary sanctions** against those responsible for retaliation
13.	Oversight	**Oversight** by an independent whistleblower investigation / complaints authority or tribunal
14.	Transparency	Requirements for **transparency and accountability** on use of the legislation (e.g. annual public reporting, and provisions that override confidentiality clauses in employer-employee settlements)

[2] The selection of these criteria are explained in the 'Methodology' section below. They are included here to provide assistance with reading the following tables.

Tables of Results

Table 1. G20 countries – public and private sector laws[3]

Rating 1 Very / quite comprehensive 2 Somewhat / partially comprehensive 3 Absent / not at all comprehensive

		Argentina		Australia		Brazil		Canada		China		France		Germany		India		Indonesia		Italy	
		Pub	Priv	Pub	Priv	Pub	Priv	Pub	Priv	Pub	Priv	Pub	Priv	Pub	Priv	Pub	Priv	Pub	Priv	Pub	Priv
1	Coverage	3	3	2	2	2	3	2	3	1	2	2	2	1	3	1	3	2	2	1	3
2	Wrongdoing	3	3	1	3	2	3	1	3	1	2	2	2	3	2	2	3	2	2	2	3
3	Definition of whistleblowers	2	2	1	3	2	3	2	3	1	2	2	2	3	3	1	3	2	2	3	3
4	Reporting channels (internal & regulatory)	2	2	1	2	2	3	2	3	2	1	2	2	2	3	2	3	2	2	2	2
5	External reporting channels (third party / public)	3	3	2	3	3	3	2	3	3	3	3	3	3	3	3	3	3	3	3	3
6	Thresholds	3	3	1	2	2	3	1	3	2	2	2	2	2	2	1	3	2	2	3	3
7	Anonymity	2	2	1	3	3	3	3	3	2	2	3	3	2	2	3	3	3	3	3	3
8	Confidentiality	2	2	1	2	2	2	1	3	2	2	3	3	3	3	1	3	3	3	1	3
9	Internal disclosure procedures	3	3	1	3	3	2	1	3	2	2	3	3	3	3	3	2	3	3	3	3
10	Breadth of retaliation	3	3	1	3	2	3	1	2	2	3	2	2	2	2	1	3	2	2	1	3
11	Remedies	3	3	2	2	3	3	1	3	2	3	2	2	2	2	2	3	3	3	3	3
12	Sanctions	2	2	1	3	3	3	1	3	2	3	2	2	3	3	2	3	2	2	3	3
13	Oversight	3	3	1	3	3	3	1	3	3	2	2	2	3	3	1	3	2	2	3	3
14	Transparency	3	3	1	3	3	3	1	3	3	3	2	2	3	3	2	3	3	3	3	3

[3] Although we stress elsewhere in this paper of the importance of separating a comparison of public and private sector law, we have included this table where they appear side by side as an easy reference should the reader want to examine both sets of ratings for a particular country.

Table 1 (continued). G20 countries – public and private sector laws

Rating 1 Very / quite comprehensive 2 Somewhat / partially comprehensive 3 Absent / not at all comprehensive

		Japan		Mexico		Russia		S. Arabia		S. Africa		Korea		Turkey		UK		USA		EU
		Pub	Priv	Pub	Priv	Pub	Priv	Pub	Priv	Pub	Priv	Pub	Priv	Pub	Priv	Pub	Priv	Pub	Priv	
1	Coverage	1	1	3	3	2	3	3	3	1	1	1	1	3	3	2	2	1	1	
2	Wrongdoing	1	1	3	3	2	3	3	3	1	1	1	1	3	3	1	1	1	1	
3	Definition of whistleblowers	2	1	2	2	2	3	3	3	2	2	1	1	2	2	2	2	1	1	
4	Reporting channels (internal & regulatory)	2	2	3	3	2	3	3	3	2	2	1	1	2	2	1	1	1	1	
5	External reporting channels (third party / public)	2	2	3	3	3	3	3	3	1	1	3	3	3	3	2	2	2	2	
6	Thresholds	1	1	3	3	3	3	3	3	2	2	2	2	3	3	1	1	1	1	
7	Anonymity	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	1	1	
8	Confidentiality	3	3	3	3	3	3	3	3	3	3	1	1	2	2	2	2	1	1	See Appendix 2
9	Internal disclosure procedures	3	3	3	3	2	3	3	3	3	2	3	3	3	3	3	3	2	2	
10	Breadth of retaliation	1	1	3	3	3	3	3	3	2	2	1	1	2	2	1	1	1	1	
11	Remedies	2	2	3	3	3	3	2	2	1	1	1	1	3	3	1	1	2	2	
12	Sanctions	3	3	2	2	3	3	3	3	3	3	1	1	2	2	2	2	1	1	
13	Oversight	3	3	2	2	3	3	3	3	3	3	1	1	3	3	3	3	1	1	
14	Transparency	3	3	3	3	3	3	3	3	2	2	1	1	3	3	2	2	1	1	

Table 2. G20 countries – public sector laws

Rating 1 Very / quite comprehensive 2 Somewhat / partially comprehensive 3 Absent / not at all comprehensive

		S. Ar	Mex	Tur	Arg	Rus	It	Ger	Brz	Jpn	Indo	S.Af	Fra	Chn	India	Kor	UK	Can	US	Aus	Tot '3'
		Pu	Pu	Pu	Pu	Pu	Pu	Pu	Pu	Pu	Pu	Pu	Pu	Pu	Pu	Pu	Pu	Pu	Pu	Pu	
9	Internal disclosure procedures	3	3	3	3	2	3	3	3	3	3	3	3	2	3	3	3	1	2	1	14
7	Anonymity	3	3	3	2	3	3	2	3	3	3	3	3	2	3	3	3	3	1	1	14
5	External reporting channels (third party / public)	3	3	3	3	3	3	3	3	2	3	1	3	3	3	3	2	2	2	2	13
14	Transparency	3	3	3	3	3	3	3	3	3	3	2	2	3	2	1	2	1	1	1	11
13	Oversight	3	2	3	3	3	3	3	3	3	2	3	2	3	1	1	3	1	1	1	11
8	Confidentiality	3	3	2	2	3	1	3	2	3	3	3	3	2	1	1	2	1	1	1	8
12	Sanctions	3	2	2	2	3	3	3	3	3	2	3	2	2	2	1	2	1	1	1	7
11	Remedies	2	3	3	3	3	3	2	3	2	3	1	2	2	2	1	1	1	2	2	7
6	Thresholds	3	3	3	3	3	3	2	2	1	2	2	2	2	1	2	1	1	1	1	6
2	Wrongdoing	3	3	3	3	2	2	3	2	1	2	1	2	1	2	1	1	1	1	1	5
10	Breadth of retaliation	3	3	2	3	3	1	2	2	1	2	2	2	2	1	1	1	1	1	1	4
1	Coverage	3	3	3	3	2	1	1	2	1	2	1	2	1	1	1	2	2	1	2	4
3	Definition of whistleblowers	3	2	2	2	2	3	3	2	2	2	2	2	1	1	1	2	2	1	1	3
4	Reporting channels (internal & regulatory)	3	3	2	2	2	2	2	2	2	2	2	2	2	2	1	1	2	1	1	2

Table 3. G20 countries – private sector laws

Rating 1 Very / quite comprehensive 2 Somewhat / partially comprehensive 3 Absent / not at all comprehensive

		Rus	It	Can	S.Ar	India	Mex	Brz	Arg	Aus	Ger	Tur	Indon	Jpn	Chn	Fra	S.Afr	Kor	UK	US	Tot '3'
		Pr	Pr	Pr	Pr	Pr	Pr	Pr	Pr	Pr	Pr	Pr	Pr	Pr	Pr	Pr	Pr	Pr	Pr	Pr	
5	External reporting channels (third party / public)	3	3	3	3	3	3	3	3	3	3	3	3	2	3	3	1	3	2	2	15
7	Anonymity	3	3	3	3	3	3	3	2	3	2	3	3	3	2	3	3	3	3	1	15
9	Internal disclosure procedures	3	3	3	3	2	3	2	3	3	3	3	3	3	2	3	2	3	3	2	14
14	Transparency	3	3	3	3	3	3	3	3	3	3	3	3	3	3	2	2	1	2	1	14
13	Oversight	3	3	3	3	3	2	3	3	3	3	3	2	3	2	2	3	1	3	1	13
8	Confidentiality	3	3	3	3	3	3	2	2	2	3	2	3	3	2	3	3	1	2	1	11
12	Sanctions	3	3	3	3	3	2	3	2	3	3	2	2	3	3	2	3	1	2	1	11
11	Remedies	3	3	3	2	3	3	3	3	2	2	3	3	2	3	2	1	1	1	2	10
1	Coverage	3	3	3	3	3	3	3	3	2	3	3	2	1	2	2	1	1	2	1	10
2	Wrongdoing	3	3	3	3	3	3	3	3	3	2	3	2	1	2	2	1	1	1	1	10
6	Thresholds	3	3	3	3	3	3	3	3	2	2	3	2	1	2	2	2	2	1	1	9
10	Breadth of retaliation	3	3	2	3	3	3	3	3	3	2	2	2	1	3	2	2	1	1	1	9
3	Definition of whistleblowers	3	3	3	3	3	3	2	2	3	3	2	2	1	1	2	1	2	1	1	8
4	Reporting channels (internal & regulatory)	3	2	3	3	3	3	3	2	2	3	2	2	2	2	1	1	2	1	1	7

A. Introduction

Whistleblower protection has been a priority element of financial, economic and regulatory cooperation between G20 countries since November 2010. When G20 leaders at the Seoul Summit included whistleblower protection as a key element of their global anti-corruption strategy, they recognised the crucial value of 'insiders' to government and companies as a first and often best early warning system for the types of poor financial practice, corruption and regulatory failure now proven as critical risks to the global economy.

In their current G20 Anti-Corruption Action Plan (2013-2014), adopted in Los Cabos in 2012, G20 leaders committed to implement wide-ranging principles for ensuring that whistleblower protection plays this vital role. The current plan provides:

> '9. The G20 countries that do not already have whistleblower protections will enact and implement **whistleblower** protection rules, drawing on the principles developed in the [Anti-Corruption] Working Group, for which Leaders expressed their support in Cannes and also take specific actions, suitable to the jurisdiction, to ensure that those reporting on corruption, including journalists, can exercise their function without fear of any harassment or threat or of private or government legal action for reporting in good faith.'[4]

This report examines the progress of G20 countries in implementing this agreement. In particular, it examines:

- Whether the job of cooperating for effective whistleblower protection is complete;
- Whether there is a case for whistleblower protection to remain a priority area for cooperation and collective action under a next G20 anti-corruption plan, or similar plan; and
- Where progress-to-date indicates the focus of further cooperation should lie, in terms of shared challenges and problems, which continuing but more focused commitment by G20 leaders can help solve.

Since the G20 Seoul Summit in November 2010, whistleblowing not only has maintained its prominent position on international and national anti-corruption agendas, but the issue has grown in importance. Pressure is increasing for countries to establish systems to protect whistleblowers from retaliation and provide them with reliable avenues to report wrongdoing. Public attitudes strongly support protection of whistleblowers, as shown in general population surveys.[5] Recent high-profile cases demonstrate the need to improve and clarify legal protections for whistleblowers in all regions. Internationally both the media's and public's interest in whistleblowing continues to be strong as a mechanism to ensure higher ethical standards are achieved in society.

Guided by international organisations, anti-corruption frameworks and a wide range of NGOs, many countries have responded by strengthening rights and opportunities for whistleblowers. Since 2010, new whistleblower laws have been passed in countries including Australia, Bosnia and Herzegovina, France, India, Italy, Jamaica, Kosovo, Luxembourg, Malaysia, Malta, Peru, Slovenia, the Republic of Korea, Uganda, the US and Zambia. Dozens of other countries are considering new laws or monitoring how their current laws are functioning in practice.

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[4] http://www.oecd.org/g20/topics/anti-corruption/G20_Anti-Corruption_Action_Plan_(2013-2014).pdf

[5] See World Online Whistleblowing Survey Stage 1 Results Release – Australian adult population sample, June 2012, found at: http://www.griffith.edu.au/__data/assets/pdf_file/0003/418638/Summary_Stage_1_Results_Australian_Population_Sample_FULL.pdf and UK Public Attitudes to Whistleblowing, November 2012, found at: http://gala.gre.ac.uk/10298/1/UK_Public_Attitudes_to_WB_Press_Release_and_Report_20121115.pdf

Moreover, international guidelines and standards for effective whistleblower legislation recently have been published by the OECD, Council of Europe, Organization of American States, and NGOs including the Government Accountability Project and Transparency International.

By using the experience and expertise assembled in recent years, all G20 countries remain in the position to establish comprehensive, loophole-free protections for whistleblowers. It is critical for these countries to keep pace with the political, social and technological developments that have elevated the profile of whistleblowing in the public arena. These developments have confirmed whistleblowing's importance as a corporate governance tool, a regulatory tool, and a contribution to the rights of citizens and communities across diverse economies.

This report analyses the current state of whistleblower protection rules in each of the 19 individual G20 country, as applying to the identification of wrongdoing in both the public sector, and the private sector. The methodology used for this assessment is further explained in section C.

While G20 countries do self-report on their implementation, this reporting is very 'broad brush', and provides limited insights into the specific issues on which reform has progressed, or on which further cooperation might be best focused. Appendix 1 sets out the information contained in the G20's 2013 anti-corruption action plan progress report. This report uses recognised principles to provide a more in-depth picture of the state of progress, and whether a case for continued high-level cooperation remains.

Appendix 2 provides a first-ever assessment of the state of whistleblower protection rules for European Union (EU) institutions, representing the final member of the G20 group. We are grateful to the Transparency International Liaison Office to the European Union, for providing this assessment, applying the same principles.

This report has another element of being first. It is the first independent evaluation of all G20 countries' whistleblowing laws for both the private and public sectors. The last time a similar study was undertaken, it was self-reported with each of the G20 countries scoring their own performance. Their self-reported scores were usually more flattering than scores in this report (see Appendix 1). This report was researched by an independent international team of experts in the field from both civil society and academia.

This report is a public consultation draft for the purpose of clarifying whether its identification of major challenges is correct. The authors welcome comments on any of the ratings provided, or the detail on why the ratings are based. Comments or feedback should be directed to the lead author simon@blueprintforfreespeech.net by 4 July 2014.

B. The importance of whistleblower protection in the G20

Whistleblowing is now considered to be among the most effective, if not **the most effective means to expose and remedy corruption**, fraud and other types of wrongdoing in the public and private sectors. This is demonstrated by much existing research (see 'Further Reading' at the end of this report).

Where properly implemented and enforced, whistleblower protection laws have provided employees with safe disclosure channels, shielded them from retaliation, and helped those who have been improperly dismissed to regain their positions and receive financial compensation for lost wages and other costs. Food is safer, water is cleaner, taxpayer money is spent more wisely, and corporations are more accountable in countries with functioning whistleblower procedures.

Due to its proven effectiveness, whistleblowing has been incorporated into the anti-corruption, pro-transparency programmes of most major international organisations, as well as many government anti-corruption agencies, and international and national NGOs. Public interest whistleblowing increasingly is being seen as a human right worthy of formal international recognition.

As critical players in the global economy, G20 countries are in an ideal position to promote transparency and anti-corruption initiatives in government and corporations alike. These initiatives are of particular import in the wake of the global financial crisis, and as political instability and citizen unrest persist in many regions and countries – both within and outside the G20.

History has shown that economic growth and development cannot be sustained if they are built on corrupt practices. Given their significant role in shaping financial systems and practices worldwide, G20 countries have a special responsibility to build sustainability into these processes.

The G20 itself acknowledges that corruption increases costs for businesses and causes the loss of billions of dollars in economic activity. The G20 also recognises that all of its members can take practical steps to reduce the costs of corruption for growth and development. As an illustration of this, all but two G20 countries have signed and ratified the UN Convention against Corruption, and all but four have implemented the OECD Anti-Bribery Convention.

In terms of whistleblower protection, G20 countries have taken various steps that are at different stages of development. As will be seen below, considerable progress can be noted and acknowledged. However, the analysis confirms the experience of G20 countries that action to implement this commitment is not easy. The whistleblower frameworks of most G20 countries still fall measurably short of recognised international standards. Some countries lag significantly behind prevailing best practices, thus offering neither protections nor disclosure opportunities for whistleblowers. Many G20 countries did not fulfil their own pledge to establish whistleblower protections by the end of 2012. The fact that the task remains only partially complete in 2014, dictates the need for a better analysis of where the key problem areas lie.

Although formal legal practice on whistleblower protection dates back 25 years in some countries, it is only recently that effective laws and procedures have begun to be studied comparatively, in sufficient detail to enable this kind of analysis. While one explanation for patchy progress is a **lack of political will**, G20 and other countries have lacked detailed insight into the critical problem areas on which action might be focused.

To guide G20 countries in fulfilling their commitments under the G20 Anti-Corruption Action Plan, the OECD in 2011 released an in-depth report that catalogues and details many whistleblower laws and practices currently in place within G20 counties. The analysis presented here builds on this report.

The OECD report also includes a compendium of best practices and guiding principles necessary for whistleblower laws to be effective. These standards take into account the diversity of legal systems in G20 countries. This offers sufficient flexibility to enable countries to effectively apply such principles in accordance with their own legal systems.

C. Methodology

To achieve the above objectives, our analysis proceeds by comparing each country's laws against internationally recognised standards. Given the nature of the G20 commitment to put in place rules consistent with the above principles, our analysis focuses simply on the written content of countries' laws (i.e.the black letter legal protections provided to whistleblowers) and does not attempt to evaluate implementation or enforcement of these laws in practice

In order to undertake a systematic comparison, we developed 14 criteria for the comprehensiveness of relevant laws, drawing in particular upon the following principles for good or best legislative practice:

- **OAS Model Law to Facilitate Reporting and Protect Whistleblowers**
- **Council of Europe Recommendation on the Protection of Whistleblowers**
- **GAP International Best Practices for Whistleblower Policies**
- **OECD Compendium of Best Practices and Guiding Principles**
- **Transparency International's Principles for Whistleblower Legislation**

Our 14 criteria, set out in the table "Best Practice Criteria for Whistleblowing Legislation" above, are based on 'essential' principles, which appeared in at least three of these five sets of standards. It can be argued that a whistleblower law is not adequate if does not address each of these principles to a reasonably comprehensive standard. If so, then the following analysis can also be used as an objective guide to the adequacy of the regimes compared. However, our primary objective is to document progress across a wide range of key principles, for the purpose of identifying where the specific commitments of G20 leaders might be best focused, in terms of further cooperative effort (i.e. most common collective problem areas or gaps). As a result, the analysis differs from other evaluations conducted. It is also the first comparative analysis to differentiate in detail, using the same principles, between the rules for the public and private sectors.

Although listed separately, the 14 criteria referred to above the table often work best together. For example, best practice of providing channels for disclosure should be paired with the need for anonymity expressed in Criteria #7, by providing both anonymous and non-anonymous reporting choices for disclosure.

In reaching assessments of the relative comprehensiveness of each criterion, we circulated initial draft ratings to a wide range of experts and whistleblowing-related NGOs in G20 countries. As a result, many ratings were modified or justified in light of the extra information provided by all the participating NGOs and experts. As outlined above, further comment and feedback remains welcome, to produce the most useful analysis. We are deeply grateful to those who have already assisted, as detailed in the Acknowledgements section of the report.

Numerical scores or ratings for each country are not attempted, because each of the 14 criteria may carry different weight in terms of their importance in forming a strong whistleblower law, depending on the circumstances. It is therefore not possible to compare countries in an 'apples-to-apples' fashion. As discussed in Analysis, the comparisons nevertheless enable a far clearer picture than available previously, as to the overall

strengths and weaknesses of whistleblower laws in each country and across the G20 as a whole.

However this report does score each of the 14 criteria, tallying it across all the G20 countries. The purpose of this is to illustrate the areas where most of the work still needs to be done, and thus what strategic direction to take in future. A high numerical score in a particular criterion suggest there must be greater focus on introducing laws with those features. A low number suggests that much progress has already been made in that criterion's area.

In support of the analysis, each country entry below includes some discussion of key resources or facts on what the assessment is based, and/or discussion, where relevant, on the performance of the law in practice. This discussion recognises that even when an excellent law exists on paper, a government still confronts challenges if that law is simply not being used or enforced. Where provided, this qualitative snapshot draws on:

- Case studies as described in court judgments or the media where the law did or did not work in practice;
- Reports from institutions or NGOs on the state of whistleblower protections in the particular country;
- Academic or research-based source material relevant to whistleblower law or the prevention of corruption generally that helps explain the lack of protections, or the failure of the enforcement of protections when they exist in the law;
- Input from experts who work in NGOs in the particular country such that they can provide an overview of the perception of the effectiveness of a law; or
- Media reports that help explain local context.

The result is a 'high-level' summary of where the gaps in protection might be for that particular country. This will support the conversation among the G20 to reform and improve whistleblower protection laws. More systematic analysis of the actual effectiveness or implementation of any particular law requires a much more rigorous and lengthy study, which is beyond this report..

This methodology and indeed the research are not intended to be a perfect or ultimate set of principles for gauging the effectiveness of laws, and we do not presume that all NGOs or governments would necessarily consider it to be that. Rather, it provides a framework for comparative analysis for the purpose of identifying whether there is a case for continued cooperative action by the G20 on this important issues and, if identified, where that action might be most efficiently focused.

We stress that this report only analyses the actual black letter laws relating to whistleblower protection in each country. The written law is only half of what is necessary to see that those who reveal serious wrongdoing are actually protected in practice. The other half of the equation is how the laws are implemented in practice, and there have been numerous reports of problems with this across G20 and other countries. Therefore we clearly state that a high score in the quality of the protection promised by the law does not mean we are saying that in practice a country actually properly protects whistleblowers. Further in countries with a low score, there may be cultural or other norms that in fact indirectly protect whistleblowers in practice.

In all cases, ratings of comprehensiveness are based entirely on provisions that are present in law, and should not be misinterpreted as an assessment of the effectiveness or otherwise of the provisions in practice.

D. Results and analysis

G20 progress to date

Tables 1-3, at the beginning of the report, present the summary results for:

(1) both the public and private sectors for each country (in country order)
(2) the public sector (ordered from weakest criteria, to strongest) and
(3) the private sector (ordered from weakest criteria, to strongest).

Strikingly, the results shown in Tables 2 and 3 reveal that nearly half of both tables is green or yellow – showing a high score of 1 or a middle score of 2. This plainly illustrates substantial progress in the development of whistleblower protections in law across the G20 countries.

A decade ago, it is likely that most of these tables would have been red (the lowest score of 3). It is useful to recognise how far G20 countries have come in the journey toward providing better protections for those who protect the integrity of our institutions in government and corporations alike.

However, as the red half of each table reveals, there is also a significant way to go to achieve high-quality whistleblower protection laws in every G20 country. The results confirm why it was necessary for G20 leaders to extend the timeline for implementation of their whistleblower legislation commitments from 2012 to 2014. In 2014, it remains clear that even if some countries do proceed expeditiously with further reform as recently flagged (see Part D); across the G20 many countries will still not have fulfilled this commitment in the life of current 2013-2014 anti-corruption action plan.

Comparison of the columns in Table 1, and between Tables 2 and 3, also indicates that countries have been far more successful to date in enacting comprehensive whistleblower protection rules dealing with disclosure of wrongdoing in their public sectors than in their private sectors. The implications of this are discussed further below.

Given these results, G20 leaders appear to have four options:

1. To determine that whistleblower protection is no longer sufficiently important to remain a G20 anti-corruption priority

2. To determine that enough has been achieved to no longer warrant whistleblower protection rules remaining a G20 anti-corruption priority

3. To admit defeat and determine that many G20 countries have so far been unable to meet their commitments, and are going to abandon their commitment to doing so

4. To identify new commitments that will better enable G20 countries to meet their previously stated whistleblower protection legislation goals.

However, based on the foregoing analysis, none of the first three of these options is credible or viable. Clearly the state of progress since 2010 means that it is not time for G20 leaders to declare that “halfway there is good enough”, any more than it is credible to declare, in the face of this level of performance, that this important element of integrity-strengthening across international financial and regulatory systems is suddenly no longer necessary.

The state of progress is also such that even for many countries that have taken action, the number of gaps in their legislative frameworks continues to undermine the likely effectiveness of the G20’s achievements as a whole. Many key components of good whistleblower protection laws are complementary with each other. When brought in together, they are interwoven in the fabric of institutions and society to provide a strong net of

measures for both detecting corruption and other regulatory breaches, and protecting whistleblowers and institutions from damaging outcomes.

If only some best practices are put in place, the remaining holes in the net can allow corruption to flourish as though there was no net at all. Therefore, having adequate protections in law across eight criteria will provide significantly less benefits than across all 14 criteria. Substantial performance in implementation is dependent on comprehensive measures – of a high standard – across the full range of a country's laws.

An example of this, using criterion #1, is the way in which 'carve-outs' for organisations have an impact on 'external disclosure'. Where a country (for example, the UK or Canada) carves military or intelligence personnel out of the whistleblower protection legislation (and consequently is rated a '2' for this criterion), then the rating for external disclosure of that same country is also affected and cannot be higher than '2'. The strength of one protection is dependent on another.

It should also be remembered that this analysis only examines the laws themselves. **The analysis does not evaluate the implementation or enforcement of the laws**. As a result, the study does not assess whether protections drafted in the written law have delivered the promised protections to whistleblowers in actual cases. This is a larger task that must be undertaken separately, but a vital one in order to ensure that disclosure systems actually work properly in practice. It also means that even comprehensive, best practice laws are only the first step to full implementation of the existing G20 commitments.

Strengths and weaknesses – public sector

Areas of Strength

Public sector disclosure protections have several areas featuring quite good coverage in legislation across G20 countries, as outlined in Table 4.

Table 4
Categories in which Whistleblower Laws for the Public Sector Rate the Best

Category of Protection: Public Sector	**1 Rating**	**2 Rating**	**Total 1 & 2**
Full range of **internal (i.e. organisational) and regulatory agency reporting channels**	4	13	17
Broad **definition of "whistleblowers"** whose disclosures are protected (e.g. including employees, contractors, volunteers and other insiders)	5	11	16
Comprehensive **coverage of organisations** in the sector (e.g. few or no 'carve-outs')	8	7	15

Seventeen out of 19 countries have some presence in law of a full range of internal and regulatory agency reporting channels. While most (13) only have a middle rating, four have the highest rating. The significance of this, the best area of performance in the public sector among all 14 criteria, is that almost all G20 countries have at least some recognition in law of the importance of whistleblowers having at least one disclosure channel.

Also encouraging is the fact that like the private sector, public sector protections have a wide definition of whistleblower to include employees, contractors and other insiders who fit the emerging model of how we increasingly work today.

As discussed below, however, protections in both of these areas are more widespread in the public than the private sector.

The third highest performing category in the public sector is the comprehensiveness of coverage of organisations. There is often a temptation by policy-makers to exempt from whistleblower laws certain institutions in government, be it the police or even Parliament itself. Yet 15 out of 19 G20 countries have enacted laws that give moderately or very good coverage of the institutions in government.

Table 5
Categories in which Whistleblower Laws for the Public Sector Rate the Worst

Category of Protection: Public Sector	**1 Rating**	**2 Rating**	**Total 1 & 2**
Protections extend to disclosures made **anonymously** (if later identified)	2	3	5
Comprehensive requirements for organisations to have **internal disclosure procedures** (e.g. including requirements to establish reporting channels, to have internal investigation procedures, and to have procedures for supporting and protecting internal whistleblowers from point of disclosure)	2	3	5
Protection extends to same disclosures **made publicly or to third parties** (external disclosures e.g. media, NGOs, labour unions, Parliament members) if justified or necessitated by the circumstances	1	5	6
Requirements for **transparency and accountability** on use of the legislation (e.g. annual public reporting, and provisions that override confidentiality clauses in employer-employee settlements)	4	4	8

Across G20 countries, the four weakest areas of whistleblower protection for the public sector are:

1. the lack of provision of anonymous channels, where the discloser can feel safe revealing serious wrongdoing without identifying themselves;
2. the requirement for organisations to have good internal disclosure procedures;
3. protection for using external disclosure avenues such as the media, MPs, NGOs and labour unions; and
4. Requirements for transparency and accountability on use of the legislation/availability of protection, including annual reporting and overriding of confidentiality clauses.

These areas of whistleblower protection need substantial strengthening across the public sector, much like the private sector. However, unlike the private sector evaluations, in the public sector only one G20 country received a high rating of 1 on providing protections for using external channels such as the media (South Africa).

This illustrates that although the protections in the public sector are generally stronger than the private sector, there are still specific gaps in which laws for public sector employees need vast improvement.

Strengths and weaknesses – private sector
Areas of Strength

Overall, the strongest areas of whistleblower law in the private sector, as illustrated by a wide range of 1 and 2 ratings across all G20 countries, are in three categories outlined in Table 6.

Table 6
Categories in which Whistleblower Laws for the Private Sector Rate the Best

Category of Protection: Private Sector	**1 Rating**	**2 Rating**	**Total 1 & 2**
Full range of **internal (i.e. organisational) and regulatory agency reporting channels**	4	8	12
Broad **definition of "whistleblowers"** whose disclosures are protected (e.g. including employees, contractors, volunteers and other insiders)	3	8	11
Protections apply to a wide range of **retaliatory actions** and detrimental outcomes (e.g. relief from legal liability, protection from prosecution, direct reprisals, adverse employment action, harassment)	4	6	10

Twelve of the 19 G20 countries score 1 or 2 in providing a full range of internal and regulatory agency reporting channels to whistleblowers. Further, 11 countries have similar scores when it comes to providing a broad definition of whistleblower that encompasses not just traditional employees, but also contractors, volunteers and others who might have access to information inside an organisation and also be subject to retaliation for being a whistleblower. Extending the application of the law is important as the structure of workplaces change rapidly in the 21st century.

More than half the countries (10) also have some or partial legal protections from a wide range of retaliatory actions against whistleblowers. About a third of countries (6) received the top score for this criterion.

Indeed, this criterion scored more 1s across countries than any other, suggesting that lawmakers in many G20 countries understand the reality that there are many ways in which whistleblowers who reveal wrongdoing can be intimidated, punished, or suffer detrimental outcomes that can deter disclosure and cause injustice. However, many G20 countries are also yet to ensure their laws fully reflect this understanding.

Areas of Weakness

The greatest areas of weakness in the private sector are around providing anonymous reporting channels for whistleblowers, and proper protections for making external disclosures, such as to the media, Members of Parliament (MPs), labour unions and NGOs.

Current laws show that only one G20 country, the US, scores a 1 in the category of providing anonymous reporting channels for the private sector. While this illustrates best practice black letter law, examination of how well this works in practice is merited in future studies.

Another problem area is around protections for external disclosures, such as to the media, NGOs, unions or MPs. This is lacking or substandard in nearly all G20 countries.

These two categories are extremely important, because together they provide the best protection for whistleblowers dealing with an institution where corruption has become

widespread, including to the executive level. Whistleblowers highly value these types of channels, especially in situations where they might have no other choice.

The lack of availability of anonymous reporting channels and protections for going through external avenues such as MPs and the media in so many G20 countries may significantly contribute to whistleblowers holding back from taking action on serious wrongdoing. Anonymous channels are critical to many whistleblowers stepping forward with evidence of criminal or other wrongdoing. Without those channels, some corruption may never be revealed.

Table 7
Categories in which Whistleblower Laws for the Private Sector Rate the Worst

Category of Protection: Private Sector	**1 Rating**	**2 Rating**	**Total 1 & 2**
Protections extend to disclosures made **anonymously** (if later identified)	1	3	4
Protection extends to same disclosures **made publicly or to third parties** (external disclosures e.g. media, NGOs, labour unions, Parliament members) if justified or necessitated by the circumstances	1	3	4
Comprehensive requirements for organisations to have **internal disclosure procedures** (e.g. including requirements to establish reporting channels, to have internal investigation procedures, and to have procedures for supporting and protecting internal whistleblowers from point of disclosure)	0	5	5
Requirements for **transparency and accountability** on use of the legislation (e.g. annual public reporting, and provisions that override confidentiality clauses in employer-employee settlements)	2	3	5

Table 7 also highlights the relatively poor performance of two other criteria: the requirement for organisations to have internal disclosure procedures, and transparency and accountability on use of the legislation/availability of protection and overriding of confidentiality clauses. Both of these categories receive a top rating for comprehensiveness in only two countries, with a score of 2 in two other countries.

These analyses help identify the areas in which G20 countries have had greatest success, moderate success and least success to date. By identifying these areas, it is possible to focus on actions which will enable G20 leaders to ensure their governments come to grips with the greatest challenges confronting this important element of the integrity infrastructure on which good governance and economic resilience depends.

Whilst this has been a priority for three and a half years, and some reform has taken place, the data and analysis in this report illustrates clearly that there is significant improvement to be made in achieving comprehensive protection for whistleblowers.

E. Conclusions and actions

Most G20 countries fail to provide adequate legal protections for whistleblowers, meaning that employees who report wrongdoing leave themselves open to retaliation, while fraud, corruption and other crimes are allowed to persist in governments and corporations alike

The data analysed clearly points to several areas of weakness in G20 countries' whistleblowing laws in both the public and private sector:

- adequate internal and external disclosure channels;
- the opportunity for employees to report wrongdoing anonymously;
- an independent agency to investigate whistleblowers' disclosures and complaints; and
- transparent and accountable enforcement of whistleblower laws.

These areas provide focus for specific content areas of the law that are missing or of lesser standard than best practice.

However these specific shortcomings beg the question of what the G20 should do next in terms of its strategic direction in the anti-corruption and whistleblowing space, and what if any commitments it should make regarding its strategic priorities. Based on the facts in this report we recommend:

1. Whistleblower protection should remain a key priority area in G20 leaders' integrity and anti-corruption commitments

It is only with high-level political leadership that the complex, competing interests provoked by effective public interest disclosure regimes can be properly reconciled. The evidence of the difficulty of performance in delivering on this commitment to date, confirms why improving whistleblower protection rules and systems should remain a G20 priority.

The only alternative is for G20 leaders to admit defeat, and instead consign whistleblowers, employees, consumers and the citizens who suffer the consequences of institutional and financial malpractice, to their individual and collective fates.

2. High level commitment is needed to address weakness, fragmentation and inefficiency in corporate governance and private (e.g. financial and corporate) sector whistleblowing rules, as well as continued work on the public sector laws

The results show that it has become important, through G20 cooperation, for leaders to consider how best to go about collaboratively strengthening whistleblowing as part of good corporate governance and private sector regulatory rules – not focusing solely on the public sector.

Many initiatives including those sponsored under UNCAC and OECD public sector governance principles, focus on the remedying of corruption and financial risks as if public sector integrity is the main problem. While this should remain a focus, there is also a great need for action in achieving more comprehensive and efficient ways of using whistleblowing to help ensure good corporate governance, within and across national borders, as part of the building of collective economic resilience.

Further, history suggests that unless the challenge of corporate governance and private sector regulation is met, then G20 efforts will not have addressed the areas of action that are

most likely to deliver the best outcomes in terms of effective prevention of poor or corrupt financial practices of the highest risk to growth and stability.

From these results, a strong focus on cooperation to achieve best practice whistleblowing protection in the corporate sector can also contribute to growth and efficiency, by heading off a real risk of costly, inefficient economic burdens. Our findings highlight the contrast between most countries, who have weak or largely non-existent systems for whistleblower protection in the financial and corporate sector; and the United States, which has the most comprehensive protections, but which are notorious for multiplicity, inefficiency and fragmentation – with attendant costs on business.

Countries that have not yet moved comprehensively to implement whistleblower protection in the private sector are thus in the advantageous position of being able to prevent this result. However, this will only occur if a concerted effort is made to articulate a better, more streamlined form of best regulatory practice than has yet been identified through other international standard-setting and cooperation.

3. G20 cooperation for more comprehensive whistleblower protection should focus on the three areas of greatest challenge:

(1) clear rules for when whistleblowing to the media or other third parties is justified or necessitated by the circumstances**;**

(2) clear rules that encourage whistleblowing by ensuring that anonymous disclosures can be made, and will be protected; and

(3) clear rules for defining the internal disclosure procedures that can assist organisations to manage whistleblowing, rectify wrongdoing and prevent costly disputes, reputational damage and liability, in the manner best suited to their needs.

These three areas represent the largest gaps in legislation, across both the public and private sectors. By focusing on cooperation for new solutions in these specific areas, G20 leaders will be able to more effectively drive the cooperation needed to enhance the quality and workability of whistleblower protection systems across the board.

A three-tiered system of reporting channels, including clear external avenues to third parties such the media, MPs, NGOs and labour unions – where necessary – is increasingly recognised as vital to effective facilitation of the disclosure of public interest wrongdoing. However, the rules necessary to achieve this are very much lacking in existing legislation. Business recognises that such rules create a powerful incentive for companies to recognise and respond to whistleblowing more effectively in order to prevent the need for reputational damage in the public domain. For example, Bob Ansell, controls and compliance manager for Philip Morris Limited, has described such protection as making 'a compelling case' for his organisation to develop an effective approach to learning about wrongdoing *first*: 'I would much rather people speak to me than a newspaper or *Today Tonight*' (Mezrani 2013).

Anonymous channels are critical to get those who know about corruption in the door to auditors or regulators, in the first instance. Without them, a government institution or a corporation may never know about wrongdoing. At present, however, whistleblower protection rules may actually deter whistleblowing by providing no protection unless employees first identify themselves. Research and experience shows that whistleblowers *will* often identify themselves, and provide invaluable information, if *first* afforded the facility to make an anonymous disclosure or enquiry, in the knowledge that, if later identified, protection will extend to their original disclosure.

By cooperating for effective rules that overcome this hurdle, G20 countries can take a quantum leap in embedding realistic whistleblower protection in financial and other regulatory systems.

Internal disclosure procedures are the mechanisms by which organisations – public or private – adapt whistleblower protection principles to their own environment. In particular, by setting out an organisation's own processes for investigating and remedying reported wrongdoing, and for supporting and protecting whistleblowers internally wherever possible, such procedures contribute to good corporate governance, the prevention of financial loss and the minimisation of labour disputes.

The analysis indicates that only 2 countries have very/quite comprehensive provisions outlining what procedures public sector organisations must put in place; and *no* countries have comprehensive requirements in place for private sector organisations. By collaborating to identify the elements of best practice procedures, especially in the private sector, and then using these to shape consistent, efficient, best practice regulation for requiring and promoting such procedures, the G20 can play a vital role.

G20 leaders are uniquely placed to drive these difficult, but strategic reforms. While the patchy progress revealed by this analysis could be seen as negative, clearer insights into what is needed confirm that the G20 has a tremendous opportunity to provide leadership on important regulatory and governance challenges that no-one else is likely to solve. These reforms are in the interest not only of whistleblowers and corruption-fighters, but everyone with an interest in the good governance, accountability, transparency and performance of governments and corporations. While action across all the criteria identified here should remain important to governments, the analysis indicates that these should be the specific foci of the next G20 anti-corruption action plan.

All G20 countries should act promptly to improve their whistleblower laws and procedures in order to provide clear, loophole free protections and disclosure channels for government and corporate employees.

F. Country Analysis

1. Argentina

Rating of legislative regime against international principles

Rating:
1. Very / quite comprehensive
2. Somewhat / partially comprehensive
3. Absent / not at all comprehensive

#	Principle	Public Sector	Private Sector
1.	Coverage	3	3
2.	Wrongdoing	3	3
3.	Definition of whistleblowers	2	2
4.	Reporting channels (internal and regulatory)	2	2
5.	External reporting channels (third party / public)	3	3
6.	Thresholds	3	3
7.	Anonymity	2	2
8.	Confidentiality	2	2
9.	Internal disclosure procedures	3	3
10.	Breadth of retaliation	3	3
11.	Remedies	3	3
12.	Sanctions	2	2
13.	Oversight	3	3
14.	Transparency	3	3

Discussion / qualitative snapshot

- Whistleblower protection in Argentina is limited. There is no dedicated whistleblower protection legislation in either the public or the private sector. However, there is piecemeal protection to be found in other laws.[6]
- Law 25.764 (Defendants and Witnesses Protection National Program Law of 2003) protects witnesses who disclose criminal activity that relates to either terrorism, kidnapping or drug trafficking (institutional violence), organised crime, human trafficking and crimes against humanity committed between 1976-1983.[7]
- However, there are several governmental bodies to which whistleblowers can make disclosures (notably with no real protection), but those complaints can be made 'anonymously':
    - Oficina Anticorrupción,[8] which has an online facility to make disclosures. However, the form is not secure;
    - Fiscalía de Investigaciones Administrativas Auditoría; and

[6] https://www.globalintegrity.org/global/the-global-integrity-report-2010/argentina/
[7] http://government.defenceindex.org/sites/default/files/documents/GI-assessment-Argentina.pdf
[8] http://www.anticorrupcion.gov.ar/denuncias_01.asp

  - The Public Prosecutor. The General de la Nación (national general auditor)[9] and the Defensor del Pueblo de la Nación (Public Defender, an Ombudsman)[10] do not accept disclosures themselves.

- Anonymity, whist proffered, is difficult to achieve as it is only relevant for the pre-trial stage. The constitutional principle of the 'right to defence' means that anonymity cannot be maintained for the trial of corruption charges.[11]
- In 2012, Freedom House produced a highly critical report on whistleblower protection in Argentina. In its report, it found: "Argentina has no law to protect whistleblowers or anticorruption activists. Allegations of corruption are frequently and abundantly, though not always informatively, dispensed by the media. Lack of information does not seem to be the reason why allegations of corruptions go unpunished in Argentina. Rather the main obstacles seem to be that incumbents tend to select political allies to fill high ranking judicial positions and that sitting judges refrain from prosecuting elected officials while they are in office or as long as they wield some power."[12]
- Encouragingly, there are some cases of companies (including financial institutions) that have established internal whistleblowing procedures (see, for example, Banco Hipotecario[13]) as part of their corporate governance framework.
- There are about 16 witness protection programmes in all of Argentina (not whistleblower).
- Each operates differently, responds to a different authority (police, prosecutor, minister) varying the extent of each programme. These programmes are in Ciudad de Buenos Aires, Buenos Aires, Catamarca, Chubut, Córdoba, Entre Ríos, Jujuy, La Rioja, Misiones, Neuquén, Santa Cruz, Santiago del Estero, Santa Fe, Tierra del Fuego, Tucumán).[14]

[9] http://www.agn.gov.ar/
[10] http://www.dpn.gob.ar/
[11] Transparency International, Argentina (Poder Ciudadno)
[12] http://www.freedomhouse.org/report/countries-crossroads/2012/argentina#.U4SSXq2SztA
[13] http://www.hipotecario.com.ar/media/pdf/MEMYBALINGPRINT2012.PDF
[14] Transparency International, Argentina (Poder Ciudadno)

2. Australia

Rating of legislative regime against international principles

Rating:

1. Very or quite comprehensive
2. Somewhat or partially comprehensive
3. Absent / not at all comprehensive

#	Principle	Public Sector	Private Sector
1.	Coverage	2	2
2.	Wrongdoing	1	3
3.	Definition of whistleblowers	1	3
4.	Reporting channels (internal and regulatory)	1	2
5.	External reporting channels (third party / public)	2	3
6.	Thresholds	1	2
7.	Anonymity	1	3
8.	Confidentiality	1	2
9.	Internal disclosure procedures	1	3
10.	Breadth of retaliation	1	3
11.	Remedies	2	2
12.	Sanctions	1	3
13.	Oversight	1	3
14.	Transparency	1	3

Discussion / qualitative snapshot

- Australian whistleblower protection rules are fairly comprehensive for the public sector, with federal and state legislation now covering all jurisdictions. Across the board, Australian public sector legislation is strong in requiring organisations to have internal procedures not only for facilitating disclosures, but also for protecting and supporting employees who report wrongdoing.[15]
- However in other respects, there remain significant differences between jurisdictions. For example, while the definitions of reportable wrongdoing and who may be covered are very comprehensive under the federal Public Interest Disclosure Act 2013, whistleblower reports about wrongdoing by members of parliament, ministerial staff or the judiciary are not protected; by contrast, under Australian state whistleblowing legislation, reporting of wrongdoing committed by all public officials (including politicians and judicial members) is typically protected.

[15] See Brown, A. J. (2013), 'Towards 'ideal' whistleblowing legislation? Some lessons from recent Australian experience', *E-Journal of International and Comparative Labour Studies,* September/October, 2(3): 153–182; Dworkin, T. M. and Brown, A. J. (2013), 'The Money or the Media? Lessons from Contrasting Developments in US and Australian Whistleblowing Laws', *Seattle Journal of Social Justice* 11(2): 653–713.

- There is a large carve-out in the protection the legislation provides for disclosing externally (such as to the media) for intelligence-related material. This carve out would likely cover not just military and intelligence services but also federal police. This is problematic as these sectors are not immune from corruption, like any other sector.

- Conversely, while disclosures to the media may qualify for protection federally (other than in most intelligence matters) and in some state jurisdictions, in other states public servants who blow the whistle to the media are still subject to criminal or disciplinary penalties.

- In the private sector, legislative protection is considerably weaker. The primary provisions are contained in Part 9.4AAA of the federal Corporations Act 2001 (inserted in 2004, after the US Congress enacted the Sarbanes-Oxley Act). However the scope of wrongdoing covered is ill-defined, anonymous complaints are not protected, there are no requirements for internal company procedures, compensation rights are ill-defined, and there is no oversight agency responsible for whistleblower protection. These provisions have been subject of widespread criticism and are the focus of a federal parliamentary committee inquiry into, among other matters, the protections afforded by the Australian Securities and Investments Commission to corporate and private whistleblowers.[16]

- Other limited protections provisions exist for whistleblowers who assist regulators in identifying breaches of industry-specific legislation such as the federal Banking Act 1959, Life Insurance Act 1995, Superannuation Industry (Supervision) Act 1993 and Insurance Act 1973, but these types of protections are also typically vague and ill-defined, with no agency tasked with direct responsibility to implement them.

[16] See http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/ASIC.

3. Brazil

Rating of legislative regime against international principles

Rating:

1. Very or quite comprehensive
2. Somewhat or partially comprehensive
3. Absent / not at all comprehensive

#	Principle	Public Sector	Private Sector
1.	Coverage	2	3
2.	Wrongdoing	2	3
3.	Definition of whistleblowers	2	3
4.	Reporting channels (internal and regulatory)	2	3
5.	External reporting channels (third party / public)	3	3
6.	Thresholds	2	3
7.	Anonymity	3	3
8.	Confidentiality	2	2
9.	Internal disclosure procedures	3	2
10.	Breadth of retaliation	2	3
11.	Remedies	3	3
12.	Sanctions	3	3
13.	Oversight	3	3
14.	Transparency	3	3

Discussion / qualitative snapshot

- Whistleblower protection is Brazil is extremely limited. Beyond standard protections offered to witnesses in criminal cases,[17] three laws refer to whistleblowing directly: Law 8.112 of 1990 (Civil Service), Law 8.443 of 1992 (Organic Law of the Court of Accounts of the Union), and Law 12.846 of 2013 (Anti-Corruption).
- In the public sector, Law 8.112 of 1990 was amended in 2011 (by the Freedom of Information Law 12.527 of 2011) to:
    - Make it the duty of all civil servants to "bring irregularities of which they have knowledge because of their position to the attention of their higher authority" or "another competent authority" where there is suspicion of involvement or knowledge by their higher authority (Art 116-IV);
    - Protect any public servant from civil, criminal or administrative liability for "giving to their higher authority, or… other competent authority… information

[17] See OECD, 'Brazil: Phase 2, Report on the application of the convention on combating bribery of foreign public officials in international business transactions and the 1997 recommendation on combating bribery in international business transactions,' (Directorate of Financial and Enterprise Affairs, 7 December 2007), 15.

concerning the commission of crimes or misconduct of which he is aware, due to his financial position, job or function" (Art 126-A).[18]

- However, this law does not provide for confidential disclosures, nor does it provide recourse against retaliation.
- Law 8.443 of 1992 provides that any citizen, political party, association, union or professional association may file a complaint with respect to irregularities and violations of the national audit law. This law therefore covers both the public and private sectors. It specifically provides that disclosures to the Brazilian Court of Audit (TCU) regarding bribery are to be treated as confidential.[19] While the definition of who can make such a disclosure is comprehensive (i.e. no limitations are placed upon it) it is specific to the TCU and the Federal Court of Accounts and contains no protections against potential retaliation.
- Law 12.846 of 2013 (Anti-Corruption) encourages companies to institute internal disclosure procedures and incentives for "the reporting of irregularities," by making this a factor taken into consideration when applying sanctions for corrupt conduct – such as domestic or foreign bribery, fraud on the public purse, or breaches of tendering.[20] However, there is no general whistleblower protection law for private sector entities.

[18] See also Article 19, 'Memorandum on the Draft Bill on Access to Information of Brazil' (July 2009), London, 13-14.
[19] Ibid, 15-16.
[20] Article 7 (viii), Law 12.846 of 2013.

4. Canada

Rating of legislative regime against international principles

Rating:

1. Very or quite comprehensive
2. Somewhat or partially comprehensive
3. Absent / not at all comprehensive

#	Principle	Public Sector	Private Sector
1.	Coverage	2	3
2.	Wrongdoing	1	3
3.	Definition of whistleblowers	2	3
4.	Reporting channels (internal and regulatory)	2	3
5.	External reporting channels (third party / public)	2	3
6.	Thresholds	1	3
7.	Anonymity	3	3
8.	Confidentiality	1	3
9.	Internal disclosure procedures	1	3
10.	Breadth of retaliation	1	2
11.	Remedies	1	3
12.	Sanctions	1	3
13.	Oversight	1	3
14.	Transparency	1	3

Discussion / qualitative snapshot

- Canada passed a dedicated law to provide whistleblower protection for government employees in 2007 (Public Servants Disclosure Protection Act), and a dedicated government agency to receive and investigate complaints of wrongdoing and reports of whistleblower reprisals (Public Sector Integrity Commissioner, PSIC). On paper, the law and the agency contain many elements considered to be needed to protect employees from retaliation. However, several NGOs have been critical of how the PSIC implements the law and say the law needs to be improved. The formal five-year review of the law is now two years overdue.

- According to the Federal Accountability Initiative for Reform (FAIR),[21] "More than twenty years after the first promises by politicians, Canada still does not have effective laws to protect truth-tellers and to enable wrongdoing in the public service to be exposed."[22] Canadians for Accountability stated that the law "has been

[21] FAIR was founded by Joanna Gualtieri, who exposed extravagance in the purchase of overseas accommodation Foreign Affairs staff.
[22] "The Canadian Experience," Federal Accountability Initiative for Reform.

extensively criticised as setting too many conditions on whistleblowers and for protecting wrongdoers."[23]

- FAIR has identified a number of weaknesses with the PSIC, including its lack of authority to order corrective actions, sanction wrongdoers, initiate criminal proceedings or apply for injunctions to halt ongoing misconduct. According to FAIR, the PSIC can report wrongdoing to other authorities "and hope that something happens as a result."[24]

- The only provision that applies to employees of private companies is a section in the Criminal Code that bans retaliation for those who report criminal offences.[25] However, NGOs have been unable to identify any example of this provision being used.

- In addition to the federal law, a number of provinces have whistleblower laws for government employees, including Alberta, Manitoba, Newfoundland, New Brunswick, Nova Scotia, Ontario and Saskatchewan. New Brunswick and Saskatchewan have laws covering the private sector.

- As of May 2014 there were four active cases before the Public Servants Disclosure Protection Tribunal, where retaliation victims can seek remedies and compensation. Three of the cases involve long-term employees of Blue Water Bridge Canada[26] who were all fired on 19 March 2013, including the vice president for operations. The PSIC says the former CEO misused public money and violated the code of ethics when he gave two managers severance payments worth $650,000.[27]

- In five of six cases that the Integrity Commissioner has referred to the Tribunal, he has declined to ask the Tribunal to sanction those responsible for the reprisals. In the one case in which the Commissioner called for sanctions, he has since reversed himself and now says there were no reprisals. The whistleblower's lawyer has initiated a judicial review to contest this reversal.

- In April 2014 Canada's Auditor General found "gross mismanagement" in the handling of two PSIC cases. The audit criticised buck-passing by top managers, slow handling of cases, the loss of a confidential file, poor handling of conflicts of interest, and the inadvertent identification of a whistleblower to the alleged wrongdoer.[28]

- In October 2012 PSIC Commissioner Mario Dion removed FAIR Executive Director David Hutton from a government whistleblower advisory committee after Hutton publicly criticised Dion's office, echoing the findings of a judicial review. In solidarity, two other NGOs – Canadians for Accountability and Democracy Watch – resigned the committee.

- Many high-profile whistleblower cases have emerged in Canada in recent years, including Sylvie Therrien, who was suspended in 2013 for revealing that employment insurance investigators were told to harass and penalise deserving applicants; Edgar Schmidt, who revealed in 2013 that for 20 years the Justice Department was not ensuring that all proposed laws complied with the Canadian Charter and Bill of Rights; and Evan Vokes, an engineer who reported in 2012 that TransCanada Pipelines often failed to comply with pipeline safety and reliability codes.[29]

[23] "About Accountability & Whistleblowing," Canadians for Accountability.
[24] "What's Wrong with Canada's Federal Whistleblower Legislation," Federal Accountability Initiative for Reform.
[25] "UNCAC Implementation Review, Civil Society Organization Report," Transparency International Canada, October 2013.
[26] Blue Water Bridge Canada is a Crown corporation that operates a bridge linking Ontario with Michigan.
[27] Public Servants Disclosure Protection Tribunal Canada.
[28] "Audit finds 'gross mismanagement' in two integrity watchdog cases," CBC News, 15 April 2014.
[29] Federal Accountability Initiative for Reform.

5. China

Rating of legislative regime against international principles

Rating:

1. Very or quite comprehensive
2. Somewhat or partially comprehensive
3. Absent / not at all comprehensive

#	Principle	Public Sector	Private Sector
1.	Coverage	1	2
2.	Wrongdoing	1	2
3.	Definition of whistleblowers	1	2
4.	Reporting channels (internal and regulatory)	2	1
5.	External reporting channels (third party / public)	3	3
6.	Thresholds	2	2
7.	Anonymity	2	2
8.	Confidentiality	2	2
9.	Internal disclosure procedures	2	2
10.	Breadth of retaliation	2	3
11.	Remedies	2	3
12.	Sanctions	2	3
13.	Oversight	3	2
14.	Transparency	3	3

Discussion / qualitative snapshot

- China has high-level rules providing some legal protection for whistleblowing across the public and private sectors, beyond general protection applied to those reporting criminal activity.[30]

- Protection of public sector whistleblowing is included in the protection of freedom of speech provided under Article 41 of the Constitution of the People's Republic of China (2004). This provides:

(1) "Citizens of the People's Republic of China have the right to criticize and make suggestions to any state organ or functionary. Citizens have the right to make to relevant state organs complaints and charges against, or exposures of, any state organ or functionary for violation of the law or dereliction of duty; but fabrication or distortion of facts for the purpose of libel or frame-up is prohibited.

(2) The state organ concerned must deal with complaints, charges or exposures made by citizens in a responsible manner after ascertaining the facts. No one may suppress such complaints, charges and exposure, or retaliate against the citizens making them.

[30] Criminal Procedure of the People's Republic of China. See Pattie Walsh, 'China' in *Whistleblowing: An employer's guide to global compliance* (DLA Piper, 2013) 13.

(3) Citizens who have suffered losses through infringement of their civic rights by any state organ or functionary have the right to compensation in accordance with the law."[31]

- These principles apply to all citizens alleging wrongdoing by the state, including state employees. However, they are very high-level principles, with few if any detailed rules or mechanisms for making clear the scope of wrongdoing that may be disclosed, how it should be disclosed, how retaliation will be prevented or how remedies will be awarded. The main mechanism is contained in the Regulation on the Punishment of Civil Servants of Administrative Organs, which makes it punishable by demerit, demotion, removal or dismissal for a civil servant to: "repress criticism, conduct retaliation, withhold or destroy reporting [whistleblowing] letters, or disclose details of the reporting person [whistleblower] to the person being reported against" (Article 25(2)).[32]

- In the private sector, whistleblowing protection is extended through the Basic Standard of Enterprise Internal Control (2008) (also referred to as "China SOX"), Article 43 of which requires all Chinese listed companies to "set up an exposing and complaining system and a whistleblower protection system, set up a special telephone line for exposing offenses, set down the procedures, time limit and requirements for handling reported offenses and complaints, and ensure that exposure and complaining are an important channel for the enterprise to efficiently get information. All staff shall be informed of the exposing and complaining system and the whistleblower protection system [in a timely manner]."[33]

- China's Labour Contract Law, Labour Dispute Resolution Law or Regulation on Labour Security also have the ability to support protection of whistleblowers by providing avenues for remedies where employers fail to protect their employees.[34]

- There are concerns with each of these laws. First, they operate at a high level of generality and abstraction, with limited evidence of more detailed rules emerging or having any effect in practice. Second, no provision is made for anonymous or confidential reporting. Third, the authorities to which complaints are made are not external except in the case of private sector disclosures. Fourth, the private sector provisions are focused on breaches of corporate law, fraud and corruption, rather than broader classes of wrongdoing, and only apply to listed companies in China. This provides no coverage for business not listed on the stock exchange or foreign companies. Finally, concerns have been raised about the ability of the legal system in China to enforce these provisions.[35]

[31] See http://www.asianlii.org/cn/legis/const/2004/1.html#A041.
[32] See Regulation at http://www.gov.cn/zwgk/2007-04/29/content_601234.htm; Global Integrity Report 2011 https://www.globalintegrity.org/global_year/2011/.
[33] See Rachel Beller (2002) (**Beller**) 'Whistleblower protection legislation of the East and West: Can it really reduce corporate fraud and improve corporate governance? A study of the successes and failures of whistleblower protection legislation in the US and China,' Vol 7, *NYU Journal of Law and Business*, 873 at 894.
[34] See http://www.asianlii.org/cn/legis/const/2004/1.html#A041
[35] See for example Beller (2002),

6. France

Rating of legislative regime against international principles

Rating:

1. Very or quite comprehensive
2. Somewhat or partially comprehensive
3. Absent / not at all comprehensive

#	Principle	Public Sector	Private Sector
1.	Coverage	2	2
2.	Wrongdoing	2	2
3.	Definition of whistleblowers	2	2
4.	Reporting channels (internal and regulatory)	2	2
5.	External reporting channels (third party / public)	3	3
6.	Thresholds	2	2
7.	Anonymity	3	3
8.	Confidentiality	3	3
9.	Internal disclosure procedures	3	3
10.	Breadth of retaliation	2	2
11.	Remedies	2	2
12.	Sanctions	2	2
13.	Oversight	2	2
14.	Transparency	2	2

Discussion / qualitative snapshot

- Since 2007 France has protected whistleblowers in the private sector from reprisal from their employers by protecting witnesses acting in good faith who testify about corruption observed in the course of their duties.[36]
- The delay in the implementation of whistleblower protection for the private sector until 2007 (and then in the public sector in 2013-14) is credited by some sociologists as a hangover from the Vichy regime in France during the 1940s.[37] Concerns expressed by trade unions about violating employees' dignity and rights to privacy, as well as strong debate about data protection, side-lined attempts in 2005-07 by companies to set up internal whistleblower procedures.
- Following a major public health scandal in France (the drug Mediator, 2010), France passed a law in 2013 for whistleblowing on environmental safety and public health. This included whistleblower provisions similar to the 2007 law, except for protection against unfair dismissal was not among protections. Following the former Budget Minister Jérôme Cahuzac scandal, two anti-corruption laws passed in 2013 that contain two whistleblower clauses.

[36] Art. L. 1161-1 of the Code du Travail (Labour Law), as inserted by Article 9 of the LOI n° 2007-1598 du 13 novembre 2007 relative à la lutte contre la corruption

[37] http://www.huffingtonpost.fr/2014/03/21/lanceurs-dalerte-francais-therondel-falciani-kerviel_n_5001240.html http://www.lemonde.fr/economie/article/2014/02/06/lanceurs-d-alerte-la-france-adopte-enfin-une-legislation-protectrice_4361322_3234.html

- In 2013 France took major steps to improving whistleblower protection legislation, though protection is limited to a number of areas of wrongdoing:
    - Grave risks to the environmental safety or public health;[38]
    - Conflicts of interest of elected officials or government members;[39]
    - Offences and crimes (for public and private sectors);[40]
    - Conflicts of interests for public sector (now pending in Parliament).
- When a (public or private sector) whistleblower makes a disclosure in good faith relating to public health or the environment, they are protected from reprisal from their employer by the Code of Public Health[41]. Dismissal is omitted among the protections and this law only gives a partial definition of a whistleblower.
- When a (public or private sector) whistleblower makes a disclosure in good faith relating to a conflict of interest of an elected official or government member, they are protected from reprisal from their employer.[42] The law sets up its independent whistleblower agency (Haute Autorité de la Transparence) and allows the disclosure to anti-corruption NGOs.
- When a (public or private sector) whistleblower makes a disclosure in good faith relating to offences and crimes, they are protected from reprisal from their employer.[43] The disclosure can be either internal or external, including to the media.[44] As with disclosures in relation to public health and the environment, there is a reverse burden of proof. This is the only law that directs protects disclosures made to the media.
- In an added layer of accountability, the law on Tax Fraud and Economic Delinquency grants approved civil society organisations to bring civil claims against those who have committed such offences, in place of the public prosecutor.[45]
- There remains no clear and comprehensive definition of a whistleblower, no independent body (except for Haute Autorité de la Transparence), no specified secure channels (internal or external), no protection for external, anonymous or confidential disclosures, no sanctions for those who retaliate, nor has there been effective implementation.

[38] LOI n° 2013-316 du 16 avril 2013 relative à l'indépendance de l'expertise en matière de santé et d'environnement et à la protection des lanceurs d'alert http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000027324252
[39] LOI n° 2013-907 du 11 octobre 2013 relative à la transparence de la vie publique http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028056315
[40] LOI n° 2013-1117 du 6 décembre 2013 relative à la lutte contre la fraude fiscale et la grande délinquance économique et financière http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028278976
[41] http://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006072665&idArticle=LEGIARTI000027325269&dateTexte=&categorieLien=cid
[42] http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028056315#LEGISCTA000028057471
[43] http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028278976#LEGISCTA000028280585. Also note that this creates separate laws per Article 6b A of Loi n° 83-634 du 13 juillet 1983 portant droits et obligations des fonctionnaires. Loi dite loi Le Pors.Act Loi Le Pors. http://www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=2AC9A385C0AF3CCEFAC96BB2D3FFDE9E.tpdjo01v_3?cidTexte=JORFTEXT000000504704&idArticle=LEGIARTI000028286359&dateTexte=20140530&categorieLien=id#LEGIARTI000028286359 (and) Article L1132-3-3 of the Labor Code http://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=2AC9A385C0AF3CCEFAC96BB2D3FFDE9E.tpdjo01v_3?cidTexte=LEGITEXT000006072050&idArticle=LEGIARTI000028285724&dateTexte=20140530&categorieLien=id#LEGIARTI000028285724
[44] http://www.justice.gouv.fr/le-ministere-de-la-justice-10017/service-central-de-prevention-de-la-corruption-12312/
[45] Code de procédure pénale - Article 2-23, authorised by LOI n°2013-1117 du 6 décembre 2013 - art. 1

7. Germany

Rating of legislative regime against international principles

Rating:

1. Very or quite comprehensive
2. Somewhat or partially comprehensive
3. Absent / not at all comprehensive

#	Principle	Public Sector	Private Sector
1.	Coverage	1	3
2.	Wrongdoing	3	2
3.	Definition of whistleblowers	3	3
4.	Reporting channels (internal and regulatory)	2	3
5.	External reporting channels (third party / public)	3	3
6.	Thresholds	2	2
7.	Anonymity	2	2
8.	Confidentiality	3	3
9.	Internal disclosure procedures	3	3
10.	Breadth of retaliation	2	2
11.	Remedies	2	2
12.	Sanctions	3	3
13.	Oversight	3	3
14.	Transparency	3	3

Discussion / qualitative snapshot

- Germany has no specific legal protections for whistleblowers other than a very limited provision that applies only to public officials who report bribery. Nor is there a dedicated agency to receive or investigate whistleblower disclosures or complaints. It is largely up to labour courts to decide whether a whistleblower should be protected or compensated – and such decisions depend significantly on an employee's behaviour and the potential harm a disclosure causes to the employer.
- **Public sector**: Germany's secrecy clauses were changed in 2009 to allow public officials to report suspicions of bribery internally or to a public prosecutor. However, the Federal Labour Court has ruled that government employees first should consider internal disclosures, lest they face dismissal for failing to correctly weigh the public interest against their loyalty obligation.[46]
- **Private sector**: Labour courts have ruled that company employees who report wrongdoing in good faith cannot be dismissed for this reason.[47] Importantly, however,

[46] "Protection of Whistleblowers: Study on Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation," OECD, 2011.
[47] "Protection of Whistleblowers: Study on Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation," OECD, 2011.

they have also ruled that even if a whistleblower was unjustly fired, an employer can dissolve an employment contract if it is determined that constructive cooperation between the two parties is not likely. Additionally, the Federal Constitution Court ruled in 2003 that the constitutional protection of freedom of expression does not apply if a person acts anonymously.[48]

- Some companies offer access to external lawyers and have set up hotlines to which disclosures can be made anonymously.[49,50] Some German states have government ombudsmen as well as hotlines that allow whistleblowers to report anonymously.

- In the last several years three political parties have introduced proposals in the German Parliament (Bundestag) to clarify and improve whistleblower protections. In 2013 the two then-ruling parties rejected the proposals, stating that existing protections were sufficient.

- Germany is the home of one of the most prominent whistleblower cases in Europe in recent years. Brigitte Heinisch was a caregiver at a nursing home in Berlin when she reported to managers that some of the residents were being poorly treated. Ignored, she filed a criminal complaint with the authorities, after which she was fired. Three German courts rejected her claim to be reinstated, but the European Court of Human Rights ruled in July 2011 that her right to freedom of expression[51] had been violated. The Court ruled that an employee is not bound by a loyalty oath if an employer fails to remedy an unlawful act. Following the ruling, the Berlin Labour Court awarded Heinisch €90,000 in compensation.

[48] Bundesarbeitsgericht, AZR 235/02, 3 July 2003.
[49] Stephenson, Paul and Levi, Michael, "The Protection of Whistleblowers: A study on the feasibility of a legal instrument on the protection of employees who make disclosures in the public interest," prepared for the Council of Europe, 20 December 2012.
[50] "Protection of Whistleblowers: Study on Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation," OECD, 2011.
[51] Under Article 10 of the European Convention of Human Rights.

8. India

Rating of legislative regime against international principles

Rating:

1. Very or quite comprehensive
2. Somewhat or partially comprehensive
3. Absent / not at all comprehensive

#	Principle	Public Sector	Private Sector
1.	Coverage	1[52]	3
2.	Wrongdoing	2	3
3.	Definition of whistleblowers	1[53]	3
4.	Reporting channels (internal and regulatory)	2	3
5.	External reporting channels (third party / public)	3	3
6.	Thresholds	1	3
7.	Anonymity	3	3
8.	Confidentiality	1	3
9.	Internal disclosure procedures	3	2
10.	Breadth of retaliation	1	3
11.	Remedies	2	3
12.	Sanctions	2	3
13.	Oversight	1	3
14.	Transparency	2	3

Discussion / qualitative snapshot

- Following a debate of nearly four years, President Pranab Mukherjee signed the Whistle Blowers Protection Act 2011 into law on 9 May 2014.[54] The debate was closely followed by the media, and the government took the reportedly unprecedented step of posting a draft of the law online and accepting public comment for one month. The law applies to public sector wrongdoing.
- Even though it does not provide for physical protection, the new law was highly anticipated in a country where dozens of people have been killed or attacked in recent years for exposing government and corporate wrongdoing.
- From January 2010 to October 2011, 12 people were killed after they used India's Right to Information Act to obtain government information in order to reveal wrongdoing. At least 40 others were beaten or attacked after filing requests under the law, which drew more than a half-million information requests from March 2010

[52] Does not cover the state of Jammu and Kashmir.
[53] Also applies to private sector employees who report wrongdoing in the public sector.
[54] A copy of the Whistleblowers Protection Act 2011 may be found at http://persmin.gov.in/DOPT/EmployeesCorner/Acts_Rules/TheWhistleBlowersProtectionAct2011.pdf

through March 2011.[55]

- In one case in Bangalore, unknown assailants murdered S.P. Mahantesh, an auditor who exposed to *The Hindu* newspaper information about irregular land allotments made to influential people.[56]
- Since 2004 the government's Central Vigilance Commission has been empowered to receive public interest disclosures. Typically, it receives several hundred complaints per year.[57] The Commission cannot impose penalties and can only issue recommendations.[58]
- The only private sector whistleblower protection rules are a new requirement, commenced in April 2014, for companies to include an internal vigil mechanism which allows internal reporting of employee concerns to auditors and where necessary, audit committees.[59]
- There are indications that whistleblowing is beginning to be accepted in the private sector. For example, the multinational vehicle-maker Mahindra & Mahindra says that it works to raise awareness and provide training on ethics and compliance issues including whistleblowing.[60]
- There is strong civil society support for improvement to whistleblower protection rules and their implementation, from a range of non-government organisations including he Commonwealth Human Rights Initiative[61] and Transparency International India.[62] Many national, regional and local organisations provide advice and support to whistleblowers and people who attempt to use the Right to Information Act to expose wrongdoing.

[55] "In India, Whistle-Blowers Pay with Their Lives," *Bloomberg Businessweek*, 20 October 2011.
[56] "Whistleblower pays with life," *The Hindu*, 12 June 2012.
[57] "The Whistle Blowers Protection Bill, 2011," PRS Legislative Research,
[58] "The Whistle Blowers Protection Bill, 2011," PRS Legislative Research,
[59] Companies Act 2013, section 177(9),(10), commenced 1 April 2014: see http://www.business-standard.com/article/companies/mca-notifies-183-sections-of-companies-act-2013-114032601009_1.html.
[60] Mahindra & Mahindra, Sustainability Review 08-09, www.mahindra.com/resources/RHS-Elements/5.0-How-we-help/Environment/Mahindra-Sustainability-Report-2008-09.pdf
[61] http://www.humanrightsinitiative.org/
[62] http://www.transparencyindia.org/

9. Indonesia

Rating of legislative regime against international principles

Rating:
1. Very or quite comprehensive
2. Somewhat or partially comprehensive
3. Absent / not at all comprehensive

#	Principle	Public Sector	Private Sector
1.	Coverage	2	2
2.	Wrongdoing	2	2
3.	Definition of whistleblowers	2	2
4.	Reporting channels (internal and regulatory)	2	2
5.	External reporting channels (third party / public)	3	3
6.	Thresholds	2	2
7.	Anonymity	3	3
8.	Confidentiality	3	3
9.	Internal disclosure procedures	3	3
10.	Breadth of retaliation	2	2
11.	Remedies	3	3
12.	Sanctions	2	2
13.	Oversight	2	2
14.	Transparency	3	3

Discussion / qualitative snapshot

- There is no direct whistleblower protection statute in Indonesia,[63] however the 2006 Law on Witness and Victim Protection seeks to protect whistleblowers that have revealed information leading to criminal prosecution.[64]
- The main issues are that the oversight body for the protection of witnesses is largely ineffective, and underfunded and that other measures such as defamation and other legal retaliations are often used.
- The requirement is not that the person is in either the public or private sector, only that they have possession of information that can lead to a prosecution.
- The Witness and Victim Protection Agency (Lembaga Perlindungan Saksi dan Korban or LPSK) is underfunded and ineffective in maintaining protections under the law. Further, its appointees are not independent from political involvement. [65]

[63] http://www.deloitte.com/assets/Dcom-Indonesia/Local%20Assets/Documents/Seminar%20Fraud%20&%20Corruption%20Controls_Peter_Coleman_%20May_2009_rev.pdf

[64] http://www.humanrights.asia/news/ahrc-news/AHRC-STM-029-2010. A copy of the law (in Bahasa and English) may be found here: http://whistleblowers.nonprofitsoapbox.com/storage/whistleblowers/documents/law%20on%20witnesses%20and%20victims%20protection.pdf

[65] ibid

- Protection includes a number of matters including the provision of security, a new identity, punishment for retaliation taken by an employer or organisation (such as terminating the employment of the witness).

- Whilst protection under the Witness and Victim Protection Law of 2006 should mean that a witness could not be prosecuted for another charge in relation to the disclosure (for example, defamation of someone involved in the wrongdoing), there have been cases when the public prosecution have simply ignored this.[66]

- The LSPK has acknowledged that its powers are limited in its ability to protect whistleblowers. An article from the Jakarta Post notes: “Chairman of the Witness and Victim Protection Institute (LPSK), Abdul Haris Semendawai, admits that whistle-blowers and justice collaborators are denied legal protection, saying that protection mechanisms under the existing Witness and Victim Protection Law requires cooperation among the LPSK, the AGO, Law and Human Rights Ministry, the Corruption Eradication Commission (KPK) and the National Police. In the case of Susno, the LPSK could do nothing to protect him when the National Police decided to arrest him in connection with misappropriation of operational funds during a regional election in West Java.”[67]

- A Wikileaks published cable from the US embassy in Indonesia also illustrates this point: “9. (SBU) NGOs contacts, however, note the law grants inadequate protection from threats, intimidation and retaliation against whistleblowers. Whistleblowers receive testimonial immunity only and not any personal and family protection, creating a disincentive for witnesses of corrupt acts to come forward. Furthermore, the law fails to give prosecutors the discretion to reduce or drop charges against a whistleblower involved in a corrupt act even if he/she exposes a larger case, although a judge can reduce the sentence. An anti-corruption advisor at the Partnership for Governance Reform, wrote in a recent editorial that, "whistleblowers still lack comprehensive legal protection, with the only realistic option for avoiding defamation suits and retaliation being the anonymity of reports as guaranteed by the Anti-Corruption Commission (KPK)."[68]

[66] See http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-123-2011
[67] http://www.thejakartapost.com/news/2012/10/19/editorial-poor-whistle-blower.html
[68] https://www.wikileaks.org/plusd/cables/06JAKARTA12254_a.html

10. Italy

Rating of legislative regime against international principles

Rating:

1. Very or quite comprehensive
2. Somewhat or partially comprehensive
3. Absent / not at all comprehensive

#	Principle	Public Sector	Private Sector
1.	Coverage	1	3
2.	Wrongdoing	2	3
3.	Definition of whistleblowers	3	3
4.	Reporting channels (internal and regulatory)	2	2
5.	External reporting channels (third party / public)	3	3
6.	Thresholds	3	3
7.	Anonymity	3	3
8.	Confidentiality	1	3
9.	Internal disclosure procedures	3	3
10.	Breadth of retaliation	1	3
11.	Remedies	3	3
12.	Sanctions	3	3
13.	Oversight	3	3
14.	Transparency	3	3

Discussion / qualitative snapshot

- Rights and opportunities for whistleblowers in Italy have been limited to a substantial degree by strong cultural factors that discourage reporting wrongdoing committed by others. Only recently has the public and political debate developed to the point that the benefits of public interest whistleblowing have become recognised.[69]
- Out of this debate, a new anti-corruption law enacted in October 2012 included the country's first provision to protect government whistleblowers from retaliation and provide them with disclosure avenues. This single provision for public employees is very limited. For example, protections can be withheld from a whistleblower if "undue damage" is caused to those who are elsewhere protected under the law. Discussions are underway among NGOs and certain policy-makers to push for the enactment of a comprehensive law.

[69] See, for example, Carinci, Maria Teresa, "Whistleblowing in Italy: rights and protections for employees," Working Papers, Centre for the Study of European Labour Law, "MASSIMO D'ANTONA," University of Catania, 2014.http://csdle.lex.unict.it/Archive/WP/WP%20CSDLE%20M%20DANTONA/WP%20CSDLE%20M%20DANTONA-INT/20140408-014619_mt-carinci_n106-2014intpdf.pdf

- Without strong laws, employees who disclose wrongdoing must seek protections from the courts, which have weighed the employee's right to information and right of criticism against the right of the employer to protect its dignity, reputation and image.[70]

- Corporate employees have no specific legal protections. While some private companies have introduced whistleblowing procedures in recent years, most of these were established to comply with the US Sarbanes-Oxley Act, which applies to foreign companies registered in the US.

- Milan, Italy's second-largest city, established a whistleblower system for municipal employees in July 2012 that seeks to prevent corruption and other wrongdoing.

- In one notable case, Ciro Rinaldi, an employee of the Ministry of Economic Development, reported that colleagues were avoiding work by having others sign in their badges. Even though the code of ethics for public employees requires them to report illicit activities, Rinaldi was harassed and his disclosure ignored by local authorities. He then reported it to the financial police, which used hidden cameras to document the wrongdoing. Judicial proceedings are underway against 29 people, four of whom are managers. In June 2012 Rinaldi received the award, "Premio Natale Città di Partenope per la Legalità."

- In another case, an employee waited 10 years and went through three lawsuits before the Supreme Court ruled in March 2013 that he was unfairly fired after informing prosecutors about crimes committed by his employer.[71]

[70] Carinci, Maria Teresa, "Whistleblowing in Italy: rights and protections for employees," Working Papers, Centre for the Study of European Labour Law, "MASSIMO D'ANTONA," University of Catania, 2014.http://csdle.lex.unict.it/Archive/WP/WP%20CSDLE%20M%20DANTONA/WP%20CSDLE%20M%20DANTONA-INT/20140408-014619_mt-carinci_n106-2014intpdf.pdf

[71] Gamberini, Gabriele, "Whistleblowing in Countries without Whistleblower Laws: the Italian Case," *ADAPT_bulletin*, 29 May 2013.

11. Japan

Rating of legislative regime against international principles

Rating:

1. Very or quite comprehensive
2. Somewhat or partially comprehensive
3. Absent / not at all comprehensive

#	Principle	Public Sector	Private Sector
1.	Coverage	1	1
2.	Wrongdoing	1	1
3.	Definition of whistleblowers	2	1
4.	Reporting channels (internal and regulatory)	2	2
5.	External reporting channels (third party / public)	2	2
6.	Thresholds	1	1
7.	Anonymity	3	3
8.	Confidentiality	3	3
9.	Internal disclosure procedures	3	3
10.	Breadth of retaliation	1	1
11.	Remedies	2	2
12.	Sanctions	3	3
13.	Oversight	3	3
14.	Transparency	3	3

Discussion / qualitative snapshot

- Food industry fraud, the concealing of information on unsafe vehicles and nuclear accidents, and other corporate scandals in the early 2000s – many of which were exposed by whistleblowers – led to the passage of the Whistleblower Protection Act in 2004.[72]
- Japan's law is often held up as one of the most comprehensive in the world, but it has numerous drawbacks and limitations – including a requirement that whistleblowers endeavour to not damage the interests of others. Japanese officials themselves have acknowledged that the law has not been frequently used.[73]
- In general terms, Japanese culture values group loyalty and the practice of "saving face." Discussing sensitive topics directly and openly is not valued because this can disrupt the most fundamental value: harmony. This was confirmed in a study on the

[72] The law took effect in 2006.
[73] "Whistleblower Protection and the UN Convention against Corruption," Transparency International, 2013.

experiences, actions and ethical positions of 24 Japanese nurses who reported wrongdoing by colleagues.[74]

- Japan has been widely criticised for enacting the Act on Protection of Specified Secrets. Passed in December 2013 amid strident arguments in Parliament, the law states that civil servants who leak classified information can be imprisoned for 10 years, and people who abet leaks for five years. The law covers the areas of defence, diplomacy, counterterrorism and counterintelligence. It also enables the government – not just in defence but throughout the government — to seal certain documents for up to 60 years.[75]

- Among Asian countries, Japan provided to the United States 2 per cent of tips related to wrongdoing committed by multinational companies with activities in both countries. Only Thailand ranked lower.[76]

- The protracted case of a whistleblower at the camera and medical equipment multinational Olympus illustrates the difficulty of adequately protecting whistleblowers. In the first such ruling ever handed down, Japan's Supreme Court in June 2012 ordered Olympus to stop punishing salesmen Masaharu Hamada and reinstate him to his position. Hamada went to court after being ostracised for relaying a supplier's complaint. He received US $20,000 in damages. As of late 2013, not only had Hamada still not been reinstated, he was transferred to a position for which he had not been trained. Another Olympus employee, Yoshihisa Ishikawa, has since sued the company for US $88,000 in damages for psychological stress and harassment.[77]

- In another high-profile case at Olympus, former CEO Michael Woodford exposed how the company had been hiding huge investment losses for 13 years. Woodford was fired in 2011 before the company acknowledged concealing US $1.5 billion in losses dating to the 1990s. Ironically, two Olympus executives closely involved in the cover-up also oversaw the company's whistleblower hotline. Woodford was awarded US $15.4 million in a court settlement over his dismissal.

[74] Davis, Anne and Konishi, Emiko, "Whistleblowing in Japan," *Nursing Ethics*. March 2007.
[75] Japan's State Secrets Law: Hailed By U.S., Denounced By Japanese," National Public Radio, 31 December 2013.
[76] "Annual Report on the Dodd-Frank Whistleblower Program – Fiscal Year 2012," US Securities and Exchange Commission, 2012.
[77] "Whistleblower: Olympus Ignores Japan Court Order," Associated Press, 29 July 2013.

12. Mexico

Rating of legislative regime against international principles

Rating:
1. Very or quite comprehensive
2. Somewhat or partially comprehensive
3. Absent / not at all comprehensive

#	Principle	Public Sector	Private Sector
1.	Coverage	3	3
2.	Wrongdoing	3	3
3.	Definition of whistleblowers	2	2
4.	Reporting channels (internal and regulatory)	3	3
5.	External reporting channels (third party / public)	3	3
6.	Thresholds	3	3
7.	Anonymity	3	3
8.	Confidentiality	3	3
9.	Internal disclosure procedures	3	3
10.	Breadth of retaliation	3	3
11.	Remedies	3	3
12.	Sanctions	2	2
13.	Oversight	2	2
14.	Transparency	3	3

Discussion / qualitative snapshot

- There is no specific whistleblower protection law in Mexico.
- The Federal Criminal Code of Mexico per Article 219 creates a crime of intimidation, committed by a civil servant that engages in physical violence or otherwise intimidates a person in an attempt to prevent another person from making a disclosure about criminal conduct.[78]
- As noted in the G20 Anti-Corruption Action Plan (Protection of Whistleblowers), Article 8 (XXI) of the Federal Law on Administrative Liability of Civil Servants imposes administrative sanction on public servants who prevent the making of a complaint (a disclosure) by blocking the disclosure itself or in any way "prejudice the interests" of the person making the disclosure.[79]
- As much of Mexico's international trade is with the US and US companies, some companies have used the *qui tam* remedies in the False Claims Act and others in order to bring a claim against a US company operating in Mexico that has engaged in corrupt conduct.[80]

[78] http://www.oecd.org/g20/topics/anti-corruption/48972967.pdf . For the full text of the law in Spanish, see: http://www.wipo.int/wipolex/en/text.jsp?file_id=199697
[79] http://www.oecd.org/g20/topics/anti-corruption/48972967.pdf
[80] http://opinion.informador.com.mx/Columnas/2014/04/24/recompensas-millonarias-para-informantes/

13. Russia

Rating of legislative regime against international principles

Rating:

1. Very or quite comprehensive
2. Somewhat or partially comprehensive
3. Absent / not at all comprehensive

#	Principle	Public Sector	Private Sector
1.	Coverage	2	3
2.	Wrongdoing	2[81]	3
3.	Definition of whistleblowers	2	3
4.	Reporting channels (internal and regulatory)	2[82]	3
5.	External reporting channels (third party / public)	3	3
6.	Thresholds	3	3
7.	Anonymity	3	3
8.	Confidentiality	3	3
9.	Internal disclosure procedures	2[83]	3
10.	Breadth of retaliation	3	3
11.	Remedies	3	3
12.	Sanctions	3	3
13.	Oversight	3	3
14.	Transparency	3	3

Discussion / qualitative snapshot

- Beyond the various statutes providing for state protection of "victims, witnesses and other participants" in judicial proceedings on criminal cases,[84] the only specific whistleblower protection provisions are found in Article 9 of the Federal Law Combating Corruption.[85] Under Article 9.4, state and municipal employees reporting corrupt actions, inducements to commit a corrupt action or failures to comply with data provision and collection for asset disclosure purposes, "enjoy the protection of the State in accordance with Russian Federation laws".[86]

- The current law therefore only provides protection in respect of a fairly narrow range of wrongdoing. Among other limitations, the regime has three major shortcomings. First, no specific provision is made for anonymous or confidential reporting. Second, beyond "enjoying the protection of the state," no specific provision is made for

[81] Only corruption, and failures to complete disclosure obligations: Articles 9.1, 9.4
[82] 'A representative of the hirer (employer), prosecutor' offices or other government authorities': Art 9.4
[83] Article 9.6
[84] These are limited to criminal matters, and require witnesses to public and to be participants in public criminal trials; see list of applicable laws at: https://blueprintforfreespeech.net/document/russia (viewed May 2014).
[85] No. 273-FZ dated December 25, 2008.
[86] Ibid.

protection from retaliation. Third, it is limited to government employees and as such, provides no protection for private sector whistleblowing.

- A more extensive whistleblower protection regime has long been debated in Russia. The 2008 provisions above did not include a wider set of provisions governing the reporting of corruption, graft, abuse of power or abuse of resources by public officials, which were drafted and approved by the National Anti-Corruption Council in September 2008 – but which were not proceeded with.
- In April 2014, President Vladimir Putin released a new National Plan to Counter Corruption for 2014-15, including continued and new anti-corruption measures.[87] It is understood this plan includes significant commitments to overhaul whistleblower protection laws.

[87] See ITAR-TASS News Agency, 'Putin endorses national anti-corruption plan for 2014-2015', http://en.itar-tass.com/russia/727473 (11 April 2014); http://transparency.org.ru/en/news/president-putin-approves-new-anti-corruption-measures (28 April 2014).

14. Saudi Arabia

Rating of legislative regime against international principles

Rating:

1. Very or quite comprehensive
2. Somewhat or partially comprehensive
3. Absent / not at all comprehensive

#	Principle	Public Sector	Private Sector
1.	Coverage	3	3
2.	Wrongdoing	3	3
3.	Definition of whistleblowers	3	3
4.	Reporting channels (internal and regulatory)	3	3
5.	External reporting channels (third party / public)	3	3
6.	Thresholds	3	3
7.	Anonymity	3	3
8.	Confidentiality	3	3
9.	Internal disclosure procedures	3	3
10.	Breadth of retaliation	3	3
11.	Remedies	2	2
12.	Sanctions	3	3
13.	Oversight	3	3
14.	Transparency	3	3

Discussion / qualitative snapshot

- Whistleblower protection laws and rules in Saudi Arabia are non-existent.[88]
- In a recent case, a whistleblower was not granted immunity from disciplinary proceedings after making a disclosure.[89]
- Anonymous reporting is not protected. The Health Minister has commented that the identity of a whistleblower is needed in order to prosecute those who commit wrongdoing.[90]
- The Commission for the Settlement of Labour Disputes is an oversight body for employment disputes, but does not expressly deal with whistleblowing.
- A new terrorism law introduced in February 2014 makes virtually all exposure of corruption, “dissident thought” or any speech critical of the government or society a criminal offence. This will make it extremely difficult for whistleblowers to come

[88] For a useful overview of Saudi law, see the US Saudi embassy website at - http://www.saudiembassy.net/about/country-information/laws/
[89] http://www.arabianbusiness.com/saudi-whistle-blowers-slam-sackings-lack-of-protection-518365.html
[90] http://www.arabianbusiness.com/saudi-whistle-blowers-slam-sackings-lack-of-protection-518365.html

forward.[91] This law forbids activity well beyond whistleblowing, including “attendance at conferences outside the kingdom…sowing discord in society”.

- In December 2013, Mohammed Bin Abdullah Al-Shareefl of Saudi Arabia’s National Anti-Corruption Commission gave a speech to the Seventh Annual Meeting for the International Association of Anti-Corruption Agencies where he suggested that further reform on the protection of whistleblowers needed to take place in Saudi Arabia. This is a positive step, but actual policy proposals have not yet been forthcoming.[92]

[91] http://www.hrw.org/news/2014/03/20/saudi-arabia-new-terrorism-regulations-assault-rights, http://www.nytimes.com/aponline/2014/02/02/world/middleeast/ap-ml-saudi-arabia.html?ref=world&_r=2
[92] http://www.iaaca.org/documents/Presentation/7c/201312/t20131206_1267703.shtml

15. South Africa

Rating of legislative regime against international principles

Rating:
1. Very or quite comprehensive
2. Somewhat or partially comprehensive
3. Absent / not at all comprehensive

#	Principle	Public Sector	Private Sector
1.	Coverage	1	1
2.	Wrongdoing	1	1
3.	Definition of whistleblowers	2	2
4.	Reporting channels (internal and regulatory)	2	2
5.	External reporting channels (third party / public)	1	1
6.	Thresholds	2	2
7.	Anonymity	3	3
8.	Confidentiality	3	3
9.	Internal disclosure procedures	3	2
10.	Breadth of retaliation	2	2
11.	Remedies	1	1
12.	Sanctions	3	3
13.	Oversight	3	3
14.	Transparency	2	2

Discussion / qualitative snapshot

- South Africa has had a dedicated whistleblower protection law since 2000, the Public Disclosures Act (PDA).[93]
- The PDA applies to workers in both the private and public sectors and to wrongdoing both within and outside South Africa, where outside the impropriety can be against the laws of that country as well.[94]
- PDA excludes “independent contractors” from coverage in its definition of an employee.[95]
- The definition of “disclosure” is very broad. It includes criminal behaviour, a failure to undertake a legal obligation, dangers to health and safety and the environment, a miscarriage of justice, a concealment of any of these matters and unfair discrimination.[96]

[93] http://www.justice.gov.za/legislation/acts/2000-026.pdf
[94] Section 1, PDA (SA)
[95] Section 1, PDA (SA)
[96] Section 1, PDA (SA)

- The definition of retaliation, or "occupational detriment," from which an employee has legal protections is also very broad.[97]

- A disclosure may be made to a legal advisor, the employee's employer, a member of cabinet or the Executive Council, in good faith to the public prosecutor or the auditor-general.[98]

- The Protection of State Information Bill ("Secrecy Bill") may have a detrimental impact on whistleblowers if their disclosure includes information that is either "confidential", "secret" or "top secret." A disclosure of this type of information is an criminal offence potentially resulting in 3-5 years, 10-15 years and 15-25 years respectively.[99] The bill is still under consideration.

- PDA lacks an obligation for companies and organisations to have a whistleblower policy,[100] and there is no governmental oversight agency to enforce the law. This causes problems with implementation.

- Blueprint for Free Speech has found: "A 2008 study sought to establish if, and how many South Africans are blowing the whistle. The study defined "whistle-blowing" as the disclosure of wrongdoing in the workplace by a person to their boss or to other people. The results showed a statistical decrease in whistleblowing. One in five, or 21.7% of respondents indicated that they had blown the whistle. 78.3% said that they had not done so. This number has decreased, rather than increased, since 2007. Given the increase in corruption, and more importantly, in the perceived level of corruption amongst the public in South Africa, we should be seeing an increase in the rate of whistleblowing.[101] In summary, the statistics that are available tend to show that the current framework is not adequate to meet the challenges of growing corruption and fear of retribution in South Africa.

- According to the Open Democracy Advice Centre, the main mechanism for whistleblower protection is employment protection, which 'excludes physical and criminal protections, and thus only covers a discrete range of the potential detriments (to which) a whistleblower may be exposed'.[102]

- After several years of working on amendments to the PDA, the Department of Justice and Constitutional Development in June 2014 released a draft for public comment. Significant strides may be taken to remedy several shortcomings, most significantly:
    - Broadening the definition of employee to include "workers".
    - Including protection against civil and criminal liability for making a protected disclosure
    - Establishing joint liability when an employer and a client conspire to retaliate against an employee[103]

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[97] Sections 1 and 3, PDA (SA)
[98] Section 1 and 8, PDA (SA)
[99] Section 36, Secrecy Bill
[100] However, section 159 of the Companies Act 71 of 2008 provides that "a public company and state-owned company must directly or indirectly establish and maintain a system to receive disclosures contemplated in this section confidentially, and act on them; and routinely publicise the availability of that system…"
[101] Martin, The Status of Whistleblowing in South Africa, June 2010, p. 102. Retrieved at: http://www.opendemocracy.org.za/wp-content/uploads/2010/10/ODAC_Whistleblowing_Report_web.pdf
[102] Empowering our Whistleblowers, Gabriella Razzano, Open Democracy Advice Centre (2014) at pages 37-38 http://www.r2k.org.za/wp-content/uploads/WhistleblowingBook.pdf
[103] Special thanks to Gabriella Razzano from Open Democracy Advice Centre (ODAC) for providing the wording on this paragraph, A copy of the draft bill and the invitation to comment may be found at http://www.justice.gov.za/legislation/invitations/invites.htm

16. Republic of Korea

Rating of legislative regime against international principles

Rating:

1. Very or quite comprehensive
2. Somewhat or partially comprehensive
3. Absent / not at all comprehensive

#	Principle	Public Sector	Private Sector
1.	Coverage	1	1
2.	Wrongdoing	1	1
3.	Definition of whistleblowers	1	1
4.	Reporting channels (internal and regulatory)	1	1
5.	External reporting channels (third party / public)	3	3
6.	Thresholds	2	2
7.	Anonymity	3	3
8.	Confidentiality	1	1
9.	Internal disclosure procedures	3	3
10.	Breadth of retaliation	1	1
11.	Remedies	1	1
12.	Sanctions	1	1
13.	Oversight	1	1
14.	Transparency	1	1

Discussion / qualitative snapshot

- Passed in 2011, the Act on the Protection of Public Interest Whistleblowers is considered one of the world's most comprehensive whistleblower laws. It is intended to protect and financially reward government and corporate whistleblowers who report violations related to safety, health, the environment, consumer protection and fair competition.[104]
- Whistleblower provisions in South Korea originally date to the passage of the Anti-Corruption Act in 2001.
- Wrongdoing can be reported to the Anti-Corruption and Civil Rights Commission (ACRC), which combines the functions of an anti-corruption commission and an ombudsman.
- The ACRC accepts disclosures, sends verified disclosures to relevant agencies for investigation, and sends the results back to whistleblowers. The ACRC also investigates claims of reprisals against whistleblowers. The ACRC can grant a range

[104] The law covers violations of 180 laws.

of protections including protection from cancelling permits, licenses and contracts.[105]

- From 2002-13 the ACRC received 28,246 reports of wrongdoing. In 220 resulting cases that were built, the ACRC recovered US $60.3 million and paid whistleblowers US $6.2 million in rewards. In 2012 alone, the ACRC recovered US $10 million from 40 cases and paid whistleblowers more than US $1 million. From 2002-13 the ACRC received 181 requests to protect whistleblowers, granting 36 percent of them.[106]
- Whistleblowers who contribute directly to increasing or recovering government revenues can receive 4 to 20 percent of these funds, up to US$ 2 million. Whistleblowers who serve the public interest or institutional improvement can receive up to US $100,000. As of May 2014 the largest reward paid was US $400,000 from a case in which a construction company was paid US $5.4 million for sewage pipelines that it did not build. Eleven people faced imprisonment and fines, and the US $5.4 million was recovered.[107]
- Other cases include: the ACRC succeeded in nullifying disciplinary action taken against an employee who reported corruption related to waste disposal, and the ACRC requested that the police provide physical protection including regular neighbourhood patrols to a whistleblower who reported purchasing irregularities.[108]

[105] "Protection of Whistleblowers: Study on Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation," OECD, 2011.
[106] "Whistleblower's Rights in Korea," presentation by the Anti-Corruption & Civil Rights Commission, Expert Group Meeting on the Protection of Reporting Persons, UN Office on Drugs and Crime, Vienna, 22-23 May 2014.
[107] "Whistleblower's Rights in Korea," presentation by the Anti-Corruption & Civil Rights Commission, Expert Group Meeting on the Protection of Reporting Persons, UN Office on Drugs and Crime, Vienna, 22-23 May 2014.
[108] "Whistleblower's Rights in Korea," presentation by the Anti-Corruption & Civil Rights Commission, Expert Group Meeting on the Protection of Reporting Persons, UN Office on Drugs and Crime, Vienna, 22-23 May 2014.

17. Turkey

Rating of legislative regime against international principles

Rating:
1. Very or quite comprehensive
2. Somewhat or partially comprehensive
3. Absent / not at all comprehensive

#	Principle	Public Sector	Private Sector
1.	Coverage	3	3
2.	Wrongdoing	3	3
3.	Definition of whistleblowers	2	2
4.	Reporting channels (internal and regulatory)	2	2
5.	External reporting channels (third party / public)	3	3
6.	Thresholds	3	3
7.	Anonymity	3	3
8.	Confidentiality	2	2
9.	Internal disclosure procedures	3	3
10.	Breadth of retaliation	2	2
11.	Remedies	3	3
12.	Sanctions	2	2
13.	Oversight	3	3
14.	Transparency	3	3

Discussion / qualitative snapshot

- Whistleblower protection in Turkey is limited. There is no comprehensive law in either the public or private sectors, and whistleblowers are forced to rely on *ad hoc* provisions in the law.
- Turkey is ranked 154th out of 180 countries on the World Press Freedom Index maintained by Reporters without Borders.[109]
- Article 74 of the Turkish Constitution provides for the right to petition the government (competent authorities and the Grand National Assembly) with a complaint or request in their own or others' public interest.[110] However, it offers no real protection in terms of freedom from reprisal and etc.
- Despite the fact that Article 90 of the Turkish Constitution provides that all instruments of international law have the force of law in Turkey, and that the government is a signatory to the UN Convention against Corruption (which requires protections for reporting persons), this still has not happened.

[109] http://rsf.org/index2014/data/index2014_en.pdf
[110] Constitution of Turkey, http://www.anayasa.gov.tr/images/loaded/pdf_dosyalari/THE_CONSTITUTION_OF_THE_REPUBLIC_OF_TURKEY.pdf

- The 2007 Law on the Protection of Eyewitnesses includes some protection for witnesses to crimes if they appear as a witness in a criminal prosecution. However, this protection is used for extreme circumstances. Measures include having correspondence sent to a different address, a change of identity (both in identification and physical appearance) and other witness protection mechanisms. It may only apply during the duration of the criminal proceeding and does not include any civil remedies.[111]

- Law No. 3628 Concerning the Declaration of Assets and Combating Bribery and Corruption per its Article 18 makes it forbidden to reveal the identity of a whistleblower without their consent.[112]

- Turkish Labour law includes some further limited protection. Employees cannot be terminated for relying or seeking to enforce their rights through administrative or judicial procedures.[113] However, if the basis on which an employee seeks to enforce these rights is groundless, termination might be valid (for example, If the employee commits a dishonest act against the employer, such as a breach of trust, theft or disclosure of the employer's trade secrets).[114]

[111] See the following summary document of a questionnaire run by the Council of Europe in respect of Turkey's witness protection regime: http://www.coe.int/t/dlapil/codexter/Source/pcpw_questionnaireReplies/PC-PW%202006%20reply%20-%20Turkey.pdf
[112] An unofficial English translation may be found at http://issuu.com/ethics360/docs/law_no_3628
[113] English translation may be found at http://www.ilo.org/public/english/region/eurpro/ankara/download/labouracturkey.pdf
[114] English translation may be found at http://www.ilo.org/public/english/region/eurpro/ankara/download/labouracturkey.pdf

18. United Kingdom

Rating of legislative regime against international principles

Rating:
1. Very or quite comprehensive
2. Somewhat or partially comprehensive
3. Absent / not at all comprehensive

#	Principle	Public Sector	Private Sector
1.	Coverage	2	2
2.	Wrongdoing	1	1
3.	Definition of whistleblowers	2	2
4.	Reporting channels (internal and regulatory)	1	1
5.	External reporting channels (third party / public)	2	2
6.	Thresholds	1	1
7.	Anonymity	3	3
8.	Confidentiality	2	2
9.	Internal disclosure procedures	3	3
10.	Breadth of retaliation	1	1
11.	Remedies	1	1
12.	Sanctions	2	2
13.	Oversight	3	3
14.	Transparency	2	2

Discussion / qualitative snapshot

- The Public Interest Disclosure Act 1998 (PIDA) provides for comprehensive protection of whistleblowers in the UK.[115] The main effect of PIDA was to amend the Employment Rights Act to embed whistleblower protections into employment law.[116]
- PIDA applies to a "worker" in both the public and private sectors, and extends protection to contractors.[117] In 2014 the UK Supreme Court found that even members of an LLP partnership are "workers" under the Act.[118] However, PIDA does not apply to, among others, volunteers, non-executive directors, job applicants or public appointees.
- In 2013 the Enterprise and Regulatory Reform Act[119] made a number of important changes to PIDA. Due to perceived misuse of PIDA by people with employment grievances, a requirement that a disclosure must be in the "public interest" was introduced. As part of this reform, the requirement that a disclosure be made in "good faith" was removed. It is still too soon to determine whether these reforms have had the intended policy effect.

[115] http://www.legislation.gov.uk/ukpga/1998/23/contents
[116] http://www.legislation.gov.uk/ukpga/1996/18/contents
[117] Section 43K of PIDA, http://www.legislation.gov.uk/ukpga/1998/23/contents
[118] http://supremecourt.uk/decided-cases/docs/UKSC_2012_0229_Judgment.pdf
[119] http://www.legislation.gov.uk/ukpga/2013/24/part/2/crossheading/protected-disclosures/enacted

- There is a broad definition of "reprisal" in PIDA covering most conduct potentially taken against a whistleblower, and consequent protections and compensation if reprisal were to be taken.
- If a 'worker' is unfairly dismissed for having made a disclosure under PIDA (burden of proof can be the employer to establish that the dismissal occurred for a principal reason other than the disclosure), the compensation is uncapped.[120]
- There is no requirement for companies or organisations to have a whistleblowing policy.
- Additionally, evidence has suggested that due to the expense of running a whistleblowing cases, many settle before going to the employment tribunal.[121] This has resulted in extensive use of 'gagging clauses' whereby a whistleblower accepts a settlement in return for silence, despite a ban for such clauses in Section 43J of PIDA. These 'non-disparagement clauses' are counterintuitive to the release of information in the public interest to the public domain and removes the focus on rectifying wrongdoing. In 2013 the 'Francis Report' found: "non-disparagement clauses are not compatible with the requirements that public service organisations in the healthcare sector, including regulators, should be open and transparent".[122]
- PIDA does not apply to 'service members', meaning that employees of the armed forces, the Ministry of Defence and the intelligence services are not afforded protections when making public interest disclosures.[123] This is a glaring gap in the legislation, especially considering the highly secretive nature of such employers. Additionally, information cannot be disclosed if it concerns a matter of 'national security'.[124]
- External disclosures (disclosures in other cases)[125] must additionally be 'in good faith', 'reasonably believed by the discloser (and any allegation therein) to be substantially true' 'reasonable in the circumstances' and 'not made for personal gain'. They must also fall within one of the following four categories:
    - The discloser must reasonably believe they would suffer detriment if they disclosed internally or to a regulator;
    - There is no regulator (and) they reasonably believed evidence may be concealed or destroyed;
    - An internal disclosure had already occurred; or
    - The subject matter of the disclosure is 'exceptionally serious'.[126]
- The UK has many whistleblower NGOs that promote strong public policy (often leading the way where government is lacking) and support individual whistleblowers.

[120] Section 124 and 103A of PIDA http://www.legislation.gov.uk/ukpga/1996/18/section/124 , Burden of proof is complicated in the UK. In relation to dismissals, employees who have less than 2 years service must show that the reason or principal reason for dismissal was a protected disclosure. If the employee has the required service, the employer must show a fair reason for dismissal. In relation to detriment claims, the burden is on the employer to show that the treatment was not on the grounds that the worker had made a protected disclosure. To make it even more confusing, a worker who is dismissed can bring a detriment claim but cannot claim unfair dismissal.
http://www.legislation.gov.uk/ukpga/1996/18/section/103A
[121] This was further amplified by the introduction of tribunal fees in 2013
[122] Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry, 6 February 2013, available at http://www.midstaffspublicinquiry.com/report.
[123] Sections 192 and 193 of PIDA, http://www.legislation.gov.uk/ukpga/1996/18/section/192 and http://www.legislation.gov.uk/ukpga/1996/18/section/193
[124] Section 202 of PIDA, http://www.legislation.gov.uk/ukpga/1996/18/part/XIII/chapter/II/crossheading/restrictions-on-disclosure-of-information
[125] Section 43G of PIDA, http://www.legislation.gov.uk/ukpga/1996/18/section/43G
[126] Section 43H of PIDA, http://www.legislation.gov.uk/ukpga/1996/18/section/43H

These include Compassion in Care, Patients First, Public Concern at Work[127], The Whistler and Whistleblowers UK.

[127] Recently, Public Concern At Work, which played an instrumental role in the present law, sponsored a high-level Whistleblowing Commission which made key recommendations for reform.

19. United States

Rating of legislative regime against international principles

Rating:

1. Very or quite comprehensive
2. Somewhat or partially comprehensive
3. Absent / not at all comprehensive

#	Principle	Public Sector	Private Sector
1.	Coverage	1	1
2.	Wrongdoing	1	1
3.	Definition of whistleblowers	1	1
4.	Reporting channels (internal and regulatory)	1	1
5.	External reporting channels (third party / public)	2	2
6.	Thresholds	1	1
7.	Anonymity	1	1
8.	Confidentiality	1	1
9.	Internal disclosure procedures	2	2
10.	Breadth of retaliation	1	1
11.	Remedies	2	2
12.	Sanctions	1	1
13.	Oversight	2	1
14.	Transparency	1	1

Discussion / qualitative snapshot

- The US has dozens of federal, state and local laws and agencies that cover whistleblowing and the protection of whistleblowers. In addition to many federal public and private sector laws, most of the country's 50 states have also enacted some form of whistleblower protections.
- The level of inconsistency between multiple laws, especially in the corporate sector, is a concern to many US NGOs, stakeholders and regulators. This is due to increased implementation difficulties, inefficiencies and regulatory burdens entailed in having multiple laws that have evolved in ad hoc ways over time. On recent count, whistleblower protection rules were to be found in no less than **47** different federal laws, including 12 new laws since 2000, relating to the private sector alone (i.e. not including federal and state public sector laws).[128]
- **Government employees:** The 1989 Whistleblower Protection Act, which covers most federal government employees, was one of the world's first comprehensive whistleblower laws. It was significantly strengthened in 2012 by the Whistleblower Protection Enhancement Act. Among many improvements, it closed loopholes that

[128] Devine, T. and T. Massarani, 2011, *The Corporate Whistleblower's Survival Guide,* San Francisco: Berrett-Koehler, p.151.

discouraged whistleblowers from reporting misconduct, broadened the types of wrongdoing that can be reported, and shielded whistleblower rights against contradictory agency non-disclosure rules through an "anti-gag" provision.[129] From 2007 to 2012, the number of new disclosures reported by federal employees increased from 482 to 1,148, and the number of whistleblower retaliation cases that were favorably resolved rose from 50 to 223.[130]

- **Corporate employees**: Two laws[131] passed following a string of corporate and Wall Street scandals (Sarbanes-Oxley and Dodd-Frank) grant legal protections and disclosure channels to private sector employees. These laws only cover people who work for publicly traded companies, which excludes about two-thirds of the country's non-agricultural workers. Under Dodd-Frank, the Securities and Exchange Commission (SEC) in 2013 paid whistleblowers more than $14 million "in recognition of their contributions to the success of enforcement actions pursuant to which ongoing frauds were stopped in their tracks." From August 2011 (when the programme began) to September 2013, the SEC received 6,573 tips and complaints from whistleblowers.[132]

- **Fraud in government contracts**: The False Claims Act, which dates to the 1860s, allows private citizens to file lawsuits on behalf of the government to recover funds stolen through contract fraud. In compensation for their risk and effort, whistleblowers may be awarded 15-25 percent of any recovered funds and fines. Under this law, the US government has recovered $35 billion in fines and stolen funds since 1986.[133]

- **Workplace health and safety**: Employees who report health and safety hazards in the workplace are protected from retaliation by the Occupational Safety and Health Act. A government official said in May 2014: "Employees have a right to file a complaint…without fear of discharge or other forms of retaliation from their employer. Such retaliation can coerce workers into silence, preventing them from reporting or raising concerns about conditions that could injure, sicken or kill them."[134,135]

- Federal and state whistleblower laws have led many whistleblowers who had been fired to be reinstated to their positions.

- Notwithstanding the existence of internal whistleblower provisions for each of the national security and intelligence agencies (such as the CIA and NSA),[136] US officials have come under criticism for their prosecution of national security and official secrecy whistleblowers such as Thomas Drake, John Kiriakou, Bradley Manning and Edward Snowden. There are carve-outs not for the agencies themselves, but rather for "classified information." External disclosure is not permitted for these employees.

- In October 2012 President Barack Obama signed an executive order (Presidential Policy Directive 19) establishing new protections for national security and intelligence community whistleblowers.[137]

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[129] "Whistleblower Protection Enhancement Act Summary of Reforms," Project on Government Oversight, 17 September 2012.
[130] "Report to Congress for Fiscal Year 2012," U.S. Office of Special Counsel.
[131] In total, the US has 47 statutes protecting corporate employees, and more than 40 states have tort liability covering any corporate worker. For example, the Consumer Product Safety Improvement Act covers 20 million private sector workers in retail commerce, without regard to whether they are publicly traded.
[132] "2013 Annual Report to Congress on the Dodd-Frank Whistleblower Program," US Securities and Exchange Commission.
[133] *Voices for Change* (video), Transparency International.
[134] "Occupational Safety and Health Act prohibits retaliation against employees," US Occupational Safety and Health Administration, 13 May 2014.
[135] This law does not provide due process rights,to enforce the protections, simply the opportunity to request an informal investigation.
[136] See, for example, The Central Intelligence Agency Act 1949 50 U.S.C 403q as referred to at http://www.fas.org/irp/congress/2012_rpt/wpea.pdf
[137] "Obama order protects intelligence community whistleblowers," Center for Public Integrity, 15 October 2012.

- Many NGOs in the US provide support for whistleblowers and advocate for stronger legal protections, including the Government Accountability Project, Project on Government Oversight, and Public Employees for Environmental Responsibility.

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Appendices

Appendix 1 - G20 ACWG – 2013 Progress Report

G20 Anti-Corruption Working Group – 2013 Progress Report
Part III – Policy and Practice Highlights Matrix

Authors' note: This table is a self-reported (by each member state) matrix produced for the St Petersburg G20 leaders meeting in 2013. While we cannot account for the accuracy or otherwise of how member states have self-reported their implementation, we encourage readers to compare this table to our own results tables.

G20 Anti-Corruption Working Group Progress Report 2013 Part III (Rev 2)

Chart 1: Anti-Corruption Treaty and Legislative Framework

Whistleblower Legislation	Arg	Aus	Brz	Can	Chn	Fra	Ger	India	Indo	It	Jpn	Mex	Rus	SAr	SAf	S.Kor	Spa	Tur	UK	US	EU
Protect in the Public Sector	No*	Y	Y	Y*	Y	No*	Y	No*	Y	Y	Y	No	Y	Y*	Y	Y	Y	Y	Y	Y	*
Protect in the Private Sector	No*	Y	No	Y*	Y	*	*	No*	Y	No	Y	No	Y	Y*	Y	Y	No	Y	Y	Y	*

Source: http://en.g20russia.ru/docs/g20_russia/materials.html

Appendix 2 – European Union whistleblower protection rules

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The followed assessment below has been prepared firstly for all EU institutions, only as per the legal provisions in the EU Staff Regulations; and separately for the European Commission, which is the only EU institution to have elaborated internal guidelines to implement the general legal provision.

Rating

1. Very or quite comprehensive
2. Somewhat or partially comprehensive
3. Absent / not at all comprehensive

#	Principle	EU institutions as a whole	European Commission
1.	Coverage	1[1]	1[2]
2.	Wrongdoing	2[3]	1[4]
3.	Definition of whistleblowers	1[5]	1[6]
4.	Reporting channels (internal and regulatory)	1	1[7]
5.	External reporting channels (third party / public)	2[8]	2[9]
6.	Thresholds	1[10]	1[11]
7.	Anonymity	3[12]	1[13]
8.	Confidentiality	3	1[14]
9.	Internal disclosure procedures	1[15]	3
10.	Breadth of retaliation	3[16]	1[17]
11.	Remedies	2[18]	1[19]
12.	Sanctions	2[20]	2[21]

[1] EU Staff Regulations (SR) and Conditions of Employment for Other Servants (CEOS): http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1962R0031:20140101:EN:PDF
(See, articles 22a, b, c in particular for general obligation on EU staff to report wrongdoing.)("**SR**") applies to all institutions
[2] 2012 European Commission Guidelines on Whistle-blowing ("**WG**"). These only apply to Commission staff, and not to staff of other institutions, apply to entire institution, c.f. para. 1.3
[3] SR art. 22a (1)
[4] WG para 1.4
[5] Staff Regulations art 22, CEOS: arts. 11 (Temporary Agents), 81 (Contract Agents), 124 (Special Advisers), 127 (Parliamentary Assistants
[6] WG paras. 1.3, 1.4
[7] WG, para 2
[8] Does not include reference to disclosures to third parties – only disclosures to other EU institutions
[9] ibid
[10] SR art. 22a (3), 22b
[11] WG, paras. 1.4, 3
[12] Not in legal framework, but exists in practice: OLAF Fraud Notification System
[13] WG, para. 3 – OLAF Fraud Notification System
[14] WG, para. 3
[15] SR art. 22c
[16] SR only mention 'prejudicial effects' but do not define them
[17] WG, paras. 1.4, 3 – does not include a list of potential retaliatory actions, but does refer to 'harassment, discrimination, negative appraisals and acts of vindictiveness'.
[18] SR arts. 22c, 24, 90 – however, this does not elaborate specific remedies for whistle-blowers
[19] SR arts. 22c, 24, 90 – and WG paras. 1.4, 3 re. burden of proof on Commission
[20] SR include provisions on disciplinary action, but no specific mention of sanctions for retaliation against whistle-blowers

13.	Oversight	3[22]	3[23]
14.	Transparency	3	3

Qualitative Snapshot

- Whistleblowing at the EU level is governed principally by the EU Staff Regulations (SR) and Conditions of Employment for Other Servants (CEOS), which since 2004 have placed a legal duty on all EU civil servants to report any wrongdoing of which they become aware in the course of their work. (This duty extends also to parliamentary assistants and special advisers to Commissioners.) The SR include only a basic definition of the information that individuals are obliged to report, specifying this as facts pointing to any "possible illegal activity, including fraud or corruption, detrimental to the interests of the Union" and any professional misconduct.
- EU staff are obliged, in the first instance, to report information internally – through their normal line management, or directly to the administrative head of their respective institution – or directly to the European Anti-Fraud Office (OLAF). Staff receiving information from whistleblowers must, in turn, provide this to OLAF without delay.
- EU rules underline that whistleblowers must not be subject to prejudicial effects by their institutions, provided that they have "acted reasonably and honestly". The rules do not include examples of actions considered to be prejudicial effects.
- The SR also provide for the protection of whistleblowers making external disclosures, provided they have first exhausted the abovementioned channels. However, this protection only applies in the case of external disclosures to other EU institutions, and not third parties such as labour unions, NGOs or the media.
- EU institutions are obliged by the SR to put in place internal procedures on how they handle information received from whistleblowers, how they protect those reporting, and on how they deal confidentially with complaints from whistleblowers regarding their treatment as a consequence of reporting wrongdoing. However, the SR do not provide specifically for anonymous reporting, or for the protection of the confidentiality of whistleblowers, nor place obligations on institutions in this regard.
- Currently of the EU institutions, only the European Commission has elaborated internal whistleblowing procedures, via its 2012 Whistleblowing Guidelines. These build on the SR, providing more detail on the sort of information qualifying as whistle-blowing, and markedly, what does not. The internal and external reporting procedures for Commission staff are laid out, alongside explanation of how the institution may protect honest whistleblowers. While this protection is not guaranteed for anonymous whistleblowers, in practice a channel for such reporting does exist via the OLAF Fraud Notification System.
- Though not comprehensive, the Commission's guidelines also provide basic information on the threshold for protection for whistleblowers; on the actions that may be considered as retaliatory (e.g. harassment or negative performance appraisals); and on the potential for disciplinary action to be taken against any individuals retaliating against whistleblowers or preventing staff from whistleblowing.

[21] WG para 3 – not detailed
[22] EU Civil Service Tribunal, no specific body for whistle-blowing
[23] ibid

- In line with the SR, EU staff retain the right to contest decisions taken against them by their institutions at the EU Civil Service Tribunal, however, no specific mention is made of oversight of whistleblowing and of the treatment of those reporting.
- No specific legal provisions appear to be in place regarding transparency and accountability regarding the application of EU whistleblowing rules.

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