

Comparative report

Whistleblowing in Italy, Austria, Estonia, France, Ireland, Romania, and Slovenia



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1. Introduction

The purpose of this report is to provide a comparative analysis of whistleblower protection in **seven EU Member States**: Italy, Austria, Estonia, France, Ireland, Romania, and Slovenia.

The analysis will be carried out taking account of the recent approval of the **EU Directive on Whistleblower Protection**, to highlight the existing national provisions which are in accordance to the Directive requirements and the efforts that countries still have to make in order to implement it.

Finally, the last part of the report will be dedicated to identifying the implementation of **national regulations** within each country.



2. Relevant legislation

Only three of the seven examined countries have a national law dedicated entirely to whistleblower protection: Romania, Ireland and Italy. Among them, Romania is the forerunner, as its law dates back to 2004 (1), while in Ireland and Italy the standalone legislation on whistleblowing entered into force, respectively, in 2014 (2) and 2017 (3).

However, both in Ireland and in Italy, whistleblowers already received protection before the enactment of the law. In the former, there were several sector-based agreements which concerned members of the public, some of which remained in force (4).

In the latter, the first provision ever intended to protect public sector whistleblowers from retaliation was introduced in 2012 by Anti-Corruption Law no. 190, and there are other rules dedicated to whistleblowing in specific sectors (5), which are still in force.

In other countries, protection is granted **through more comprehensive laws** or provisions in sector-based laws. However, France must be distinguished among them. Although it does not have a law whose exclusive purpose is to protect whistleblowers, the so-called “Sapin 2 Law” includes a general statute for whistleblowers that applies both in public and private sec-

(1) Law no. 571/2004 on the protection of personnel in public authorities, public institutions and other units reporting violations of the law.

(2) Protected Disclosures Act.

(3) Law no. 179/2017, Provisions for the protection of whistleblowers who report crimes or misconduct of which they become aware in the context of public or private employment.

(4) The Health Act 2004, as amended by the Health Act 2007, sets out protections for health sector employees and members of the public who report possible wrongdoings in the healthcare sector; the Protection for Persons Reporting Child Abuse Act 1998 protects people reporting potential abuse of children from civil liability and victimisation; the Charities Act 2009 sets out specific protections for people who report alleged breaches of the legislation to the Charities Regulatory Authority.

(5) Art. 52 bis of Legislative Decree no. 385/1993 (Consolidated Banking Law), Articles 4-undecies and 4-duodecies of Legislative Decree no. 58/1998 (Consolidated Law on financial intermediation provisions); Art. 48 of Legislative Decree no. 231/2007 (Anti-money laundering regulation); Art. 20 Legislative Decree 81/2008 (Regulation on safety at work).

tors and to all reports.

The Sapin 2 Law (6) coexists with different special regimes applicable according to the type of employment of the public official (7) or the sector in which the alert is issued (8).

Both Estonia and Slovenia have an Anti-Corruption Law that only protects whistleblowers who report on corruption, although with a key difference. The Estonian Anti-Corruption Act has limited personal scope, as it provides protection only to public officials who report corruption regarding other public officials. Conversely, the Slovenian Integrity and Prevention of Corruption Act provides that anyone can report any kind of corruption. However, the Slovenian Act also gives specific protection to official persons who report unethical or illegal conduct they have been requested in their sphe-

re of work. In both countries, other provisions within legal acts could apply to whistleblowers, although not envisaging them specifically (9).

Whistleblowers in Austria are only mentioned in the Securities/Stock Exchange Act (10) and corporate law. Their protection is either limited to specific sectors or for specific types of wrongdoing (11); other relevant laws may apply (12).

Austria, Estonia, Romania and Slovenia do not have designated **soft law tools** on whistleblowing, but in Romania and Slovenia there are ethical codes, which are only morally binding documents. Conversely, Italy (13), France (14) and Ireland (15) have soft law guidance documents to support the effective implementation of the law.

(6) Act no. 2016-1691 of 9 December 2016 on transparency, the fight against corruption and the modernisation of economic life,

(7) Article 6-ter A of Law 13 July 1983 applies to civil servants, probationary civil servants, contractual agents under public law, occasional civil servants; the Labour Code applies to private law employees of the EPICs, private law agents employed by public entities, employees governed by private law in public industrial or commercial establishments as well as employees governed by private law employed by other public bodies who benefit from the protection envisaged by Article L. 1132-3-3 of the Labour Code; the Defence Code applies to military personnel; Law no. 2015-912 of 24 July 2015 applies to intelligence service officials.

(8) Law no. 2013-316 of 16 April 2013 on the independence of health and environment; Art. L634-3 of the French Monetary and Financial Code applies to alerting in the banking and insurance sector; Act No. 2013-1117 of 6 December 2013 on the fight against tax fraud protects whistleblowers in the sector of taxation.

(9) Estonia has the Employment Contracts Act, banning the unfair dismissal and unlawful degrading of employment conditions; the Equal Treatment Act, prohibiting any kind of discrimination of persons, and the Civil Service Act, which, together with the former, provides employees with the right to claim compensation from their employer if they have been punished or illegally removed from office. Slovenia has the Civil Servants Act, which establishes a principle of non-harassment that prohibits any kind of retaliatory measures; the Employment Relationships Act, which prohibits sexual and other harassment and bullying in the workplace and protects the worker's dignity; the Mass Media Act states that editorial personnel, journalists and the authors/creators of articles are not obliged to reveal the sources of their information, except when stipulated by criminal legislation; the Witness Protection Act, which can be applied to whistleblowers or their family members, even if not a witness.

(10) Art. 160 Abs 13 Börsegesetz.

(11) Fragmented legislation exists concerning whistleblowing in the public sector and financial sector, or concerning corruption or environmentally harmful substances.

(12) The Public Service Law, which is the country's first ever legal protection related to whistleblowing; the Civil Servants Act; the Private Employees Act; the Banking Act; the Environmental Information Act, which protects employees who report environmental wrongdoing; the Stock Exchange Act; the Austrian Financial Market Authority; the Labour and Constitution Act, which protects all employees from dismissals which violate Austria's basic social principles; the Data Protection Act and the Civil Code (ABGB).

(13) ANAC Resolution no. 6/2015 "Guidelines on the protection of public employees who report offences", updated to Law no. 190/2012, as the Authority has not yet approved the new Guidelines; ANAC Resolution no. 1033 of 30 October 2018, which governed the procedure for imposing administrative pecuniary sanctions. As regards the private sector, in January 2018 Confindustria published an explanatory note on "The regulation of whistleblowing".

(14) The circular of the Ministry of Action and Public Accounts of 19 July 2018 on the procedure for reporting alerts issued by public officials and the guarantees and protections granted to them; French Anti-Corruption Agency guidelines to help private and public sector entities prevent and detect corruption, influence peddling, extortion by public officials, unlawful taking of interest, misappropriation of public funds and favouritism", published in the Official Journal of the French Republic, 22 December 2017.

(15) Government Reform Unit, Department of Public Expenditure and Reform. Guidance under section 21(1) of the Protected Disclosures Act 2014 (the "2014 Act") for the purpose of assisting public bodies in the performance of their functions under that Act ("the Guidance").

3. Definition

For most of the countries, a whistleblower is a person who reports information on breaches of which he/she has learned in the context of work-related activities. This definition is part of the one given by the Directive (16), which adds, however, that whistleblowers are also those who make - in specific circumstances - a public disclosure.

However, it should be noted that in the Slovenian Integrity and Anti-Corruption Act, whistleblowers are referred to as “any person who reports instances of corruption”, regardless of whether knowledge of such corruption was acquired in the context of an employment relationship.

Only in France and Romania are whistleblowers **expressly defined by law**; in Slovenia and Italy, they are **only defined implicitly**; Irish law does not define the whistleblower but the “protected disclosure”, while in Austria and Estonia there is **no special legal definition**.

The requirement of **good faith** differs greatly from one country to the other.

Romania, Slovenia and France expressly require the whistleblower’s good faith. The latter also adds that the report must be made “in a disinterested manner”, while the Slovenian Act also requires the whistleblower reasonably to believe that the information, as provided, is true.

In Ireland, as well as in the Directive, acting in good

faith is seen to be acting in the reasonable belief that the disclosure is substantially true. In Italy, whistleblowers must report in the interest of the integrity of the public administration or the private entity.

The **catalogue of breaches** that may be reported is wide and varied. The Directive has adopted a broad notion of breaches falling within its scope, which also includes abusive practices, i.e. acts or omissions that do not appear to be unlawful in formal terms but which defeat the object or the purpose of the law. The Irish, Romanian and French laws provide a list of wrongdoings that may be reported, while in Italy, this is included in the Guidelines of the National Anti-Corruption Authority.

Romania adds to violations of laws also the breach of professional ethics or the principles of proper administration, efficiency, effectiveness, economy and transparency, and expressly indicates a breach of legal provisions regarding public procurement. France also adds the possibility of reporting “a serious threat or prejudice to the general interest”.

Conversely, the subject of the reports is somewhat limited in Slovenia and Estonia, where whistleblowers may only report corruption.

Irish law specifies, like the Directive, that the reasons for disclosure are irrelevant.

(16) Article 5, no. 7.

4. Sectors of application

Not all of the compared countries protect whistleblowers in both the public and private sectors, as required by the Directive. In Romania, whistleblower protection in the **private sector** is only voluntary, and in Estonia there are no specific forms of protection in the private sector.

In Austria, private sector employees are protected only in the financial and banking sector. However, large enterprises and multinational companies started to implement internal whistleblowing systems to fulfil compliance procedures and good practice recommendations.

On the other hand, whistleblowing regulations in Italy, France, Ireland, and Slovenia apply to **both the public and private sectors**.

In Italy, protection in the private sector has only been provided since the end of 2017 and, moreover, it only applies to those corporate entities and associations, including those which are not corporate bodies, that have established organisation and management models, known as “231 models”. The adoption of these models is optional, and they are aimed at excluding or limiting the liability of institutions for crimes committed by individuals in their interest or for their benefit.

As far as the **public sector** is concerned, Italian law applies to public administrations, public economic entities and private law entities under public control

in accordance with Art. 2359 of the Civil Code; Irish law applies to all public bodies, such as government departments, local authorities and certain other publicly-funded bodies, which are listed in the law . Rules concerning whistleblowers in Romania apply to public authorities and institutions of the central and local public administrations, apparatus of the Parliament, working apparatus of the Presidential Administration, working apparatus of the Government, autonomous administrative authorities, public institutions of culture, education and health, national state-owned companies, and other representatives of the public sector.

In Slovenia, the scope of protection is very broad and extends to public companies and the state administration (state body, local community, a holder of a public authority or other legal persons governed by public or private law), as well as to private companies.

French rules are in line with the provisions of the Directive since they apply without distinction to both the public and private sectors; the only difference concerns the thresholds provided for the duty to establish internal reporting channels and procedures for reporting.

(17) According to Irish law, public body means a Department of State, a local authority within the meaning of the Local Government Act 2001, any other entity established by or under any enactment (other than the Companies Act), statutory instrument or charter or any scheme administered by a Minister of the Government, a company (within the meaning of the Companies Acts) in which the majority of the shares are held by or on behalf of a Minister of the Government, a subsidiary (within the meaning of the Companies Acts) of such a company, an entity established or appointed by the Government or a Minister of the Government, any entity that is directly or indirectly controlled by an entity within any of the latter, an entity on which any functions are conferred by or under any enactment (other than the Companies Acts), statutory instrument or charter, or an institution of higher education in receipt of public funding.

5. Organisational measures and connections to the prevention of corruption

In all countries, whistleblower protection measures are a key tool in the fight against corruption. As seen in the previous paragraphs, in countries where whistleblowers do not yet have an entirely dedicated law, they find protection in the anti-corruption laws.

In Slovenia and Italy, there are different levels of organisational measures to fight and prevent corruption. The **Resolution on the Prevention of Corruption in the Republic of Slovenia**, adopted by the National Assembly, aims to identify realistic, gradual and deliberate measures to eliminate corruption.

The Commission for the Prevention of Corruption monitors the implementation of the Resolution based on an **action plan**. Public bodies must adopt an **integrity plan**, which includes, in particular, an assessment of the institution's exposure to corruption, proposals for integrity improvements, and measures for the timely detection, prevention and correction of corruption risks.

In Italy, the National Anti-Corruption Authority (ANAC) coordinates the implementation of strategies to prevent and detect corruption and illegal acts in public administration, developed at national and international levels. ANAC adopts the three-year **National Anti-Corruption Plan**, which identifies the main corruption risks, remedies, and enforcement measures; it is the model for **the three-year anti-corruption plans** of the individual administrations and for the anti-corruption measures supplementing those adopted according to Legislative Decree 231/2001. **The Head of the Prevention of Corruption and Transparency** is identified in every public administration and has the task of verifying the effective implementation of the plan and its suitability. The **Independent Evaluation Body**, in the private sector, verifies that the three-year plans for preventing corruption are coherent with the objectives established in the strategic management planning documents. It reports to ANAC on the implementation status of the measures. The task of supervising the functioning of and compliance with the organisation and management models (so-called 231 models) and ensuring that they are updated is entrusted to a body of the entity

with independent powers of initiative and control, the **Supervisory Body**.

The implementation of the whistleblowers' policy in Romanian public institutions is the subject of the **National Anti-Corruption Strategy** followed by extended evaluation and monitoring reports. The evaluation missions aim to document how central and local public administration institutions apply the provisions of the law in terms of notifications, warnings management and whistleblower protection. A law enforcement procedure for whistleblowing has been prepared by the **National Integrity Agency** and is generally valid for all public institutions in Romania that fall under the remit of the law.

In Estonia, the Ministry of Justice coordinates the anti-corruption policies and a select anti-corruption parliamentary committee supervises the implementation of anti-corruption measures, discussing the potential of corruption incidents involving officials and assessing them. There is no public policy or monitoring strategy; the number of cases and their outcome remains unknown.

In Austria, Estonia, and Ireland there is no overarching authority appointed to receive and investigate disclosures made by whistleblowers.

In France, **the French Anti-Corruption Agency** has no investigative powers as a result of whistleblower reports but has the power to sanction a private or public body that has not set up an internal whistleblowing system. However, the Human Rights Defender (HRD) has the power to restore the injured party's rights through mediation to avoid litigation or by supporting the judge's work. The HRD has also the power to investigate in order to gather evidence from the employer that there is no link between the unfavourable decision and the report, as well as to search for any concordance between the sanction and the alert. The intervention of the HRD does not involve verifying whether the alert is well-founded but only consists of verifying that the criteria of the Sapin 2 law are fulfilled in principle.

6. Subjective field of application

The Directive provides an extensive personal scope, which not only includes persons having the status of worker, including civil servants, but also persons having self-employed status, shareholders and persons belonging to the administrative, management or supervisory body of an undertaking, including non-executive members, as well as volunteers and paid or unpaid trainees and any persons working under the supervision and direction of contractors, subcontractors, and suppliers. Furthermore, the Directive applies to workers whose work-based relationship has already ended or is yet to begin.

Most of the countries will have to modify their national law in implementing the Directive, as, while they all recognise the figure of whistleblower in **civil servants**, and almost all - except Austria - include **workers under the supervision of contractors, subcontractors or suppliers**, none of them recognise **volunteers** or people whose employment relationship has not yet started, or **shareholders**. On the other hand, Estonia and Ireland include **former employees**.

Only Ireland explicitly includes **freelancers** and, together with France and Estonia, **trainees**.

Employees sitting on **supervisory bodies** are protected by the Protected Disclosure Irish Act; Italian law, albeit only for the private sector, includes “persons serving as representatives or holding administrative or senior executive positions within the body or an organisational unit of same, and being financially and functionally independent and persons exercising management and control of same” and generally “persons subject to their direction or supervision”. However, the latter definition is too general and does not allow for it to be established whether, in the private sector, other categories of workers identified by the Directive are included.

Another overly generic definition is found in the Slovenian Integrity and Prevention of Corruption Act. It applies to anyone who reports any kind of corruption to the Commission and to officials who report any kind of unethical or illegal conduct they have been requested in their sphere of work. Therefore, the law does not expressly identify all of the various categories of workers to which it applies – except for official persons - but is generally addressed to everyone (and not only to workers).

Several laws expressly identify some **further categories** of workers. Irish law includes agency workers and police officers from the national police services. Romanian law specifically covers personnel working under special statutes as doctors, teachers, police officers, court clerks and priests. Estonian Anti-Corruption Act applies to public officials regardless of whether they perform their duties permanently or temporarily, for a charge or without charge, while in service or engaged in a liberal profession or under a contract, by election or appointment.

From the countries examined, France is undoubtedly the one whose whistleblower legislation applies to the most categories of workers. The Constitutional Council has specified that the Sapin 2 Law procedure is limited to “whistleblowers making an alert against the organisation employing them or the one with which they collaborate in a professional context”. Consequently, the Sapin 2 Law applies to agents, holders or contract staff belonging to the structure subject to the obligation, to trainees and apprentices, as well as to external and occasional collaborators of the administration, bodies or communities concerned, such as voluntary users of the public service who actually participate in its execution, either as reinforcement or by substituting a public official.

DIRECTIVE	ITA	IRE	ROM	FRA	SLO	AUT	EST
workers, including civil servants	✓	✓	✓	✓	✓	✓	✓
Self-employed	✗	✓	✗	✓	*	✗	✓
Shareholders	✗	✗	✗	✗	*	✗	✗
Person belonging to the administrative, management or supervisory body of an undertaking, non-executive members	✓ <small>only private sector</small>	✓	✗	✓	*	✗	✗
Volunteers	✗	✗	✗	✗	*	✗	✗
Trainees	✗	✓	✗	✓	*	✗	✓
Workers under the supervision and direction of contractors, subcontractors and suppliers	✓	✓	✓	✓	*	✗	✓
Workers whose work-based relationship has already ended	✗	✓	✗	✗	*	✗	✓
Workers whose work-based relationship is yet to begin	✗	✗	✗	✗	✗	✗	✗

* The Slovenian Act generally applies to all those who report corruption

7. Reporting channels

Only Irish (just for the public sector), Italy and French law provide the **duty to establish internal reporting channels**.

In France, the requirement to set up a reporting channel is not addressed to all public and private sector bodies. More specifically, the criteria of the number of inhabitants and the number of agents employed are used.

Italian law envisages the establishment of internal reporting channels for all public bodies and in the private sector, only to those entities that have adopted the so-called 231 models. Therefore, the adoption of these models is optional, but, if adopted, they must include one or more reporting channels and at least an alternative one with IT methods, which must guarantee the confidentiality of the whistleblower's identity during the activities carried out in managing the report.

France and Ireland have a **tiered reporting system**: whistleblowers must firstly disclose information internally; if this is not possible, or is inappropriate or ineffective, they may report to an external channel. In some circumstances, as a final step, it is possible to disclose publicly. However, French law distinguishes the ordinary reporting procedure from the emergency one: in cases of severe and imminent danger or risk of irreversible damage, the obligation of prior internal reporting can be overcome.

In Slovenia, there is a similar reporting system but only for official persons reporting unethical conduct they have been requested. They may report such practices to their superior or the responsible person; if there is no responsible person, or if that person fails to respond to the report or if it is the responsible person himself/herself who asks that official to engage in illegal or unethical conduct, the report will fall under the remit of the Commission.

The issue of reporting in stages was a highly debated point in the decision-making process of the Directive. In the final version, following the amendment proposed by the European Parliament, the Directive leaves the whistleblower free to select the most appropriate reporting channel. However, it encourages reporting through internal reporting channels before reporting through external ones if the breach can be addressed effectively internally and if the reporting person considers that there is no risk of retaliation.

Usually, **internal reporting channels** are addressed to the employer, the direct or indirect superior, or the designated "alert referent", such as, for Italy, the Head of the Prevention of Corruption and Transparency in the public sector or the Supervisory Body in the private one. Conversely, in Romania, a whistleblower may report to the hierarchical superior of the person who has breached the legal provisions, to the Head of the public

authority, to the public institution or to the budgetary unit of the person who violated the legal rules.

Furthermore, reports can also be made internally to the disciplinary commissions within the public institution to which the person who violated the law belongs.

The competent administrative authority provides **external reporting channels**, i.e. the French High Authority for the Transparency of Public Life and the Anti-Corruption Agency, the Italian National Anti-Corruption Authority (ANAC), the Slovenian Commission for the Prevention of Corruption. It is also possible to report to professional bodies, such as French professional orders, or to other authorities indicated by national law. Ireland includes government authorities, members of parliament, lawyers, and trade unions, while Estonia includes agencies performing public duties, their officials, persons supervising agencies, persons controlling declarations or bodies conducting proceedings concerning an offence. Romania includes legal bodies, bodies responsible for the establishment and investigation of conflicts of interest and incompatibilities, parliamentary committees, professional, trade union or employers' organisations and also non-governmental organisations.

In some countries, such as Italy, Romania and France, it is possible to complain to a **judicial authority**. In Estonia and Slovenia, suspicions about corruption can be reported to the Police. In the latter, although it is not possible to report corruption to the Courts directly, criminal offences (when a case of corruption becomes a crime) can be reported directly to the State Prosecutor's Office.

In Austria, several public authorities provide reporting systems for whistleblowers, targeting specific areas. The BMI (Bundesministerium für Inneres), the Austrian Ministry of the Interior, focuses on reports on corruption and malpractice (in office); the WKStA (Wirtschafts und Korruptionsstaatsanwaltschaft), the Economic and Corruption Prosecutor, provides a full reporting system, with emphasis on corruption, criminal economic matters, social benefit fraud, balance and capital market offences and money laundering; the FMA (Finanzmarktaufsicht), the Financial Market Supervision Authority in Austria, deals with violations of compliance with the regulations by companies; the BWB (Bundeswettbewerbbehörde), the Federal Competition Authority specialises in antitrust violations and cases of abuse of market power.

Only Romania and Ireland specifically envisage the possibility of **public disclosure**. In France, this is only possible as a last resort after the failure of the first two steps or in the event of "grave and imminent danger".

However, the Slovenian Integrity and Prevention of Corruption Act states that reporting to the Commission will not encroach on the reporting person's right

to inform the public of the corrupt practice.

Only Slovenian law expressly provides the possibility for the Commission or other competent authorities to **notify the whistleblower** of the measures or the course of action taken in this respect, but only at the whistleblower's request.

All countries will undoubtedly have to work on this point, as the Directive provides not only that feedback is given to all reports after a defined timeframe, but also that receipt of the report is acknowledged.

DIRECTIVE	ITA	IRE	ROM	FRA	SLO	AUT	EST
Duty to establish specific reporting channels	✓	✓ only public bodies	✗	✓	✗	✗	✗
No tiered reporting system	✓	✗	✓	✗	✓	✓	✓
Internal reporting channel	✓	✓	✓	✓	✓ only for official persons	✓	✓
External reporting channel	✓	✓	✓	✓	✓	✓	✓
Public disclosure	✗	✓	✓	✓	✗	✗	✗

8. Duty of confidentiality

All of the examined countries incorporate the general principle stated by the Directive in terms of the **confidentiality** of whistleblower's identity, meaning that that identity should not be disclosed without his/her explicit consent to anyone other than the authorised staff members who receive and/or follow-up on reports. This requirement is seen in a broad sense, so that it also includes any other information from which the identity of the reporting person may be directly or indirectly deduced. French law and Italian ANAC Guidelines -however not yet approved- also includes the confidentiality of the identity of the accused person in the context of the alert.

However, there are **several exceptions** to this principle, and therefore circumstances exist in which the identity can be revealed.

In Romania, the identity of the reporting person is only protected in certain circumstances, depending on the reported person and the reported violation. Confidentiality is always granted if the person involved is the hierarchical superior or has control, inspection and evalua-

tion responsibilities over the whistleblower. If the report concerns corruption, forms assimilated with corruption, abuse while on duty and similar offences, crimes against the financial interests of the Union, or forgery, confidentiality is guaranteed.

For other countries, the whistleblower's identity may be disclosed in the context of **investigations by national authorities or judicial proceedings**. For example, in France the Sapin 2 law provides for the judicial authority as the only exception to the confidentiality duty.

In Italy, for the public sector, the whistleblower's right to confidentiality is expressed differently in relation to the legal contexts involved: confidentiality is guaranteed only until the end of the preliminary investigation in the context of criminal proceedings and until the conclusion of the evidentiary phase in proceedings before the Court of Auditors. In the context of disciplinary proceedings, the whistleblower's identity may be disclosed if the complaint is based, entirely or partly, on the report, and the knowledge of his/her identity is necessary for the accused's defence, but only with the whistleblower's

consent.

In Austria, in legal proceedings, whistleblowers must disclose their identity as they will be named as a witness in criminal court proceedings and, therefore, their names will be disclosed to the lawyers representing the defendant.

Furthermore, in Ireland, the protection of the whistleblower's identity will not apply if the disclosure is required by law or it is essential for the effective investigation, the public interest, or to prevent crime or risks to State security, public health or the environment.

In Slovenia, the State Prosecutor, the Police and the Court will safeguard the identity of the whistleblower, unless his/her identity is necessary to safeguard the defendant's right to a fair trial, and if the disclosure will not place the whistleblower or his/her family in any kind of danger.

However, none of the countries examined appears to adopt the **appropriate safeguards envisaged by the Directive**. In particular, the Directive states that the reporting person shall be informed before his or her identity is disclosed unless such information would jeopardise the investigations or judicial proceedings.

In some countries only, a breach of confidentiality may result in a **sanction**. In Slovenia, a fine is imposed on a natural or legal person attempting to establish the whistleblower's identity. In France, the fine is much higher, and imprisonment can also be imposed; sanctions also apply for any breaches of confidentiality of the person accused by the alert.

Some countries require the use of **IT methods and cryptographic tools** to guarantee the confidentiality of the whistleblower's identity and the content of the reports. In Italy, the National Anti-Corruption Authority has established an IT platform which uses a cryptographic protocol that guarantees enhanced protection of confidentiality and allows the reporting person to dialogue impersonally and rapidly with the Authority. Furthermore, private law entities must provide at least one reporting channel suitable for guaranteeing confidentiality

with IT methods. The new ANAC Guidelines, which will soon be adopted, will promote the use of cryptography tools. The Slovenian Commission for the prevention of Corruption, several Austrian public authorities and some private corporations offer IT platform with encryption technology.

For both Slovenia and Italy, the provisions of the law **regulating access to public information shall not apply** to documents, files, records and other documentary material relating to reporting. In Slovenia, this applies until the procedure before the Commission has been concluded, but the information on the protected reporting person shall not be disclosed even after the procedure has been concluded. As a further level of protection of the whistleblower's identity, in Italy, data on whistleblowing may only be accessed in the presence of specific security measures or subject to authorisation from the Data Protection Supervisor.

France and Italy also consider the requirement for **compliance with the law on personal data protection** (and GDPR) as regards the processing of personal data recorded as part of the reporting system.

French law has a provision on **keeping records of the reports**. It establishes that once the objective pursued by the data collection has been achieved or when no action has been taken on the alert, there is no longer any need to retain the data and they must be deleted within a maximum period of two months from the closure of all admissibility or verification operations. The persons concerned must be informed of this closure. This obligation is accompanied by the penalties envisaged by the Penal Code. In Italy, ANAC Guidelines - not yet approved - establish that the Head of the Prevention of Corruption and Transparency ensures that reports are kept for five years from their receipt, keeping the identifier's identification data separate.

In Estonia, Ireland, Italy and Romania, the law does not accept or prohibit **anonymous disclosure**. Conversely, in Slovenia and Austria, reports may be anonymous; in France only in exceptional cases.

DIRECTIVE	ITA	IRE	ROM	FRA	SLO	AUT	EST
Non-disclosure of the WB's identity	✓	✓	✓ <small>depends on the reported person and the violation</small>	✓	✓	✓	✓
Derogation: investigation by national authorities or judicial proceedings	✓	✓	✗	✓	✓	✓	✓
Information before disclosure	✗	✗	✗	✗	✗	✗	✗
Sanctions for breach of confidentiality	✗	✗	✗	✓	✓	✗	✗
Personal data processing	✓	✗	✗	✓	✗	✗	✗
Anonymous reports	✗	✗	✗	✗	✓	✓	✗

9. Protection measures, burden of proof and sanctions

In Austria, Estonia and Romania, there are **no comprehensive protection measures** in place, but whistleblowers can use alternative laws to seek remedies. However, in Estonia there are no protections for public officials who report misconduct other than corruption, neither for private sector whistleblowers. In Romania, disciplinary or administrative sanctions taken against whistleblowers can be declared void by the disciplinary committee or by the Court if they were applied as a result of an act of whistleblowing in the public interest, done in good faith.

Therefore, only France, Slovenia, Italy, and Ireland **prohibit any form of retaliation** against whistleblowers for reasons directly or indirectly related to the report. This is seen in a broad sense, in accordance with the Directive, meaning that a whistleblower cannot be dismissed, sanctioned, moved or damaged by any other adverse effects on his/her working conditions. In Ireland, the protection extends to any third party who has suffered detrimental repercussions from any disclosure of alleged wrongdoing.

In France, Italy, and Ireland, in the event of such measures being taken, they are **void by law**. The judge may order the **reinstatement** of any person who has been dismissed, not had his/her contract renewed or has been revoked in violation of the legal provisions prohibiting retaliation measures; severance pay may also be applied if the employee does not request reinstatement or such a measure is impossible. On the other hand, in Slovenia, the Commission shall demand that such conduct is discontinued immediately and, if whistleblowers are civil servants and if they continue to be the focus of retaliation despite the Commission's demand, they may ask their employer to transfer them to another equivalent post and inform the Commission accordingly.

Italian law requires that any adoption of measures considered to be retaliation in the public sector shall be communicated to ANAC, informing the Department of Public Administration of the Presidency of the Council of Ministers or other supervisory or disciplinary bodies so that they may take the action and apply the measures within the scope of their responsibility or, for the private sector, to the National Employment Inspectorate.

In Ireland, Slovenia, and France an **interim relief** procedure is available to the employee pending the determination of a claim for unfair dismissal.

It is only in Slovenia and Ireland that whistleblowers have the right to claim **compensation** from their employer for the damage caused illegally if they have been subjected to retaliatory measures as a consequence of filing the report. According to the Estonian

Civil Service Act, employees are granted the right to claim compensation from their employer if they have been punished or illegally dismissed from office. Furthermore, in Slovenia, the Commission may offer whistleblowers **assistance** in establishing a causal link between the adverse consequences and the retaliatory measures.

In Ireland, public bodies must provide their employees with written **information** on the procedures for making protected disclosures by current and former workers and for dealing with such disclosures.

According to the Sapin 2 Law, in France whistleblowers can be directed and assisted by the Human Rights Defender. Furthermore, the Maison des Lanceurs D'Alerte offers legal advice to whistleblowers.

In Italy, Romania and Slovenia Transparency International has set up an Advocacy and Legal Advice Centre (ALAC) in order to support citizens with reporting corruption complaints. The centre offers free and confidential advice. Transparency Legal Advice Centre ("TLAC") is Ireland's only independent law centre specialising in providing free legal advice to anyone who wishes to disclose wrongdoing as provided for under the Protected Disclosures Act.

The Irish Act provides **immunity from most civil actions** for damages (except for defamation actions). In prosecutions of persons for any offence prohibiting or restricting the disclosure of information, such persons may use the defence that, at the time of the alleged offence, the disclosure was, or the person reasonably believed it to be, a protected disclosure.

French, Italian, and Irish law provide the **absence of criminal liability for disclosure of legally protected secrets** if the disclosure of the information is necessary and proportionate to the interests involved, if it is made following the reporting procedures defined by law and if the person meets the criteria for determining a whistleblower. In France, this extends to breaches of any other secret, except national defence secrets, medical secrets or secrets in relationships between a lawyer and his/her client. In Italy, it covers official, professional, scientific and industrial secrets. However, Italian law expressly excludes the disclosure of information covered by secrecy acquired in the context of professional consulting or assistance and the reporting of information or documents subject to corporate, professional or official secrecy "in ways that exceed the purpose of eliminating the unlawful act", or outside of the established reporting channels.

As a further protection measure, in Ireland, all disclosures are assumed to be protected until the employer proves the contrary; in Romania public-interest whis-

whistleblowers benefit from the **presumption** of good faith, unless proven otherwise.

French law expressly introduces protective measures for **the person concerned** by an alert. These are mainly confidentiality guarantees, and their violation is punishable by imprisonment and a fine.

Several countries, such as Italy and Slovenia, strengthen the protection of whistleblowers by imposing **pecuniary sanctions on those who have adopted retaliatory measures**. In the Italian private sector, disciplinary sanctions are provided for those who violate the measures protecting the reporting person.

Furthermore, in Italy, ANAC may apply an administrative pecuniary sanction against the responsible party which has not established procedures for making and managing reports or which has established them, but the same do not comply with what is outlined in the law and which has failed to control and analyse the reports received.

In France, the **offence of obstructing the alert** is punishable by imprisonment and/or a criminal fine, which is increased when the investigating judge or chamber receives an abusive libel complaint against a whistleblower.

As mentioned in the previous paragraph, in Slovenia and France, a **breach of the whistleblower's confidentiality** can lead to a sanction.

In Italy, Slovenia, Ireland and France sanctions also apply for **malicious disclosures**. In France, they may be

criminal sanctions (imprisonment or a criminal fine), disciplinary sanctions or dismissal for fault.

Conversely, in Austria, Romania and Estonia, no sanctions are provided. However, although Romanian law stipulates no sanctions against retaliation or discrimination, disputes that regard work or working relations may be subject to court review which may subsequently cancel any sanctions applied in the wake of a public interest notification.

As a further protection measure against retaliation, Italy, Slovenia, France, and Romania, in line with the Directive, provide a **reversal of the burden of proof**. In proceedings before a Court or other authority relating to detrimental effects suffered by the reporting person, and subject to that person establishing that he or she reported or made a public disclosure and suffered damage, it shall be presumed that the detrimental effect was a result of retaliation for the report or public disclosure. In such cases, the person who applied the detrimental measure must prove that the measure was based on reasons unrelated to the report.

Some countries envisage the **exclusion** of the protection measures granted in some cases. In Italy, protections are not guaranteed in cases where, including by means of a first instance judgment, a whistleblower is found criminally liable for crimes of slander or defamation or for crimes committed by means of the complaint to the ordinary or accounting judicial authority. Furthermore, this applies if he/she is found civilly liable, for the same reason, in cases of malicious conduct or gross negligence.

DIRECTIVE	ITA	IRE	ROM	FRA	SLO	AUT	EST
Prohibition on any form of retaliation	✓	✓	✗	✓	✓	✗	✗
Compensation	✗	✓	✗	✗	✓	✗	✗
Comprehensive information and advice	✓	✓	✓	✓	✓	✗	✗
Legal aid	✗	✗	✗	✗	✗	✗	✗
Financial assistance and psychological support	✗	✗	✗	✗	✗	✗	✗
No liability	✓	✓	✗	✓	✗	✗	✗
Interim relief	✗	✓	✗	✓	✓	✗	✗
Reversal of burden of proof	✓	✗	✓	✓	✓	✗	✗
Protection of the accused person	✗	✗	✗	✓	✗	✗	✗
Sanctions for retaliatory measures	✓	✗	✗	✓	✓	✗	✗

10. Implementation

The final part of this report aims to analyse the implementation of whistleblowing legislation, based upon interviews held by the project partners with representatives of several public bodies in each country as well as with representatives of organisations that deal with whistleblowing at national level, either carrying out support activities, such as Transparency International, the French Human Rights Defender and the Maison des Lanceurs d'Alerte, or being designated to receive reports, such as the Italian National Anti-Corruption Authority (ANAC). Firstly, not all public bodies have adopted **internal policies or guidelines** relating to the reporting procedure and the protection of whistleblowers.

In Italy and Ireland, their adoption is mandatory for all legal entities. Although it is not provided by law, in France many public bodies have established internal regulations regarding whistleblowing. The City of Paris has adopted a memorandum relating to the protection of whistleblowers, which was sent to all the directors, employees, unions of the City and received wide publicity, in particular as it was sent in an attachment to the paychecks.

In Estonia, there is no procedure at the level of the local and central governments that were interviewed; in Romania, only a few central and local public administrations have adopted a Regulation or Internal Order. In Slovenia, the adoption of internal policies aimed explicitly at whistleblowers seems to be an exception: among the public bodies interviewed, only (18) the University of Maribor has adopted "Guidelines on the procedure for reporting corruption and protecting the whistleblower in the University of Maribor" (19), with all employees being informed of those guidelines upon their recruitment.

Another element that emerges from the case studies is that a **person responsible for implementing the pol-**

icies is not always identified. Indeed, in Romania and Estonia, there is no clear structure of supervision or persons in charge of this at institutional level. On the other hand, in Ireland, public bodies identify an official or office that is responsible for reviewing the disclosure and it is easily accessible on the public body's website. In Italy, the Head of Prevention of Corruption and of Transparency is the person in charge of implementing the whistleblowing rules and has the task of receiving reports within each entity, as required by law. It is interesting to note that the Municipality of Milan has established the "Monitoring Body", composed of two persons external to the Municipality and one internal, which is in charge of receiving and verifying the reports. They do, however, report to the Head of Prevention of Corruption and of Transparency. This is an isolated case in the Italian context and it was established as a guarantee for whistleblowers (20).

In France, the administrations identify the ethical representative ("referent déontologue") and the alert-referent ("réfèrent-alerte"). In the City of Paris, the protection of whistleblowers is part of the "risk control, internal control and compliance policy" which covers cross-sectional risks, ethics and the prevention of corruption within the City. A City employee works as a project manager for the "risk management, internal control and compliance policy"; he receives the alerts and has implemented the City's entire anti-corruption programme, including the protection of whistleblowers. The refer-alert of the City of Paris does not assess the report alone, but sends it to an "Informal Committee", consisting of six people²¹, which decides jointly on its admissibility and on the actions to be taken. This Committee vaguely resembles the body established by the Municipality of Milan.

A recurring issue in case studies is that **specific reporting channels** are absent or, if they are established, they are not sufficiently developed at the level of public

(18) The other Slovenian administrations interviewed have adopted some Orders and Guidelines, although they do not specifically target the whistleblowing procedure. The Municipality of Maribor has adopted the "Order on measures to protect the dignity of employees", which protects employees from sexual and other harassment and bullying; it requires a Councillor for help and information to be named and describes the procedure. The Maribor University Medical Centre implements internal policies on the protection of information security, professional secrecy and on the protection of workers from bullying.

(19) The Guidelines offer the possibility of reporting to the integrity plan administrator aside from the Commission.

(20) For example, to discover the identity of the person who made the report and who provided their data, all three Body members must enter their passwords: this is a further guarantee of the confidentiality of the whistleblower's data.

(21) The Central Ethics Officer of the city of Paris (magistrate), the Director of Legal Affairs, the Head of the Private Affairs Department (Magistrate), the Director of the Summary Procedure, the Statutory Adviser (Magistrate) of the Mayor and the Mayor's Advisor on Human Resources.

bodies. This is the case in Romania and Estonia, where there are no well-established reporting channels. In France, even though it is mandatory to establish internal reporting channels, in May 2019, only 30% of large public bodies had fulfilled the obligation. This also applies in terms of how the reporting channels guarantee the confidentiality of whistleblowers. In Romania, while certain city halls provide no means of communication, some line ministries have complex reporting systems, from complaints sent by email and Romanian Post, to calls made to a specialist call centre system and the existence of a virtual button on the official website, known as e-petition.

In France, the Regional Council of Brittany will soon implement the “Signalement.net” platform. At the same time, all bodies interviewed in Italy have already adopted an **IT platform** for sending reports, able to protect the confidentiality of whistleblowers through cryptographic systems, although some of them have only done so in recent months. Some of the entities interviewed in Austria have also adopted a platform. Wiener Stadtwerke, the holding company that manages public infrastructure services in the City of Vienna, and the Federal Office of the Austrian Anti-Cartel Authority offer a reporting platform that facilitates anonymous communication with the relevant compliance officers of the holding company; the Financial Market Authority provides two portals, one for complaints by individual consumers and one for internal whistleblowing.

However, many of the administrations interviewed have **never received reports**. In Slovenia, none of the entities interviewed had received them. From the bodies interviewed in Italy, either they had not received any reports, or they had received very few, between 10 and 20 in the last year. In Ireland, many public bodies did not receive reports in 2018; others received between 10 and 20, except for the Health Service Executive which received 52. At the level of the Ministry of Home Affairs in Romania, about 200 complaints are received per year, while the cities of Zalau and Oradea did not receive reports under the whistleblowing legislation.

In France, the Prefecture of Brittany received around 50 reports in 2016 concerning questions about conflict of interests; in the City of Paris, the numbers were very low (8 in 2018 and 3 in 2019). However, the fact of receiving few reports is not necessarily a positive sign, especially in entities with a large number of employees. The absence of reports does not always infer a perfect system that has no illicit conduct to be reported (as,

on the other hand, is claimed by some entities), but, rather, it can be indicative of a lack of awareness of the channel or a lack of confidence in the reporting tool. Furthermore, there are no studies on the point. Conversely, authorities involved in assisting whistleblowers receive more reports (22), along with the external authorities. The Slovenian Commission for the Prevention of Corruption received 541 reports of suspected corruption in 2018, 61 of which were forwarded to the State Prosecutor’s Office for criminal proceedings, and the Italian National Anti-Corruption Authority received 783 reports in 2018. From these, 20 reports were sent to the Public Prosecutor’s Office and 19 were sent to the Court of Auditors.

The Austrian office of the special prosecutor for economic crime and corruption (WKStA) receives more than 1,100 reports per year, but around half of these are unsubstantiated. Out of more than 7,000 reports received in 5 years, only 29 led to a verdict in the criminal courts. In many administrations, **training activities** have been carried out to inform employees of the possibility of making reports. In Italy, anti-corruption training is mandatory in public institutions and appropriate - according to ANAC Guidelines - on whistleblowing. Some entities organise training meetings both in person, carried out by individual managers or directly by the Head of Prevention of Corruption and of Transparency, and online, through the institution’s intranet. These meetings often deal with the issue of anti-corruption and transparency, with a specific focus on whistleblowing. Training meetings are regularly scheduled for new employees. The Municipality of Milan sends information notes on the subject via email and with the pay packets, as an efficient way of increasing awareness of the whistleblowers regulation.

In Slovenia, there is almost no training on whistleblowing, and there is an expectation upon employees to familiarise themselves with the existing legislation and guidelines. The perception is that this is the domain of the Commission and it should, therefore, be its job to deal with it. However, it does not organise practical or educational seminars for State employees. Furthermore, the culture of the organisations seems to perceive whistleblowers as traitors, and they will not, therefore, provide training and education on how reports can be made. In Romania, there is no clear pattern in this regard for the city halls and line ministries. The majority of employees have not participated in such training sessions.

(22) The French Defender of Rights received 195 reports in the last two and a half years, and the Maison des Lanceurs d’Alerte was contacted by 54 people. The Italian Anti-Corruption Alert (ALAC), which is part of the international system of Advocacy and Legal Advice Centres, the assistance centres for whistleblowers designed by Transparency International, from 2014 to 2018, received 618 reports, of which 152 in the year 2018.

In the City of Paris, e-learning videos on whistleblower protection are being prepared and will be published internally; it has also started drafting a new Code of Ethics and created a page dedicated to ethics on the intranet; there is also a simplified ethical charter for agents who cannot read.

No **systematic analysis and evaluation of whistleblowing** has ever been undertaken for the public sector in Austria.

In Estonia, as well as in France, there is no public policy or monitoring strategy of the number and outcomes of the cases, which often remain unknown (23).

On the contrary, in Ireland, public bodies are required to publish information on the number of reports received and the action taken annually. In Italy, all administrations publish annually a report containing indications of the measures taken on the reports received. Furthermore, starting from April 2016, the Italian National Anti-Corruption Authority decided to commence periodic evaluation activity of reports received directly through its platform and those collected from a sample of about 40 public entities, in order to monitor the state of application of the regulation of the whistleblowing in Italy, to highlight its critical issues and to understand the effectiveness of the institute as a tool for preventing corruption. So far, four sets of monitoring have been carried out.

The Slovenian Commission also issues yearly reports on its work. Some Romanian administrations have at least performed annual external monitoring of the implementation of the National Anti-Corruption Strategy for 2016-2020, which includes the whistleblowing topic. However, in no country there is an automated collection of the number of reports received from all public administrations.

The **overall perception** in Slovenia, Romania, and Estonia is that there is no effective implementation of the legislation, and that remains a stigma that whistleblower is someone who is a traitor to the organisation. Therefore, there is no strong interest in whistleblower protection. In Slovenia, whistleblowing legislation is generally seen as reliable, since the Commission safeguards the informer's anonymity; however, the law is also perceived as inefficient, as people believe that even if they report irregularities to the Commission, nothing will happen. Citizens still see the media as one of the most convenient and trustworthy means of uncovering irregularities in society. In Austria, informers tend to turn to journalists either because formal internal complaint mechanisms have proven to be useless

or because they are afraid of retaliation if they address their grievances within their organisation.

In Ireland, the main concerns relate to the ability of whistleblowers to make concurrent protected disclosures to numerous bodies or persons; there is also confusion over specific sectors having two separate statutory protected disclosure regimes. The French Defender had pointed out the multitude of whistleblower protective regimes as a major difficulty. The existence of a triple reporting channel has been qualified as a "necessary evil" by the Defender of Human Rights.

Conversely, the perception of implementation is quite positive in Italy, Ireland and France. The relevant French law is perceived as being reliable and responsive; guarantees are in place for any whistleblower who fulfils the conditions laid down by the law. However, there are still difficulties, particularly regarding the possibility of actually protecting anonymity, the lack of sanctions due to the absence of an internal alert system, as well as the lack of protection for legal persons. Furthermore, there is a need to promote the procedure and the reporting tool, through an awarenessraising campaign.

In Italy, the Anti-Corruption Authority, in its last report, identified a "qualitative" increase in the reports sent and greater confidence in the institution. However, there are some critical issues concerning the application of the institution: in particular, the improper use of alerts for matters completely unrelated to the anti-corruption authority's competence and the difficulty of whistleblower protection taking root in the workplaces, especially small ones.

Critical issues quite common to all the compared countries are the widespread lack or inadequacy of clear internal procedures for the protection of whistleblowers and reporting channels, as well as the uncertainty created by their multitude.

Finally, not all countries which do not yet have a specific whistleblower regulation are **planning to adopt it** (for example, in Estonia, this is not a priority of Parliament, and local and central governments are not incentivised to create and enforce internal whistleblowing procedures).

(23) The only official records and data known are registered by the Central Criminal Police, where corruption-related cases reported through a hotline are countered, but it remains unknown how many originated from whistleblowers.



Annex 1 - - Whistleblowing

**Summary of the legal provisions
in the Member States**

DEFINITION

SOFT LAW

REFERENCE LEGISLATION

ITALY

Law 190/2012 (anti-corruption law) introduced the first provision to protect public sector whistleblowers (art. 54 bis in Leg. Decree 165/2001); the law was amended by Leg. Decree 90/2014, which included the National Anti-Corruption Authority as the recipient of reports of its employees and also of employees of other administrations according to art. 54 bis.

Law 179/2017 (standalone legislation on whistleblowing both in the private and public sectors) amended art. 54bis and introduced specific protection in the private sector, adding a new paragraph in art. 6 of Leg. Decree 231/2001. The aim is to protect the whistleblower and not to discover corruption.

ANAC Resolution 6/2015 "Guidelines on the protection of WB"; **ANAC Resolution 1033/2018** (procedure for administrative pecuniary sanctions); **Confindustria explanatory note** 2018.

Whistleblowers are **only implicitly defined by Law 179/2017**.

PUBLIC SECTOR: Civil servants who, to protect the integrity of the public administration, report to the person responsible for the prevention of corruption and transparency, to the National Anti-Corruption Authority (ANAC), to the ordinary judicial authority or to the Court of Auditors unlawful conduct (crimes against the public administration and abuse of law in administrative activity) of which they have learned in the context of their work-related activities.

PRIVATE SECTOR: Top managers or employees of organisations that have established organisation and management models (known as "231 models") who present, in protection of the entity's integrity, detailed reports of unlawful conduct relevant according to Legislative Decree no. 231/2001 and based upon specific and consistent evidence, or violations of the entity's organisation and management model, of which they have become aware due to the functions performed.

Public and private sector (which established organisation and management models, known as "231 models")

IRELAND

Standalone legislation dedicated to protecting whistleblowers both in the private and public sector: the **Protected Disclosures Act (PDA) 2014**. This is part of a wider set of legislative government reforms which aim to improve innovation and transparency in all areas of the public sector.

Additional protections for whistleblowers are provided by a range of sectoral legislation, including the **Health Act 2004, as amended by the Health Act 2007** (for health sector employees and members of the public who report any wrongdoings in the healthcare sector); the **Protection for Persons Reporting Child Abuse Act 1998** (for people reporting potential abuse of children from civil liability and victimisation); the **Charities Act 2009** (for people who report alleged breaches of the legislation to the Charities Regulatory Authority).

A soft-law guidance document supports the effective implementation of the Protected Disclosures Act. The Guidance when establishing and reviewing protected disclosure procedures. **The Guidance document** offers support to public bodies in establishing suitable procedures for making and dealing with employees' complaints of wrongdoings.

Whistleblowers are not defined by law, but protected disclosure is.

A WB is a worker who discloses information which, in his reasonable belief, reveals one or more relevant wrongdoings which came to his attention in connection with his employment.

The PDA refers to the (protected) disclosure of the relevant wrongdoing, which covers an offence, a breach of a legal obligation, other than one arising under the worker's contract of employment or other contract whereby the worker undertakes to do or perform personally any work or services. Such wrongdoings include: a miscarriage of justice, an endangerment of health and safety, damage to the environment, a misuse of public funds, an oppressive, discriminatory or grossly negligent act or omission by a public body or one which constitutes gross mismanagement, with information inferring that the wrongdoing has been, is being or is likely to be concealed or destroyed.

Public and private sector

ROMANIA

Standalone legislation on whistleblowing: Law no. 571/2004 on the protection of personnel in public authorities, public institutions and other units reporting violations of the law.

There are no designated soft laws on WB. There are best practice guidelines - but usually in private companies. There are, however, Codes of Ethics and other legal forms that may apply.

Whistleblowers are defined by law as well as "public interest whistleblowing". They are the persons who, in good faith, report any act that involves a violation of the law, professional ethics or the principles of good administration, efficiency, effectiveness, economy and transparency; corruption, fraud, nepotism and discriminating treatment.

Public sector (private sector on voluntary basis)

CATEGORY OF SUBJECTS

OBJECTIVE FIELD

ITALY

PUBLIC SECTOR

(art. 1 Law 179/2017): Public administrations, public economic entities and private law entities under public control in accordance with art. 2359 of the Civil Code.

PRIVATE SECTOR

(art. 2 Law 179/2017): Corporate entities and associations, including those which are not corporate bodies, that have adopted an organisation model for crime prevention according to Decree no. 231/2001 on corporate criminal liability (the 231 Model Decree).

PUBLIC SECTOR: Civil servants, persons under public law, employees of a public economic entity or of a private entity under public control, workers and collaborators of companies that supply goods or services and carry out works in favour of the public administration.

PRIVATE SECTOR: Persons serving as representatives or holding administrative or senior executive positions within the body or an organisational unit of same, and being financially and functionally independent; persons exercising management and control of same; persons subject to their direction or supervision.

IRELAND

The Protected Disclosure Act applies to all public bodies: a Department of State, a local authority, any other entity established by or under any enactment (other than the Companies Act), statutory instrument or charter or any scheme administered by a Minister of the Government, a company (within the meaning of the Companies Acts) a majority of the shares in which are held by or on behalf of a Minister of the Government, a subsidiary (within the meaning of the Companies Acts) of such a company, an entity established or appointed by the Government or a Minister of the Government, any entity that is directly or indirectly controlled by an entity within any of the latter, an entity on which any functions are conferred by or under any enactment (other than the Companies Acts), statutory instrument or charter, or an institution of higher education in receipt of public funding.

All workers from the private and public sectors are covered (broad definition of workers: current and former employees; contractors and consultants; agency workers; trainees; temporary workers; interns and those on work experience). The legislation specifically includes: policemen from the national police services; freelancers, contractors, etc. Legal advisors are excluded from the protection of the law in relation to issues that attract legal professional privilege.

The Act does not apply to volunteer workers; public bodies at their discretion may investigate reports of wrongdoing from volunteers

ROMANIA

Public authorities and institutions of the central public administration, the local public administration, the apparatus of Parliament, the working apparatus of the Presidential Administration, the working apparatus of the Government, autonomous administrative authorities, public institutions of culture, education, health and social assistance, national companies, autonomous bodies of national and local interest, as well as national state-owned companies. The law shall also apply to persons appointed to scientific and consultative councils, specialist committees and other collegiate bodies organised in the structure or with public authorities or institutions.

Civil servants; contract staff, according to the Labour Code; personnel working under special statutes, doctors, teachers, police officers, court clerks, priests, etc.

Third parties related contracts, public procurement procedures targeting private companies might be subject to public warnings if links with the public servants and categories of subjects targeted by the law are suspected of wrongdoings.

REPORTING CHANNELS

ITALY

PUBLIC SECTOR:

The legislation **require organisations to implement specific reporting channels** and identifies recipients of disclosed information: whistleblowers can report to the person within the public administration at which the whistleblower works who is **in charge of the prevention of corruption and transparency or the National Anti-Corruption Authority** or complain to the **ordinary judicial authority** or the **Court of Auditors**.

PRIVATE SECTOR:

Companies falling within the scope of Legislative Decree 231/2001 are **required to implement one or more internal reporting channels** allowing, in protection of the entity's integrity, for detailed reports of unlawful conduct to be made which are relevant for the purposes of this decree and based on specific and consistent evidence, or violations of the entity's Organisation and Management Model.

At least one alternative reporting channel suitable for guaranteeing, by electronic means, the confidentiality of the whistleblower's identity must be set up. The Confindustria explanatory note provides some indications on the recipients of the reports, which must be identified by the company.

IRELAND

Public bodies must implement internal disclosing mechanisms. Companies are not required to do so. Public bodies are required to provide written information setting out the procedures to all their employees.

A tiered reporting system: 1) workers are encouraged to follow the reporting system of the public body; 2) the worker is required to disclose the alleged wrongdoing to a '**prescribed person**', this is normally the **regulator**, or supervisory body or local authority. Workers may disclose the wrongdoing to a regulator in circumstances where they believe that they cannot disclose or do not wish, for other reasons, to disclose the alleged wrongdoing to their employer; 3) public disclosure: the suspected wrongdoing is disclosed to the general public, generally through a media source. Specific disclosures can be made to:

- **the employer/responsible person;**
- **the prescribed person;**
- **the minister;**
- **the legal adviser or Trade Union Official;**
- **other persons, such as a Member of Parliament or a journalist.**

ROMANIA

There is no **obligation to set up reporting channels**.

The report of violations of the law or of ethical and professional rules may be made, alternatively or cumulatively, to a wide range of internal and external channels: **the hierarchical superior** of the person who has breached the legal provisions; **the head of the public authority, the public institution or budgetary unit** of the person who violated the legal provisions; **disciplinary commissions** or other similar bodies within the public authority, the public institution to which the person who violated the law belongs; **judicial bodies; bodies responsible for the establishment and investigation of conflicts of interest and incompatibilities; parliamentary committees; media; professional, trade union or employers' organisations; non-governmental organisations.**

A specific and detailed procedure for handling whistleblower complaints has had to be issued by each ministry in Romania, but a significant majority retained the possibility of the complaint being issued alternatively or cumulatively to any of the above-mentioned channels.

CONFIDENTIALITY

ITALY

The process of following up reports must guarantee the **confidentiality** of the whistleblower's identity upon receipt of the report and in any subsequent phase, including in relationships with third parties.

PUBLIC SECTOR: In criminal proceedings, the identity of the whistleblower is kept confidential until the end of the preliminary investigation. In proceedings before the Court of Auditors, the identity cannot be disclosed until the conclusion of the evidentiary phase. In disciplinary proceedings, the identity cannot be disclosed when the disciplinary complaint is based on distinct and additional verifications with respect to the report, even if consequential to it. If the complaint is based, in whole or part, on the report, and the knowledge of the whistleblower's identity is indispensable for the defendant's defence, the report will be used for the purposes of the disciplinary proceedings only with the whistleblower's consent to the disclosure of his identity.

Data concerning whistleblowing may only be accessed in the presence of specific security measures or subject to authorisation from the Data Protection Supervisor.

PRIVATE SECTOR: The reporting channels, including the alternative channel via IT methods, must guarantee the **confidentiality** of the whistleblower's identity during the activities of managing the report.

The legal framework does not accept nor prohibit **anonymous** disclosures

IRELAND

Confidentiality is guaranteed.

The Act sets out protection measures for a person to whom a protected disclosure is made, and any person to whom a protected disclosure is referred in the performance of that person's duties. The person responsible for receiving and investigating alleged wrongdoings shall not disclose to another person any information that might identify the person making the protected disclosure.

Exceptions: in circumstances where failing to disclose the worker's name would hinder the effective investigation of the relevant wrongdoing; if the non-disclosure would be a serious risk to the security of the State, public health, public safety or the environment; or if the disclosure would result in the prevention of crime or prosecution of a criminal offence.

The legal framework does not accept nor prohibit **anonymous** disclosures

ROMANIA

Confidentiality under the WB law is granted only if

the person reported through whistleblowing is the hierarchical superior or has control, inspection and evaluation powers over the whistleblower. In this case, the discipline commission or another similar body will guarantee the whistleblower's protection, concealing his identity.

If reports concern corruption, forms assimilated with corruption, abuse while on duty and similar offences, crime against the financial interests of the Union, or forgery, there is the benefit of ex officio confidentiality, namely, the identity of the WB must be protected from the very start. (Article 8 of the Law on WB states that all provisions are taken from the Law on witness protection when reporting on the above-mentioned situations).

A law enforcement procedure for whistleblowing has been prepared by the National Integrity Agency and is generally valid for all public institutions in Romania that fall under the law. The procedure regulates measures for the protection of persons who have reported violations of law in public institutions and other units reporting violations of the law.

The legal framework does not accept nor prohibit **anonymous** disclosures

PROTECTION

ITALY

PUBLIC SECTOR:

A WB may not be punished, demoted, dismissed, transferred, or subjected to another organisational measure having direct or indirect adverse consequences on the working conditions as a result of the report. Any discriminatory or retaliatory acts that are taken are **invalid**. Any whistleblower who is dismissed because of the report is **reinstated** into the workplace.

The adoption of measures against the whistleblower that are deemed to be retaliation shall be communicated to ANAC by the interested party or by the most representative unions within the respective administration. ANAC shall inform the Department of Public Administration of the Presidency of the Council of Ministers or other supervisory or disciplinary bodies in order that they may implement any activities or measures within the scope of their responsibility. Exceptions: cases in which, including by means of a first instance judgment, the WB is found criminally liable for the crime of slander or defamation or in any case for crimes committed by means of the complaint to the ordinary or accounting judicial authority, or is found civilly liable for the same reason, in cases of malicious conduct or gross negligence.

PRIVATE SECTOR:

Prohibition on direct or indirect retaliatory or discriminatory acts for reasons directly or indirectly related to the report. **Invalidity** of any retaliatory or discriminatory measure adopted.

The adoption of discriminatory measures may be reported by the WB or by the trade union organisation indicated by the same to the National Employment Inspectorate, in order for it to take the measures for which it is responsible. Exceptions: those who make fraudulent or grossly negligent reports that prove to be unfounded (disciplinary sanctions are applied to them).

IRELAND

Broad protection against retaliation. The protection extends to any third party and job seekers who have suffered detrimental treatment due to disclosing alleged wrongdoings.

In cases where a worker has been dismissed for an alleged disclosure, the worker may apply to the Circuit Court, which may order the re-engagement, reinstatement, or the continuation of the worker's contract. Employees can be awarded a maximum of five years' remuneration for dismissal on grounds of having made such a protected disclosure.

Civil action leading to uncapped compensation can be brought against anyone implementing detrimental treatment due to a protected disclosure or due to loss caused by a failure to protect a discloser's identity.

The **interim** relief procedure is available to the employee.

All disclosures are assumed to be protected disclosures, until the employer proves the contrary.

ROMANIA

There is no specific protection mechanism for whistleblowers.

However, whistleblowers can use alternative laws to seek remedies, such as the Labour Law.

The protection of whistleblowers can be guaranteed in two areas: administrative and legal.

Before the Disciplinary Committee or other similar bodies, public-interest whistleblowers benefit from the presumption of good faith, unless otherwise proven. At the request a whistleblower under an administrative disciplinary procedure, the disciplinary commissions or other notified bodies have the obligation to invite the press and a representative of the trade union or professional association. The announcement is made by means of a communication on the website of the public authority at least 3 working days before the hearing, under the sanction of nullity of the report and of the disciplinary sanction applied. If the accused person is hierarchically superior and/or has, directly or indirectly, powers of control, inspection and evaluation of the whistleblower, the discipline commission or another similar body will ensure the protection of the whistleblower, concealing his identity. In the case of warnings in the public interest that signal violations of the law, the provisions of Law no. 682/2002 on the protection of witnesses should be applied.

According to national judicial practice, the administrative litigation or labour panels of the courts have jurisdiction in such cases:

- If the court finds that the whistleblower was prosecuted for the warning, it will apply the sanction of absolute **nullity** – including in the case of abusive dismissal or disciplinary sanction.

- If the court finds that the sanctioned person is a whistleblower, it will automatically check the manner in which the sanction was given, for what reason and when (before or after the warning) and whether or not it is an indirect sanction and/or is disproportionate.

BURDEN OF PROOF

SANCTIONS

ITALY

PUBLIC:

ANAC may impose administrative pecuniary sanctions considering the size of the administration or entity to which the report refers in those cases: if it is determined, in the context of the preliminary investigation conducted by ANAC, that discriminatory measures have been adopted; if it is found that procedures are lacking for making and managing reports, or that the procedures do not comply with what is set forth in the law; if it is established that the responsible party has failed to check and analyse the reports received; if it is ascertained that the person responsible for verifying and analysing the reports received has not performed his duty.

PRIVATE:

Disciplinary sanctions for those who violate the measures protecting the whistleblower and for those who make fraudulent or grossly negligent reports that prove to be unfounded.

PUBLIC:

Reversal - It is the responsibility of the public administrations or the public economic entity or the private-law entities under public control to prove that the discriminatory or retaliatory measures taken against the whistleblower are motivated by reasons unrelated to the report.

PRIVATE:

Reversal - It is the employer's responsibility to demonstrate that the retaliatory measures are based on reasons unrelated to the report.

IRELAND

If trade secrets are disclosed, if the employee cannot prove that the information was disclosed in the general public interest, the employee may be liable for a criminal offence. Such an offence is punishable by a fine of up to €50,000 and up to three years in prison.

The PDA specifically includes a provision which outlines that a protected disclosure will not constitute a criminal action. Sanctions are applicable for trade secret breaches and in certain pieces of sector-based legislation.

No reversal of burden of proof: it is placed on the employee.

Section 5(8) of the Protected Disclosures Act provides that a disclosure is presumed to be a protected disclosure. In unfair dismissal claims, the burden of proof is placed on the employer to prove that the dismissal was fair and justified. In penalisation and tort claims, the burden of proof is placed on the employee.

ROMANIA

The law **does not highlight sanctions against retaliation, discrimination and bullying.**

Reversed: the law provides that the burden of proof of bad faith is on the public institution and not on the whistleblower. There is no clear practice or explicit rules on the evidence that a whistleblower should bring in supporting his accusations. However, the lack of relevant elements in support of the referral can make it difficult for the public institution to take corrective measures.

ORGANISATIONAL MEASURES

ITALY

ANAC coordinates the implementation of strategies to prevent and detect corruption and illegal acts in public administration, developed at national and international level. ANAC adopts the three-year **National Anti-Corruption Plan (PNA)** which identifies the main corruption risks, remedies and enforcement measures; it is the model for the **three-year anti-corruption plans of the individual administrations (PTPC)** or the anti-corruption measures supplementing those adopted according to Legislative Decree 231/2001.

The **Head of Corruption and Transparency Prevention (RPCT)** is identified in every public administration. He/she verifies the effective implementation of the plan and its suitability. The Independent Evaluation Body, in the private sector, verifies that the three-year plans for preventing corruption are coherent with the objectives established in the strategic-management planning documents and that, when measuring and evaluating performances, the objectives connected to anti-corruption and transparency are taken into account. It reports to ANAC on the implementation status of the measures to prevent corruption and to increase transparency.

The task of supervising the functioning of and compliance with the 231 models and ensuring that they are updated is entrusted to a body of the entity with independent powers of initiative and control, the **Supervisory Body (OdV)**.

IRELAND

There is no overarching authority appointed to receive and investigate disclosures made by whistleblowers.

Central government departments and local authorities have introduced policies for protected disclosures which were developed in line with the PDA. The policies commonly set out how staff members can make a disclosure; what happens when disclosures are made; and what the department does to protect staff members. The policies implemented strongly reflect the Protected Disclosures Act (PDA) and the supporting soft law documents.

Section 22 of the PDA requires public bodies to transparently and openly publish information on received protected disclosures on an annual basis.

The implementation of the Act was reviewed by the Department of Public Expenditure and Reform in 2018 and a number of measures were agreed to ease concerns expressed by public bodies, interest groups and members of the public.

ROMANIA

Only some central and local public administration entities in Romania have adopted detailed and transparent procedures regarding the functioning and protection of whistleblowers. Their functioning is the subject of one of the most important and coherent national public policies, the National Anti-Corruption Strategy.

The implementation of the whistleblowers policy in public institutions in Romania is the subject of the **National Anticorruption Strategy (SNA)** followed by extended evaluation and monitoring reports, both for the period 2012-2015 and beyond 2020.

Moreover, these monitoring reports on the implementation of the SNA are subject to external auditing and are sent to Brussels as part of the special assessment by the European Commission which has imposed on Romania and Bulgaria after accession (2007) the so-called Justice Cooperation and Verification Mechanism.

The evaluation missions aim to document the way in which central and local public administration institutions apply the provisions of the law both from the point of view of notifications, warnings management and whistleblowers' protection.

FRANCE

Law no. 2015-1690 of 9 December 2016 on the new competence of the Human Rights Defender (guidance and protection of whistleblowers).

Law no. 2016-1691 of 9 December 2016 (Sapin II Law) creates a general status of whistleblower. The law was not specifically adopted to protect whistleblowers and aims to cover several aspects, such as the fight against corruption, the breaches of probity, modernization of economic life. However, depending on the employment regime of the public official or the sector involved in the report, the Sapin II Law must be interpreted in parallel with other laws still in force, which makes the legal landscape complex.

For the public official:

- civil servants, probationary civil servants, contractual agents under public law, occasional civil servants --> **Law of 13 July 1983**; in the case of alert only for facts likely to be qualified as a **conflict of interest** in the public sector > **Law of 6 December 2013** ("loi déontologie"); the relationship between the alerting procedures provided for these two texts has not been clarified.

- private law employees of the EPICs, private law agents employed by public entities > **the Labour Code** (freedom of expression is more limited for public officials than for private sector employees)

- military, intelligence officer > **the Defence Code** (military personnel); **Law no. 2015-912 of 24 July 2015** (intelligence service officials)

- **Article 40 Criminal Procedure Code**: requires any constituted authority, whether public official or civil servant, who acquires, in the performance of his duties, knowledge of a crime or offence to give notice thereof without delay to the public prosecutor and to transmit to that judge all information, minutes and acts relating thereto. The relationship between Art. 40 CPC and the Sapin II Law provisions on whistleblowing is ambiguous.

Other sector-based legislation in force:

- Banking and insurance > **Monetary and Financial Code** (the alert in this field has to be reported to the financial market's authority or the prudential supervision and resolution authority)

- Tax fraud (public and private sector) > **Law No. 2013-1117 of 6 December 2013** (not repealed by Sapin II Law; relationship not clarified)

- **Law no. 2013-316 of 16 April 2013** on the independence of **health and environmental** expertise and the protection of whistleblowers maintains the existence of a national commission on ethics and alerts in public health and environment (CNDASPE).

Law no. 2015-1690 of 9 December 2016 on the new competence of the Human Rights Defender (guidance and protection of whistleblowers).

Implementation instruments:

Decree no. 2017-564 of 19 April 2017 on procedures for collecting alerts; implemented consequently by ministerial.

The **"CNIL-Standards relating to processing of personal data set up for the implementation of the alert mechanisms requirements in the professional context"**, adopted by the CNIL, French Data Protection Authority on 18 July 2019, published on the 10 December 2019.

SLOVENIA

There are no specific regulations regarding Whistleblowers. Slovenia adopted or amended the following legislation in order to fight corruption and to protect whistleblowers:

- **the Integrity and Prevention of Corruption Act** (2010, amended twice in 2011): provides extensive protection of any whistleblower who discloses information in good faith both in the public and private sector and establishes the Commission on Prevention of Corruption which can receive the reports.

- **the Civil Servants Act** establishes a principle of non-harassment which prohibits any kind of retaliatory measures.

- **the Employment Relationships Act** prohibits sexual and other harassment and bullying in the workplace and protects the worker's dignity. It states that the contract cannot be terminated at the employer's discretion.

- **the Mass Media Act** states that editorial personnel, journalists and the authors/creators of articles are not obliged to reveal the sources of their information, except when stipulated by criminal legislation.

- **the Access to Public Information Act**
- **the Criminal Procedure Act** potentially forces the journalist to reveal his source. The 2019 amendment recognises reporters and journal editors as privileged witnesses who can refuse to testify about their sources except when such testimony is necessary for the prosecution of a crime with a penalty of over three years of imprisonment.

- **the Witness Protection Act** can be applied to whistleblowers or their family members, even if not a witness.

- **the Criminal Code**: whistleblowing can be considered a criminal offence, such as unjustified disclosure of professional secrecy, disclosure and unjustified acquisition of business secrecy, abuse of internal information and disclosure of classified information.

AUSTRIA

There are no specific regulations regarding Whistleblowers. There are reporting channels provided for whistleblowing but no law that actually protects whistleblowers. The only way a WB can be protected is via the crown-witness status.

Fragmented legislation exists concerning whistleblowing in the public sector and the financial sector, or concerning corruption or environmentally harmful substances. The relevant laws are **the Public Service Law, the Civil Servants Act, the Private Employees Act, the Banking Act, the Environmental Information Act, the Austrian Financial Market Authority, the Labour and Constitution Act, the Data Protection Act and the Civil Code (ABGB), and the Criminal Procedure.**

ESTONIA

No specific regulations on whistleblowing; there are a few normative acts indirectly targeting whistleblowers.

The Anti-Corruption Act (ACA), which applies to public officials who report corruption regarding other public officials, is the piece of legislation having most relevance to WB. It prohibits the concealment of corrupt acts and grants WB confidentiality and protection from retaliation unless they knowingly provide incorrect information. Other acts could apply to whistleblowers, while not targeting them specifically: **the Employment Contract Act** prohibits unfair dismissal and the illicit reduction of employment conditions (but it is unclear whether protection on whistleblowing could be invoked); **the Equal Treatment Act** prohibits any kind of discrimination and states the official's obligation to prove that, if the person who disclosed corruption was subjected to unfair treatment, that treatment was not motivated by the disclosure; **the Civil Service Act** provides employees with the right to claim compensation from their employer if they have been punished or illegally dismissed from office; **the Penal Code; the Public Service Act (PSA); the Witness Protection Act; and the Administrative Procedure Act (APA).**

On the private sector, the law states that "the principles provided for in this section also apply in the case of notification of an incident of corruption occurred outside the performance of public duties" but it is unclear how it applies and is enforced.

There is no specific form of protection on WB in the private sector, other than employment contracts or general acts against retaliation.

	FRANCE	SLOVENIA	AUSTRIA	ESTONIA
SOFT LAW	<p>The circular of 31 January 2018 of the Ministry of Justice for the harmonious application of the Sapin II Law provisions of criminal law. Many decentralised administrations, including local authorities, adopted the necessary soft law instruments for implementing Decree no. 2017-564 (set up procedures for collecting alerts made by whistleblowers) (administrative notices, circulars).</p> <p>French Anticorruption Agency (AFA) Guidelines to help private and public sector entities prevent and detect corruption, influence peddling, extortion by public officials, unlawful taking of interest, misappropriation of public funds and favouritism, published in the JORF n°0295, 22 December 2017.</p>	<p>There are no soft laws in Slovenia, with the exception of the Code of Ethics of Slovene Public Servants, which is more a moral code than a legally binding document. Article 12 of the Code imposes a requirement on administrative bodies to ensure that public servants who report violations of the code or other criminal offences shall not suffer any kind of damage.</p> <p>The code states that administrative bodies must ensure that public servants, who report in good faith any kind of irregularity or a criminal offence, are protected from threats and similar acts which endanger the performance of public tasks.</p>	<p>No soft law. There is no central supervisory authority responsible for WB or transparency. The public accounts office (Rechnungshof) has very limited rights to audit public bodies or political parties. It may give recommendations but they are not binding.</p>	<p>There are general acts that relate to whistleblowing, but no specific guidelines on whistleblowing. The main issue is the missing legislation. The main piece of legislation that relates to WB stems from ACA, which is an anti-corruption act, not a WB act.</p>
DEFINITION	<p>Whistleblowers are defined by law as natural persons who disclose or report, in a disinterested and good-faith manner, a crime or misdemeanour, a serious and manifest breach of an international commitment duly ratified or approved by France, a unilateral act of an international organisation taken on the basis of such an undertaking, the law or the regulations, or a serious threat or prejudice to the general interest, of which they have personal knowledge. Exceptions: information covered by national defence secrecy, medical secrecy, professional secrecy of lawyers.</p>	<p>Whistleblowers are only implicitly defined by law as any person who may report instances of corruption in a state body, local community, a holder of a public authority or other legal persons governed by public or private law, or practice by a natural person which he believes contains elements of corruption, to the Commission or to any other competent body.</p>	<p>No specific legal definition. Whistleblowers are only referenced in the Securities/Stock Exchange Act and in corporate law as persons who report secret information from their professional environment that should be available for public scrutiny or discussion. These may be various acts of bad management, crimes or threats of which the whistleblowers are aware, often through their position or activity.</p>	<p>Not defined by law. Whistleblowers are public officials who report corruption regarding other public officials, in the context of performing public duties and even outside that context.</p>

OBJECTIVE FIELD

CATEGORY OF SUBJECTS

FRANCE

Public and private sectors

Both **private and public sectors** are covered by the provisions of the Sapin II Law. The duty to put in place a whistleblowing **internal channel** applies **only** to:

- legal entities under private law with at least 50 employees;
- legal entity under public law with at least 50 employees and agents;
- state administrations;
- departments; regions; municipalities with more than 10,000 inhabitants; establishment of inter-municipal cooperation with its own tax system for a municipality of more than 10,000 inhabitants.

Every individual satisfying the conditions of the Sapin II Law (good faith, disinterested reporting, respect of **reporting channels**) is covered by the definition of whistleblower. However, by interpretation of the Constitutional Court, the duty to respect the reporting channels applies to alerts occurring in **the working field**. As a consequence, **the following workers must respect the reporting channels** in order to benefit from the Sapin II protection: public officials, holders or contract staff belonging to the structure; trainees and apprentices; external and occasional collaborators of the administration, bodies or communities concerned, such as a voluntary user of the public service who actually participates in its execution, either as a reinforcement or by substituting a public official; local law officials employed by the State's public administrations and agencies abroad. No authority is appointed to deliver the status of whistleblower (**self-assessment regime**). The person accused by the alert has the right to the protection of his/her confidentiality (art. 9-I Sapin II Law).

SLOVENIA

Public and private sectors

The scope of protection is very broad and extends not only **to public companies and state administrations** but also to **private companies**. Any person may report instances of corruption in a state body, local community, by a holder of a public authority or other legal persons governed by public or private law, or practice by a natural person which they believe contains elements of corruption, to the Commission or to any other competent body.

An **official** can report any kind of unethical or illegal conduct in their sphere of work. The Integrity and Prevention of Corruption Act extends its protection to **anyone** who reports any kind of corruptive behaviour. Therefore, the protection is applied to employees, consultants, suppliers of the public administration and all others. Protection of whistleblowers is also extended in the Civil Servants Act and the Employment Relationship Act.

AUSTRIA

Public and private sector

PUBLIC SECTOR: A number of public authorities provide either contact details or ICT enabled reporting systems for whistle-blowers targeting specific areas (external whistleblowing): **BMI** (Austrian Ministry of the Interior) focuses on reports of corruption and malpractice (in office) and it heads the subdivisions BKA, BVT and BAK; **WKStA** - Economic and Corruption Prosecutor, which provides a full reporting system with emphasis on corruption, economic criminal matters, social benefit fraud, balance and capital market offences and money laundering; **FMA** - Financial Market Supervision Authority in Austria, uses the same reporting system as the WKStA and deals with violations of regulatory compliance by companies; **BWB** - Federal Competition Authority, specialises in violations of antitrust and cases of abuse of market power. **PRIVATE SECTOR:** Individual banks, large enterprises and multinational companies have started to implement internal whistleblowing systems to fulfil compliance procedures and good practice recommendations.

Depending on the legislation, protection is granted to:

- **civil servants;**
- **financial sector employees** reporting on insider trading, market manipulation, money laundering and terrorist financing;
- **all citizens** reporting corruption via an online platform; and
- **employees in the private sector** reporting on environmentally harmful substances.

ESTONIA

Public sector

Estonia has no specific designated piece of legislation on whistleblowing. It has, however, a few normative acts that apply to public authorities and institutions of the central and local public administrations, apparatus of the Parliament, working apparatus of the Presidential Administration, working apparatus of the Government, autonomous administrative authorities, public institutions of culture, education and health, national state-owned companies and other public sector representatives.

Estonia grants protection to public sector whistleblowers who report on corruption, including **employees, consultants, suppliers, temporary and former employees**.

Moreover, the ACA also applies **to public officials** - persons holding an official position for the performance of public duties regardless of whether they perform their duties permanently or temporarily, for payment or not for payment, while in service or engaged in freelancing or under a contract, by election or appointment.

REPORTING CHANNELS

FRANCE

Legal obligation to set up reporting channels.

Alert channels in the working context. The ordinary reporting procedure has three reporting levels (an alert must be reported in stages): (1) (internal) to the **employer, the direct or indirect superior or the designated “alert referent”**; the duty to set up an internal channel applies to “large organisations”. There is **no regulatory or legislative basis for determining the precise procedure to be followed for the internal alert of small bodies; (2) (external) to the competent judicial or administrative authority or to professional bodies** (if there is no reaction to the internal alert after a reasonable time limit (not defined by law, or by order; defined by few implementation instruments); (3) **public disclosure**, after three months if there is no reaction from the previous channels, by informing **elected representatives, members of civil society and revealing to the media**.

The **emergency procedure** in cases of serious and imminent danger or in the presence of a risk of irreversible damage > the alert may be brought directly to the attention of the competent external authority. It can be publicly disclosed. The Legislator has not clarified if this is an alternative (“or”) or a cumulative faculty (“and”). “**External authorities**” are not specifically defined by law. The following **may be considered** as external authorities: **the judicial and administrative authorities, professional orders, the High Authority for the Transparency of Public Life, the French Anti-Corruption Agency; the Human Rights Defender**, who will refer the whistleblower to the appropriate body to receive the report, and whom investigative competences could help to establish the person’s rights (mediation to avoid litigation or support to the judge’s work in case of litigation); the **National Commission on Ethics and Health and Environment Alerts; the Prudential Supervisory and Resolution Authority; the Financial Markets Authority and others depending on the sector**.

Alert outside the working context: unclear; Human Rights Defenders are appointed to give guidance (NGOs such as Transparency International France and most recently the **“House for Whistleblowers”** (Maison des Lanceurs d’Alerte) can also give advice. The House also offers technical support in securely sharing information and moral and psychological support, if required. Moreover, in some cases, it can provide financial support from the donation fund.

SLOVENIA

The main channel for reporting corruption is a state institution - **Commission for the Prevention of Corruption** - which has the sole purpose of preventing and fighting corruption. Corruption can also be reported to the **police**.

At the whistleblower’s request, the Commission and other competent authorities shall notify the whistleblower of the measures or the course of action taken in this respect. This provision shall not encroach on the whistleblower’s right to inform the public of the corrupt practice in question.

An official person can report directly to the superior or a person authorised by the **superior** as well as to the Anti-Corruption Commission.

Reporting corruption to the courts directly is not possible; however, it is possible to report criminal offences (when a case of corruption becomes a crime) directly to the **State Prosecutor’s Office**.

There is a limited requirement for employers to implement an internal whistleblowing mechanism.

AUSTRIA

Legal obligation to set up reporting channels.

Three possible entities may serve as a contact for whistleblowers: the **BMF** accommodates all sections concerning taxes, customs, anti-fraud, and financial police and is therefore the prior contact for the BWB and FMA; the **WKStA** is located in the BMVRDJ (Federal Ministry of Constitution, Reforms, Deregulation and Justice) and reports to the 1st instance of the general court. When the WKStA becomes active, the Regional Court for Criminal Matters in Vienna is responsible, even if there is no clear local jurisdiction; the BMI holds the FIU (Money laundering reporting unit) which is located at the financial investigation office at the BKA. This is the contact partner for professional groups (i.e. accountants and auditors).

Specific disclosures can be made to: the **Federal Bureau of Anti-Corruption** for disclosures regarding corruption (‘FBAC’); the **Austrian Office of Prosecution for Economic Crime and Corruption** for the disclosure of economic crimes, through their website; and the **Public Prosecutor’s Office**, specifically for the disclosure of economic crimes and corruption.

In general, companies are not required to implement whistleblowing mechanisms. There is no general requirement to disclose internally before external disclosures can be made.

In the financial sector, entities are required to implement disclosing procedures. Employees can make external disclosures regarding corruption and white-collar crimes to a public channel. Disclosures regarding environmental cases can be made to the **Environmental Agency and Federal Ministries**.

ESTONIA

There is no overarching body/authority appointed to receive and investigate disclosures by whistleblowers.

There is no requirement to set up reporting channels.

Estonia lacks a clear and comprehensive framework for whistleblower protection. Specific and adequate reporting channels are yet to be implemented.

The Anti-Corruption Act states that disclosures of corruption can be addressed to agencies performing public duties, their officials, persons supervising agencies, persons controlling declarations or bodies conducting proceedings concerning an offence. Cases of corruption can also be reported through a hotline and website linked to the Government’s anti-corruption website or the Estonian Police and Border Guard Board, through an anonymous line or by e-mail.

The ACA does not foresee or regulate other channels of disclosure such as the media or NGOs.

CONFIDENTIALITY

FRANCE

Confidentiality is guaranteed (of identities and information). The obligation to protect the confidentiality of whistleblowers must be understood in the sense of its two components:

- **the prohibition on disclosing any information related to the alert** (the whistleblower's identity, information subject to alert, the identity of the accused person in the context of the alert). The obligation does not apply if the whistleblower consents to the disclosure of his identity or if the disclosure is made to the judicial authority. Any breach of confidentiality can lead to a two-year prison sentence and a €30,000 fine.
- **the compliance with French law on the protection of personal data** as regards the processing of personal data recorded within the reporting system (data protection).

Anonymous reporting is **not forbidden** by Sapin II but anonymisation is **not recommended** by the CNIL, the Human Rights Defender or by any other authority.

SLOVENIA

Confidentiality is guaranteed.

The State Prosecutor, the Police and the Court will safeguard the whistleblower's identity, unless his identity must be disclosed to safeguard the right of a defendant to a fair trial, and if revealing his identity will not endanger the whistleblower or his family. The identity of the whistleblower who reports in good faith and reasonably believes that the information he provides on the report is true, which will be assessed by the Commission, shall not be established or disclosed. Only the court may rule that any information about the reporting person(s) and their identity be disclosed if this is strictly necessary in order to safeguard the public interest or the rights of others. The Commission for the Prevention of Corruption protects the applicant by granting him a pseudonym. The provisions of the law regulating access to public information shall not apply to documents, files, records and other documentary material relating to a procedure conducted by the Commission with regard to the reported suspicion of corruption until the procedure before the Commission has been concluded. The Media Act states that the journalist has the right to non-disclosure of the source unless bound by criminal legislation. The Criminal Procedure Act also contains provisions on safeguarding the identity and personal data of a witness if there is a justified danger to the life of a witness or the life of his/her close relative, the testimony of the witness is relevant to the criminal proceedings, the witness demonstrates a sufficient degree of credibility, the interest of fairness and the successful conduct of criminal proceedings outweighs the interest of the defence in order to become acquainted with the identity of the witness.

Disclosures to the Anti-Corruption Commission can be made anonymously.

AUSTRIA

Confidentiality is guaranteed and no penalties are specified.

The whistleblower may remain anonymous when using the electronic communication system offered by the public authorities and some private corporations. However, in terms of legal proceedings, whistleblowers will, in all likelihood, have to disclose their identity as they will be named as a witness in criminal court proceedings and their names will be disclosed to the lawyers representing the defendant.

The offences mentioned in Art. 20 in StPO can be reported anonymously via the internet-based whistleblower systems. The BMI (BKA, BVT, BAK), as well as the BWB, can be approached anonymously.

ESTONIA

Confidentiality is guaranteed if whistleblowers report on corruption.

The whistleblower's identity shall remain confidential and may only be disclosed with the written consent of the notifier. If the notifier is involved as a witness in the proceedings concerning the offence, the provisions of the proceedings are applied without violating confidentiality.

The ACA guarantees the whistleblower's anonymity when requested. If there is a risk that the source will be revealed, the investigation will be ceased and the investigators will attempt to gather the disclosed information through other means. However, this is not the case if the whistleblower knowingly discloses false information; such disclosures could also lead to punishment according to the Penal Code.

The law does not accept or prohibit anonymous disclosure.

PROTECTION

FRANCE

Prohibition on any sanction measure and any other measure of direct or indirect discriminatory nature against a person who has reported the facts involved in the definition of whistleblower (**retaliation**). In the event of such measures being taken, they are **void** by law. The competent judges may order the **reinstatement of an employee or agent who has been dismissed**, not renewed or reinstated without regard to the provisions prohibiting discriminatory measures.

If the employee does **not request reinstatement** or if reinstatement is impossible, the judge grants him/her an **indemnity, at the employer's expense**, in an amount at least corresponding to his/her salary for the last six months. **No criminal liability** in the event of a breach of professional secrecy.

The **interim relief** procedure is available to suspend dismissal.

SLOVENIA

There is a **prohibition on retaliatory measures** against the whistleblower. If such measures have already been taken, the Commission shall demand that this conduct is **discontinued**.

If the Commission's demands are not respected and if natural persons or legal persons do not follow the provisions of this act, article 77 and 78 provide the list of minor offences that can be attributed to natural persons and legal persons. There is the right to claim **compensation** for the unlawfully caused damage. The Employment Relationships Act prohibits sexual and other harassment and bullying in the workplace, and also protects the worker's dignity at work. It states that the contract cannot be legally terminated as a retaliatory measure against the whistleblower; this kind of contract termination is illegal and would, therefore, be a ground for a lawsuit and monetary compensation to the whistleblower. The Civil Servants Act establishes a principle of non-harassment.

The Integrity and Prevention of Corruption Act envisages a full range of remedies with a focus on the recovery of losses and making the complainant whole. Amongst others, this includes **interim and injunctive relief, compensation** for any pain and suffering incurred, compensation for loss of past, present and future earnings and status, etc. Whistleblowers in the public sector can also be **transferred** to another equivalent working position if their working conditions become unbearable. Witness protection may be provided (article 23, par. 6 of the Act).

The Commission may provide **assistance** to whistleblowers to establish a link between negative consequences and retaliatory activities.

AUSTRIA

No comprehensive protection measures are envisaged.

Protection against workplace retaliation and interim relief procedures may be offered based on alternative legislation:

- Public sector: general definition "no disadvantage should be suffered". Physical protection as guaranteed by the prosecution procedures.
- Corruption: civil servants shall not "suffer any disadvantages".
- Financial sector: only introduces reporting mechanisms and does not provide protection.
- Environmentally harmful substances: "should not be penalised, harassed, or chased".

The FBAC offers protection for all disclosed behaviour within the scope of the FBAC, thus regarding economic crimes, such as corruption and money laundering.

Contracts that violate morality are null and void. It may be possible to contest the termination of an employment contract (dismissal/suspension), for example, due to whistleblowing, as it violates the basic principles of society. However, it is unclear how this will work in practice.

ESTONIA

No general whistleblower protection mechanism is in place.

Protection may derive from alternative laws: according to general administrative law, if the WB is suspended, dismissed, transferred or appraised early within a certain timeframe, the act may be declared void. Private sector employees also have the right to contest potential harassment and sanctions (termination of employment contract, disciplinary measures) in a labour dispute committee or in court. This right is a general rule and does not specifically refer to harassment resulting from whistleblowing.

The Witness Protection Act provides security protection for anyone who qualifies as a witness.

BURDEN OF PROOF

SANCTIONS

FRANCE

The offence of obstructing the alert is punishable by imprisonment (one year) and/or by a criminal fine (up to EUR 15,000).

Rather than €15,000, the fine is increased to €30,000 when the investigating judge or chamber receives an abusive libel complaint against a whistleblower.

A breach of the whistleblower's confidentiality can lead to punishment such as imprisonment of up to two years and a fine of up to €30,000 (individuals) or 150,000 euros (legal entities).

This sanction also applies for a breach of confidentiality of the person accused by the alert.

If a whistleblower acts in bad faith, he/she may be held liable under tort law and face criminal or disciplinary sanctions, for example, slander (up to 5 years of imprisonment and a criminal fine of up to €45,000) or dismissal for fault.

The burden of proof is reversed from the whistleblower to the employer who allegedly subjected the employee to reprisal measures because of the report being made.

As soon as the person presents facts inferring that he/she is reporting facts constituting a crime, or that he/she has reported an alert under the terms of the Sapin Act, "it is up to the defendant, in view of the evidence, to prove that his/her decision is justified by objective factors unrelated to the declaration or testimony of the person concerned". This provision, which applies to both civil servants and employees with private law contracts, is identical in the Defence Code and therefore also applies to the military.

SLOVENIA

An individual who attempts to establish the identity of the whistleblower who made the report in good faith or has reasonably believed that his information is true: a fine of between €400 - €1,200. The responsible person of a State body, local community body, holder of public authority, and legal person governed by public or private law who initiates a procedure for the establishment or disclosure of the whistleblower's identity due to the report having been filed by this person: between €400 - €4,000. The responsible person of a State body, local community body, holder of public authority, or other legal person governed by public or private law who acts in a manner that has adverse consequences for the whistleblower, or takes retaliatory measures against the whistleblower: between €400 - €4,000. The responsible person of a State body, local community body, holder of public authority, or other legal person governed by public or private law who fails to cease immediately imposing retaliatory measures: between €400 - €4,000. The responsible person of a State body, local community body, holder of public authority, or other legal person governed by public or private law who fails to transfer a public servant without justification: between €400 - €4,000. Legal persons can be sentenced with a penalty from €400 to €100,000.

If a reporting person cites facts in a dispute that give grounds for the assumption that he has been subject to retaliation by the employer due to having filed a report, the burden of proof is on the employer.

AUSTRIA

Not specified.

No reversal of the burden of proof.

ESTONIA

No sanctions are provided for retaliation against public sector whistleblowers.

Courts shall apply a shared burden of proof for the protection of the persons having reported an incident of corruption.

A person referring or being part of a case in the courts shall state in his or her application the facts based on which he or she claims to have been subject to unequal treatment. If the person against whom the application was filed does not prove otherwise, it is presumed that the unequal treatment was caused by the reporting of an incident of corruption.

ORGANISATIONAL MEASURES

FRANCE

No special authority has been appointed to evaluate the implementation of the provisions of the Sapin II Law on whistleblowing.

No special authority has been appointed to evaluate the implementation of the provisions of the Sapin II Law on whistleblowing.

The implementation of the obligation to set up an internal channel according to the Decree of 2017 is not followed by any sanction or special supervision.

According to Art. 17-II Sapin II law the internal reporting procedure is one of the eight compliance mechanisms (“compliance policy” or “anti-corruption plan”) concerning companies with at least 500 employees or with a turnover of more than €100 million and public bodies with industrial and commercial functions (in French EPIC) or belonging to a public group with at least 500 employees and with a turnover of more than €100 million.

The compliance policy may result from collaboration with the **French Anti-Corruption Agency (AFA)**.

The AFA published in the (French) Official Journal recommendations on the compliance policy, including recommendations on the internal alert mechanism (December 2017).

Although the compliance policy is a duty mostly concerning companies, the Municipality of Paris had decided to implement the reporting procedure as part of the compliance policy.

The **Human Rights Defender** is appointed to “guide” and “protect” whistleblowers. That means:

- verifying that the internal channel has been respected
- search to find the authority(ies) likely to be competent in the context of the external channel
- self-tasking in the areas for which he is competent (child abuse, discrimination etc.)
- use his investigative powers in order to collect evidence from the employer (looking for the link between a retaliation and an alert)
- work to have the whistleblowers’ rights re-established (ask to cancel retaliation measures either via mediation or support to the judicial work with the results of the investigation).

SLOVENIA

State bodies, self-governing local communities, public agencies, public institutions, public economic institutions and public funds must, in accordance with this law, draft and adopt an **integrity plan which includes, in particular, an assessment of the institution’s corrupt exposure, proposals for integrity improvements and measures for the timely detection, prevention and correction of risks to corruption.** The **Resolution on the Prevention of Corruption in the Republic of Slovenia was adopted by the National Assembly** at the Government’s proposal and aims at realistic, gradual and deliberate measures to eliminate corruption. The **Commission** monitors the implementation of the resolution on the basis of an action plan adopted by the Commission in conjunction with the measures taken in the resolution within three months from adopting the resolution or its amendments. When implementing the resolution and plans for its implementation, the Commission cooperates with public and private sector organisations, non-profit private law organisations in the field of corruption prevention, and with citizens. Art. 53 of the Integrity and Prevention of Corruption Act demands that the public sector has an action plan. The action plan for the implementation of the public sector resolution shall be reported to the Commission by the end of February each year on the activities for implementing these measures in the previous year. Within 3 months after receiving these reports, the Commission shall draw up a report on the implementation of the resolution, indicating key achievements, problems, risk factors and performance appraisal, and shall include it in the annual report. In the absence of measures from the action plan for the implementation of the resolution, the Commission may propose to the competent authority, against the persons responsible for the implementation of the measures, the establishment of liability.

AUSTRIA

There is no overarching authority appointed to receive and investigate disclosures made by whistleblowers.

3 institutions involved who cooperate: BMI – BMF – BMVRDJ. Their task is to investigate the cases but none of them is required to protect the WB. They are all obliged to handle data and information according to the DSGVO and therefore to keep the whistleblowers anonymous.

ESTONIA

There is no overarching authority appointed to receive and investigate disclosures made by whistleblowers.

A selected anti-corruption parliamentary committee exercises supervision over the implementation of anti-corruption measures, discussing potential incidents of corruption involving officials and assessing them.

No institution/agency dealing with whistleblowing and no public policy or monitoring strategy; the number of cases and their outcome remains unknown. The only official records and data known are registered by the Central Criminal Police where corruption-related case reports through a hotline are counted but it is unknown how many originate from whistleblowers.

The Ministry of Justice coordinates the anti-corruption policies. A select anti-corruption parliamentary committee performs supervision over the implementation of anti-corruption measures, discussing potential of corruption incidents involving officials and assessing them.

