



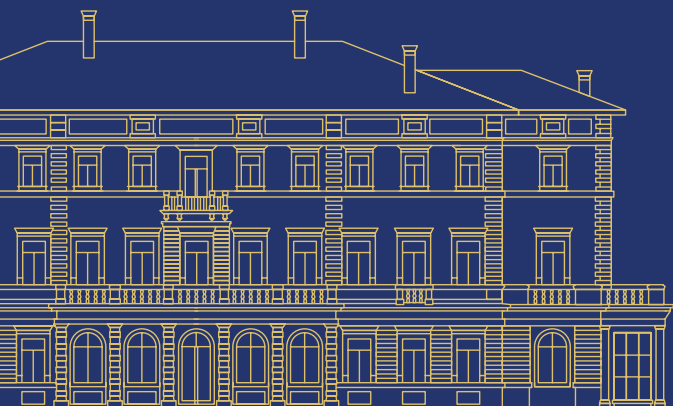
**BEYOND PAPER RIGHTS:
IMPLEMENTING WHISTLEBLOWER
PROTECTIONS IN CENTRAL
AND EASTERN EUROPE**

November 2023



ADVANCING THE RULE OF LAW

The CEELI Institute is a Czech public benefit organization (not-for-profit) based in Prague, dedicated to the development and training of an international network of legal and judicial professionals committed to advancing the rule of law. Through innovative training programs and other activities, the Institute works with judges, lawyers and civil society actors to build laws-based societies. The CEELI Institute prides itself on the diversity and quality of the programs it has developed, the peer to peer exchanges it fosters, the innovative nature of its programming, and its legacy of contributing to the advancement of the rule of law in vulnerable countries. Our efforts are focused on creating independent, transparent, and effective judiciaries, strengthening democratic institutions, fostering efforts to combat corruption, bridging difficult conflicts, promoting human rights, and supporting lawyers and civil society actors in repressive environments. The CEELI Institute is based at the Villa Grebovka, in Prague, a historic nineteenth century building now renovated into a state-of-the-art residence and conference center.



BEYOND PAPER RIGHTS: IMPLEMENTING WHISTLEBLOWER PROTECTIONS IN CENTRAL AND EASTERN EUROPE

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FOREWORD

Any whistleblower, exposing any form of wrongdoing, finds themselves on an uneven playing field. They are one against an entire system—the might of a company, or a government agency. The odds are stacked against them from the start; employers have the financial capacity and the legal expertise to outlast even the most determined whistleblower.

Whistleblower protection laws around the world seek, in different ways and to different extents, to address this power imbalance. Many provide for varying disclosure pathways—internal, external, and public—to enable whistleblowers to escalate concerns when they are not heeded. Some provide for reverse onus provisions, so it is up to the employer, not the whistleblower, to disprove the allegations. Others allow for interim remedies, so a whistleblower is not forced to suffer in silence while they await a final determination of their dispute.

Research published in 2021 by Government Accountability Project and the International Bar Association, *Are Whistleblowing Laws Working? A Global Study of Whistleblower Protection Cases*, found that the promise of whistleblowing laws in addressing this imbalance remained too often elusive. Our study was an exhaustive review of case law in every jurisdiction to enact dedicated whistleblower protections since the 1980s. Unfortunately, too often, in nations around the globe, these paper rights have not translated into practical, accessible, and enforceable protections.

The European Union’s whistleblowing directive was seen as a landmark moment globally for the advancement of whistleblower protections globally. As a consequence of the directive, now adopted across the continent, whistleblowers in Europe have stronger rights on paper—rights that go a considerable way towards addressing the power imbalance faced when workers speak up about wrongdoing.

The major question, though, is whether these enhanced rights will translate in practice. Only then will there be a level playing field. The international experience has been that whistleblower protections work when the laws are as robust as possible, independent national authorities play an active role in overseeing and enforcing the scheme, and civil society provides accessible legal assistance to prospective whistleblowers.

This report, in traversing those issues, makes compelling recommendations for ensuring whistleblower protections in Central and Eastern Europe work not only in theory but in practice, too. Paper shields provide no help to whistleblowers. Only if these rights become accessible, workable, and actually used will the democratic promise of the European Union's directive be realised.

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Tom Devine is among the world's foremost experts on whistleblower protections. Based in Washington DC, he is legal director at the Government Accountability Project, where he has worked since 1979. Tom has formally or informally assisted over 7,000 whistleblowers in defending themselves against retaliation and in making real differences on behalf of the public. He has not lost a case since 2006, and has prevailed in advocacy at numerous U.S. courts of appeals as well as the Supreme Court.

EXECUTIVE SUMMARY

Whistleblowing helps detect and address misconduct, including corruption, fraud, and human rights abuses, in the public and private sectors. Whistleblowers therefore serve a vital public interest function, calling out wrongdoing and deterring misconduct.

In 2019, the European Union took an important step towards protecting and empowering those who speak up about wrongdoing, through the adoption of a landmark whistleblower protections directive: *Directive 2019/1937 on the protection of persons who report breaches of European Union law (the EU Directive)*. The *EU Directive* was hailed as a globally significant development for integrity and accountability. However, across the continent the subsequent transposition process has proven challenging. Now, almost four years after the *EU Directive* was finalised, and two years since it was due to be transposed, the *EU Directive*'s implementation in member states remains incomplete. Much work remains to be done.

This report considers whistleblower protections in six Central and Eastern European nations: Bulgaria, the Czech Republic, Hungary, Poland, Slovakia, and Romania. It summarises the transposition process in each jurisdiction, noting the challenges that have arisen and the opportunities that remain.

Bulgaria has adopted a new whistleblower protection law, but significant concerns have been raised by civil society stakeholders as to compliance with the *EU Directive*. A new law has also been adopted in the Czech Republic, which took effect in August. While Czechia's approach to transposition has been minimalistic, it builds on a reasonably robust underlying framework and adopts a broad approach to the law's scope: applying to a range of wrongdoing, not only breaches of EU law. Hungary has also adopted a new law to meet its transposition obligations, but did so without consultation with key stakeholders. Analysis suggests the new law contains loopholes and shortcomings that undermine its efficacy.

At the time of writing, Poland has not yet transposed the *EU Directive* and the European Commission has commenced proceedings against it in the Court of Justice. Slovakia has a strong whistleblower protection law, which was recently updated to comply with the *EU Directive*. Slovakia's whistleblowing framework is underpinned by the independent Whistleblower Protection Office. Romania, meanwhile, has adopted a revised law as part of the transposition process, but civil society has raised concerns that in key respects it is regressive rather than representing an improvement on the pre-*EU Directive* scheme.

After surveying these developments, this report explores three overarching recommendations to ensure the *EU Directive* has practical effect—in other words, that the protections it provides are not merely “paper rights”. This has been a recurring theme of whistleblower protection regimes across the globe since dedicated whistleblowing laws began to proliferate in the 1980s and 1990s—translating theoretical protections into practical shields has proven difficult.

This report offers three recommendations. First, further law reform is required across the six jurisdictions to meet and exceed the requirements of the *EU Directive*. In some jurisdictions, urgent reform is required due to inadequate transposition processes. In other nations, governments should commit to ongoing review and reform to ensure protections remain consistent with global best practice. Because the *EU Directive* was finalised in 2019, there have already been legislative innovations in the subsequent years in other regions. Close scrutiny on the operation of these laws in practice and a commitment to ongoing reform will be critical.

Second, the establishment of an independent, appropriately resourced whistleblowing protection authority is rapidly emerging as global best-practice. Some nations, such as Slovakia, already have such a body; others have dedicated the whistleblowing oversight functions to government departments (such as the Ministry of Justice in the Czech Republic). Slovakia's Whistleblower Protection Office offers a model for the region. The experience elsewhere, particularly in the United States, has been that a dedicated body to overseeing and enforcing whistleblower protection laws is essential. The establishment of such bodies should be a priority for governments—and a key advocacy goal of civil society.

Finally, civil society can and should play a critical role in operationalising these laws. With appropriate funding and support, civil society organisations should build on equivalent no-cost or low-cost legal services for whistleblowers offered in other jurisdictions. Such services have proven instrumental to the efficacy of whistleblower protection laws elsewhere—the transposition of the *EU Directive* provides a golden opportunity for similar efforts to bear fruit in Central and Eastern Europe.

The *EU Directive* was motivated by recognition of the importance of whistleblowers to a democratic society, concern about the mistreatment of these courageous truth-tellers, and belief that a better paradigm was possible. The *EU Directive* was an important step, and the largely concluded transposition process was another. But the European Union, and the six jurisdictions considered in this report, need to continue progressing to ensure whistleblowers are protected and empowered in exposing wrongdoing and can thereby play a vital democratic role.

Recommendations

1. Ongoing law reform is needed to ensure whistleblower protections meet and exceed the requirements of the *EU Directive*.
2. Governments should commit to establishing standalone, independent, well-funded whistleblower protection authorities, and, where such authorities already exist, governments should commit to further improving their functioning to ensure alignment with the *EU Directive's* objectives.

3. Civil society should look to provide low-cost or no-cost specialised legal advice to whistleblowers. Governments and national authorities should consider funding civil society to provide legal and non-legal support to whistleblowers and ensure civil society groups are adequately integrated into whistleblowing frameworks. Civil society and whistleblower protection authorities should explore possibilities for cooperation and collaboration to ensure maximum impact.

INTRODUCTION

Approaching the fourth birthday of the landmark *EU Directive*, the transposition process is almost over. Yet this milestone marks the beginning, not the end, of work to ensure the *EU Directive* translates into practical, accessible support for whistleblowers across the continent. If whistleblowers are to act as agents of change in combatting fraud and corruption in government, exposing corporate wrongdoing, and calling out human rights violations, that work needs to continue.

The world's first dedicated whistleblower protection laws began to take shape in the United States in the 1980s. Other countries followed—with the *Public Interest Disclosure Act 1998* in the United Kingdom representing an early model in the European Union. In the late 2000s, the Parliamentary Assembly of the Council of Europe gave attention to the issue and, in 2010, encouraged European nations to review the existing protections. A number of European countries subsequently began work on comprehensive whistleblower protections.

The LuxLeaks case in the mid-2010s, which saw whistleblowers expose favourable tax treatment of multinational companies in Luxembourg and yet face criminal prosecution, gave momentum to the task. In 2017, the European Commission began consultation and, in 2019, the *EU Directive* took effect.

In a desire to assist the transposition process, in September 2021 the CEELI Institute published a report, *Speaking Up: Protecting Whistleblowers in Central and Eastern Europe (Speaking Up)*, in relation to protections in Bulgaria, Hungary, Romania, and Slovakia. The report was published with input from civil society partners across those jurisdictions: the Bulgarian Institute for Legal Institutes, K-Monitor (Hungary), Expert Forum (Romania), and Transparency International Slovakia. This initiative arose out of a larger project focused on combatting fraud and corruption in the healthcare sector.

In late 2022, it was decided to continue the whistleblowing aspect of this work, and a roundtable was convened at the CEELI Institute in Prague in March 2023 to discuss the transposition process and take stock of whistleblower protections in the region. By this time, the project had expanded its scope to include Poland and the Czech Republic, with input from the Anticorruption Academy Foundation (Poland) and Transparency International Czech Republic. Almost 30 experts from across the region gathered at the workshop, including lawyers, journalists, policymakers, civil society advocates, and representatives of national authorities, to consider the progress since the *EU Directive* transposition began and the challenges ahead. The workshop was held in partnership with the International Bar Association and the Whistleblowing International Network,¹ reflecting the two group's

¹ The Whistleblowing International Network has been a primary coordinator of the EU Whistleblowing Monitor, an online tool established to track developments in the transposition and implementation of the *EU Directive* across the 27 EU Member States. It is kept up to date by a team of over 30 country editors which are all civil society actors including lawyers, investigative journalists, trade unionists, and NGOs.

longstanding roles at the forefront of whistleblower protections globally. It was also attended by a representative of the European Commission.

This report draws on the views expressed at that workshop, considers subsequent progress, and looks ahead to the future. It has a particular focus on the practical operation of whistleblower protection laws—now that the transposition process is largely (although not entirely) complete, where to go from here? The report will be launched in November 2023 at a further workshop at the CEELI Institute with that question in mind: what role for national authorities and civil society, working independently and in collaboration, in giving effect to the protections now enacted in domestic law following the transposition of the landmark *EU Directive*?

In many respects, this report picks up where its predecessor, *Speaking Up*, left off. In that report, it was said:

Transposition of the Directive into national law is an important and challenging next step. The Directive provides only limited detail and guidance; the operative text contains just 29 articles. If transposition is undertaken effectively, holistically, and with fidelity to the Directive’s underlying intent, whistleblowers across the EU will benefit. However, there are many examples of whistleblower protection laws in other jurisdictions that mirror best-practice on paper and have negligible impact in reality. The transposition process is an important first step, but it is just that. Effectively protecting whistleblowers requires ongoing cultural and societal change.

The transposition of the *EU Directive* has proven challenging, as the subsequent section will demonstrate. Some nations have proceeded with a minimalistic approach to transposition—doing the minimum required by the *EU Directive*, which was inherently limited by the boundaries of European Union competency, rather than using this landmark opportunity to adopt expansive protections. While law reform requirements remain, perhaps the bigger challenge ahead is putting the law into action—through robust oversight and enforcement of the laws by national authorities, and ensuring whistleblowers have access to the legal and non-legal support they need through civil society—to ensure that whistleblowers truly can make use of the protections the *EU Directive* offers.

SUMMARY OF TRANSPOSITION IN MEMBER STATES: CHALLENGES AND OPPORTUNITIES

The transposition process has been complex, at times fraught and beset by delays—across the European Union, but particularly in Central and Eastern Europe. As the below summary outlines, post-transposition challenges remain in all six jurisdictions under consideration. It is not entirely bad news, though. In most of the nations considered, the transposition has led or will soon lead to stronger legal protections for whistleblowers. There are also opportunities flowing from robust transposition in certain areas of the *EU Directive*. A mixed bag, in other words.

It is important to keep in mind that the *EU Directive* operates in context of European Union general legal principles and within the European Court of Human Rights framework. All 27 European Union member states are also members of the Council of Europe. Both the Court and the Council of Europe have developed parallel instruments and jurisprudence for the protection of whistleblowing. The Court has, for example, repeatedly upheld protections for whistleblowing through its Article 10 case law. This means that even in jurisdictions where the *EU Directive* has been inadequately transposed and adopted, transnational legal frameworks may provide support for whistleblowers.

Bulgaria

In January 2023, the National Assembly of Parliament in Bulgaria formally adopted legislation transposing the *EU Directive*, the *Law on Protection of Persons Reporting or Publicly Disclosing Information on Breaches*. This marked a positive step forward after a turbulent political process had seen attempts to improve Bulgaria’s whistleblowing regime derailed on several occasions during the transposition process. However, the pace with which the final legislation was enacted—due to an impending election and conditionality requirements on European Union recovery funding—meant that it contains shortcomings. Concerns have been raised about the burden of proof not being correctly transposed, and the need for increased penalties—with minimalistic fines under the new provisions.

The enactment of the law has been followed by a next phase of regulatory adoption, including bylaws and ordinances issued by the designated authority, the Commission for Personal Data Protection. However, these developments have been criticised by civil society stakeholders for a lack of adequate consultation and non-compliance with legal requirements. In a recent statement, one such stakeholder—Transparency International Bulgaria—was heavily critical of the legality of the guidance issued by the Commission, *Guidance on the Receiving, Registering and Reviewing of Reports*.

TI Bulgaria reiterates that full transposition of [the EU Directive], and the establishment of a stable legal framework that could be implemented by all stakeholders, can only be ensured if all gaps, inconsistencies, and legal issues with the secondary legislation are resolved in a timely and transparent manner.

Bulgaria did not previously have a standalone whistleblower protection law, with limited protections provided only in particular sector and for particular forms of conduct. Bulgaria's historical context has meant that whistleblowing remains an emerging, evolving concept. As the Bulgarian Institute of Legal Initiatives explained in the *Speaking Up* report:

The concept of whistleblowing and its protection is relatively new for the Bulgarian society. As a consequence, whistleblowing as a construction still opens some interesting debates, provoked by the communist past.

Thus, while the now-adopted *EU Directive* is an important step forward, the nature of the law—and its practical implementation—has to date been imperfect. Further law reform and improved administrative guidance, developed through proper, consultative processes, will be necessary to ensure the effectiveness of the *EU Directive* in practice.

Czech Republic

The Czech Republic did not previously have a comprehensive whistleblower protection regime. The transposition process provided an important opportunity for reform, but it became a circuitous process—with a number of delays. Early drafts of the proposed law were criticised by civil society organisations as not adhering to the requirements of the *EU Directive*. The law then faced significant parliamentary delays. Finally, the new Czech whistleblowing regime became law in June 2023.

The law is somewhat above a minimalistic transposition, although it could have gone significantly further. The material scope of the law extends beyond only breaches of European Union law to include criminal offences and misdemeanours to a particular level of financial penalty. This will mean most workplace-related issues will fall within scope—which is important, although the material scope could have been wider. Anonymous reporting is also permitted and protected, although more narrowly than would be desirable. Finally, a point of contention has been the delegation of whistleblowing responsibilities to the Ministry of Justice, which will be the primary external channel—albeit its functions are largely limited to receipt of disclosures, and then coordinating with relevant investigative authorities. Giving this function to a core government department, rather than independent authority, will limit its effectiveness.

Hungary

Hungary, which has had a dedicated whistleblower protection framework since 2013, was a slow starter when it came to revise its framework to meet the requirements of the *EU Directive*. Almost no substantive steps were taken during the transposition window, and as late as this beginning of this year Hungary was the only member state not to have begun the transposition process. Strangely, though, progress on the transposition was not included among milestones for European Union funding.

In February, the Hungarian government published a draft transposition law adopting a minimalistic approach to adopting the *EU Directive*. The draft had been developed with no input from civil society. One particular concern was proposed protections for whistleblowing in relation to the ‘Hungarian way of life’, which was seen as ‘trolling’ by the Hungarian government aimed at international critics.² This led to Hungary’s president vetoing the law.

In May 2023, the Hungarian Parliament adopted a revised law removing the provisions that had led to the presidential veto. Nonetheless, significant concerns remain about the state of the transposition law in Hungary. These include that it does not adequately protect whistleblowing to journalists, nor those blowing the whistle on certain topics (including classified materials or court proceedings), and that it provides insufficient legal support for whistleblowers. While the revised law represents an improvement on the prior iteration, it could have gone much further. It was described by one participant at the March workshop as a ‘missed opportunity’.

Poland

Poland is the only nation of the jurisdiction considered in this report, and one of only two across the European Union (the other being Estonia), not to have adopted a law in response to the *EU Directive*. There have been over half a dozen draft laws, most of which have represented minimum standard efforts—with a narrow material scope, substantial exclusions for national security matters (including defence procurement), no provision for anonymous reporting, limited penalties, and few external reporting channels. The recent election in Poland has delayed further progress.

In a recently published book chapter,³ Polish transparency expert Marta Kozak-Maśnicka summarised the situation. Full transposition is urgently required, she wrote, given (i) there is presently no comprehensive whistleblowing framework in Poland and labour laws have proven ineffective in providing protections; (ii) the existing labour law system fails to protect millions of workers in atypical employment relationships; and (iii) the enforcement system through Polish courts have proven difficult in whistleblowing cases, due to limitations on investigations into the actual motive for retaliatory action.

It may well be sometime before Poland has adopted the *EU Directive* and then implemented it effectively in practice. As Marta Kozak-Maśnicka said in September:

Now, almost three years after the beginning of the transposition process in Poland, we have nine versions of the draft bill. We still do not implement the Directive to guarantee adequate protection for whistleblowers. Ministries in the government cannot agree on the final shape of the whistleblower protection law. Moreover, there

² See the joint analysis by K-Monitor, Transparency International Hungary and TASZ.

³ Marta Kozak-Maśnicka, ‘Implementation of the EU Whistleblower Directive in Poland’ in Simon Gerdemann (ed.), *Europe’s New Whistleblowing Laws* (Universitätsverlag Göttingen, 2023) 123.

is a lack of political will to implement law which imposes additional obligations on employers and public administration. The current situation is unlikely to change soon ... The new government will be able to take advantage of the work done so far on the draft law, but it is unlikely to address this immediately after the elections (it is not a priority issue).⁴

Slovakia

In January 2019, Slovakia adopted the *Act No. 54/2019 Coll. on the protection of whistleblowers notifying activities undermining the functioning of civil society and the amendment of certain other Acts*. This whistleblowing law provided for robust protections, broad scope and a reversed burden of proof, all backed by a newly established dedicated whistleblower protection authority. The enactment of this law meant that minimal changes were required to ensure adherence with the *EU Directive*. As Transparency International Slovakia said in the *Speaking Up* report, ‘most of the provisions of the Directive have already been transposed (in substance). Protection granted under the Act is in some respects even broader than under *EU Directive*.’

In May 2023, amendments were passed to the 2019 law as part of the transposition process. Relevant changes included expanding the definition of whistleblower (to a wider category of persons), expanding protection and redefining retaliation (to include more forms of prohibited actions). Importantly, the changes include clarification that anonymous reporting is permitted and enhanced obligations on employers in relation to their internal whistleblowing arrangements.

Romania

As with its regional counterparts, Romania has experienced a winding journey towards transposition of the *EU Directive*. Romania previously had a dedicated whistleblowing law for public servants, and several sectoral-based protections. In June 2022, Romania’s parliament passed a law to adopt the *EU Directive*. However, this law was strongly criticised by civil society and other stakeholders, in part because it failed to adhere to the *EU Directive* in certain respects and represented a regression on protections in the existing law. This saw the law sent back to parliament by Romania’s president.

In late December 2022, a further law adopting the *EU Directive* was passed addressing some concerns, albeit issues—including in relation to anonymous reporting, which was effectively discouraged—remained. A third law was passed through parliament in March 2023, said to be in response to potential blocking of European Union funds linked to the shortcomings in the law. The changes bolstered the provisions for anonymous reporting.

⁴Quoted in EU Whistleblowing Monitor, <https://www.whistleblowingmonitor.eu/country/poland> (25 September 2023).

PRACTICAL IMPLEMENTATION: LAW REFORM

As the above analysis demonstrates, regrettably the challenges which have arisen in the transposition process mean that further law reform will be required to ensure whistleblower protections across Central and Eastern Europe meet the standards of the *EU Directive*, in letter and in spirit. More will be known after the European Commission's conformity analysis concludes shortly—the Commission is required to provide an implementation report to the Council and the Parliament by mid-December 2023. However, it is evident that the laws in Bulgaria, Hungary and Romania will need significant further amendments to bring them up to scratch.

Beyond immediate law reform to rectify deficiencies in the transposition process, thought must be given to future reforms to ensure whistleblower protections across Europe remain best-practice in a fast-evolving landscape. The *EU Directive* requires member states to aggregate data on reporting, investigations and recoveries under whistleblowing laws and submit to the European Commission on an annual basis. By the end of 2025, the Commission is required to develop a report taking into account this data to assess 'the impact of national law transposing this Directive.' This analysis is intended to:

evaluate the way in which this Directive has functioned and consider the need for additional measures, including, where appropriate, amendments with a view to extending the scope of this Directive to further Union acts or areas, in particular the improvement of the working environment to protect workers' health and safety and working conditions.⁵

These requirements built into the *EU Directive* provide useful opportunities to recalibrate, improve and expand the application of national whistleblower protection schemes. But it is important that member states do not leave all of the heavy lifting to the European Commission. National governments, and civil society groups, should work in the years ahead to monitor the effectiveness of these laws, highlight shortcomings, and explore reform opportunities. Since the first dedicated whistleblowing laws were introduced in the United States in the 1980s, the development of whistleblower protections has been a transnational project—with the standard of protections increasing overtime as jurisdictions experimented with different regimes. The European Union is particularly well-placed, through the overarching framework of the *EU Directive*, to benefit from this 'laboratory federalism' on a continental scale. Jurisdictions, and civil society actors, should view the nominal end-date of the transposition process as not the end of the road for law reform, but the start of a new phase of opportunity for improvement.

⁵ Article 27(3).

Practical Implementation: National Authorities

In recent years there has been growing recognition that a capable, independent national authority is required to oversee, administer, and enforce whistleblower protections regimes. In the United States, for example, the Office of Special Counsel (OSC) is an independent agency established by the *Whistleblower Protection Act 1989* with a primary role to protect public sector employees, including whistleblowers, from prohibited personnel practices, such as retaliation. The OSC can receive whistleblower disclosures and direct agencies to investigate, while retaining an oversight function. The OSC can also investigate alleged retaliation against whistleblowers, hold mediation to seek to resolve whistleblower retaliation grievances, and if necessary, commence litigation against agencies that have retaliated against a whistleblower. Other American agencies have equivalent whistleblower support and protection functions, such as Securities and Exchange Commission's Office of the Whistleblower.

The *EU Directive* anticipates that each member state will have a designated public authority (the competent authority) to oversee the protections and receive disclosures from whistleblowers. The *EU Directive* sets out a range of requirements on member states in this regard. For example, the national authority must:

- (a) Have dedicated, specially trained staff for receiving disclosures, providing information to whistleblowers and maintaining contact with whistleblowers;
- (b) Provide effective assistance to whistleblowers, as part of the requirement to provide access to support measures; and
- (c) Review their procedures for receiving reports, and following up, regularly—and at least every three years.

Befitting the nature of the *EU Directive*, there is otherwise much detail missing about the role and nature of the competent authority. To date, different member states have taken different approaches. In Ireland, the Protected Disclosures Commissioner is a referral-style body—it receives disclosures and passes them on to the most appropriate investigative body. However, it does not have a wider role in overseeing and enforcing the whistleblower protections regime in Ireland. Finland has adopted a similar approach, with the Office of the Chancellor of Justice. In the Netherlands, on the other hand, the House of the Whistleblower provides support to whistleblowers and investigates wrongdoing and mistreatment of whistleblowers. It predates the *EU Directive*, having been established in 2016, and has a much wider range of functions and powers.

In the six Central and Eastern European nations focused upon for this report, a mixed approach has been adopted. The standout jurisdiction is Slovakia, with the dedicated, independent Whistleblower Protection Office. In the Czech Republic, for now these functions

reside within the central government, at the Ministry of Justice. In Bulgaria, the Personal Data Protection Commission has been given whistleblower-related functions, while the National Integrity Agency is the relevant authority in Romania. In Hungary, the Office of the Commissioner for Fundamental Rights is the relevant national authority, while at the time of writing, it is not clear which body in Poland would take these functions. Across the region, civil society has been critical at the failure to establish robust independent authorities with adequate jurisdiction to oversee and enforce the protections established by the *EU Directive*.

Although it has only been operational for a limited period, Slovakia's Whistleblower Protection Office serves as a model of best practice. The body works to protect whistleblowers, assist them during the process, intervene in retaliation cases, raise awareness about protections and best practice and oversee the wider regime. It has powers to order temporary relief to whistleblowers facing reprisal, to direct disclosures to the appropriate investigative body, to assist organisations in establishing their internal whistleblower programs and to issue sanctions in certain cases. The body has also worked to promote whistleblower protections and the importance of whistleblowing across Slovakian society, including through media, advertising, and advocacy.

We strongly recommend that other governments across the region, and elsewhere in the European Union, work to establish a standalone, independent, well-funded whistleblower protection authority with appropriate functions and powers. This should also be a key advocacy focus for civil society. Such authorities will give member states the best possible opportunity to ensure the now-adopted *EU Directive* works not only on paper but also in practice. As much was directly envisaged by the *EU Directive*, which provided that various support measures set out in Article 20 'may be provided, as appropriate, by an information centre or a *single and clearly identified independent administrative authority*.' The recent establishment of the Network of European Integrity and Whistleblowing Authorities (NEIWA), a network of national authorities across the European Union, will provide an important forum for the exchange of best-practice.

Practical Implementation: Role of Civil Society

For whistleblower protection laws to work in practice, whistleblowers need access to lawyers. Thus, it was said in the *Are Whistleblowing Laws Working?* report: 'Whistleblowing laws can be a complex maze, even for experienced practitioners. As such, legal counsel is often essential for whistleblowers to be able to effectively enforce their rights.'⁶ Article 20 of the *EU Directive* recognises the need for this support, providing for 'comprehensive and independent information and advice, which is easily accessible to the public and free of charge, on procedures and remedies available, on protection against retaliation, and on the rights of the person concerned', in addition to legal aid in 'proceedings and legal counselling or other legal assistance' as applicable under national law. Accessible, low- or no-cost legal

⁶ Government Accountability Project and the International Bar Association, *Are Whistleblowing Laws Working? A Global Study of Whistleblower Protection Litigation* (2011) p.65.

support for whistleblowers to understand their rights and obligations under the *EU Directive*, as adopted, will be essential to the effectiveness of these laws in practice.

It is here that civil society can play a critical role—on addition to whatever support may be offered via national authorities. The international experience has been that legal support for whistleblowers through civil society has been a significant factor in the practical effectiveness of whistleblower protection regimes. There has been a proliferation of civil society bodies providing such legal advice and representation, from Government Accountability Project in the United States (now operational for more than four decades) to Protect in England, Transparency International Ireland's SpeakUp helpline, Transparency Legal Advice Centre, Pištaljka in Serbia, and the Plateforme de Protection des Lanceurs d'Alerte en Afrique (PPLAAF) across Africa. Some of these provide advice only for prospective whistleblowers, others provide representation in legal proceedings. But the common thread is that these civil society organisations seek to provide practical support, so that these laws can work in practice, not just on paper. Many of these groups came together to form the Whistleblowing International Network as a forum to collaborate and share best-practice.

There is already some civil society support for whistleblowers across the region. Transparency International Czech Republic and Oživení, for example, both provide support for whistleblowers in Czech Republic, as does Transparency International Slovakia in Slovakia and Transparency International Hungary's Advocacy and Legal Advice Centre in Hungary. But there is significant scope for growth in civil society support for whistleblowers across Central and Eastern Europe, to build on the momentum of the *EU Directive*. Questions of funding for such work will always loom large—in some jurisdictions, such services are funded by government, in others by philanthropy or international organisations. Each jurisdiction will need to explore what is most appropriate for the particular context; in some nations, government funding could raise concerns about conflict of interests. But whatever the route to establishing and funding ongoing legal support for whistleblowers, that it happens is critical to ensuring the success of the *EU Directive*.

Accordingly, governments and national authorities must consider how best to integrate civil society organisations into whistleblowing frameworks. Direct or indirect funding for legal advice should be considered, in addition to financial backing for the provision of wider support functions—advice lines, non-legal support (including psychological assistance and career coaching), and more. Civil society organisations can also play an important role within whistleblowing systems more broadly, whether engaging in investigations, educations, and training (as with Pištaljka in Serbia) or acting themselves as facilitators of disclosures (such as in France).

There is significant scope for mutually beneficial cooperation and collaboration between civil society and national authorities in translating the *EU Directive* from paper to practice. The nature of that interaction will be among the topics for discussion at a subsequent CEELI Institute roundtable in Prague in November 2023, bringing together civil society organisations, policymakers, and national authorities.

CONCLUSION

The hard work starts now. That is the key message of this report, considering the progression of whistleblower protections in six Central and Eastern European nations: Bulgaria, the Czech Republic, Hungary, Poland, Romania, and Slovakia. The *EU Directive* has been largely adopted, to greater and lesser extents (with ongoing delays in Poland), and at least on paper the protections available for whistleblowers across the region are now stronger. The critical question is whether this will translate in practice. Will these paper rights become practical shields, provisions that protect and empower whistleblowers? Or will they gather dust on the statute book—proving unwieldy and ineffective in practice?

The six jurisdictions considered in this report, and indeed all member states, are not monolithic. The experience of the *EU Directive* across the bloc will vary greatly, just as the transposition process has turned on local conditions and political contexts. But this report has sought to outline, drawing on global best practices, some key recommendations to guide the implementation of these newly strengthened laws. It is hoped these are broadly applicable in all six nations, and across the European Union more generally.

Through a combination of ongoing law reform, the establishment and operation of independent national whistleblowing authorities, and practical legal support by civil society for whistleblowers, these laws can be given robust practical effect. The protections on paper will require further enhancement—both because of the shortcomings of the transposition process, but also because of the ongoing evolution of best-practice in this area. The ideas that underpinned the *EU Directive* are already five or more years old—the pace of change globally has been rapid, as more and more nations have enacted dedicated whistleblower protection laws. Further changes will be required. But the primary priorities outlined in this report concern practical matters—oversight and enforcement of the regime by dedicated, independent, properly resourced national authorities and legal support by civil society for whistleblowers.

The work of whistleblower advocates is never over, but through robust laws, effective whistleblowing authorities and direct legal support for whistleblowers, the motivation behind the *EU Directive* can be fulfilled. The *EU Directive* sprung from injustice: the prosecution of the LuxLeaks whistleblowers stood in stark contrast to the public interest in the information revealed. On one hand LuxLeaks led to significant changes to European Union tax policy and saw one of the whistleblowers, Antoine Deltour, awarded the European Parliament Citizen's Prize. Yet at the same time, Deltour and Raphaël Halet were pursued through the court system—Halet's case only finally concluding this year. While there had been momentum for a European whistleblowing directive for some time, the injustice of the LuxLeaks case galvanised support and underscored the need for action.

Whistleblowers make the European Union a better place. If the *EU Directive*, now adopted across the continent, can ensure the next generation of LuxLeaks-style whistleblowers are empowered to speak up and protected from retaliation, it will be having the desired effect. There is much work to be done—but the culmination of the transposition process is an important first step towards a region where whistleblowers are protected, not punished.



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