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Whistleblower Protection Legislation and Corruption

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Abstract

Following the “Snowden effect” and more recent whistleblower scandals, such as the Panama Papers, Luxleaks, Cambridge Analytica or the Danish Tax Fraud, the number of whistleblowing cases and laws for the protection of whistleblowers in Europe and around the world has significantly increased as a tool to combat corruption, fraud and organizational wrongdoings. This paper provides a theory-based and empirical analysis of the theory of change behind whistleblower protection legislation as an anti-corruption policy tool. By introducing a new indicator developed in collaboration with ERCAS and based on international best practices on whistleblower laws – the Whistleblower Index (WI) – the report shows that there is only a slightly upward interaction between stronger whistleblower laws, as of the WI, and slightly higher levels of WGI’s Control of Corruption. It also did not find a statistically significant change in WGI’s Control of corruption after the introduction of a specific whistleblower protection law. Based on the empirical analysis carried out for this study, whistleblower protection legislation only seems to be effective in deterring corruption and organizational wrongdoings in a governance system based on ethical universalism and absence of captive media.¹

Keywords: Corruption, whistleblowing, measurement, law, anticorruption policy.

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Introduction

Since 2013 and the well-known case of Edward Snowden, who leaked nine up to ten thousand classified documents on NSA's global surveillance program, whistleblower protection legislation has become a more common legislative approach to combat organizational wrongdoing, such as lack of transparency or corruption. According to the *Government Accountability Project* – whose guidance has supported over six thousand whistleblowers around the world since 1977 – Snowden's case encouraged increasing numbers of individuals to speak up and report on organizational wrongdoings, thus positively affecting preconceptions on whistleblowers. More recent scandals, such as the Panama Papers, Luxleaks, Cambridge Analytica or the Danish Tax Fraud, have further shown how whistleblowers can play a key role in uncovering organizational wrongdoings.

Following this renewed momentum, in late April 2018 the European Commission published the *Proposal for a Directive of the European Parliament and of the Council on the protection of persons reporting on breaches of Union law*², whose primary objective is to protect persons reporting on *unlawful activities*, often occurring in the form of *corruption or fraud*, as they “can sometimes result in serious harm to the public interest”, and whistleblowers “help prevent damage and detect threat or harm to the public interest that may otherwise remain hidden” (European Commission, 2018: 1). The Commission's proposal was passed by the Court of Auditors in late September 2018³ and is expected to turn into a finalised Directive in early 2019, starting from which Member States would have up to 3 years to implement it.

What is inherent in the Commission's proposal, as so in most other institutional and media reports worldwide, is the assumption that whistleblowing has an impact on the recurrence of corruption or fraud incidents, along with malpractice and organization negligence. But who is a whistleblower and under which circumstances has their protection been acknowledged as a key tool in the fight against corruption?

Definition of Whistleblowing

Literature suggests there is no single approach to define whistleblowers, nor to identify the circumstances under which a government shall grant them protection from retaliation. The concept was first coined in the early nineteenth century and acquired the meaning of a person who reports organizational misconduct, fraud or corruption, and more generally any activity considered to be against the law or ethical standards. As explained by Peter Jubb, whistleblowing differs from informing in its being a deliberate act of dissent from *degenerative behavior in organizations* that challenges someone in higher authority (Jubb, 1999). Among the major response categories described by Hirschman, whistleblowing entails voice to manifest disagreement over organizational wrongdoing (Hirschman, 1970). Voicing dissent is the symptom of felt moral responsibility, as “the whistleblower is a concerned citizen, totally, or predominantly motivated by notions of public interest who initiates of her or his own free will an open disclosure about significant wrongdoing directly perceived in a particular occupational role, to a person or agency capable of investigating the complaint and facilitating the correction of wrongdoing” (De Maria, 1994). When referring to the conditions under which whistleblowers should be granted protection, the United Nations Convention Against Corruption (UNCAC) alludes to “any person who reports in good faith and on reasonable grounds

² European Commission, COM(2018) 218 final, *Proposal for a Directive of the European Parliament and of the Council on the protection of persons reporting on breaches of Union law*, Brussels, 23.04.2018.

³ Court of Auditors Opinion (2018), *ECA OPI 2018-4*, https://eur-lex.europa.eu/procedure/EN/2018_106#2018-09-26_OPI_byECA.

to the competent authorities any facts concerning offences established in accordance with this Convention” (UNCAC, 2005).

While it may be easier to find multiple points in common over the definition of whistleblowing in international literature, national legislations widely differ in terms of the conditions under which a whistleblower is to be protected. Depending on the country under analysis, the legal basis for protection can be special, granted by courts, grounded on administrative procedures or on non-binding codes of best practices of conduct for the private sector (Thüsing & Forst, 2016).

Not only the legal basis, but also the application of this protection differs depending on the country considered: while most of the legislative frameworks analyzed by Thüsing & Forst have general laws protecting whistleblowers to different extents, certain countries draw a well-defined distinction between private and public sector as for the coverage of the law. In this sense, the UK enacted in 1998 and later amended in 2013 the well-known *Public Interest Disclosure Act*, which separately but wholly covers both the public and private sectors. Other countries tend to protect specific categories of employees, regardless of the sector they work for. This is the case of France, that covers on a more general note whistleblowers, while granting clear-cut protection to those individuals who whistle the blow on environmental matters or conflicts of interests.

Whistleblower protection legislation is also subject to national variation depending on the scope of the definition of reportable wrongdoing (Thüsing & Forst, 2016). Countries such as Romania, Brazil and Japan limit protection to illegal conduct, while others such as France, the United Kingdom and the United States comprise both illegal conduct and potential danger to break the law. Certain jurisdictions like Canada have a wider definition of whistleblowing covering all the areas mentioned above in addition to unethical behavior and breaches of codes of conduct.

It was predominantly in response to such a wide variation in whistleblower protection legislation that the European Union proposed a Union-wide scheme of minimum standards for the protection of persons reporting on breaches of Union law.⁴ In the proposed Directive, the Commission suggested a wide definition encompassing different categories of persons reporting on breaches of the Union law (Chapter I, articles 1-3), minimum standards for internal reporting channels (Chapter II, articles 4-5), minimum standards for external reporting channels (Chapter III, articles 6-12), minimum standards for the protection of whistleblowers (Chapter IV, articles 13-18), and final provisions on the implementation and application of this Directive at the national level (Chapter V, articles 19-22).

Whistleblowing and Corruption

But how has whistleblowing become a widely-accepted tool to fight corruption? According to theory, whistleblowers constitute a key instrument in deterring corruption and bribery as they are useful informers when a deviation from the norm occurs, thus making their encouragement and protection against retaliation fundamental to the international fight against corruption (Public Services International Research Unit, 2003). Policy and empirical research would seem to support the argument, underlining the value of whistleblower protection legislation as a potential source of information for governments and organizations (White, 2000; Transparency International, Feinstein International Center, Humanitarian Policy Group of the Overseas Development Institute, 2008). Not only literature, but also numerous international organizations recognized the importance of whistleblowing in the fight against corruption. The Council of Europe recognized whistleblower protection legislation as a *key aspect of freedom of expression and freedom of conscience* needed for both strengthening democratic accountability and transparency, and for detecting hidden wrongdoing and organizational mismanagement (Council of Europe, 2014). According to the OECD, whistleblowing also facilitates the reporting of fraud, bribery and corruption, while supporting compliance to anti-corruption laws (OECD, 2011).

⁴ See note 1.

International Best Practices for Whistleblower Laws

Not only has whistleblowing acquired formal recognition of merit across various legislations, but also the protection of those who blow the whistle has become a relatively popular object of interest for international best practices. While many different guides exist on how to best draft whistleblower laws, certain common principles seem to inspire them all (Table 1).

Table 1: International Best Practices for Whistleblower Laws.

Common Principles	Recurrent Principles	Other Principles
<ul style="list-style-type: none"> • Broad definition of whistleblower, covering all individuals who personally carry out disclosures, and those assisting them; • Broad definition of reportable wrongdoing or disclosure; • Sanctions for retaliation and interference; • Comprehensive remedies for whistleblowers; • Interim relief, transfer option, coverage for attorney fees, and personal accountability for reprisals; • Provisions and protections for anonymous reporting; • Personal protection against harassment and retaliation; • Entitlement to a fair hearing. 	<ul style="list-style-type: none"> • Right to refuse violating the law; • Variety of disclosure channels in place; • Special disclosure channel for intelligence agencies and national security matters; • Financial rewards for whistleblowers; • Transparent use of legislation and publication of data; • Periodic legislative review; • Presence of a specific law dedicated to whistleblower protection; • Burden of proof on employers; • Whistleblower participation; • Dedicated oversight authority; • Protection from gag orders; • Existence of supporting tools and services for paper rights; • Absence of protection for knowingly false disclosures; • Waiver of liability from disciplinary 	<ul style="list-style-type: none"> • Realistic timeframe to act on rights (minimum 6 months); • Private attorney general option; • Broad coverage of organizations (public, private, NGO, and military sectors); • Right not to be extradited based on a disclosure made; • Creation of a technological channel to

These include a broad definition of whistleblower, covering all those individuals that carry out disclosures relevant to the public service mission and that are actively taking part in activities related to the organization’s mission (Devine & Walden, 2013) and all those individuals that assist them in blowing the whistle (Blueprint for Free Speech, 2016); a broad definition of reportable wrongdoing or disclosure, including the context and subject of disclosure with no loopholes (Devine & Walden, 2013); sanctions for retaliation and interference (Blueprint fo Free Speech, 2018); comprehensive remedies for whistleblowers, covering all direct, indirect, and future consequences of any retaliation (Transparency International , 2013), interim relief, transfer option, coverage for attorney fees, and personal accountability for reprisals (Devine & Walden, 2013); provision and protections for anonymous reporting and confidentiality, including technological infrastructures that secure the anonymity of online whistleblowers (Blueprint for Free Speech, 2016), personal protection against harassment and retaliation, and the entitlement to a fair hearing.

Whistleblowing and the Culture of Silence

The previous section illustrated how literature tends to associate decreasing levels of corruption to the practice of whistleblowing: this connection is based on the assumption that, had silence not occurred, severe human and capital losses would have been prevented (Public Services International Research Unit, 2003). Another assumption that is often being made is that public interest is the main driver of employees, while organizational loyalty comes up short.

Contrary to this assumption, existing literature acknowledges that certain sectors have an embedded *culture of silence*, in other words there are certain behavioral standards that push individuals to keep their mouth shut even when a crime or a deviation from the norm occurs (Skolnick, 2001; Loyens, 2013; Rothwell & Baldwin, 2007). Literature has also found a link between collectivism and *acquiescent silence*, meaning that a collectivistic country with high power distance is more likely to prompt a culture of silence among employees (Rhee, Dedahanov, & Lee, 2014). A connection has been found in turn between corruption and collectivism, the latter being a promoter of silence and of decreased sense of responsibility for one's actions (Mazar & Aggarwal, 2011).

Methodology

Given the contradiction between the presumed theory of change behind whistleblower protection legislation and the findings on existing cultures of silence, this report aimed to challenge the theoretical link between the introduction of whistleblower protection legislation and the fight against corruption. In other words, it investigated whether the introduction of a good law protecting whistleblowers influences the level of corruption in a country. This paper was written in collaboration with the European Research Centre for Anti-Corruption and State-Building (ERCAS), based at the Hertie School of Governance in Berlin, Germany. The geographical scope of this research was *Horizon 2020 Digiwhist Project's* country dataset – otherwise known as EuroPAM dataset⁵ –, which consists of: EU-28 countries, Switzerland, Georgia, Norway, Iceland, Serbia, and Armenia.

Among all EuroPAM countries (Table 2), the majority protects whistleblowers to different extents, nevertheless only a few of them have introduced a single piece of legislation that focuses on whistleblower protection. Out of thirty-four countries under analysis, 12 only have a specific law in place for the protection of whistleblowers.

Table 2: Whistleblower Protection Legislation for EuroPAM Countries.

Country	Coverage	Specific Law (Yes/No)	Name of applicable legislation
Armenia	None or limited	No	Law on Civil Service, 2001; Criminal Code, 2003.
Austria	Partial	No	Federal Act Concerning the Protection of Personal Data 2000; The Service Code for Civil Servants, 1979; Law on the BAK - Federal Law Gazette No. 72/2009; Public Service Law amended in January 2012; Labour Law; Environmental Information Act.
Belgium	Partial	No	The Flemish Whistleblowing Decree of 2004; Federal bill 2802/2003; Law on the Termination of a Suspected Violation of the Integrity in a Federal Administrative Authority by a Member of his Staff; Belgian Act of December 8 th , 1992 on the protection of privacy in relation to the processing of personal data

⁵ The EuroPAM database is part of the EU-funded Digiwhist project, whose aim is to increase efficiency in public spending and trust for governments across Europe. It is an extension of the Public Accountability Mechanisms initiative (PAM) by the World Bank.

Bulgaria	None or limited	No	Administrative Procedure Code, 2006; Conflict of Interest Prevention and Ascertainment Act, 2008; Administration Act, 1999.
Croatia	Partial	No	Civil Obligation Act, 2005; Art. 14a. Of the Civil Servants Act; the Courts Act; Criminal Procedure Act - Chapter XVIII Art 283-300; Art 117 para 3 of Labour Act; The Witness Protection Act, 2003; Labour Act, 1995; Civil Service Act, 2005 - Art. 4 Para 2; Art 69, para 3 of Occupational Health and Safety Act.
Cyprus	Partial	No	Public Service Law, 1990, later amended in 2006 (public sector employees); The Unfair Dismissal Law (private sector employees).
Czech Republic	Partial	No	Labour Code 2006; Criminal Code 2009; Code of Administrative Procedure 2004; Civil Servants Act 2002; Act on Non-Discrimination 198/2009; Ombudsman Act 1999.
Denmark	Partial	No	Penal Code 1930; Employers' and Salaried Employees' Act 1996; Legal Relationship between Employers and Salaried Employees (Private Sector-min rights); Section 77 of the Danish Constitution relating Freedom of Speech.
Estonia	Partial	No	Anti-Corruption Act 2012 (public sector employees); Minor protection offered in the Public Service Act, 1995, Equal Treatment Act, 2008, Penal Code, 2001; Witness Protection Act, 2005; Occupational Health and Safety Act, 1999; Environmental Liability Act, 2007; Employment Contracts Act, 1992.
Finland	None or limited	No	Criminal Code, 1889.
France*	Partial	No	The anti-corruption law, 2007 (1598/2007); The 2011/2012 Sunshine Act, otherwise known as <i>Loi Bertrand</i> ; The 316/2013 Law or <i>Loi Blandin</i> ; The 907/2013 Law, article 25; The 1117/2013 Law; The 1691/2016 Law, or <i>Sapin II</i> .
Georgia*	Partial	Yes	Whistleblower Act 1993.
Germany	Partial	No	Criminal Code, 1998 (Chapter 30, Sections 331-337); The Data Protection Act, 2003; The Labour Protection Act, 1996; The General Equal Treatment Act, 2006; The Works Council Constitution Act, 1972.
Greece	None or limited	No	Penal Code Art. 263/B, 1950.
Hungary	Partial	Yes	Act CLXV of 2013 on Complaints and Public Interest Disclosure; Act CXII of 2011 on the Right of Self-Determination in Respect of Information and the Freedom of Information; Labour Code; Civil Servants Act; Act LXXX, 2003.
Iceland	Advanced	No	Media Act No. 38 of 20 April 2011.
Ireland	Partial	Yes	The Protected Disclosures Act 2014.
Italy	Partial	No	Anti-Corruption Law, 2012; Law No. 112/2012; Legislative Decree No. 165/2001 Art 54 - Consolidation Act for the Public Service, 2001; Employment Law 300/1970; Legislative Decree 231/2001.
Latvia	Partial	No	Labour Law, 2001.
Lithuania	None or limited	No	Labour Code, 2002; Law on Public Service.
Luxembourg	Advanced	No	Law of 13 February 2011 relating to the fight against corruption; Labour law Code 2006
Malta	Advanced	Yes	Whistleblower Act, 2013; Public Administration Act, 2010; Criminal Code.
Netherlands	Partial	Yes	Whistleblowers Centre Act, 2016; Civil Service Act, 1929; Reporting of Suspected Malpractices Decree, 2006; Civil Code; Central and Local Government Personnel Act; Police Act, 2012; Military Personnel Act, 1931.
Norway	None or limited	No	The Working Environment Act, 2005 (WEA 2005).

Poland	Partial	No	Labour Code (art. 101), 1974; Criminal Code (art. 240), 1997; Code of Criminal Procedure (art. 304), 1997.
Portugal	None or limited	No	Article 4 of the Law 19/2008; Criminal Procedure Code; Law 36/1994; Law 93/1999; Law-Decree (Act) 190/2003; Law 25/2008; Criminal Code, approved by Law 48/1995; Labour Code; Law 59/2008.
Romania	Advanced	Yes	Law 571/2004, otherwise known as the Whistleblower Protection Act; Law 682/2002 on Witness Protection; Law 554/2004 on Administrative Disputes; Law 188/1999 on the Regulations of Civil Servants.
Serbia	Advanced	Yes	Law on Protection of Whistleblowers, 2014 ("Official Gazette of RS", No. 128/2014); Law on Civil Servants, 2005; Anti-Corruption Agency Act, 2008.
Slovakia	Advanced	Yes	Act No. 307/2014 Coll. on Certain Measures Related to Reporting of Anti-Social Activities and on Amendment and Supplements to Certain Acts; Law 125/2006 on Labour Inspection; Labour Code.
Slovenia	Advanced	No	Integrity and Prevention of Corruption Act, 2010.
Spain	None or limited	No	Criminal Procedure Law, 1882; Penal Code, 1995; Organic Law 15/1999 on Data Protection.
Sweden*	Partial	Yes	Freedom of Information Act, 1776; Act on the Protection of Business Secrets, 1990; Lex Sarah on the care sector, 1999; Lex Maria from the Patient Safety Law (Ch. 3, Paragraph 5), 2011; The Whistleblower Act, or <i>Act on Special Protection for Workers against Reprisals for Whistleblowing Concerning Serious Irregularities</i> , 2016.
Switzerland	Partial	No	Federal Personnel Act, 2013.
United Kingdom	Advanced	Yes	Public Interest Disclosure Act 1998; Employment Rights Act, 1996; Enterprise and Regulatory Reform Act, 2013; Small Business, Enterprise and Employment Act, 2015.

Based on this geographical variation, the analysis focused on those countries that have introduced a specific law addressing whistleblower protection - namely Hungary, Ireland, Malta, The Netherlands, Romania, Serbia, Slovakia, and the United Kingdom – and inquired whether a theory of change exists behind it. In doing so, this analysis left out three problematic cases (highlighted with asterisk in Table 2): 1) Belgium: literature is split in considering Belgium as a country with or without a specific law on whistleblowers, given the fragmented legislation covering whistleblowers in different ways depending on the regional area under consideration; 2) France: the country has just passed a new law – Law 1691/2016, otherwise known as *Sapin II* – which covers whistleblowers, anti-corruption and economic modernization, but the original text was not available in English at the time of this analysis; 3) Sweden: the country has introduced the Whistleblower Act – or *Act on Special Protection for Workers against Reprisals for Whistleblowing Concerning Serious Irregularities* – in March 2016 but, due to the brevity and lack of detail of the law, no whistleblowers have used it since it took effect in January 2017 (Blueprint for Free Speech, 2018). The research also had to exclude Georgia from the cases under analysis, thus making the cases under analysis eight instead of nine: while this EuroPAM country introduced a specific law for whistleblower protection in 1993, as well as it is often considered one of the most successful cases of fight against corruption, no official or unofficial translation in English was available for this legislative text.

To test how effective the law introduced is to protect whistleblowers, Aram Khaghaghordyan – ERCAS Coordinator and Research Associate at the research centre – developed a questionnaire made of sixty-four dichotomous (Yes/No) questions (Appendix 1).

The questionnaire is divided into five different categories: 1) *Scope and Coverage*, subdivided into scope and coverage by sector; 2) *Reporting and Administration*, subdivided into reporting channels and agency; 3) *Protection and Thresholds*, subdivided into identity, whistleblower protection, and thresholds; 4) *Sanctions and Remedies Against Retaliation*, subdivided into sanctions, remedies against retaliation, and financial reme-

dies; 5) *Transparency and Due Process*, subdivided into transparency, review, and appeal. The logic behind the creation of this questionnaire was to check how comprehensive and well-drafted is the existing national legislation on whistleblowers as compared to international best practices on whistleblower protection. Based on ERCAS questionnaire, this analysis created a Whistleblower Index (WI) that measured how comprehensive is the legislation on whistleblowers in those countries that have introduced a specific law. To do so, the research compiled the questionnaire for the eight cases under analysis. Whenever the questions were not addressed in the specific law, this analysis considered other laws from the national legislative framework covering whistleblowers to some extent. The analysis then created a dichotomous variable based on the compiled questionnaires – the Whistleblower Index – and normalized it to a scale of 100 points. Under the same section, a qualitative comparison was undertaken between the countries under analysis for both the overall WI and each of the subcategories of the index.

In the fourth section, the analysis aimed to test whether the Whistleblower Index is correlated with a decrease in national levels of corruption and bribery. Given the restricted size of our sample, the methodological design used to approach change was to first look at Kauffmann's confidence intervals for WGI's Change of Corruption and see whether any statistically significant change in control of corruption occurred in the cases under analysis. This indicator, developed by the World Bank Group as one of the Worldwide Governance Indicators, captures public perceptions on the extent to which power is exercised for undue private gain (Kaufmann, Kraay, & Mastruzzi, 2010). Second, the analysis calculated averages for Control of Corruption before and after the introduction of the Whistleblower Law and used a t-test to investigate whether using the year of introduction of the law as year 0 produced different results as compared to Kaufmann's confidence intervals. Third, it looked at the correlation between change in Control of Corruption and WI's overall score.

Table 3: Year of Introduction of a specific whistleblower law for selected countries, EuroPAM database.

Country	Year of Introduction
Hungary	2011
Ireland	2014
Malta	2013
Netherlands	2016
Romania	2004
Serbia	2014
Slovakia	2014
United Kingdom	1998

The fifth section analyzed whistleblower scandals in all countries under consideration – except for the Netherlands, where a specific whistleblower law was only recently introduced – and compared these results with seven control countries taken randomly from the EuroPAM dataset, namely Italy, France, Greece, Spain, Norway, Latvia and Czech Republic. For each country, the analysis looked at the amount of scandals which took place in the past four years, namely between 2014 and 2017. This section was based on Reuters and the BBC World News to ensure that no critical scandal was left aside for reasons of partial media coverage. The main purpose of this analysis was to investigate whether more whistleblower scandals took place in countries that have introduced a specific law protecting whistleblowers, as compared to those that did not.

The Whistleblower Index

Among the case studies under analysis, none scores high in the Whistleblower Index, all of them equal to or lower than 61/100, (Table 1).

Table 4: Cross-country comparison of the Whistleblower Index.

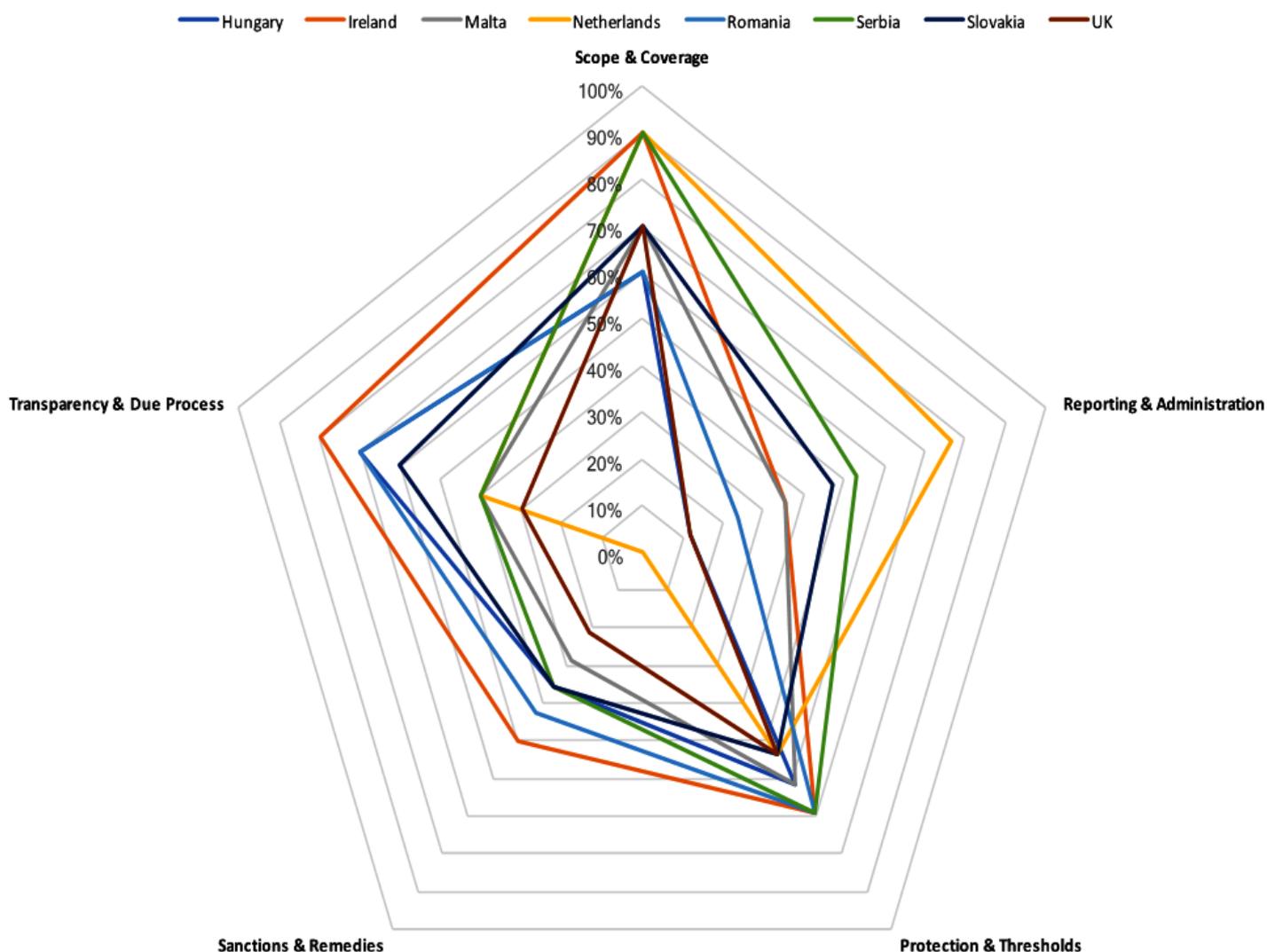
WI Index	
Ireland	2011
Serbia	2014
Netherlands	2013
Slovakia	2016
Romania	2004
Malta	2014
Hungary	2014
United Kingdom	1998

This would suggest that international best practices on whistleblower protection legislation are hard to follow even for those countries that have introduced a specific law addressing whistleblowers. Among the major findings of this analysis, the United Kingdom was found to score the lowest out of all countries under analysis, with 38/100. This is in line with more recent accounts of the UK's protection of whistleblowers (Blueprint for Free Speech, 2018) but contradicts a wider body of literature, which often depicts UK's whistleblower law – the *Public Interest Disclosure Act (PIDA)* – as one of the strongest existing laws for whistleblowers in the world (Transparency International, 2013). Another troublesome finding concerned Romania which scores 50/100 only, although it is also being often considered one of the most advanced countries in Europe for whistleblower protection legislation. To better understand the discrepancy between findings and existing literature on whistleblower protection frameworks in Europe, the analysis looked at the index's subcategories – Scope & Coverage, Reporting & Administration, Protection & Thresholds, Sanctions & Remedies, Transparency & Due Process – to see which were the main factors contributing to the depicted scenario. To do so, the analysis focused on partial results of the Whistleblower Index (Appendix 2) and noted that some sections tend to be covered more thoroughly and often than others. This cross-country comparison is visually displayed in Figure 1.

As shown in the figure above, there is wide variation in how countries perform depending on which subcategory is considered. The two sections where countries converge the most are Scope & Coverage and Protection & Thresholds. In this sense, cross-national commonalities include having a specific definition of whistleblowing and whistleblower (except for Hungary), protection of people outside the traditional employer-employee relationship (except for Hungary and Slovakia), and coverage of whistleblowers in all sectors – apart from Romania, which only addresses the public sector – with the exception of intelligence agencies and armed forces, which are often left out from the legislative scope.

In Protection & Thresholds, common practices include the protection of anonymity, the possibility to receive and investigate anonymous reports, and protection from dismissal and from any disciplinary proceedings. Potential areas for improvement include protection from any detriment caused by fellow workers and/or agents of the employer; creation of a technological infrastructure to preserve the anonymity of reports; and burden of proof on the employer. As for Sanctions & Remedies, Figure 1 shows how on average all countries taken into consideration fall behind, with a peak of 50% in Ireland. The Netherlands, which has a relatively high WI, scores 0 in this section. Other areas open to enhancement include the presence of sanctions, remedies against retaliation, and financial remedies for whistleblowers. The same consideration is valid for WI's section on Transparency & Due Process for all countries under analysis except for Romania, Ireland, and Hungary.

Figure 1: Radar Chart, Cross-country comparison of WI's subcategories, in %.



Hungary

With respect to whistleblower protection legislation in Hungary, this research looked at 2011's *Act CXII on the Right of Self-Determination in Respect of Information and the Freedom of Information* and the more recent *Act CLXV of 2013 on Complaints and Public Interest Disclosures*.⁶ For specific parts of the Index, the *Labour Code*, the *Civil Servants Act*, and *Act LXXX of 2003* were also considered.

Based on the findings, Hungary's law covers all sectors, including intelligence agencies and armed forces, nonetheless the scope of whistleblower protection appears to be relatively restricted. The legislative framework requires a range of reporting channels to be in place,⁷ but it does not mandate internal reporting channels or special procedures for reports on national security matters, military secrets or classified information. There is no dedicated agency or division of an existing agency for whistleblowers (Hungarian Civil Liberties Union & K-Monitor, 2015). The law protects anonymous whistleblowers and there are some provisions to ensure that anonymous reports can be received and investigated; nevertheless, there is a gap in the protection of anonymity between the end of the investigation and sixty days after the investigation⁸

⁶ The English version of *Act CLXV of 2013 on Complaints and Public Interest Disclosures* can be found at http://corruptionprevention.gov.hu/download/7/a2/90000/KIM%20555_2013-4.pdf

⁷ Article 4 of Act CLXV, 2013 dictates to introduce a protected electronic system for public interest disclosures.

⁸ Article 15, paragraphs 2 and 5 of Act CLXV, 2013.

that puts anonymous whistleblowers at risk of identification after the disclosure. Besides the protection of anonymity, the Hungarian framework also appears to be lacking on general protection of whistleblowers, which does not envisage any sanction for those who may take actions against whistleblowers, apart from prohibiting the divulgation of a whistleblower's personal data.⁹ The legislative framework is thorough on remedies against retaliation and transparency, while it shows deficiencies on financial incentives.

Ireland

To study Ireland's legislative framework on whistleblowers, this analysis looked at the *Protected Disclosures Act* of 2014.

The findings show that Ireland has by far the best whistleblower protection legislation in Europe, with 61/100 on the Whistleblower Index. When drafting the law, Ireland looked up to what has been considered one of the strongest existing whistleblower laws in the world, the UK's well-known *Public Interest Disclosures Act* of 1998. The scope and coverage of the law as well as the mechanisms for transparency and review in Ireland are full; nevertheless, there are no provisions on people mistakenly identified as whistleblowers or assisting the whistleblower to report, nor regulations dictating to update the whistleblower on the status of the disclosure made. In terms of remedies against retaliation, the law is strong (Walshe, 2016) and it allows for the whistleblower's transfer to a new department with similar salary and working conditions,¹⁰ interim and injunctive relief before the end of investigation, and extended protection to family members and/or affected associates of the whistleblower. Compared to the other cases under analysis, Ireland scores high on financial remedies and allows for up to five years of financial remuneration, paid leave and compensation for pain and suffering and legal fees. The law is strong on reporting channels, as it dictates all public-sector organizations to create internal reporting channels, regardless of their size, and it comprises special procedures for disclosures on national security matters. The law also requires a range of reporting channels to be in place, including to the employer or an authorized person, to prescribed persons, to the Minister, to a legal adviser and to the public. Some of the law's deficiencies include that there is no agency or division dedicated to the monitoring and overseeing of whistleblower protection, as well as a weak sanction system, which only provides the compensation or order for continuation of the contract of employment.

Malta

Malta's provisions on whistleblowers can be found in the *Protection of the Whistleblowers Act* of 2013. Additional regulations are also in the *Public Administration Act* of 2010 and in the *Criminal Code*.

The law is strong on paper and comprehensive on the coverage of sectors and reporting measures. The law has also wide-ranging regulations on thresholds for protection and on the review of the disclosure. The Act provides protection for the whistleblower's identity, as anonymous reports can be received and processed and the identity cannot be disclosed without explicit consent; nevertheless, it is important to note that anonymous disclosures are not to be considered as protected disclosures under the Act's framework.¹¹ As for areas open to improvement, Malta's legislation is weak on the actual protection of whistleblowers (Blueprint for Free Speech, 2018), as well as on sanctions and remedies against retaliation. Furthermore, the Act does not have any provision on intelligence agencies and armed forces. Other flaws can be found in the areas of appeal, transparency of the disclosure and financial incentives: in this regard, the only existing provision allows for compensation of whistleblowers for pain and suffering.¹² These deficiencies are further stressed by the absence of an agency or division of an existing agency dedicated to the protection of whistleblowers.

⁹ Article 9 and 10 of Act CLXV, 2013.

¹⁰ Schedule 1, Section 11, Paragraph 3, a/ b of the *Protected Disclosures Act*.

¹¹ Part III, Article 11(1) of the *Protection of the Whistleblowers Act* of 2013.

¹² Part II, Article 7(3) of the *Protection of the Whistleblowers Act* of 2013.

The Netherlands

Protection of whistleblowers in the Netherlands can be found in the *Whistleblowers Centre Act* of 2016. Some provisions regulating the field can also be found in the *Civil Service Act* of 1929, the *Reporting of Suspected Malpractices Decree* of 2006, the *Civil Code*, the *Central and Local Government Personnel Act*, the *Police Act* of 2012 and the *Military Personnel Act* of 1931.

The Act of 2016 covers whistleblowers from all sectors and is especially strong on the Reporting & Administration section of the WI. In this sense, not only it requires internal reporting procedures for both public and private sector organizations with more than fifty employees,¹³ but it also and most importantly introduced a strong agency, the Whistleblowers Centre.¹⁴ The Centre is allowed to receive and investigate complaints,¹⁵ as well as to monitor their investigation and corrective actions. It also has the authority to collect all public disclosures made to other agencies and to do follow-ups on their investigations,¹⁶ to make public the results of investigations,¹⁷ to order an investigation if considered necessary, to provide advice and support to whistleblowers, and to report annually to the executive branches on the outcomes of all investigations and prosecutions. The Act also contains strong provisions on the review and appeal mechanisms,¹⁸ as well as on the protection of the whistleblower's identity.¹⁹ The legislative framework is extremely weak on sanctions, remedies against retaliation and financial incentives, for all of which it scores 0 on the WI. Some weaknesses can also be found on the transparency of procedures and on the protection of whistleblowers: the only provisions in place mandate to post internal whistleblower procedures in the workplace,²⁰ to provide the whistleblower with immunity from any disciplinary proceedings in relation to the disclosure made,²¹ and to protect whistleblowers from dismissal.²²

Romania

In 2004, Romania introduced *Law 571/2004*, otherwise known as the *Whistleblower Protection Act*, which specifically addresses whistleblowers. Apart from this Act, other provisions can be found in *Law 682/2002 on Witness Protection*, *Law 554/2004 on Administrative Disputes*, *Law 188/1999 on the Regulations of Civil Servants*. Other sources used for this analysis include two reports written by Transparency International (Transparency International Romania, 2012; Transparency International, 2009).

The Law only covers whistleblowers in the public sector (Transparency International Romania, 2009), for which internal reporting procedures are required regardless of the size of the organization. The scope of the law is wide,²³ as so are the thresholds²⁴ and the protections provided to whistleblowers.²⁵ Remarkably enough, the Law also contains some remedies against retaliation as well as financial remedies – including protection of family members and associates,²⁶ interim and injunctive relief,²⁷ compensation for lost earn-

¹³ Section 2(1) of the Whistleblowers Centre Act of 2016.

¹⁴ Section 3 of the Whistleblowers Centre Act of 2016.

¹⁵ Section 3, paragraph a) and b) of the Act.

¹⁶ Section 13(1) and Section 10(2) of the Act.

¹⁷ Section 17(7) and 17(8) of the Act.

¹⁸ Chapter 1, Section 14, 17(3-4-5), 6(1) and Chapter 2, Section 4(1) of the Act.

¹⁹ Chapter 1, Section 2(2) and Section 3 of the Act.

²⁰ Chapter 1, Section 2(3) of the Act.

²¹ Chapter 3, Section 18(a-b-c) of the Act.

²² Section 18, amendment to article 658b of Book 7 of the Civil Code; Section 18(a), Section 18(b), Section 18(c) as amendments to the Central and Local Government Personnel Act, to the Police Act 2012 and to the Military Personnel Act 1931; Reporting of Suspected Malpractices Decree for civil servants and employees of the police.

²³ Article 3(a-b) of Law 571/2004.

²⁴ Article 5 and 9 of Law 571/2004.

²⁵ Article 4(d) and 9(1) of Law 571/2004.

²⁶ Article 14 and 15 of Law 682/2002 on Witness Protection.

²⁷ Article 14 and 15 of Law 554/2004 on Administrative Disputes.

ings and status, paid leave and compensation for pain and suffering –, and it is very strong on review and appeal mechanisms.²⁸ Differently from the abovementioned areas, the legislative framework is rather weak on sanctions – the only sanctionable action is the divulgation of whistleblower’s identity without explicit consent²⁹ – and on transparency of procedures. Other flaws include that whistleblowers are only protected within the public sector and that there is no dedicated agency for monitoring whistleblower protection.

Serbia

In 2014, Serbia introduced a specific law on whistleblowers, *Law 128/2014*, otherwise known as the *Law on the Protection of Whistleblowers*. Other provisions on whistleblowing can be found in the *Law on Civil Servants* of 2005 and the *Anti-Corruption Agency Act* of 2008.

Serbia provides coverage to whistleblowers in all sectors³⁰ and a wide array of reporting channels available: in both the public and the private sectors, each employer with more than ten employees must install an internal reporting channel for whistleblowing;³¹ additional provisions regulate external reporting,³² disclosures on national security matters,³³ and other reporting channels in place.³⁴ The Anti-Corruption Agency shares responsibilities on whistleblowing with the Ministry of Labor, that is responsible for supervising the implementation of *Law 128/2014*. While the two agencies are responsible for monitoring the protection of whistleblowers, very limited is their actual authority on protected disclosures, which is limited to receiving and investigating reports,³⁵ launching initiatives for amending and enacting regulations in the field, and to introducing and implementing education programs on whistleblowing.³⁶ Comprehensive provisions exist for thresholds and sanctions, such as the prohibition to extradite whistleblowers,³⁷ to divulge the whistleblower’s identity without express consent,³⁸ and penalties for agencies that do not follow up on whistleblower disclosures and complaints.³⁹ The actual protection of whistleblowers is quite strong, as it consists in the burden of proof on the employer,⁴⁰ the unlawfulness for fellow workers or employer’s agents to cause any detriment to the whistleblower,⁴¹ and protection from dismissal.⁴² Weak points of the legislative framework in Serbia include remedies against retaliation and financial remedies – that only comprise interim relief⁴³ and compensation for pain and suffering⁴⁴ –, and the appeal and review mechanisms.

Slovakia

In 2014, Slovakia introduced the *Act No. 307/2014 Coll. on Certain Measures Related to Reporting of Anti-Social Activities and on Amendment and Supplements to Certain Acts*. Other relevant acts include *Law 125/2006 on Labour Inspection* and the *Labour Code*.

²⁸ Transparency International, 2009.

²⁹ Article 20(1) of Law 682/2002 on Witness Protection.

³⁰ Article 2(1, 2) of Law 128/2014 on the Protection of Whistleblowers.

³¹ Article 16 of the Law.

³² Article 18 of the Law.

³³ Article 20 of the Law.

³⁴ Articles 16, 18, and 19 of the Law on Civil Servants, 2005.

³⁵ Article 18 of the Law.

³⁶ Article 5 of the Anti-Corruption Agency Act of 2008.

³⁷ Article 21(12) of the Law.

³⁸ Article 38 and Article 14 of the Law.

³⁹ Article 38 of the Law.

⁴⁰ Article 29 of the Law.

⁴¹ Article 38 and 14 of the Law.

⁴² Article 14 and 21.

⁴³ Articles 32, 33, 34, and 35 of the Law.

⁴⁴ Articles 22, 23, and 26 of the Law.

Whistleblowers from all sectors are covered by the law, including those from intelligence agencies and armed forces, for which special procedures exist.⁴⁵ Strong provisions exist for sanctions,⁴⁶ appeal mechanisms,⁴⁷ and the protection of anonymity in public disclosures.⁴⁸ Among the main weaknesses in the Slovakian legislative framework for whistleblowers, it is relevant to note that no external reporting channels or any reporting channel other than internal exist, meaning that whistleblower protection is entirely up to employers and, to a lesser extent, to the Labour Inspectorate: the latter serves as agency for whistleblowers and it has the authority to receive and investigate public disclosures,⁴⁹ as well as to order an investigation when considered necessary⁵⁰ or report to regulatory authorities for follow-up or corrective actions⁵¹; nevertheless, there is no provision empowering the Labour Inspectorate to cease retaliation perpetrated by the employer or fellow workers, or to make a whistleblower whole, nor there are provisions allowing the Inspectorate to publish data on public disclosures regularly, or to make public the results of investigations: this in turn makes the Labour Inspectorate a rather weak agency for monitoring and overseeing the protection of whistleblowers. The legislative framework does not provide any remedy against retaliation or financial remedy, except for the entitlement to interim relief.⁵² Other flaws can be found in poor review mechanisms and scope of the law: in this sense, people outside the traditional employee-employer relationship are not in the scope of the law, as so are not those mistakenly identified as or assisting the whistleblower. Also, the disclosure does not necessarily have to be made in the public interest.

United Kingdom

The United Kingdom was the first European country to ever introduce a specific law protecting whistleblowers in 1998, the *Public Interest Disclosure Act* (otherwise known as *PIDA*), which has been considered for the past two decades one of the most comprehensive laws for the protection of whistleblowers. Other relevant laws to consider in UK's legislative framework include the *Employment Rights Act* of 1996, the *Enterprise and Regulatory Reform Act* of 2013, and the *Small Business, Enterprise and Employment Act* of 2015.

The Act has wide scope and coverage: it protects whistleblowers in all sectors other than intelligence agencies and armed forces. Good review mechanisms and thresholds are in the scope of the legislative framework⁵³ - such as the entitlement to fair hearing, same access to judicial remedies as the other parties involved, and thresholds of good faith for the disclosure made and the one of honest and reasonable belief that the information disclosed is true. It is also worth mentioning that whistleblowers in the UK are entitled to ample protections, such as protection from dismissal and from other forms of retaliation, including: immunity from any disciplinary proceedings connected to the disclosure made,⁵⁴ burden of proof on the employer,⁵⁵ and the right not to be subjected to detriments caused by fellow workers or agents of the employer.⁵⁶ Also, whistleblowers are entitled to interim relief⁵⁷ and compensation for past earnings and status.⁵⁸ While being strong on the aforementioned areas, the UK's legislative framework for whistleblowers shows some deficiencies worth mentioning: the identity of whistleblowers is poorly protected and there

⁴⁵ Article 1, Section 7(1) with regards to employers of professional soldiers; Section 21(1, 2) of the 307/2014 Act.

⁴⁶ Article 1, Section 14 and 15 of the Act.

⁴⁷ Section 7(6) of the Act.

⁴⁸ Article 1, Section 2 and 11(6) of the Act.

⁴⁹ Article 1, Sections 7, 13, and 17 of the Act.

⁵⁰ Article 12 of Law 125/2006.

⁵¹ Article 6(1) of Law 125/2006.

⁵² Section 13(7) of the Act.

⁵³ Section 43C, 43E, 43F, 43G of the Law; Section 48 and 127B of the Employment Rights Act.

⁵⁴ Section 47B of the Law.

⁵⁵ Section 1B and 1C of the Employment Rights Act of 1996.

⁵⁶ Section 47B(1A) of the Employment Rights Act of 1996.

⁵⁷ Section 128 of the Employment Rights Act, 1996.

⁵⁸ Section 49 of the Employment Rights Act, 1996.

are no sanctions other than that for failing to comply with a court order.⁵⁹ Also, no protection is granted to people outside the traditional employee-employer relationship and there are no appeal mechanisms for the whistleblower. Finally, there is no agency or division of an existing agency dedicated to the protection of whistleblowers.

Measuring Change in Control of Corruption

According to classic literature, there are two paths that countries can follow to control corruption and achieve good governance:

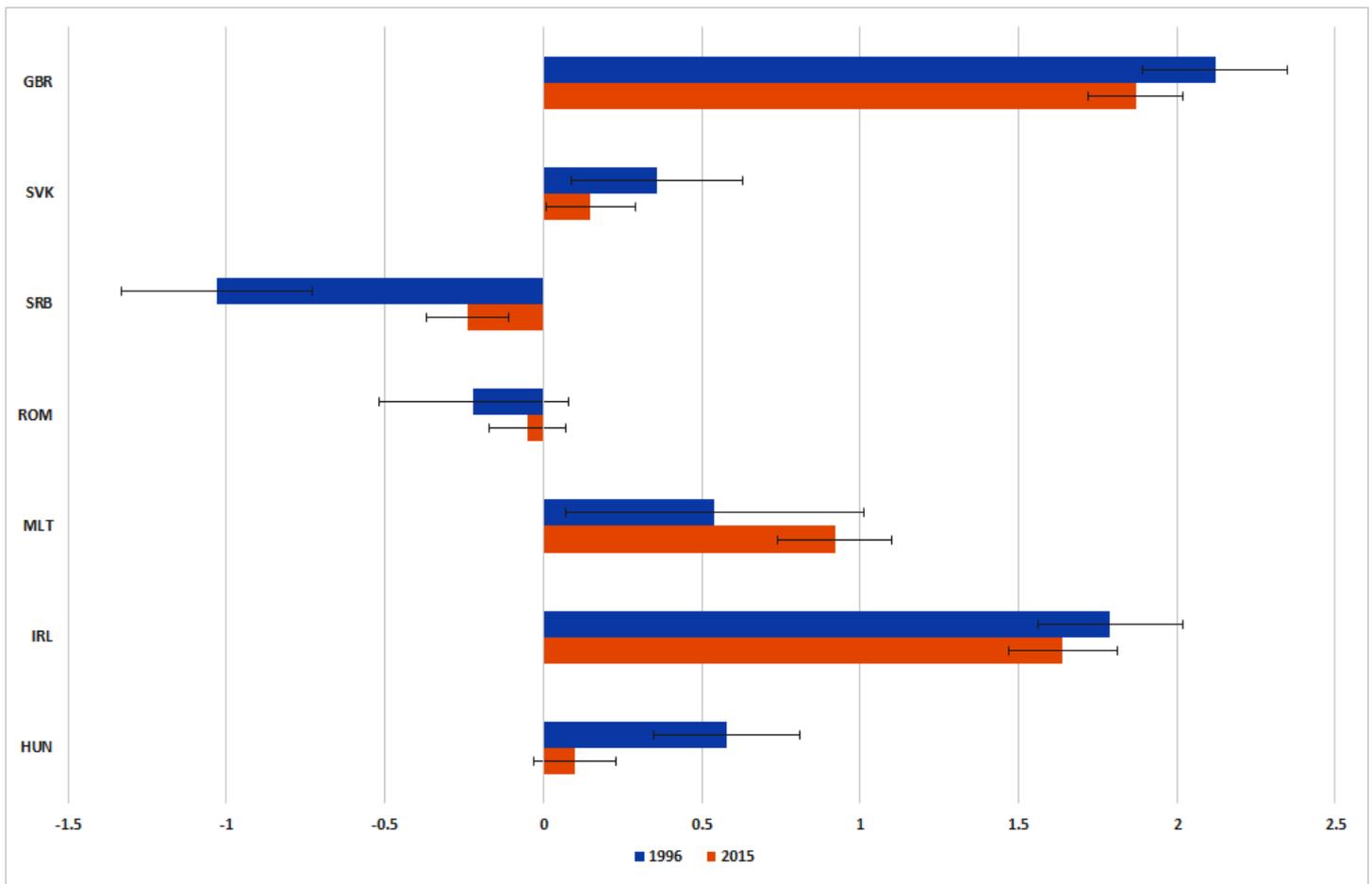
The modernization of society: when following this path, countries transition towards ethical universalism “with an incremental change of institutions until open access, free competition and meritocracy become dominant” (Mungiu-Pippidi, 2017). Post-WWII’s Australia is often being cited as an historical example of this path (Graycar, 2015).

The modernization of the state: this path consists in addressing the non-rational state or failed organism of the state, that is all corrupt acts after they have occurred. Under this paradigm, countries have introduced various laws on integrity, anti-corruption agencies, and the protection of whistleblowers. This path has proven to be successful in very few cases, because it requires the presence of an enlightened principal who is truthfully committed to reform the country and address the flaws of the state. If this condition does not occur, in other words corruption is spread at all levels of society including the government, this path is not desirable (Rose-Ackerman, 1997).

The criticisms made in relation to the second path would suggest that the introduction of laws on integrity, anti-corruption agencies, or the protection of whistleblowers will not have an impact on the quality of governance of a country unless the latter is governed by ethical universalism. To test whether this postulate is true, the analysis aimed to discover whether the introduction of a specific law on whistleblowers had any impact on the level of corruption of a country.

The first methodological approach used to address this question was to look at Kaufmann’s confidence intervals for WGI’s Control of Corruption and examine whether any of the countries under analysis had a statistically significant change in Control of Corruption from the first to the last year of available estimates (Kaufmann, 2017). According to classic theory, if confidence intervals for control of corruption’s estimates taken in different periods of time overlap, then WGI’s change in control of corruption should not be interpreted as meaningful. The comparison of confidence intervals for the first and the last available years in the dataset – 1996 and 2015 respectively – (Figure 2), showed that out of all countries under analysis, Serbia is the only case to experience a positive change in Control of Corruption that is also statistically significant: that is, apart from Serbia, all countries that showed a positive change in Control of Corruption between 1996 and 2015 – namely Romania and Malta – have overlapping confidence intervals. The only significant changes in Control of Corruption that took place among the countries under analysis were in Serbia and Hungary, respectively in a positive and negative direction.

⁵⁹ Section 132 of the Employment Rights Act, 1996.

Figure 2: Estimates and confidence intervals for WGI's Control of Corruption, 1996 & 2015.

Source: Kaufmann, Kraay and Mastruzzi, *Worldwide Governance Indicators (WGI)* www.govindicators.org, 1996-2015.

Given that the interest of this analysis was to investigate whether the introduction of a specific law on whistleblowers has an impact on corruption levels of a country, the second methodological approach used was to undertake a paired t-test on the mean of Control of Corruption before and after the introduction of the law in each country. To run this test, the analysis calculated the mean of WGI's Control of Corruption for the years before and after the introduction of a specific law. The year of introduction of the law was included in the post-introduction mean. This process was undertaken for all countries under analysis, excluding the Netherlands which only introduced the law in 2016. Results showed that there is no statistically significant difference in means of Control of Corruption before and after the year of introduction of the law (Table 5). That is, the introduction of the whistleblower law itself does not have a statistically significant effect on the mean of WGI's Control of Corruption based on the results of this analysis. In support to this argument, a recent report showed that the introduction of a specific law on whistleblowers does not have a statistically significant effect on Control of Corruption among all EU-28 countries (Mungiu-Pippidi, 2017).

Table 5: Pairwise t-test on the mean of Control of Corruption before and after the introduction of the Whistleblower Law.

Variable	Obs	Mean	Std. Err.	Std. Dev.	[95% Conf. Interval]	
Before	7	.6420794	.3674743	.9722457	-.2570979	1.541257
After	7	.6171429	.3190002	.8439952	-.1634225	1.397708
diff	7	.0249365	.0778301	.205919	-.1655068	.2153798

mean(diff) = mean(Before - After) t = 0.3204
 Ho: mean(diff) = 0 degrees of freedom = 6
 Ha: mean(diff) < 0 Ha: mean(diff) != 0 Ha: mean(diff) > 0
 Pr(T < t) = 0.6202 Pr(|T| > |t|) = 0.7595 Pr(T > t) = 0.3798

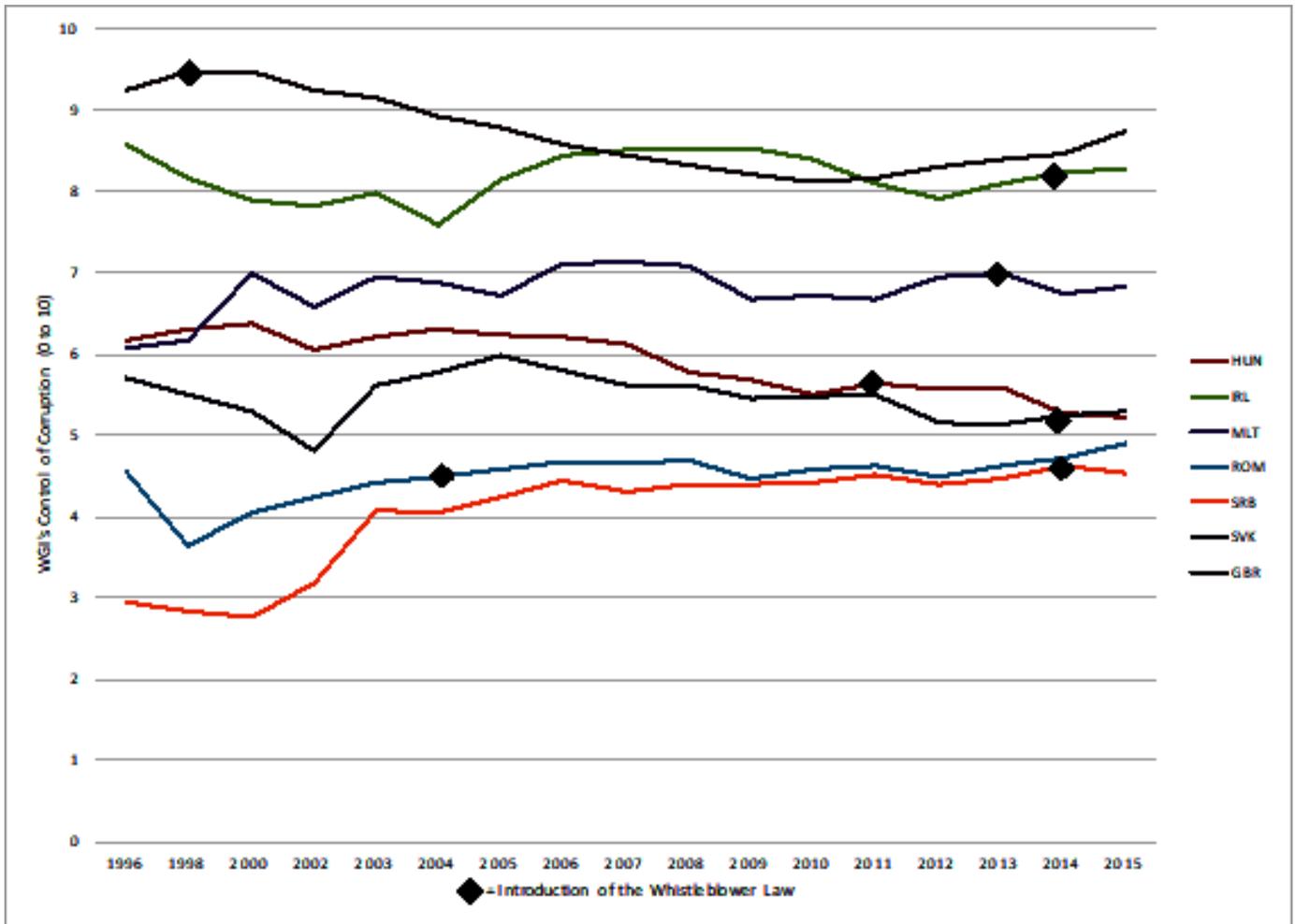
Source: Kaufmann, Kraay and Mastruzzi, *Worldwide Governance Indicators (WGI)* www.govindicators.org, 1996-2015.

This conclusion was also supported by plotting the introduction of a specific whistleblower law in a time-series of WGI's Control of Corruption for each country under analysis (Figure 3). What the graph below shows is that, after the introduction of the law, only Romania, Ireland and Slovakia seem to slightly improve in WGI's Index. Given that Ireland and Slovakia introduced a whistleblower law in 2014 – thus providing a rather limited timeframe for the analysis to check for unbiased changes in Control of Corruption –, Romania was the only country to show a positive change in Control of Corruption after the introduction of the law over multiple years. However, it is important to keep in mind that Romania has been strongly invested in combating corruption since the revolution of 1989 and the fall of Romania's communist leader Nicolas Ceausescu (Horsley, 1999): after twenty-one years of Ceausescu's presidency and forty-two years of Communist rule in the country, Ceausescu and his wife were executed on Christmas Day 1989, thus making way for the Nationalist Salvation Front.⁶⁰ A series of economic and democratic reforms followed, including the *Cooperation and Verification Mechanism* (CVM) designed by the European Commission in 2007 as a transitional measure for Romania to enable progress on judicial reform and the fight against corruption.

Given that this research did not prove that WGI's Control of Corruption changes significantly after the introduction of a whistleblower law, the analysis then looked at the interaction between change in Control of Corruption and the country's score on the Whistleblower Index. In other words, the analysis attempted to see whether there is a relationship between how the country does on the WI and the relative change in Control of Corruption after the introduction of the law. As shown in Figure 4 below, there seems to be a slightly upward interaction between the two variables, such that higher levels of the WI are correlated with a positive change in Control of Corruption and lower levels of WI are connected with a negative change in Control of Corruption, and vice versa. While the amount of observations under analysis is too low to drive any conclusion or meaningful correlation coefficient, Figure 4 below would suggest that using the Whistleblower Index instead of the dichotomous variable on whether a specific law on whistleblowers exists seems to be a more meaningful indicator. In this sense, the WI could be used for both countries with and without a specific law, as it assesses whistleblower protection by looking at all applicable laws in a specific country regardless of whether a specific law exists; the index is also a nuanced indicator that allows for cross-country comparisons of whistleblower protection.

⁶⁰ The Nationalist Salvation Front, or FSN, was the political organization that governed Romania during the first weeks after 1989's revolution.

Figure 3: Time-series of WGI's Control of Corruption (0 to 10) and the Introduction of a Whistleblower Law, 1996-2015.

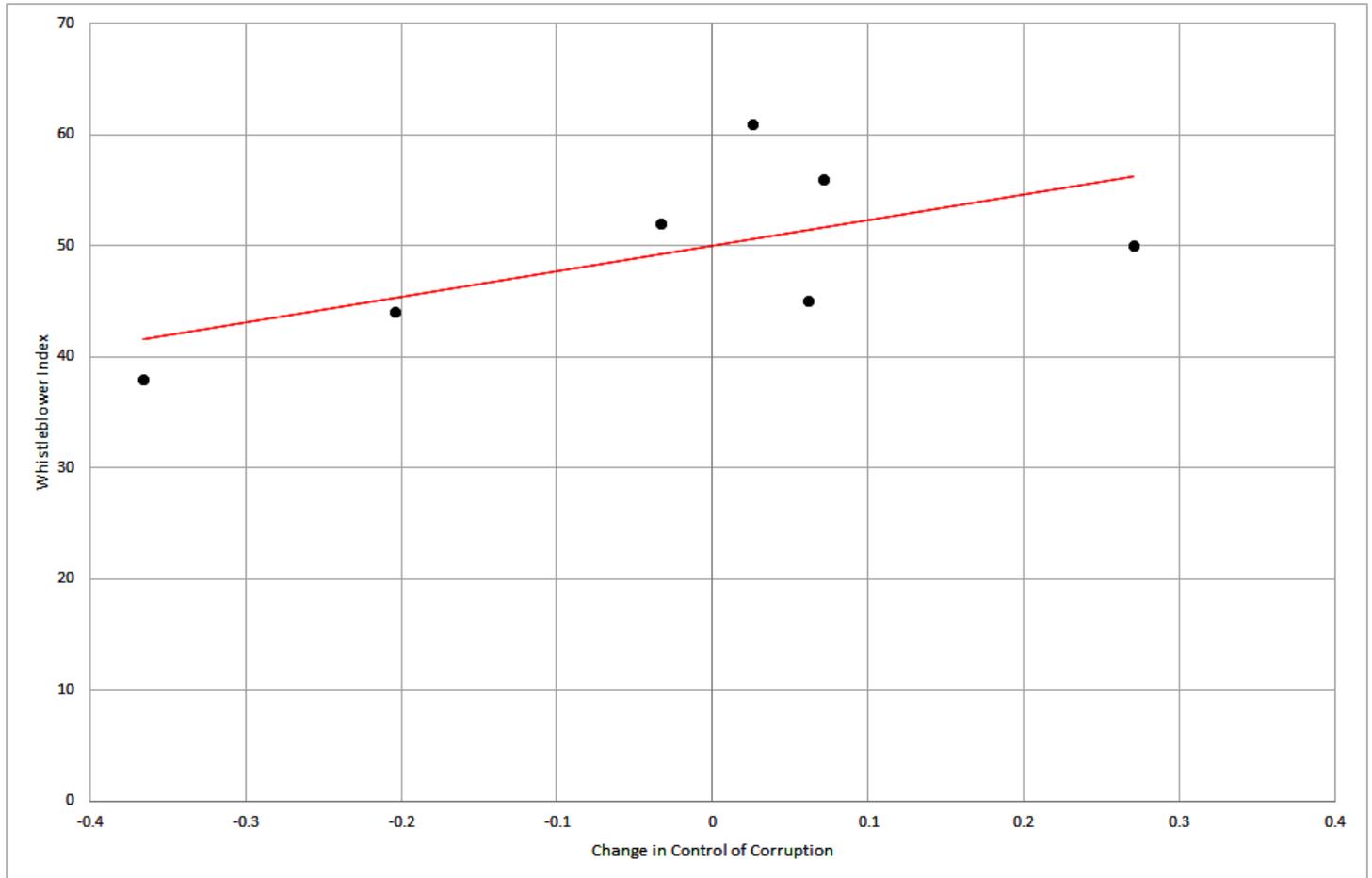


Source: Kaufmann, Kraay and Mastruzzi, *Worldwide Governance Indicators (WGI)* www.govindicators.org, 1996-2015.

Whistleblower Legislation and Human Agency

The success of whistleblower laws in preventing corruption scandals depends to a large extent on the human agency factor. As anticipated in Section 4 of this paper, using whistleblower laws as an anti-corruption tool follows the path of the state's modernization. According to Mungiu-Pippidi, the success of whistleblower laws relies to a large extent on collective action (Mungiu-Pippidi, 2017). In other words, for whistleblower laws to be successful many scandals ought to be uncovered.

The basic assumption behind whistleblower protection legislation is that empowering citizens to speak up will increase the amount of public scandals reported internally, externally, and to the media. But is it always the case? According to Tocqueville, an empowered and politically engaged citizenry is the result of intense horizontal cooperation among private individuals, political participation and freedom of the press (Tocqueville, 1840). Nevertheless, literature suggests that when freedom of the press is only partial if nonexistent, media outlets may themselves be susceptible to corruption (Mungiu-Pippidi, 2013).

Figure 4: Scatterplot, WI by Change in WGI's Control of Corruption (Estimates).

Source: Kaufmann, Kraay and Mastruzzi, *Worldwide Governance Indicators (WGI)* www.govindicators.org, 1996-2015.

According to the Freedom House (2017), slightly less than half of the countries under analysis for this research are “Partly Free” (Serbia, Romania, and Hungary), while the rest is considered “Free” (Slovakia, Ireland, United Kingdom, and Malta), in terms of freedom of the press. If whistleblower laws empower citizens to speak up and report on public scandals, then the analysis would expect – at least in those countries where freedom of the press is high – the number of public scandals reported by media outlets to go up. For this reason, the analysis aimed to test: 1) whether there is any significant difference in the amount of public scandals reported by world news in countries that introduced whistleblower laws, as opposed to countries that have not introduced a whistleblower law yet; 2) whether, among those countries with a specific law, there is a meaningful difference between those countries with partly free and free press (Freedom House, 2017) in the number of public scandals reported. To do so, this analysis considered as “treatment group” those countries with a specific law – Hungary, Ireland, Malta, Romania, Serbia, Slovakia, and the United Kingdom – excluding the Netherlands due to the recent introduction of the law; and seven random EU-28 countries as “control group”: namely Italy, France, Greece, Spain, Norway, Latvia, and Czech Republic (Table 6). This analysis looked at the number of public scandals reported between 2014 and 2017 by Reuters and BBC World News for both the control and treatment groups. Table 6 shows that there is no significant difference in the number of whistleblower scandals reported in countries that introduced a whistleblower law (Specific Law = Yes) as opposed to those that did not (Specific Law = No), except for two outliers – Ireland and the United Kingdom – that the analysis shall discuss later.

Table 6: Number of whistleblower scandals reported in countries with or without a whistleblower law, 2014-2017

Country	Specific Law (Yes/No)	Whistleblower Scandals
<i>Italy</i>	No	1
<i>France</i> ⁶¹	No	1
<i>Greece</i>	No	1
<i>Spain</i>	No	1
<i>Norway</i>	No	0
<i>Latvia</i>	No	0
<i>Czech Republic</i>	No	0
<i>Hungary</i>	Yes	0
<i>Ireland</i>	Yes	4
<i>Malta</i>	Yes	0
<i>Romania</i>	Yes	1
<i>Serbia</i>	Yes	0
<i>Slovakia</i>	Yes	0
<i>United Kingdom</i>	Yes	33

Source: Data retrieved from Reuters & BBC World News, April 2017.

The first step of this analysis was to consider the control group. Between 2014 and 2017, the analysis reported only on: one scandal in Italy, the BT Group scandal (Stempel, 2017; Holton, 2017); one in France, the Falciani scandal (Revill, 2017); one in Greece, the Novartis scandal (Georgiopoulos & Papadimas, 2017); one in Spain, Ana Garrido's scandal (BBC, 2016h). As for the other countries from the control group – Norway, Latvia, Czech Republic – no whistleblower scandal could be found in either Reuters or BBC World News over the past four years.

The analysis then looked at the treatment group, that is those countries that introduced a specific law on whistleblowers. Based on this research, all cases except from the United Kingdom and Ireland showed one or no whistleblower cases: one scandal in Romania – the GSK scandal – (Hirschler, 2015); no scandal in Hungary, Malta, Serbia, and Slovakia.

Among those countries that introduced a whistleblower law, two cases especially stand out for the number of scandals reported on the news: The United Kingdom and Ireland to a lesser degree.

United Kingdom

Between 2014 and 2017, thirty-three different scandals have been reported in the UK.

Ten scandals were reported in 2017, including the one over UKIP's electoral spending (BBC, 2017a) and one at Redditch's Alexandra hospital (BBC, 2017f).

In 2016, another ten whistleblower cases were reported in the UK, among which the well-known case of child sexual abuse reported in Rotherham (BBC, 2016f), Hollesley Bay Prison's scandal (BBC, 2016d), and the whistleblower case at the Exeter Deaf Academy (BBC, 2016a).

⁶¹ Given that France just recently introduced a whistleblower law enforced since January 2017, for France only we took into consideration the timeframe 2013-2016 to avoid interferences with the introduction of the new law.

In 2015, the analysis reported seven scandals, such as Dr. Stephen Frost's scandal (BBC, 2016b; Brimelow, 2015), and HSBC tax scandal (Bowler, 2015).

In 2014, six scandals were reported, among which one on NHS Grampian (BBC, 2014b) and ex-Met PC James Patrick's allegations for manipulation of crime figures by the Metropolitan Police (BBC, 2014e).

Ireland

Along with the United Kingdom, Ireland was also regarded as an outlier of the analysis for the number of whistleblower scandals reported by world news.

The analysis reported the scandal of the company Sinn Fein in 2017 (Humphries, 2017), and five more scandals in 2014, the Cherry Tree House scandal among others (Connolly, 2014).

Based on the results of this analysis, the main takeaway was that the introduction of a specific law itself does not seem to influence the number of public scandals reported by world media. But how can the cases of Ireland and the UK be explained? As this analysis previously discussed, Ireland and the United Kingdom have a higher number of whistleblower scandals reported by media outlets. This cannot be explained alone by the level of freedom of the press: in this sense, not just Ireland and the UK, but also Slovakia and Malta have the highest level of Freedom of the Press according to the Freedom House.⁶² To explain this gap, the analysis pointed out that Ireland and the UK are the only two countries out of the original dataset whose WGI's Control of Corruption score is located in the upper quartile (see Figure 3). This would suggest that, for the number of public scandals reported to increase, both WGI's Control of Corruption and Freedom of the Press (Freedom House) ought to be high in principle. In other words, the cases of Ireland and the UK support the theory for which only countries with a good quality of governance – or "enlightened principal" – can be successful in combating corruption by introducing whistleblower laws (Mungiu-Pippidi, 2017). This analysis also suggested that freedom of the press may be a crucial factor to determine the success of whistleblower protection legislation.

Conclusions and recommendations for the use of whistleblower protection legislation as an anti-corruption tool

Since the UK's introduction of the *Public Interest Disclosures Act* in 1998, whistleblower protection legislation has gained momentum in Europe as a key instrument for the state to combat corruption and bribery. According to existing literature, the theory of change behind whistleblower laws is that whistleblowers are powerful voices to deter corruption and to signal whenever a deviation from the norm occurs. Over the past few years, various international organizations – such as Transparency International, the Government Accountability Project, and the Blueprint for Free Speech – have created guides on international best practices for whistleblower laws, in an attempt to encourage more countries to protect whistleblowers. Many of the existing laws on whistleblowing – the Irish *Protected Disclosures Act* among others – have been inspired by the aforementioned guides and by consulting with these organizations. A EU-wide Directive for minimum standards of whistleblower protection has been recently proposed⁶³ by the European Commission and may lead to a radical change in the Union's legislative framework if turned into Directive.

In light of such powerful momentum, this report tested the effectiveness of whistleblower laws to combat corruption. In other words, it aimed to find out whether a theory of change exists behind the introduction of a specific law on whistleblowers. However, it did not find evidence that treating corruption as an exception by introducing a whistleblower law is a successful approach to improving the quality of governance.

⁶² Freedom House, 2017.

⁶³ See note 1.

First, the analysis looked at how comprehensive whistleblower protection legislation is across EuroPAM countries, as compared to international best practices. To do so, the analysis created an indicator, the Whistleblower Index (WI), and piloted it on 8 out of 12 EuroPAM countries that introduced a whistleblower law, namely: Hungary, Ireland, Malta, the Netherlands, Romania, Serbia, Slovakia, and the United Kingdom.⁶⁴ The results of this analysis showed that the extent to which whistleblowers are protected widely varies by country, and that it is not always the case that countries that became famous for comprehensive whistleblower laws (i.e. United Kingdom) also score high on the WI. This suggested that other factors, such as the implementation of the law or the pre-existing quality of governance or/and the freedom of the press in the country, may have an impact on the success of the law as a tool to combat corruption.

Second, the analysis undertook a t-test on the means of WGI's Control of Corruption before and after the introduction of the law for all the cases under analysis except for the Netherlands: the findings did not prove any meaningful impact of the introduction of the law on WGI's indicator. This finding further strengthened the case for thinking that the introduction of a whistleblower law alone does not significantly impact on the quality of governance in a country (Mungiu-Pippidi, 2017).

Third, this research tested the hypothesis for which whistleblower laws can positively affect the number of whistleblower scandals reported by the news. The analysis targeted public scandals reported by Reuters and BBC World News and aimed to investigate whether countries with a specific law on whistleblowing are more likely to have a higher number of whistleblower scandals reported than those that do not have a specific law on whistleblowers. The analysis was run on a target group – all cases under analysis except for the Netherlands – and a control group, seven EuroPAM countries with no specific law randomly selected. Results showed no meaningful difference between the two groups apart from two outliers, Ireland and the UK: in both countries, the number of scandals reported in the news was higher than the rest of the cases taken into consideration. According to the analysis, this difference may be explained by the fact that Ireland and the UK are the only ones under analysis to have both high freedom of the press (Freedom House) and high quality of governance. This in turn would suggest that, no matter how high WI's score is, the introduction of a whistleblower law is unlikely to encourage whistleblowers to speak up unless certain conditions of good governance and freedom of the press are in place.

In conclusion, the findings of this report suggested that whistleblower laws alone cannot be an effective tool to combat corruption, but highly comprehensive laws may be relatively more effective in leading to change in the levels of corruption and bribery of a country. In this regard, the Whistleblower Index presented in this report proves to be an adequate tool to monitor the scale of whistleblower protection legislation in Europe and around the world and to undertake cross-country comparisons. This report advises the use of the Whistleblower Index as a common indicator of quality for whistleblower laws, as it builds up on international best practices on how to protect whistleblowers and it transforms them into monitorable standards.

While recommending the use of the Whistleblower Index on a larger scale, this report suggests the introduction of whistleblower laws as an anti-corruption tool only where corruption is an exception, not the norm of the context, and where freedom of the press is high. Evidence from this report showed that ignoring the potential impact of captive media and lack of ethical universalism on the success of whistleblower protection legislation leads to considerable ineffectiveness and no progress.

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⁶⁴ Belgium, France, Georgia and Sweden had to be excluded from the scope of this analysis for the reasons specified in Section 3.

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Appendixes

Appendix 1: Questionnaire for Whistleblower Index (WI).

	The Whistleblower Index	Short response
A	Scope and Coverage	
A.1	Scope	
1	Is there a specific, standalone whistleblower protection law?	Yes/No
2	Is there a specific definition of whistleblowing (reportable offenses)?	Yes/No
3	Must the reportable wrongdoings explicitly concern, harm or threaten the public interest?	Yes/No
4	Is there a specific definition of a whistleblower (reporting person)?	Yes/No
5	Do the protections cover people who are mistakenly identified as whistleblowers, who provide supporting information regarding a whistleblower's disclosure, and who assist or attempt to assist a whistleblower?	Yes/No
6	Are people outside the traditional employee-employer relationship eligible to receive whistleblower protection? (Irrespective of their work status and whether or not they are paid, including: consultants, contractors, trainees/interns, volunteers, student workers, temporary workers, former employees, prospective workers/ job applicants)	Yes/No
A.2	Coverage by Sector	
7	Public Sector	Yes/No
8	Private Sector	Yes/No
9	Third Sector (e.g. not-for-profit organizations, charities, associations, volunteer and community groups)	Yes/No
10	Intelligence agencies and armed forces	Yes/No
B	Reporting and Administration	
B.1	Reporting Channels	
11	Does the law require procedures for internal reporting channels for public sector organizations?	Yes/No
12	Does the law require procedures for internal reporting channels for private sector organizations?	Yes/No
13	Do procedures for internal reporting channels apply to all companies, regardless of the size?	Yes/No
14	Does the law specify the procedure for reporting to regulatory or government oversight agencies?	Yes/No
15	Does the law specify procedures for external reporting channels, if justified or necessitated by the circumstances? (external disclosures e.g. to media, NGOs, labor unions, parliament members, the general public)	Yes/No
16	Does the law require a range of reporting channels to be in place? (e.g. hotlines, online portals, advice lines, compliance offices, and internal or external ombudspersons)	Yes/No
17	Are there special procedures for reports regarding matters of national security, military secrets or classified information?	Yes/No
B.2	Agency	
18	Is there a dedicated whistleblowing government agency or a dedicated division within an existing government agency?	Yes/No
19	Are there provisions giving the agency the authority to receive and investigate complaints of retaliation and improper investigations of whistleblower disclosures?	Yes/No
20	Are there provisions giving the agency the authority to collect all workplace whistleblower disclosures from the agencies to which they were reported, and monitor their investigation and any corrective action?	Yes/No
21	Are there provisions giving the agency the authority to refer information regarding crimes or misconduct reported by whistleblowers to regulatory, investigative or prosecutorial authorities for follow-up, corrective actions and/or policy reforms?	Yes/No
22	Are there provisions giving the agency the authority to make public the results of investigations?	Yes/No

23	Are there provisions giving the agency the authority to order an investigation if it is inadequate or not conducted within a reasonable amount of time?	Yes/No
24	Are there provisions giving the agency the authority to order any public, private or non-profit sector organization to cease retaliation against a whistleblower, to order a victimized whistleblower to be fully compensated and reinstated to their position and status, and to otherwise order an organization to make a whistleblower whole?	Yes/No
25	Are there provisions allowing the agency to provide advice and support to whistleblowers, monitor and review whistleblower frameworks, raise public awareness about whistleblower provisions, and enhance the cultural acceptance of whistleblowing?	Yes/No
26	Are there provisions allowing the agency to collect and regularly publish (at least annually) data and information regarding the functioning of whistleblower laws and frameworks?	Yes/No
27	Are there provisions allowing the agency to report annually to the national legislative and executive branches on the outcomes of all workplace whistleblower reports, including the results of all investigations, sanctions and prosecutions?	Yes/No
C	Protection and Thresholds	
C.1	Identity	
28	Does the law explicitly state that the whistleblower's identity and identifying information may not be disclosed without the individual's explicit consent?	Yes/No
29	Does the law provide protection to an anonymous whistleblower if identified after the disclosure is made?	Yes/No
30	Are there provisions to allow and receive anonymous reports?	Yes/No
31	Does the law allow for investigation of anonymous reports?	Yes/No
32	Are there any requirements for creating technological infrastructure to monitor a disclosure without revealing the identity of the whistleblower?	Yes/No
C.2	Whistleblower protection	
33	Are there specific provisions to protect whistleblowers from dismissal and other forms of retaliation?	Yes/No
34	Is the person who makes a disclosure within the scope of the law immune from any disciplinary proceedings and liability under criminal, civil, administrative and other laws and regulations in relation to that disclosure?	Yes/No
35	Are there specific provisions protecting whistleblowers from being subjected to any detriments by any fellow worker or agent of their employer?	Yes/No
36	Is the burden of proof for such dismissal lie with the employer -- to demonstrate that any adverse personnel actions were not motivated by or associated with an act of whistleblowing?	Yes/No
37	Do employees and workers have the right to decline to participate in corrupt, illegal or fraudulent acts and are legally protected from any form of retribution if they exercise this right?	Yes/No
C.3	Thresholds	
38	Are the types of thresholds for disclosing defined in the law? (e.g. honest and reasonable belief of wrongdoing, including protection for "honest mistakes"; and no protection for knowingly false disclosures or information)	Yes/No
39	Does the law provide protection in case of knowingly false disclosures?	Yes/No
40	Does the law provide protection in case of reporting inaccurate information in honest error?	Yes/No
D	Sanctions and Remedies against Retaliation	
D.1	Sanctions	
41	Are there civil and/or criminal sanctions for retaliating or threatening to retaliate against whistleblowers?	Yes/No
42	Does the law specify that a whistleblower may not be extradited to another country if such is linked to the disclosure?	Yes/No
43	Are there civil and/or criminal sanctions for divulging the name or identifying information of a whistleblower without the whistleblower's expressed consent?	Yes/No
44	Do any penalties apply for agencies or organizations that do not investigate or otherwise follow up on whistleblower disclosures and/or retaliation complaints?	Yes/No

45	Are there civil and/or criminal sanctions for failing to comply with a court or other order, or recommendation to reinstate, compensate or otherwise make whole a whistleblower?	Yes/No
D.2	Remedies against retaliation	
46	Are whistleblowers, as well as his or her family members and affected friends/associates, entitled to personal protection measures?	Yes/No
47	Is the whistleblower entitled to interim and injunctive relief pending the outcome of administrative, judicial or other proceedings?	Yes/No
48	Is the whistleblower entitled to removal of any negative records that could be a “dossier” for blacklisting or later retaliation?	Yes/No
49	Is the whistleblower entitled to be transferred to a new department or supervisor, without diminishing salary, status, duties and working conditions?	Yes/No
D.3	Financial Remedies	
50	Is the whistleblower entitled to compensation for lost past, present and future earnings and status?	Yes/No
51	Is the whistleblower entitled to paid leave, with no negative repercussions?	Yes/No
52	Is the whistleblower entitled to compensation for pain and suffering and legal and mediation fees?	Yes/No
53	Is the whistleblower entitled to compensation and other damage from former employers who reveal whistleblowing conduct to future employers?	Yes/No
54	Are whistleblowers entitled to financial incentives or rewards for whistleblowing?	Yes/No
E	Transparency and Due Process	
E.1	Transparency	
55	Is the whistleblower entitled to be updated on the status of the disclosure made?	Yes/No
56	Are there provisions that require annual public reporting of whistleblower disclosures, retaliation complaints, investigation outcomes, and whistleblower mechanisms and procedures?	Yes/No
57	Are there provisions that override confidentiality clauses and other contractual and employment provisions that would restrict the rights of an employee to make a report under the law?	Yes/No
58	Are there provisions requiring any information and resulting measures to be made public, if based on a whistleblower’s disclosure that lead to prosecutions, sanctions, corrective actions, policy reforms or other measures?	Yes/No
59	Are there requirements to post whistleblower laws and procedures clearly in workplaces where their provisions apply?	Yes/No
E.2	Review	
60	Are whistleblowers entitled to a fair hearing before an impartial forum where they are claiming for any loss suffered?	Yes/No
61	Do whistleblowers have a right to clarify their complaint or provide additional information or evidence?	Yes/No
62	Do whistleblowers have the same right and access to judicial remedies as all other aggrieved parties?	Yes/No
E.3	Appeal	
63	Do whistleblowers have the right of appeal against the result of an investigation or finding related to retaliation or compensation?	Yes/No
64	Do whistleblowers have the right of appeal against the result of a court decision related to retaliation or compensation?	Yes/No

Appendix 2: The Whistleblower Index for Hungary, Ireland, Malta, the Netherlands, Romania, Serbia, Slovakia, and the UK.

	Hungary	Ireland	Malta	Netherlands	Romania	Serbia	Slovakia	UK
A	6	9	7	9	6	9	7	7
A.1	2	5	4	5	5	5	3	4
1	1	1	1	1	1	1	1	1
2	0	1	1	1	1	1	1	1
3	0	1	0	1	1	0	0	1
4	0	1	1	1	1	1	1	1
5	1	0	0	0	0	1	0	0
6	0	1	1	1	1	1	0	0
A.2	4	4	3	4	1	4	4	3
7	1	1	1	1	1	1	1	1
8	1	1	1	1	0	1	1	1
9	1	1	1	1	0	1	1	1
10	1	1	0	1	0	1	1	0
B	2	6	6	13	4	9	8	2
B.1	2	6	6	5	4	6	3	2
11	0	1	1	1	1	1	1	0
12	0	0	1	1	0	1	1	0
13	0	1	1	0	1	0	0	0
14	1	1	1	1	0	1	0	0
15	0	1	1	0	1	1	0	1
16	1	1	1	1	1	1	0	1
17	0	1	0	1	0	1	1	0
B.2	0	0	0	8	0	3	5	0
18	0	0	0	1	0	1	1	0
19	0	0	0	1	0	1	1	0
20	0	0	0	1	0	0	1	0
21	0	0	0	1	0	0	1	0
22	0	0	0	1	0	0	0	0
23	0	0	0	1	0	0	1	0
24	0	0	0	0	0	0	0	0
25	0	0	0	1	0	1	0	0
26	0	0	0	0	0	0	0	0
27	0	0	0	1	0	0	0	0
C	8	9	8	7	9	9	7	7
C.1	4	3	3	3	2	3	3	1
28	1	1	1	1	0	1	1	0
29	0	1	0	0	0	0	0	0
30	1	1	1	1	1	1	1	1
31	1	0	1	1	1	1	1	0
32	1	0	0	0	0	0	0	0

C.2	1	3	2	2	4	3	2	4
33	0	1	1	1	1	1	1	1
34	0	1	1	1	1	0	0	1
35	1	1	0	0	0	1	0	1
36	0	0	0	0	1	1	1	1
37	0	0	0	0	1	0	0	0
C.3	3	3	3	2	3	3	2	2
38	1	1	1	1	1	1	1	1
39	1	1	1	0	1	1	1	1
40	1	1	1	1	1	1	0	0
D	5	7	4	0	6	5	5	3
D.1	1	1	2	0	1	3	4	1
41	0	0	1	0	0	0	1	0
42	0	0	0	0	0	1	0	0
43	1	0	0	0	1	1	1	0
44	0	0	0	0	0	1	1	0
45	0	1	1	0	0	0	1	1
D.2	3	3	1	0	2	1	1	1
46	1	1	0	0	1	0	0	0
47	1	1	1	0	1	1	1	1
48	1	0	0	0	0	0	0	0
49	0	1	0	0	0	0	0	0
D.3	1	3	1	0	3	1	0	1
50	0	1	0	0	1	0	0	1
51	0	1	0	0	1	0	0	0
52	0	1	1	0	1	1	0	0
53	1	0	0	0	0	0	0	0
54	0	0	0	0	0	0	0	0
E	7	8	4	4	7	4	6	3
E.1	4	4	2	1	2	3	3	1
55	1	0	1	0	1	1	1	0
56	1	1	0	0	0	0	0	0
57	1	1	0	0	1	1	1	1
58	0	1	0	0	0	0	0	0
59	1	1	1	1	0	1	1	0
E.2	2	3	2	2	3	1	1	2
60	0	1	1	1	1	0	0	1
61	1	1	0	1	1	1	0	0
62	1	1	1	0	1	0	1	1
E.3	1	1	0	1	2	0	2	0
63	1	0	0	1	1	0	1	0
64	0	1	0	0	1	0	1	0
TOT	21	31	25	29	25	32	27	19