

# EU DIRECTIVE ON WHISTLEBLOWING AND THE TRANSPOSITION PROCESS IN DENMARK AND NORWAY

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## ABSTRACT

*Denmark and Norway share similar labour market models and legal systems yet differ significantly in whistleblower protection. Norway introduced whistleblower provisions in the Working Environment Act (WEA) in 2007 but has not fully implemented the European Directive (EU) Whistleblowing Directive (WB Directive). Denmark, by contrast, lacked general whistleblowing legislation until transposing the WB Directive in 2021. In both countries, statutory adaptation involves public consultation prior to legislative proposals. This chapter analyses these consultation rounds to examine stakeholder positions on the necessity and scope of whistleblower legislation and the mobilization of interests, particularly among employers and employees. Employer responses in both countries emphasized delimiting the material scope during transposition. Nevertheless, Denmark's Whistleblowing Act, shaped by the WB Directive, significantly strengthened employee protection. Its scope extends beyond EU requirements to include breaches of Danish law and other 'serious matters,' such as sexual harassment. Norwegian trade*

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*unions, conversely, advocated leveraging national discretion to enhance protections beyond the WB Directive's minimum standards. Danish employers expressed concerns about restricting the whistleblowing scheme to traditional employee–employer relations to avoid disrupting established systems – a position absent from Norway's consultation. These findings illustrate contrasting approaches to balancing EU obligations with domestic priorities and highlight how stakeholder engagement influences legislative outcomes in whistleblower protection.*

**Keywords:** Transposition; labour law; Denmark; Norway; stakeholder consultation<sup>1</sup>

The Whistleblower Directive (WB Directive) was adopted on 23 October 2019 (European Parliament & Council, 2019). The purpose of the WB Directive is to strengthen the enforcement of European Union (EU) law by protecting individuals who report violations of specifically designated EU law, by laying down common minimum standards. The Member States had until 17 December 2021 to implement the WB Directive into national law.

The WB Directive entails, among other things, the establishment of reporting mechanisms in various private and public entities, as well as the designation of external competent authorities to receive and handle reports of violations of EU legislation in specific listed areas, including procurement law, financial services, transport security, environmental protection, consumer protection and data privacy. The purpose of the WB Directive is to enhance the enforcement of Union law and policies in specific areas for a high level of protection of persons reporting breaches of Union law. The preamble points out that whistleblower protection legislation in the EU is fragmented and that whistleblowers do not have sufficient protection against retaliation. This may discourage potential whistleblowers from reporting illegal or objectionable practices out of fear of reprisals. Effective protection of whistleblowers is therefore a means to ensure the effective enforcement of EU law. Whistleblowers shall be protected from unfair dismissal, unfair treatment, coercion, intimidation, harassment and civil and criminal liability in respect of the disclosure of confidential information.

The WB Directive is a so-called minimum-directive, meaning that it sets minimum standards and that the Member States have the right to set higher standards when implementing the regulation (EUR-Lex, n.d.). The Member States have the opportunity to allow the social partners to enter into agreements on matters covered by the WB Directive, as long as the collective agreement provisions do not lower the level of protection provided by the WB Directive.

The need for legal amendments will depend on existing national provisions. This chapter compares the transposition process of the WB Directive in Denmark and Norway.<sup>2</sup> These countries are quite similar as regards to labour market models and legal systems. On the other hand, when it comes to national legislation aimed at protecting whistleblowers, the two countries differ. In Norway, employees have had whistleblower protection in the Working Environment Act (WEA) since 2007 but has still not finalized the implementation of

the EU Directive into national law. In Denmark, there has been no general whistleblowing legislation until the transposition of the EU Directive in 2021. This major difference in the need for legal amendment involves different approaches to the process in the two countries. Another reason why this is an interesting topic is that the whistleblower legislation was highly controversial when it was introduced in Norway almost 20 years ago, and it remains a subject of considerable debate. The question, therefore, is whether this has also influenced attitudes towards the transposition of the EU Directive. A common feature for the two Nordic countries is the high degree of autonomy for the social partners in negotiating working conditions and resolving disputes. This might raise concerns that this type of legislation could disrupt workplace social dialogue and lead to the development of parallel systems. Moreover, the Nordic labour market model is characterized by a high degree of participation and involvement from the employees in the day-to-day business. Combined with a strong protection for workers' freedom of speech, a relevant question is whether there is a need for whistleblowing legislation and how this will be combined with the constitutional rights of freedom of expression.

In both countries, the process of adapting a statutory act involves a preliminary consultation with the public before proposal of the act. A long list of stakeholders, including public authorities, social partners and NGOs, are consulted as part of the process. The response from the consultation rounds in Denmark and Norway form the basis for the analysis in this chapter. A comparison of transposing new legislation processes will contribute to the overall analysis of conflicts of interests and power relationships between the stakeholders in the two countries. This can be specified in two questions: How do the stakeholders assess the need for this legislation and its scope? Do we see a mobilization of different interests and power by key stakeholders, especially from employers and employees?

We then discuss whether the WB Directive affect the existing mechanisms for balancing the managerial prerogative and the freedom of speech of workers. From a power perspective, it can be argued that the whistleblower provisions provided employees with new tools to further reduce the inherent asymmetry in the relationship between employers and employees. The whistleblower provisions can therefore also be seen as an attempt to limit the employer's managerial prerogative and thereby indirectly, property rights in the private sector (Engelstad, 2015). Thus, the property rights, as a basis for the employers' right to manage, and freedom of speech, as a basis for whistleblowing and the protection of whistleblowers, are two possible conflicting democratic principles.

## THE TRANSPOSITION PROCESS IN DENMARK

In Denmark, the WB Directive was transposed in the Statutory Act on Whistleblower Protection (the Whistleblower Act). The proposal for the Act was submitted by the Minister of Justice on 14 April 2021, and the Act was adopted on 29 June and came into force on 17 December 2021 (Justitsministeriet, 2021a;

2021b). It was the Ministry of Justice that was responsible for the transposition process, which is unusual for EU law affecting the labour market. In a labour law perspective, this means: no preliminary debate/negotiations in the Ministry of Labour's 'implementation committee' with representatives from the social partners and very few comments on the relationship with existing employment law and industrial relations systems for handling disputes at the workplace.

The Whistleblower Act, Section 1, covers reports concerning breaches of EU law within the scope of the WB Directive, as well as reports that otherwise concern serious violations of law and other serious matters. The Danish Act thus expands the material scope of the Whistleblower Protection to violation of rules and regulations originating in Denmark, e.g. criminal law and public administrative law, as well as 'serious matters' such as sexual harassment or harassment.

The consultation process revealed several points of interest. One issue concerned the risk of limiting the existing freedom of speech and freedom of opinion for employees and, more specifically, for public employees. A second issue concerned the expansion of the scope of the Danish Act going beyond the WB Directive. A third issue, following up on the expansion of the scope, concerned the delimitation between topics regulated by the normal mechanisms in employment relations and topics falling under the Whistleblower Act.

*The freedom of speech* of public employees has been the centre of much attention over the last decade or so, with several expert committees and reports, ombudsman cases and guides, as well as guidelines issued by the Ministry of Justice (Ytringsfrihedskommissionen, 2020; Ombudsmanden, 2016–2018). The notion is that freedom of speech for public employees is under pressure and that public employers are restricting or sanctioning employees who exercise their freedom of speech. For this reason, several stakeholders found it important to clarify that the Whistleblower Act in no way limits the freedom of speech of public employees. This topic has a dedicated section in the consultation document. The Ministry emphasized that the Whistleblower Act establishes a high level of protection for whistleblowers in both private and public sectors. The act does not restrict the freedom of speech for public employees. It is stated in the comments to Section 13 in the Act that employers in the public sector should give information that internal and external whistleblower schemes do not limit the freedom of speech of public employees. The existing rules on freedom of speech and the right of public employees to inform the public continues to apply. This is also addressed in the guidelines published alongside the Act. Moreover, the Ministry underlined that the freedom of speech of employees is protected in Section 77 of the Danish Constitution and in Article 10 of the European Convention of Human Rights (Justitsministeriet, 2016).

On the matter of freedom of speech, two take-away points can be deduced. First, a concern raised by stakeholders and NGOs, that the existing right to freedom of speech of public employees was at risk of being confused, stifled, or otherwise hindered by the Whistleblower Act. This resulted in clarifications in

several places as well as a continued focus. Second, for employees in private sector, the protection offered in the Whistleblower Act is new and moves the protection of private employees significantly forward in relation to their existing lack of right to inform, as well as in relation to their existing limited freedom of speech.

### *The Scope of the Danish Act Going Beyond the WB Directive*

As mentioned, the scope of the Whistleblower Act is expanded beyond the scope of the WB Directive. Several stakeholders commented on the expansion of scope. The comments fall in three categories – those supporting the expansion, those criticizing it and those concerned with the delimitation towards employment law and industrial relations.

The trade unions welcomed this broader scope, advocating that the act to be extended to all cases of sexual harassment and offensive behaviour not only ‘grave’ situations. The argument is that distinguishing between serious and non-serious offences can be challenging, thus supporting a more inclusive approach. One trade union suggested expanding the scope even further with breaches of professional norms and standards. It was also argued by one NGO that protection should include all violations of laws, professional standards, collective agreements, international obligations and other significant matters. Some of the employers’ associations argued against the significant expansion of the WB Directive’s scope, suggesting the expansion should be limited to ‘serious offences or sexual harassment’ (Dansk Arbejdsgiverforening, 2021). Concerns were raised regarding the lack of clarity in the scope due to the expansions. Some stakeholders called for more precise definitions and examples to ensure clarity and certainty for the whistleblowers. The lack of clear definitions of ‘serious offences’ and ‘other serious matters’, creating uncertainty for whistleblowers who must distinguish between EU and national rules. A solution could be that protection should cover all employees reporting any suspected violations in good faith. Also, employer associations called for detailed examples, comprehensive lists and guidelines to define ‘grave’ and ‘serious’ breaches to ensure legal certainty and avoid ambiguity. Lack of clarity could make it difficult for companies and whistleblowers to determine what falls within the scope and lead to legal uncertainty.

### *The Relationship Between the Whistleblower Act and Labour and Employment Regulations*

Those opposed to the expansion were employer associations, who were concerned with disrupting the balance between employment law and whistleblowing or with disrupting the existing employment and industrial relations systems. Several employers’ associations underlined that it should be clarified that the act does not cover industrial or employment disputes. They advocated for adding explicit exclusion provisions to the Whistleblower Act, ensuring that labour and employment regulations take precedence in cases that can be addressed through

these systems. Others called for clear guidelines to avoid undermining the legal certainty and the existing labour law system. This separation is crucial to maintain system integrity (Finanssektorens Arbejdsgiverforening, 2021; Kommunernes Landsforening, 2021). It was also emphasized that whistleblowing should not be used to gain an advantage in employment disputes, preserving trust in the Danish system.

The comments from the Ministry underlined that the normal rules in employment relations apply in situations concerning reporting on types of matters outside the material scope of the Whistleblower Act (Justitsministeriet, 2021b). This would be the case for information about breach of internal guidelines of a less serious nature, such as guidelines on sick leave, alcohol, dress code, private use of office supplies, etc., and information about less severe personnel-related conflicts in the workplace. Such information can instead be submitted to the supervisor, personnel/HR department or a shop steward. As a clear general rule, reports about conflicts between two or more employees and reports about a person's own employment conditions will fall outside the intended scope, except in cases of sexual and severe harassment. Specific disputes between employees, etc., are generally handled in the workplace or within the industrial dispute resolution system. However, there may be exceptional cases where even minor conflicts and challenges with cooperation can pose significant risks and thus constitute serious matters under the Whistleblower Act, i.e. in sectors where critical functions are performed, including health, defence or transport sectors. In such circumstances could cases fall under the scope of 'other serious matters' covered by the Whistleblower Act.

It is also clarified from the Ministry that conflicts under the scope of the industrial relations system as a starting point falls outside the scope of the Whistleblower Act. This cover disputes concerning interpretation and administration of collective agreements, the lawfulness of industrial actions including work stoppages or lockouts, the role and protection of shop stewards, the lawfulness of dismissals, etc.

The concerns raised in the consultation process underlined the need to delimitate the material scope of the Whistleblower Act more clearly, as the protection of whistleblowers is an exception to the regular set of rules for how to settle disputes or disagreements at the workplace. The legitimization for the cross-cutting protection of whistleblowers goes against the duty of loyalty towards the interests of the employer to keep business to themselves.

Another issue raised in the consultation process as well as during the negotiation in the Danish parliament concerned whistleblower schemes in groups of companies. The proposal stated that groups of companies with more than 250 workers in total were obliged to establish individual whistleblower schemes in each legal unit and could not use a joint whistleblower scheme. The issue was put forward by major stakeholders among the employers' associations, large private companies and also among the NGOs. These stakeholders saw it as a major challenge that the act would dispose of the current opportunity to have a joint whistleblower scheme in groups of companies. This would, according to the stakeholders, result in a de facto weakening of the companies' advantages of the

whistleblower schemes, a weakening of compliance with the legislative acts that the Whistleblower Act aimed to protect, as well as increasing some of the risks the Whistleblower Act tried to protect against.

The Ministry made an amendment proposal, allowing employers covered by the act to establish joint whistleblower schemes within corporate groups, in both private and public sector. In the remarks, the Ministry recognized the challenges faced by larger corporate groups and public employers due to the lack of shared whistleblower schemes (Folketinget, 2020–2021). The Ministry has engaged in discussions with the EU Commission and other EU Member States on how to interpret the WB Directive's rules on internal whistleblower schemes since the amendments depend on changes to the WB Directive. Additionally, the Danish amendment includes provisions for outsourcing whistleblower functions to affiliated companies within a corporate group. The question of the legality under the EU Acquis of joint whistleblower schemes, as well as the question of outsourcing a whistleblower scheme to a company in a group of companies, is still unanswered.

## THE TRANSPOSITION PROCESS IN NORWAY

More than three years after the implementation deadline, the EU Directive is still not implemented in Norwegian law. The responsibility for the transposition is divided between the Ministry of Justice and Public Security and the Ministry of Labour and Social Inclusion. A report on how to implement the WB Directive was outsourced to a law firm (Lund & Co. DA, 2022), commissioned by the Ministry of Labour and Social Inclusion, while the consultation round was arranged by the Ministry of Justice and Public Security.

Unlike Denmark, Norway has had whistleblower provisions in the WEA since 2007. It is broadly established that employees have the right to report wrongdoings and that whistleblowers should be protected against retaliation. Moreover, in Section 1.1, it is stated that one of the purposes of the Act is to facilitate a satisfactory climate for free speech in the undertaking. Employees' freedom of speech is protected by the general rules set out in Article 100 of the Norwegian Constitution, Article 10 of the European Convention on Human Rights (ECHR) and Article 19 of the UN International Covenant on Civil and Political Rights (ICCPR). The clear starting point is that employees have the same protection of freedom of speech as all other citizens. The whistleblowing regulations in WEA can be seen as a prolonging of the freedom of speech stated in the Constitution.

An important piece of background information is that the whistleblowing regulations in the WEA have been, and continue to be, highly contested. During the law-making process before 2007, there was a mobilization of interests around two camps, the employers' and the employees' side. Put simply, when the first bill was sent to consultation in 2004, the employers' associations expressed concern that the whistleblowing provisions could pave the way for disloyal acts by the employees and challenge the managerial prerogative. The regulation,

interpretation and effect of the provisions remained controversial, and this resulted in further revisions in 2017 and 2020.

In the consultation process on the EU Directive, we don't find the same arguments from the employers' side that were emphasized in connection with the national legislation. However, it is possible to find arguments that are related to these attitudes, i.e., the support of minimum implementation and the arguments for a separate law on breaches of EU/EEA-law. On the other side, some of the trade unions view this implementation process as an opportunity to reintroduce claims to establish a whistleblowing ombud and investigate the possibilities for a new law that goes beyond the regulations in the WEA.

### *The Question of Minimum Implementation*

As mentioned, the Member States can choose to implement the WB Directive according to the minimum standards set in the regulation. The employers' associations support a minimum implementation of the WB Directive (Regjeringen, 2022). One central argument is that the duty to act in whistleblowing cases often entails an administrative burden, as it frequently requires the involvement of legal or other professional expertise. Thus, the implementation of the WB Directive into Norwegian law should result in as little additional work and bureaucracy for employers as possible.

From the trade union side, it is argued that the available room for action should instead be used to strengthen whistleblower protection beyond the minimum requirements of the WB Directive. This could create a legal framework that is robust, easy to understand, considers the needs of all parties involved and functions as intended. A directive-based minimum implementation does not sufficiently meet these objectives (Yrkesorganisasjonenes Sentralforbund, 2022).

### *The Need for a Single Law*

The proposal to transpose the WB Directive into a single law is supported by both some of the trade unions and the employers' associations. The circle of people included in the WB Directive is much wider than in the WEA.<sup>3</sup> This is one of the important arguments for a separate law. Furthermore, the matters that can be reported are regulated differently in the WEA and in the WB Directive. The right to blow the whistle under the WEA relates to 'censurable conditions' in general. The WB Directive, on the other hand, applies to breaches of specific areas of EU law, not including labour law.

However, one of the trade unions emphasize that it is unfortunate that the proposed implementation involves a supplementary law that applies exclusively to EEA-related matters, rather than seeking a comprehensive legal framework within a single law, with provisions that clearly specify the whistleblower protection covers and to whom it applies in different contexts. The main argument is that it currently exists significant uncertainty regarding the boundaries of whistleblowing (Norsk Journalistlag, 2022). Some of the other trade unions see

the need for a closer examination of the necessity for a new and wider whistleblowing regulations in areas beyond those covered by the WEA, and the government is encouraged to consider, in the long term, establishing a committee to explore how this can be addressed.

The report from [Lund & Co DA \(2022\)](#) points out that the whistleblowing provisions in the WEA seek to balance the interests of the employee and the employer, among other things, by weighing the employee's freedom of speech against the unwritten duty of loyalty in employment relationships. On the other hand, the WB Directive is an instrument aimed at ensuring the effectiveness of EU/EEA law. Hence, a common whistleblowing act would disrupt the balance that the legislator has sought to achieve in the WEA between the protection of employees and the interests of employers. Additionally, the whistleblowing provisions in the WEA are also designed to uncover violations of the law, but the regulations are primarily intended to protect employees rather than to serve as a mechanism for exposing wrongdoing in the public interest. Although a unified whistleblowing framework has the advantage of avoiding difficult boundary issues, the report emphasizes that there are strong reasons to leave the provisions of the WEA unchanged. Since the purpose serves as a guideline for interpretation, this suggests that the whistleblowing provisions under the WB Directive do not naturally belong in the WEA ([Lund & co DA, 2022](#)). However, it is underlined that the intention of the new law is not to lower the level of protection that an employee or hired worker has under the provisions of the WEA. The new Act will therefore explicitly state that it does not entail any limitations on the protection whistleblowers have under other legislation or legal grounds.

The suggestion on a separate law to implement the WB Directive implies that there will be two parallel systems for whistleblowing. In general, it is a fear that two laws might be confusing and pedagogically unwise. One concern was that one cannot expect a whistleblower to know whether a violation within the organization constitutes a breach of national law/guidelines or EEA law. The complexity may result in fewer people coming forward, which is contrary to the intention of the WB Directive ([Transparency International Norge, 2022](#)). Another concern from the consultation process is the different requirements for supervision and handling of reports. This can make it unclear and challenging for businesses to understand what applies, which set of regulations they need to follow, and when ([Arbeidstilsynet, 2022](#)). Thus, it is necessary that the new Act has references to the WEA and vice-versa and that the concept of employee must be identical in both sets of regulations.

It is also pointed out by the Norwegian Bar Association in the consultation process that the regulation requires high competence on EEA regulation ([Advokatforeningen, 2022](#)).

The obligation to establish internal reporting channels should apply to all legal entities in the private sector that employ at least 50 workers or have done so during the past 12 months. Both permanent and temporary employees in full-time and part-time positions should be included. The same applies to workers hired in from external companies. This means that it is just a small

proportion of businesses in Norway that will be affected by this legislation ([Næringslivets Hovedorganisasjon, 2024](#)). As in Denmark, the question of joint whistleblower schemes within corporate groups is highlighted in the consultation process. The proposed legislation can be understood to mean that companies with more than 249 employees will not be able to share an internal reporting channel. Such an interpretation may become problematic in corporate groups that have established reporting channels and a robust compliance programme to handle whistleblowing cases across group companies. It is thus argued to use the Danish solution, allowing companies that are part of a corporate group to establish a shared whistleblowing system ([Advokatforeningen, 2022](#)).

Moreover, several of the trade unions want to establish a national whistleblowing ombud to enhance the sense of security for the most vulnerable employees and assist both employees and employers in preventing and managing challenging whistleblowing cases.

## DISCUSSION

In our introduction, we posed the questions of whether the stakeholders see a need for legislation on whistleblower protection, and whether we see a mobilization of different interests from the employees and the employers' representative. These two questions have been answered in the preceding sections.

In this final section, we will discuss the second question raised in the introduction, namely whether the transposition affected the existing balances between the managerial prerogative and the freedom of speech of workers.

The main difference between Denmark and Norway in this implementation process is that Denmark is introducing whistleblowing regulations for the first time whereas Norway has had such regulations in place since 2007. This means, among other things, that the Danes have adopted a law that goes beyond the minimum requirements of the WB Directive in order to ensure whistleblowing provisions in some key areas of working life, such as harassment. Such provisions are already in place in Norway. In other words, the provisions on scope largely shape the views expressed during the consultation process, especially among employers.

The issue of expanding the material scope of the Whistleblower Act was opposed by the employers, both in Denmark and Norway. The WB Directive's mechanism of giving protection to employees for certain behaviours can be perceived as an interference and limitation of the employer's prerogative. In Denmark, the employers did not see the function of whistleblowing per se as an advantage to the company or society. This follows the same lines of argumentation that was seen from some of the Norwegian employers when the original whistleblowing regulations were proposed in 2004. As such, the opposition against the expansion of the material scope, as well as a strong focus on the delimitation of the protection when employees are acting outside the WB Directive, indicates that the employers assess that these regulations can contribute to interfere or limit the managerial prerogative.

Since a minimum implementation of the WB Directive does not affect labour law, it was more convenient for the Norwegian employers' associations to accept this regulation but still emphasizing that it should be held on a minimum and separate from the regulations in the WEA. The consultation paper that formed the basis for the input was also careful to point out that the balance of interests between employers and employees in the WEA should not be disturbed, for example by proposing a joint law with an extended scope in connection with the transposition of the WB Directive.

Moreover, in Denmark, those opposed to the expansion of the scope were employer associations, who were concerned with disrupting the balance between employment law and whistleblower protection or with disrupting the existing employment and industrial relations systems. More specifically, on the broadening of the scope in relation to the employment law regulation, in the consultation process, several employers' associations underlined that the act should clarify that it does not cover industrial disputes or employment disputes. This was a quite traditional point of view taken by the employers' side. The benefits of whistleblower protection to the overall society, the market as well as for the individual businesses were not in focus for the employers. The focus from the employers' side was to protect the status quo in the existing labour law framework, allowing sanctioning of employees for any revelations or statements that may negatively affect the employer's market position – even when the critique is true.

As in Denmark, there is a long-standing tradition in Norway for union representatives and management to discuss and resolve matters through social dialogue, without interference from legislation. The absence of labour law in the WB Directive is likely the reason why Norwegian employers have not emphasized the importance of ordinary channels for cooperation between the social partners in their consultation responses. They do not mention possible disruption or replacing of the existing industrial relations, unlike the Danes. The same goes for the Norwegian trade unions, where, as shown, some also argue for more extensive legislation in this area. This may be related to experiences of negative feedback and retaliation faced by workers who have blown the whistle in the past decade (Trygstad & Ødegård, 2022). Although Norway and Denmark share similar labour market models, trade union density and collective agreement coverage are higher in Denmark than in Norway. This means that the social partners are not equally equipped to handle conflicts of interest in the workplace, e.g., the Norwegian workers will to a higher degree be depended on legislation to protect their interests.

The employee side in Denmark did not in the same way as the employers oppose the mechanism of legislation protecting the workers. However, the fact that in Denmark the Whistleblower Act was passed by the Ministry of Justice, and not the Ministry of Employment as would be usual for rules affecting labour relations at the work place, could be seen as the entire issue of whistleblowing not being perceived as a 'usual' employee right but more concerned with freedom of speech per se, a fundamental right a topic organized by the Ministry of Justice. The concern about the effect of the WB Directive on the current weak

protection of the freedom of speech of public employees in Denmark was raised, not only by trade unions but by the Ministry of Justice itself.

As such, the discussions were concerned with limiting the effects of the whistleblowing scheme to the 'ordinary' employee–employer systems to not disrupt or interfere in this. And, so as to not prepare a path where new dispute resolution mechanisms would find their way into the existing labour market relations. And, perhaps further, that the protection of a fundamental right of workers in general is not placed in the hands of the Ministry of Justice but should continue to be balanced by the bargaining procedures of the social partners supported by the Ministry of Employment. In this, the WB Directive is perhaps wisely placed in the Ministry of Justice, as a way to signal, that the topic is unusual and odd and does not affect the usual measures available in the labour market.

In Norway, the public debate about the WB Directive has been virtually absent, likely for the same reasons mentioned earlier: it does not concern labour law, and there is already comprehensive legislation on whistleblowing in place. The question of consequences for free speech has also been more or less absent in connection with the transposition of the EU Directive. One explanation might be that there has been a substantial debate on free speech in working life during the last years, among other things in connection with a public commission on free speech, that published their report in 2022 (NOU, 2022, p. 9).

The absence of public debate may also be explained by a similar situation to that in Denmark, namely that the responsibility for the report on the transposition of the WB Directive in Norway was assigned by Ministry of Labour and Social Inclusion, while the Ministry of Justice and Public Security was responsible for the consultation round. This division may have contributed to less discussion among the social partners than normal.

Another common feature between Denmark and Norway in the consultation round was the fear of unclarity and the provided room for interpretation and increased bureaucracy connected with the new regulations, especially from the employers' side. This is understandable since it is the employers and managers that are responsible for establishing legal channels for whistleblowing as well as investigating cases in a thorough and fair way. The preoccupation from employers in both countries on the requirements of reporting channels is a clear indicator on this.

## CONCLUSION

Whistleblowers often challenge powerful actors inside the organization. This is the backdrop for the growing recognition of the need to strengthen the protection of workers' freedom of speech and whistleblowing in many countries during the last 20 years. And this is also some of the background for the EU Directive on whistleblowing.

The main difference between Denmark and Norway in this implementation process is that Denmark is introducing whistleblowing regulations for the first time to adhere to EU requirements whereas Norway has had such regulations in place since 2007. The transposition processes of the EU WB Directive in Denmark and Norway have revealed conflicting interests, especially between the social partners. The concerns raised from the employers' side in both countries underlined the need to delimitate the material scope when transposing the EU Directive. The transposition in Denmark goes beyond the minimum requirements. The protection offered in the Whistleblower Act is new and moves the protection of private employees significantly forward in relation to their existing lack of right to inform, as well as in relation to their existing limited freedom of speech.

From the trade union side in Norway, it is argued that the available room for action should be used to strengthen whistleblower protection beyond the minimum requirements of the WB Directive, in addition to the already existing regulations in the WEA. According to the employee side, this could create a legal framework that is robust, easy to understand, considers the needs of all parties involved and functions as intended. A directive-based minimum implementation does not sufficiently meet these objectives.

On the matter of freedom of speech, another take-away point can be deduced from the Danish experience. First, the concern raised by stakeholders and NGOs in the consultation rounds concerned the risk that the Whistleblower Act would stifle, confuse or otherwise become a new hindrance for the exercise of the freedom of speech, which was already enjoyed by public employees. This resulted in clarifications in several places as well as a continued focus on freedom of speech of public employees. Indeed, a new statutory Act on Freedom of Speech of Public Employees has been adopted in 2025. Free speech has not been a matter of discussion in Norway in connection with this transposition process.

Another point could be that the choice in both countries of placing the transposition of the WB Directive in the hands of the Ministry of Justice signalled that whistleblowing is not a regular mechanism in the labour market and as such, placing it in the Ministry of Justice not only can smooth the transposition of the WB Directive but also limits the effects of the legislation becoming a model for future interferences in the labour market balances and interests of the social partners.

In Denmark, it was also very clear that the stakeholders aimed to demarcate that the WB Directive did not affect the existing labour market mechanisms for breaches of employee duties or for dispute resolutions. By this, the scope/use of the WB Directive is kept in place, and the potentials for expansion of the material scope, as well as the risk of 'overflow' of the mechanisms into other areas of labour law, were strongly discouraged. As the labour market in Denmark is considered well-regulated and balanced, the social partners are well-respected and collaborate in finding solutions that are balanced for companies and workers and societies. Alas, the trade unions were not the drivers of the expansion; this was the Ministry of Justice. The trade unions agreed that

concepts, etc. needed clarification so as to give a high level of legal certainty for the whistleblower.

The WB Directive is still not implemented in Norway, for unknown reasons. It is therefore not known whether this regulation will spark any political debate when the final proposition is presented in the Parliament. Given past controversies surrounding whistleblowing in Norwegian society, it is not unlikely that some politicians will seek to make their mark by advocating for new and stronger regulations in connection with the implementation of the WB Directive.

## NOTES

1. This chapter has been funded by the Research Council of Norway, Project number 325442.

2. Norway is not a member of the EU but is part of EU's inner market regime through the Agreement on the European Economic Area (EEA).

3. The personal scope in the WB Directive includes former employees, workers not begun, contractors, self-employed, board members, shareholders, trainees and volunteers, persons who provide assistance and third parties connected to the reporting person. The WEA covers employees and hired workers, students, conscripts, patients (in healthcare or rehabilitation institutions), individuals undergoing training and participants in labour market measures.

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