THE TRANSPOSITION OF THE EU WHISTLEBLOWING DIRECTIVE: WHAT ROLE DOES NATIONAL LEGISLATION IN THE MEMBER STATES ENVISAGE FOR TRADE UNIONS?

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ABSTRACT

This chapter examines the role that Member States (MS) envisaged for trade unions when they implemented the EU Directive on Whistleblowing (EUD), which came into force in 2021. The EUD adopts a three-tiered approach to disclosures of information about wrongdoing, namely, internal, external and public. Such an approach facilitates the involvement of unions in a range of matters, for example: ensuring that employers have appropriate whistleblowing policies and agreed procedures; the provision of advice and representation to members who are actual or potential whistleblowers or are the subject of allegations; checking that identified wrongdoing is dealt with; protection against victimisation and the monitoring and review of arrangements To provide context for the discussion which follows the chapter starts by providing some definitions and a short review of the literature on trade union involvement in whistleblowing prior to the EU Directive coming into force. It then examines in detail the extent to which EU MS have implemented whistleblowing legislation in ways that give trade unions a role at collective

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and individual level. The chapter concludes with a discussion about international best practices and suggests what might be needed to ensure that countries adopt them.

Keywords: Trade unions; transposition; whistleblowing[1]; directive; role of trade unions

The potential role of trade unions in the whistleblowing process has been explored elsewhere (Frieze & Jennings, 2001; Lewis & Vandekerckhove, 2018; Phillips, 2020), and this chapter attempts to explore how much of that potential has been fulfilled since the EU Directive on Whistleblowing (EUD) came into force in 2021. Before focusing on the way in which the EU Member States (MS) have implemented the EUD, it is important to remind ourselves why workers join trade unions and the possible levels at which unions might operate. Historically, workers have become union members in order to obtain the benefits of collective power. Subsequently they have had more personal reasons for doing so, for example, to access individual representation at disciplinary and grievance, etc. hearings and to utilise legal, financial and insurance services. In terms of collective involvement in industrial relations, trade unions might be active at local, industry, national or supranational levels. However, in the whistleblowing context attention concentrates on the following tiers of disclosure, i.e. internal, external or public (see Vandekerckhove, 2006). The EUD acknowledges the tiered approach, and this facilitates the involvement of unions in a range of matters, for example: ensuring that employers have appropriate whistleblowing policies and agreed procedures; the provision of advice and representation to members who are actual or potential whistleblowers or are the subject of allegations; checking that identified wrongdoing is dealt with; protection against victimisation and the monitoring and review of arrangements (Transparency International, 2022).

This chapter will examine the extent to which EU MS have implemented whistleblowing legislation in ways that give trade unions a role at collective and individual level. Having done so, it will refer to laws in a couple of non-EU countries in order to identify best practices and suggest what might be needed to ensure that countries adopt them. To provide context for the discussion which follows, we start by providing some definitions and a short review of the literature on trade union involvement in whistleblowing prior to the EU Directive coming into force.

CONTEXT FOR THE DISCUSSION

Research Background

Before offering a short literature review and research background, we will provide some definitions of key terms that are used. For the purposes of this chapter, the following definition of 'whistleblowing' in the International Organisation for Standardisation (ISO) guidelines (2021) is adopted: 'reporting of

suspected or actual wrongdoing by a whistleblower' (Paragraph 3.1). 'Wrongdoing' is defined as 'action(s) or omission(s) that can cause harm', and a 'whistleblower' is a 'person who reports suspected or actual wrongdoing, and has reasonable belief that the information is true at the time of reporting' (see ISO Paragraphs 3.8 and 3.9, respectively). It is important for our purposes that Note 2 to Paragraph 3.9 of the ISO document gives examples of whistleblowers that include union representatives. One of the aims of the EUD is to protect 'relevant interested parties', and Note 2 to Paragraph 3.4 of the ISO guidelines states that such parties 'can include, but are not limited to, those who make reports, any subjects of those reports, witnesses, personnel, worker representatives, suppliers, third parties, public, media, regulators and the organization as a whole'. In outlining who should be protected from detriment, Paragraph 8.4.5 specifies 'others assisting or involved in a report of wrongdoing, internal investigators, family members, trade union representatives or others supporting the whistleblower, or those who are wrongly suspected of reporting wrongdoing'. It will be noted that all of these definitions refer to concerns which are raised internally, externally or publicly.

Other terms that are invoked in this chapter are unlikely to need explanation. However, it might be useful at this stage to distinguish whistleblowing policies from procedures. Although in practices such policies and procedures may appear in the same document, the former display 'the intentions and direction of an organization as formally expressed by its top management' (ISO Paragraph 3.7) whereas the latter provide a mechanism for raising and handling concerns about wrongdoing. Many key expressions are likely to be defined in national legislation on whistleblowing and/or social partnership generally, for example, trade unions, worker representatives, collective agreement, consultation, employer organization, employer and employee. 'Social partners' is a term widely used in Europe to refer to representatives of management and labour. These will normally be employer organisations and trade unions or other representatives of employees. 'Social dialogue' is the process whereby the social partners negotiate on work-related matters. Supporters of such a process maintain that the collective bargains that result from it can promote a culture of integrity by institutionalising the exchange of information and building trust between the parties.

Research has consistently demonstrated that the two main reasons that deter people from reporting perceived wrongdoing are fear of retaliation and a belief that the wrongdoing is unlikely to be rectified (see Lewis et al., 2014). Historically, attention has focused on making it safe for people to raise a concern, but it is just as important to make whistleblowing 'effective'. Near and Miceli (1995) define this as 'the extent to which the questionable or wrongful practice (or omission) is terminated at least partly because of whistleblowing and within a reasonable time frame'. More recently, Vandekerckhove et al. (2014) defined 'successful' whistleblowing as raising a concern that results in 'managerial responsiveness to the primary concerns aired by the whistleblower about wrongdoing; and managerial ability or willingness to refrain from, or protect the whistleblower against, retaliation or reprisals for having aired those concerns'.

Subsequently, Lewis and Vandekerckhove (2012) suggested that trade unions have been neglected as organisations that can not only receive concerns but may also be able to take action to stop wrongdoing at industry/sector level as well as the workplace.

In terms of individual representation, we might expect whistleblowing to trade unions to be more successful than other routes because of their unique position in being able to support their members. Indeed, a union may be willing to assist a non-member in order to attract new members. Addison and Bellfield (2004) argue that rather than collective voice, it is individual voice that lowers the risk of workers quitting, i.e. individual rights are more valuable than collective representation. By way of contrast, Frieze and Jennings (2001) maintain that the task and value of trade union involvement is precisely the protection of whistleblowing workers. In their UK study of 1,000 cases from the Public Concern at Work (now Protect) advice line data, Vandekerckhove and James (2013) discovered that those who raised their concern with a trade union had aired it with others beforehand. One obvious explanation is that they have been advised to do so. More negatively, workers may turn to a union because of the adverse reactions they receive from people in their organisation when raising a concern internally. In relation to how successful whistleblowing to a union was, their findings showed that it was safer for whistleblowers to raise a concern with a union than it is to other recipients. However, they also revealed that raising a concern with a union was less effective than using other external or internal recipients. It follows that the task for unions is not simply to show that they can protect their members but to demonstrate to wider society that they are capable of ensuring that allegations of wrongdoing are taken seriously and that malpractices are dealt with appropriately. Indeed, while acknowledging the factors that limit the scope for trade unions to support whistleblowers, Kenny (2024) draws attention to their potential role in 'collective bricolage'. This term 'describes the organizing practices of public whistleblowers and their allies, working together outside the official channels to disrupt the status quo, and bringing information about serious wrongdoing to those who can address it'.

As regards collective representation, Lewis and Vandekerckhove (2012) identified the involvement of trade unions as a key element in their framework for reviewing international guidelines on whistleblowing policies. However, at that time they found that only the guidelines issued by the British Standard Institute advised organisations to consult with trade unions. Transparency International (2018) asserts that experience demonstrates that legislation developed after consultation with relevant stakeholders, including trade unions, is more likely to be effective (see also Abazi, 2021). Stakeholder engagement can ensure that the needs and concerns of all parties that will be affected and their expertise in handling concerns are taken into account. In turn, this should help build the trust and support of those who will have a role in implementing whistleblowing measures. Additionally, broad consultation can be useful as part of a publicity campaign to promote whistleblowing as a matter of public as well as private interest. Such awareness will be particularly important in nations

where the cultural perception of whistleblowing is negative (See Council of Europe, 2014).

Having conducted some empirical research as part of his doctoral thesis, Phillips (2020) asserts that one explanation for the limited engagement of UK trade unions in whistleblowing is that they view whistleblowing as an individual act but regard their role as collective. It might also be observed that whistleblowing laws tend to provide individual rights and remedies, which do not fit easily with the collective nature of trade unions. Indeed, Phillips points to the paradox that trade unions 'want to collectivise whistleblowing but do not put whistleblowing on the collective bargaining table' (p. 7). In comparing the United Kingdom with the Netherlands and Norway, Phillips notes that the latter two countries have much greater coverage of collective bargaining and collective agreements are more prominent at sectoral level than in the United Kingdom. Another problem identified by Phillips is that trade unions want to support whistleblowers, but 'at all levels, they seem not to understand what whistleblowing is'. It follows that, if trade unions cannot identify a whistleblowing situation, they cannot make it a collective issue or protect a whistleblowing member from reprisals. With some regret, he concludes that unions 'do not currently play an effective role in supporting members who wish to make a whistleblowing disclosure' (p. 227). This chapter aims to build on previous research by investigating the role that MS have envisaged for trade unions when transposing the EU Directive into their national legislation.

Pressure From International Institutions

In terms of European institutions, in 2014 the Council of Europe published its *Recommendation of the Committee of Ministers of the Council of Europe to States on the Protection of Whistleblowers*. Paragraph 16 of this document states that 'Workers and their representatives should be consulted on proposals to set up internal reporting procedures, if appropriate'. Turning now to the EUD, Paragraph 29 of the Recital and Article 3.4 make clear the desire to uphold the participative role of trade unions in national labour relations systems while guaranteeing minimum levels of protection for workers. The Recital states: 'This Directive should not affect national rules on the exercise of the rights of employees' representatives to information, consultation, and participation in collective bargaining and their defence of workers' employment rights. This should be without prejudice to the level of protection granted under this Directive'. Article 3.4 provides that: 'This Directive shall not affect national rules on the exercise by workers of their rights to consult their representatives or trade unions, and on protection against any unjustified detrimental measure prompted by such consultations as well as on the autonomy of the social partners and their right to enter into collective agreements. This is without prejudice to the level of protection granted by this Directive'. This form of words is consistent with both the overarching EU principles of subsidiarity and proportionality (see Article 5(3) of the Treaty on European Union, EU (2012)) as

well as the autonomy of the social partners as a fundamental right (see Article 28 of the European Union's Fundamental Rights Charter (EU, 2000).

Another key provision is Article 8.1 of the EU Directive which states that: 'MS shall ensure that legal entities in the private and public sector establish channels and procedures for internal reporting and for follow-up, following consultation and in agreement with the social partners where provided for by national law.' The word 'agreement' suggests that a collective bargain may be the ultimate outcome. However, the words 'where provided for by national law' make it clear the process will depend on the legislation in MS and reflects the principle of subsidiarity in legislating at EU level. Unsurprisingly, the European Trade Union Confederation (2018) had made representations to the effect that it must be obligatory that the establishment of reporting channels is done in consultation and through negotiation with the worker representatives and/or the trade unions and that the right to be represented is ensured. Indeed, the Council of European Professional and Managerial Staff (2020) pointed out that unions are ideally placed to negotiate best practices and hold organisations to account. Unfortunately, with the decline in membership since the 1980s in many EU countries, questions have been raised about whether unions are representative enough of the workforce and if they have the power to make changes in this field. Nevertheless, as institutions they are likely to have more resources and experience than non-union representatives.

Other roles are envisaged for representatives in Recitals 41, 45 and 54 of the EU Directive. Recital 41 provides that trade union and employees' representatives 'should enjoy the protection provided for under this Directive both where they report in their capacity as workers and where they have provided advice and support to the reporting person'. Recital 54 identifies trade union representatives and employees' representatives as third parties who could be authorised to receive reports of wrongdoing. Recital 45 states that protection should be made available to people who make information about wrongdoing publicly available inter alia via trade unions:

> Protection against reprisals as a means of safeguarding freedom of expression and media freedom and pluralism should be granted both to persons who report information about acts or omissions in an organisation ('internal reporting') or to an external authority ('external whistleblowing') and to persons who make such information, officials, civil society organisations, trade unions, or professional and business organisations.

Interestingly, the International Labour Organisation (2025) Working Paper 135 does not mention the role of trade unions as potential *internal* recipients of concerns. The function of Recitals is to explain how the objectives of the Directive are to be achieved as well as how particular terms used in it should be understood. Although they are not legally binding in themselves, courts can use them to interpret the Directive's Articles. Consistent with this function, the words 'should' and 'could' that are used here are legally weak and can be contrasted with the word 'shall' which is used in both Article 3.4 and 8.1 of the Directive (see above).

At the global level, it should be noted that the International Labour Organisation (2025) is a keen advocate of social dialogue and collective bargaining and claims that these processes can: help define corruption and whistleblowing in specific national contexts; encourage research into the causes of corruption and motivations for whistleblowing; provide effective protections for whistleblowers; create awareness among staff of the value of whistleblowers and the protections afforded to them; strengthen integrity programmes; develop the specialised knowledge of staff and close loopholes identified through consultations. More generally, it is asserted that 'social dialogue and collective bargaining can help change the organizational culture by bringing out workers' interests, building trust in the change process itself between the parties, and empowering workers to contribute to the goals of the organization'. Rather disappointingly, the subsequent United Nations Convention Against Corruption (2023) resolution on the Protection of Reporting Persons adopts many of the principles accepted by the Council of Europe and European Commission but goes no further than a call to States Parties 'to continue to develop appropriate measures to fully and effectively provide protection. . ..'

A NOTE ON METHODOLOGY

The author only felt confident to scrutinise the transposed legislation in the English language. In some MS, official translations were available, but in others, reliance was placed on DEEPL and Google Translate language conversion software. What emerged from this process was of variable quality, so caution needs to be exercised with the results when endeavouring to conduct a forensic exercise. A further complication is that some MS do not have self-contained whistleblowing statutes but have relevant provisions in other general or specific legislation or constitutional rights to freedom of expression. Thus, what follows may not present a totally accurate picture about how the Directive has been implemented in some countries. It should also be noted that the legislative materials scrutinised for each country are not referred to in the main text but are listed in alphabetical order in Appendix A.

NATIONAL LEGISLATION ON THE ROLE OF SOCIAL PARTNERS

Autonomy, Consultation and Collective Bargaining

In the light of Article 3(4) of the EUD, it is unsurprising that specific mention is made of the autonomy of the social partners in several countries, e.g. Bulgaria Article 3(4); Cyprus Article 4.5(5); Greece Article 5; Italy Article 1(4); Luxembourg Article 1(4); Malta Article 2.5; Portugal Article 3.5 and Romania Article 1(7). Similarly, Paragraph 29 of the Recital may have caused a number of MS to state explicitly that their whistleblowing legislation does not affect the right of workers to consult their representatives or the right to conclude

collective agreements, e.g. Bulgaria Article 3(4); Cyprus Article 4.5(5); France Article 8; Italy Article 1(4); Luxembourg Article 1(4); Malta Article 2.5; Poland Article 24 (which is noteworthy for specifying both a minimum and maximum period in which the consultation must take place); Portugal Article 3.5; Romania Article 1 and Spain Article 5. Several countries expressly provide that the rules on protection against damage resulting from such consultation are unaffected: Article 3(3.) Bulgaria; Article 4.5 (5) Cyprus; Article 1. 4 Italy; Luxembourg Article 1(4); Malta Section 2(5); Poland Article 9 and Romania Article 1. Significantly, both the Netherlands Section 2(7) and Sweden Chapter 1 Section 7 expressly acknowledge that a whistleblowing procedure can be set out in a collective labour agreement. In other MS where social dialogue is well established, it might be assumed that negotiation and/or consultation will take place about the introduction of whistleblowing arrangements at the workplace.

Limitation of Rights

Some MS emphasise the mandatory nature of their statutory provisions by outlawing the waiver or limitation of rights. For example, in Hungary Article 44 of Act XXV of 2023 imposes a blanket ban on declarations, contracts or regulations which restrict or exclude rights in the whistleblowing legislation. In other countries, collective or individual agreements are referred to in a variety of ways. For example, Denmark Article 4, Finland Section 28, Germany Article 39, Ireland Section 23, Portugal Section 23, Romania Article 27 and Spain Article 6 state that rights and guarantees provided by its whistleblowing laws cannot be waived or limited by agreement. Estonia Article 7 and Austria Section 4(4) render deviations from their whistleblowing statutes void unless the derogation is provided for in the legislation whereas other countries are more specific in outlawing provisions which offer less favourable rights and remedies (See Denmark Article 4; Finland Section 28; Germany Section 39; Greece Article 5(2)(e); Hungary Article 44; Ireland Section 23; Malta Section 2(5); Romania Article 27(1); Spain Article 63 and Sweden Chapter 1 Section 7).

Retaliation

In relation to the prohibition of retaliation, Article 19 of the EU Directive provides 15 illustrations of the forms that retaliation might take. This includes: '(l) blacklisting on the basis of a sector or industry-wide informal or formal agreement, which may entail that the person will not, in the future, find employment in the sector or industry'. Clearly, this covers boycotting provisions that might be contained in a collective agreement although it is hard to imagine that a trade union would agree to such provisions. EU MS commonly deal with agreements to boycott, for example, Austria Section 20(2)5; Belgium Article 15; Bulgaria Article 33(1); France Article 10; Ireland Section 3; Poland Article 12; Portugal Article 12; Romania Article 22 and Slovenia Article 19. Indeed, several of the countries adopt wording which is very close to that contained in Article 19 of the EUD.

Advice, Support and Representation

As indicated above, Recitals 41 of the Directive specifies that trade union and employee representatives should be protected 'where they report in their capacity as workers and where they have provided advice and support to the reporting person.' In France, Article 9 refers to trade unions acting in their capacity as 'whistleblower, facilitator or person in connection with the whistleblower'. In Greece, Article 5(2)(e) deals with the rights of employees to advice from their representatives or trade unions and provides protection against 'any unjustified harmful measure which results from said consultations'. In Ireland, Article 9 specifically protects disclosures made by workers 'in the course of obtaining legal advice (including advice relating to the operation of this Act)' from a trade union official. In Sweden, Chapter 3 Section 2 states that 'An operator must not take retaliatory action because someone consults their employee organisation for advice on reporting. The operator must also refrain from obstructing or attempting to obstruct such consultation'. Chapter 1 Section 8(3) of the legislation defines an 'operator' as follows: 'in the private sector, a physical or legal person; in the public sector, a central government administrative authority, a court or a municipality'. Additionally, in Sweden, business associations, trade unions and civil society organisations can apply for public funds to provide information and advice to whistleblowers. Specific mention of assistance is made in Portugal where Article 6(4) stipulates that statutory protection is afforded to natural persons (including trade unions or workers' representatives) who confidentially assist whistleblowers in the procedure.

In relation to support, Section 9 (1) in Latvia states that trade unions can 'provide support, including consultations, for whistleblowers' and Section 9(3) provides that unions may 'without special authorisation, apply to an institution (authority) or a court on behalf of such whistleblower who is a member'. Similarly, in the Netherlands, Section 5 allows an authorised representative of a reporting person to make a request to the Investigation Department. In Ireland, if a trade union has the consent of a member who is an employee, Schedule 2 of the Protected Disclosures Act 2014 specifically empowers it to complain on their behalf to the Rights Commissioner and, subsequently, to appeal to the Labour Court. In Italy where there has been as dismissal referred to in Article 22, a worker and his/her trade union can make a joint application to a judge for reinstatement.

Recipients of Concerns

Recital 54 of the EU Directive identifies trade union representatives and employees' representatives as third parties who could be authorised to receive reports of wrongdoing. In Latvia, Section 4 of the Whistleblowing Law 2022 stipulates that a trade union can be used by as a whistleblowing mechanism and Section 10 affords whistleblowers and related persons an individual right to consultation about the protection of their rights. In Romania, Article 19 identifies trade unions as potential recipients of a public disclosure, and Article 26

requires a trade union representative to be invited to a disciplinary investigation if so requested by a whistleblower who is under investigation.

DISCUSSION

In some countries, trade unions are limited in their engagement in wider society and have adversarial relationships with government and business. However, in contrast with liberal market economies, it might be expected that, in nations with more coordinated economies (see Hall & Soskice, 2001) and more cooperative systems of industrial relations, trade unions might be more willing to establish, operate and monitor effective whistleblowing arrangements. Phillips' (2020) doctoral research suggests that while coordinated economies are more proactive and liberal economies reactive to engagement with whistleblowing law, there is little difference when it comes to pushing for and undertaking a role. Our review of the legislation shows that in many countries, there is no acknowledgement in whistleblowing statutes that collective bargaining has a role to play in facilitating whistleblowing but in a small number (for example, Sweden and the Netherlands), such a role is explicit. Looking outside the EU for a moment, in Norway Section 2 A-2 of the Work Environment Act makes it clear that employees can report concerns internally via a safety or union representative. Section 2 A-6 obliges undertakings that regularly employ at least five employees to have procedures for internal whistleblowing and those with fewer employees must have such procedures 'if the conditions at the undertaking so indicate'. These procedures must be 'prepared in connection with the undertaking's systematic health, environment and safety activities in cooperation with the employees and their elected representatives'. The word 'consultation' is used in other sections of this legislation, so it can be inferred that the requirement for 'cooperation' here suggests that something close to agreement should be sought. Indeed, Section 2.3 of the Working Environment Act (as amended 2024) spells out the employees' general duty to cooperate in the operation of the Act in some detail.

The question then arises as to how open trade unions are to collaborate with other organisations at national, sectoral and local levels and how equipped they are to represent the interests of the workforce in relation to whistleblowing issues. While it is assumed that collaboration is a positive thing, one negative aspect is that it can lead to distrust in the ability of trade unions to handle concerns appropriately. For example, if it is alleged that an employer is polluting the environment, a union may cooperate in phased remediation in order to avoid a total plant closure and safeguard the employment of the majority of the workforce. However, a whistleblower who has another job (or is confident about obtaining one) may feel that immediate rectification is required and that the public interest should prevail over the private interests of the organisation, trade unions and workers. Union collaboration with the media can be particularly problematic. Media reaction is difficult to predict, and journalists have their own interests to serve, so unions may have to work hard to ensure that the legal

protection of whistleblowers is not compromised. In terms of unions being equipped to handle concerns about wrongdoing, it is an unfortunate corollary that where collective bargaining about whistleblowing is less prevalent or confined to very local arrangements, there is more likely to be a lack of expertise and resources invested in the process.

We now turn to unions as recipients and makers of disclosures. Again, the union role will depend on resources and/or the extent to which it has voice within a work organization. Those that have negotiating rights with employers might ensure that union officials are designated as internal recipients of concerns and are permitted to make disclosures themselves on behalf of workers (Unless otherwise stated, reporting wrongdoing to a regional or national official is most likely to be considered to be an external disclosure). One advantage of collective voice is that it amplifies that of an individual, but it can also focus attention on the concern rather the person raising it (Abazi, 2021). If lodging concerns with union representatives is permitted under an agreed whistleblowing procedure, those who do so should be protected and may also choose to have their identity concealed as an extra safeguard against retaliation. Reporting to union officials will be particularly attractive to members as they may be used to approaching them in other circumstances, and in turn, this may increase the general willingness to raise concerns. If trade unions are designated receivers and/or makers of disclosures, they should be in a position to resolve ambiguities about whether wrongdoing has occurred and is covered by the procedure and/or the law. Indeed, the fact that the union makes the disclosure adds weight to the concern, and this might also encourage members to report wrongdoing to it. Although there may be difficulties in practice, unions should try to ensure that reprisals are not imposed by work colleagues who might feel that the concern should not have been raised. For example, because loyalty has been interpreted to mean that workers should not get members of the group into trouble or the group norm is to turn a blind eye to the particular form of wrongdoing. However, one matter that is sometimes raised in relation to trade union representatives serving as recipients of concerns is the question of confidentiality. It could be argued that information supplied by a member could only be used for the purposes agreed by that person and not generally in dealings with the employer. Thus if a discloser of safety failings decided not to proceed with the matter, without additional information the union might be unable to pursue the issue even though other members might be at risk.

Where there is distance between the worker who originally suspected wrongdoing and the person investigating it, the opportunity for management to retaliate may be reduced. Additionally, if there are good industrial relations at the workplace, it would be anticipated that the union will able to ensure that concerns are properly investigated and that any wrongdoing identified is corrected. When an organisation is properly held to account, trust in the procedure will be bolstered, and this, in turn, may reduce the likelihood of inappropriate external disclosures being made in the future. Where the trade union is unable to secure a right to receive or make a disclosure, they could aim to secure a safe a communication channel to senior management. Ideally, open discussions would

ensure that top managers are aware of and are acting on allegations of wrongdoing and accept responsibility for ensuring that whistleblowers are immune from reprisals. In the absence of effective formal communication channels, at the very least trade unions should be able to advise and represent their members at any meetings about the disclosure.

In terms of the advisory role of trade unions, it should be noted that in some countries independent organisations have been established to provide advice about what can be disclosed under national legislation, how a concern can be raised and what support is available during the whistleblowing process. Where this is the case, trade unions may feel that they can serve their members best by engaging with the specialist bodies. However, where there are competing advice agencies, it may well be the task of trade unions to point potential or actual whistleblowers in the direction of the one that they think is most appropriate in the particular circumstances. Clearly, this would require officials to have some knowledge about what services are available. It almost goes without saying that a statutory right to both physical and digital access to the workforce would be valuable not only to facilitate the provision of advice and support but also for monitoring the impact of whistleblowing arrangements. In this respect, it is again worth noting the approach taken in New Zealand where Section 20 of the Employment Rights Act 2000 grants union representatives reasonable access to workplaces in order to monitor compliance with both collective agreements and statutory employment-related rights.

CONCLUSION

Our focus here will be on the best practices that have emerged in the transposition process. However, before identifying them it is important to remember that not all MS have been enthusiastic about introducing or amending their whistleblowing legislation. This is illustrated by the fact that the European Commission has felt obliged to bring proceedings against a small number of MS in order to ensure compliance with the EUD. It is also evident that a few countries appear to have reproduced some of the wording in both the Directive and its Recitals without really applying it to their national context. More positively, some MS have gone beyond the EU minimum requirements in relation to trade union involvement and have adhered to best practice guidelines contained in the ISO document and elsewhere. While the overall picture may not be encouraging for trade unions, this is hardly surprising since it reflects the union movement's weakness in many MS as well as the strength of social dialogue in others.

It is now widely acknowledged that consultation with trade union or employee representatives is the minimum requirement for introducing adequate whistleblowing procedures. However, if co-operation is genuinely desired, it might be argued that receiving representations is insufficient and that employers should be obliged to use their best endeavours to negotiate whistleblowing arrangements with trade unions. Put crudely, collective bargaining can promote

effective communication, allow employers to plan better and ensure that the workforce is treated equitably. From a trade union perspective, it might be observed that negotiating good whistleblowing agreements and displaying efficiency in the handling of concerns may well assist them in recruiting new members. Thus, it is asserted that MS should be put under more pressure to recognize that whistleblowing is a legitimate subject for collective bargaining. Underpinning this should be a legal right of workers to consult representatives and not suffer damage for doing so.

The role of trade union representatives in the whistleblowing process can be widely drawn but is likely to be limited by resource constraints as well as the approach of employers. For example, it might cover advising and supporting members, receiving individual concerns and raising them collectively, ensuring rectification of wrongdoing and that disclosers of information do not suffer reprisals. Ideally, MS should be obliged to make public funds available to enable trade unions (and non-governmental organisations) to provide specialist advice to both actual and potential whistleblowers. If union representatives are to serve as recipients of concerns, there would also seem to be great advantage in legislation and/or collective agreements specifying that, with the consent of the member, such representatives can act on their behalf in referring matters to external investigating agencies and the courts.

Finally, the EU Commission's key rationale for the Directive is that effective national legislation on whistleblowing is critical to combating fraud and other financial irregularities. However, there is also a compelling business and societal case for protecting for those who raise concerns about other forms of wrongdoing. Employers need to know about problems and inefficiencies in their organisation at the workplace so that they can deal with them as soon as possible and certainly before there is external scrutiny of their activities. It also important for workers as, even today, so-called 'gagging clauses' exist and staff are criticised for endeavouring to uphold high standards and safe practices. More generally, society must strive to achieve an open culture where whistleblowers are valued for their role in making the public more secure and free from corruption. Indeed, as noted by the Organization for Economic Cooperation and Development (1999), the more corrupt countries tend to be those without union representation.

NOTES

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APPENDIX A

LIST OF RELEVANT LEGISLATION CONSIDERED

Austria: Whistleblower Protection Act 2023 (HSchG) 2023.
Belgium: Parlement de la communauté française session 2022–2023 3 Juillet 2023 proposition de décret1 and décret et ordonnance conjoints relatifs au médiateur bruxellois.
Bulgaria: Protection of persons who report or publicly disclose information on Breaches Act 2023.
Croatia: Law on the protection of reporters of irregularities 2022.
Cyprus: Law providing for the protection of persons who report breaches of EU and National Law 2022.
Czech Republic: Act amending certain acts in connection with the adoption of the Whistleblower Protection Act. Act no. 172/2023.
Denmark: Whistleblower Protection Act 2024.
Estonia: The act on the protection of whistleblowers of work-related breaches of European Union law 2024.
Finland: Law on the protection of persons reporting violations of European Union and National Law 2022.
France: Law no. 401 aimed at improving the protection of whistleblowers 2022.
Germany: Law for better protection of whistleblowers (Whistleblower Protection Act – hinschg) 2023.
Greece: Protection of persons who report violations of Union Law - Incorporation of directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 (l 305) and other urgent regulations 2022.
Hungary: Act on complaints, whistleblowing and reporting of abuse 2023.
Ireland: Protected Disclosures Act 2014 Ed Disclosures Act 2014.
Italy: Legislative decree no. 24. Implementation of directive (EU) 2019/1937 of the European parliament and of the council of 23 October 2019, on the protection of persons who report Breaches of Union Law and laying down provisions regarding the protection of persons who report breaches of national law 2023.
Latvia: Whistleblowing law 2022.
Lithuania: Law on protection of whistleblowers 2021.
Luxembourg: Law transposing directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of union law 2023.
Malta: An Act to Amend the Protection of the Whistleblower Act. Cap. 527. 2021.
Netherlands: Whistleblower Protection Act 2023.
New Zealand: Employment Rights Act 2000.
Norway: Working Environment Act 2005; as amended 2024).
Poland: Act on the protection of whistleblowers 2024.
Portugal: Whistleblower protection proposal. Law No. 93. 2021.
Romania: Law NR. 361 on the protection of whistleblowers in the public interest 2022.
Slovakia: Act on the Protection of Whistleblowers and on Amendments to Certain Acts 2023.
Slovenia: Reporting Persons Protection Act 2023.
Spain: Law 2/2023, of February 20, 2023, regulating the protection of persons who report regulatory and anti -corruption breaches.
Sweden: The act on the protection of persons reporting irregularities 2021.