



Estimating the Economic Benefits of Whistleblower Protection in Public Procurement

Final Report



Written by Milieu Ltd
July - 2017



EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs

Directorate G — Directorate Single Market for Public Administration

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs Unit G.1 – Public Procurement Strategy

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Estimating the Economic Benefits of Whistleblower Protection in Public Procurement

Final Report

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Luxembourg: Publications Office of the European Union, 2017

ISBN 978-92-79-70975-3

doi: 10.2873/125033

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Abstract

This study outlines an economic case for whistleblower protection in the European Union (EU). It focuses on the public procurement sector, a major component of the economy and an attractive hotspot for corruption. In this context, whistleblower protection can encourage the reporting of corrupt practices, resulting in less misuse of public funds.

The study involved a detailed investigation into the costs faced by the public sector to set up and maintain whistleblower protection in seven European countries where whistleblower provisions are in place (France, Ireland, Italy, the Netherlands, Romania, the Slovak Republic, and the United Kingdom). The actual potential of a well-functioning whistleblower protection system to prevent misuse of public funds in public procurement was estimated through economic modelling.

The quantitative findings clearly demonstrate the economic value of whistleblower protection. For all of the countries and scenarios considered, the potential greatly exceeds the costs. The qualitative evidence gathered from the countries sheds light on good practices and lessons learned for effective and efficient implementation. What remains for policymakers is not to justify the economic case, but rather to determine how such systems can be effectively and efficiently designed to realise the full potential for citizens across the EU.

Resumé

Cette étude propose un aperçu des dynamiques économiques autour de la question de la protection des lanceurs d'alerte dans l'Union européenne (UE). Elle porte sur le secteur des marchés publics, un composant majeur de l'économie et un secteur à haut risque pour la corruption. Dans ce contexte, la protection des lanceurs d'alerte encouragerait la dénonciation d'actes de corruption, permettant de minimiser le détournement de fonds publics.

Dans le cadre de cette étude, il a été procédé à une analyse détaillée des coûts, pour le secteur public, liés à la mise en place et au maintien de mesures de protection des lanceurs d'alerte dans sept pays européens disposant de provisions propres aux lanceurs d'alerte (la France, l'Irlande, l'Italie, les Pays-Bas, la Roumanie, la République de Slovaquie et le Royaume-Uni). Une modélisation économique a permis d'estimer le potentiel d'un système de protection des lanceurs d'alerte fonctionnant convenablement pour empêcher le détournement de fonds publics.

Les résultats quantitatifs montrent clairement la valeur économique de la protection des lanceurs d'alerte. Pour tous les pays et scénarios étudiés, le potentiel surpasse largement les coûts. Les données qualitatives collectées sur les pays mettent en lumière de bonnes pratiques et les leçons tirées de l'expérience pour une mise en œuvre efficace et efficiente. Il appartient ainsi toujours aux décideurs politiques non pas de justifier la dynamique économique mais de déterminer de quelle manière de tels systèmes peuvent être conçus pour fonctionner de manière efficace et efficiente et atteindre tout le potentiel pour les citoyens de l'UE.

Executive Summary

Tackling corruption is a top priority for policymakers in the European Union (EU). Corruption in the EU is estimated to cost EUR 120 billion per year, which represents approximately 1 percent of EU's total GDP. Public procurement is one of the government activities that is most vulnerable to corruption. In this area alone, the risk of corruption risk is estimated to cost the EU EUR 5.3 billion annually¹. The protection of whistleblowers, who report or disclose information on threats to the public interest that they witnessed during their work, can contribute to the fight against corruption and to the safeguarding of fundamental rights in the EU. Recent, well-known cases involving whistleblowers include Antoine Deltour of Luxembourg Leaks, who disclosed information about tax avoidance schemes that benefited several multinational enterprises operating in Europe, and Edward Snowden, who reported on global government mass surveillance programs. In these and other cases, the national legal framework for whistleblower protection plays a central role in the likelihood of a disclosure being made, how a disclosure is handled, and whether or not whistleblowers experience retaliation by their employer.

Momentum towards EU action in the area of whistleblower protection has increased in recent years. In 2014, the Council of Europe issued a Recommendation (2014/7)² that advocated a European framework to engage in whistleblower protection. In May 2016, the Greens/EFA Group of the European Parliament proposed a draft Directive³ that was supported by the European Commission's Directorate General for Migration and Home Affairs (DG Home). Following a public consultation launched by the European Commission's Directorate General for Justice and Consumers (DG Justice) in March 2017, the Greens/EFA Group advocated a cross-sectoral whistleblower protection at the EU level, which was supported by many stakeholders⁴. In addition, DG Justice prepared a roadmap in January 2017⁵ for an Impact Assessment Study to identify and assess options for EU action to strengthen the protection of whistleblowers; this study is currently under development.

The 'Study on Quantifying the Economic Benefits of Whistleblower Protection in Public Procurement' was commissioned by the European Commission's Directorate General for Internal Market, Industry, Entrepreneurship and SMEs (DG Growth) to understand the economic case for introducing legislation to define and to protect the rights of whistleblowers in the EU.

In doing so, the study draws on the actual experiences of EU countries that have introduced national legislation to protect whistleblowers. Specifically, a quantitative assessment of the costs for setting up and maintaining whistleblower protection systems was made for seven countries – France, Ireland, Italy, the Netherlands, Romania, the Slovak Republic, and the United Kingdom. The potential for misused

¹ M. Hafner et al., 2016, The Cost of Non-Europe in the area of Organised Crime and Corruption – Annex II-The Cost of Non-Europe in the Area of Corruption, Research paper by RAND Europe, European Parliamentary Research Service – European Added Value Unit, Brussels.

² Council of Europe, Committee of Ministers, 2014, *Recommendation CM/Rec(2014)7 of the Committee of Ministers to Member States on the Protection of Whistleblowers*, available at <https://search.coe.int/>.

³ V. Abazi, A. Alemanno, P. V. Bartlett Quintanilla, J. Berg, Z. Herman, P. Rauschenberger and M. Vogel, *Whistleblower Protection in the Public and Private Sector in the European Union: A Draft Directive*, 4 May 2016. <http://www.greens-efa.eu/>

⁴ P. Bartlett Quintanilla, J. Berg, Z. Herman and P. Rauschenberger, 2017, *Arguments for horizontal legislative action to ensure even and effective protection for whistleblowers in the EU*, Greens/EFA Position Paper in the context of the European Commission Public Consultation on Whistleblower Protection, available at <https://extranet.greens-efa.eu/public/media/file/7109/5084>.

⁵ European Commission, DG JUST, 2017a, *Inception Impact Assessment – Horizontal or further sectorial EU action on whistleblower protection*, available at http://ec.europa.eu/smart-regulation/roadmaps/docs/plan_2016_241_whistleblower_protection_en.pdf.

public funds to be recovered thanks to whistleblower disclosures was estimated through an economic analysis of existing data and statistics. The quantitative analysis was complemented by a qualitative assessment of factors that may contribute to the effectiveness and efficiency of whistleblower protection, including good practices.

Methodology

A cost-benefit analysis approach was taken in which the costs of the whistleblower protection system were assessed against the benefits in terms of the potential for reductions in corruption and the misuse of public funds. A detailed description of the approach taken can be found in Section 2 of the report.

For several reasons, indicated in Section 2.3, it was not possible to calculate the actual benefits of whistleblower protection in the area of public procurement, based on funds recovered through past successful cases. Thus, an approach was taken to estimate the *potential* benefits that an effective whistleblower protection system could generate in the area of public procurement in each selected country. A key source of information supporting this approach was DIGIWHIST, an EU Horizon 2020 funded project focused on fighting public sector corruption. Through DIGIWHIST, data on public procurement awards from the EU Member States was obtained as well as the Corruption Risk Index, which is based on known risk factors for corruption in public procurement⁶. The analysis of potential benefits considered three scenarios, reflecting a range in how likely whistleblowing can lead to the detection of corruption.

A detailed investigation into the costs of setting up and maintaining whistleblower protection systems was guided by a framework that centred on the five cost categories indicated below:

- **Development of legislation:** The costs associated with the development of a standalone whistleblower protection law or a specific provision of a law relating to whistleblower protection. This cost category reflects activities such as impact assessments, stakeholder consultations, parliamentary review and amendments, as well as the drafting of the legislation itself.
- **Internal channels:** The costs incurred to set up and maintain systems through which employees of a public body can make an internal disclosure.
- **External channels:** The costs related to systems in prescribed bodies separate from the employer to which a whistleblower can make an external disclosure.
- **Judicial costs:** These costs relate to claims made in Court by whistleblowers who face retaliation and trainings for judges on the particularities of whistleblower cases.
- **Free legal advice:** Governments may finance an independent organization to provide free legal advice to individuals considering making a disclosure. This would represent a cost for the public sector.

Information about these costs was gathered through interviews primarily with focal points from the national governments as well as published studies and reports. When sufficient information was available, through interviews and other sources, monetary estimates were constructed by cost category for each country selected. However, due to data constraints, it was not possible to construct monetary estimates for each cost category in every country. The comparison of costs and potential benefits therefore

⁶ The Corruption Risk Index was developed by DIGIWHIST researchers. The higher the CRI, the greater the risk of corruption in the area of public procurement. See Section 2.1.2 for more information.

focused on three countries – Ireland, Romania, and the Netherlands – where the estimates of costs were most robust and reflected almost all of the cost categories.

Findings

The study has several key findings. The overall costs for setting up and maintaining whistleblower protection are quite low in comparison with the potential benefits. In the Netherlands for example, the ratio of potential benefits to costs ranged from 22:1 to 37:1, depending upon the scenario considered. The ratios can be understood as follows: 22:1 means that for every EUR 1 invested in whistleblower protection, there is a potential to gain EUR 22 in terms of misused public funds recovered. Similarly, 37:1 can be understood to mean that the potential benefits are EUR 37 for every EUR 1 spent.

For all three countries with the most robust data – Ireland, the Netherlands and Romania – a favourable ratio of potential benefits to costs was observed for the three scenarios considered. While in all cases the potential benefits exceeded the costs, a large degree of variation was observed. For example, in Ireland, the ratio of potential benefits to costs ranged from 1.4:1 to 2.3:1, while in Romania it ranged from 319:1 to 532:1 (see Table 1). The lower and upper bounds reflect the range in the findings from the three scenarios.

Table 1: Comparison of potential benefits to costs in three EU Member States

| Scenarios | Ireland | The Netherlands | Romania |
|--------------------------------------|------------------|-----------------|------------------|
| Costs (Systemic + Incremental) | | | |
| n/a | EUR 7.5 million | EUR 5.7 million | EUR 526 thousand |
| Potential benefits | | | |
| Lower bound | EUR 10.3 million | EUR 125 million | EUR 168 million |
| Upper bound | EUR 17.2 million | EUR 208 million | EUR 280 million |
| Ratio of potential benefits to costs | | | |
| Lower bound | 1.4 to 1 | 22 to 1 | 319 to 1 |
| Upper bound | 2.3 to 1 | 36 to 1 | 532 to 1 |

The credibility of the study's findings is supported by a peer-reviewed published study on whistleblower protection from the United States⁷. The study, which is based on the actual amounts of misused public funds recovered, concluded that the ratio of the actual benefits to the actual costs in the United States ranged from 14:1 to 52:1, the average being 33:1. These estimates can serve as a benchmark for this study, where data was less available and the potential rather than the actual benefits were estimated.

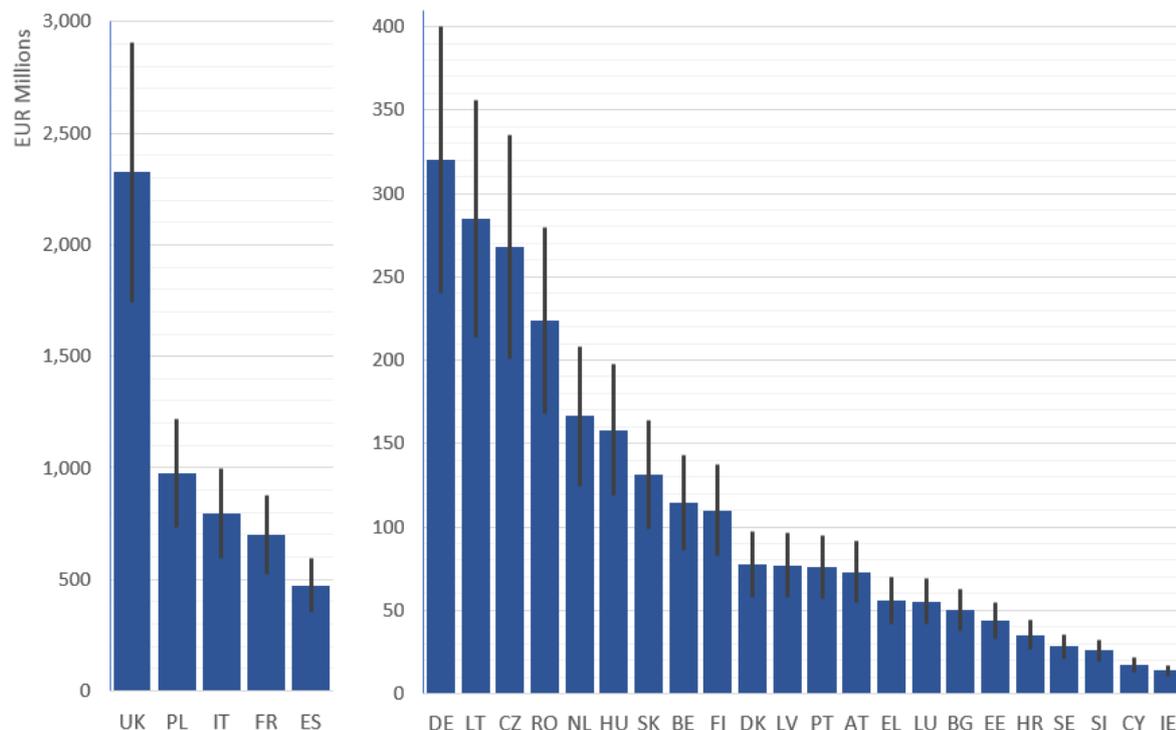
The large variation between countries in the ratio of potential benefits to costs is due to several factors. Variations in costs are driven by differences in the activities carried out to set up and implement whistleblower protection systems. For example, some countries carried out extensive stakeholder consultation before developing legislation; others have more elaborate internal reporting channels, etc. While these activities drive up costs, they also are likely to lead to greater effectiveness of the systems, thereby increasing the likelihood that the full potential benefits of whistleblower protection can be realised (e.g. through a greater number of disclosures). On the benefits side, variations are due to differences in overall size of the economy (GDP),

⁷ T. Carson, M. Verdu and R. Wokutch, 2008, 'Whistle-Blowing for Profit: An Ethical Analysis of the Federal False Claims Act', *Journal of Business Ethics*, 77: 361-376.

the share of GDP represented by public procurement contracts on average and the Corruption Risk Index. This is given in more detail in Section 3.1 and Table 5 in the main report.

For the EU as a whole, the potential benefits of effective whistleblower protection are in the range of EUR 5.8 to 9.6 billion each year in the area of public procurement exclusively⁸. Key drivers of this potential are the size of the economy, the value of public procurement awards, and the levels of corruption in the different Member States. Figure 1 presents the estimated potential benefits by country.

Figure 1: Estimated potential benefits (EUR millions) by country



A review of the main findings can be found in Section 3 of the report, while the detailed findings from each country can be found in Annex 1.

As mentioned, there are considerable differences in the ways in which whistleblower systems are set up and implemented across the countries studied. A deeper investigation into these differences led to the identification of several good practices that can enhance the effectiveness and efficiency of whistleblower protection systems in other countries and at the EU level. Key areas for good practice identified are as follows:

- **Raising awareness:** Previous surveys showed that three out of four Europeans who witnessed corruption did not report it⁹. Raising awareness among workers about the disclosure procedure in place, as well as of the whistleblower protection granted, could increase the likelihood that wrongdoing is reported;

⁸ Malta is not included in these estimates as the Corruption Risk Index was not available.

⁹ European Commission, 2014, Special Eurobarometer 397, Wave EB79.1 – TNS Opinion & Social, pp. 100-106, available online at http://ec.europa.eu/commfrontoffice/publicopinion/archives/ebs/ebs_397_en.pdf.

- **Promoting set-up of internal channels:** The proper setup and maintenance of internal channels may increase the probability of disclosure and the proper handling thereof;
- **Software to ensure confidentiality:** Fear of retaliation is the most common reason for not reporting instances of corruption¹⁰. Software that protects the confidentiality of whistleblowers and their identity may reduce the risk of retaliation; and
- **Internal training:** More knowledgeable staff would increase the chances that disclosures are properly received and investigated, respecting confidentiality issues.

More information can be found in Section 4.2 including country examples of the good practices.

The study identified interlinkages between cost categories that have implications for effectiveness and efficiency. For example, the development of legislation may include the preparation of guidance for employers to set up internal channels. In this case, the additional cost to produce the guidance may be offset by more effective internal channels, contributing to a more effective whistleblower protection system. Other examples can be found in Section 4.1.

Conclusions

This study has two main conclusions for policymakers at the EU and Member State levels.

There is a strong economic case for whistleblower protection, even when considering only the area of public procurement. As public procurement represents only one area of public spending, the economic benefits of whistleblower protection across other sectors are likely to be even greater. The returns to whistleblower protection may also vary by country. Countries with a higher risk of corruption and, in the case of public procurement, a larger economy or larger amounts of public procurement may stand to gain more from an effective whistleblower protection system.

However, **whistleblower protection must be effectively implemented to reap these potential benefits**. A growing number of European countries have a stand-alone law to protect whistleblowers, but studies suggest that implementation is poor, which limits the effectiveness of the legislation in encouraging whistleblower disclosures. Thus, the costs associated with activities promoting the efficiency and effectiveness of the system should be viewed as an investment with a sizeable payoff. Examples of such activities include training for individuals assigned to receive disclosures through internal and external channels and for judges to handle cases involving whistleblowers. Effective implementation may also result in lower costs, judicial costs in particular.

The study revealed a wide spectrum in how whistleblower protection is designed and implemented in European countries. EU action in this area could draw on these country experiences and help ensure effective protection for whistleblowers where it is presently lacking. The potential for economic benefits, as described in this study, alongside the promotion of transparency and democratic principles, as set forth in other studies, together build a strong and convincing case for new EU legislation.

¹⁰ C. Pring, 2016, *People and Corruption: Europe and Central Asia – Global Corruption Barometer 2016*, Transparency International.

Synthèse

Combattre la corruption est l'une des priorités des décideurs politiques dans l'Union européenne (UE). On estime à 120 milliards d'euros par an les coûts liés à la corruption, ce qui représente approximativement 1% du PIB total de l'UE. Les marchés publics comptent parmi les activités gouvernementales les plus vulnérables à la corruption. Rien que dans ce secteur, les coûts liés aux risques de corruption pour l'UE sont estimés à 5,3 milliards d'euros par an¹¹. La protection des lanceurs d'alerte, qui dénoncent ou divulguent des informations au sujet de menaces à l'encontre de l'intérêt public dont ils ont été témoins dans le cadre de leur travail, peut contribuer à la lutte contre la corruption et à la protection des droits fondamentaux dans l'UE. Antoine Deltour, de l'affaire Luxembourg Leaks, qui divulgua des informations au sujet des stratégies d'évasion fiscale mises en œuvre par plusieurs multinationales implantées en Europe, ainsi qu'Edward Snowden, qui divulgua les programmes gouvernementaux de surveillance de masse, comptent parmi les cas récents et bien connus impliquant des lanceurs d'alerte. Dans ces cas comme dans d'autres, les cadres législatifs nationaux pour la protection des lanceurs d'alerte jouent un rôle central dans la probabilité qu'une information soit divulguée, sur la manière selon laquelle elle est traitée et sur la survenance ou non de représailles de la part des employeurs envers les lanceurs d'alerte.

Au cours des dernières années, la dynamique vers une action de l'UE dans le domaine de la protection des lanceurs d'alertes a largement augmenté. En 2014, le Conseil de l'Europe a publié une Recommandation (2014/7)¹² en faveur d'un cadre européen pour la protection des lanceurs d'alerte. En mai 2016, le groupe Les Verts/ALE du Parlement européen a proposé un projet de directive¹³ soutenu par la Direction générale de la Migration et des Affaires intérieures (DG Home) de la Commission européenne. A la suite d'une consultation publique initiée par la Direction générale de la Justice et des Consommateurs (DG Justice) en mars 2017, le groupe Les Verts/ALE a milité pour la protection trans-sectorielle des lanceurs d'alerte au niveau de l'UE, soutenu par de nombreux acteurs concernés¹⁴. En outre, une feuille de route pour étude d'impact afin d'identifier et d'évaluer les options disponibles pour une action de l'UE renforçant la protection des lanceurs d'alerte a été développée par la DG Justice en janvier 2017¹⁵. Cette étude est actuellement en cours de réalisation.

¹¹ M. Hafner et al., 2016, Le coût de la non-Europe dans le domaine du crime organisé et de la corruption – Annexe II – Le coût de la non-Europe dans le domaine de la corruption (*The Cost of Non-Europe in the area of Organised Crime and Corruption – Annex II- The Cost of Non-Europe in the Area of Corruption*), Document de recherche par RAND Europe, Service de Recherche du Parlement européen – Unité Valeur Ajoutée Européenne, Bruxelles (non-traduit).

¹² Conseil de l'Europe, Comité des Ministres, 2014, Recommandation CM/Rec(2014)7 du Comité des Ministres aux Etats membres sur la protection des lanceurs d'alerte (*Recommendation CM/Rec(2014)7 of the Committee of Ministers to Member States on the Protection of Whistleblowers*), disponible sur <https://search.coe.int/> (non-traduit).

¹³ V. Abazi, A., Alemanno, P. V. Bartlett Quintanilla, J. Berg, Z. Herman, P. Rauschenberger and M. Vogel, La protection des lanceurs d'alerte dans le secteur public et le secteur privé dans l'Union européenne: un projet de directive (*Whistleblower Protection in the Public and Private Sector in the European Union: A Draft Directive*), 4 May 2016. <http://www.greens-efa.eu/> (non traduit).

¹⁴ P. Bartlett Quintanilla, J. Berg, Z. Herman and P. Rauschenberger, 2017, Arguments en faveur d'une action législative horizontale pour assurer une protection efficace et juste des lanceurs d'alerte dans l'UE (*Arguments for horizontal legislative action to ensure even and effective protection for whistleblowers in the EU*), Les Verts/ALE, Exposé de position dans le cadre de la consultation publique de la Commission européenne sur la protection des lanceurs d'alerte, disponible au <https://extranet.greens-efa.eu/public/media/file/7109/5084> (non traduit).

¹⁵ Commission européenne, DG JUST, 2017a, Analyse d'impact initiale – Action européenne horizontale ou sectorielle en matière de protection des lanceurs d'alerte (*Inception Impact Assessment – Horizontal or further sectorial EU action on whistleblower protection*), disponible au http://ec.europa.eu/smart-regulation/roadmaps/docs/plan_2016_241_whistleblower_protection_en.pdf

L'«*Etude sur la quantification des bénéfices économiques de la protection des lanceurs d'alerte pour les marchés publics*» a été commandée par la Direction Générale du Marché Intérieur, de l'Industrie, de l'Entrepreneuriat et des PME (DG Growth) afin de mieux comprendre les conséquences économiques de l'introduction d'une législation définissant et protégeant les droits des lanceurs d'alerte dans l'UE.

Dans ce cadre, l'étude s'appuie sur l'expérience des Etats membres ayant introduit une législation nationale protégeant les lanceurs d'alerte. Une évaluation quantitative des coûts liés à l'introduction et au maintien de systèmes de protection des lanceurs d'alerte a été effectuée dans sept Etats : la France, l'Irlande, l'Italie, les Pays-Bas, la Roumanie, la République de Slovaquie et le Royaume-Uni. L'analyse économique des données et statistiques disponibles a permis d'estimer la mesure des fonds publics détournés qui pourraient être récupérés grâce aux informations divulguées par les lanceurs d'alerte. Une évaluation qualitative des facteurs pouvant contribuer à l'efficacité et à l'efficacit  de la protection des lanceurs d'alertes, incluant certaines bonnes pratiques, a  galement  t  men e en compl ment de cette analyse quantitative.

M thodologie

Une approche bas e sur l'analyse des co ts et b n fices a  t  adopt e pour l' valuation des co ts associ s   un syst me de protection des lanceurs d'alerte et des b n fices en termes de r duction de la corruption et des d tournements de fonds publics. Une description d taill e de l'approche adopt e est pr sent e dans la section 2 de ce rapport.

Pour diverses raisons d taill es dans la section 2.3, il n'a pas  t  possible de calculer les b n fices effectifs des mesures de protection des lanceurs d'alerte dans le secteur des march s publics, c'est- -dire des b n fices sur base des fonds recouverts au cours de cas pr c dents. L'approche adopt e a donc  t  de proposer une estimation des b n fices *potentiels* qu'un syst me efficace de protection des lanceurs d'alerte pourrait g n rer dans le secteur des march s publics dans chacun des pays s lectionn s. DIGIWHIST, un projet de lutte contre la corruption dans le secteur public financ  par Horizon 2020, a constitu  une source d'informations cl  dans le cadre de cette approche. Des donn es concernant l'attribution de march s publics par les Etats membres ont pu  tre obtenues par le biais de DIGIWHIST, ainsi que l'Indice des Risques de Corruption, bas  sur les facteurs de risques de corruptions sur les march s publics connus¹⁶. L'analyse des b n fices possibles prend en compte trois sc narios, refl tant les diff rents degr s selon lesquels les lanceurs d'alertes peuvent permettre de d tecter des actes de corruption.

L'analyse d taill e des co ts li s   la mise en place et au maintien de syst mes de protection des lanceurs d'alerte a  t  r alis e sur la base de cinq cat gories de co ts ainsi identifi es :

- **D veloppement de la l gislation** : co ts associ s au d veloppement d'une loi propre   la protection des lanceurs d'alerte ou d'une provision sp cifique au sein d'une loi. Cette cat gorie de co ts refl te des activit s telles que des  tudes d'impact, des consultations d'acteurs concern s, un examen

(non traduit).

¹⁶ L'Indice de Risque de Corruption a  t  d velopp  par les chercheurs travaillant dans le cadre du projet DIGIWHIST. Plus l'indice est haut, plus le risqu  de corruption en mati re de march  public est  lev . Voir section 2.1.2 pour davantage d'informations.

parlementaire et les amendements qui en découlent et la rédaction du projet de loi même.

- **Procédure de recueil des alertes interne** : coûts générés par la mise en place et le maintien de systèmes permettant aux employés du secteur public de faire des signalements en interne.
- **Procédure de recueil des alertes externe** : coûts liés aux systèmes d'organismes prescrits, distincts des employeurs des lanceurs d'alerte, leur permettant de faire des signalements en externe.
- **Frais judiciaires** : coûts relatifs aux plaintes déposées par les lanceurs d'alerte faisant l'objet de représailles et à la formation des juges aux spécificités liées aux cas des lanceurs d'alerte.
- **Conseil juridique gratuit** : les gouvernements ont la possibilité de financer des organisations indépendantes fournissant des conseils juridiques gratuits aux individus envisageant de faire des signalements, représentant un coût pour le secteur public.

Les informations relatives à ces coûts ont été recueillies par le biais d'entretiens avec les points de contact des gouvernements nationaux et d'études et rapports publiés. Des estimations monétaires par catégorie de coûts ont été réalisées pour chaque pays sélectionné lorsque suffisamment d'informations (entretiens et autres sources) étaient disponibles. Cependant, en raison de manque de données, il n'a pas été possible de produire une estimation pour chaque catégorie de coûts pour tous les pays. La comparaison des coûts et de bénéfices potentiels porte de fait sur trois pays, l'Irlande, la Roumanie et les Pays-Bas, où les estimations des coûts étaient les plus solides et reflètent la quasi-totalité des catégories de coûts.

Résultats

Plusieurs résultats clés ont pu être obtenus dans le cadre de cette étude. Les coûts globaux de la mise en place et du maintien d'une protection des lanceurs d'alerte sont peu élevés en comparaison des bénéfices qu'elle rapporte. Aux Pays-Bas par exemple, le rapport entre les bénéfices potentiels et les coûts est compris entre 22:1 et 37:1 en fonction des différents scénarios. Ces rapports peuvent être lus comme suit : 22:1 signifie que chaque euro investi dans la protection des lanceurs d'alerte peut potentiellement représenter un gain total de 22 euros en termes de fonds publics détournés recouverts. De même, 37:1 signifie que les bénéfices potentiels rapportés par chaque euro investi sont de 37 euros.

Pour les trois pays présentant les données les plus solides (l'Irlande, les Pays-Bas et la Roumanie), un rapport favorable entre les bénéfices potentiels et les coûts a pu être observé, pour les trois différents scénarios étudiés. Si dans tous les cas les bénéfices potentiels dépassent les coûts, d'importantes variations ont pu être observées. En Irlande par exemple, le rapport entre les bénéfices potentiels et les coûts est compris entre 1.4:1 et 2.3:1, en Roumanie, il est compris entre 319:1 et 532:1 (voir Tableau 1). Les limites inférieures et supérieures reflètent la marge de variation entre les trois scénarios.

Tableau 1 Comparaison bénéfices potentiels – coûts dans trois Etats membres de l'UE

| Scénarios | Irlande | Pays-Bas | Roumanie |
|---------------------------------|--------------------|------------------|------------------|
| Coûts (systémiques + marginaux) | | | |
| ND | 7.5 millions d'EUR | EUR 5.7 millions | EUR 526 mille |
| Bénéfices potentiels | | | |
| Limite inférieure | EUR 10.3 millions | EUR 125 millions | EUR 168 millions |
| Limite supérieure | EUR 17.2 millions | EUR 208 millions | EUR 280 millions |

| Scénarios | Irlande | Pays-Bas | Roumanie |
|--------------------------------------|------------|-----------|------------|
| Rapport bénéfices potentiels - coûts | | | |
| Limite inférieure | 1.4 pour 1 | 22 pour 1 | 319 pour 1 |
| Limite supérieure | 2.3 pour 1 | 36 pour 1 | 532 pour 1 |

La crédibilité des résultats de l'étude est étayée par une étude revue par des pairs au sujet de la protection des lanceurs d'alerte aux Etats-Unis¹⁷. L'étude, reposant sur les montants effectifs des fonds détournés recouverts, conclut que le rapport entre les bénéfices et les coûts effectifs aux Etats-Unis est compris entre 14:1 et 52:1 (33:1 en moyenne).

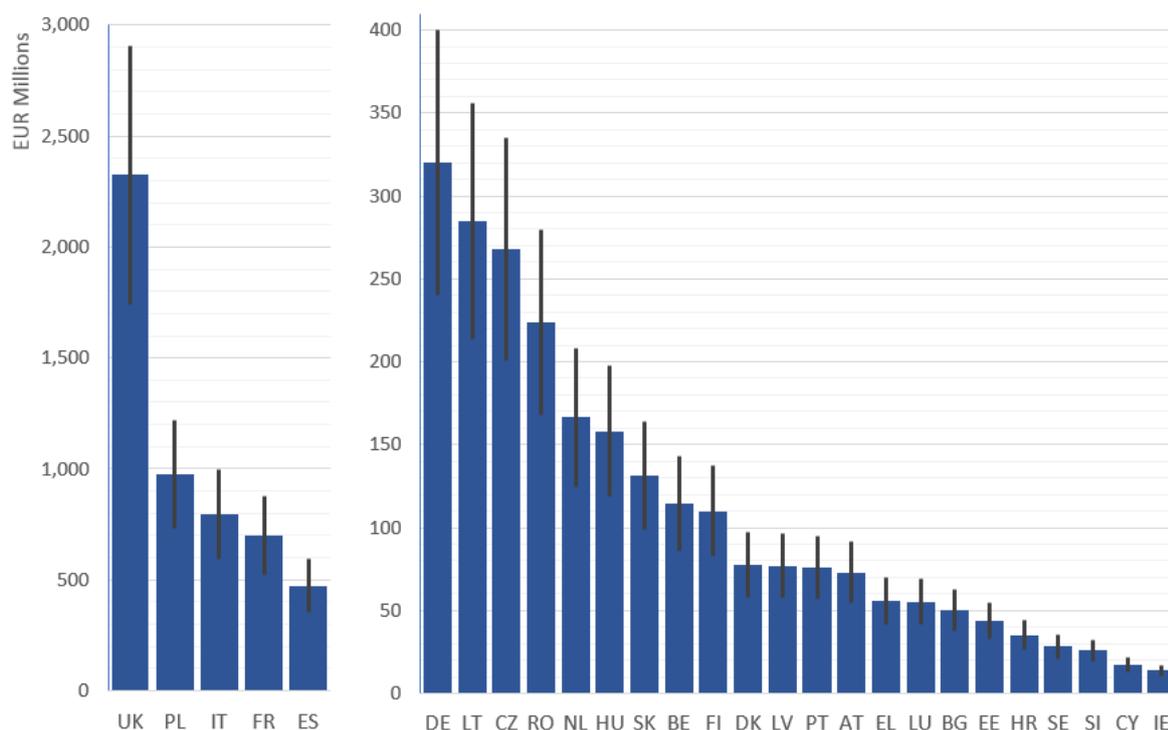
Les larges variations entre les pays résultent de plusieurs facteurs. Les coûts varient en fonction des différences entre les activités de mise en place et de maintien de systèmes de protection des lanceurs d'alerte. Certains pays ont par exemple lancé une grande consultation des acteurs concernés avant de développer une législation, tandis que d'autres disposent de procédures de recueil des alertes élaborées, etc. Si ces activités génèrent des coûts, elles sont également susceptibles d'améliorer l'efficacité des systèmes, augmentant ainsi la probabilité d'atteindre la totalité des bénéfices potentiels apportés par la protection des lanceurs d'alerte (notamment en favorisant la divulgation d'un plus grand nombre d'informations). Pour ce qui est des bénéfices, les variations sont dues aux différences de taille de l'économie des pays (PIB), à la part moyenne que représentent les contrats de marchés publics et à l'Indice de Risques de Corruption. Ceci est présenté plus en détails dans la section 3.1 et le Tableau 5 du rapport.

Concernant l'UE dans son intégralité, les bénéfices potentiels d'une protection des lanceurs d'alerte efficace sont de l'ordre de 5,8 à 9,6 milliards d'euros par an, en ne tenant compte que des marchés publics¹⁸. La taille de l'économie, la valeur des contrats publics attribués et le niveau de corruption dans les différents Etats membres constituent les principaux moteurs de ce potentiel. La Figure 1 présente les bénéfices potentiels estimés par pays.

¹⁷ T. Carson, M. Verdu and R. Wokutch, 2008, 'Lancer l'alerte dans un but lucrative: une analyse éthique du Federal False Claims Act' ('Whistle-Blowing for Profit: An Ethical Analysis of the Federal False Claims Act'), *Journal of Business Ethics*, 77: 361-376 (non traduit).

¹⁸ Son indice de risqué de corruption n'étant pas disponible, Malte n'est pas incluse dans ces estimations.

Figure 1: Bénéfices potentiels estimés par pays (en millions d'euros)



Les principaux résultats sont présentés dans la Section 3 de ce rapport. Les résultats détaillés liés à chaque pays peuvent être consultés dans l'annexe 1.

Comme décrit plus tôt, on remarque de grandes différences entre les diverses manières de développer et de mettre en œuvre des systèmes de protection des lanceurs d'alerte parmi les pays étudiés. Une analyse plus en profondeur de ces différences a permis l'identification de plusieurs bonnes pratiques susceptibles de pouvoir stimuler l'efficacité et l'efficacité des systèmes de protection des lanceurs d'alertes dans d'autres pays et au niveau européen. Des domaines clés de bonnes pratiques ont pu être identifiés :

- **Travail de sensibilisation** : des enquêtes antérieures ont montré que trois européens sur quatre ayant été témoins d'actes de corruption ne les ont pas dénoncés¹⁹. Mieux faire connaître les procédures d'alerte et les garanties de protection des lanceurs d'alerte parmi les travailleurs permettraient d'augmenter la probabilité des signalements des méfaits observés.
- **Promotion de la mise en place de canaux internes** : la mise en place et le maintien de procédure de recueil des alertes interne pourrait augmenter la probabilité qu'une information soit signalée et traitée comme il se doit.
- **Logiciel garantissant la confidentialité** : la peur de représailles est la raison la plus commune de ne pas dénoncer des actes de corruption²⁰. Le

¹⁹ Commission européenne, 2014, Eurobaromètre special N°397, Vague EB79.1 – TNS Opinion & Social, pp. 100-106, disponible en ligne au http://ec.europa.eu/commfrontoffice/publicopinion/archives/ebs/ebs_397_en.pdf (en anglais).

²⁰ C. Pring, 2016, Les gens et la corruption: Europe et Asie centrale – Baromètre global de la corruption 2016 (*People and Corruption: Europe and Central Asia – Global Corruption Barometer 2016*), Transparency International (en anglais).

développement de logiciels garantissant la confidentialité des lanceurs d'alerte permettrait de réduire le risque de représailles.

- **Formations internes** : la présence de personnel informé pourrait augmenter les chances que les informations signalées soient correctement et confidentiellement reçues et analysées.

Davantage d'informations sont disponibles à ce sujet dans la section 4.2, y compris des exemples de bonnes pratiques issus des pays étudiés.

Cette étude a permis d'identifier des interconnexions entre les catégories de coûts ayant un effet sur l'efficacité et l'efficacité des mesures. Le développement d'une législation pourrait par exemple inclure la préparation d'un document d'orientation destinés à aider les employeurs à mettre en place une procédure de recueil des alertes interne. Dans ce cas, les coûts supplémentaires découlant de la production du document d'orientation pourraient être compensés par l'existence de procédures de recueil des alertes internes plus efficaces, contribuant à une meilleure efficacité du système de protection des lanceurs d'alerte. D'autres exemples sont présentés dans la section 4.1.

Conclusions

Deux principales conclusions à destination des décideurs politiques au niveau européen et au niveau national peuvent être tirées de cette étude.

Il existe une **forte dynamique économique en faveur de la protection des lanceurs d'alerte**, même en ne tenant compte que du secteur des marchés publics. Ces derniers ne représentant qu'un seul secteur des dépenses publiques, les bénéfices économiques de la protection des lanceurs d'alerte étendue à d'autres secteurs sont probablement encore plus importants. Les retombées de la protection des lanceurs d'alertes peuvent également varier selon les pays. Les Etats présentant un plus haut risque de corruption et, dans le cas des marchés publics, une économie plus importante ou de plus grands montants de marchés publics gagneront davantage à mettre en place un système efficace de protection des lanceurs d'alerte.

Néanmoins, **la protection des lanceurs d'alerte doit être mise en œuvre de manière efficace afin de récolter ces bénéfices potentiels**. Bien qu'un nombre croissant de pays européens dispose d'une loi propre à la protection des lanceurs d'alerte, des études tendent à montrer que leur mise en œuvre est faible, ce qui limite l'efficacité de la législation encourageant les signalements par les lanceurs d'alerte. Ainsi, les coûts associés à des activités promouvant l'efficacité et à l'efficacité du système devraient être perçus comme un investissement très rentable. La formation d'individus destinés à recevoir les signalements par le biais de procédures de recueil des alertes internes et externes et de juges destinés à traiter les cas impliquant des lanceurs d'alerte sont deux exemples de telles mesures. Une mise en œuvre efficace peut aussi permettre une réduction des coûts, en particulier des coûts judiciaires.

L'étude a permis de mettre en lumière un large éventail de manières de concevoir et de mettre en œuvre la protection des lanceurs d'alerte dans les pays européens. Une action de l'UE dans ce domaine pourrait s'inspirer de ces exemples et agir en faveur de l'assurance d'une protection efficace des lanceurs d'alertes là où elle fait défaut pour le moment. Les bénéfices économiques potentiels, tels que décrits dans cette étude, ainsi que la promotion de la transparence et des principes démocratiques tels que présentés par d'autres études, constituent des arguments solides et convaincants en faveur d'une nouvelle législation de l'Union européenne.

1 Introduction, objectives and context of the study

1.1 Overview

Tackling corruption is a top priority for both national governments and EU policymakers, and public procurement is one of the government activities which is most vulnerable to corruption²¹. Public procurement also represents an important share of government expenses for about 15 percent of the EU's GDP²². Overall, research has found that corruption in the EU is estimated to cost EUR 120 billion per year, which represents approximately 1 percentage of the EU's total GDP²³. Specifically, in the area of public procurement, the risk of corruption is estimated to cost EUR 5.3 billion annually to the EU²⁴. In fact, corruption is estimated to increase the cost of public procurement contracts by 20-25 percentage points²⁵. The protection of whistleblowers, who report or disclose information regarding threats to the public interest, is central to tackling corruption. Moreover, whistleblower protection contributes to the safeguarding of fundamental rights in the European Union, including freedom of speech and democratic accountability, and to promote the public's trust in institutions and government²⁶. Horizontal action at the EU level to protect whistleblowers may, thus, offer significant benefits to EU citizens. Legal arguments, however, alone may not be sufficient to guarantee efficient and effective protection, hence the need to investigate the economic benefits. An economic understanding of the costs entailed in relation to the benefits that may accrue is further motivated by the current climate of Better Regulation and limited public funds.

This study seeks to address the gap in knowledge about the economic benefits of whistleblower protection while contributing to an EU Commission Impact Assessment for horizontal or further sectorial EU action on whistleblower protection²⁷. It focuses on the area of public procurement where the link between costs and benefits in terms of public funds is arguably closer and more direct than it is other areas. Furthermore, efficient and effective public procurement procedures are critical to the functioning of the internal market, one of the EU's central tenets.

1.2 EU policy context

In recent years, there has been a growing number of proposals and recommendations from EU institutional bodies, as well as legislation at the Member State level on the issue of whistleblower protection. At present, Hungary, Ireland, Luxembourg, Malta, the Netherlands, Romania, the Slovak Republic, Sweden, and the United Kingdom have stand-alone whistleblower legislation in the EU. The UK Public Interest Disclosure Act was the first stand-alone law in Europe to protect whistleblowers, dating back to 1998, and it has long been considered a model for other European countries. Other EU Member States currently include provisions on whistleblower protection as part of other types of legislation. For instance, France has introduced new whistleblower provisions in the recent anti-corruption law.

Despite the efforts and concrete steps made by many EU Member States to protect whistleblowers, only a few EU countries are considered to have a comprehensive legal

²¹ OECD, 2016, *Preventing Corruption in Public Procurement*.

²² M. Mendes and M. Fazekas, 2017, *Towards More Transparent and Efficient Contracting - Public Procurement in the European Union*, Digiwhist and Open Knowledge Foundation.

²³ European Commission, 2014, *Report from the Commission to the Council and the European Parliament EU Anti-Corruption Report*, COM(2014) 38 final.

²⁴ M. Hafner et al., 2016, *op. cit.*

²⁵ M. Mendes and M. Fazekas, 2017, *op. cit.*

²⁶ Council of Europe, Committee of Ministers, 2014, *op. cit.*

²⁷ European Commission, DG JUST, 2017a, *op. cit.*

http://ec.europa.eu/smart-regulation/roadmaps/docs/plan_2016_241_whistleblower_protection_en.pdf

framework, while implementation often remains very weak. Although the United Kingdom was considered by several studies²⁸ as one of the most advanced and comprehensive systems to protect whistleblowers, recent research²⁹ has assessed the UK system against a set of international standards. The assessment highlighted the weaknesses of the UK system, such as high legal costs incurred by whistleblowers who face retaliation from their employer and file a claim to the tribunal. Ireland introduced comprehensive legislation for the protection of whistleblowers in 2014, while France and the Netherlands have more advanced legislation since 2016 and Sweden since January 2017.

Whistleblower protection was also recognised by the OECD G20 Anti-Corruption Plan as one of its top priorities in 2010 and the plan urged countries to institute better legal protection³⁰. In 2014, the Council of Europe issued a Recommendation (2014/7)³¹ that advocates a European framework to engage in whistleblower protection and the drafting of common principles for the Member States. The European Parliament has also called on the European Commission to develop legislation on whistleblower protection: in May 2016, the Greens/EFA proposed a draft directive³² that was supported by the European Commission's Directorate General for Migration and Home Affairs (DG Home). Research is underway in the Committee of Legislative Affairs of the European Parliament to identify an appropriate legal basis upon which to argue an EU competency for a Directive on horizontal whistleblower protection, which would introduce whistleblower protection across sectors in all EU Member States. In March 2017, the European Commission's Directorate General for Justice and Consumers (DG Justice) launched a public consultation on whistleblower protection³³. In its response to this recent public consultation, the Greens/EFA Group of the European Parliament has advocated a horizontal EU approach, which is supported by many stakeholders.³⁴ In addition, DG Justice prepared in January 2017 a roadmap³⁵ to set the context and objectives of the Impact Assessment Study on the need for horizontal or further sectorial action at EU level to strengthen the protection of whistleblowers; the study is currently under development. The recent EU action on the topic shows that whistleblower protection is gaining momentum in the EU. This study also contributes to the efforts to better understand the current whistleblower protection in place in different countries and it explores the costs and benefits of such a system.

1.3 The case of public procurement

Whistleblower protection can have an important impact on reducing corruption in public procurement. This is because in the context of their work, individuals (potential

²⁸ OECD, 2010, *Study on Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation*, G20 Anti-Corruption Action Plan, Protection of Whistleblowers, available at <https://www.oecd.org/g20/topics/anti-corruption/48972967.pdf>

M. Worth, 2013, *Whistleblowing in Europe: Legal Protections for Whistleblowers in the EU*, Transparency International.

²⁹ S. Wolfe, M. Worth and S. Dreyfus, 2016, *Protecting Whistleblowers in the UK: A New Blueprint*, Blueprint for Free Speech and Thomson Reuters Foundation, available at <https://blueprintforfreespeech.net/wp-content/uploads/2016/05/Report-Protecting-Whistleblowers-In-The-UK.pdf>.

³⁰ OECD, 2010, *op. cit.*

³¹ Council of Europe, Committee of Ministers, 2014, *op. cit.*

³² V. Abazi, A., Alemanno, P. V. Bartlett Quintanilla, J. Berg, Z. Herman, P. Rauschenberger and M. Vogel, *Whistleblower Protection in the Public and Private Sector in the European Union: A Draft Directive*, 4 May 2016. <http://www.greens-efa.eu/>

³³ European Commission, DG JUST, 2017b, *Public consultation on whistleblower protection*, 3 March 2017, available at http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=54254.

³⁴ P. Bartlett Quintanilla, J. Berg, Z. Herman and P. Rauschenberger, 2017, *Arguments for horizontal legislative action to ensure even and effective protection for whistleblowers in the EU*, Greens/EFA Position Paper in the context of the European Commission Public Consultation on Whistleblower Protection, available at <https://extranet.greens-efa.eu/public/media/file/7109/5084>.

³⁵ European Commission, DG JUST, 2017a, *op. cit.*

whistleblowers) may become aware of corrupt practices that may be less evident or are costlier to detect than through other anti-corruption control mechanisms. Procurement procedures typically involve some form of tender or auction to avoid undesirable practices such as collusion, bid-rigging, fraud and corruption, and political favouritism³⁶. Public procurement legislation in the EU (the Public Procurement Directives) seeks to ensure that public contracts are consistently awarded in an open, fair, and transparent manner across the EU³⁷. For instance, certain legal obligations stipulated in the Public Procurement Directives, such as the comprehensive use of e-procurement, the definition of the conflict of interests in public procurement, rules on contract modification or the rules on keeping reports on procurement procedures, may mitigate the risk of corruption. Despite these legislative efforts, unlawful practices can still occur during a public procurement process at any of its three phases: the pre-award, the post-award, and (possibly) the litigation and complaint phase. For instance, in the pre-award phase the suppliers of the service/good might collude and fix the price collectively or might submit false bids in order to ensure that a particular company secures the tender. Overpayments, usually made through false or duplicated invoices, are a common type of fraud in the post-award phase. Whistleblowers can effectively contribute to the detection of unlawful procedures in each of the three public procurement phases by disclosing information that may not be readily available or evident. Therefore, clear and comprehensive provisions on whistleblower protection are needed to encourage individuals to report fraud and other types of wrongdoing that they become aware of during the course of their work activities. Indeed, according to a Eurobarometer survey, three out of four Europeans who witnessed corruption said that they did not report it³⁸. Another survey by Transparency International reports that the most common reason why people do not report corruption is that they fear the consequences of such action³⁹. This finding suggests that a well-functioning legislative framework to protect people who want to speak up against corruption but fear the consequences may generate substantial benefits.

1.4 Objectives of the study

The heightened interest of policymakers in whistleblower protection is reflected in a growing body of research on the topic. However, there is a lack of evidence regarding the costs of implementing effective systems for the protection of whistleblowers at present. This study seeks to contribute to this critical gap and has the following objectives:

- Assess the costs of setting up and maintaining whistleblower protection systems through an in-depth understanding of the activities and resources involved;
- Estimate the benefits stemming from whistleblower protection in the area of public procurement;
- Support policymakers to design policy that can be confidently adopted and implemented.

For these purposes, a cost-benefit analysis methodology guided the collection of quantifiable evidence from seven EU countries encompassing a wide range of legal frameworks and stages of implementation: France, Ireland, Italy, the Netherlands, Romania, the Slovak Republic, and the United Kingdom. Cost estimates were

³⁶ OECD, 2016, *op. cit.*

³⁷ Directive 2014/24/EU and Directive 2014/25/EU will be referred to as the "the Public Procurement Directives". Directives 92/13/EEC and 89/665/EEC will be referred to as "the Remedies Directives".

³⁸ European Commission, 2014, Special Eurobarometer 397, *Corruption*, Wave EB79.1 – TNS Opinion & Social, February 2014, available at <http://ec.europa.eu/>.

³⁹ C. Pring, 2016, *op. cit.*

compared against the potential benefits of recovering misused funds from corrupt awards made in the area of public procurement. A positive potential benefit to cost ratio could provide a rationale, on economic grounds alone, for implementing a whistleblower protection system.

The investigation provides a basis for identifying good practices, which are reviewed in the context of the overall efficiency and effectiveness of the whistleblower protection system and provide lessons learned for other countries. The outputs from this study can also support the on-going Impact Assessment study on the need for horizontal or further sectorial action at EU level to strengthen the protection of whistleblowers.

Given the study's focus on public procurement, specific information relative to whistleblowing in the public procurement sector was sought throughout the period in which the research was conducted. However, whistleblower protection provisions are not specific to public procurement in any EU country⁴⁰. Rather, public procurement is one of several areas covered by whistleblower legislation, meaning that distinguishing the costs that are specific to public procurement from the other costs of the whistleblower protection system is not possible. The estimation of potential benefits, however, focused on the area of public procurement specifically.

The report is structured as follows. An overview of the economic methodology is presented in Section 2. The main findings can be found in Section 3, while the country-specific findings can be found in Annex 1. Factors influencing the efficient and effective operation of a whistleblower protection system including good practices are presented in Section 4. Section 5 presents the conclusions of the study.

⁴⁰ In the United States however, the Fair Claims Act provides protection to whistleblowers who report fraud in government programs (including public procurement).

2 Methodology

This study was designed to investigate the economic case for whistleblower protection in the EU by drawing on quantifiable evidence from countries in which some degree of protection was already in place. Specifically, a cost-benefit analysis approach was taken in which the costs of the whistleblower protection system and the handling of cases with a whistleblower disclosure were assessed against the benefits in terms of reducing corruption and misused public funds.

Two approaches were considered to implement the cost-benefit analysis. The first was a detailed review and extrapolation of a sample of actual cases of whistleblower disclosures in the area of public procurement. However, cases that met all if the conditions, namely that misused public funds were recovered and the disclosure was made at a time when whistleblower protection provisions were in place, were not available. The lack of suitable cases might imply the underutilization or underperformance of whistleblower protection systems. At the same time, it is indicative of the fact that whistleblower protection was recently introduced or reinforced in many European countries, limiting the likelihood that disclosures were made subsequently and have reached a sufficiently advanced stage⁴¹. Cases of whistleblower disclosures are often quite complex, and may not enter the public domain if a settlement occurs before a court decision, reducing the potential to gather relevant data and information.

In comparison, the second approach, which examined the costs and potential benefits of whistleblower protection systems, was more robust. The remainder of this section describes the approach, first in terms of assessing the potential benefits (Section 2.1) and then in terms of the costs in a selection of Member States (Section 2.2). The main challenges and limitations faced in the study are described in Section 2.3.

2.1 Assessment of the benefits

Two proxy measures of potential benefits were estimated for the EU overall. The methodology for defining the measures and the approach to estimation is described below.

2.1.1 Defining the proxy measures

A number of studies suggest that whistleblower protection may offer benefits to society in terms of reducing corruption, increasing transparency, and protecting democratic principles such as free speech⁴². In the context of public procurement, there may be additional tangible benefits in the recovery of misused public funds. Corrupt practices may occur at different stages of the public procurement process (pre-bidding, bidding, and post-bidding phases) and can be evident, for instance, in terms of inflated prices, misused funds or delayed completion. Whistleblowers could potentially uncover corrupt practices at all stages. A system that encourages disclosures about corrupt practices and other wrongdoings and that ensures the protection of whistleblowers from retaliation could have indirect benefits in terms of deterring corrupt practices and increasing overall transparency in the area of public procurement⁴³.

A reasonable proxy for the benefits of whistleblower protection in the area of public procurement could, therefore, be the amount of public funds recovered thanks to

⁴¹ As noted earlier, the United Kingdom has the oldest standalone whistleblower protection law in Europe – the Public Interest Disclosure Act – which was introduced in 1998.

⁴² OECD, 2010, *op. cit.*; Worth, M., 2013, *op. cit.*

⁴³ M. Mendes M, and M. Fazekas, 2017, *op. cit.*

whistleblower disclosures. As this information was not available from the Member States, we constructed two measures through an economic analysis of existing data and statistics. The first measure was the estimated amount of corrupted funds in public procurement that could potentially be identified thanks to whistleblower disclosures. However, corruption and unlawful actions may not necessarily result in the loss of public funds. Thus, the second measure was the estimated amount of public funds that could potentially be recovered from the corrupted funds identified previously.

Given that these measures are not based on the actual experience of the Member States, we refer to them as potential benefits. The two measures reflect the *potential* for an optimally designed and implemented whistleblower protection system in the Member State to recover misused public funds. In practice, effective implementation and design of the whistleblower protection system may lead to a greater realization of this potential. Due to a lack of suitable data, and the fact that not all whistleblower cases lead to the direct recovery of public funds, it was not possible to calculate actual levels of misused public funds. Nevertheless, sound estimates of the misused public funds that could potentially be recovered thanks to whistleblowers have been calculated. The approach for estimating the two measures of potential benefits is described in the following sub-section.

2.1.2 Estimating potential benefits

Two measures of potential benefits were defined to explore the potential benefits. These measures were modelled based on information from several secondary data sources. Three scenarios were defined for each measure to reflect a range in one of the underlying parameters in the estimation, which concerned the probability that whistleblowing could uncover a corrupt award. This section describes each data source and the approach for the estimation. The robustness of each data source is highlighted, as are the assumptions for the analysis.

2.1.2.1 Data sources

*Public procurement data*⁴⁴: The basis of our estimation was data about actual public procurement awards in all EU Member States available from Tenders Electronic Daily (TEDs) and other electronic procurement data portals. The data was compiled and made available to the public by DIGIWHIST, an EU Horizon 2020 funded project that focused on fighting public sector corruption and is implemented by six European research institutes with leading experts in the field. The files include data on public procurement awards made in 35 jurisdictions, including the 28 EU Member States, from 2009 to 2014. The data includes information about each public procurement award, such as the contract price and the main sector of the contracting body.

*Corruption Risk Index*⁴⁵: Although a whistleblower system has an impact in uncovering corrupt funds in any country, this impact may be stronger in countries where the risk of corruption is greater. Our modelling of potential benefits thus draws on the Corruption Risk Index (CRI), which is a composite indicator of high-level institutionalised corruption in the public procurement sector. The CRI was developed by researchers at DIGIWHIST through an econometric analysis of data on public procurement awards from EU Member States. The analysis investigated known risk

⁴⁴ DIGIWHIST: <http://digiwhist.eu/about-digiwhist/>. M. Fazekas, and G. Kocsis, 2015, 'Uncovering High-Level Corruption: Cross-national Corruption Proxies Using Government Contracting Data', ERCAS Working Paper No. 46.

⁴⁵ Fazekas, M and Toth B, 2015, 'Corruption in EU Funds? Europe-wide evidence on the corruption effect of EU funded public contracting', *Government Transparency Institute*, Working Paper series: GTI-WP/2015:01, Budapest, Hungary.

factors for corruption, referred to as red flags. For example, one red flag is single bidder contracts, given that the submission of a single bid in public procurement tenders may be the signal of restricted competition⁴⁶. For instance, the tender process might be illegally accelerated to favour a certain bidder and discourage possible competitors⁴⁷. Restricted and unfair access typically translates into higher prices, lower quality or reduced quantity to generate corruption rents⁴⁸. Based on the findings of the econometric analysis, a CRI was assigned to each award in the public procurement data described in Section 2.1.1. The CRI ranged from 0 to 1 where 0 reflects minimum corruption risk while 1 reflects maximum corruption risk. The value represents the probability that corruption was present in a public procurement award. Based on these estimates from each public procurement award, DIGIWHIST researchers also estimated an overall CRI value for each country by year. These estimates were used for the calculation of potential benefits.

In this study, the level of corruption in the area of public procurement is taken as given in each Member State. It may be the case, however, that the level of corruption decreases in part due to the whistleblower protection system. A declining CRI over time may reflect the deterrence impact of whistleblower protection. The potential deterrence effect was not explored in the study due to the recent introduction of whistleblower protection in most of selected Member States.

*Global Fraud Report*⁴⁹: A number of documents advocating for whistleblower protection note that it can uncover 40 percent of corruption or fraud⁵⁰. This figure is one of the most commonly reported statistics in research studies about whistleblower protection. Its source is the Global Fraud Report, based on a survey and in-depth interviews with senior executives worldwide about their experience with fraud, published annually by Kroll, a global market research firm. While the report focuses on fraud in the private sector at global level, we assume that the estimates can serve as a reasonable proxy for the public sector. The 2016/17 Global Fraud Report reports that the percentage of fraud uncovered, thanks to whistleblowers, was equal to 44 percent in Canada, 49 percent in the US, 53 percent in Italy and 50 percent in the UK, against a global average of 44 percent. The previous reports show lower figures: the average share of fraud uncovered by whistleblowers was equal to 41 percent in 2015/2016 and 32 percent in 2013/2014.

Identifying and Reducing Corruption in Public Procurement in the EU: Another study suggests that public funds may only be lost in a share of corrupt awards. A study by PwC and Ecorys, with the support of Utrecht University,⁵¹ conducted an analysis of 192 corrupt, grey, and clean awards in the area of public procurement in eight EU Member States (France, Hungary, Italy, Lithuania, the Netherlands, Poland, Romania, and Spain). The authors estimated that the clean cases had a public loss of 5 percent while for corrupt and grey cases the public loss was 18 percent. Public loss was defined as the monetary amount lost to corruption when a public procurement case turns out to be corrupt.

⁴⁶ M. Fazekas and G. Kocsis, *op. cit.*

⁴⁷ W. Wensink and J. M. de Vet, 2013, *Identifying and Reducing Corruption in Public Procurement in the EU*, Study for the European Commission, PwC and Ecorys with support of Utrecht University.

⁴⁸ M. Fazekas, and B. Tóth, 2017, 'Infrastructure for Whom? Corruption Risks in Infrastructure Provision Across Europe', *The Governance of Infrastructure*, p.177.

⁴⁹ Kroll, 2014, *Global Fraud Report 2013–2014*.

⁵⁰ See for example, V. Abazi, *et al.*, 2016, *op. cit.*

⁵¹ W. Wensink and J. M. de Vet, *op. cit.*

2.1.2.2 Analysis

The two measures of potential benefits were estimated using a selection of variables from the sources noted in Section 2.1.2.1, as are presented in Table 2. Some of the data varied by Member State while other variables were constant. We considered three scenarios, given that the findings for the estimate from the Global Fraud Report varied by year (from 32 percent in 2013/2014 to 41 percent in 2015/2016 and 44 percent in 2016/2017).

Table 2: Variables to estimate potential benefits

| Source | Variable | Value | By Member State? |
|--|--|---|------------------|
| DIGIWHIST public procurement tender data | Annual average value of public procurement contracts (2009-2014) | EUR | Yes |
| DIGIWHIST Corruption Risk Index | Average Corruption Risk Index (2009-2014) | 0-1 scale (1=most corrupt) | Yes |
| Global Fraud Report 2016/2017 | Share of fraud uncovered thanks to whistleblower disclosures | Scenario 1 – 30 percent Scenario 2 – 40 percent Scenario 3 – 50 percent | No |
| Identifying and Reducing Corruption in Public Procurement in the EU* | Share of public loss implicit in the corrupted funds | 18 percent | No |

*This source was only used in the estimation of the second measure of potential benefits.

The first measure was calculated as follows. The annual average value of public procurement amounts (PP_{ij}) and the CRI (CRI_{ij}) were calculated for each country for the 2009-2014 period. Using these two figures, we estimated the value of corrupted public procurement funds [a] in year i and country j and as the average of the product of annual country-level estimates for public procurement value and the Corruption Risk Index over n years, as shown in the following equation:

$$[a] = \frac{\sum_{i=2009}^{2014} PP_{ij} * CRI_{ij}}{n}$$

The resulting figure [a] was multiplied by each of the scenario values from the Global Fraud Report, resulting in three unique estimates for the first measure. The second measure applied the estimate from the PWC and Ecorys study⁵² to each of the scenarios, which resulted in three additional estimates.

⁵² *Ibid.*

2.2 Assessment of the costs

Information about the costs of a whistleblower protection system was gathered from seven EU Member States: France, Ireland, Italy, the Netherlands, Romania, the Slovak Republic, and the United Kingdom. The approach to selecting these Member States is described in Section 2.2.1. A framework that guided the data collection is presented in Section 2.2.2 while the data collection itself and the analysis are presented in Section 2.2.3.

2.2.1 Selection of countries

As a first step, European countries were classified into three groups based on their level of whistleblower protection⁵³. Figure 2 presents the coverage of whistleblower protection laws in European countries in different colours, based on the analysis of legislation done by Transparency International⁵⁴ and which has been updated by our whistleblower expert. Countries in green (see Group 1 in Table 3) have a comprehensive legislation, countries in a yellow (Group 2) have a partial legislation and countries in red (Group 3) have no or very limited legislation.

Figure 2: Whistleblower protection laws in EU-28 Member States



⁵³ Serbia, Bosnia and Herzegovina were considered for inclusion as they have standalone whistleblower protection laws.

⁵⁴ M. Worth, 2013, *op. cit.*

The three levels identified, i.e. comprehensive, partial, and none or very limited, indicate whether existing national laws include comprehensive or near comprehensive/partial/no or very limited provisions and procedures for whistleblowers in the public and/or private sectors⁵⁵.

Table 3: Classification of European countries by level of whistleblower protection

| Group 1: Comprehensive | Group 2: Partial | Group 3: None/Limited |
|---|--|--|
| Bosnia/Herzegovina, Ireland, Luxembourg, Netherlands, Romania, Serbia, Slovak Republic, Sweden, UK. | Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, France, Germany, Hungary, Italy, Latvia, Lithuania*, Malta, Poland, Portugal*, Slovenia. | Bulgaria, Croatia, Finland, Greece, Spain. |

* Whistleblower provisions are generally weak although there is a hotline in place to report corruption. In Lithuania, there is also a reward mechanism for individuals who report corruption, ranging from EUR 2,850 to 28,500 – depending on the severity of the crime reported.

Countries with no or limited whistleblower protection provisions were excluded. Countries with comprehensive or partial whistleblower protection in place were then considered for inclusion based on the following three criteria:

- Availability of data or information through official sources;
- Cooperative focal point at the national level able to facilitate access to relevant information; and
- Overall geographic distribution and coverage of countries with different political, cultural and economic characteristics.

Table 4 presents some background information about whistleblower protection in the seven selected countries.

Table 4: Background information on whistleblower protection system in the selected countries

| Country | Law | Level of protection ⁵⁶ | Year when latest provision introduced | Sectors covered |
|---------|---|-----------------------------------|---------------------------------------|--------------------|
| France | Loi Sapin II - 2016-1691 | Partial | 2016 | Public and private |
| Ireland | Protected Disclosures Act | Comprehensive | 2014 | Public and private |
| Italy | Legislative Decree 30 March 2001, n. 165, art. 54bis. | Partial | 2012 | Public |

⁵⁵ *Ibid.*

⁵⁶ Assessment drawn from previous studies as well as expert judgement of the team. Key sources were the following:

D. Santoro, 2015, *Should Europe protect whistleblowers?*, Citizens Rights, and Worth, M., 2013, *op. cit.*

| Country | Law | Level of protection ⁵⁶ | Year when latest provision introduced | Sectors covered |
|-----------------|--|-----------------------------------|---------------------------------------|--------------------|
| Netherlands | The Whistleblowers' Center Act (34105/7) | Comprehensive | 2016 | Public and private |
| Romania | Law no. 571/2004 | Comprehensive | 2004 | Public and private |
| Slovak Republic | Act No. 307/2014 | Partial | 2015 | Public and private |
| United Kingdom | Public Interest Disclosures Act | Comprehensive | 1998 | Public and private |

2.2.2 Defining cost categories

The costs of whistleblower protection were defined as the resources invested by Member States to setup and maintain the system. Possible sources of costs may be time spent by government officials to review and substantiate disclosures, encrypted software to facilitate confidential or anonymous disclosures, trainings for individuals tasked with receiving disclosures, and awareness-raising efforts to promote the proper utilization of the system. Systemic costs were defined as the costs incurred in setting up and maintaining the system, regardless of the number of whistleblower disclosures. Incremental costs, in contrast, were costs specific to whistleblower disclosures and which would not be incurred in their absence.

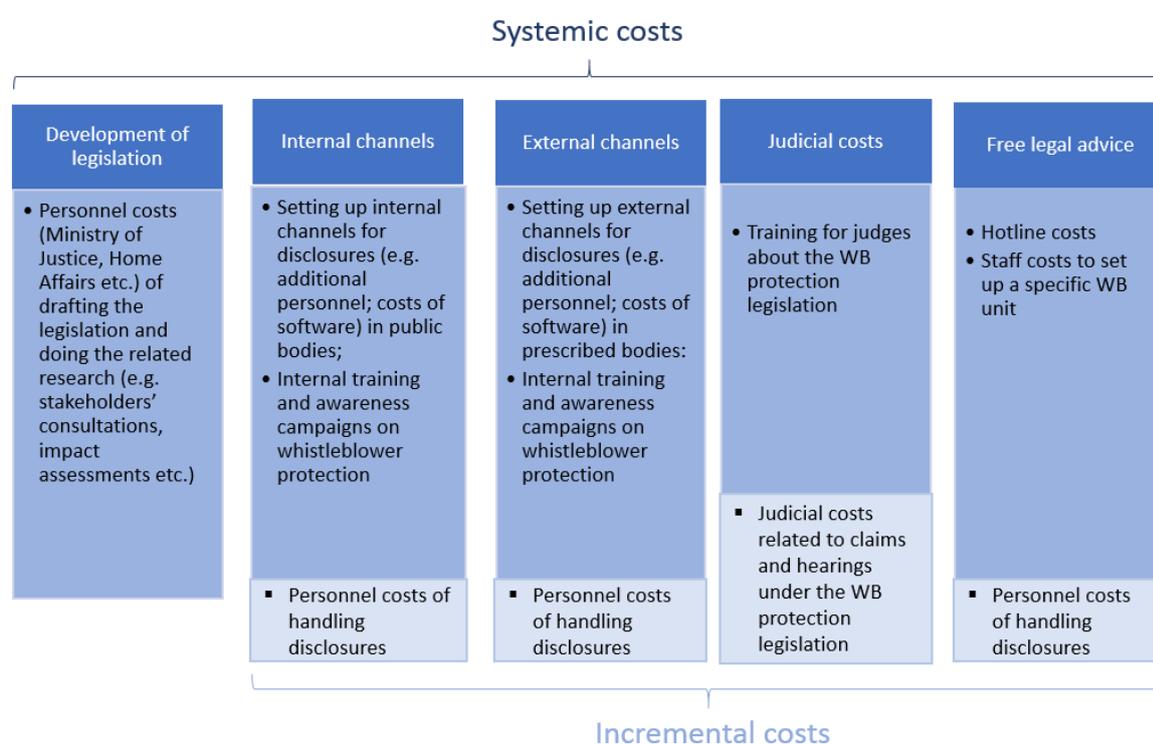
Figure 3 presents the framework that guided the assessment of the costs of whistleblower protection systems in the selection of Member States. Five main categories of costs were defined as follows:

- **Development of legislation:** The costs associated with the development of a standalone whistleblower protection law in countries where one has been introduced, or a specific provision of a law relating to whistleblower protection. This cost category reflects activities such as impact assessments, stakeholder consultations, parliamentary review and amendments, as well as the drafting of the legislation itself.
- **Internal channels:** The costs incurred in setting up and maintaining systems through which employees of a public body can make a disclosure.
- **External channels:** The costs related to systems in prescribed bodies separate from the employer to which a whistleblower can make a disclosure.
- **Judicial costs:** These costs relate to claims made in Court by whistleblowers who face retaliation and trainings for judges on the particularities of whistleblower cases.
- **Free legal advice:** Governments may finance an independent organization to provide free legal advice to individuals considering making a disclosure. This would represent a cost for the public sector.

Four of the five cost categories may include systemic and incremental costs. The drafting of the legislation would include only systemic costs.

The framework focused on financial costs incurred by public institutions in each Member State considered, given that the study seeks to build an economic case for whistleblower protection from the public finance standpoint. Costs that private companies and whistleblowers may encounter themselves have been excluded. For example, private companies may incur costs to setup and maintain internal channels. Whistleblowers may incur significant legal fees for representation in court as well as possible loss of employment and wages. In many countries, whistleblowing is viewed negatively and carries a social stigma. These issues may present a significant barrier to realizing the full potential effectiveness of the whistleblower protection system. Through certain practices, however, Member States may increase the compliance of the private sector and the disclosure rate among potential whistleblowers. Some of these practices and their implications for the costs and effectiveness of the whistleblower protection system are presented in Section 4.

Figure 3: Cost components of a whistleblower protection system



2.2.3 Data collection and analysis

The collection of data and other relevant information was guided by the framework (Figure 3), which was adapted to each of the seven countries in accordance with the setup of the whistleblower protection system. Activities corresponding to each cost category and their implications for costs were identified. Relevant data and information was then gathered from multiple sources with a focus on the key drivers. A legal expert from each country undertook a thorough desk review of reports, studies, and newspaper articles, which was complemented by interviews and discussions with national focal points. In total, we communicated with almost 200 interlocutors including national focal points over the course of the study (see Annex 3 for the list of organisations). Official data sources, such as the national statistical office data portals, were consulted for additional information needed for the cost calculations (e.g. the salary of a senior civil servant) or corroborate information provided through interviews and discussions.

Through triangulation of data and information gathered from a range of sources, we constructed estimates of the systemic and incremental costs by cost category for the whistleblower protection systems in each of the Member States selected. The approach to construct estimates of costs varied across the Member States and was driven to a large degree by the information and data available. In the case of personnel, costs were estimated based on the reported number of individuals involved, the average gross salary, and the time period over which the activity took place. In some countries, the whistleblower protection provisions mandate that all public bodies with at least 50 employees set up an internal channel. Data and information gathered from one or several public bodies was extrapolated to all public bodies at the level for which the sample was obtained. When possible, we translated the gathered information to annual, monetary figures to facilitate the aggregation of costs across activities.

Section 3 presents the main findings of the study. Annex 1 describes the analysis and findings for each of the Member States, as well as the underlying assumptions. Section 2.3, which follows, highlights the key overall limitations and challenges faced in the study.

2.3 Limitations and challenges

Several limitations and challenges were encountered in the preparation of the study that merit discussion. With regards to the data collection, notable challenges and limitations included:

- **Interviews with national focal points were essential to gather information on costs.** The data collection relied significantly on information provided by national focal points including government officials. As a result, the quality and type of information gathered across countries varied in accordance with the resources, the level of knowledge and availability of the focal points. Gathering usable information from focal points required significant planning and follow-up both within the team (between the legal experts and economists) and with the focal points, which was a challenge to undertake within the narrow timeframe of the study. In the data collection, we sought correspondence with at least three focal points with relevant knowledge in each of the following areas – drafting of legislation, internal channels, and external channels.
- **Comprehensive data and information on costs were not available for any of the countries.** For most Member States represented in the study, data and information could not be obtained for one or more of the cost categories. Information was easier to locate for systematic costs than incremental costs. Relevant data and information for the study could have potentially been gathered from regular monitoring and reporting of the implementation of the whistleblower protection system. However, monitoring data was only obtained for a few countries – Italy, Romania, and the UK.
- **Data and information related to past expenditures was not always available, often due to the recent introduction of the whistleblower legislation.** Given the limited availability of information, we did not impose a strict timeframe for the incurrence of costs (e.g. the past year). For some Member States, planned budgetary figures were incorporated into the estimates with the assumption that actual expenditures would be comparable. The Member State findings in Annex 1 indicate when this assumption was made.

The main challenges and limitations related to the analysis are as follows:

- **The study estimates potential benefits, not the actual benefits gained.** Actual benefits would include, for example, the amount of misused public funds recovered thanks to information disclosed by a whistleblower. Such figures were not available from any of the EU Member States. To circumvent this challenge, the potential benefits were estimated as described in Section 2.1.
- Due to the fact that estimates in the study reflect, on the one hand, the actual costs of setting up and maintaining the whistleblower protection system, and, on the other, potential rather than actual benefits, **a causal relationship cannot be directly demonstrated between estimated costs and potential benefits.** Stated differently, the potential benefits presented in the study are not a direct consequence of the costs of a whistleblower protection system. Nevertheless, the quantitative results combined with the qualitative evidence strongly suggest a relationship between the level of implementation (which may be linked to higher costs) and the benefits.
- **Significant variation in the setup and implementation of whistleblower protection in the Member States.** This variation presented a challenge to making comparisons across countries in a robust manner. Our methodology addressed this challenge in several ways. First, the data collection was undertaken using a standardized set of tools across the Member States. Second, data and information gathered were translated to annual monetary estimates when possible. Lastly, comparisons were made by cost category rather than overall levels (see Section 3.2).
- **Data and information regarding the costs varied significantly across the Member States in terms of the type of costs available as well the level of detail.** In general, the more data and information available, the more activities could be assigned costs, driving the overall estimate of costs in a Member States. Caution should be taken in the interpretation of cost estimates to consider which specific activities are and are not reflected.
- **One-off and recurrent costs were not distinguished in relation to the systemic costs.** In theory, one-off costs would only be incurred in the initial year or period and should be amortized over the reference period for a cost-benefit analysis. However, as whistleblower protection was introduced or reinforced recently in most of the Member States, it was often not clear when costs were one-off or recurrent, regarding training for example. Thus, in our analysis, we did not distinguish the two and compared the sum of the systemic and incremental costs with the annual potential benefits.

3 Main findings

This section presents the main findings of the analysis of the costs and benefits related to whistleblower protection. First, the overall costs for setting up and maintaining whistleblower protection are quite low in comparison with the potential benefits. In the Netherlands for example, the ratio of potential benefits to costs ranged from 22:1 to 37:1, depending upon the scenario considered. The ratios can be understood as follows: 22:1 means that for every EUR 1 invested in whistleblower protection, there is a potential to gain EUR 22 in terms of misused public funds recovered. Second, the potential benefits of whistleblower protection effectively implemented in the area of public procurement across the EU is ranges from EUR 5.8 to 9.6 billion each year. This estimate excludes Malta due to the unavailability of data. Third, important differences were observed in costs across countries; these are mainly due to the different types of activities carried out to set up and implement whistleblower protection. For example, some countries carried out extensive stakeholder consultation before developing legislation, others have more elaborate internal reporting channels, and others focus more on training. Although certain activities might be more costly, they have the potential to increase the effectiveness of whistleblower protection and, in some cases, to reduce the overall costs (see Section 4.1 for more details on the interlinkages between cost categories).

Sections 3.1 and 3.3 presents the findings for potential benefits and costs respectively. The methodology for the analytic approach has been described in Section 2. Lastly, in Section 3 the costs are compared with the potential benefits for several Member States. More detailed information regarding the potential benefits and costs from each country can be found in Annex 1.

3.1 Potential benefits at EU level

Two measures of potential benefits were constructed in this study. The first measure estimated the amount of corrupted funds in public procurement that can potentially be identified thanks to whistleblower disclosures. However, not all corrupted funds may be recoverable even when they have been identified, depending on the stage at which corruption is discovered or takes place. For instance, the discovery of misspending of public fund in a procurement award might not result in the recovery of the misspent funds that was due to corruption. To address this issue, a second measure was introduced and estimated the amount of misused public funds that could be potentially recovered from the corrupted funds identified previously. For each of the two measures, three scenarios were defined based on the degree to which whistleblower protection can increase the detection of corruption. Section 2.1 describes the measures and the methodology to estimate them in greater detail.

Using the first measure, we found that the overall potential benefits for the EU-28 are in the order of EUR 32.3 to 53.8 billion each year⁵⁷. Using the more conservative second measure, the potential benefits were estimated to be EUR 5.8 to 9.6 billion each year⁵⁸. These estimates relate to the public procurement sector alone, and do not take the public benefits that would accrue from whistleblower disclosures in other areas or sectors into account.

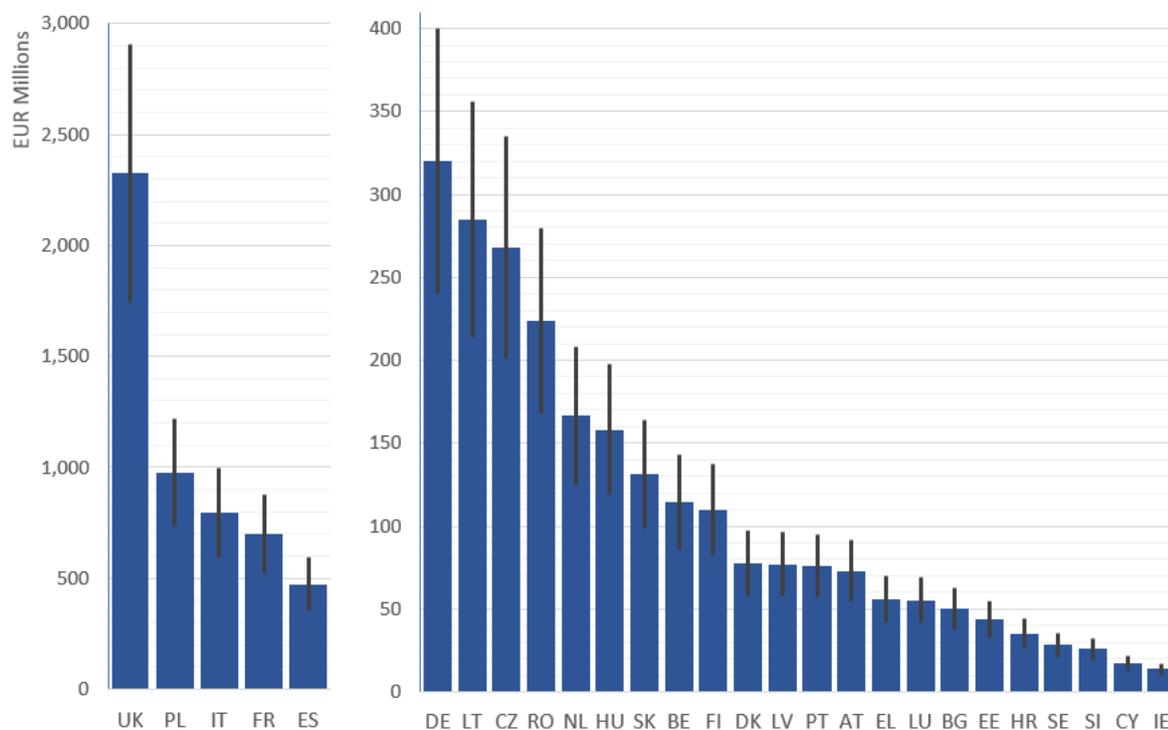
Figure 4 presents the breakdown of the second measure of potential benefits by Member State. As explained in Section 2.1, three scenarios of benefits were

⁵⁷ This figure includes all the EU-28 countries except Malta as the Corruption Risk Index was not available for Malta. The number of public procurement awards was too small to conduct regression analysis. See: M. Fazekas and G. Kocsis, op. cit.

⁵⁸ *Ibid.*

considered. These scenarios considered different estimates for the share of corruption in public procurement awards identified thanks to whistleblowers. The green bars are the estimates from Scenario 2 while the black line indicates the range represented by Scenario 1 (lower bound) to Scenario 3 (upper bound). The full results for both measures, by Member State and by scenario can be found in Annex 4.

Figure 4: Estimated potential benefits (EUR millions) by country



Note: The figures in the chart are based on the more conservative measure of potential benefits, defined as the amount of corrupted funds in public procurement that can potentially be identified thanks to whistleblower disclosures.

Significant variation was observed across the Member States. Following the methodology for estimating the potential benefits, the three main factors influencing benefits are: overall size of the economy (GDP), the share of GDP represented by public procurement contracts on average and the Corruption Risk Index⁵⁹. Table 5 indicates the factors that were more influential in some countries as compared with others, resulting in greater levels of potential benefits. For example, potential benefits are the greatest in the UK (EUR 1.7 to 2.9 billion annually), and as indicated in Table 5, are mainly driven by the large size of the economy and the relatively high share of GDP represented by public procurement contracts in that country⁶⁰.

Table 5: Factors strongly influencing the level of potential benefits by country

| Country | GDP | Public procurement share of GDP | Corruption Risk Index |
|---------|-----|---------------------------------|-----------------------|
|---------|-----|---------------------------------|-----------------------|

⁵⁹ The Corruption Risk Index was developed by DIGIWHIST researchers. The higher the CRI, the greater the risk of corruption in the area of public procurement. See Section 2.1.2 for more information.

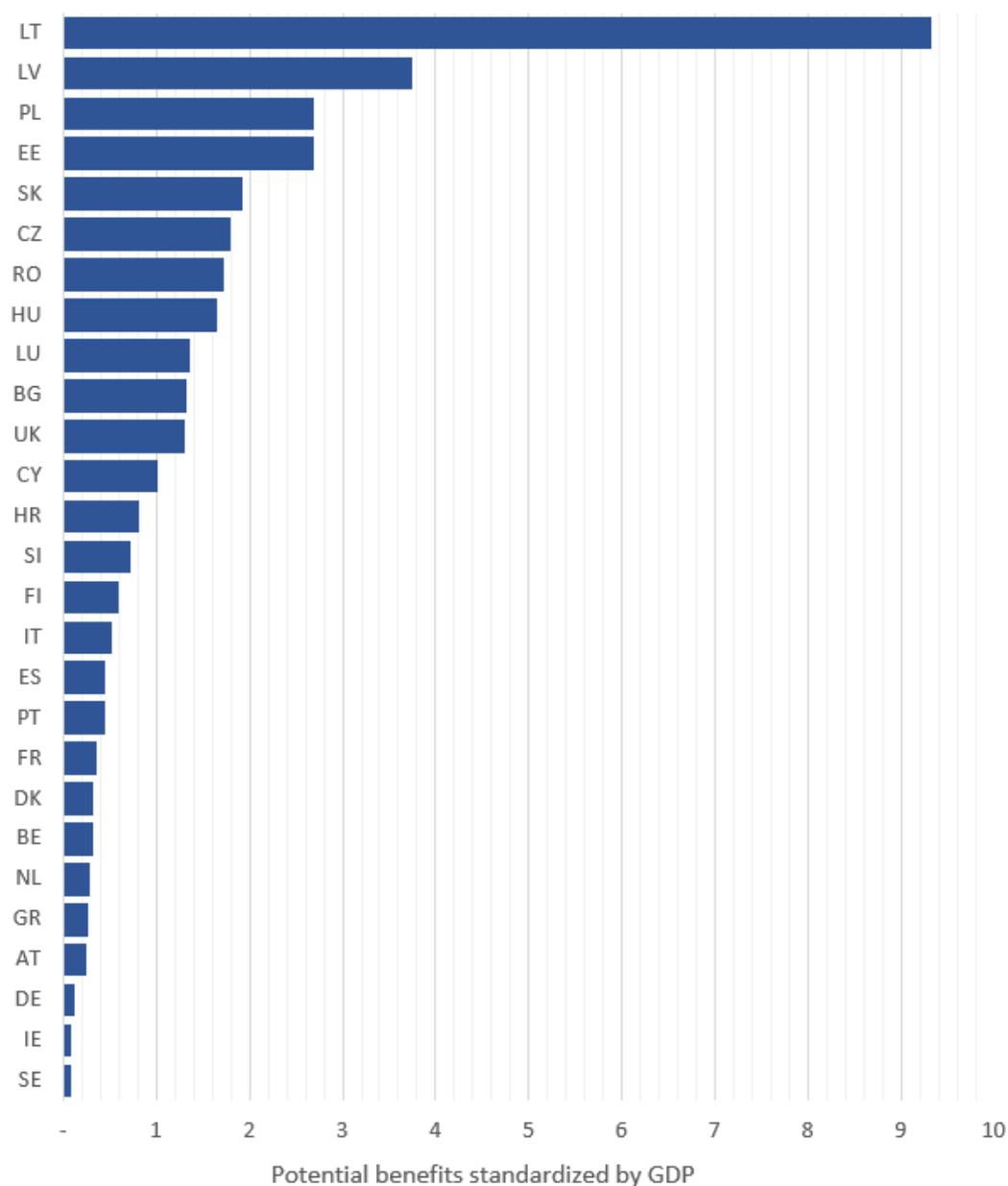
⁶⁰ In the UK, the share is 6 percent as compared with the EU average of 3 percent. This driver is coupled with the fact that the UK has a larger than average economy resulted in large potential benefits.

| Country | GDP | Public procurement share of GDP | Corruption Risk Index |
|--------------------------------|-----|---------------------------------|-----------------------|
| DE, ES, FR, NL | ✓ | - | - |
| HU, LU, LV | - | ✓ | - |
| BG, CY HR, RO | - | - | ✓ |
| UK | ✓ | ✓ | - |
| CZ, EE, LT, PL, SI, SK | - | ✓ | ✓ |
| IT | ✓ | - | ✓ |
| AT, BE, DK, FI, GR, IE, PT, SE | - | - | - |

Note: GDP, public procurement share of GDP and Corruption Risk Index are three factors that influence the level of potential benefits. Factors that are more influential in certain countries are indicated. Values that were 10 percent or higher than the mean are considered to be highly influential. Malta was not included in the analysis of potential benefits as the Corruption Risk Index was not available.

Adjusting the potential benefits by the size of the economy can provide an indication of the relative magnitude of the benefits for each country. Figure 5 presents the relative potential benefits for Scenario 2, which were calculated as the potential benefits standardized by GDP. The scale is an indication of the magnitude of potential benefits and is not monetary. Due to the large size of its economy, the UK places lower in terms of relative potential benefits. Lithuania has the greatest level of relative potential benefits due to higher than average levels of public procurement and corruption. Ireland ranks low in terms of potential benefits and relative potential benefits due to a smaller economy, corruption risk and public procurement.

Figure 5: Relative potential benefits by country



Note: Potential benefits were divided by GDP and multiplied by a scaling factor of 10,000,000.

3.2 Costs in the selected countries

The costs of setting up and maintaining a whistleblower protection system were estimated based on an extensive, in-depth collection of data and information from the seven selected EU Member States⁶¹. The data collection and analysis were guided by the framework presented in Section 2.2. In particular, the framework defined five cost categories: development of legislation, internal channels of disclosure, external channels of disclosure, judicial costs, and free legal advice.

⁶¹ For information about the selection of the Member States, please refer to Section 2.2.1.

Section 3.2.1 presents an overview of the information gathered from the Member States while Section 3.2.2 presents the findings by cost category with a focus on the cost drivers and discusses the possible implications for the overall effectiveness of the whistleblower protection system.

3.2.1 Overview

Detailed information regarding the costs of activities associated with whistleblower protection was gathered from seven countries highlighted in Table 6 and classified by cost category. The quality of information available varied across the countries, and was driven, in large, by the responsiveness of national focal points. Comprehensive information on costs was not obtained for any of the countries included in the study. Nevertheless, the information collected allowed for an understanding of the main costs in each country and also provided important insights on the main activities and factors that drive the costs of setting up and implementing whistleblower protection systems.

Table 6 presents the distribution of relevant information by cost category and Member State. Estimates of the costs involved to develop the whistleblower legislation were constructed for five countries. Information about the costs to set up and maintain internal and external channels was gathered from five and four countries respectively. Data on judicial costs related to whistleblower cases were obtained from three countries. Lastly, information on the costs of providing free advice was obtained from the three countries where the service was offered or subsidized by the government. In the other countries, whistleblowers can seek free advice from NGOs such as Transparency International.

Table 6: Overview of relevant information collected, by cost category and Member State

| Member State | Cost categories: | | | | |
|-----------------|----------------------------|-------------------|-------------------|----------------|-------------|
| | Development of legislation | Internal channels | External channels | Judicial costs | Free advice |
| France | ✓ | - | ✓ | - | n.a. |
| Ireland | ✓ | ✓ | - | ✓ | ✓ |
| Italy | - | ✓ | ✓ | - | n.a. |
| Netherlands | ✓ | ✓ | ✓ | - | ✓ |
| Romania | ✓ | ✓ | ✓ | ✓ | n.a. |
| Slovak Republic | ✓ | ✓ | - | - | ✓ |
| United Kingdom | - | - | - | ✓ | n.a. |

Note: n.a. stands for 'not applicable'. We learned that free advice was offered to whistleblowers in all of the countries selected, but only in some was the free advice financed by the government. In Romania, a number of NGOs including Transparency International provide free advice. In the UK, Public Concern at Work provides free advice and is not financed by the government.

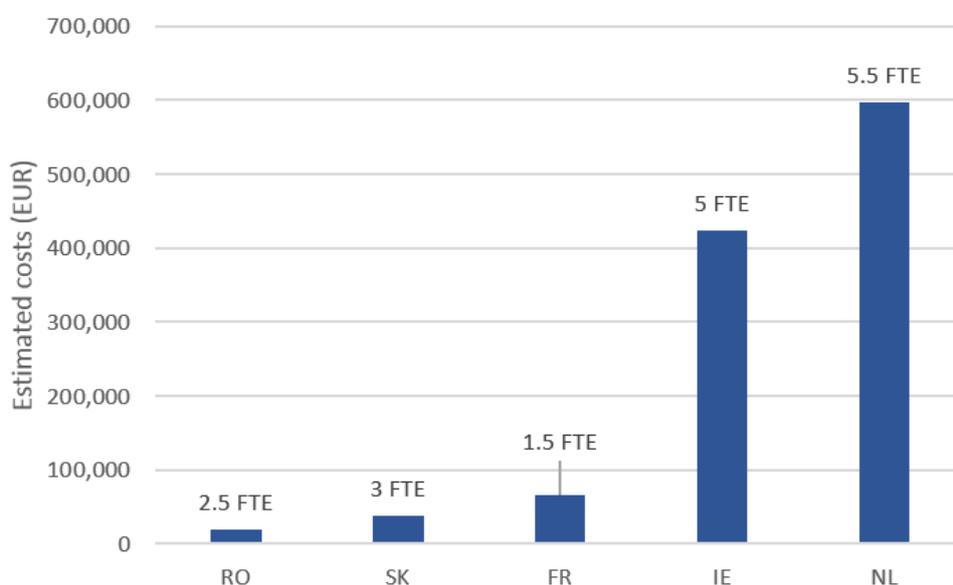
3.2.2 Findings by cost category

Robust comparisons of the overall costs across Member States cannot be made due to the variability of information gathered and the uneven coverage of the cost categories. Costs may appear to be higher in one country simply because more information was available. For example, the highest costs were observed in the Netherlands, where information on four cost categories was obtained. The costs were lowest in the Slovak Republic and Italy, where information could only be obtained for two of the cost categories. It is, therefore, more informative to review the estimates available from the Member States by cost category. This section reviews the findings for each cost category with a focus on understanding the key activities and elements that drive the costs.

Development of legislation

The development of whistleblower legislation and related guidance documents is treated as systemic costs in our analysis (see Section 2.2.2 for the definition of systemic cost). Figure 6 presents the findings from our analysis.

Figure 6: Estimated costs of developing whistleblower legislation



In total, monetary estimates could be constructed for five of the seven Member States. The costs ranged from EUR 9,960 in Romania to EUR 597,050 in the Netherlands. The differences evident across the countries may be due to a number of factors, such as the activities involved, differences in the cost of labour, and whether the legislation was a standalone law or part of a broader legislation. The amount of time government officials invested in this activity are reflected in our estimates of annual full-time equivalents (FTE), which are indicated in Figure 6. These estimates suggest that more human resources were devoted to the legislation in the Netherlands than in Romania (5.5 FTE versus 2.5 FTE). In fact, the legislation in the Netherlands was developed in two rounds over a period of four years⁶². The amount of time devoted to the legislation was the least in France (1.5 FTE), which was unique among the five countries in not having a standalone whistleblower protection law. In general, more FTEs imply higher costs. However, this is not the case for France where costs are higher than for Romania and the Slovak Republic, despite fewer FTE. Higher salaries for civil servants in France can explain this discrepancy.

⁶² The legislation was developed between 2012 and 2016. The law was passed in July 2016.

The development of legislation was also relatively costly in Ireland. A key driver of these costs was the preparation of guidance materials and other documents to support implementation. For example, the Department of Public Expenditure and Reform engaged external legal experts to assist with the development of the Guidance for Public Bodies. The preparation of guidelines and other documents to support implementation contributed to costs in other countries as well. In France, an implementation decree was adopted in April 2016, four months after the Sapin II law was passed. In Romania, several NGOs including Transparency International and Active Watch for Whistleblower Protection prepared guidelines⁶³.

Another factor that contributed to costs in all the five countries was the engagement of experts and stakeholders through activities such as stakeholder consultations and working groups. In the Slovak Republic, the legislation's development was supported by a working group of representatives from the Ministry of Interior, the Ministry of Justice and Transparency International. The legislation itself was developed over a period of 18 months (approximately from February 2012 to September 2014). In France, consultations regarding Articles 6 to 16 of the Sapin II law, which are related to whistleblower protection, were carried out with actors from various sectors and associations including the OECD, the Association of Private Enterprises, the Trade Union of Magistrates, the National Conference of Procurers, and NGOs such as Transparency International, Sherpa and Anticor. In Romania, three experts from the national chapter of Transparency International supported the drafting of the legislation. In the Netherlands, an expert group was convened in the first round of the legislation's development.

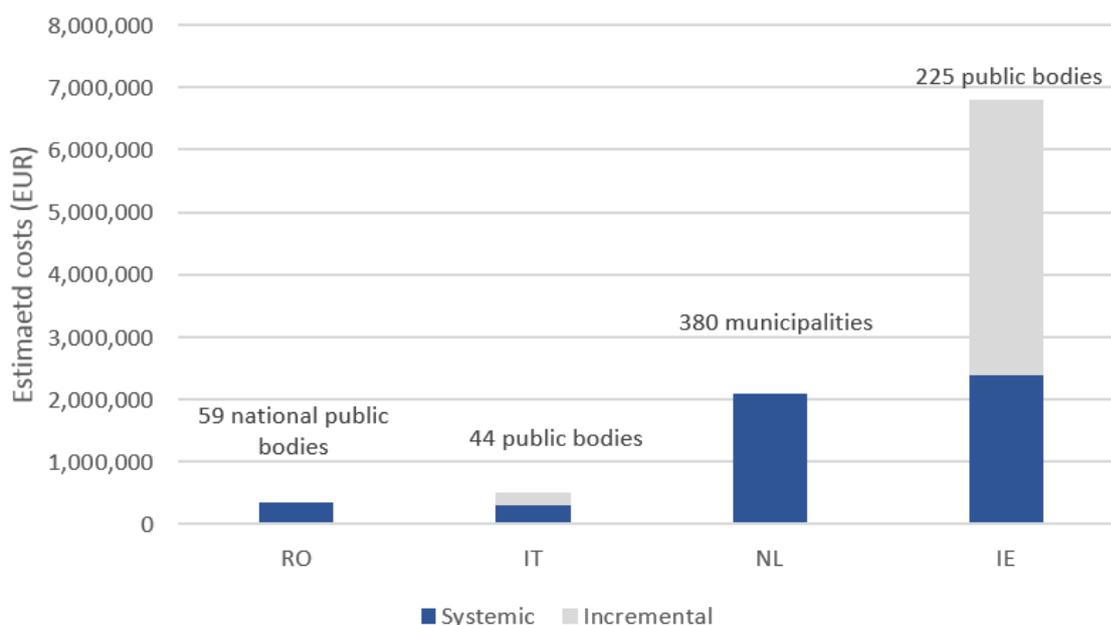
Although activities to engage stakeholders and experts as well as the development of guidance documents represent a cost, they may contribute to the effective design and implementation of the whistleblower protection system. Thus, the incurrence of costs to undertake such activities may be offset by the benefits of more effective protection for whistleblowers.

Internal channels of disclosure

In many countries, a whistleblower must first attempt to make a disclosure through the internal channel of the employer⁶⁴. The costs involved in setting up and maintaining such channels in public bodies were considered as systemic costs while the costs to receive and process a disclosure were classified as incremental costs (see Section 2.1.2 for more information). Figure 7 presents the findings from our analysis.

⁶³ The cost of preparing these guidelines could not be estimated.

⁶⁴ This is the 3-tiered model adopted in the Council of Europe Recommendation (2014)7 on Whistleblower Protection.

Figure 7: Costs of internal channels


In total, monetary estimates were constructed for four countries. The total costs ranged from EUR 354,000 in Romania to EUR 6.8 million in Ireland. Systemic costs were gathered for all countries, while incremental costs were estimated for Italy and Ireland. The key driver of costs in our analysis was the number of public bodies reflected in the costs. For example, the costs from the Netherlands reflect implementation in 225 central public bodies while the costs from Romania were the result of an extrapolation to 59 national public bodies. The systemic costs for an internal channel per public body in the Netherlands and Romania however are more comparable (EUR 5,539 versus EUR 6,000)⁶⁵.

Other factors influenced costs in Ireland and Italy. In Ireland, an important part of the systemic costs is related to internal training on protected disclosures. Indeed, the 12 public bodies surveyed developed and provided training for staff who may receive whistleblower disclosures. The costs for the training varied considerably across public bodies, suggesting that the content and approach of the training may have tailored to the circumstances of each department. The average cost of internal training was then extrapolated to 225 central public bodies. In Italy, another important component of systemic costs is the purchase or development of an IT system to allow for confidential disclosures: 20 out of a sample of 44 central and local public administrations had such an IT system in place. Several public administrations acknowledged the value that a dedicated IT system can offer to protect confidentiality and promote disclosures⁶⁶. The cost of such a system was estimated by the Municipality of Milan to be EUR 18,108 in total, including EUR 12,200 for the purchase of the software and EUR 3,224 for staff time on management, testing and the

⁶⁵ EUR 5,539 is the systemic costs for the Netherlands (EUR 2,104,900) divided by 380 for the number of municipalities. Similarly, EUR 6,000 is the systemic costs for Romania (EUR 354,000) divided by 59 national public bodies.

⁶⁶ For example, the Ministry of Economic Development in its 2016 report explicitly mentions the lack of financial resources as an obstacle to purchase dedicated software that would ensure the anonymity of the whistleblower. Similarly, two local administrations mention the high costs of an encrypted IT system as a reason for adopting other types of disclosure channels. Four regions and one municipality mentioned that they plan to adopt IT system developed by the ANAC when it becomes available.

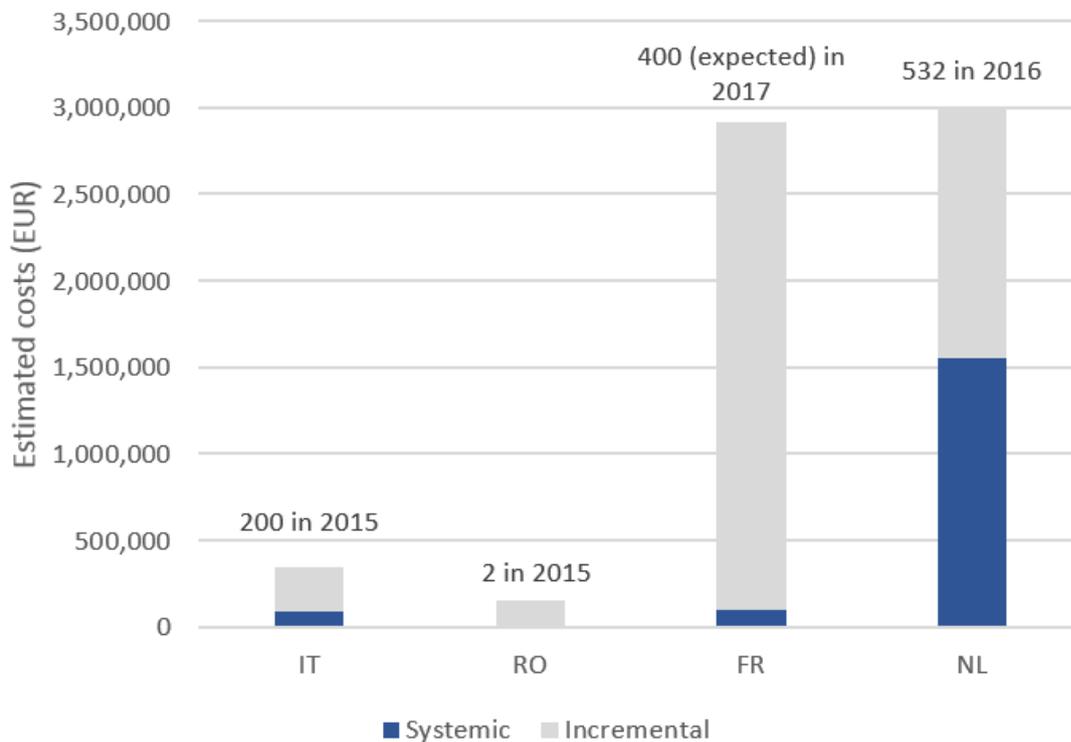
implementation of the software. The National Anti-Corruption Authority contracted with an external company to develop and maintain the system at the cost of EUR 90,000 annually for the first three years.

In the Slovak Republic, we could not obtain information to estimate the costs of setting up and maintaining internal channels. However, we did learn that the Regional Labour Inspectorates play a role in monitoring them, and were able to estimate a cost of EUR 170,000 based on the staff time involved.

External channels of disclosure

A whistleblower may also be able to make a disclosure to a prescribed body external to the employer. There may be one or more prescribed bodies, depending on the setup of the whistleblower protection system in the country. The costs involved in setting up and maintaining one or more external channels were considered as systemic costs, while the costs to receive and handle a disclosure as incremental costs (see Section 2.1.2 for more information). Figure 8 presents the findings from our analysis.

Figure 8: Costs of external channels and estimated number of disclosures received per year



Estimates for the costs associated with the setup and maintenance of one or more external channels were calculated for four countries (see Figure 8). The costs ranged from EUR 344,795 in Italy to EUR 3 million in the Netherlands. The estimated costs were primarily incremental costs related to processing and investigating disclosures, although the systemic costs of setting up the disclosure channel were estimated for three of the four countries.

The expected high number of potential disclosures to the external channel is a driver of costs in France and the Netherlands. In France, the legislation expanded the responsibilities of the *Défenseur des Droits*⁶⁷ to collect and forward reports from whistleblowers to the relevant external channel. In support of the whistleblower protection legislation, four positions (one senior individual, two lawyers and one assistant) were created at the *Défenseur des Droits* with the expectation that the agency will handle about 400 reports a year. In the Netherlands, the external channel known as the Whistleblower House received 532 reports between July and December 2016⁶⁸. Four staff members received these reports while another unit of three individuals provided support in terms of research and investigation. Of these 532 reports, only 70 were determined to be actual whistleblower disclosures. Thus, another driver of costs may be reports that do not meet the requisites of a whistleblower disclosure as per the country's legislation.

In accordance with the Italian whistleblower protection legislation, the National Anti-Corruption Authority is eligible to receive external disclosures. The systemic costs of this authority to setup an external channel based on an IT system was estimated to be EUR 90,000, while the incremental costs were estimated to be EUR 254,795 annually. The National Anti-Corruption Authority received 200 disclosures in 2015 and has a dedicated team of three people for whistleblower disclosures.

External channel costs in Romania were relatively low, due in part to the small number of applications received by the National Integrity Agency that involved a whistleblower. Of the 30 reports the agency received in 2015, two were related to a whistleblower. The number of applications is typically higher in election years; 2015 was not an election year.

These findings suggest that there may be efficiency and effectiveness gains to be made in the operation of the external channels. For example, as mentioned in the case of the Netherlands, only 70 of 532 reports to the Whistleblower House were confirmed as whistleblower disclosures. Efficiency gains may be evident in a higher share of reports that fall within the scope of the whistleblower legislation. Fewer resources may be needed consequently to review reports (efficiency gains), and can be used instead for the investigation of actual whistleblower disclosures (effectiveness gains). An awareness-raising campaign for the public about the basics of whistleblowing (e.g. what constitutes a disclosure, what rights whistleblowers have) could potentially increase the share of disclosures that fall within the scope of the legislation and the efficiency of the system (see Section 4.2 for more information).

Judicial costs

Judicial costs include costs related to presentation of whistleblower cases in the judicial system. Systemic costs in this context may include training for judges on the specificities of whistleblower cases and the development of guidance documents, while incremental costs would include the costs related to the court's processing of complaints from whistleblowers facing retaliation and subsequent handling of cases (see Section 2.1.2 for more information). Estimates for judicial costs were produced for three countries: Ireland, the UK, and the Slovak Republic; Table 7 presents the findings from our analysis.

⁶⁷ The *Défenseur des Droits* (Defender of Rights) is an independent body in France that is charged with defending the rights of citizens.

⁶⁸ Huis voor Klokkenluiders, 2017, *Jaarverslag 2016* – Annual Report, March 2017.

Table 7: Judicial costs by country

| Country | Total estimated cost | Number of cases/claims | Cost per case/claim |
|----------------|---|---|--|
| Ireland | EUR 5,600 (incremental cost) and EUR 7,922 (systemic cost related to developing Code of Practice for Public and Private Bodies) | A total of 13 complaints and 3 cases in 2016 | EUR 135,008 to process complaints and EUR 178,507 for the cases |
| Romania | EUR 2,747 | Maximum of 41 cases that may involve a whistleblower were presented to the Bucharest Tribunal in 2015 | EUR 67 per case for the Bucharest Tribunal |
| United Kingdom | EUR 961,844 | 1,382 PIDA applications in 2014/15 | EUR 93,895 for the Employment Tribunal to handle a PIDA case and EUR 867,948 to process claims |

The judicial costs in the UK are substantially larger than those noted for Ireland and Romania. A closer comparison of the systems in the UK and Ireland can provide insights into the drivers behind the difference in costs. In the UK, the Employment Tribunal received a high number of claims as compared with the comparable institution, the Workplace Relations Commission, in Ireland (see Table 7, column 3). Although whistleblower protection was introduced more recently in Ireland, this does not appear to explain the difference in the number of claims. The UK Employment Tribunal received 416 claims between 2000 and 2001, two years after the introduction of PIDA. Two years after the introduction of the PDA in Ireland, the Workforce Relations Commission received 13 complaints. The difference in the number of claims may be due to other factors related to the implementation of whistleblower protection in the two countries.

In general, it can be argued that in a well-functioning whistleblower protection system, there should be few instances in which whistleblowers experience retaliation and consequently, file a claim in court to ask for the enforcement of the legislation. A crucial finding is that an effective whistleblower protection system would result in a reduction in judicial costs, given that fewer claims filed would translate into lower judicial costs.

Free legal advice

Free legal advice refers to the provision of support free of charge to individuals considering whether or not to blow the whistle. This service was available in all countries, but it was not always financed by the government. In two cases – Ireland and the Netherlands – the government finances free advice for potential whistleblowers.

In Ireland, the national chapter of Transparency International provides information and support for workers that consider reporting wrongdoing and for whistleblowers. The Irish government has financed the Speak Up helpline managed by Transparency

International since 2016 with an amount of approximately EUR 260,000 per year. The contribution of the Irish government allowed Transparency International Ireland to setup the Transparency Legal Advice Centre (TLAC), which became operational in March 2016. The TLAC is the only Irish independent law centre specialised in providing legal advice to anyone who wishes to disclose wrongdoing, under the Protected Disclosures Act⁶⁹. Transparency International Ireland estimated the cost of supporting each client to be EUR 108 since the beginning of the activity of TLAC. Table 8 provides an overview of the number of clients of the Speak Up helpline. Whistleblowers represent about 24% of the clients of the helpline since the entry into force of the PDA.

Table 8: Overview of clients of the Speak Up helpline managed by Transparency International Ireland

| Year | Total Clients | Whistleblowers | Whistleblowers % |
|------|---------------|----------------|------------------|
| 2011 | 162 | 14 | 9% |
| 2012 | 92 | 9 | 10% |
| 2013 | 52 | 9 | 17% |
| 2014 | 214 | 51 | 24% |
| 2015 | 165 | 37 | 22% |
| 2016 | 182 | 50 | 27% |

In the Netherlands, free legal advice is provided by a unit within the external channel. We estimated the cost of this service to be EUR 400,000 per year. The cost of free legal advice in Ireland and the Netherlands were treated as incremental costs in our calculations.

The main driver of the costs estimated was staff time. In Ireland, the work of TLAC is undertaken by the TLAC Managing Solicitor. Since currently there is a three-month waiting list for free legal advice from TLAC, Transparency International Ireland is planning to recruit a second person to support the work of the advice line. In the Netherlands, free legal advice is provided by a unit of four staff in the Whistleblower House. Individuals or employers may consult this service.

Public Concern at Work (PCaW) is a well-known service in the UK that provides free legal advice to potential whistleblowers. Their website states the following: "The income we receive comes from (a) the subscriptions enlightened employers take to promote our support to their people and (b) fees from the consultancy and training we provide to business, governments and other organisations"⁷⁰. As the reported sources of income are from private individuals and companies, the operational costs of the organization were not considered in our analysis.

3.3 Comparing costs and potential benefits

The costs of setting up and maintaining a whistleblower protection system were compared with the three scenarios of potential benefits for three of the seven countries included in the study – Ireland, the Netherlands and Romania. These countries were selected because the estimates of costs were more comprehensive,

⁶⁹ Transparency International Ireland, *Transparency Legal Advice Centre*, 2017, available at <http://www.transparency.ie/helpline/TLAC>.

⁷⁰ Public Concern at Work, *Funding*, available at <http://www.pcaw.org.uk/support-us/funding>.

covering four or five of the cost categories (see Table 6). Information from the other countries, in contrast, covered three or fewer of the cost categories, rendering comparisons with potential benefits less robust. With respect to potential benefits, we drew on the more conservative measure - the amount of misused public funds that could potentially be recovered from identified corrupt public procurement awards due to an effective whistleblower protection system – for the comparison.

In reviewing the results, it should be kept in mind that the nature of the potential benefits differs from the nature of the estimated costs. On one hand, the potential benefits are estimated through a top-down approach using available data and indicators. On the other hand, the costs are estimated through a bottom-up approach using data collected through desk research and interviews, on the actual costs of setting up and maintaining the whistleblower protection system. Therefore, a causal relationship cannot be directly demonstrated between potential benefits and costs. Nevertheless, the analysis shows qualitatively that a link exists between effective implementation, which usually implies higher costs, and benefits of the whistleblower protection system. Assuming a well-designed and implemented system, the estimated costs and potential benefits can be compared and contribute to an economic case for whistleblower protection.

Table 9 presents estimates of the ratio of potential benefits to costs for each scenario and for each country. Both systemic and incremental costs have been included in the estimation of costs. Using the example of the Netherlands, the estimated ratios of potential benefits to costs can be interpreted as follows. A ratio of potential benefits to costs of 22 to 1 or 22:1 means that there is potential to recover EUR 22 in misused public funds for every EUR 1 invested in an effective whistleblower protection system. The other two scenarios offer more favourable ratios of 29:1 and 37:1. These benefits are based on an estimated potential and not a measure of actual funds recovered. Thus, the findings infer that the Netherlands would gain EUR 29 for every EUR 1 invested in whistleblower protection, provided that the system is properly designed and functions well in implementation. If design or implementation is poor, then it is likely that actual benefits are significantly lower than the potential benefits. Still, the magnitude of potential benefits is so great relative to the costs in most countries that the realisation of only a small share of benefits would still be worth the investment in a whistleblower protection system from an economic point of view. For example, the realisation of only 10 percent of the potential benefits in the Netherlands (EUR 12.5 million) would still vastly outweigh the costs.

Table 9: Comparison of potential benefits to costs in three EU Member States

| | Ireland | The Netherlands | Romania |
|--------------------------------------|------------------|-----------------|------------------|
| Costs (Systemic + Incremental) | | | |
| | EUR 7.5 million | EUR 5.7 million | EUR 526 thousand |
| Potential benefits | | | |
| Scenario 1 | EUR 10.3 million | EUR 125 million | EUR 168 million |
| Scenario 2 | EUR 13.8 million | EUR 166 million | EUR 224 million |
| Scenario 3 | EUR 17.2 million | EUR 208 million | EUR 280 million |
| Ratio of potential benefits to costs | | | |
| Scenario 1: | 1.4 to 1 | 22 to 1 | 319 to 1 |

| | Ireland | The Netherlands | Romania |
|---|-------------------|-------------------|-------------------|
| Costs (Systemic + Incremental) | | | |
| Scenario 2: | 1.8 to 1 | 29 to 1 | 426 to 1 |
| Scenario 3: | 2.3 to 1 | 36 to 1 | 532 to 1 |
| Drivers of potential benefits | | | |
| GDP (EU average = 466 billion) | EUR 162.2 billion | EUR 592.2 billion | EUR 129.6 billion |
| CRI (EU average = 0.31) | 0.23 | 0.27 | 0.44 |
| Share of GDP represented by public procurement (EU average = 5.69%) | 0.51% | 1.41% | 5.54% |

Note: Author calculations based on data from DIGIWHIST and Eurostat. CRI = Corruption Risk Index.

Table 9 indicates that the potential benefits to cost ratio ranges from 319:1 to 532:1 in Romania, 22:1 to 36:1 in the Netherlands, and 1.4:1 to 2.3:1 in Ireland. The large variation between countries in the ratio of potential benefits to costs is due to several factors. Variations in costs are driven by differences in the activities carried out to set up and implement whistleblower protection systems. For example, some countries carried out extensive stakeholder consultation before developing legislation; others have more elaborate internal reporting channels, etc. While these activities drive up costs, they also are likely to lead to greater effectiveness of the systems, thereby increasing the likelihood that the full potential benefits of whistleblower protection can be realised (e.g. through a greater number of disclosures). On the benefits side, variations are due to differences in overall size of the economy (GDP), the share of GDP represented by public procurement contracts on average and the Corruption Risk Index. This is given in more detail in Section 3.1 and Table 5 in the main report.

Furthermore, the results demonstrate a strong correlation between potential benefits and the estimated ratio – the greater the potential benefits, the greater the ratio between potential benefits and costs. Potential benefits in Romania are approximately 16 times higher than potential benefits in Ireland. In the Netherlands, potential benefits are about 12 times higher than in Ireland. Thus, an understanding of the drivers of potential benefits is needed to support the interpretation of the findings.

In addition to the ratios of potential benefits to costs, Table 9 presents information about three drivers of potential benefits – the size of the economy (GDP), the risk of corruption in public procurement (CRI) and the relative share of public procurement in the economy (the monetary value of public procurement awards as a share of GDP). All three factors appear to be drivers of the increased potential in the Netherlands as compared with Ireland – the economy of the Netherlands is substantially larger, the risk of corruption is higher, and the relative share of public procurement in the economy is greater. The drivers of the difference in potential benefits between Ireland and Romania, however, are different. Romania's economy is smaller, while the level of corruption is substantially higher as is the relative share of public procurement in the economy. As described in Section 3.2, the costs in Romania are relatively low. The lower costs of labour in Romania may be one of the reasons, but also the fact that Romania has not taken on some costly activities carried out in other countries, such as extensive staff training, guidance or the use of IT systems for reporting. Low utilization of the system may generate less incremental costs and may reflect the social stigma of whistleblowing and perceptions that the system is not effective. From

the perspective shown in this study, it could be concluded that in countries like Romania where the potential for anti-corruption benefits is relatively higher, it could make more sense to invest in greater effectiveness of the whistleblower protection systems.

Findings from a cost-benefit analysis study by the United States Fair Claims Act, the legislation providing protection to whistleblowers who expose fraud in government programs, can provide a useful benchmark for assessing the estimated ratios presented in Table 9⁷¹. The system is considered by some experts to be the most advanced whistleblower protection system in place. One of its distinguishing features is that whistleblowers can receive a share of the misused public funds recovered as a reward. Furthermore, a significant amount of information regarding costs and benefits is available through public sources. In FY 2016, USD 2.9 billion of misused public funds was recovered thanks to disclosures from whistleblowers, while the whistleblowers themselves received a total of USD 519 million⁷². The study concluded that the whistleblower provisions offered a benefit to cost ratio of 14:1 to 52:1 (a mean of 33:1), where the bulk of benefits were generated from the deterrence of fraud. These results are particularly relevant as the US study estimated actual benefits, while this study has measured potential benefits. Therefore, these results could contribute to make an economic case for whistleblower protection in the EU, despite the different legal framework in the US.

Nonetheless, the findings from this study lend strength and credibility to the results of our investigation. The estimated ratio from the Netherlands falls within the range of the benefit to cost ratio from the Fair Claims Act study. The estimates from Ireland fall below the range, while the estimates from Romania are substantially higher. The lower ratio for Ireland is likely due to the greater availability of information on costs, while in Romania, the higher ratio can likely be attributed to our estimation of potential rather than actual benefits. Overall, the findings of our study, supported by the evidence in the US, show that massive gains can be achieved by investing in a whistleblower protection system that is robust, reliable, and that functions properly. However, it should be noted that a key component of the US system with respect to the Fair Claims Act is data collection on case law and the associated amounts spent and recovered. Better data collection and information tracking of whistleblower disclosures, claims, and cases in the EU would support the estimation of actual economic benefits of whistleblower protection.

⁷¹ T. Carson, M. Verdu and R. Wokutch, 2008, *op. cit.*

⁷² Annual statistics from 1987 are available online: U.S. Department of Justice – Civil Division, 2016, Fraud Statistics, available at <https://www.justice.gov/opa/press-release/file/918361/download>.

4 Efficiency and effectiveness

Building on the findings presented in Section 3, this section of the report reflects on the efficiency and effectiveness of activities undertaken as part of whistleblower protection systems in the seven countries.

In doing so, we draw on both quantitative and qualitative evidence collected over the course of the study.

Section 4.1 presents several examples of how cost categories may be inter-linked, resulting in efficiency and effectiveness gains. Section 4.2 describes four examples of good practices for the design and implementation of an effective whistleblower protection system. The good practices were selected based on the cost-effectiveness principle rather than from a legal point of view.

4.1 Interlinkages across cost categories

The assessment of costs related to whistleblower protection systems in the seven selected countries, presented in Section 3.2, treats each cost category independently. In practice however, some inter-linkages between cost categories may be evident with implications for the effectiveness and efficiency of the system. While we could not investigate these inter-linkages in a robust, quantitative manner due to the limited availability of information, the evidence gathered from the countries suggest several inter-linkages described below.

Development of legislation and internal channels

- Description: The process through which whistleblower legislation is developed may have implications for the establishment and maintenance of internal channels. For instance, the legislation itself or guidance documents can specify which bodies (e.g. public and private bodies with at least 50 employees) are mandated to set up an internal channel, and how they should do so.
- Implications: Increased costs for both cost categories (development of legislation and internal channels). Possible increase in effectiveness.

Internal and external channels

- Description: Whistleblower protection in many countries is tiered such that whistleblowers should first attempt to make a disclosure through an internal channel. If the disclosure is not received and handled appropriately, then the whistleblower can make the report to an external channel. Thus, in an effective and efficient whistleblower system, most disclosures should be handled appropriately through the internal channel and minimal disclosures should be made through the external channel.
- Implications: Increased costs for internal channels, but lower costs for the external channel. Greater efficiency and possibly effectiveness.

Free legal advice and judicial costs

- Description: Free legal advice can help potential whistleblowers determine whether their case falls within the scope of protection or not, the evidence and other information needed to make the disclosure, and the implications for their well-being. Based on this information, the individual can make an informed decision about whether or not to blow the whistle. The provision of free legal

advice may increase the share of disclosures related to wrongdoings within the scope of the legislation and that are well-substantiated by evidence.

- **Implications:** Increased costs for legal advice and lower judicial costs as whistleblowers would be better informed about their specific cases. Greater efficiency for internal and external channels as only relevant disclosures would be reported to the established channels.

Disclosure channels and judicial costs

- **Description:** The proper functioning of internal and external channels should allow whistleblowers to make disclosures without risk of retaliation. In the case that retaliation is experienced, the whistleblower may file a claim in court to seek protection and compensation. Activities undertaken to ensure the proper functioning of disclosure channels may, thus, lead to fewer cases of retaliation and lower judicial costs.
- **Implications:** Increased costs for internal and external channels and lower judicial costs. Greater efficiency.

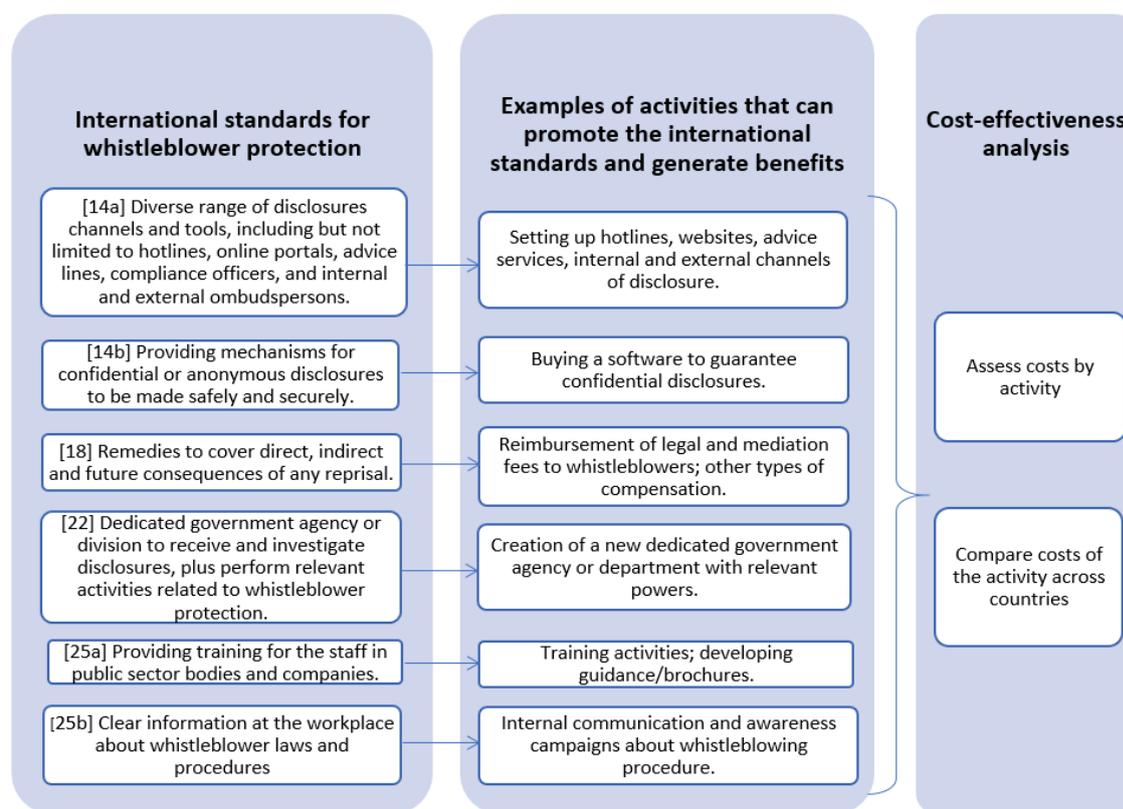
4.2 Good practices

Good practices identified during the course of this study were considered on the basis of the cost-effectiveness principle, rather than from a purely legal point of view. Specifically, we defined good practices as activities reflecting international standards of whistleblower protection, as identified by the NGO Blueprint for Free Speech⁷³. The 26 international standards are based on recommendations from several sources, including, *inter alia*, the Council of Europe, Transparency International, and the OECD⁷⁴. The activities selected have cost implications, but also offer benefits in terms of increasing the effectiveness of the system. Therefore, they can be viewed as conditions for an effective whistleblower protection system, which could generate benefits, such as recovered public funds, less corruption, improved freedom of speech and integrity of public institutions. This is particularly relevant as many studies, as well as stakeholders, have indicated that weak implementation of whistleblower legislation is one of the main issues. In each country assessed, we selected activities that reflect some of these international standards. We then reviewed the activities in terms of their cost drivers and their potential replication in other countries and, on this basis, identified a series of good practices in the countries analysed. Figure 9 illustrates the approach taken to identify good practices, which are described in the remainder of the section.

⁷³ S. Wolfe, M. Worth and S. Dreyfus, *Protecting Whistleblowers in the UK: A New Blueprint*, 2016, available at <https://blueprintforfreespeech.net/>

⁷⁴ The international standards are grouped into six legislative categories: coverage of the law, protection granted to whistleblowers, disclosures, remedies and reliefs, administrative procedures, and engagement of whistleblowers in the investigations. *Ibid.*

Figure 9: Identification of good practices



Note: the numbers in squared brackets correspond to the number attributed to each international standard as specified by Blueprint for Free Speech. International standards 14 and 25 were broken into two parts: 14a and 14b, and 25a and 25b in order to better match the corresponding activities.

4.2.1 Raising awareness

Where awareness of whistleblower protection is very low, workers might not report the malpractice they witness. Therefore, raising awareness among workers about the disclosure procedure in place as well as the whistleblower protection granted could contribute to the effectiveness of the system by increasing the probability that wrongdoing is reported. Previous surveys have shown that three out of four Europeans who witnessed corruption did not report it⁷⁵. The issue of lack of awareness was reported by several Italian public administrations in their annual report on anti-corruption measures. Similarly, during a roundtable on whistleblower protection organised by the European Parliament in March 2017, whistleblower experts also highlighted the lack of awareness of whistleblower provisions in place as a key issue. Good practices in raising awareness of whistleblowing procedures in place were identified in some Italian public administrations as well as in Irish government departments and are planned by a French authority.

In Italy, some central and local public administrations implemented awareness raising activities in various ways. The Ministry of Economy and Finance publicised the internal disclosure channel to employees via its intranet system by introducing a dedicated section on whistleblowing. The costs of such in-house activities were considered minimal and insignificant by the Ministry. The Municipality of Milan was active in communicating to its employees via several means the internal whistleblowing

⁷⁵ European Commission, 2014, Special Eurobarometer 397, Wave EB79.1 – TNS Opinion & Social, pp. 100-106, available online at http://ec.europa.eu/commfrontoffice/publicopinion/archives/ebs/ebs_397_en.pdf.

procedure. The Municipality developed and published internal guidelines to explain whistleblowing in general on its intranet, as well as the procedure to use the IT system that was set up as internal channel of disclosure. About ten staff members of the Municipality worked on the development of these guidelines for two months. However, since the staff did not work exclusively and continuously on the guidelines, it was not possible to estimate the cost associated to this activity. In addition, the Municipality added an explanatory note on whistleblower protection to the electronic version of the employees' payslips, and circulated information on whistleblowing via e-mail. Moreover, several meetings to raise awareness on whistleblower protection were organised for 23 departments of the municipalities during the year 2016. The Municipality of Rome shared guidelines with its employees regarding how to make disclosures through the internal channel and the external channel of the National Anti-Corruption Authority. In addition, the employees were informed about the hotline setup by Transparency International Italy to report corruption. Similarly, Sicily region circulated information via e-mail to all employees about the new IT system adopted for internal disclosures. Trentino-Alto Adige region had an informative session, including the involvement of trade unions, for all of the employees about the procedure for whistleblower disclosures.

Of the 12 Irish public bodies that were included in the analysis, six prepared internal guidelines on the whistleblowing procedures and three of them had in place additional awareness raising measures. The average cost of internal guidelines and awareness raising incurred by these public bodies was EUR 7,453. The Department of Agriculture, Food and the Marine prepared, for instance, posters on whistleblowing as part of its awareness campaign.

The French authority *Défenseur des Droits*, which functions as an external channel of disclosure for whistleblowers, highlighted the importance of raising awareness among workers as a communication campaign will be one of its first activities. However, estimates of its planned costs were not available.

4.2.2 Promote setup of internal channels

In many countries, including those covered in this study, whistleblowers must make a first attempt at making a disclosure through the internal channel set up by their employer. The proper setup and maintenance of internal channels may, thus, influence the probability of reporting and also of the proper handling of a disclosure. Activities that can encourage the setup of internal channels (or alternatively, sanction poorly established channels) are good practices that can contribute to the effectiveness of a whistleblower protection system.

In the Netherlands, the Whistleblower House produced a pamphlet to guide employers on how to set up internal channels to handle disclosures from whistleblowers⁷⁶. Employers can also submit questions to the Whistleblower House via telephone and email. The pamphlet was produced by the Knowledge & Prevention Unit, which included three staff members, between July and December 2016. The pamphlet was one of three outputs of the unit during this period, as noted in the 2016 Annual Report. The other two outputs were protocols for cooperation and coordination with the Ombudsman and the Public Prosecution Service. Assuming that time was allocated evenly across these outputs, we estimate that the cost of producing the pamphlet to support public and private sector employers in setting up internal channels to be about EUR 26,667. The number of public bodies alone is estimated to be more than 1,600.

⁷⁶ Huis voor Klokkenuiders, *Integriteit in de praktijk: de meldregeling*, 2016, available at <https://huisvoorklokkenuiders.nl/wp-content/uploads/2017/02/HvK-broch-10-Meldregeling-1.pdf>

Thus, the cost of the guidance per public body would amount to EUR 16.68. If private sector employers were also accounted for, the cost per employer would be even lower.

The Irish Department of Public Expenditure and Reform developed a guidance document for Public Bodies under Section 21(1) of the Protected Disclosures Act, which prescribes that every public body shall establish an internal channel of disclosure⁷⁷. The guidance document includes a detailed analysis of protected disclosures procedures to be followed by public bodies. For instance, it clarifies what the relevant wrongdoings that can be reported are, and it gives guidance on the assessment of disclosures and investigation of the reported wrongdoing. The development of the guidance document involved both internal staff and external legal experts and its cost was estimated to be EUR 37,421.

The Department for Business and Skills of the UK government also prepared a guidance document for employers and a code of practice on whistleblowing⁷⁸. In particular, the code of practice describes a number of measures that should be considered as best practice for employers, such as awareness raising activities and internal training. However, it was not possible to find evidence on the cost of preparing this guidance document.

In the Slovak Republic, the Labour Inspectorates have responsibilities to support the whistleblower protection legislation. Specifically, they conduct inspections of internal channels of private and public bodies. The Labour Inspectorates hired additional staff at a cost of EUR 170,000 to support these activities. In 2015, 14 percent of 166 inspected bodies received a EUR 20,000 fine for not having set up an internal channel to the specifications detailed in the legislation. The sum of these fines was EUR 464,800, which was substantially more than the cost of hiring additional staff.

4.2.3 Software to ensure confidentiality

Providing mechanisms to ensure the respect of confidentiality of whistleblowers' identity is an additional international standard that could encourage the disclosure of information. In fact, the fear of the consequences is mentioned as the most common reason for not reporting witnessed corruption⁷⁹. The introduction of software that protects the confidentiality of whistleblowers by making sure that the whistleblower's identity is kept secret by the designated recipient is one such mechanism.

In Italy, of the 44 public bodies assessed 19 reported to have an IT system in place that allows to protect the confidentiality of whistleblowers. While some public bodies purchased a software from an external provider, others developed an IT system in-house. The costs associated to the development of the in-house IT system would correspond mainly to staff time and can be expected to be lower than the costs of purchasing a software from an external company. The municipality of Milan spent in total EUR 18,108 for setting up an online procedure for internal disclosures (EUR 12,200 excluding VAT for purchasing the software and EUR 3,224 for staff involved in additional work related to the software). The National Anti-Corruption Authority developed an IT system for internal and external disclosures and stipulated a contract with an external provider to maintain the IT system. The value of the contract was EUR 90,000 per year for an initial period of three years. The online procedure for internal and external disclosures is expected to be available before the end of 2017.

⁷⁷ Irish Department of Public Expenditure and Reform, Government Reform Unit, 2014, *Guidance under section 21(1) of the Protected Disclosures Act 2014 for the purpose of assisting public bodies in the performance of their functions under the Act*.

⁷⁸ UK Government, Department for Business Innovation & Skills, Whistleblowing – Guidance for Employers and Code of Practice, March 2015, available at <https://www.gov.uk/government/>.

⁷⁹ C. Pring, 2016, *op. cit.*

The IT system developed by the National Anti-Corruption Authority can be considered to be of particular interest given that it is an open source software and it will be made available to the local administrations for free. The practice of developing an IT system at the central level and making it available for local public bodies can be considered as an interesting example to achieve efficiency, given that local administrations might lack the necessary financial resources to purchase their own software that enables to protect the confidentiality of whistleblowers.

4.2.4 Internal training

Providing internal training for the staff in charge of processing and investigating disclosures is also among the international standards, as knowledgeable staff would allow a more effective protection of whistleblowers, for instance, concerning confidentiality issues.

Internal training for the staff seems to be a common practice in Irish public bodies. In fact, all of the 12 Irish public bodies included in the analysis had provided internal training sessions on protected disclosures. The costs of such training varied widely across public bodies, ranging from EUR 275 in the Office of Public Works to EUR 15,250 in the Department of Education and Skills. In particular, the Department of Education and Skills engaged an external legal firm⁸⁰ to provide training about processing protected disclosures for approximately 60 members of staff at Principal Officer or equivalent level within the Department's three main geographic locations (Dublin, Athlone, and Tullamore). The service provided by the legal firm included two parts. The first took the form of half day seminar to introduce and explain to the staff the key provisions of the Protected Disclosures Act. The cost for providing this seminar was EUR 1,750. The second part was constituted by the development of a guidance manual and the delivery of training sessions (half day each) to examine guidance on screening and investigating protected disclosures within the Department in detail. Each training session involved 10-12 persons and a total of five training sessions were held in April and May 2016. The cost of these training sessions was EUR 13,500 (EUR 3,500 for the first session and EUR 2,500 per additional session). In contrast to the detailed information on the training activities of the Department of Education and Skills, it was not possible to investigate the modalities and costs of the training provided by the Office of Public Works.

The Italian anti-corruption law envisages training about ethics and legality for public sector employees in the areas at highest risk of corruption⁸¹. Although the above-mentioned training is not specific to whistleblower protection, in practice some public administrations included whistleblower protection guidance as part of the general anti-corruption training activities. The Municipality of Milan provided internal training on anti-corruption measures to 629 managers and 7,255 employees during the period 2014-2015. The training session was prepared in partnership with Transparency International Italy and with the lawyers of the consulting company Dasein, for a total cost of EUR 24,200. The topic of whistleblower protection was included in the training sessions as a mean to enhance legality and contrast corruption or other wrongdoings. The Ministry of Economy and Finance provided Web-Based Training (including a test) on anti-corruption measures to all its employees. The online training also envisaged a specific section about the Italian provision on whistleblower protection. The cost for the time that staff spent on arranging the Web-Based Training, in relation to whistleblowing specifically, was estimated to be EUR 2,246.

⁸⁰ The legal firm was selected following an open tendering competition. A total of three bids for the provision of training services were received by the Department and were evaluated on the basis of cost, experience/references, and understanding of the Department's requirements.

⁸¹ Law 6 November 2012 n. 190, art. 1,11.

In the Netherlands, the 2017 budget for the Whistleblower House includes a line item to train the four staff members who provide free legal advice to potential whistleblowers. This training is considered to be crucial to ensuring that the staff members are up-to-date on the latest issues, and can work more efficiently. An estimate for the planned training could not be obtained.

5 Conclusions

This study set out to explore the economic case for whistleblower protection in the EU. To do so, it focused on the area of public procurement in which there is a high risk of corruption that could be exposed through interventions such as whistleblower protection. A cost-benefit analysis methodology was employed to assess quantifiable data on the costs of setting up and maintaining a whistleblower protection system and the potential benefits in terms of the recovery of misused public funds in seven EU Member States: France, Ireland, Italy, the Netherlands, Romania, the Slovak Republic, and the United Kingdom. This sample reflected a wide range of legal frameworks and stages of implementation.

The study has two main conclusions for policymakers at the EU and Member State levels:

- **There is a strong economic case for whistleblower protection.** The potential to recover misused public funds was found to exceed the costs of setting up and maintaining such systems for all of the countries studied – and this is only in the area of public procurement. In Ireland, the ratio of potential benefits to costs ranged from 1.4:1 to 2.3:1, while in Romania it ranged from 319:1 to 532:1. While all countries stand to gain from whistleblower protection, countries with a higher risk of corruption and in the case of public procurement, a larger economy and higher levels of public procurement, may experience greater returns. This conclusion mirrors quantitative findings on the ratio of actual benefits to actual costs of whistleblower protection in the United States which were 33:1 on average⁸². As public procurement represents only one area of public spending, the economic benefits of whistleblower protection across other sectors are likely to be even greater.
- **Whistleblower protection must be effectively implemented to reap the potential benefits.** From a cost-benefit perspective, the policymaker's objective should not be to minimise costs alone, but to optimise the ratio of benefits to costs. Some activities with associated costs are likely to contribute to the effectiveness of the system, for example, training for individuals assigned to receive disclosures through internal and external channels and for judges to handle cases involving whistleblowers. Other costs such as judicial costs would be expected to be minimal in a well-functioning, effective whistleblower protection system.

Whistleblower protection systems vary substantially across the countries covered in this study in terms of their design and implementation. The different approaches may have implications for the level and allocation of costs, as well as for its efficiency and effectiveness overall. For example, a case involving a whistleblower in France was protracted due to the cross-border nature of the wrongdoing, resulting in diminished benefits. This illustrative example highlights the need for legal systems to be ready to react to the specificities of the case. Another case from Ireland suggests that whistleblower protection may be uniquely beneficial for identifying the individuals responsible, while other anti-corruption activities such as audits may only identify instances of non-compliance. In Italy, the experience of a whistleblower underscores the importance of having dedicated support available in case of retaliation. Financial support and other remedies may also be appropriate. Lastly, one of the greatest benefits of whistleblower protection in the area of public procurement may not be the actual recovery of funds, but the deterrent effect, as is suggested by a case from the

⁸² T. Carson, M. Verdu and R. Wokutch, 2008, *op. cit.*

Netherlands. Instances of corrupt practices and wrongdoing may decrease due to concerns that the people involved may be exposed by a whistleblower. For more information about these illustrative cases, please see Annex 1.

The scope of this study was limited to the actual set up and operations of whistleblower protection systems. However, the importance of external factors, such as attitudes towards transparency and the rule of law, in the effectiveness of whistleblower protection should not be discounted. Monitoring the implementation of whistleblower protection systems and the larger systems in which they are situated (e.g. Anti-Corruption Strategies) can serve to identify where inefficiencies lie and where more potential benefits can be gained.

Annex 1 – Country fiches

1 France

1.1 Overview of legislation

In France, fragmented legislation to protect whistleblowers in different sectors has been in place since 2007. In December 2016, the Sapin II law⁸³ introduced whistleblower protection that applies horizontally across sectors, in contrast to the previous sectorial protection. Although the Sapin II law is not a stand-alone law on whistleblower protection, it includes 11 provisions related to the protection of whistleblowers⁸⁴. The Implementation decree no 2017-564, which governs the establishment of relevant procedures, was passed in April 2017. Since the implementation decree is rather recent, implementation of the law is not expected until 2018.

The main characteristics of the whistleblower protection framework as established by the Sapin II law are presented in the following.

- Definition of worker: Employees in private and public companies and civil servants with any type of contract.
- Definition of wrongdoing: A crime or misdemeanour, a serious and manifest violation of international or national law, or a serious threat or prejudice to the public interest. There are some exceptions including for national security.
- Channels of disclosure: Disclosures should first be made through internal channels, which should be established by private and public companies with at least 50 employees, as well as by most public administrations. If the disclosure is not properly handled, it can then be presented to an external channel of disclosure. There are various potential external channels of disclosure, including the judiciary or professional orders. Furthermore, the *Défenseur des Droits*⁸⁵ can help the whistleblower to identify the appropriate external channel. If the disclosure has not been handled by internal or external channels within 3 months and there is a risk of irreversible damage, the disclosure can be made to the public through the media.

1.2 Methodology for cost estimates

Our estimate for the costs of developing the legislation are based on two activities:

- the adoption of the legislation;
- the drafting of implementation decree no 2017-564 and related consultations.

The first activity involved two category A civil servants over a period of six and a half months. During the period, there were four public debates, four committee meetings

⁸³ Loi n° 2016-1691 du 9 décembre 2016 relative à la transparence, à la lutte contre la corruption et à la modernisation de la vie économique (Sapin II Law).

⁸⁴ Law 2016-1691 is more commonly known as the Sapin II law. Articles 6 to 16 relate to whistleblower provisions.

⁸⁵ The *Défenseur des Droits* is an independent government agency that was created in 2011 to defend individuals whose rights are not respected and allow equal access to justice. The *Défenseur des Droits*' competence to handle disclosures is recent and based on Loi organique n° 2016-1690 du 9 décembre 2016 relative à la compétence du Défenseur des droits pour l'orientation et la protection des lanceurs d'alerte (Act 2016-1690).

Défenseur des Droits, 2015, available at <http://www.defenseurdesdroits.fr/fr/institution/presentation>

and 1 final reading. Concerning the second activity, the drafting of the decree involved 1.5 FTE of a category A civil servant for a period of four months. Drawing on the base salary for a category A civil servant, the overall costs of the legislation and the decree were estimated to be EUR 66,500.

Due to the fact that the legislation and its implementation decree are quite recent, little information was gathered on the costs of setting up internal and external channels. Public bodies with at least 50 employees at all levels are required to establish an internal channel. These bodies include more than 1,400 public authorities, 96 departments (between regions and municipalities), 967 municipalities (out of 35,885 in total), and 587 public bodies for cooperation between local authorities. We therefore estimate that there are at least 3,050 such bodies. Thus, even minimal costs may be sizeable in aggregate and are worth noting.

It is not clear how many public and administrative bodies are required to set up an external channel. Through a correspondence with the French Prudential Supervision and Resolution Authority (the ACPR)⁸⁶ we gathered insights into the costs associated with setting up and maintaining an external channel. The ACPR set up the channel as early as 2015 to collect and process alerts in accordance with the transposition of the Capital Requirements Directive IV (CDR IV). A representative from ACPR could not tell us how many disclosures were made per year, but noted that the costs of handling them in relation to personnel and other resources were minimal. While the channel was already established before the Sapin II law, the scope for which a disclosure can be made was broadened by the Sapin II law. Whether the number of disclosures will increase as a result remains to be seen.

Our estimate for the incremental costs of the system are primarily based on expected costs to be incurred by the *Défenseur des Droits*. The 2016 expenditures for the organization are EUR 28,110,389, covering an estimated 40 staff members. About 56 percent of these expenditures were for salaries. An average expenditure per staff member value was calculated and then multiplied by four, as we learned through an interview that four positions would be created to support the law.

1.3 Findings on costs and benefits

The amount of time that civil servants from the Ministry of Interior devoted to following the review of the legislation in Parliament and the drafting of the implementation decree was roughly calculated to have cost EUR 66,500 or 1.5 annual FTE. This figure does not, however, reflect time for preparing the impact assessment⁸⁷, which is required for every law, and the consultation process. Consultations were carried with actors from various sectors and associations including the OECD, the association of private enterprises (AFEP), the trade union of magistrates, the national conference of procurers, and NGOs such as Transparency International, Sherpa, and Anticor.

Table 10 below presents the number of amendments tabled and adopted for the whistleblower provisions in the Sapin II law as well as the entire law (168 articles). Although whistleblower provisions accounted for 6 percent of the total number of articles, the number of amendments tabled and adopted specifically on the whistleblower provisions represented 12 percent of the total figures. Information

⁸⁶ The ACPR (Autorité de contrôle prudentiel et de résolution) is an independent administrative authority, working under the auspices of the French central bank, which is responsible for monitoring the banking and insurance sectors in France.

⁸⁷ République Française, 2016, *Etude d'impact - Projet de Loi relatif à la transparence, à la lutte contre la corruption et à la modernisation de la vie économique*, 30 March 2016, p. 25.

about the time devoted to preparing and reviewing amendments was not available and, thus, estimates of their cost were not developed.

Table 10: Amendments tabled and adopted on the Sapin II

| Type of amendments | Whistleblower provisions (11 articles) | | Whistleblower provisions (11 articles) | All provisions (168 articles) |
|---|--|----------------------------|--|-------------------------------|
| | Lower chamber | Higher chamber | | |
| Amendments tabled in committees (all readings): | 58 (Adopted: 25) | 35 (Adopted: 19) | 93 (Adopted: 44) | 999 (Adopted: 428) |
| Amendments tabled in plenary (all readings): | 145 (Adopted: 35) | 75 (Adopted: 8) | 220 (Adopted: 43) | 1,566 (Adopted: 290) |
| Total: | 203 (Total adopted: 60) | 110 (Total adopted: 27) | 313 (Total adopted: 87) | 2,565 (Total adopted: 718) |

According to legislation, private and public bodies with at least 50 employees should set up internal channels. There are at least 3,050 public bodies (public authorities, public establishments, and State administrations) to which this would apply. However, information on activities involved in setting up these channels could not be obtained from government focal points and the relative cost of such activities could not be estimated.

Table 11 presents an overview of the cost findings in France. The Sapin II law and Act 2016-1690 give to the *Défenseur des Droits* the responsibilities of collecting and forwarding disclosures from whistleblowers to the relevant external channel. Disclosures are collected through an online portal, the set-up costs of which were estimated to be EUR 100,000. Four positions within the *Défenseur des Droits* were created to support the new law (one senior individual, two lawyers and one assistant). The associated costs, including salaries for these individuals, was estimated to be EUR 2,811,039 annually starting in 2017. The agency is expected to handle about 400 letters/disclosures per year.

As previously mentioned, the number of possible external channels could not be determined, nor it is apparent which public bodies already had external channels in place due to earlier legislation on whistleblower protection. In case external channels are already in place, it is expected that little to no adaptation would be necessary. Through interviews we learned that national public bodies likely did not have external channels prior to the adoption of Sapin II. However, the French Prudential Supervision and Resolution Authority (the ACPR), which is related to the financial sector, reported setting up an external channel as early as 2015 in accordance with the national transposition of the CDR IV.

Table 11: Overview of estimated costs of whistleblower protection by type and activity

| Information/data on the costs of the whistleblower protection system | | |
|--|--|-------------|
| Type | Activity | Amount |
| Systemic | Drafting of Implementation Decree | EUR 21,000 |
| | Following the adoption of the legislation (Ministry of the Interior) | EUR 45,500 |
| | <i>Défenseur des Droits</i> – online portal | EUR 100,000 |

| Information/data on the costs of the whistleblower protection system | | |
|--|--|----------------------|
| | TOTAL | EUR 166,500 |
| Incremental | <i>Défenseur des droits</i> – staff and other costs (e.g. office space rental) | EUR 2,811,039 |
| | TOTAL | EUR 2,811,039 |
| Major cost categories not included: Drafting of the legislation, setting up internal and external channels and handling disclosures | | |

The estimates of potential benefits are presented in Table 12. In particular, we have estimated that comprehensive and well-implemented whistleblower protection in France would potentially allow to identify corrupted funds in public procurement for EUR 2.9 to 4.9 billion annually. As not all corruption and unlawful actions result in a loss of public funds, we estimated that the amount of public funds that could be potentially recovered in the area of public procurement amount to EUR 524.9 to 874.8 million annually. Table 12 also presents the ratio of potential benefits to costs calculated for France, which ranges from 176:1 to 294:1. However, this ratio should be seen as a rough estimate where the costs are likely to be under-estimated, given that certain major cost categories were not included in the analysis, as indicated in Table 11.

Table 12: Overview of estimated potential benefits of whistleblower protection

| Estimated potential benefits of the whistleblower protection system in the public procurement sector | | | |
|--|-------------------|-------------------|-------------------|
| Potential benefits | Scenario 1 | Scenario 2 | Scenario 3 |
| Corrupted funds potentially identified thanks to whistleblower disclosures | EUR 2,915,900,000 | EUR 3,887,866,667 | EUR 4,859,833,333 |
| Potential misused funds recovered due to whistleblower disclosures | EUR 524,862,000 | EUR 699,816,000 | EUR 874,770,000 |
| Ratio of potential benefits to costs | Scenario 1 | Scenario 2 | Scenario 3 |
| | 176:1 | 235:1 | 294:1 |
| Output: number of disclosures received by central public bodies | | | |

The *Défenseur des droits* is expected to receive about 400 whistleblower disclosures a year.

Note: The ratio of potential benefits to costs is not included in the main body of the report due to the limited coverage of cost categories.

1.4 Illustrative case of whistleblowing in the area of public procurement

Patrick Malick was working in a construction company when he reported in 2009 bribery and collusion in the course of public procurement attribution and execution, including bribes directly paid to the Mayor of Metz. Investigations carried out by the Strasbourg interregional judiciary police led to the confirmation of the existence of collusion in about 50 contracts, leading to unlawful pre-attribution of contracts as per the rules of public procurement, as well as to the qualification of bribery and misuse of corporate assets. The case was referred to the Ministry of Justice Central Service against corruption (SCPC), which recommended extending the investigations. However, due to the extension of the investigation scope geographically – as the investigated operations had tight links with a company based in Luxembourg – a new investigation judge was appointed in 2011. Investigations in Luxembourg could not confirm the existence of bribery or collusion, as no intent could be demonstrated. After

a period of two years of very little advancement of the investigation, the NGO Anticor asked for a reopening of the case and continuation of investigation in France. Eventually, in 2015, the Chamber of Instruction dropped the charges, arguing that the case was old and advanced investigations measures were already taken⁸⁸.

This case demonstrates the valuable contribution that whistleblowers can make in terms of detecting unlawful procedures in the area of public procurement. However, the protracted investigations, also caused by the cross-country nature of the case, prevented the realization of the overall potential benefits and possibly the recovery of misused public funds.

2 Ireland

2.1 Overview of legislation

The Irish Protected Disclosures Act (PDA) came into effect on 15 July 2014 and represents an example of comprehensive and horizontal legislation to protect whistleblowers. The legislation seems to be properly implemented, at least in public bodies at national level.

The main characteristics of the PDA are presented in the following.

- Definition of worker: employees or former employees, trainees, people working under a contract for services, independent contractors, agency workers, people on work experience and the Gardaí.
- Definition of wrongdoing: broad definition that includes the commission of criminal offences, failure to comply with legal obligations, endangering the health and safety of individuals, damaging the environment, miscarriage of justice, misuse of public funds, and oppressive, discriminatory, grossly negligent or grossly mismanaged acts or omissions by a public body. In addition, the concealment or destruction of information about any of the above wrongdoing is also included.
- Channels of disclosure: Whistleblowers can report internally to their employer or externally to a prescribed body. In case of internal disclosure, employees of public bodies may choose to report to the relevant Minister. A worker can also disclose information to one of the prescribed bodies listed in the PDA (see SI 339/2014 as amended by SI 448/2015). In addition, the legislation envisages that protected disclosures can be made to an external person, such as a journalist, upon certain conditions specified by the PDA.

2.2 Methodology for cost estimates

Our analysis of costs was based on the information gathered through the Department of Public Expenditure and Reform on the costs faced by some Irish central public bodies in their implementation of the PDA. Following a phone interview with the Department of Public Expenditure and Reform and a submission of a request for information, the Department surveyed a sample of 25 Irish central public bodies to support the study. The survey sought to gather information regarding the costs that the public bodies incurred to set up and maintain channels of disclosures. An overview of the information gathered from 12 central public bodies that replied to the survey as well as from the Workplace Relations Commission is presented in Table 13Table 13. In

⁸⁸ The information presented is based on the communication with the French NGO Anticor, which is a member of the Platform against tax and judicial paradises.

addition, the Department compiled and sent to us additional information from Transparency International Ireland.

Table 13: Overview of information received from Irish central public bodies

| Irish central public body | Activities for which cost estimates were provided |
|--|--|
| Central Statistics Office | Internal guidelines, awareness raising |
| Department of Agriculture, Food and the Marine | Internal guidelines, awareness raising, internal training, advice to confidential recipients |
| Department of Communications, Climate Action and Environment | Internal guidelines, awareness raising, internal training |
| Department of Defense | Internal guidelines, processing disclosures, carrying out investigations |
| Department of Education and Skills | Internal training |
| Department of Finance | Internal training |
| Department of Public Expenditure and Reform | Development of legislation, internal guidelines, internal training, free advice (Speak Up helpline) |
| Department of Social Protection | Internal guidelines, internal training, processing disclosures |
| Department of the Taoiseach | Internal training |
| Legal Aid Board | Internal training |
| Office of Public Works | Internal training |
| Public Appointments Service | Internal training |
| Workplace Relations Commission | Developing the Code of Practice for Public and Private Bodies, processing complaints in relation to PDA, adjudication of cases |

The information provided by the Department of Public Expenditure and Reform was transferred into an Excel spreadsheet. Each cost was categorised based on the authority involved, the activity and the relative type of cost (i.e. systemic or incremental). The costs for developing the Protected Disclosures Act were estimated internally by the Department of Public Expenditure and Reform and did not require further analysis. However, the information on the systemic and incremental costs related to channels of disclosures required further analysis and extrapolation. More specifically, we calculated the weighted average of the cost of different activities (e.g. internal training, handling disclosures etc.) reported by the surveyed public bodies (weighted by the number of employees⁸⁹). The cost estimates from the central public bodies that were surveyed were extrapolated to 225 central public bodies. The number of central public bodies was calculated based on the Register of Public Sector Bodies prepared by the Irish Central Statistics Office⁹⁰.

2.3 Findings on costs and benefits

Table 14 presents an overview of the cost findings in Ireland. The two main activities in the category of systemic costs were the development of legislation and the internal training carried out on whistleblower protection for the personnel of the departments. The estimated cost (EUR 424,396) of developing the legislation includes also the cost incurred by the Department of Public Expenditure and Reform to develop a Guidance for Public Bodies. Given the complexity of the subject and to ensure high quality guidance, the Department of Public Expenditure and Reform engaged external legal input to assist with the development of the Guidance. Therefore, the estimated cost covers the legal element as well as the Departmental staff time. The cost for internal

⁸⁹ The number of employees per public body by year was gathered from the Department of Public Expenditure and Reform, Databank, Public Service Staff Numbers Databank, viewed 10 April 2017 at http://databank.per.gov.ie/Public_Service_Numbers.aspx.

⁹⁰ Central Statistics Office, April 2017, 2016 Register of Public Sector Bodies (including General Government Bodies) in Ireland, Methodological note, available at <http://www.cso.ie/>.

training varied across Departments and was estimated to be on average EUR 3,177, which corresponds to EUR 714,716 for 225 Irish central public bodies.

Concerning incremental costs, judicial costs were estimated to be rather low in Ireland, corresponding to EUR 5,600 in 2016 for both claims and cases under the PDA. Incremental costs in Ireland were mainly related to processing and investigating disclosures: an annual average of EUR 8,438 and EUR 11,157 per public body. Therefore, the cost of processing and investigating disclosures for 225 public bodies was estimated to be EUR 1.9 and 2.5 million per year respectively. Another significant incremental cost in Ireland was public funding (annual average of EUR 260,000) for free advice provided by Transparency International Ireland to whistleblowers or individuals who consider disclosing wrongdoing.

Table 14: Overview of estimated costs of whistleblower protection by type and activity

| Information/data on the costs of the whistleblower protection system | | |
|--|---|----------------------|
| Type | Activity | Amount |
| Systemic | Drafting the legislation, conducting an impact assessment and preparing guidelines | EUR 424,396 |
| | Developing the code of practice for public and private bodies | EUR 7,922 |
| | Preparation of internal guidelines and awareness campaigns – weighted sum of sample average across 225 Irish central public bodies | EUR 1,676,886 |
| | Internal training – weighted sum of sample average across 225 Irish central public bodies | EUR 714,716 |
| | TOTAL systemic costs | EUR 2,823,920 |
| Incremental | Judicial costs of handing disclosures and cases (13 complaints and 3 cases in 2016) | EUR 5,600 |
| | Internal channels – processing disclosures – average from two departments across three years, extrapolated to 225 Irish central public bodies | EUR 1,898,550 |
| | Internal channels – internal and external investigations – weighted sum of sample average 225 Irish central public bodies | EUR 2,510,250 |
| | Speak Up helpline – free legal advice – annual average for two years (2016-2017) | EUR 260,000 |
| | TOTAL annual incremental costs | EUR 4,674,400 |

The estimates of potential benefits are presented in Table 15. In particular, we have estimated that comprehensive and well implemented whistleblower protection in Ireland would potentially allow to identify corrupted funds in public procurement in the range of EUR 57.4 to 95.6 million annually. As not all corruption and unlawful actions result in a loss of public funds, we estimated that the amount of public funds that could be potentially recovered in the area of public procurement amount to EUR 10.3 to 17.2 million annually. Table 15 also presents the ratio of potential benefits to costs calculated for Ireland that ranges from 1.4:1 to 2.3:1.

Table 15: Overview of estimated potential benefits of whistleblower protection

| Estimated potential benefits of the whistleblower protection system in the public procurement sector | | | |
|--|----------------|----------------|----------------|
| Potential benefit | Scenario 1 | Scenario 2 | Scenario 3 |
| Corrupted funds potentially identified thanks to whistleblower disclosures | EUR 57,374,000 | EUR 76,498,667 | EUR 95,623,333 |

| Estimated potential benefits of the whistleblower protection system in the public procurement sector | | | |
|--|-------------------|-------------------|-------------------|
| Potential misused funds recovered due to whistleblower disclosures | EUR 10,327,320 | EUR 13,769,760 | EUR 17,212,200 |
| Ratio of potential benefits to costs | Scenario 1 | Scenario 2 | Scenario 3 |
| | 1.4:1 | 1.8:1 | 2.3:1 |

2.4 Illustrative case of whistleblowing in the area of public procurement

A whistleblower disclosure was made in Ireland in 2015 about public procurement practices in five hospitals.⁹¹ Following the 'Prime Time' investigation on RTE, the St Vincent's Private Hospital and Beacon Hospital suspended three members of the staff, which according to the RTE report "accepted expensive holidays and gifts, and were accused of passing on commercially sensitive information to a surgical supplies company"⁹², Eurosururgical Ltd. The hospital's employees, "leaked competitors' price lists to Eurosururgical and (...) went on holidays paid for by the company and accepted gift vouchers worth up to EUR 500 for Brown Thomas."⁹³ The Health Service Executive (HSE) suspended all payments to Eurosururgical Ltd from all hospitals. Both St Vincent's and Beacon hospitals have set up internal investigations procedures, and the employees involved were put on leave.

In 2013, the Comptroller and Auditor General noted that there was a "significant level of non-compliance" with procurement rules within the HSE⁹⁴, specifically, EUR 1.6 billion of the EUR 14 billion budget for the procurement of goods and services for hospitals. Their report noted that 36 percent of purchases were not undertaken using appropriate procurement processes. This case seems to indicate that whistleblowers can be crucial to determine precisely the responsibility of certain misconducts, although the audit can show general non-compliance levels.

3 Italy

3.1 Overview of legislation

In Italy, protection for public sector whistleblowers was introduced in the Unified Text on Public Sector Employment⁹⁵ by the anti-corruption law⁹⁶, which entered into force on 28 December 2012⁹⁷. The Italian legislation to protect whistleblower is considered partial as its scope covers only public sector employees.

⁹¹ N. O'Connor, R. Nugent and G. Harkin, 18 July 2015, 'Fraud squad probe alleged corruption at seven hospitals', *Herald.ie*, viewed 5 April 2017 at <http://www.herald.ie/news/fraud-squad-probe-alleged-corruption-at-seven-hospitals-31385781.html>.

M. Wall, 17 July 2015, 'Analysis: Investigations to follow hospital procurement claims', *The Irish Times*, viewed 5 April 2017 at <http://www.irishtimes.com/news/health/analysis-investigations-to-follow-hospital-procurement-claims-1.2289086>.

⁹² N. O'Connor, R. Nugent and G. Harkin, 2015, *op. cit.*

⁹³ C. Coyle, 8 January 2017, 'Eurosururgical boss goes bankrupt', *The Times UK*, viewed 15 May 2017 at <https://www.thetimes.co.uk/article/eurosururgical-boss-goes-bankrupt-3bqvsk8kt>

⁹⁴ European Commission, DG HOME, Corruption, E. Byrne, Ireland, available at https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/organized-crime-and-human-trafficking/corruption/experience-sharing-programme/docs/e_byrne_the_irish_case_en.pdf

⁹⁵ Legislative Decree 30 March 2001, n. 165, art. 54bis.

⁹⁶ Law 6 November 2012 n. 190, art. 1,51.

⁹⁷ Gazzetta Ufficiale della Repubblica Italiana, viewed 15.05.2017 at <http://www.gazzettaufficiale.it/>

The main characteristics of the whistleblower protection provision are presented in the following.

- **Definition of whistleblower:** the provision refers to public sector employees that report unlawful actions witnessed as part of their work, although a clear definition is not included.
- **Definition of wrongdoing:** the provision does not contain a specific definition, but it refers to 'unlawful actions'. Guidelines prepared by the National Anti-Corruption Authority (ANAC) specify that 'unlawful actions' include: offences against the PA, abuse of power to obtain private advantages, bad functioning of the administration due to the use of the assigned functions for private purposes.
- **Channels of disclosure:** Internal disclosures to the Responsible of Corruption Prevention; external disclosures to the judicial authority or the National Audit Office or the national Anti-Corruption Authority (ANAC). There is no hierarchy between internal and external channels, nor between the different external channels.
- **Anonymity and/or confidentiality:** Anonymity is not ensured. Confidentiality is ensured, according to the law, except for criminal law cases. According to Italian NGOs, the confidentiality principle is not always well implemented.

The anti-corruption law requires that each public administrative body appoints a responsible person for the prevention of corruption (RPC)⁹⁸. It has been acknowledged that the RPC is also in charge of receiving and handling whistleblower disclosures in the public administrations. Moreover, the RPC has to report annually to the National Anti-Corruption Authority (ANAC) about the anti-corruption activities of the public administrative body. The annual report includes a section on whistleblower protection, which provides the following information:

- whether the PA has developed a procedure to receive whistleblower disclosures;
- which form the procedure takes (e.g. e-mail, IT system);
- in case the PA has not developed a procedure, the reasons why this is the case;
- whether the PA has received disclosures;
- how many disclosures the PA has received;
- whether the PA has received anonymous disclosures or disclosures from external public employees;
- suggestions on how to strengthen the whistleblower protection procedure.

3.2 Methodology for cost estimates

The analysis of costs for the implementation of the whistleblower protection system in Italy focused on the collection of information for a sample of central and local public administrative bodies. Due to the extremely high number (22,523⁹⁹) of existing public administrative bodies in Italy, it was not possible to review the RPC reports from each body, nor to extrapolate our estimates for costs from a sample of bodies to all bodies.

⁹⁸ Law 6 November 2012 n. 190, art. 1,7. In Italian this figure is called 'Responsabile della Prevenzione della Corruzione' (RPC).

⁹⁹ IPA Indice delle Pubbliche Amministrazioni, I numeri dell'IPA, viewed 16.05.2017 at <http://indicepa.gov.it/>.

A written questionnaire to gather information regarding the costs involved by different activities (e.g. training, management of disclosures etc.) related to the whistleblower protection system was sent to the following central public administrations:

- All 13 Italian Ministries¹⁰⁰;
- The Presidency of the Council of Ministries;
- National Audit Office¹⁰¹;
- Competition Authority¹⁰²;
- Stock Market Supervision Authority¹⁰³.

In addition, a sample of local public administrative bodies were contacted:

- Lazio region;
- Umbria region;
- Calabria region;
- Veneto region;
- Lombardy region;
- Sardinia region;
- Municipality of Milan.

The cost estimates for Italy were calculated based on the following sources of information:

- Interview with public official from the Planning and information analysis unit of the National Anti-Corruption Authority (ANAC);
- Reply to the written questionnaire from the Ministry of Economy and Finance, from the Competition Authority, and from the City of Milan;
- Annual reports on anti-corruption measures prepared by the Responsible for the Prevention of Corruption (RPC) of Italian Ministries (13 in total), of the Presidency of the Council of Ministries, of the National Audit Office, of all Italian regions, and of a selection of Italian municipalities¹⁰⁴.

Our methodology to estimate the costs of the whistleblower protection system in Italy was based on combining the information gathered from the RPCs and the replies to the questionnaire. We extrapolated the cost estimates from the Ministry of Economy and Finance and from the Municipality of Milan to the other central and local public administrative bodies in the sample. Table 16 presents the information collected from each source in greater detail, and how the information was used in the calculation of the final estimates.

¹⁰⁰ Foreign Affairs and International Cooperation; Interior; Justice; Defense; Economy and Finance; Economic Development; Agriculture, Food and Forestry Policy; Environment and Land and Sea Protection; Infrastructure and Transport; Labour and Social Policy; Education, University and Research; Culture and Tourism; Health.

¹⁰¹ Corte dei Conti.

¹⁰² Autorità Garante della Concorrenza e del Mercato.

¹⁰³ Commissione Nazionale per la Società e la Borsa (CONSOB).

¹⁰⁴ The Italian municipalities include in the analysis are the following: Florence, Milan, Naples, Palermo, Perugia, Rome, Trieste, and Vibo Valentia. The selection covers Italian cities from the South, North, and the Centre and it was made on the basis of additional information about whistleblower disclosures provided by the ANAC in one of its reports.

Table 16: Source and type of information for cost estimates of the whistleblower protection system in Italy

| Source of information | Format of information retrieved | Information retrieved | Use for cost estimates |
|---|--|---|--|
| Planning and Information Analysis Unit, National Anti-Corruption Authority (ANAC) | Phone interview and written communication via e-mail. | Number of staff involved in whistleblower disclosures; type of disclosure channel in place and relative costs (cost of software). | Systemic and incremental costs for external and internal channels of disclosures. Extrapolation of software costs to the Fiscal Authority and the National Audit Office. |
| National Anti-Corruption Authority (ANAC) | On-line information available on the website. | Number of employees and salaries by function. | Estimate of incremental costs related to staff involved in the management of whistleblower disclosures. |
| Ministry of Economy and Finance | Written questionnaire. | Number of staff involved and amount of time spent on management of disclosures, internal training. | Systemic and incremental costs for internal channels of disclosures. Extrapolation of costs to other Ministries. |
| Central and local public administrations | Annual reports prepared by the Responsible for the Prevention of Corruption (RPC). | Type of disclosure channels in place, number of disclosures. | Estimate of the costs related to the management of disclosures and software costs where relevant. |
| Ministries, Presidency of the Council of Ministries, and National Audit Office | On-line information available on the respective websites. | Annual gross salaries of the RPCs. | Estimate of the costs related to the management of disclosures. |
| City of Milan | Written questionnaire and annual report prepared by the RPC. | Cost of software for disclosure channel. | Extrapolation of software costs to other local PAs considered and for the Ministries. |

Where information on the costs incurred was not readily available, the costs of activities linked to the protection of whistleblowers were calculated by multiplying the amount of time spent on the activity by the salary of the person carrying out the activity. For instance, the cost of handling disclosures for each PA was estimated as follows. The number of disclosures received annually by each of the PAs assessed was multiplied by the share of time spent on handling each disclosure, which was calculated based on the answer to a written questionnaire from the Ministry of Economy and Finance. The result was the total amount of time spent per year on handling disclosures. The amount of time was then multiplied by the salary of the specific individuals carrying out the activity to reach an estimate for the cost of the activity.

With regards to setting up a disclosure channel, we assumed that a disclosure channel based on a phone number, dedicated e-mail address and postal mail would have minimal cost implications, while the costs would be more tangible for the development or purchase of a specific software for whistleblower disclosures. Therefore, the purchase cost of a specific software reported by the Municipality of Milan was used to extrapolate the cost for the other local and central public administrative bodies, and Ministries that reported in their RPCs to have such software in place, as well as for the Fiscal Authority. Similarly, the cost of a specific software reported by the ANAC was used to extrapolate the cost of a similar software purchased by the National Audit Office, as reported by one of the public officials interviewed.

3.3 Findings on costs and benefits

Of the 44 central and local public administrative bodies studied, 20 had setup a system for whistleblower disclosures in 2014. By 2015 this figure had increased to 32 and in 2016 it increased to 41 (all bodies studied except for the Ministry of Justice, the Basilicata region and the Molise region). An overview of the types of channel of disclosure implemented by central and local public administrations as of 2016 is presented in Table 17.

Table 17: Multiple or exclusive channels of disclosure in place in 2016 in the 44 public administrations assessed in Italy

| Paper form | E-mail | IT system | IT system ensuring anonymity | No. of public administrative bodies |
|------------|--------|-----------|------------------------------|-------------------------------------|
| ✓ | - | - | - | 3 |
| ✓ | ✓ | - | - | 9 |
| ✓ | ✓ | ✓ | - | 1 |
| ✓ | ✓ | - | ✓ | 5 |
| ✓ | - | - | ✓ | 3 |
| - | ✓ | - | - | 9 |
| - | ✓ | - | ✓ | 2 |
| - | - | - | ✓ | 9 |

Although it was not possible to gather information on the cost of developing the whistleblower protection provision, it should be noted that whistleblower protection represents only one clause of the overall anti-corruption law. It was therefore, assumed that the costs linked to the development of this particular measure would not have been substantial.

Table 18 presents an overview of the costs estimated for the Italian whistleblower protection system. According to the findings of our research, setting up a channel of disclosure via paper form or via email has minimal cost implications, while an IT system that ensures the respect of confidentiality would represent – in most cases – a substantial cost for the administrative body. At the same time, public administrative bodies seem to value having an IT system that would protect confidentiality. Notably, one of the reasons the Ministry of Environment provided for not having a channel of disclosure in place in 2015 was that they were waiting to buy an IT system to ensure anonymity. Similarly, the 2015 report of the Ministry of Infrastructures and Transport mentioned that an IT system would be introduced in 2016, while the 2016 report shows that only a dedicated e-mail address was in place. Although it was not possible to investigate why this change occurred, it seems reasonable to assume that the cost of an IT system could have represented an obstacle. The Ministry of Economic Development in its 2016 report explicitly mentions the lack of financial resources as an

obstacle to purchase dedicated software that would ensure the anonymity of the whistleblower. Similarly, two local administrations¹⁰⁵ mention the high costs of an encrypted IT system as a reason for adopting other types of disclosure channels. Four regions and one municipality¹⁰⁶ mentioned that they will adopt the IT system developed by the ANAC as soon as it will become available.

Table 18: Overview of estimated costs of whistleblower protection by type and activity

| Information/data on the costs of the whistleblower protection system | | |
|---|---|--------------------|
| Type | Activity | Amount |
| Systemic | Set up and first year maintenance of IT system for internal and external disclosures – ANAC | EUR 90,000 |
| | IT system for WB disclosures – Ministries and other central public bodies | EUR 175,400 |
| | IT system for internal disclosure channel – local public bodies | EUR 140,108 |
| | Internal training on WB protection – Ministry of Economy and Finance | EUR 2,246 |
| | TOTAL systemic costs | EUR 407,754 |
| Incremental | Maintenance of IT system – ANAC | EUR 90,000 |
| | Annual staff cost for management of channel and disclosures – ANAC | EUR 254,795 |
| | Annual staff cost for management of disclosures – sample of central PAs | EUR 140,933 |
| | Annual staff cost for management of disclosures – local PAs (regions) | EUR 20,820 |
| | Annual staff cost for management of disclosures – local PAs (sample of municipalities) | EUR 30,226 |
| | TOTAL annual incremental costs | EUR 536,774 |
| Major cost categories not included | Development of legislation (the whistleblower provision was introduced by a specific comma of the Anti-Corruption law. We assume that its relative cost would not be very significant). Costs faced by other local and central public administrative bodies other than the ones included in the sample. It should be noted that central and local public administrative bodies in Italy amount to 22,523 ¹⁰⁷ . Judicial costs linked to whistleblower cases that face retaliation and file a complaint to the Court. | |

The estimates of potential benefits are presented in Table 19. In particular, we have estimated that comprehensive and well implemented whistleblower protection in Italy would potentially allow to identify corrupted funds in public procurement for EUR 3.3 to 5.5 billion annually. As not all corruption and unlawful actions result in a loss of public funds, we estimated that the amount of public funds that could be potentially recovered in the area of public procurement amount to EUR 596.8 to 994.7 million annually. Table 19 also presents the ratio of potential benefits to costs calculated for Italy that ranges from 632:1 to 1,053:1. However, this ratio should be seen as a rough estimate where the costs are likely to be under-estimated, given that certain major cost categories were not included in the analysis, as indicated in Table 18.

In addition to the estimated potential benefits, information on the number of disclosures received the 44 public administrations assessed in this study. In 2014, the

¹⁰⁵ Municipality of Vibo Valentia (Calabria region) and Puglia region.

¹⁰⁶ Florence, Puglia region, Tuscany region, Trentino-Alto Adige region, Umbria region

¹⁰⁷ IPA Indice delle Pubbliche Amministrazioni, I numeri dell'IPA, viewed 16.05.2017 at <http://indicepa.gov.it/>

public administrative bodies – excluding the National Anti-Corruption Authority – assessed received a total of 98 disclosures (10 from employees and 88 from external public employees). The number of disclosures increased to 256 (239 from employees and 19 from external public employees) in 2015 and 198 in 2016 (144 from employees and 54 from external public employees). The increasing number of internal disclosures could reflect better knowledge of the system and the increasing availability of internal disclosure channels. This may reflect increasing effectiveness of the whistleblower protection system with respect to encouraging employees to disclose information about wrongdoing. The analysis of data from the regions (21 out of 44 public administrative bodies included in the study) seems to show that the introduction of an IT procedure that ensures anonymity is positively associated to the number of disclosures received (case of Emilia-Romagna, Lazio). External disclosures to the National Anti-Corruption Authority also increased throughout the years, since the creation of this Authority: from 16 disclosures in the period May-December 2014 to 200 disclosures in 2015 and 83 disclosures in the period January-May 2016. The upward trend in the number of disclosures, the quality of which have also improved in terms of content relevance according to the ANAC, may represent a better awareness and knowledge of the whistleblower protection provision. Awareness raising practices in several public administrations may have, for instance, contributed to this finding.

Table 19: Overview of estimated potential benefits of whistleblower protection

| Estimated potential benefits of the whistleblower protection system in the public procurement sector | | | | |
|---|------------------------------|--------------------|------------------------------|--------------------------|
| Type of potential benefit | | Scenario 1 | Scenario 2 | Scenario 3 |
| Corrupted funds potentially identified thanks to whistleblower disclosures | | EUR 3,315,650,000 | EUR 4,420,866,667 | 5,526,083,333 |
| Potential misused funds recovered due to whistleblower disclosures | | EUR 596,817,000 | EUR 795,756,000 | 994,695,000 |
| Ratio of potential benefits to costs | | Scenario 1 | Scenario 2 | Scenario 3 |
| | | 632:1 | 842:1 | 1,053:1 |
| Output: number of disclosures received by central public bodies | | | | |
| Internal/external disclosure | Public administration | Time period | Number of disclosures | |
| External | Central ¹⁰⁸ | 2014 | | 68 |
| | | 2015 | | 18 |
| | | 2016 | | 33 |
| | | 2014-2016 | | 118 |
| | | Internal | | |
| Internal | Central ¹⁰⁸ | 2014 | | 0 |
| | | 2015 | | 222 |
| | | 2016 | | 103 |
| | | 2014-2016 | | 325¹⁰⁹ |
| | | Internal | | |
| Internal | Local (regions) | 2014 | | 7 |
| | | 2015 | | 8 |
| | | 2016 | | 30 |
| | | 2014-2016 | | 45 |
| | | External | | |
| External | | 2014 | | 10 |

¹⁰⁸ Central PAs include all Ministries, the Presidency of the Council of Ministries, the National Audit Office, and the Fiscal Authority.

¹⁰⁹ Of the 325 disclosures received, four did not fall within the definition of art.54bis Legislative Decree 30 March 2001, according to the RPC report.

| Estimated potential benefits of the whistleblower protection system in the public procurement sector | | | |
|--|--|-----------------------------|-------------------------------|
| | | 2015 | 1 |
| | | 2016 | 21 |
| | | 2014-2016 | 32 |
| Internal | | 2014 | 3 |
| | | 2015 | 7 |
| | | 2016 | 11 |
| External | Local (sample of municipalities ¹¹⁰) | 2015-2016 | 21 |
| | | 2014 | 10 |
| | | 2015 | 0 |
| | | 2016 | 0 |
| | | 2015-2016 | 10 |
| External (mainly from public administrations) | ANAC | Sep. – Dec. 2014 | 16 (1 related to PP) |
| | | 2015 | 200 (37 related to PP) |
| | | Jan. – May 2016 | 83 (18 related to PP) |
| | | Sep. 2014 – May 2016 | 299 (55 related to PP) |

Note: The ratio of potential benefits to costs is not included in the main body of the report due to the limited coverage of cost categories.

3.4 Illustrative cases of whistleblowing in the area of public procurement

The engineer Vito Sabato is a civil servant at the city of Pavia (Lombardy region). In 2006, while he was in charge of reviewing the city expenses for public transport, Mr Sabato noticed that some public tenders of the city were overstated. In particular, he noticed that conspicuous public funds were allocated to build bus stops in not populated areas, to road signs that were never created or was invoiced several times, and for maintenance of non-existent roads. All of these irregularities amounted to **over EUR 2 million**. In 2007, Mr Sabato decided to report these facts to the prosecutor and the responsible people were convicted in the Court of First and Second Instance. However, the case became statute-barred. Mr Sabato was forced to leave his position and displaced within the city administration. Since he reported the wrongdoing he has not been able to perform tasks according to his qualifications, he has been isolated and he suffers of depression-anxiety symptoms¹¹¹. This particular case seems to indicate that dedicated support to whistleblowers who face retaliation is needed.

Maria Grazia Blefari was manager of the Contracting Authority in the province of Reggio Calabria when she witnessed irregularities in the majority of public tenders issued by the local administration. Ms Blefari reported these irregularities to the financial police on the 11 August 2011. After conducting investigations, the financial police found out that a local company was stirring the public procurement process thanks to the cooperation of corrupted civil servants. According to the Preliminary

¹¹⁰ The municipalities included are: Florence, Milan, Naples, Palermo, Perugia, Potenza, Rome, Trieste and Vibo Valentia.

¹¹¹ Riparte il Futuro, *Storia di Vito: una verità scomoda caduta in prescrizione*, 20 April 2017, viewed 15.05.2017 at <https://www.riparteilfuturo.it/blog/articoli/vito-sabato-whistleblowing-prescrizione>
C. Pracchi, 16 November 2016, 'Pavia, la dura vita del whistleblower: denunciò il malaffare, da nove anni in Comune a far nulla. E il sindaco tace', *Il Fatto Quotidiano*, viewed 15.05.2017 at <http://www.ilfattoquotidiano.it/>.

Investigations Judge, the role of Ms Blefari was key to discover this large case of corruption in public procurement.¹¹²

4 Netherlands

4.1 Overview of legislation

In the Netherlands, protection for whistleblowers is offered by different pieces of legislation and labour union agreements that have been put into place since 2001. In July 2016, the *Huis voor Klokkeluiders* law was passed to create an external channel for both the public and private sectors.

The main characteristics of the latest whistleblower protection legislation are presented in the following.

- Definition of worker: Employees including those with zero hour contracts, temporary workers who have worked for more than 24 hours with the organization, volunteers, and persons who have seconded the employer to other institutions.
- Definition of wrongdoing: Actions (that are supported by evidence) that threaten the public interest such as violations of environmental law or tax law or a threat to public safety.
- Channels of disclosure: Whistleblower disclosures should be made through the designated internal channel when possible. If not possible, the disclosure should be made to the *Huis voor Klokkeluiders*, the external channel.

4.2 Methodology for cost estimates

The key sources of information and data about the whistleblower protection system in the Netherlands included interviews or email correspondence with a representative from a trade union, a representative from the Society of Dutch Municipalities, a representative from the Ministry of the Interior and an official from the external channel *Huis voor Klokkeluiders* (Whistleblower House), which was established in July 2016. Budgetary information was also obtained from the 2016 Annual Report of the Whistleblower House.

All information gathered from the sources was input into an Excel spreadsheet. The interviewees typically provided information regarding the amount of time, approximate salaries and the number of people involved in certain activities. Salaries for senior officials in the central government and municipalities were obtained from an official source¹¹³.

For the development of the legislation, an expert group was convened with the support of a half person over a period of two years. In the subsequent two years, 1.5 to 2 people worked full-time on the legislation.

A survey was circulated to representatives of public bodies at the national, provincial and municipal levels to gather information on setting up and maintaining internal channels of disclosure. Only one response was received from the representative of the Society of Municipal Bodies. This response provided information about staff time

¹¹² R. Galullo, 28 March 2012, 'Mariagrazia Blefari santa subito! In Calabria si oppone agli appalti truccati e per questo la vogliono uccidere in treno', *Il Sole 24 Ore*, viewed 15.05.2017 at <http://robertogalullo.blog.ilsole24ore.com/>

¹¹³ <https://www.werkenvoornederland.nl/over-de-rijksoverheid/arbeidsvoorwaarden>

associated with setting up a channel in a municipality. This information was translated to a monetary figure using an estimate of salary and multiplied by 388, which is the number of municipal bodies in the Netherlands. Costs to set up an internal channel were not estimated for national and provincial public bodies due to their non-response to the survey.

With regards to the external reporting and investigation institution, the Whistleblower House, costs were estimated as follows. Through an interview with a representative from the organization, we learned that about half of the planned budget of EUR 3 million would be allocated to staff. This figure was then divided by the number of employees (15) and multiplied by the number of staff in each unit – Consulting, Knowledge & Prevention, Research, and Management. Consulting and Research were classified as incremental costs as they relate to processing of disclosures, while the remaining units were considered as systemic costs. The remainder of the budget (net of salaries) was similarly divided between systemic and incremental costs. The representative reported that about half of these funds were for systemic costs such as the rent for the facility and the ICT system, while the remaining half were discretionary funds to support the investigation of whistleblower disclosures, for example, hiring of experts.

4.3 Findings on costs and benefits

For this study, we focused on the costs associated with the Act passed in July 2016 establishing the *Huis voor Klokkeluiders* (Whistleblower House). The legislation was developed in two rounds over the course of four years. An expert group was convened in the first round to develop the legislation. The total estimated cost for these activities is EUR 597,050.

Table 20 presents an overview of the cost findings in the Netherlands. The Whistleblower House's actual expenditures from July to December 2016 were EUR 0.8 million. The planned budget for 2017 is EUR 3 million. As the body was only set up in July 2016 and the expenditures were limited to five months, the 2017 budget figure was included in our cost estimation. Half of this planned funding is allotted for staff, while the remaining half would be for hiring experts to investigate disclosures, information technology, training for staff members (particularly to communicate with whistleblowers in an appropriate manner) and renting of office space from the Ministry of the Interior. In terms of staffing, four people (soon to be five people) focus exclusively on providing free legal advice, three people (soon to be four people) focus on research and procedures, and three people develop knowledge and prevention activities such as brochures. The Research & Prevention Unit also developed established protocols to define roles and mutual referral with the Public Prosecutor's Office and the National Ombudsman. Lastly, there are five additional staff members to support the management and operation of the organization.

In five months of 2016, the Whistleblower House received 532 reports, of which 70 were genuine whistleblower disclosures¹¹⁴. It is estimated that around one thousand reports will be received in 2017.

A brochure developed by the Whistleblower House notes elements that should be included in the set-up in an employer's internal channel of disclosure. The brochure notes that many employers have already committed to similar arrangements through sectoral and industry agreements.

¹¹⁴ Huis voor Klokkeluiders, March 2017, Jaarverslag 2016 – Annual Report.

Table 20: Overview of estimated costs of whistleblower protection by type and activity

| Information/data on the costs of the whistleblower protection system | | |
|--|---|----------------------|
| Type | Activity | Amount |
| Systemic | Development of legislation – Ministry of the Interior | EUR 358,050 |
| | Development of legislation – Expert group consultation | EUR 239,000 |
| | External channel (<i>Huis voor Klokkeluiders</i>) – Knowledge & Prevention Unit (develop brochures and guidance documents), set up ICT system (providing for cases to be safe and secure), management staff | EUR 1,550,000 |
| | Set up internal channels in all municipalities | EUR 2,104,900 |
| | TOTAL | EUR 4,251,950 |
| Incremental | External channel (<i>Huis voor Klokkeluiders</i>) – Staff to provide free advice (Consulting Unit and Division of Research) and funds to hire experts to investigate disclosures | EUR 1,450,000 |
| | TOTAL | EUR 1,450,000 |

Major cost categories not included: Handling reports made through internal channels, judicial costs

The estimates of potential benefits are presented in Table 21. We have estimated that comprehensive and well implemented whistleblower protection in the Netherlands would potentially allow to identify corrupted funds in public procurement for EUR 692.9 million to 1.1 billion annually. As not all corruption and unlawful actions result in a loss of public funds, we estimated that the amount of public funds that could be potentially recovered in the area of public procurement amount to EUR 124.7 to 207.9 million annually. Table 21 also presents the ratio of potential benefits to costs calculated for the Netherlands that ranges from 22:1 to 36:1.

Table 21: Overview of estimated costs of whistleblower protection by type and activity

| Estimated potential benefits of the whistleblower protection system in the public procurement sector | | | |
|--|-----------------|-----------------|-------------------|
| Potential benefit | Scenario 1 | Scenario 2 | Scenario 3 |
| Corrupted funds potentially identified thanks to whistleblower disclosures | EUR 692,895,000 | EUR 923,860,000 | EUR 1,154,825,000 |
| Potential misused funds recovered due to whistleblower disclosures | EUR 124,721,100 | EUR 166,294,800 | EUR 207,868,500 |
| Ratio of potential benefits to costs | Scenario 1 | Scenario 2 | Scenario 3 |
| | 22:1 | 29:1 | 36:1 |
| Output: number of disclosures | | | |
| 70 disclosures by whistleblowers made to the external channel in 6 months during 2016. 2 cases reported to misuse of public funds. | | | |

4.4 Illustrative case of whistleblowing in the area of public procurement

In 2014, the province of Limburg wanted to issue a contract for public transport in the province. The contract was worth **EUR 2 billion** and would provide public transport rights for the 2016-2031 period. The company which won the tender, Abellio, received

confidential information from a former employee of a competitor. An employee of the parent company, the Dutch Railways, learned about the communication and hired a lawyer to proceed with a case. The result was that the company ranked second (Arriva) was granted the contract.

This case shows that whistleblower disclosures can contribute to identify unlawful practices in public procurement. Although in this particular case financial gains are not evident, the whistleblower's action contributed to a more democratic public tendering and to deterrence of corrupt behaviour.

5 Romania

5.1 Overview of legislation

In 2004 Romania introduced a standalone whistleblower protection law¹¹⁵ (entry into force on 14 December 2004) with the aim to protect people that report possible wrongdoings in the workplace. Although the law was introduced in 2004, it was not actively implemented until the introduction of the Anti-Corruption Strategy, adopted every four years, the latest being the 2016-2020 one, which includes several implementation measures related to whistleblower protection¹¹⁶. The law does not require the setup of internal channels; however, it appears that most ministries do in fact have them in place.

The main characteristics of the whistleblower protection law are presented in the following.

- Definition of worker: Employees in the public sector, on a permanent or a temporary contract. It also applies to medics, professors, policemen, priests, etc. It does not cover magistrates.
- Definition of wrongdoing: Broad definition that includes: corruption offences; offences against the financial interest of the EU; preferential practices or treatment or discrimination in the exercise of the attributes of the establishments; incompatibilities and conflicts of interest; and abusive use of material or human resources.
- Channels of disclosure: Disclosures can be made to internal and external channels such as: (a) the employer; (b) the leader of the public institution employing the person; (c) the disciplinary committees or other similar prescribed bodies within the public authority; (d) legal bodies; (e) bodies tasked with establishing and investigating conflicts of interests and incompatibilities; (f) parliamentary commissions; (g) the mass media; (h) professional, trade union or employers' associations; and (i) non-governmental organisations.

5.2 Methodology for cost estimates

The key sources of information for Romania were interviews with officials at the Ministry of the Interior, the Ministry of Justice and the Bucharest Tribunal as well as implementation data from the National Anti-Corruption Strategy 2012-2015¹¹⁷ and the report regarding the National Anti-Corruption Strategy 2016-2020¹¹⁸. Challenges were encountered in identifying activities and resources involved in the development of the

¹¹⁵ Law no. 571/2004.

¹¹⁶ See Anti-Corruption Strategy 2016-2020, available at: <http://www.just.ro/strategii-si-politici/strategii-nationale/>

¹¹⁷ See Anti-Corruption Strategy 2012-2015, available at: <http://sna.just.ro/SNA/SNA20122015.aspx>

¹¹⁸ See Anti-Corruption Strategy 2016-2020, available at: <http://www.just.ro/strategii-si-politici/strategii-nationale/>.

legislation, as it was passed in 2004. Many activities related to the implementation of the legislation have been implemented more recently. We focused our efforts on characterizing the costs associated with these activities.

Following the National Anti-Corruption Strategy 2016-2020, each public body with at least 50 employees should allocate at least EUR 200,000 to implementing measures to comply with the law. Assuming that about 15 percent of these funds are related to whistleblower protection activities, we obtained an estimate of EUR 6,000 per year per public body. The estimate of 15 percent was based on information regarding the types of actions falling under the NAS promoting integrity and good governance at all levels of public bodies. While public bodies are not obliged to setup internal channels, in practice we found in a review of the implementation data for the Anti-Corruption Strategy 2012-2015 that national public bodies in most part seem to have implemented them regardless. We estimated that there were about 59 national public authorities in Romania on 31 December 2016. Assuming that all of these public institutions have over 50 employees and comply with the strategy, the expected cost of compliance was estimated to be EUR 354,000 per year.

Lastly, judicial costs were estimated based on an analysis of information from the 2016 budget from the Bucharest Tribunal and implementation data from the 2012-2015 National Anti-Corruption Strategy¹¹⁹.

5.3 Findings on costs and benefits

Table 23 presents an overview of the cost findings in Romania. In drafting the legislation, the Ministry of Justice worked together with three employees from the national chapter of Transparency International Romania. During the period of the law's development, Romania was also drafting and adopting several laws related to the justice sector as well as amendments to the Constitution related to the accession process to the EU. Several studies and reports were undertaken over the years regarding the implementation of the law as well as guidelines¹²⁰. Based on information gathered regarding the individuals and the approximate period of time they spent on the development and adoption of the legislation, we estimated the cost to be about EUR 19,920 or about 2.5 annual FTE.

Although the law was introduced in 2004, it was not actively implemented until the introduction of the Anti-Corruption Strategy, which referenced whistleblower protection. The law does not require the setup of internal channels; however, it appears that most ministries do in fact have them in place. During this period, 11 out of 19 ministries reported at least one case of whistleblowing through internal channels¹²¹. Following the Anti-Corruption Strategy, each public body with at least 50 employees should allocate at least EUR 200,000 for compliance activities. We assumed 20 percent of these funds would be allocated to activities support whistleblower protection. This figure was then extrapolated to all 59 national bodies in Romania to reach an estimate of EUR 354,000. This estimate assumes that all 59 national bodies setup in internal channels.

The National Integrity Agency (NIA) serves as an external channel of disclosure for complaints that may also include whistleblowers. Disclosures can be made

¹¹⁹ See Final Report regarding the implementation of National Anti-Corruption Strategy 2012–2015, available at: <http://www.just.ro/strategii-si-politici/strategii-nationale/>

¹²⁰ M. Worth, 2013, *op. cit.*; Ministry of Internal Affairs, 2015, *Development of new methods for the whistleblower protection in corruption cases*. Several guidelines were also developed by NGOs, such as Transparency International and Active Watch for Whistleblower Protection.

¹²¹ See Final Report regarding the implementation of National Anti-Corruption Strategy 2012–2015, available at: <http://www.just.ro/strategii-si-politici/strategii-nationale/>

anonymously if requested by the whistleblower and depending on the nature of the corrupt practice¹²². Disclosures are then reviewed to determine whether the requirements are met in terms of form and substance. If the conditions are met, information about the disclosure is then passed to an integrity inspector. The integrity inspector produces an Assessment Report, which is then sent to the petitioner and other competent bodies within five days of the filing. The petitioner is assigned a registration number and receives the findings of the report, but not the full report. The cost of the NIA handling whistleblower cases was estimated to be a share of the organization's annual budget, which was EUR 2,239,754 in 2016. The share was estimated based on the information gathered through an interview that 2 of 30 applications made in 2015 involved a whistleblower. The number of complaints filed varies year to year and is higher in election years (e.g. in 2016 there were many more complaints due to local and parliamentary elections while 2015 was relatively quiet). Based on these figures, the estimated annual cost for the NIA's handling of reports from whistleblowers is EUR 149,317.

Annual statistics from the Anti-Corruption Strategy implementation data indicate significant variation by year in terms of the number of disclosures made through internal channels in central public bodies and agencies. In 2013, there were a total of 4,607 disclosures as compared with 336 disclosures in 2015 (see Table 22).

Table 22: Select indicators from the Anti-Corruption Strategy implementation data

| Public body | Indicator | 2011 | 2012 | 2013 | 2014 | 2015 |
|----------------|-------------------------------------|------|------|-------|-------|------|
| Central bodies | Disclosures | 295 | 616 | 4,413 | 1,435 | 336 |
| | Cases of retaliation filed in court | 3 | 6 | 7 | 6 | 16 |
| | Whistleblower received compensation | 1 | 3 | 28 | 16 | 0 |
| Agencies | Disclosures | 0 | 44 | 194 | 234 | 0 |
| | Cases of retaliation filed in court | 0 | 1 | 0 | 0 | 0 |
| | Whistleblower received compensation | 0 | 0 | 0 | 2 | 0 |
| Total | Disclosures | 295 | 660 | 4,607 | 1669 | 336 |
| | Cases of retaliation filed in court | 3 | 7 | 7 | 6 | 16 |
| | Whistleblower received compensation | 1 | 3 | 28 | 18 | 0 |

Judicial costs were estimated from information gathered from the Bucharest Tribunal and implementation data from the Anti-Corruption Strategy 2012–2015. The

¹²² It is within the attributes of the disciplinary committee to determine whether the disclosure is of a public interest and whether to afford the whistleblower anonymity. Also, the whistleblower, when submitting its disclosure can ask for anonymity. Unless the disclosure is not classified to be of a public interest, the disciplinary committee will have to afford anonymity to the whistleblower.

With respect to offences provide for in art 5 (a) and (b) the anonymity is granted in light of the provision of art. 12 par. (2) subsection a) of Law 682/2002 regarding witness protection. Also, in the situation when the person incriminated by the public interest whistleblowing is the direct or indirect superior, has control or inspection and evaluation responsibilities over the whistleblower, the disciplinary committee or other similar body shall ensure the protection of the whistleblower by hiding his identity.

implementation data listed information about all cases related to anti-corruption presented to the Bucharest Tribunal in 2015. Of the 161 cases total, we identified 41 cases that potentially involved a whistleblower¹²³. The costs of handling these cases was estimated using information from the 2016 budget of the Tribunal. From the budget, information on direct incidental costs for experts, medical experts, lawyers, interpreters, office advocates, salaries for six judges, utilities, stationery, post, headquarters maintenance, and the IT network was abstracted. This figure was divided by 161 – the total number of cases - to reach an estimate of EUR 67 per case. This figure was multiplied by 41 to reach an estimate of judicial costs of EUR 2,747. For each case, the implementation data indicated the amount of funds at stake and that had been recovered.

For each of the 41 cases, the implementation data indicated the amount of funds at stake and the funds recovered. In total for the 41 cases, an estimated EUR 22.7 million were at stake, while EUR 4.5 million were recovered, and EUR 7.8 million still remain to be recovered. Compensation was awarded to 16 cases involving a whistleblower between 2011 and 2015, but information regarding the nature of these cases and the compensation amounts could not be obtained.

Table 23: Overview of estimated costs of whistleblower protection by type and activity

| Information/data on the costs of the whistleblower protection system | | |
|---|---|-------------------------|
| Type | Activity | Estimated amount |
| Systemic | Drafting legislation | EUR 1,992 |
| | Adoption of the law | EUR 7,968 |
| | Internal channels in national public bodies– integrity training, IT infrastructure, training (part of Anti-Corruption Strategy) | EUR 354,000 |
| | TOTAL | EUR 363,960 |
| Incremental | External channel – National Integrity Agency | EUR 149,317 |
| | Judicial costs | EUR 2,747 |
| | TOTAL (annual) | EUR 152,064 |

Major cost categories not included: Setting up external channel, handling disclosures through internal channels in public bodies

The estimates of potential benefits are presented in Table 24. On the benefits side, we have estimated that comprehensive and well implemented whistleblower protection in Romania would potentially allow to identify corrupted funds in public procurement for EUR 932.5 million to 1.5 billion annually. We estimated that the amount of public funds that could be potentially recovered in the area of public procurement amount to EUR 167.8 to 279.7 million annually, given that not all corruption and unlawful actions result in a loss of public funds. Table 24 also presents the ratio of potential benefits to costs calculated for Romania that ranges from 319:1 to 532:1.

¹²³ In order to identify the cases and whether or not they could be related with whistleblower protection we used several websites that give access to certain information about court cases, such as: portaljust.ro; rolil.ro; lege5.ro; scj.ro; However, the excel file did not provide comprehensive information for all cases such as the number of file or the name of the court. Therefore, those cases could not be verified. Also, when the cases were found on the respective websites, the information available was limited and although making reference to the criminal offences under Law 571/2004, it did not provide that the quality of the complainant was also of a whistleblower. The information available online was limited and we were not able to identify public procurement whistleblower cases.

Table 24: Overview of estimated potential benefits of whistleblower protection

| Estimated potential benefits of the whistleblower protection system in the public procurement sector | | | |
|--|-------------------|-------------------|-------------------|
| Potential benefit | Scenario 1 | Scenario 2 | Scenario 3 |
| Corrupted funds potentially identified thanks to whistleblower disclosures | EUR 932,510,000 | EUR 1,243,346,667 | EUR 1,554,183,333 |
| Potential misused funds recovered due to whistleblower disclosures | EUR 167,851,800 | EUR 223,802,400 | EUR 279,753,000 |
| Ratio of potential benefits to costs | Scenario 1 | Scenario 2 | Scenario 3 |
| | 319:1 | 425:1 | 532:1 |
| Output indicators | | | |
| 2 reports involving a whistleblower to the external channel in 2015; EUR 4.5 million recovered in 2015 from cases in the area of anti-corruption that may have involved a whistleblower. | | | |

6 Slovak Republic

6.1 Overview of legislation

The Slovak Republic introduced a standalone whistleblower protection law in 2015 with the aim to protect people that report possible wrongdoings in the workplace¹²⁴. A recent evaluation indicates that there is a low degree of implementation¹²⁵. The main characteristics of the latest whistleblower protection legislation are presented in the following.

- **Definition of whistleblower:** an individual who in good faith notifies the competent authority about the facts about which he/she became aware during the exercise of his/her employment, profession, position or function, and which can significantly contribute or have contributed to the clarification of serious anti-social activities, or the finding or conviction of the perpetrator.
- **Definition of wrongdoing:** misconduct in public procurement and public auction and corruption offenses as detailed in the Criminal Code.
- **Channels of disclosure:** Whistleblowers can report administrative and criminal offenses through their employer. In addition, a disclosure can be made externally to the competent responsible authority both in the case of criminal (police or court) and administrative offenses. The application for protection is handled by the relevant administrative authority or the prosecutor in the case of criminal offenses.

6.2 Methodology for cost estimates

Almost all data and information supporting the assessment of costs in the Slovak Republic were gathered from interviews with two individuals – a representative from the Labour Inspectorate and another representative from the Ministry of the Interior. In addition, information was abstracted from the 2016 Annual Report of the Legal Aid

¹²⁴ Act No. 307/2014

¹²⁵ Ministry of Interior, 2016, Evaluation study concerning whistleblowers, Slovak National Centre of Human Rights.

Centre¹²⁶ and an Evaluation study conducted by the Slovak National Centre of Human Rights¹²⁷.

In the interviews, information was gathered on the amount of time, number of people and average salary of individuals involved in activities related to whistleblower protection. In terms of the legislation, activities included a stakeholder consultation, an impact assessment, and the development of guidance in addition to the development of the legislation itself. The total cost was estimated to be 38,100 EUR.

The cost of setting up and maintaining internal channels in public bodies could not be estimated. All public and private bodies with at least 50 employees are obliged to set up an internal channel of disclosure. Administrative or suspected criminal offenses should be reported through the designated internal channel or otherwise the competent administrative or criminal authority. An estimated 14 percent of private and public bodies did not set up channels in 2016.

The Regional Labour Inspectorates were tasked with monitoring the setup and maintenance of internal channels. An overall cost figure for increasing the number of staff was obtained through an interview with the Regional Labour Inspectorate. With regards to free legal advice, we reviewed the budget and annual report for the Legal Aid Centre. The costs for legal advice from the Legal Aid Centre were estimated as the share of applications related to whistleblowers multiplied by the annual expenditures of the Centre in 2016. The Annual Report noted two applications related to whistleblowers and an overall figure of 5,893 applications¹²⁸.

6.3 Findings on costs and benefits

Table 25 presents an overview of the cost findings in the Slovak Republic. The development of the Slovak whistleblower legislation was supported by a working group of representatives from the Ministry of Interior, the Ministry of Justice and Transparency International. The legislation itself was developed over a period of 18 months (roughly February 2012 to September 2014). In total, the estimated cost for developing the legislation is EUR 36,450, or about three FTE.

All public and private bodies with at least 50 employees are obliged to set up an internal channel of disclosure. Administrative offenses or suspected criminal offences should be reported through the designated internal channel or through the competent administrative or criminal authority. Estimates for the costs of setting up and maintaining internal channels could not be obtained although the information gathered from interviews suggest that they would not be substantial. The inspections focus on a checklist derived from eight points of the legislation.

The Labour Inspectorates are given responsibilities to support the whistleblower protection legislation following Article 7 of Act No. 307/2014. They conduct inspections of internal channels of private and public bodies. They are also obliged to support the protection of whistleblowers who make disclosures through an external channel free of charge. The Labour Inspectorates hired additional staff at a cost of EUR 170,000 to support these responsibilities.

¹²⁶ Slovak Republic, 2016, Annual Report of the Legal Aid Centre, available at <http://www.centrumpravnejpomoci.sk/wp-content/uploads/2014/03/Výročná-správa-2016-FINAL.pdf>

¹²⁷ M. Cenker, 2017, Hodnotiaca správa slovenského národného strediska pre ľudské práva k problematike chráneného oznamovania v Slovenskej Republike za rok 2016, Slovenské národné stredisko pre ľudské práva, Bratislava, available at http://snslp.sk/CCMS/files/2Hodnotiaca_sprava_2016_-_finalna_verzia.pdf

¹²⁸ Slovak Republic, 2016, Annual Report of the Legal Aid Centre, available at <http://www.centrumpravnejpomoci.sk/wp-content/uploads/2014/03/Výročná-správa-2016-FINAL.pdf> Slovak Republic, 2016, *op. cit.*

Since the legislation was introduced, 32 whistleblowers have been granted protection from the Inspectorates¹²⁹. Whistleblowers are also entitled to free legal advice from the Legal Aid Centre only after reporting the case. However, the Legal Aid Centre only provides civil law advice in relation to employment issues and thus whistleblower disclosures that concern criminal matters are not covered. In total, 32 whistleblowers were granted protection from the Labour Inspectorate in 2015 and 2016 (18 were criminal activities and 14 were administrative offenses). Of 5,893 applications for legal aid in 2016, there were 2 whistleblower cases. The costs for responding to these two requests (711 EUR) was estimated as a share of the total annual budget of the Legal Aid Centre.

Table 25: Overview of estimated costs of whistleblower protection by type and activity

| Information/data on the costs of the whistleblower protection system | | |
|--|---|--------------------|
| Type | Activity | Amount |
| Systemic | Stakeholder consultation | EUR 8,000 |
| | Impact assessment | EUR 4,000 |
| | Development of guidance to implement legislation | EUR 3,600 |
| | Development of legislation | EUR 22,500 |
| | National Labour Inspectorate – monitoring internal channels | EUR 170,000 |
| | TOTAL | EUR 208,100 |
| Incremental | Legal Aid Centre – free legal advice | EUR 711 |
| | TOTAL | EUR 711 |

Major cost categories not included: Set-up of internal channels of disclosure, handling whistleblower disclosures through internal and external channels

The estimates of potential benefits are presented in Table 26. In particular, we estimated that comprehensive and well implemented whistleblower protection in the Slovak Republic would potentially allow to identify corrupted funds in public procurement for EUR 547.2 to 914.1 million annually. As not all corruption and unlawful actions result in a loss of public funds, we estimated that the amount of public funds that could be potentially recovered in the area of public procurement amount to EUR 98.5 to 164.2 million annually. Table 26 also presents the ratio of potential benefits to costs calculated for Slovakia that ranges from 472:1 to 786:1. However, this ratio should be seen as a rough estimate where the costs are likely to be under-estimated, given that our analysis did not cover certain major cost categories, as indicated in Table 25.

Table 26: Overview of estimated potential benefits of whistleblower protection

| Estimated potential benefits of the whistleblower protection system in the public procurement sector | | | |
|--|-------------------|-------------------|-------------------|
| Potential benefit | Scenario 1 | Scenario 2 | Scenario 3 |
| Corrupted funds potentially identified thanks to whistleblower disclosures | EUR 547,240,000 | EUR 729,653,333 | EUR 912,066,667 |
| Potential misused funds recovered due to whistleblower disclosures | EUR 98,503,200 | EUR 131,337,600 | EUR 164,172,000 |
| Ratio of potential benefits to costs | Scenario 1 | Scenario 2 | Scenario 3 |
| | 472:1 | 629:1 | 786:1 |
| Output: number of disclosures received by central public bodies | | | |

32 whistleblower disclosures made through external channels in 2015/16. In 2016, there were 6 disclosures made to the Ministry of the Interior and 1 disclosure made to the National Labour Inspectorate.

¹²⁹ Ministry of Interior, 2016, *op. cit.*

Note: The ratio of potential benefits to costs is not included in the main body of the report due to the limited coverage of cost categories.

6.4 Illustrative case of whistleblowing in the area of public procurement

In 2010, an employee (Ms. Lapinova) at the National Forestry Centre reported intended misuse of public funds in the tendering of a project in the value of **EUR 700,000**. The employee was responsible for the selection of the successful tenderer and controlling the allocation of funds. Following discovery of a breach, she refused to sign a document approving the financing of the project. She was subsequently fired from her position as comptroller while the Centre's management only issued a warning to the commission involved with the tender, and the individual in the commission dealing with the tender became the director of the Centre. In October 2016, the regional court upheld the decision of the municipal court that her dismissal was illegal. She was unemployed for years after her dismissal and could not find work as comptroller in other companies. She was later offered to return to the Centre, but not as a comptroller¹³⁰. This case indicates that whistleblowers that report wrongdoings in the public interest face serious personal consequences, such as long-term unemployment. For this reason, monetary compensation from governments could be a valuable support measure to help ensure the well-being of the whistleblower until the resolution of a labour-law dispute.

Ms. Kovacovicova and Dr. Alan Suchanko spoke up against the purchase of an overpriced CT device by the Alexander Winter Hospital in Piešťany. The device was supposed to be supplied by a company with Belize owners and ties to Mr. Paška, former Parliament president with close connections to the health sector. Media and public interest followed and led to the resignation of several politicians including the Health Minister and the cancellation of the procurement contract. The price for the CT scanner was inflated by almost EUR **1 million**¹³¹. It is likely that the entire amount of EUR 1 million was meant to be misappropriated. By way of comparison, the recovery of EUR 1 million from this specific case would by itself create an economic argument for an effective whistleblower protection in Slovakia. Indeed, the costs related to whistleblower protection in Slovakia were estimated to be EUR 208,811 – although it should be noted that certain cost categories are not included in this estimate.

7 The United Kingdom

7.1 Overview of legislation

The United Kingdom was the first European country to introduce a legislation on whistleblower protection, the Public Interest Disclosures Act (PIDA), in 1998. The PIDA was afterwards amended and the most recent changes date to 2013, when a 'public interest' test was added. According to the legislation, whistleblowers should first report internally to their employer or they can, under certain circumstances, report externally to a list of prescribed bodies, as indicated by the law¹³². Whistleblowers who face retaliation at their workplace may file a complaint to an Employment Tribunal for breach of the provisions included in the law. Therefore, Employment Tribunals are the only courts that the whistleblower can complain to. After the complaint is filed to an employment tribunal, an attempted resolution in the form of early conciliation is

¹³⁰ Biele vrana, available at <http://bielavrana.sk/oceneni/2014.html#lapinova>

¹³¹ Biele vrana, available at

<http://bielavrana.sk/oceneni/2015.html#kovacovicova>; <https://spectator.sme.sk/c/20057143/piestany-hospital-will-not-be-fined-over-unlawful-purchase-of-ct.html>

¹³² A list of prescribed people bodies is provided by the Department for Business, Energy and Industrial Strategy and is available at <https://www.gov.uk/government/>.

sought through the Advisory, Conciliation and Arbitration Service (ACAS)¹³³. However, fees to file a claim or request a hearing to the Employment Tribunal were introduced in 2013¹³⁴. Individuals in a critical financial situation can get support to pay tribunal fees¹³⁵.

The main characteristics of PIDA are presented in the following.

- **Date of entry into force:** The PIDA came into force on 2 July 1999 in Great Britain and on 31 October 1999 in Northern Ireland.
- **Scope:** Public and private sector.
- **Definition of worker:** employees, workers, contractors, trainees, agency staff, homeworkers, police officers, every professional in the NHS, and UK workers abroad. Genuinely self-employed (other than in the NHS), volunteers, the intelligence services or the armed forces are not included.
- **Definition of wrongdoing:** Crimes, civil offenses, failure to comply with an obligation set by law, miscarriages of justice, endangerment to someone's health and safety, and damage to the environment.
- **Channels of disclosure:** Whistleblowers must first report through internal channels, and if not appropriately handled, the report can then be made to an external channel. Depending on the response and the urgency of the issue at stake, the whistleblower can also alert a legal advisor, a member of Parliament, and as a last resort, the media.¹³⁶

7.2 Methodology for cost estimates

The cost estimates were calculated based on the following sources of information:

- Data on PIDA applications and cases published by the UK charity Public Concern at Work¹³⁷;
- Estimates on judicial costs calculated for Ireland (assumed to be the same in the UK, where relevant information was not found)¹³⁸;
- Replies to a written questionnaire from a number of public bodies that are identified as prescribed bodies under PIDA¹³⁹;
- Annual reports of the UK Advisory, Conciliation and Arbitration Service (ACAS)¹⁴⁰;
- Estimates on the average compensation received by whistleblowers from a Blueprint for Free Speech report¹⁴¹;
- Eurostat data on exchange rates¹⁴².

¹³³ UK Government, Department for Business Innovation & Skills, Whistleblowing – Guidance for Employers and Code of Practice, March 2015, p. 9, available at <https://www.gov.uk/government/>.

¹³⁴ Wolfe, S., M. Worth and S. Dreyfus, 2016, *op. cit.*

¹³⁵ UK Government, Get help paying court and tribunal fees, available at <https://www.gov.uk/get-help-with-court-fees>

¹³⁶ Public Concern at Work, Law & Policy, A guide to PIDA, viewed 19.05.2017 at <http://www.pcaw.org.uk/law-policy/a-guide-to-pida#pi1>

¹³⁷ Public Concern at Work, PIDA statistics, available at <http://www.pcaw.org.uk/law-policy/a-guide-to-pida/pida-statistics>.

¹³⁸ A request for data and information on the judicial costs incurred in the UK was made to the UK Advisory, Conciliation and Arbitration Service as well as to the UK Ministry of Justice. However, the two public bodies do not hold the requested data and information.

¹³⁹ The following public bodies replied to our questionnaire: NHS Healthcare Improvement Scotland; Ofwat; Audit Scotland; Children's Commissioner's Office; Scottish Information Commissioner; Registers of Scotland; Nursing and Midwifery Council; Commissioner for Ethical Standards in Public Life in Scotland.

¹⁴⁰ Advisory, Conciliation, and Arbitration Service, Annual Report, available at <http://www.acas.org.uk/index.aspx?articleid=4883>.

¹⁴¹ Wolfe, S., M. Worth and S. Dreyfus, 2016, *op. cit.*

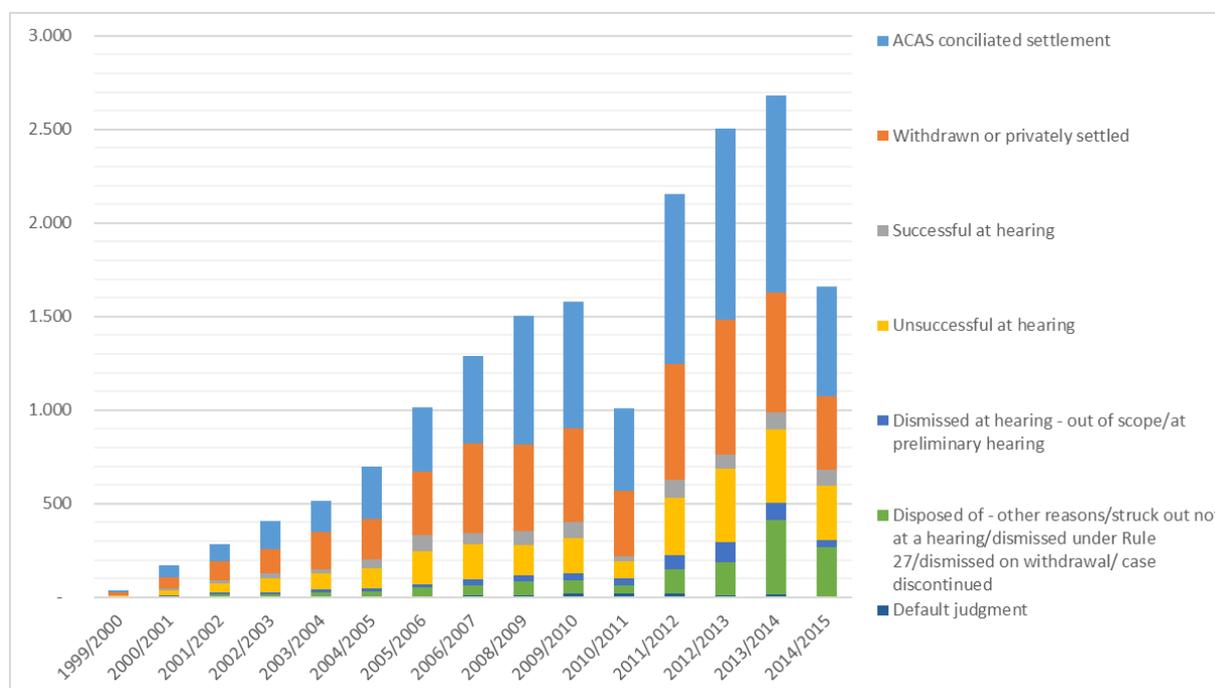
¹⁴² Eurostat, Euro/ECU exchange rates - annual data (ert_bil_eur_a).

The judicial costs related to handling the claims filed under PIDA and the number of PIDA cases disposed by the Employment Tribunal were calculated by multiplying the number of claims/cases by the estimated cost per claim/case as available from the cost analysis of Ireland. The compensation awarded annually by the Employment Tribunal to whistleblowers was estimated as follows. The median compensation awarded to whistleblowers during the period 2007-2014 was multiplied by the number of successful cases per year. The resulting annual amounts were converted into EUR and the annual average of the compensation amount from 2009/2010 to 2014/2015 was calculated.

7.3 Findings on costs and benefits

Table 27 presents an overview of the cost findings in the UK. Based on the information available, the main costs incurred by the UK public sector seem to relate to the judicial costs of handling whistleblowers' claims under PIDA and the relative cases. More specifically, it was estimated that the Employment Tribunal spent from 2009-2010 until 2014-2015 an annual weighted average¹⁴³ of EUR 867,948 for handling claims under PIDA and an annual weighted average¹⁴⁴ of EUR 93,895 for handling tribunal cases related to PIDA. The average time of such cases at the Employment Tribunal is estimated to be 20 months¹⁴⁵. Although this particular aspect is not captured in our analysis, the length of the case could be a driver of costs for both the Employment Tribunal and the whistleblower. The relatively high judicial costs can be explained by the high number of claims made by whistleblowers to ask for protection under PIDA (see Figure 10).

Figure 10: Number of PIDA cases to the Employment Tribunal, by year and by result



¹⁴³ The average is weighted by the number of PIDA claims filed per year.

¹⁴⁴ The average is weighted by the number of Employment Tribunal hearings related to PIDA.

¹⁴⁵ Wolfe, S., M. Worth and S. Dreyfus, 2016, *op. cit.*

Source: Public Concern at Work, PIDA statistics, available at <http://www.pcaw.org.uk/law-policy/a-guide-to-pida/pida-statistics>

A large number of claims under PIDA to the Employment Tribunal implies that a large number of whistleblowers feel that they have been unfairly treated. Two considerations should be made in relation to the number of applications. First, the number of PIDA applications might underestimate the number of whistleblowers who face retaliation as some individuals may be discouraged to file a claim for financial reasons. In fact, the Employment Tribunal fees related to whistleblowing are set at GBP 250 to file a claim and GBP 950 to request a hearing¹⁴⁶. In addition, legal costs for plaintiffs in PIDA cases are estimated to be between GBP 8,000 and GBP 25,000¹⁴⁷. Second, a large number of claims under PIDA may signal that the whistleblower protection system is not functioning properly, in terms of deterring employers from retaliating. If disclosures were received confidentially and the whistleblower did not face retaliation at the workplace, there would be no reason to file a claim.

An additional cost category from the government perspective is the compensation awarded by the Employment Tribunal to the whistleblowers who faced retaliation, although this amount can be seen as a benefit from a whistleblower perspective. According to previous research, whistleblowers were awarded a median amount of GBP 17,422 by Employment Tribunals during the period 2007–2014. Based on this estimate, we calculated that the Employment Tribunals from 2009–2010 to 2014–2015 paid an annual average¹⁴⁸ of EUR 1,715,130 to whistleblowers.

From the information gathered from prescribed bodies under PIDA, it seems that public bodies that act as external channels face low costs for setting up disclosure channel and handling reports. This may be due, however, to the fact that none of the public bodies assessed had a specific software in place; phone lines and e-mails are instead used as disclosure channels.

Due to data limitations, it was not possible to estimate certain cost categories related to the development and implementation of the PIDA. For instance, the costs associated to the development of the legislation and the subsequent amendments were not estimated.

Table 27: Overview of estimated costs of whistleblower protection by type and activity

| Information/data on the costs of the whistleblower protection system | | |
|---|--|----------------------|
| Type | Activity | Estimated amount |
| Incremental | External channels – reports can be made in 22 areas | Not significant |
| | ACAS work on early conciliations of PIDA claims | Not available |
| | Employment Tribunal costs of handling PIDA cases (weighted annual average from 2009/2010 to 2014/2015) | EUR 93,895 |
| | Employment Tribunal costs of handling claims under PIDA (weighted annual average from 2009/2010 to 2014/2015) | EUR 867,948 |
| | Employment Tribunal compensation to WB in case of successful hearing (weighted annual average from 2009/2010 to 2014/2015) | EUR 1,715,130 |
| | TOTAL (annual) | EUR 2,676,974 |
| Major cost categories not included: Systemic costs; costs related to setting up internal channels of disclosure. | | |

¹⁴⁶ UK Government, Make a claim to an employment tribunal, available at <https://www.gov.uk/employment-tribunals/make-a-claim>

¹⁴⁷ Wolfe, S., M. Worth and S. Dreyfus, 2016, *op. cit.*

¹⁴⁸ The average is weighted by the number of successful hearing at the Employment Tribunal.

The estimates of potential benefits are presented in Table 28. In particular, we have estimated that comprehensive and well implemented whistleblower protection in the UK would potentially allow to identify corrupted funds in public procurement for EUR 9.7 to 16.1 billion annually. As not all corruption and unlawful actions result in a loss of public funds, we estimated that the amount of public funds that could be potentially recovered in the area of public procurement amount to EUR 1.7 to 2.9 billion annually. Table 28 also presents the ratio of potential benefits to costs calculated for the UK that ranges from 651:1 to 1,085:1. However, this ratio should be seen as a rough estimate where the costs are likely to be under-estimated, given that our analysis did not cover certain major cost categories, as indicated in Table 27Table 25.

Table 28: Overview of estimated potential benefits of whistleblower protection

| Estimated potential benefits of the whistleblower protection system in the public procurement sector | | | |
|---|-------------------|--------------------|--------------------|
| Potential benefit | Scenario 1 | Scenario 2 | Scenario 3 |
| Corrupted funds potentially identified thanks to whistleblower disclosures | EUR 9,681,850,000 | EUR 12,909,133,333 | EUR 16,136,416,667 |
| Potential misused funds recovered due to whistleblower disclosures | EUR 1,742,733,000 | EUR 2,323,644,000 | EUR 2,904,555,000 |
| Ratio of potential benefits to costs | Scenario 1 | Scenario 2 | Scenario 3 |
| | 651:1 | 868:1 | 1,085:1 |

Note: The ratio of potential benefits to costs is not included in the main body of the report due to the limited coverage of cost categories.

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Annex 3 – Mapping of organisations contacted

| Organisation | Relevance (EU/ country) |
|--|-------------------------|
| Transparency International Austria | AT |
| Reporters without borders Austria | AT |
| Forum Informationsfreiheit | AT |
| Transparency International Belgium | BE |
| Belgian Mediateur fédéral | BE |
| Flemish Ombudsman | BE |
| Centre for Responsible Democracy/Luna | BH |
| Public Interest Advocacy Centre | BH |
| Transparency International - Bosnia and Herzegovina | BH |
| Transparency International Cyprus | CY |
| Transparency International Czech Republic | CZ |
| Oživení (NGO) | CZ |
| Transparency International Germany | DE |
| Reporters without borders Germany | DE |
| CORRECTIV (Independent journalism, Germany) | DE |
| Whistleblower Netzwerk e.V. | DE |
| Transparency International Denmark | DK |
| Transparency International Estonia | EE |
| DIGIWHIST | EU |
| Blueprint for Free Speech | EU |
| National Whistleblower Centre | EU |
| American University Washington College of Law | EU |
| Centre for European Research in Maastricht (CERiM) | EU |
| Ecole des Hautes Etudes Commerciales (HEC) Paris | EU |
| European Parliament - Greens/EFA | EU |
| International Federation of Accountants | EU |
| Ascent-EU | EU |
| University of Nebraska School of Law | EU |
| Griffith University Australia | EU |
| Transparency International Headquarters | EU |
| International Consortium of Investigative Journalists | EU |
| University of Melbourne | EU |
| University of Turin - Project 'Warning on Crime' | EU |
| Eurocadres | EU |
| Transparency International (central bureau Berlin) | EU |
| Transparency International France | FR |
| Anticor (NGO) | FR |
| Central Service for the Prevention of Corruption (Ministry of Justice) | FR |
| Paris financial pole for investigation judges | FR |
| Interregional judiciary police located in Strasbourg | FR |
| Newspaper Médiapart | FR |
| Agence Française Anticorruption | FR |
| Défenseur des droits | FR |
| Ministry of Economy (Direction des affaires juridiques) | FR |
| Ministry of Public Administration | FR |
| Sherpa (NGO) | FR |

| Organisation | Relevance (EU/ country) |
|--|-------------------------|
| Autorité de contrôle prudentiel et de résolution | FR |
| International Whistleblowers Research Network | Global |
| Transparency International Hungary | HU |
| Transparency International Ireland | IE |
| Raise a Concern | IE |
| Ireland Comptroller and Auditor General (prescribed person under the Public Disclosures Act) | IE |
| Whistleblowers Ireland | IE |
| Irish Department of Public Expenditure and Reform, Reform and Delivery Office (RDO) | IE |
| Irish Times (newspaper) | IE |
| Independent Ireland (newspaper) | IE |
| Transparency International Italy | IT |
| World Bank | IT |
| National Anti-Corruption Authority (ANAC) | IT |
| Riparte il Futuro | IT |
| Ministry of Justice | IT |
| ANAC – Planning and information analysis unit | IT |
| Lazio region | IT |
| Umbria region | IT |
| Calabria region | IT |
| Veneto region | IT |
| Lombardy region | IT |
| Sardinia region | IT |
| Municipality of Milan | IT |
| Ministry of Infrastructure and Transport | IT |
| Ministry of Health | IT |
| Ministry of Education | IT |
| Ministry of Environment | IT |
| Ministry of Interior | IT |
| Ministry of Defense | IT |
| Ministry of Employment | IT |
| Ministry of Culture | IT |
| Ministry of Agriculture and Forestry | IT |
| Ministry of Economic Development | IT |
| Ministry of Economy and Finance | IT |
| National Audit Office (Corte dei Conti) | IT |
| Competition Authority | IT |
| Stock Market Supervision Authority (CONSOB) | IT |
| School of National Administration – Presidency of the Council of Ministries | IT |
| Transparency International Luxembourg | LU |
| Transparency International Latvia | LV |
| Lithuania Independent Anti-Corruption Agency | LT |
| Transparency International Lithuania | LT |
| Transparency International Netherlands | NL |
| Huis voor klokkenluiders | NL |
| Bios – previous Dutch WB organisation | NL |
| Dutch ombudsman | NL |

| Organisation | Relevance (EU/ country) |
|---|-------------------------|
| Greenwich University | NL |
| FNV Trade Union | NL |
| Ministry of Interior Affairs the Netherlands | NL |
| National Integrity Office | NL |
| Transparency International Poland | PL |
| Transparency International Portugal | PT |
| Portugal resident (newspaper) | PT |
| Office of the public prosecutor in Porto and Lisbon | PT |
| Transparency International Romania | RO |
| Expert Forum (EFOR) | RO |
| Funky Citizens (Romanian organisation) | RO |
| Romanian Centre for Investigative Journalism | RO |
| Alliance for a Clean Romania | RO |
| Romanian Academic Society | RO |
| Rise Project (investigative journalists) | RO |
| General Secretariat of the Government and the Prime-Minister Control Body | RO |
| Romanian Government - Anti-Fraud Department (DLAF) | RO |
| General Anticorruption Direction, Ministry of Internal Affairs | RO |
| National Anticorruption Direction | RO |
| National Anticorruption Strategy | RO |
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| Pro Democracy Association | RO |
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| Center for Investigative Journalism in Slovenia (CPNS) | SI |
| Transparency International Slovenia | SI |
| Društvo Integriteta (NGO) | SI |
| Transparency International Sweden | SE |
| Swedish newspaper Dagens Nyheter ¹⁴⁹ | SE |
| Swedish newspaper Aftonbladet | SE |
| Swedish investigative TV programme Uppdrag Granskning | SE |
| TCO (contact suggested by Eurocadres) | SE |
| Brussels Office of the Swedish Trade Unions | SE |
| Ministry of Employment | SE |
| Pistaljka | Serbia |
| Ministry of Justice | Serbia |
| Transparency International Slovakia | SK |
| Slovak National Centre for Human Rights | SK |

¹⁴⁹ In Sweden, everyone who reports misconduct to the media is protected and ensured anonymity.

| Organisation | Relevance (EU/ country) |
|--|-------------------------|
| Ministry of Interior (working group drafting the legislation) | SK |
| National Labour Inspectorate | SK |
| Fair Play Slovakia | SK |
| Head of the Special Prosecutor's Office of the Special Prosecution under the General Prosecutor's Office | SK |
| Southeast Europe Coalition for Whistleblower Protection | South-East Europe |
| Public Concern at Work | UK |
| Transparency International | UK |
| UK National Audit Office | UK |
| UK Serious Fraud Office (SFO), prescribed person under PIDA | UK |
| UK Department for Business, Energy and Industrial Strategy (BEIS), policy department with responsibility for whistle-blower protection | UK |
| The Guardian (newspaper) | UK |
| List of prescribed bodies under PIDA | UK |
| Government Accountability Project | USA |
| Virginia Tech University | US |

Annex 4 – Estimated annual potential benefits of a whistleblower protection system by country

The table below presents findings from the estimation of potential annual benefits in terms of public funds recovered for an effective national whistleblower protection system. The methodology for obtaining these estimates is described in Section 2.1.

| Country | Scenario 1 | Scenario 2 | Scenario 3 |
|---|-----------------------|-----------------------|-----------------------|
| Corrupted funds potentially identified thanks to whistleblower disclosures¹⁵⁰ | | | |
| AT | 304,230,000 | 405,640,000 | 507,050,000 |
| BE | 477,015,000 | 636,020,000 | 795,025,000 |
| BG | 209,140,000 | 278,853,333 | 348,566,667 |
| CY | 72,222,000 | 96,296,000 | 120,370,000 |
| CZ | 1,117,360,000 | 1,489,813,333 | 1,862,266,667 |
| DE | 1,332,700,000 | 1,776,933,333 | 2,221,166,667 |
| DK | 323,270,000 | 431,026,667 | 538,783,333 |
| EE | 180,995,000 | 241,326,667 | 301,658,333 |
| ES | 1,971,750,000 | 2,629,000,000 | 3,286,250,000 |
| FI | 457,930,000 | 610,573,333 | 763,216,667 |
| FR | 2,915,900,000 | 3,887,866,667 | 4,859,833,333 |
| EL | 233,745,000 | 311,660,000 | 389,575,000 |
| HR | 147,120,000 | 196,160,000 | 245,200,000 |
| HU | 659,320,000 | 879,093,333 | 1,098,866,667 |
| IE | 57,374,000 | 76,498,667 | 95,623,333 |
| IT | 3,315,650,000 | 4,420,866,667 | 5,526,083,333 |
| LT | 1,187,085,000 | 1,582,780,000 | 1,978,475,000 |
| LU | 230,779,500 | 307,706,000 | 384,632,500 |
| LV | 320,115,000 | 426,820,000 | 533,525,000 |
| NL | 692,895,000 | 923,860,000 | 1,154,825,000 |
| PL | 4,053,900,000 | 5,405,200,000 | 6,756,500,000 |
| PT | 316,885,000 | 422,513,333 | 528,141,667 |
| RO | 932,510,000 | 1,243,346,667 | 1,554,183,333 |
| SE | 118,185,000 | 157,580,000 | 196,975,000 |
| SI | 107,479,500 | 143,306,000 | 179,132,500 |
| SK | 547,240,000 | 729,653,333 | 912,066,667 |
| UK | 9,681,850,000 | 12,909,133,333 | 16,136,416,667 |
| TOTAL (EU-28 except Malta) | 32,277,344,000 | 43,036,458,667 | 53,795,573,333 |
| Potential misused funds recovered due to whistleblower disclosures¹⁵¹ | | | |
| AT | 54,761,400 | 73,015,200 | 91,269,000 |
| BE | 85,862,700 | 114,483,600 | 143,104,500 |
| BG | 37,645,200 | 50,193,600 | 62,742,000 |
| CY | 12,999,960 | 17,333,280 | 21,666,600 |
| CZ | 201,124,800 | 268,166,400 | 335,208,000 |
| DE | 239,886,000 | 319,848,000 | 399,810,000 |
| DK | 58,188,600 | 77,584,800 | 96,981,000 |
| EE | 32,579,100 | 43,438,800 | 54,298,500 |

¹⁵⁰ Please see section 2.1 for information on the methodology used for this estimation.

¹⁵¹ Please see section 3.2 for information on the methodology used for this estimation.

| Country | Scenario 1 | Scenario 2 | Scenario 3 |
|-----------------------------------|----------------------|----------------------|----------------------|
| ES | 354,915,000 | 473,220,000 | 591,525,000 |
| FI | 82,427,400 | 109,903,200 | 137,379,000 |
| FR | 524,862,000 | 699,816,000 | 874,770,000 |
| EL | 42,074,100 | 56,098,800 | 70,123,500 |
| HR | 26,481,600 | 35,308,800 | 44,136,000 |
| HU | 118,677,600 | 158,236,800 | 197,796,000 |
| IE | 10,327,320 | 13,769,760 | 17,212,200 |
| IT | 596,817,000 | 795,756,000 | 994,695,000 |
| LT | 213,675,300 | 284,900,400 | 356,125,500 |
| LU | 41,540,310 | 55,387,080 | 69,233,850 |
| LV | 57,620,700 | 76,827,600 | 96,034,500 |
| NL | 124,721,100 | 166,294,800 | 207,868,500 |
| PL | 729,702,000 | 972,936,000 | 1,216,170,000 |
| PT | 57,039,300 | 76,052,400 | 95,065,500 |
| RO | 167,851,800 | 223,802,400 | 279,753,000 |
| SE | 21,273,300 | 28,364,400 | 35,455,500 |
| SI | 19,346,310 | 25,795,080 | 32,243,850 |
| SK | 98,503,200 | 131,337,600 | 164,172,000 |
| UK | 1,742,733,000 | 2,323,644,000 | 2,904,555,000 |
| TOTAL (EU-28 except Malta) | 5,809,921,920 | 7,746,562,560 | 9,683,203,200 |

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