

February 11, 2021

Sent via Email

Mr. David B. Hanson
Chair
Standing Committee on Resource Stewardship
Legislative Branch
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Edmonton, AB T5K 2B6
c/o RSCommittee.Admin@assembly.ab.ca

**RE: Review of the *Public Interest Disclosure (Whistleblower Protection) Act* by the
Standing Committee on Resource Stewardship**

Dear Mr. Hanson:

This correspondence is in response to the Standing Committee on Resource Stewardship's motion of February 4, 2021:

That the Public Interest Commissioner provide their report itemizing which items the stakeholders under this committee have already provided which they're in agreement with and identify the items with which they have objections and the reasons why by no later than business close next week, Friday.

I have prepared two documents in response to the Committee's motion.

Appendix "A" entitled, *A report on the Public Interest Commissioner's position to stakeholder recommendations in review of the Public Interest Disclosure (Whistleblower Protection) Act* (the Act), details the key elements of the six presentations to the Committee on February 4, 2021 and my position relative to the recommendations or general concepts advanced by the presenters.

Appendix "B" entitled, *Transparency International Toolkit for Assessing Whistleblower Legislation*, is a copy of the assessment our office used to determine how my proposed amendments to the Act would align with international best practices.

The analysis by my office found that if all of the amendments recommended by my office were applied, Alberta's whistleblower law would be strongly in-line with international best practices. Where Alberta's law would not conform to international guidelines are areas that do not apply

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or are impracticable under Alberta Law (i.e., the toolkit applies to European Union law), and areas that I believe would not be advantageous to include in the Act. There were three general areas in this regard:

1. First, I do not support the concept of legislative protections for persons who make public disclosures (for example, disclosures to the media or using any other public platform). It is important to note that protecting whistleblowers reporting wrongdoing, protecting journalistic sources, and protecting public participation are three distinct concepts. The media has the ability to bring serious matters to light. However, allegations reported within the media, or through other public means, are unproven. They are not the result of a robust, impartial and procedurally fair investigation that the Act affords. An individual's personal perspective of what constitutes wrongdoing and a public interest matter is subjective. Permitting public disclosures would permit individuals to arbitrarily invoke legislated whistleblower protections on any matter they perceive to be wrongdoing – whether or not this actually is the case. There are also concerns regarding confidentiality. It is important to recognize that the Act should also protect persons wrongfully accused. An individual can undeservingly suffer irreparable harm to their career, their reputation, and their personal or family life as the result of allegations being made publicly.
2. The second area where the Act would not conform relates to the complete inclusion of the private sector into Alberta's whistleblower legislation. There is no jurisdiction, which I am aware of, where the law provides for a single authority (i.e., a public interest commissioner) to be responsible for whistleblower protection throughout the entire public and private sector. There is certainly virtue in extending protections to whistleblowers in the private sector; however, this Act is intended to provide protections for individuals reporting matters of public interest relating to the administration of our public institutions. Where I did make recommendations that apply to the private sector, is in creating the Prescribed Service Provider regulation.
3. The last area that I did not support is the concept of applying a reverse onus and a presumption of guilt on persons who allegedly commit a reprisal. The Public Interest Commissioner must be impartial and the standard of proof applied is a balance of probabilities. A presumption of guilt does not conform to the principals of procedural fairness and natural justice, which are established through Canada's common law.

It is important to note that the assessment was conducted by my staff. If deemed necessary by the committee, I would certainly welcome an independent and impartial analysis by Legislative Assembly Office Research Services, using the Transparency International Toolkit to compare my recommendations to international best practices and standards.

The experience my office has had applying the Act, working with public entities, and interacting with similar legislative officers in other jurisdictions, will allow us to provide the Committee with a sound perspective on the benefits and risks associated with any of the stakeholder recommendations the Committee is considering. My office remains available to assist the Committee as needed.

Should the Committee require any additional information or clarification please do not hesitate to contact me directly via email at marianne.ryan@pic.alberta.ca.

Sincerely,

Marianne Ryan
Public Interest Commissioner

/lja
Attachments



APPENDIX “A”

*In response to a motion on February 4, 2021 of the Standing
Committee on Resource Stewardship*

**A report on the Public Interest Commissioner’s position to
stakeholder recommendations in review of the *Public
Interest Disclosure (Whistleblower Protection) Act***



**PUBLIC INTEREST
COMMISSIONER**

February 10, 2021



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Alberta Health Services

1	Issue Extension of timelines	Stakeholder recommendation: Extend timelines under s.3(7)(c) of the <i>Public Interest Disclosure (Whistleblower Protection) Regulation</i> to conclude an investigation from 120 to 180 business days; [s. 3(7)(c) AR 71/2013]
	Commissioner's response : I support this recommendation. Due to the seriousness, complexity and procedural fairness requirements associated with public interest disclosure investigations, extensions past the current 120 periods are often required. The time requirements associated with an investigation are the result of large amounts of information and records requiring analysis, extensive investigative interviews, and reviews to determine questions of law. Public interest disclosure investigations often relate to multiple complex issues where multiple parties are involved with an investigation. Further, procedural fairness affords the alleged wrongdoer the right to respond to the allegations and provide additional information for consideration. This is a necessary process, however depending on the severity and extent of the matter, the process may take several weeks.	
2	Issue Chief officer extension provisions	Stakeholder recommendation: Increase the amount of time the Chief Officer is authorized to extend the timeline for an investigation from 30 to 60 days under section 5(1) of the <i>Public Interest Disclosure (Whistleblower Protection) Regulation</i> ; [s. 5(1) AR 71/2013]
	Commissioner's response : I support this recommendation. I do not have concerns with Chief Officers being permitted to extend the timeline for completion of an investigation by 60 days, from the previous 30-day allowance under section 5(1) of the Regulation. Although investigations should be conducted as expeditiously as possible, I believe the public interest favors a thorough and effective investigation as opposed to potentially limiting investigative steps for the purpose of meeting timelines.	
3	Issue Subsidiary Health Corporations	Stakeholder recommendation: Include Alberta Precision Laboratories Ltd., a subsidiary health corporation of Alberta Health Services, within the <i>Public Interest Disclosure (Whistleblower Protection) Regulation</i> ; [s. 2(1)(b) AR 71/2013]
	Commissioner's response : I support a variation of this recommendation.	

	<p>I have also recommended the regulation be amended to state all subsidiary health corporations are jurisdictional under the Act, as opposed to prescribing each individual subsidiary by name. The result of this amendment would be that any changes to the name of a subsidiary or the creation of a new subsidiary would not require an amendment to the regulations. (See Commissioner's Recommendation # 5.)</p>	
4	<p>Issue</p> <p>Contracted service providers</p>	<p>Stakeholder position:</p> <p>Where AHS sees issues from time to time is with people coming forward from private health care providers, often long-term care facilities, with concerns. AHS may provide the private health care provider with funding, but does not have the jurisdiction to investigate those matters.</p>
	<p>Commissioner's response :</p> <p>I support the stakeholder's position on this issue.</p> <p>I recommended that a prescribed service provider regulation be made, and include any person, organization or body who are a party to a contract or agreement with a department, office or public entity, to provide goods or services. The Act's jurisdiction would apply to the extent of that contract or agreement and prescribed service providers would be required to adopt the existing whistleblower procedures of the contracting entity. (See Commissioner's Recommendation # 1)</p> <p>As it relates to the stakeholder's concerns, the prescribed service provider regulation, if applied as recommended, would include private health care providers and long-term care facilities under contract with AHS. It would also give AHS the jurisdictional authority to investigate complaints it receives under the auspices of the Act.</p>	

Alberta Medical Association

1	<p>Issue</p> <p>Definition of "wrongdoing"</p>	<p>Stakeholder recommendation:</p> <p>The definition of wrongdoings in the act be amended so that it is clear as to what acts or omissions constitute wrongdoings and on what grounds an event would be considered substantial or create a specific danger. [s. 3(1)(b)]</p>
	<p>Commissioner's response :</p> <p>I do not support the recommendation.</p> <p>My office has not encountered issues with interpreting the current definition of wrongdoing. My interpretation of the section referenced by the stakeholder is that this type of wrongdoing would need to be substantive, and be an actual danger as opposed to being speculative. It would be impracticable for the Act to prescribe every eventuality and every potential form of wrongdoing. I would caution against making a definition that too narrowly defines the scope of what may be investigated under the Act.</p>	

2	Issue Definition of “employee”	Stakeholder recommendation: A broader term such as “individual” or “person” or “affected person” should apply to the Act. The word “employee” also narrows the scope of protection that is provided in the Act. The Act should include physicians, resident physicians and medical students, and students of other health care professions.
	Commissioner’s response : I support the recommendation. The Act currently applies to contracted physicians and health practitioners working within hospitals and facilities operated by Alberta Health Services, Covenant Health and Lamont Health Care Centre. It does not apply to physicians or health practitioners operating within a private practice. The Act also does not include medical students, and students of other health care professions. I recommended that a prescribed service provider regulation be made, and include any person, organization or body who are a party to a contract or agreement with a department, office or public entity, to provide goods or services. This would include physicians and health care professionals in private practice. (See Commissioner’s Recommendation #1) I also recommended the Act protect persons, other than employees, from reprisals when they make a disclosure of wrongdoing, or seek advice in accordance with the Act (See Commissioner’s Recommendation # 11) , and that the definition of reprisal be expanded to include “any detriment” to a person. (See Commissioner’s Recommendation #12) The proposed recommendations would address the stakeholder’s concerns. The protection provisions of the Act would apply to physicians in private practice, medical students, and students of other health care professions.	
3	Issue Commissioner’s authority to act on finding of wrongdoing	Stakeholder recommendation: The commissioner has limited ability to act when wrongdoing has been found except to report to the offices of the Legislature. There appears to be no obligation on any of these bodies to do anything specific. There are no sanctions on any individuals who committed wrongdoing. The application of a fine should be the Commissioner’s minimum capability, possibly including the ability to direct reinstatement of the whistle-blower who has been fired for speaking up. This would be more consistent to the powers of analogous bodies such as the Alberta Human Rights Commission.
	Commissioner’s response : I do not support the recommendation. The Act grants the Commissioner the authority to conduct investigations for the purpose of identifying and remedying wrongdoing. If a finding of reprisal is made, I am required to forward the matter to the Labour Relations Board to determine appropriate remedies and to the Minister of Justice and Solicitor General for consideration of prosecution under the Act.	

	<p>The Act does not give the Commissioner the ability to impose fines or penalties when an investigation finds a reprisal occurred. A reprisal is an offence, and the ability to impose fines or penalties is appropriately managed by the courts through due process.</p> <p>I am the independent investigative authority. I do not believe I should also be the adjudicator to penalize individuals and grant remedies. I believe it would be conflict for the Commissioner to do so.</p>	
4	Issue Mechanism to appeal Commissioner's decision	Stakeholder position: While the Commissioner has the discretion to refuse to conduct an investigation or cease an investigation, which is under way, there is no corresponding right of a review or appeal specified in the Act, nor is there an obligation to report on the refusal or termination to either the Legislature or to the individual who has disclosed the alleged wrongdoing.
	Commissioner's response : <p>I do not support the stakeholder's position on this issue.</p> <p>As it relates to notifying individuals of a decision not to investigate a disclosure - Section 19(3) of the Act requires the Commissioner to inform the employee who made the disclosure and the affected department, public entity, or office, when a decision is made not to investigate a disclosure of wrongdoing. The Commissioner is further required under section 33 of the Act to report annually on, in part, the number of disclosures acted on and the number of disclosures not acted on by the Commissioner. This reported is tabled in the Legislative Assembly.</p> <p>As it relates to a right of appeal or review of a decision by the Commissioner - Section 52(2) of the of the Act outlines the process for judicial review of a decision of the Commissioner concerning a reprisal.</p> <p>As it relates to allegations of wrongdoing - Except on the ground of lack of jurisdiction, no proceeding or decision of the Commissioner shall be challenged, reviewed, quashed or called into question in any court. The Act recognizes the Commissioner as the final decision maker in this regard. Moreover, the Commissioner does not issue orders or impose administrative penalties that ought to be subject of an appeal mechanism. The Commissioner makes recommendations for corrective measures.</p>	
5	Issue Reprisal through social-media	Stakeholder recommendation: The committee amend the definition of reprisals against whistle-blowers to include retaliation against the whistle-blower expressed through social media activity.
	Commissioner's response : <p>I support the recommendation.</p> <p>I recommended an amendment to the Act expanding the definition of reprisal to include "any detriment" to a person. Retaliation through the use of social media would apply. (See Commissioner's Recommendation #12)</p>	

Alberta Professional Planners Institute

1	Issue Confidentiality	Stakeholder recommendation: Ensure that whistleblower information will be held in confidence and not subject to use for another purpose
	Commissioner's response : I support the recommendation. I have recommended strengthening the protections for whistleblowers and witnesses, including a requirement to keep confidential the identity of a person who made a disclosure, is the subject of a disclosure or participated in an investigation, and to not reveal the identity of said persons, unless required by law or necessary to carry out the purposes of the Act. (See Commissioner's Recommendation #7 and #8) I have further recommended the Act be amended making the disclosure of the identity of a person who made a disclosure of wrongdoing, participated in an investigation or is the subject of a disclosure of wrongdoing, an offence, except under certain circumstances. (See Commissioner's Recommendation #10)	
2	Issue Non-political decision-making	Stakeholder position: Elected officials should not be the final decision-makers in determining who can come forward or what happens with information that's brought forward through the whistle-blower Act. It should be bureaucratically appointed people who are leading that decision-making process and the adjudication process.
	Commissioner's response : The stakeholder's position is currently in practice. The Public Interest Commissioner is not elected and is an independent legislative officer. The Commissioner is appointed by an all-party standing committee.	

Cameron Hutchison

1	Issue Reform of legislation and the Commissioner's application of the Act	Stakeholder recommendation: Reforms are made to competently interpret and administer the act according to its remedial terms, and provide adequate resources for the investigation of alleged wrongdoings and reprisals.
	Commissioner's response : I support a variation of the stakeholder's recommendation. I agree with the stakeholder's general perspective that improvements can be made to the legislation. In this regard, I made 22 recommendations to enhance the scope of the Act, strengthen protections for whistleblowers and witnesses, and improve the functionality of the Act.	

	<p>I do not support the position of the stakeholder in relation to how I interpret and apply the Act. I have encouraged any individual seeking additional information or clarification on how I apply and interpret the Act, to contact my office.</p>	
2	<p>Issue</p> <p>Rigor and transparency of reprisal investigations</p>	<p>Stakeholder position:</p> <p>Improved rigor and transparency of reprisal investigations. What is needed is properly trained investigators who aggressively turn over every stone, looking for evidence of a disguised reprisal.</p>
	<p>Commissioner's response :</p> <p>I do not support the stakeholder's position.</p> <p>My office has retained five highly competent and experienced investigative experts. I do not support a perspective that my staff lacks training or competency to undertake investigations mandated by the Act.</p> <p>All investigations by my office are well-planned, methodical, and are conducted with rigor. The Act grants me authority to access records and information, in any form, from any individual and to compel statements. This authority has been applied appropriately.</p> <p>My office investigates the specific allegations brought to our office, and makes a determination on those allegations.</p>	
3	<p>Issue</p> <p>Right of appeal</p>	<p>Stakeholder recommendation:</p> <p>There should be a right of appeal to the Alberta Labour Relations Board or, alternatively, the Court of Queen's Bench against a negative reprisal finding.</p>
	<p>Commissioner's response :</p> <p>I support the stakeholder's position. However, this provision already exists. Section 52(2) of the of the Act outlines the process for judicial review of a decision of the Commissioner concerning a reprisal.</p>	
4	<p>Issue</p> <p>Survey of public service employees</p>	<p>Stakeholder recommendation:</p> <p>Take into account the experiences and concerns of public service employees through an anonymous survey to gauge the kind and extent of wrongdoing they encounter in the workplace, and to help determine which legal reforms would encourage them to make disclosures</p>
	<p>Commissioner's response :</p> <p>I do not support the stakeholder's recommendation.</p> <p>Employees participating in such a survey would be asked to discuss potentially serious wrongdoing outside the auspices of the Act and the protection it affords. Confidentiality cannot be guaranteed using such a survey, and should such information become known, inferences may be made as to who participated in the survey and who provided the damning information.</p>	

	<p>Employees could then find themselves subject to reprisals and having no protections afforded to them under the Act.</p> <p>Moreover, in receiving the survey information, the committee may become burdened with the knowledge of specific wrongdoing occurring within the public service, and be subsequently compelled to act. The committee would need to consider whether it wishes to undertake this burden.</p> <p>Employees who have knowledge of wrongdoing within the public service ought to report their concerns under the blanket of protection afforded by the Act. I do not believe employees lack confidence in the Act, but would trust a survey process to disclose incidents of wrongdoing.</p> <p>The committee has offered the opportunity for individuals to provide input on legislative reforms by inviting public submissions.</p>	
5	Issue Inclusion of the private sector in the Act	Stakeholder recommendation: Include private sector employees under a revamped regime
	<p>Commissioner's response :</p> <p>I support a variation of the stakeholder's recommendation.</p> <p>There is no jurisdiction internationally, that I am aware of, where the law provides for a single authority (i.e. a Public Interest Commissioner) to be responsible for whistleblower protection throughout the entire public and private sector. There is virtue in extending protections to whistleblowers in the private sector, however the <i>Public Interest Disclosure (Whistleblower Protection) Act</i> is intended to provide protections for individuals reporting matters of public interest relating to the administration of <u>our public institutions</u>.</p> <p>Where I have made recommendations that apply to the private sector, is in creating the Prescribed Service Provider regulation. It's my recommendation that a prescribed service provider regulation include any person, organization or body who are a party to a contract or agreement with a department, office or public entity, to provide goods or services. I believe the public perception is that entities receiving significant government funding are the responsibility of government, and the role of government is to ensure those contracted service are delivered in compliance with its requirements. (See Commissioner's Recommendation #1)</p>	
6	Issue Journalistic shield law	Stakeholder recommendation: The Alberta Legislature adopt a journalistic shield law protecting against journalists
	<p>Commissioner's response :</p> <p>I take no position on this specific issue. However, should the committee identify the need for Alberta legislation specific to journalists' sources, I would suggest a "stand alone" piece of legislation would be more appropriate than embedding the protection of journalists' sources within the existing <i>Public Interest Disclosure (Whistleblower Protection) Act</i>.</p>	

7	Issue Protection of public participation	Stakeholder recommendation: The Alberta Legislature enact legislation protecting against strategic lawsuits against public participation (aka anti-SLAPP legislation)
	Commissioner's response: I take no position on this specific issue. However, should the committee identify the need for Anti-SLAPP legislation in Alberta, I would suggest that similar to Ontario's <i>Protection of Public Participation Act</i> , a "stand alone" piece of legislation would be more appropriate than embedding the provisions of legislation within the existing <i>Public Interest Disclosure (Whistleblower protection) Act</i> . Where I have made a recommendation that may apply relates to the inclusion of protection from civil liability for persons who make disclosures of wrongdoing or complaints of reprisal. If applied, this provision would protect persons against lawsuits as a result of using the Act. (See Commissioner's Recommendation #6)	
8	Issue Protections for non-whistleblowers	Stakeholder recommendation: The Act does not protect employees who are believed to be the whistleblower
	Commissioner's response : I support the recommendation. I have made the same recommendation that the Act protect persons who are suspected of making a disclosures of wrongdoing. (See Commissioner's Recommendation #13)	
9	Issue Inclusion of policy violations and code of conduct violations as wrongdoing	Stakeholder recommendation: The Act include policy violations and code of conduct violations as types of wrongdoing to which employees ought to receive protections under the Act
	Commissioner's response : I do not support the recommendation. The purpose of the Act is to facilitate the disclosure and investigation of significant and serious matters ... that an employee believes may be unlawful, dangerous to the public or injurious to the public interest. Where wrongdoing occurs, violations of codes of conduct and policy are likely inherent; however, including code of conduct and policy violations as stand-alone forms of reportable wrongdoing does not conform with the objective of the Act, and I do not believe such an inclusion would serve the public interest. It's my belief there are sufficient mechanisms through internal human resource departments, processes through the public service commission, and grievance mechanisms through collective agreements to address policy and code of conduct violations. I do not believe the legislature intended for my office to be responsible for policing policy matters within our public institutions.	

10	Issue Presumption of guilt	Stakeholder recommendation: There should be a presumption that dismissal or reprisal is the result of whistle-blowing, leaving it to the employer to prove that it is not.
	Commissioner's response: I do not support the recommendation. The Public Interest Commissioner must be impartial and not demonstrate bias that favours a party to a complaint. A presumption of guilt does not conform to the principals of procedural fairness and natural justice, established through Canada's common law. The standard of proof applied is a balance of probabilities. In scenarios where an individual or organization fails to demonstrate a lawful reason for the adverse employment action, the balance of probabilities would favour the complainant.	
11	Issue Protections to employees who report wrongdoing outside the legislative process	Stakeholder position: "Protection is currently denied when an employee reports wrongdoing to the wrong person, fails to put the disclosure in writing, or, as one case noted, fails to reference the legislation. These look like gotcha technicalities that do not serve any purpose other than to deny eligibility for reprisal protection under the act. Employees should automatically be given protection when they report wrongdoing in the workplace regard-less of which superior they report it to, whether it is in writing, and whether or not it references the act."
	Commissioner's response : I do not support the stakeholder's position. The Act currently protects employees when they seek advice from a supervisor about the Act or about making a disclosure. However, the Act does not permit disclosures to be made to a supervisor. Disclosures may only be made to a designated officer or to my office. This is necessary as supervisors are not equipped to investigate public interest disclosures, and employers need to be able to distinguish between a disclosure under the Act, to which the protection provisions apply, and all other forms of complaints that are received as part of the regular administration of the organization. It would be unfeasible for organizations to determine which issues reported under all available mechanisms ought to qualify for legislative whistleblower protection. Without pre-defined criteria ambiguity exists, and distinguishing what constitutes wrongdoing and a public interest matter becomes subjective. An individual employee's perspective of whether, in the course of their duties, they were reporting a wrongdoing in the public interest, may differ from that of the employer and the public. Further, it would severely hamper an employer from making reasonable and appropriate human resource management decisions. The Act exists as it prescribes a dedicated process employees can utilize to gain legislative protections for reporting wrongdoing.	

	I also believe it is necessary for employees to make formal disclosures in writing. This ensures the accuracy of information reported and verifies the employee's commitment to the complaint process. For example, an employee venting or making off-handed statements to a supervisor should not be considered a disclosure.	
12	Issue Protection for employees who refuse to participate in wrongdoing	Stakeholder recommendation: Employees who refuse to participate in wrongdoing should also be covered.
	Commissioner's response : I support the recommendation. However, this provision currently exists. Under section 24(1)(d), employees are protected from reprisal when they declined to participate wrongdoing.	
13	Issue Public disclosures and disclosures to the media	Stakeholder recommendation: The committee might also wish to consider a provision found in the federal act that permits disclosures directly to the press and public in urgent circumstances only, where there is not enough time to conduct an investigation to remedy the wrongdoing.
	Commissioner's response : I do not support the recommendation. An individual's personal perspective of what constitutes wrongdoing and a public interest matter is subjective. Permitting public disclosures would permit individuals to arbitrarily invoke whistleblower protections on any matter they perceive as wrongdoing – whether or not this is actually the case. I respect the media and its ability to bring light serious matters. However, allegations reported within the media are unproven. They are not the result of a robust, impartial and procedurally fair investigation that the Act affords. I also have concerns regarding confidentiality. It is important to recognize that the Act should also protect persons wrongfully accused. An individual can suffer irreparable harm to their careers, their reputation, and their personal and family life as the result of allegations made public or through "public disclosures". The Act compels oaths of secrecy and confidentiality not undertaken by the media. I believe disclosures should only be made using the Act, which specifically defines what constitutes a wrongdoing for the purpose of investigating matters in the public interest, and sets clear parameters for when legislative protections apply. The Act directs the Chief Officer, Commissioner or designated officer, as the case may be, to report emergencies or imminent risks to the appropriate authority. Where an emergency exists, emergency services ought to be the immediate point of contact for any employee. The employee may then engage the Public Interest Commissioner's office if they believe whistleblower protection is required.	

14	Issue Collaboration with public entities	Stakeholder position: Any hint of collaboration or informality with an employer would and should rightly scare off a whistle-blower.
	Commissioner's response : I do not support this position. My office has worked to foster a cultural shift in how whistleblowing is perceived, and where management and employees work together to detect and remedy wrongdoing. This is happening. Organizations are beginning to embrace this culture and are seeing the benefits of supporting a strong whistleblower protection regime. My office has worked collaboratively with many public sector organizations to investigate allegations of wrongdoing, with the support and approval of the complainant. My office has also worked collaboratively with organizations to remedy wrongdoing outside the auspices of a formal investigation. There are circumstances where a more aggressive approach is required; however, a collaborative approach has exceedingly been successful in investigating wrongdoing, encouraging the necessary cultural change, and promoting accountability and confidence in the administration of our public institutions.	
15	Issue Confidence in system	Stakeholder position: “(In the) 2017-2018 annual report: an employee makes a complaint of wrongdoing to the deputy minister, an authorized channel, but was denied protection because he did not mention the act, the public interest disclosure act, or identify it as disclosure under the act. This is a reprisal investigation, so that guy is out of luck, and see you later. So that’s really unsatisfactory. That’s a gotcha, and that really does not create confidence in the system.”
	Commissioner's response : I do not support the stakeholder's position. The case referenced by the stakeholder related to an employee who made a general complaint via email to a Deputy Minister and was subsequently terminated. Our office examined whether the Deputy Minister ought to have considered the email a protected disclosure, whether the disciplinary action was the result of that email, and whether the subject matter of the email was potentially wrongdoing. In this case, none of the criteria applied. The email was not written in a manner that would have given the Deputy Minister any indication that the employee was making a disclosure or seeking whistleblower protection, and the email was not the sole reason for the employee's termination. Further, the subject matter of the email did not relate to wrongdoing defined in the Act. I would not support a regime where such a scenario would qualify an employee for whistleblower protection, and the employer would then be found to have committed an offence of reprisal.	

Centre for Free Expression

1	Issue Current state of Alberta's Whistleblower Law	Stakeholder position: Canada is recognized internationally as having one of the worst national whistleblower laws of any modern democracy. The provinces have generally followed the lead of the federal government.
	Commissioner's response: I do not support the stakeholder's position. I agree that the Act can be improved. This is the purpose of legislative reviews. It's through experience that we determine how amendments can be made to make legislation more effective. However, I do not support a perspective that legislators created a statute that lags far behind modern democracies. The Act was initially created, and subsequently amended in 2018, and given careful consideration by the standing committees of the time to similar laws in other jurisdictions, and best practices. This is the same process that is currently underway. The analysis by my office did not encompass a review of the effectiveness of the <i>Federal Public Servants Disclosure Protection Act</i> . This is a federal statute that does not relate to Alberta's law currently under review by the committee. The analysis by my office found that if the recommended amendments were applied, Alberta's law would be strongly in line with international best practices and standards. (See Appendix B)	
2	Issue Reportable types of wrongdoing	Stakeholder position: Alberta's Act is limited in scope of what can be reported. Commissioner's response : I do not support the stakeholder's position. The purpose of the Act is to provide an avenue for the reporting and investigation of serious and significant matters that are unlawful, dangerous or injurious to the public interest. The Commissioner is therefore mandated to investigate the most serious violations of the public interest. The Act applies to the following forms of wrongdoing: <ul style="list-style-type: none"> a) A contravention of an Act, a regulation made pursuant to an Act, an Act of the Parliament of Canada or a regulation made pursuant to an Act of the Parliament of Canada; b) An act or omission that creates a substantial and specific danger to the life, health or safety of individuals ... or to the environment; c) Gross mismanagement of public funds or a public asset; d) Gross mismanagement of the delivery of a public service; and e) Gross mismanagement of employees This is an encompassing list. I have not found that my office is receiving complaints relating to serious forms of wrongdoing not captured by the Act. I believe that other forms of "wrongs" that are reported to my office that do not fall under the Act (i.e. policy violations) are more appropriately addressed through existing internal mechanisms.

3	Issue Good faith	Stakeholder recommendation: Alberta's Act applies a good faith test that should be removed. Commissioner's response : I support the recommendation. I recommended removing "good faith" terminology from the Act. Complaints ought to be assessed on facts and on the merits of the complaint. A complainant's motivation should not be a prerequisite to making a disclosure. My office has noted circumstances where employers are interpreting what constitutes good faith arbitrarily, and view the absence of good faith as negating the protection provisions of the Act. My office presumes good faith in the absence of clear evidence of malice. If a person makes a disclosure by providing knowingly false or misleading information, he or she will be subject to the penalties set out in the Act for making a false statement. Since our inception, my office has not declined to investigate a disclosure based on the absence of good faith. (See Commissioner's Recommendation #17)
4	Issue Reporting wrongdoing through alternate channels during course of duties	Stakeholder recommendation: Alberta's Act lacks protection when a disclosure is made through alternate channels (i.e. a supervisor). Commissioner's response : I do not support the recommendation. There needs to be a defined process for making formal disclosures. To consider all complaints made during the course of duties as potential disclosures, presents risks. The Act is intended to address serious wrongdoing on matters of public interest. Without pre-defined criteria then ambiguity exists, and distinguishing what constitutes wrongdoing and a public interest matter then becomes subjective. An individual employee's perspective of whether, in the course of their duties, they were reporting a wrongdoing in the public interest, may differ from that of the employer and the public. Further, such a provision would potentially restrict an employer from making reasonable human resource management decisions as every employee reporting something, under any available mechanism, could seek whistleblower protection. The Act protects employees who seek advice from a supervisor. However, the Act does not permit disclosures to be made to a supervisor. Disclosures may only be made to a designated officer or to my office. This is necessary as supervisors may not be equipped to assess and investigate public interest disclosures, and employers need to be able to distinguish between a disclosure under the Act, to which the protection provisions apply, and all other forms of complaints made through alternate channels.

5	Issue Disclosures must be made in writing	Stakeholder recommendation: Alberta's Act lacks protection when a disclosure is not made in writing. Commissioner's response : I do not support the recommendation It is necessary for a disclosure to be in writing. This ensures the accuracy of information reported and verifies the employee's commitment to the complaint process. For example, an employee venting or making off-handed statements to a supervisor should not be considered a disclosure. In circumstances where an individual is unable to write a disclosure, my office will transcribe a conversation, and have the individual verify the contents and accuracy of the information.
6	Issue Interim relief	Stakeholder recommendation: The Act does not contain a provision to provide interim relief Commissioner's response : I take no position on this issue. There is merit in the ability to provide interim relief. However, including such a provision would need to be carefully considered. An employer may have a justifiable reason for dismissing an employee. Requiring an employer to retain the employee, or to reverse a human resource management decision until the conclusion of an investigation, may have a more detrimental impact on the work environment within the organization. Granting interim relief to an employee also creates a presumption the allegation is substantiated. Further, a decision to grant interim relief would need to be subject to an appeal mechanism. When a reprisal is found, I am required to report the matter to the Labour Relations Board to determine appropriate remedies. Section 3(e) of the Act grants the Labour Relations Board the power to issue interim orders pending a final determination of the matter. Should the committee support the recommendation and consider interim relief prior to a finding of reprisal, I would suggest that the mechanism for granting interim relief be undertaken outside my authority and potentially through the courts.
7	Issue Reverse onus	Stakeholder recommendation: The Alberta Act lacks a reverse onus provision. Commissioner's response : I do not support this recommendation. The Public Interest Commissioner must be impartial. A reverse onus of proof during reprisal investigations creates a bias and does not conform to the principals of procedural fairness and natural justice, established through Canada's common law.

	The standard of proof applied is a balance of probabilities. In scenarios where an individual or organization fails to demonstrate a lawful reason for the adverse employment action, the balance of probabilities would favour the complainant.	
8	Issue Commissioner authority to issue orders	Stakeholder recommendation: The Act contain a provision giving the Public Interest Commissioner the authority to issue orders for corrective measures
	Commissioner's response : I do not support this recommendation. The Public Interest Commissioner provides recommendations and does not issue orders. An organization is not required by law to comply with the recommendations; however, similar to my role as the Ombudsman, the Commissioner relies on the power of moral suasion. If an organization chooses not to follow the recommendations, a process of escalation exists within section 22(5). As an example, where a department has not followed recommendations, I may report the matter to the Clerk of the Executive Council. Executive Council thereby becomes accountable for the inaction of the department. I also have the power to report matters publicly in order to hold individuals, organizations and elected officials accountable for any inaction. I have not encountered a circumstance where my recommendations have not been followed. Further, where an administrative authority has the power to issue an order, an appeal mechanism would need to be in place.	
9	Issue Access to the Labour Relations Board	Stakeholder position: The Public Interest Commissioner is effectively a gatekeeper to the body that would grant them a remedy (i.e. the Labour Relations Board). There's not compelling need to have that role. In other jurisdictions people can go directly to some form of tribunal and make their case.
	Commissioner's response : I do not support the stakeholder's position. Employees are not restricted from accessing the Labour Relations Board through complaint processes outlined in the <i>Public Service Employee Relations Act</i> , the <i>Alberta Labour Relations Code</i> , and the <i>Alberta Employment Standards Code</i> . The process differs where an employee elects to make a complaint under the <i>Public Interest Disclosure (Whistleblower Protection) Act</i> . The Public Interest Commissioner is the independent investigative authority responsible for determining whether a reprisal occurred. The process of referring a complaint to the Labour Relations Board under section 27.1 permits the Board to hold hearings for the purpose of determining remedies as the result of the reprisal. The Act grants the Board powers to issue orders for a substantial range of remedial measures not available in other statutes.	

	<p>Providing employees with direct access to the Labour Relations Board, places the investigative responsibility and burden of proof on the employee to prove to the Labour Relations Board that a reprisal occurred. Under the existing regime, the Commissioner's office undertakes this function. Determining whether a reprisal has occurred is not the responsibility of the Labour Relations Board, and the employee is only responsible for petitioning for remedies.</p>	
10	<p>Issue</p> <p>Commissioner's discretion to not investigate a complaint</p>	<p>Stakeholder position:</p> <p>"The laws typically give an enormous amount of discretion to do nothing, and it gives a whole list of reasons why the commissioner might decide not to investigate, including any other reason, which just invites them to make up reasons."</p>
	<p>Commissioner's response :</p> <p>I do not support the stakeholder's position.</p> <p>Section 19 of the Act outlines circumstances where the Commissioner is not required to undertake an investigation into a disclosure. These provisions are discretionary, meaning I may still choose to undertake an investigation if one of the listed circumstances apply.</p> <p>It's my view that the provisions in section 19 provide an appropriate balance of discretion, while ensuring I have the ability to decline an investigation for reasons that do not conform with the purpose and intent of the Act, or would result in duplicative investigative efforts.</p> <p>A decision to apply a provision outlined in section 19 is not made arbitrarily, and is always supported by extensive analysis guided by our operational procedures.</p> <p>The existence of the provision allowing me to decline to investigate for "any other reason" was included for circumstances that was not foreseen by legislators at the time.</p>	
11	<p>Issue</p> <p>Reprisals</p>	<p>Stakeholder position:</p> <p>"There is substantial evidence that whistle-blowers are indeed suffering reprisals, and the track record in terms of uncovering and fixing serious wrongdoing is almost nonexistent: just one case in seven years."</p>
	<p>Commissioner's response :</p> <p>I do not support this position.</p> <p>I am not aware of substantial evidence that whistleblowers in Alberta are suffering reprisals. I would encourage the stakeholder to facilitate this information to our office, and encourage those Albertans who believe they have been the subject of a reprisal, as the result of making a whistleblower complaint, to contact my office.</p> <p>To date, my office has found 6 wrongdoings. These were instances where myself or my predecessor found were serious enough to constitute a declaration of "wrongdoing". Such a finding is not taken lightly, nor should it be. Such a finding is reserved for instances where the actions of individuals or organizations are unlawful, dangerous to the public, or injurious to the public interest.</p>	

	<p>However, this number does not include instances where our office worked collaboratively with organizations to correct wrongdoing outside the auspices of a formal investigation, cases where wrongdoing was found by designated officers following an investigation and supported by our office, and instances where investigations found wrongs that did not meet the threshold of “wrongdoing”, but were still addressed with the public entity and remedied.</p>	
12	<p>Issue</p> <p>Measuring effectiveness of the Act</p>	<p>Stakeholder recommendation:</p> <p>“If we were able to, through follow-up surveys, find out more about the whistle-blowers, we would have a lot better indication of whether the system is actually working to protect them, and if it doesn’t or if people believe it doesn’t.”</p>
	<p>Commissioner’s response :</p> <p>I support a variation of this recommendation.</p> <p>I believe additional information is required to assist in measuring the effectiveness of the Act. However, measuring the effectiveness through a survey presents serious risks:</p> <ul style="list-style-type: none"> • First, a broad public survey would not differentiate between persons who have utilized the Act and persons who have used other mechanisms. • If the survey was targeted at employees who have contacted our office, or used the Act through all public entities, there are confidentiality concerns as the identity of complainants should not be disclosed. • The concept of a public survey of whistleblowers is counter to the concept of preserving and strengthening confidentiality within the Act. • I would also be concerned that information provided in such surveys could potentially compromise the confidentiality of the whistleblower, witnesses and persons accused of wrongdoing. I do not believe it would be appropriate for parties not associated with the matter to have access to such information. • Employees participating in such a survey would be asked to discuss potentially serious wrongdoing outside the auspices of the Act and the protection it affords. • Confidentiality cannot be guaranteed using such a survey, and should such information become known, inferences may be made as to who participated in the survey and who provided the damning information. Employees could then find themselves subject to reprisals and having no protections afforded to them under the Act. <p>I have recommended an amendment to the Act to allow the Public Interest Commissioner to require that jurisdictional entities provide an annual reporting on their activities under the Act. This information would be highly useful to assist my office in identifying systemic issues, recognizing deficiencies, measuring the effectiveness of the Act, and observing the performance of public entities in applying the Act. (See Commissioner’s Recommendation #22)</p>	
13	<p>Issue</p> <p>Independence of the Public Interest Commissioner</p>	<p>Stakeholder recommendation:</p> <p>“What we have is evidence that there’s a huge conflict of interest in this role when the person is appointed by the government, can be removed by the government, and whose future career prospects may depend on the favour of the government, and they’ve been</p>


	<p>brought up in an environment like bureaucrats are where they're socialized to believe in protecting the bureaucracy. When someone of that background and career path is put in this role, you have a huge conflict of interest and enormous pressure on them to keep the government out of trouble in the short term. Again, that's a pattern that we see. It's quite blatant in some cases. I think that position has to be, as far as you can make it, independent of the government. There are various ways of doing that."</p>
	<p>Commissioner's response :</p> <p>I do not support this position.</p> <p>Officers of the Legislature are independent from government, and are not accountable to any particular Ministry. Legislative officers are appointed by the Standing Committee on Legislative Offices, which is an all-party committee. The Committee also approves the budgets of legislative offices. This appointment and budgetary process mirrors other Canadian jurisdictions.</p> <p>I have not felt I am in a conflict of interest, neither have I been pressured to protect the public entities that fall under the jurisdiction of the Act.</p>

Dr. John T. Huang

1	<p>Issue</p> <p>Physicians</p>	<p>Stakeholder recommendation:</p> <p>The Act extend to physicians in private practice</p>
	<p>Commissioner's response :</p> <p>I support the recommendation.</p> <p>The Act currently applies to contracted physicians and health practitioners working within hospitals and facilities operated by Alberta Health Services, Covenant Health and Lamont Health Care Centre. It does not apply to physicians, health practitioners operating within a private practice. The Act also does not include medical students, and students of other health care professions.</p> <p>I recommended that a prescribed service provider regulation be made, and include any person, organization or body who are a party to a contract or agreement with a department, office or public entity, to provide goods or services. This would include physicians and health care professionals in private practice. (See Commissioner's Recommendation # 1)</p> <p>The stakeholder raised concerns regarding fraudulent billing practices of physicians. With the recommended amendment, such practices by physicians in private practice would be reportable wrongdoing under the Act.</p>	


APPENDIX "B" - Transparency International Toolkit for Assessing Whistleblower Legislation

Assessment of the *Public Interest Disclosure (Whistleblower Protection) Act* with proposed amendments

No:	Indicator Name:	Indicator Question:		
1.	MATERIAL SCOPE: REPORTABLE INFORMATION	WHICH FORMS OF WRONGDOING ARE COVERED?		
A. COMPLIANCE WITH THE EU DIRECTIVE		Indicator Rating (Best practice)		
The legislation complies with EU Directive requirements if it...		Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
a)	defines “breaches” as acts or omissions that are unlawful or abusive (i.e. “defeat the object or the purpose” of the law)	5.1	National law has to cover both unlawful and abusive behaviours to comply with the Directive.	Yes
b)	covers information, including reasonable suspicions, about actual or potential breaches which occurred or are very likely to occur in a work-related context	5.2	Covers information on past, ongoing and “future” breaches and “reasonable suspicions” of breaches (no strong evidence/certainty required)	Yes
c)	covers information about attempts to conceal such breaches	5.2		Yes

d)	covers breaches of EU law falling within the scope of the EU acts listed in the Annex of the Directive that concern the following areas: <ul style="list-style-type: none"> • public procurement • financial services, products and markets, and prevention of money laundering and terrorist financing • product safety and compliance • transport safety • protection of the environment • radiation protection and nuclear safety • food and feed safety, animal health and welfare • public health • consumer protection • protection of privacy and personal data, and security of network and information systems 	2.1(a)	<i>The Directive does not cover the entirety of the areas listed. It covers, within those areas, the scope of the EU acts listed in its Annex.</i>	Partially The EU Directive applies to EU Laws. This does not relate to the Alberta PIDA.
e)	covers breaches of EU law affecting the financial interests of the Union	2.1(b)		No (N/A to PIDA)
f)	covers breaches of EU law relating to the internal market, including breaches of Union competition and State aid rules, as well as corporate tax rules	2.1(c)		No (N/A to PIDA)
In addition, the legislation may (optionally)...		Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
g)	extend its scope of application beyond what is covered by criteria (d) - (f)	2.2	<i>This goes toward best practice and highly recommended. A broader and less fragmented scope than that described in criteria (d)-(f) above should be encouraged as a matter of priority (best practice is a "horizontal" approach as described in criterion B(v), below).</i>	Yes
h)	exclude from its scope reports of breaches of the procurement rules involving defence or security aspects unless they are covered by the relevant acts of the Union	3.2	<i>This is not best practice, thus failure to comply need not be highlighted.</i>	Yes (inherent)

i) exclude from its scope information covered by: <ul style="list-style-type: none"> the protection of classified information the protection of legal and medical professional privilege the secrecy of judicial deliberations rules on criminal procedure. 	3.3	<i>This is not best practice, thus failure to comply need not be highlighted.</i>	Yes
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B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE		Indicator Rating (Best practice)	
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The legislation can be considered STRONG if it...	Explanatory notes	Meets criteria? (Yes/No)
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i) defines “breaches” as acts or omissions that are unlawful or abusive (i.e. criterion (a) above) or that threaten or harm the public interest	<p><i>Abuse of law are acts and omissions which do not appear to be unlawful in formal terms but defeat the object or the purpose of the law.</i></p> <p><i>All three categories of acts and omissions should be covered to meet the criterion (unlawful, abusive and threatening/harming the public interest).</i></p> <p><i>If national legislation provides for a list of types of breaches that would fall within the definition, it should be indicative/non-exhaustive.</i></p>	Yes
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ii) covers at least the following: <ul style="list-style-type: none"> corruption criminal offences breaches of legal obligation miscarriages of justice specific dangers to public health, safety or the environment human rights violations 		Partially (breaches of legal obligation and miscarriages of justice not included)
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	<ul style="list-style-type: none"> • abuse of authority • unauthorised use of public funds, property or resources • gross waste or mismanagement • conflict of interest • fraudulent financial disclosures made by government agencies/officials and regulated corporations 		
iii)	covers information on perceived or potential breaches that have been, are being or are likely to be committed	<i>Covers information on past, ongoing and “future” breaches and no strong evidence/certainty is required.</i>	Yes
iv)	covers information about concealment of breaches and attempts to conceal such breaches		Yes
v)	adopts a “horizontal” or cross-cutting/cross-sectoral approach (i.e. does not only apply to specific sectors, areas or domains)		No (PIDA applies only to public sector)
vi)	does not exclude some categories of reportable information (such as matters of national security, official or military secrets, or classified information).	<i>The law can establish special procedures and safeguards for reporting information concerning such matters, via a body that is institutionally and operationally independent from the security sector or via authorities with the appropriate security clearance.</i>	No (PIDA excludes matters of solicitor client privilege, parliamentary privilege, and deliberations of exec council)
In addition, the legislation may be considered even stronger if it...		Explanatory notes	Meets criteria? (Yes/No)
vii)	limits the use of special schemes/rules (for example for information related to national security) to narrowly and clearly defined categories of information being disclosed and without consideration of the person making the disclosure.	<i>This means that a military officer raising a concern about irregularity in the procurement of office supplies should not be subject to a special whistleblowing scheme for information relating to national security but should be able to use the “general” scheme.</i>	Yes

Relevant sources:

TI Principles 1, 3, 19 and 24; TI Best Practice Guide pp 7-10, 42-45 and 66; TI Position Paper pp 4-5



The legislation can be considered **MODERATE** if it...

viii) meets criteria (ii) – (iii) above, **AND**

ix) does not adopt a fully horizontal approach (i.e. does not meet criterion (v) above) **but** has nonetheless a significant and coherent range, covering many sectors/domains/areas.

The legislation can be considered **WEAK** if it...

x) does not meet at least criteria (viii) – (ix) above.


No: Indicator Name:		Indicator Question:	
2 PERSONAL SCOPE: PUBLIC AND PRIVATE SECTORS		DOES THE LEGISLATION COVER BOTH THE PUBLIC AND PRIVATE SECTORS?	
A. COMPLIANCE WITH THE EU DIRECTIVE		Indicator Rating (Best practice)	
The legislation complies with EU Directive requirements if it...	Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
a) covers reporting persons in both the public and private sectors.	4.1		Yes
B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE		Indicator Rating (Best practice)	
The legislation can be considered STRONG if it...		Explanatory notes	Meets criteria? (Yes/No)
i) covers persons working in the public sector			Yes
ii) covers persons working in the private sector.			No
Relevant sources: TI Principles 1, 2, 4 and 24; TI Best Practice Guide pp 10-11 and 66			


The legislation can be considered **MODERATE** if it...

- iii) meets criteria (i) and (ii) above **but** with significant exceptions in the public sector such as the police and the military
- iv) meets criteria (i) and (ii) above **but** only in some and not all areas of the private sector (such as the financial/banking sector).


The legislation can be considered **WEAK** if it...


- v) only covers persons working in the public sector **or** persons working in the private sector, **but not both**
- vi) covers persons working in the public sector **and** persons working in the private sector, **but** with significant exceptions/limitations in both cases (i.e. does not meet criteria (iii) or (iv) above).

No: Indicator Name:		Indicator Question:	
3 PERSONAL SCOPE: DEFINITION OF A REPORTING PERSON		WHICH CATEGORIES OF INDIVIDUAL ARE PROTECTED?	
A. COMPLIANCE WITH THE EU DIRECTIVE		Indicator Rating (Best practice)	
The legislation complies with EU Directive requirements if it...		Relevant Article(s)	Meets criteria? (Yes/No/Partially)
a) defines a 'reporting person' as a natural person who reports or publicly discloses information on breaches acquired in the context of thier work-related activities (irrespective of the nature of those activities)		5.7	Partially
b) applies to at least the following categories of individuals: <ul style="list-style-type: none"> • workers (whether full, part-time, fixed-term, temporary), including civil servants • self-employed persons • shareholders and persons belonging to the administrative, management or supervisory body • volunteers and paid or unpaid trainees • persons working under the supervision and direction of contractors, sub-contractors and suppliers 		4.1 Recital 38	<i>The EU Directive definition of a worker is quite broad (see Recital 38).</i> Partially
c) applies to reporting persons who acquired information in the context of past work activities ("in a work-based relationship which has since ended")		4.2 5.9	Yes
d) applies to reporting persons who acquired information on breaches during the recruitment process or other pre-contractual negotiations.		4.3	Yes

B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE		Indicator Rating (Best practice)	
The legislation can be considered STRONG if it...		Explanatory notes	Meets criteria? (Yes/No)
i)	defines a 'reporting person' as a natural person who reports or publicly discloses information on breaches acquired in the context of their work-related activities (i.e. criterion (a) above)	<p><i>"Work-related activities" should be interpreted widely to include, for example, an organisation's summer party.</i></p> <p><i>If national legislation provides for a list of categories of individuals that would fall within the definition, it should be indicative/non-exhaustive.</i></p>	Yes
ii)	applies to at least the following categories of individuals (i.e. criterion (b) above): <ul style="list-style-type: none"> workers (whether full, part-time, fixed-term, temporary), including civil servants self-employed persons shareholders and persons belonging to the administrative, management or supervisory body volunteers and paid or unpaid trainees persons working under the supervision and direction of contractors, sub-contractors and suppliers 		Yes
iii)	covers past work-related activities (i.e. criterion (c) above)		Yes
iv)	covers persons who acquired information during the recruitment process or other pre-contractual negotiations (i.e. criterion (d) above)		Yes
v)	extends protection measures to persons who are believed or suspected to be a reporting person, even mistakenly, and who suffered retaliation		Yes

vi)	does not exclude categories of workers such as police officers and members of the armed forces or intelligence services.		No
In addition, the legislation may be considered even stronger if it...		Explanatory notes	Meets criteria? (Yes/No)
vii)	defines 'reporting person' as a natural person who reports or publicly discloses information on breaches, without any requirement that the individual must have acquired the information reported/disclosed in the context of their work-related activities		Yes
viii)	extends protection measures to persons who are about to, or intend to, make a whistleblowing report or disclosure		No
ix)	extends protection measures to persons who refuse to participate in breaches (without necessarily reporting them).		Yes
Relevant sources: TI Principles 4 and 11; TI Best Practice Guide pp 11-14 and 26-27; TI Position Paper pp 5-6			
The legislation can be considered MODERATE if it...			
x)	meets at least criteria (i) – (iii) above.		
The legislation can be considered WEAK if it...			
xi)	does not meet at least the criteria (i) – (iii) above.		

No:	Indicator Name:	Indicator Question:		
4	PERSONAL SCOPE: PROTECTED THIRD PARTIES	ARE RELEVANT THIRD PARTIES PROTECTED?		
A. COMPLIANCE WITH THE EU DIRECTIVE		Indicator Rating (Best practice)		
The legislation complies with EU Directive requirements if it extends protection to...		Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
a)	facilitators (natural persons who assist a reporting person in the reporting process in a work-related context, and whose assistance should be confidential)	4.4(a) 5.8		Yes
b)	third persons who are connected with the reporting persons and who could suffer retaliation in a work-related context, such as colleagues and relatives	4.4(b)		Yes
c)	legal entities that the reporting persons own, work for or are otherwise connected with.	4.4(c)		Yes
In addition, the legislation may (optionally) extend protection to ...		Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
d)	civil society organisations providing advice to reporting persons which are bound by a duty to maintain the confidential nature of the information received.	Recital 89	<i>This is best practice and should be encouraged.</i>	Yes



B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE		Indicator Rating (Best practice)	
The legislation can be considered STRONG if it extends protection to...	Explanatory notes	Meets criteria? (Yes/No)	
i) legal entities that the reporting persons own, work for or are otherwise connected with (i.e. criteria (c) above)		Yes	
ii) third persons who are connected with the reporting persons and who could suffer retaliation, such as colleagues and relatives	<i>Protection should not be limited to retaliation "in a work-related context" but should include any form of retaliation, including outside a work-related context (i.e. this is wider than criterion (b) above).</i>	Yes	
iii) natural persons who assist or attempt to assist a reporting person		Yes	
iv) legal persons, including civil society organisations, who assist or attempt to assist a reporting person.		Yes	
In addition, the legislation may be considered even stronger if it extends protection to...	Explanatory notes	Meets criteria? (Yes/No)	
v) individuals who provide supporting information (that they have reasonable grounds to believe is true) regarding a report or disclosure.		Yes	
Relevant sources: TI Principle 4; TI Best Practice Guide pp 11-14; TI Position Paper pp 5-6			

The legislation can be considered **MODERATE** if it...

vi) meets two or three out of the four criteria (i) – (iv) above.


The legislation can be considered **WEAK** if it...

vii) meets one or none of the criteria (i) – (iv) above.

No:	Indicator Name:	Indicator Question:	
5	CONDITIONS AND THRESHOLDS FOR PROTECTION	WHICH ARE THE CONDITIONS AND THRESHOLDS FOR PROTECTION OF REPORTING PERSONS?	
A. COMPLIANCE WITH THE EU DIRECTIVE		Indicator Rating (Best practice)	
The legislation complies with EU Directive requirements if it...		Relevant Article(s)	Meets criteria? (Yes/No/Partially)
a) establishes that reporting persons qualify for protection where the following 2 conditions are met: <ul style="list-style-type: none"> they had reasonable grounds to believe that the information on breaches reported was true at the time of reporting they reported in accordance with the conditions set-out for internal reporting, external reporting, public disclosure, as relevant 		6.1 Recital 32	YES
b) specifies that persons who reported or publicly disclosed information on breaches anonymously, and are subsequently identified and suffer retaliation, qualify for protection.		6.3	PARTIALLY
B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE		Indicator Rating (Best practice)	
The legislation can be considered STRONG if it...		Explanatory notes	Meets criteria? (Yes/No)
i) where they had reasonable grounds to believe that the information on breaches reported was true at the time of reporting		Reporting persons should qualify for protection regardless of whether any subsequent investigation finds proof of wrongdoing.	YES

ii)	even where they reported or publicly disclosed information anonymously (i.e. criterion (b) above)		NO
iii)	without consideration of the reporting person’s motives for reporting (this should be irrelevant in deciding whether they should receive protection)		YES
iv)	without limiting such protection to reports made “in the public interest”.		YES
In addition, the legislation may be considered even stronger if it...		Explanatory notes	Meets criteria? (Yes/No)
v)	stipulates that protection extends to reporting persons who report or disclosure inaccurate information in honest error.	<i>It is often considered as implied, but a clear stipulation is preferable to minimise risks of misinterpretation.</i>	YES
Relevant sources: TI Principle 5; TI Best Practice Guide pp 9-10 and 14-16			
The legislation can be considered MODERATE if it...			
vi)	meets criteria (i) – (iv) above but includes additional conditions for qualifying for protection further to those mentioned above.		
The legislation can be considered WEAK if it...			
vii)	does not meet criteria (i) – (iv) above		


II. REPORTING CHANNELS AND PROCEDURES


No:	Indicator Name:	Indicator Question:		
6	MULTIPLE REPORTING AVENUES	TO WHAT EXTENT DOES THE LEGISLATION FORESEE MULTIPLE REPORTING AVENUES (FOR INTERNAL, EXTERNAL AND PUBLIC REPORTING)?		
A. COMPLIANCE WITH THE EU DIRECTIVE		Indicator Rating (Best practice)		
The legislation complies with EU Directive requirements if it...		Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
a)	provides for reporting within the workplace (internal reporting)	8		YES
b)	provides for reporting to designated competent authorities (external reporting)	11		YES
c)	provides for public disclosures	15		NO
d)	allows reporting persons to report directly externally to the designated competent authorities (i.e. does not impose any additional conditions for external reporting)	10		YES
e)	encourages reporting through internal reporting channels first where the breach can be addressed effectively internally and where the reporting person considers that there is no risk of retaliation.	7.2		YES

B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE		Indicator Rating (Best practice)	<div><div></div><div></div><div></div></div>
The legislation can be considered STRONG if it...	Explanatory notes	Meets criteria? (Yes/No)	
i) provides for reporting within the workplace (internal reporting) (i.e. criterion (a) above)		YES	
ii) provides for reporting to designated competent authorities (external reporting) (i.e. criterion (b) above)		YES	
iii) provides for public disclosures (i.e. criterion (c) above)		NO	
iv) allows reporting persons to report directly externally to the designated competent authorities (i.e. does not impose any additional conditions for external reporting) (i.e. criterion (d) above).		YES	
Relevant sources: TI Principles 15, 16 and 17; TI Best Practice Guide pp 31 and 37-38; TI Position Paper p2			
The legislation can be considered MODERATE if it...			
v) meets criteria (i) – (iii) above; BUT			
vi) requires that reporting persons first report through internal channels before using external channels or make a public disclosure OR			
vii) “encourages” reporting through internal channels first in a way that limits in effect access to external reporting and/or further limits public disclosures.			

The legislation can be considered **WEAK** if it...

viii) does not meet all three criteria (i) – (iii) above.

No: Indicator Name:		Indicator Question:	
7 OBLIGATIONS FOR PUBLIC AND PRIVATE ENTITIES		TO WHAT EXTENT DOES THE LEGISLATION PLACE OBLIGATIONS ON PUBLIC AND PRIVATE ENTITIES?	
A. COMPLIANCE WITH THE EU DIRECTIVE		Indicator Rating (Best practice)	
The legislation complies with EU Directive requirements if it...	Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
a) requires all public entities to establish channels and procedures for internal reporting and for follow-up (internal reporting mechanisms)	8.1 8.9	<ul style="list-style-type: none"> <i>Municipalities with fewer than 10,000 inhabitants or fewer than 50 workers, or public sector entities with fewer than 50 workers can be exempt.</i> <i>Municipalities can be allowed to share internal reporting channels.</i> 	YES
b) requires private entities with 50 or more workers to establish internal reporting mechanisms	8.3 8.4 8.6	<ul style="list-style-type: none"> <i>This threshold does not apply to private sector entities that are obliged to establish internal reporting channels by virtue of other Union acts (referred to in Parts I.B and II of the Directive's Annex).</i> <i>Private sector entities with 50 to 249 workers may share resources.</i> 	PARTIALLY
c) requires the public and private entities mentioned in criteria (a) and (b) above to follow-up on internal reports received (i.e. to assess the accuracy	8.1 9.1(d) 5.12		YES

of the allegations made in the report and, where relevant, to address the breach reported).			
In addition, the legislation may (optionally)...	Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
d) require internal reporting mechanisms to be established following consultation and in agreement with the social partners	8.1	<i>This is best practice and should be encouraged.</i>	PARTIALLY
e) require (some) private entities with fewer than 50 workers to establish internal reporting mechanisms	8.7 Recital 48	<i>This is best practice and should be encouraged.</i>	PARTIALLY
f) allow internal reporting channels to be operated internally or externally by a third party	8.5		YES
g) ensure that internal reporting mechanisms enable not only the entities' workers to report information on breaches but also other persons who are in contact with the entity in the context of their work-related activities (those referred to in article 4.1(b), 4.1(c), 4.1(d) and 4.2, i.e. the self-employed, shareholders, volunteers, trainees, those working under the direction of contractors, etc.).	8.2	<i>This is best practice and should be encouraged.</i>	YES
B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE		Indicator Rating (Best practice)	
The legislation can be considered STRONG if it...		Explanatory notes	Meets criteria? (Yes/No)
i) requires all public entities, at local, regional and national level, without exception and regardless of size, to establish internal reporting mechanisms		<i>Some public entities can be allowed to share internal reporting channels.</i>	YES
ii) requires all private entities with 50 or more employees to establish internal reporting mechanisms (i.e. criterion (b) above)			NO
iii) requires the public and private entities mentioned in criteria (i) and (ii) above to follow-up on internal reports received (i.e. to assess the accuracy of the allegations made in the report and, where relevant, to address the breach reported).			YES

iv)	requires all public and private entities to protect reporting persons and protected third parties (i.e. requires the employer to try to prevent and to address detriment to the reporting persons).		NO
v)	provides minimum standards to be met by internal reporting mechanisms	<i>The law can refer to a mandatory regulation if it is more appropriate in the national context to have such minimum standards in a regulation.</i>	YES
vi)	requires internal reporting mechanisms to be established following consultation and in agreement with relevant stakeholders, including the social partners		NO
vii)	ensures that internal reporting mechanisms enable all relevant individuals to report information on breaches, and at least those covered by the legislation personal scope (consultants, former employees, job applicants, etc.)	<i>Internal reporting mechanisms should not be only designed for an entity's employees.</i>	YES
viii)	provides for effective, proportionate and dissuasive penalties for failure to fulfil the obligation to implement internal reporting mechanisms within a given time period.	<i>Penalties should also apply for failure to have regard to meet the minimum standards provided in the law or regulation (see indicators 8&9 below).</i>	NO
ix)	provides for effective, proportionate and dissuasive penalties for failure to follow up on reports		NO
In addition, the legislation may be considered even stronger if it...		Explanatory notes	Meets criteria? (Yes/No)
x)	provides for effective, proportionate and dissuasive penalties for failure to protect a reporting person		NO
Relevant sources: TI Principle 15; TI Best Practice Guide pp 32-33, 36 and 45-47; TI Position Paper pp 9-10			


The legislation can be considered **MODERATE** if it...

- xi) meets at least criteria (i) - (iv) above **but** exempts more entities from the obligation to establish such mechanisms (e.g. exempts certain sectors or entities with a significantly larger number of employees than 50 or small municipalities); **OR**
- xii) fully meets criteria (i) - (iii) above **but** does not meet criteria (iv).

The legislation can be considered **WEAK** if it...

- xiii) does not meet at least criteria (i) - (iii) above; **OR**
- xiv) does not meet criteria (xi) above.

No:	Indicator Name:	Indicator Question:	
8	INTERNAL REPORTING AND FOLLOW-UP: PROCEDURES	TO WHAT EXTENT ARE THE PROCEDURES FOR INTERNAL REPORTING AND FOLLOW-UP DEFINED IN THE LEGISLATION?	
A. COMPLIANCE WITH THE EU DIRECTIVE		Indicator Rating (Best practice)	
The legislation complies with EU Directive requirements if it requires public and private entities to adopt internal reporting mechanisms that...		Relevant Article(s)	Meets criteria? (Yes/No/Partially)
a)	ensure the confidentiality of the identity of the person reporting internally and any third party mentioned in the report, and prevents access to that information by non-authorized staff	9.1(a)	YES
b)	provide reporting channels (plural) that enable reporting in writing (e.g. by post, by physical complaint box, through an online platform) and/or orally (i.e. by telephone or through other voice messaging systems, and by means of a physical meeting within a reasonable timeframe)	9.1(a) 9.2. Recital 53	YES
c)	designate an impartial person/department to follow up on reports and to maintain communication with the reporting person, including to ask for further information where necessary and to provide feedback	9.1.(c)	<i>This person or department can be the same as the one receiving the reports.</i> YES
d)	ensure diligent follow-up of reports (by said impartial person or department)	9.1(d)	YES
e)	keep records of every report received, in compliance with confidentiality requirements	18.1	YES
f)	ensure that reports, wherever they are received, are stored for no longer than it is necessary and proportionate	18.1	YES
g)	grant organisations the right to document oral reporting and meetings via recording, transcript or minutes, subject to the consent of the reporting person	18.2 18.3 18.4	YES

h) offer the reporting person the opportunity to review, rectify and agree to the transcripts/minutes of oral reporting and meetings (mentioned in criterion (g) above).	18.2 18.3 18.4		YES
In addition, the legislation may (optionally)...	Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
i) require follow-up of anonymous reports.	9.1(e)	<i>This is best practice and should be encouraged.</i>	YES
B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE		Indicator Rating (Best practice)	
The legislation can be considered STRONG if it requires public and private entities to adopt internal reporting mechanisms that...		Explanatory notes	Meets criteria? (Yes/No)
i) ensure the confidentiality of the identity of the reporting person (unless explicitly waived by the reporting person) (i.e. criterion (a) above)			YES
ii) provide multiple reporting channels that are easily accessible and enable reporting in writing and orally			YES
iii) designate impartial person(s)/department for handling reports, in particular for: <ul style="list-style-type: none"> • providing any interested person with information on the procedures for reporting • receiving reports • following up on reports • maintaining communication with the reporting person, including to ask for further information where necessary and to provide feedback 			YES
iv) ensure diligent (i.e. thorough, timely and independent) follow-up of reports (i.e. criterion (d) above)			YES
v) provide enforceable mechanisms to receive and follow up on reporting persons' retaliation complaints in a transparent and timely manner			YES
vi) provide a process for disciplining perpetrators of retaliation			YES


vii)	provide enforceable mechanisms to ensure full reparation for the reporting persons who have suffered retaliation (i.e. for providing remedial measures and compensation) in a transparent and timely manner		YES
viii)	require follow-up of anonymous reports (i.e. criterion (i) in part A above)		YES
ix)	provide reporting channel(s) that enable anonymous reporting (e.g. through an online reporting platform).		YES
In addition, the legislation may be considered even stronger if it requires public and private entities to adopt internal reporting mechanisms that...		Explanatory notes	Meets criteria? (Yes/No)
x)	ensure that designated staff have the relevant qualifications and/or receive specific training for the purpose of handling reports		NO
xi)	provide for additional strategies to prevent retaliation against reporting persons (e.g. risk assessment, preventive measures)		NO
xii)	provide or refer to safe and confidential advice channels		YES
xiii)	provide for reporting channels that enable communication between anonymous reporting persons and persons handling their report.		YES
xiv)	provide for appeals regarding the fairness and quality of the process in a case at the request of the whistleblower or the person concerned.		NO
Relevant sources: TI Principles 15 and 18; TI Best Practice Guide pp 34-37; TI Position Paper pp 8-10			


The legislation can be considered **MODERATE** if it...

xv) meets all five criteria (i) – (v) above


The legislation can be considered **WEAK** if it...

xvi) does not meet at least the five criteria (i) – (v) above.


No:	Indicator Name:	Indicator Question:	
9	INTERNAL REPORTING AND FOLLOW-UP: INFORMATION AND COMMUNICATION	TO WHAT EXTENT ARE THE INFORMATION AND COMMUNICATION REQUIREMENTS FOR INTERNAL REPORTING MECHANISMS DEFINED IN THE LEGISLATION?	
A. COMPLIANCE WITH THE EU DIRECTIVE		Indicator Rating (Best practice)	
The legislation complies with EU Directive requirements if it...		Relevant Article(s)	Meets criteria? (Yes/No/Partially)
a) requires the provision of appropriate information relating to the use of internal reporting channels		7.3	YES
b) requires the provision of clear and easily accessible information regarding the procedures for reporting externally to competent national authorities and, where relevant, to EU institutions, bodies, offices or agencies		9.1(g)	YES
c) requires the acknowledgement of receipt of the report within seven days (or less) of its receipt		9.1(b)	YES
d) requires the provision feedback to reporting persons within three months on the action envisaged or taken as follow-up to the report and the grounds for the choice of that follow-up.		5.13 9.1(f)	YES

B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE		Indicator Rating (Best practice)	
The legislation can be considered STRONG if it...	Explanatory notes	Meets criteria? (Yes/No)	
i) ensures that regulations and procedures for internal reporting are highly visible and understandable (e.g. regularly promoted, sign-posted in the workplace, both physically and electronically)		YES	
ii) requires the provision of clear and easily accessible information regarding the procedures for reporting externally to competent authorities (i.e. criterion (b) above)		YES	
iii) requires the acknowledgement of receipt of the report within a strict, short time frame of receipt	<i>The seven-day timeframe foreseen in criterion (c) above can be considered too long in some contexts.</i>	YES	
iv) requires the timely provision of feedback to reporting persons on the action envisaged or taken as follow-up to the report and the grounds for the choice of that follow-up	<i>The three-month timeframe foreseen in criterion (d) above can be considered too long in some contexts.</i>	YES	
v) provides reporting persons with the opportunity to clarify their report and provide additional information or evidence (albeit without the obligation for them to do so)		YES	
vi) allows reporting persons to review and comment on the results of the follow-up on their report (e.g. on the draft investigation report)		YES	
vii) requires the publication of annual reports recording the numbers of reports received, steps taken to follow up and outcome.		YES	


In addition, the legislation may be considered even stronger if it...	Explanatory notes	Meets criteria? (Yes/No)
viii) provides for effective, proportionate and dissuasive penalties for failure to provide feedback on the follow-up to the reporting person within a reasonable timeframe		NO
ix) requires comprehensive internal training to management and staff on reporting of breaches.		NO
Relevant sources: TI Principles 15, 18, 22 and 27; TI Best Practice Guide pp 33, 47-49; TI Position Paper p10		
The legislation can be considered MODERATE if it...		
(x) meets at least criteria (i) - (iv) above		
The legislation can be considered WEAK if it...		
(xi) does not meet at least criteria (i) - (iv) above (regardless of whether criteria (v) - (vii) are met).		

No:	Indicator Name:	Indicator Question:		
10	ESTABLISHING EXTERNAL REPORTING MECHANISMS	TO WHAT EXTENT DOES THE LEGISLATION ESTABLISH EXTERNAL REPORTING CHANNELS AND OBLIGATIONS TO FOLLOW UP ON REPORTS?		
A. COMPLIANCE WITH THE EU DIRECTIVE		Indicator Rating (Best practice)		
The legislation complies with EU Directive requirements if it ...		Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
a)	clearly designates authorities competent to receive, give feedback and follow up on external reports	11.1 5.14	<i>This might be done via regulation, but the law should clearly state who is responsible for designating the authorities and include comprehensive criteria for such designation.</i>	YES
b)	requires such authorities to establish independent and autonomous channels for external reporting	11.2(a)		YES
c)	requires such authorities to diligently follow up on reports	11.2 (c) Recital 65	<i>To be able to diligently follow up on reports, the designated authority should already have or be given the necessary capacities and powers to do so (either by investigating and addressing the breaches reported through remedial action itself <u>or</u> by referring the report to another authority and ensure that there is appropriate follow-up by such authority).</i>	YES
d)	provides such authorities with adequate resources	11.1	<i>This is an essential aspect, but it is acknowledged that it will likely not be</i>	YES


		<i>addressed (solely) in the whistleblower legislation itself.</i>	
e) requires any authority which has received a report but does not have the competence to address the breach reported, to transmit it to the competent authority, within a reasonable time and in a secure manner, and to inform the reporting person without delay	11.6		Partially
f) requires that the competent authority transmits the information contained in a report in due time to competent institutions, bodies, offices or agencies of the EU, as appropriate, for further investigation, where provided for by law	11.2(f)		YES
g) requires competent authorities to review their procedures for receiving reports, and their follow-up, regularly, and at least once every three years.	14		Partially
In addition, the legislation may (optionally)...	Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
h) provide that competent authorities can decide that a reported breach does not require further follow-up if it is clearly minor or repetitive, as long as they inform the reporting person of such a decision and the reasons for it	11.3 11.4	<i>This is not best practice, thus failure to comply need not be highlighted.</i>	YES
i) provide that competent authorities may deal with reports of serious breaches or breaches of essential provisions falling within the scope of the Directive as a matter of priority.	11.5		YES

B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE		Indicator Rating (Best practice)	
The legislation can be considered STRONG if it...		Explanatory notes	Meets criteria? (Yes/No)
i)	clearly designates authorities competent to receive, give feedback and follow up on external reports (i.e. criterion (a) above)		YES
ii)	requires such authorities to establish independent and autonomous channels for external reporting (i.e. criterion (b) above)		YES
iii)	requires such authorities to diligently follow up on reports (i.e. criterion (c) above)	<i>To be able to diligently follow up on reports, the designated authority should already have or be given the necessary capacities and powers to do so (either by investigating and addressing the breaches reported through remedial action itself <u>or</u> by referring the report to another authority and ensure that there is appropriate follow-up by such authority).</i>	YES
iv)	requires any authority which has received a report, but does not have the competence to address the breach reported, to facilitate transmission of the report to the correct responsible authority, but not without the explicit consent of the reporting person (for example they can inform, where possible, the reporting person and either get their explicit consent before transmitting their report to the correct responsible authority or direct them to the correct responsible authority)	<i>This differs from criterion (e) above in that it requires the reporting person to give their consent for the report to be forwarded, where possible.</i>	YES
v)	provides minimum standards to be met by such external reporting mechanisms	<i>The law can refer to a mandatory regulation if it is more appropriate in the national context to have such minimum standards in a regulation.</i>	YES

vi)	provides for effective, proportionate and dissuasive penalties for failure to fulfil the obligation to implement external reporting mechanisms within a given time period.	<i>Penalties should also apply for failure to have regard to meet the minimum standards provided in the law or regulation (see indicators 11 and 12 below).</i>	N/A
In addition, the legislation may be considered even stronger if it...		Explanatory notes	Meets criteria? (Yes/No)
vii)	states that designated authorities should be provided with adequate resources	<i>This is an essential aspect, but it is acknowledged that it will likely not be addressed (solely) in the whistleblower legislation itself.</i>	NO
viii)	requires competent authorities to review their procedures for receiving reports, and their follow-up, regularly, and at least once every three years (i.e. criterion (g) above).		NO
Relevant sources: TI Principles 16 and 30; TI Best Practice Guide pp 37-39 and 45-47; TI Position Paper p 10			
The legislation can be considered MODERATE if it...			
ix)	meets at least criteria (i) - (iii).		
The legislation can be considered WEAK if it...			
x)	does not meet at least criteria (i) - (iii), regardless of whether the other criteria are met.		

No:	Indicator Name:	Indicator Question:		
11	EXTERNAL REPORTING AND FOLLOW-UP: PROCEDURES	TO WHAT EXTENT ARE THE PROCEDURES FOR EXTERNAL REPORTING AND FOLLOW-UP DEFINED IN THE LEGISLATION?		
A. COMPLIANCE WITH THE EU DIRECTIVE		Indicator Rating (Best practice)		
The legislation complies with EU Directive requirements if it requires external reporting channels and procedures to...		Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
a)	ensure the completeness, integrity and confidentiality of the information and prevent access by non-authorised staff members of the competent authority	12.1(a)		YES
b)	guarantee the durable storage of information to allow further investigations to be carried out	12.1(b)		YES
c)	enable reporting in writing and orally (by telephone or through other voice messaging systems and by means of a physical meeting within a reasonable timeframe)	12.2		YES
d)	ensure diligent follow-up on the report	11.2(c)		YES
e)	designate staff members (plural) responsible for handling reports, in particular for: <ul style="list-style-type: none">providing any interested person with information on the procedures for reportingreceiving and following up on reportsmaintaining contact with the reporting person for the purpose of providing feedback and requesting further information where necessary	12.4	<i>The EU Directive does not require that the same person perform all three tasks.</i>	YES
f)	ensure that designated staff receive specific training for the purpose of handling reports	12.5		NO

g)	ensure that where a report is received through other channels or by other staff members, they are prohibited from disclosing any identifying information	12.3		YES
h)	ensure that where a report is received through other channels or by other staff members, they promptly forward the report to the staff members responsible for handling reports	12.3	<i>Although it is a requirement under the EU Directive, forwarding a report without the express prior consent of the reporting person is not best practice (see criterion (x) below).</i>	
i)	keep records of every report received, in compliance with confidentiality requirements	18.1		YES
j)	ensure that reports, wherever they are received, are stored for no longer than it is necessary and proportionate	18.1		YES
k)	empower competent authorities to document oral reporting and meetings via recording, transcript or minutes, subject to the consent of the reporting person	18.2 18.3 18.4		YES
l)	offer the reporting person the opportunity to review, rectify and agree the above-mentioned transcripts/minutes of oral reporting and meetings.	18.2 18.3 18.4		YES

B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE			Indicator Rating (Best practice)	
The legislation can be considered STRONG if it requires external reporting channels and procedures to...			Explanatory notes	Meets criteria? (Yes/No)
i)	ensure the completeness, integrity and confidentiality (including of the identity of the reporting person) of the information and prevent access by non-authorised staff members of the competent authority (i.e. criterion (a) above)			YES
ii)	provide multiple reporting channels that are easily accessible and enable reporting in writing and orally			YES

iii)	ensure diligent (i.e. thorough, timely and independent) follow-up on the report (i.e. criterion (d) above)		YES
iv)	designate staff members (plural) responsible for handling reports, in particular for: <ul style="list-style-type: none"> providing any interested person with information on the procedures for reporting receiving and following up on reports maintaining contact with the reporting person for the purpose of providing feedback and requesting further information where necessary (i.e. criterion (e) above)		YES
v)	ensure that designated staff have the relevant qualifications and receive specific training for the purpose of handling reports		NO
vi)	ensure that where a report is received through other channels or by other staff, they are prohibited from disclosing any identifying information (i.e. criterion (g) above).		YES
vii)	require follow-up of anonymous reports		YES
viii)	provide reporting channel(s) that enable anonymous reporting (e.g. through online reporting platform).		YES
ix)	guarantee the durable storage of information (i.e. criterion (b) above)		YES
In addition, the legislation may be considered even stronger if it requires external reporting channels and procedures to...		Explanatory notes	Meets criteria? (Yes/No)
x)	ensures that where a report is received through other channels or by other staff members, the recipient should direct the reporting person to the correct channel or authority	<i>This differs from criterion (h) above in that it requires the recipient to direct the reporting person to the appropriate channel rather than forwarding their report without their consent.</i>	NO
xi)	provides for reporting channels that enable communication between anonymous reporting persons and persons handling their report.		YES

Relevant sources:


TI Position Paper p 10


The legislation can be considered **MODERATE** if it...

xii) meets at least criteria (i) - (iv).

The legislation can be considered **WEAK** if it...

xiii) does not meet at least criteria (i) - (iv).

No:	Indicator Name:	Indicator Question:		
12	EXTERNAL REPORTING AND FOLLOW-UP: INFORMATION AND COMMUNICATION	TO WHAT EXTENTD ARE THE INFORMATION AND COMMUNICATION REQUIREMENTS FOR EXTERNAL REPORTING MECHANISMS DEFINED IN THE LEGISLATION?		
A. COMPLIANCE WITH THE EU DIRECTIVE		Indicator Rating (Best practice)		
The legislation complies with EU Directive requirements if it requires competent authorities to...		Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
a)	publish on their websites at least the following information: <ul style="list-style-type: none">the conditions for qualifying for protectionthe contact details for the external reporting channelsthe procedures applicable to the reporting of breaches, including request for clarification/further information and feedback to the reporting personthe confidentiality regimethe nature of the follow-up to be giventhe remedies and procedures for protection against retaliation and the availability of confidential advicethe conditions under which persons reporting to the competent authorities are protected from incurring liability for a breach of confidentialitycontact details of the information centre or of the single independent administrative authority	13		Partially
b)	publish the above information in a separate, easily identifiable and accessible section of their websites	13		Partially
c)	acknowledge receipt of information on breaches within seven days (unless the reporting person explicitly requested otherwise, or the competent authority reasonably believes that acknowledging receipt of the report would jeopardise the protection of the reporting person's identity)	11.2(b)		Yes

d)	provide feedback to the reporting person within a reasonable timeframe not exceeding three months (or six months in duly justified cases)	11.2(d)		Yes
e)	communicate the final outcome of investigations to the reporting person (in accordance with procedures provided for under national law).	11.2(e)		Yes
B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE			Indicator Rating (Best practice)	
The legislation can be considered STRONG if it requires competent authorities to...		Explanatory notes		Meets criteria? (Yes/No)
i)	publish on their websites at least the following information (i.e. criterion (a) above): <ul style="list-style-type: none"> the conditions for qualifying for protection the contact details for the external reporting channels the procedures applicable to the reporting of breaches, including regarding request for clarification/further information and feedback to the reporting person the confidentiality regime the nature of the follow-up to be given the remedies and procedures for protection against retaliation and the availability of confidential advice the conditions under which persons reporting to the competent authorities are protected from incurring liability for a breach of confidentiality contact details of the information centre or of the single independent administrative authority 			No, although Yes in practice
ii)	publish the above information in a separate, easily identifiable and accessible section of their websites (i.e. criterion (b) above)			No - although Yes in practice
iii)	provide for the acknowledgement of receipt of the report within a strict, short time frame of receipt	<i>The seven-day timeframe foreseen in criterion (c) above can be considered too long in some contexts.</i>		Yes
iv)	provide timely feedback to the reporting persons on the action envisaged or taken as follow-up to the report and the grounds for the choice of that follow-up	<i>The three to six-month timeframe foreseen in criterion (d) above can be</i>		Yes

	<i>considered too long in some contexts.</i>	
v) communicate the findings and final outcome of investigations to the reporting person	<i>Communication can be limited due to legal requirements, such as criminal procedure rules and privacy laws. This is ok insofar as these limitations are necessary and proportionate, and the whistleblower is notified of the reasons of the limited communication.</i>	Yes
vi) provide reporting persons with the opportunity to clarify their report and provide additional information or evidence (albeit without the obligation for them to do so)		Yes
vii) provide reporting persons with the opportunity to review and comment on the results of the follow-up on their report (e.g. on the draft investigation report)		Yes
viii) foresee annual reports recording the numbers of report received, steps taken to follow up and outcome.		Yes
In addition, the legislation may be considered even stronger if it...	Explanatory notes	Meets criteria? (Yes/No)
ix) provides for effective, proportionate and dissuasive penalties for failure to provide feedback on the follow-up to the reporting person within a reasonable timeframe.		No
x) provides for penalties for failure to ensure that information on reporting is published and easily accessible.		No
Relevant sources: TI Principles 22; TI Best Practice Guide pp 47-49; TI Position Paper p 10		


The legislation can be considered **MODERATE** if it...

x) meets criteria (iii) – (v) above; **AND**

xi) partially or fully meets criteria (i) above (i.e. requires competent authorities to publish at least part of the information listed in criteria (i) above).

The legislation can be considered **WEAK** if it...

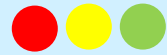
xii) does not meet criteria (x) and (xi) above.

No:	Indicator Name:	Indicator Question:		
13	PUBLIC DISCLOSURES	TO WHAT EXTENT ARE PUBLIC DISCLOSURES PROTECTED?		
A. COMPLIANCE WITH THE EU DIRECTIVE		Indicator Rating (Best practice)		
The legislation complies with EU Directive requirements if it protects a person who makes public disclosures where...		Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
a)	the person first reported internally and externally, or directly externally but no appropriate action was taken	15.1(a)		YES
b)	the person has reasonable grounds to believe that the breach may constitute an imminent or manifest danger to the public interest, or a risk of irreversible damage, including harm to a person's physical integrity	15.1(b)(i)		YES
c)	in the case of external reporting, the person has reasonable grounds to believe that there is a risk of retaliation or there is a low prospect of the breach being effectively addressed due to the particular circumstances of the case (such as those where evidence may be concealed or destroyed or where an authority may be in collusion with the perpetrator of the breach or involved in the breach).	15.1(b)(ii)		YES


B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE		Indicator Rating (Best practice)	<div><div></div><div></div><div></div></div>
The legislation can be considered STRONG if it protects a person who makes public disclosures where...	Explanatory notes	Meets criteria? (Yes/No)	
i) the person first reported internally and externally, or directly externally but no appropriate action was taken (i.e. criterion (a) above)		YES	
i) the person has reasonable grounds to believe that the breach may constitute an imminent or manifest danger to the public interest, or a risk of irreversible damage, including harm to a person's physical integrity (i.e. criterion (b) above)		YES	
iii) in the case of external reporting, there is a risk of retaliation or there is a low prospect of the breach being effectively addressed due to the particular circumstances of the case (i.e. criterion (c) above).		YES	
Relevant sources: TI Principle 17; TI Best Practice Guide pp 40-41			
The legislation can be considered MODERATE if it...			
iv) meets both criteria (i) and (ii) above but not criterion (iii).			
The legislation can be considered WEAK if it...			
v) does not meet both criteria (i) and (ii) above.			

III. PROTECTION MEASURES



No:	Indicator Name:	Indicator Question:		
14	DUTY OF CONFIDENTIALITY	TO WHAT EXTENT DOES THE LEGISLATION GUARANTEE THE CONFIDENTIALITY OF A REPORTING PERSON'S IDENTITY?		
A. COMPLIANCE WITH THE EU DIRECTIVE		Indicator Rating (Best practice)		
The legislation complies with EU Directive requirements if it...		Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
a)	ensures that the identity of the reporting person cannot be disclosed to anyone beyond the authorised staff members competent to receive or follow up on reports, without the explicit consent of that person	16.1		YES
b)	ensures that criterion (a) also applies to any other information from which the identity of the reporting person may be directly or indirectly deduced	16.1		YES
c)	<p>only allows the identity of the reporting person to be disclosed where</p> <ul style="list-style-type: none"> this is a necessary and proportionate obligation... imposed by Union or national law... in the context of investigations or judicial proceedings, including with a view to safeguarding the rights of defence of the person concerned... subject to appropriate safeguards <p><i>(The above sentence has been broken down into bullet points to emphasise the various elements of the derogation.)</i></p>	16.2 16.3		YES

d)	requires that where their identity is to be disclosed, the reporting person shall be informed beforehand (an explanation sent in writing), unless such information would jeopardise the related investigations or judicial proceedings	16.3		YES
e)	ensures that competent authorities that receive information on breaches that include trade secrets do not use or disclose those trade secrets for purposes going beyond what is necessary for proper follow-up	16.4		YES
f)	provides for effective, proportionate and dissuasive penalties applicable to natural or legal persons that breach the duty of maintaining the confidentiality of the identity of reporting persons.	23.1(d)		YES
B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE				Indicator Rating (Best practice) 
The legislation can be considered STRONG if it...		Explanatory notes		Meets criteria? (Yes/No)
i)	ensures that the identity of the reporting person cannot be disclosed beyond those persons competent to receive or follow up on reports, without the explicit consent of that person (i.e. criterion (a) above)			YES
ii)	stipulates that criterion (i) also applies to any other information from which the identity of the reporting person may be directly or indirectly deduced (i.e. any identifying information) (i.e. criterion (b) above)			YES
iii)	clearly and narrowly defines the very few exceptions to confidentiality. The identity of the reporting person may only be disclosed where there is a legal obligation to do so, and such obligation should be confined to the context of investigations by national authorities or judicial proceedings and should be necessary and proportionate , including with the view to safeguard the rights of defence of the person concerned			YES
iv)	stipulates that when identifying information must be disclosed, reporting persons should be informed beforehand (an explanation sent in writing), with sufficient notice			YES

v)	provides for effective, proportionate and dissuasive penalties for breaching the duty of maintaining the confidentiality of the identity of reporting persons (i.e. criterion (f) above).		YES
In addition, the legislation may be considered even stronger if it...		Explanatory notes	Meets criteria? (Yes/No)
vi)	stipulates that when identifying information must be disclosed, reporting persons should be provided with additional protection measures where appropriate		NO
vii)	provides the reporting person with the possibility to appeal the decision to disclose their identity.		NO
Relevant sources: TI Principle 7; TI Best Practice Guide pp 18-20			
The legislation can be considered MODERATE if it...			
N/A. Given the critical importance of maintaining strict confidentiality, any gaps in the confidentiality regime may significantly weaken the whistleblower protection legislation and hence the option of giving a rating of MODERATE for this indicator is excluded.			
The legislation can be considered WEAK if it...			
viii)	does not meet all criteria (i) - (v) above.		


No:	Indicator Name:	Indicator Question:		
15	DATA PROTECTION	TO WHAT EXTENT DOES THE LEGISLATION GUARANTEE THE PROTECTION OF PERSONAL DATA WHEN PROCESSING REPORTS?		
A. COMPLIANCE WITH THE EU DIRECTIVE		Indicator Rating (Best practice)		
The legislation complies with EU Directive requirements if it...		Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
a)	requires processing of personal data, including the exchange or transmission of personal data to be carried out in accordance with relevant EU legislation	17	Relevant EU legislation includes Regulation (EU) 2016/679, Directive (EU) 2016/680 and Regulation (EU) 2018/1725.	N/A
b)	prohibits the collection of personal data which are manifestly not relevant for the handling of a specific report (or if collected, requires it to be deleted without undue delay).	17		YES
In addition, the legislation may (optionally)...		Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
c)	restrict the exercise of certain data protection rights of persons concerned to prevent and address attempts to find out the identity of the reporting persons or attempts to hinder reporting or to impede, frustrate or slow down follow-up, in particular investigations.	Recital 84	This is best practice and should be encouraged.	YES


B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE		Indicator Rating (Best practice)	<div><div></div><div></div><div></div></div>
The legislation can be considered STRONG if it...	Explanatory notes	Meets criteria? (Yes/No)	
i) clearly articulates the relationship between the whistleblower protection legislation and data protection rules in a way that allows the effective implementation of the whistleblower protection legislation		YES	
ii) restricts the exercise of certain data protection rights of persons concerned to prevent and address attempts to find out the identity of the reporting persons or attempts to hinder reporting or to impede, frustrate or slow down follow-up, in particular investigations (i.e. criterion (c) above).		YES	
Relevant sources:			
The legislation can be considered MODERATE if it...			
iii) meets one of criteria (i) - (ii).			
The legislation can be considered WEAK if it...			
iv) meets none of criteria (i) or (ii).			

No:	Indicator Name:	Indicator Question:		
16	ANONYMITY	TO WHAT EXTENT DOES THE LEGISLATION REQUIRE ANONYMOUS REPORTS TO BE ACCEPTED AND PROTECTED?		
A. COMPLIANCE WITH THE EU DIRECTIVE		Indicator Rating (Best practice)		
The legislation complies with EU Directive requirements if it...		Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
a)	establishes that persons who report or publicly disclose information on breaches anonymously, and are subsequently identified and suffer retaliation, qualify for protection.	6.3.	<i>This is regardless of whether the law requires private and public entities and competent authorities to accept and follow up on anonymous reports (which is at the discretion of each Member State).</i>	YES
B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE		Indicator Rating (Best practice)		
The legislation can be considered STRONG if it...		Explanatory notes		Meets criteria? (Yes/No)
i)	establishes that persons who report or publicly disclose information on breaches anonymously, and are subsequently identified, qualify for protection	<i>Identified anonymous reporting person do not need to suffer retaliation to qualify for protection.</i>		YES
ii)	requires that public and private entities, as well as competent authorities, accept and follow up on anonymous reports			NO
iii)	requires that internal and external reporting channels enable anonymous reporting (e.g. through online reporting platform).			NO

In addition, the legislation may be considered even stronger if it...	Explanatory notes	Meets criteria? (Yes/No)
iv) requires the establishment of channels for anonymous reporting that enable communication between the reporting person and the person handling the report.		NO
Relevant sources: TI Principle 13; TI Best Practice Guide pp 20-21; TI Position Paper pp 8-9		
The legislation can be considered MODERATE if it...		
v) meets both criteria (i) and (ii) above but not criterion (iii).		
The legislation can be considered WEAK if it...		
vi) does not meet both criteria (i) and (ii).		

No:	Indicator Name:	Indicator Question:
17	PROHIBITION OF RETALIATION	TO WHAT EXTENT DOES THE LEGISLATION PROHIBIT RETALIATION?

A. COMPLIANCE WITH THE EU DIRECTIVE		Indicator Rating (Best practice)	
The legislation complies with EU Directive requirements if it...	Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
a) prohibits any form of retaliation against reporting persons and protected third parties	19	<i>If national legislation provides for a list of forms of retaliation, it should be indicative/non-exhaustive.</i>	YES
b) defines retaliation as any: <ul style="list-style-type: none"> 1. direct or indirect... 2. act or omission... 3. which occurs in a work-related context, ... 4. is prompted by internal or external reporting or by public disclosure, and... 5. which causes or may cause unjustified detriment to the reporting person. <p><i>(The above sentence has been broken down into bullet points to emphasise the various elements of the definition.)</i></p>	5.11 Recital 89	<i>As explained by recital 89, this covers retaliation taken, encouraged or tolerated by the reporting person's employer but also by their customer or recipient of services and by persons working for or acting on behalf of the latter, including colleagues and managers in the same organisation or in other organisations with which the reporting person is in contact in the context of their work-related activities (i.e. it covers the situations where the reporting person is self-employed or works for a contractor, subcontractor or supplier of the retaliator).</i>	YES
c) covers threats of retaliation and attempts of retaliation	19		YES

d)	<p>ensures that at least the following forms of retaliation are covered:</p> <ul style="list-style-type: none"> • suspension, dismissal • demotion or withholding of promotion • transfer of duties, change of location, reduction in wages, change in working hours • withholding of training • negative performance assessment or employment reference • disciplinary measures, reprimand or other penalties • coercion, intimidation, harassment or ostracism • discrimination, disadvantageous or unfair treatment • failure to convert a temporary employment contract into a permanent one, or failure to renew - or early termination of - a temporary employment contract • harm, including harm to reputation or financial loss • blacklisting • early termination of a contract for goods or services • cancelation of a licence or permit • psychiatric or medical referrals 	19	<p><i>National legislation does not need to provide for a list of examples, but it should be formulated in a way that undeniably includes the forms of retaliation listed here. If a list is provided, it should be clearly indicative and non-exhaustive.</i></p>	YES
e)	provides for effective, proportionate and dissuasive penalties applicable to natural or legal persons that retaliate against reporting persons and protected third parties.	23.1(b)		YES
<p>B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE</p>				<p>Indicator Rating (Best practice)</p> 
The legislation can be considered STRONG if it...		Explanatory notes	Meets criteria? (Yes/No)	
i)	prohibits any form of retaliation against reporting persons and protected third parties (i.e. criterion (a) above)		YES	
ii)	broadly defines retaliation to include any act or omission which causes or may cause detriment (e.g. "all forms of retaliation, disadvantage or discrimination") (i.e. criteria (b2) and (b5) above)	<p><i>Any list of forms of retaliation provided should be indicative/non-exhaustive.</i></p>	YES	


iii)	covers retaliation against all whistleblowers whether they reported internally or externally or made a public disclosure (i.e. criterion (b4) above)		NO
iv)	covers direct and indirect forms of retaliation (e.g. targeting family or friends) (i.e. criterion (b1) above)		YES
v)	covers retaliation committed by or within organisations other than the reporting person's employer (e.g. customer, recipient of services)		YES
vi)	covers threats of retaliation and attempts of retaliation (i.e. criterion (c) above)		YES
vii)	covers retaliation occurring outside a work-related context.	<i>This differs from criterion (b3) above.</i>	YES
viii)	provides for effective, proportionate and dissuasive penalties for retaliating against reporting persons and protected third parties (i.e. criterion (e) above).		YES
In addition, the legislation may be considered even stronger if it...		Explanatory notes	Meets criteria? (Yes/No)
ix)	requires all public and private entities to protect reporting persons and protected third parties (i.e. requires the employer to try to prevent and to address detriment to the reporting persons).		NO
x)	expressly includes forms of retaliation specific to reporting persons that are not employees (such as blacklisting, early termination of a contract for goods or services, cancelation of a licence or permit, listed in criterion (d) above)	<i>They are usually covered by broad definitions of retaliation. However, a clear stipulation is preferable.</i>	YES
xi)	provides for effective, proportionate and dissuasive penalties for failure to protect a reporting person		YES
Relevant sources: TI Principles 6 and 29; TI Best Practice Guide pp 21-23, 28-30 and 36-37; TI Position Paper pp 9-10			


The legislation can be considered **MODERATE** if it...

xii) meets criteria (i) – (iii) and criterion (viii) above **but** does not meet all criteria (iv) – (vii).


The legislation can be considered **WEAK** if it...


xiii) does not meet at least criteria (i) – (iii) and criterion (viii) above.

No:	Indicator Name:	Indicator Question:		
18	SUPPORT MEASURES	TO WHAT EXTENT ARE THERE PROVISIONS FOR SUPPORT FOR REPORTING PERSONS?		
A. COMPLIANCE WITH THE EU DIRECTIVE		Indicator Rating (Best practice)		
The legislation complies with EU Directive requirements if it...		Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
a)	ensures that reporting persons (and protected third parties) have access to information and advice on procedures and remedies available, on protection against retaliation, and on the rights of the person concerned. This information and advice should be comprehensive, independent, easily accessible to the public and free of charge.	20.1(a)		YES
b)	ensures that reporting persons have access to effective assistance from competent authorities (i.e. those handling external reports) before any relevant authority involved in their protection (i.e. another authority or a court). This includes competent authorities confirming that external reporting has taken place.	20.1(b) Recital 90		YES
c)	ensures reporting persons have access to legal aid in criminal and in cross-border civil proceedings, in accordance with EU law	20.1(c)		N/A
d)	ensures reporting persons have access to legal aid in further proceedings and legal counselling or other legal assistance, in accordance with national law.	20.1(c)	<i>“In accordance with national law” in this context is understood to mean that, where legal aid is provided for under national law, it should be made available to reporting persons.</i>	NO

In addition, the legislation may (optionally)...	Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
e) provide for financial assistance in the framework of legal proceedings	20.2		NO
f) provide for other support measures for reporting persons, including psychological support, in the framework of legal proceedings	20.2		NO
g) provide for access to the above support measures via an information centre or a single independent administrative authority	20.3		NO
h) provide for the certification of the qualification of reporting persons for protection.	20.1(b) Recital 90	<i>In such cases, reporting persons should have effective access to judicial review of that certification.</i>	NO
B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE		Indicator Rating (Best practice)	
The legislation can be considered STRONG if it...		Explanatory notes	Meets criteria? (Yes/No)
i) ensures that reporting persons (and protected third parties) have access to information and advice on procedures and remedies available, on protection against retaliation, and on the rights of the person concerned. This information and advice should be comprehensive, independent, easily accessible to the public and free of charge (i.e. criterion (a) above).			YES
ii) ensures that reporting persons have access to effective assistance from competent authorities (i.e. those handling external reports) before any relevant authority involved in their protection (i.e. another authority or a court) (i.e. criterion (b) above)			YES
iii) ensures that reporting persons have access to legal assistance, including legal aid or financial assistance in the framework of legal proceedings (i.e. optional criterion (e) above)			NO

iv)	provides access to individual confidential advice, free of charge, to reporting persons, including referring them to the appropriate authorities		YES
v)	provides access to all the above-mentioned support measures for reporting persons and other protected persons via a single independent body.		YES
In addition, the legislation may be considered even stronger if it...		Explanatory notes	Meets criteria? (Yes/No)
vi)	provides for an assistance fund for legal procedures and for support for reporting persons in serious financial need	<i>Including financial need outside the framework of legal proceedings.</i>	NO
vii)	provides for psychological support to reporting persons.		NO
Relevant sources: TI Principles 20 and 28; TI Best Practice Guide pp 54 and 58-61			
The legislation can be considered MODERATE if it...			
viii)	meets at least criteria (i) – (iii) above.		
The legislation can be considered WEAK if it...			
ix)	does not meet at least criteria (i) – (iii) above.		

No: Indicator Name:		Indicator Question:	
19 PROTECTION MEASURES AGAINST RETALIATION: RIGHTS AND REMEDIES		TO WHAT EXTENT DOES THE LEGISLATION GUARANTEE RIGHTS AND ACCESS TO REMEDIES, COVERING ALL DIRECT, INDIRECT AND FUTURE CONSEQUENCES OF ANY RETALIATION?	
A. COMPLIANCE WITH THE EU DIRECTIVE		Indicator Rating (Best practice)	
The legislation complies with EU Directive requirements if it...	Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
a) ensures that reporting persons and protected third parties have access to remedies (i.e. legal action)	21.8 Recital 95	<i>As explained by recital 95, while the types of legal action may vary between legal systems, they should ensure that compensation or reparation is real and effective, in a way which is proportionate to the detriment suffered and which is dissuasive.</i>	YES
b) ensures that reporting persons and protected third parties have access to remedial measures	21.6 Recital 94	<i>There should be remedial measures appropriate for all forms of retaliations. Recital 94 mentions for example reinstatement in the event of dismissal, transfer or demotion, and the restoration of a cancelled permit, licence or contract.</i>	YES
c) ensures that reporting persons and protected third parties have the right and access to interim relief pending the resolution of legal proceedings (in order to stop threats, attempts or continuing acts of retaliation)	21.6 Recital 96		NO
d) ensures that reporting persons and protected third parties have the right and access to full compensation for damage suffered.	21.8 Recital 94	“Full compensation” means that it should not be capped by legislation	YES

		<p>and that the following examples in Recital 94 should be covered:</p> <ul style="list-style-type: none"> • compensation for actual and future financial losses • compensation for other economic damage, such as legal expenses and costs of medical treatment • compensation for intangible damage such as pain and suffering. 	
e)	ensures that rights and remedies cannot be waived or limited (for example by denying protection or penalising reporting persons) by any agreement, policy, form or condition of employment, including pre-dispute arbitration agreements	24 Recital 91	<p><i>This covers loyalty clauses in contracts and confidentiality or non-disclosure agreements.</i></p> <p>YES</p>
f)	provides for effective, proportionate and dissuasive penalties applicable to natural or legal persons that retaliate against reporting persons and protected third parties	23.1(b)	<p>YES</p>
g)	does not affect rules on the exercise by workers of their rights to consult their representatives or trade unions, and on protection against any unjustified detrimental measure prompted by such consultations as well as on the right to enter into collective agreements.	3.4	<p>YES</p>
<p>B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE</p>			<p>Indicator Rating (Best practice)</p> 
<p>The legislation can be considered STRONG if it...</p>		Explanatory notes	Meets criteria? (Yes/No)
i)	ensures that any retaliation is made null and void. In particular, reporting persons and protected third parties should have the right and access to reinstatement , for example in case of transfer, dismissal or demotion.		<p>YES</p>

ii)	ensures that reporting persons and protected third parties have the right and access to full financial compensation for damage suffered (i.e. not capped by legislation, but to be determined according to the circumstances of the case), including for: <ul style="list-style-type: none"> attorney and mediation fees lost past, present and future earnings and status pain and suffering (potentially including medical expenses, relocation costs or identity protection) 	<i>In order to achieve a rating of STRONG, the legislation should ensure full reparation of all direct, indirect and future consequences of any retaliation that restores the reporting persons to a situation that would have been theirs had they not suffered retaliation.</i>	YES
iii)	ensures that reporting persons and protected third parties have the right and access to a fair hearing before an impartial forum (i.e. court, whistleblowers authority or Alternative Dispute Resolution), with full right of appeal		YES
iv)	ensures that reporting persons and protected third parties have the right and access to interim relief pending the resolution of legal proceedings (in order to stop threats, attempts or continuing acts of retaliation) (i.e. criterion (c) above)	<i>The conditions for being granted interim relief should not be too difficult to meet (including a reasonable timeframe to apply).</i>	NO
v)	provides for effective, proportionate and dissuasive penalties for retaliating against reporting persons and protected third parties (i.e. criterion (f) above)		YES
vi)	ensures that rights and remedies cannot be waived or limited (for example by denying protection or penalising reporting persons) by any agreement, policy, form, or condition of employment, including pre-dispute arbitration agreements, loyalty clauses in contracts or confidentiality or non-disclosure agreements (i.e. criterion (e) above).		YES
In addition, the legislation may be considered even stronger if it...		Explanatory notes	Meets criteria? (Yes/No)
vii)	includes an indicative list of non-financial remedial measures, including measures applicable to whistleblowers who are not employees , such as: <ul style="list-style-type: none"> the restoration of a cancelled permit, licence or contract withdrawing a litigation against an individual deletion of any negative records that could constitute a “dossier” for blacklisting or later retaliation 		YES

viii)	provides for effective, proportionate and dissuasive penalties for failure to protect and support a reporting person		NO
ix)	provides for personal protection measures in cases where a reporting person's life or safety, or that of their family members, are in jeopardy (including actual or likely danger to life, body or property).		NO

Relevant sources:

TI Principles 12, 14, 20 and 21; TI Best Practice Guide pp 24-25, 27-28 and 50-55; TI Position Paper pp 7-8

The legislation can be considered **MODERATE** if it...

x) **largely** meets the criteria (i) – (vi) above; **BUT**



xi) includes one (but not more than one) of the following limitations:

- financial compensation is capped; **or**
- the range of detrimental consequences eligible for reparation is narrowly defined; **or**
- there are barriers to a fair hearing and/or interim relief (e.g. high legal costs, the conditions for being granted interim relief are difficult to meet).

The legislation can be considered **WEAK** if it...

xii) does not meet all criteria (i) – (vi) above; **OR**

xiii) **largely** meets all of the criteria (i) – (vi) above **but** also includes 2 or more of the limitations described in criterion (xi) above.

No:	Indicator Name:	Indicator Question:		
20	PROTECTION MEASURES AGAINST RETALIATION: BURDEN OF PROOF	TO WHAT EXTENT DOES THE LEGISLATION PLACE THE BURDEN OF PROOF UPON THE PERSON WHO TOOK THE DETRIMENTAL ACTION TO DEMONSTRATE THAT SUCH ACTION WAS NOT CONNECTED WITH THE REPORTING PERSON'S REPORT OR DISCLOSURE?		
A. COMPLIANCE WITH THE EU DIRECTIVE		Indicator Rating (Best practice)		
The legislation complies with EU Directive requirements if, in proceedings relating to a detriment suffered by a reporting person...		Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
a)	it is presumed that the detriment was made in retaliation for the report or the public disclosure, once the reporting person has established that they reported or made a public disclosure and suffered a detriment	21.5		NO
b)	it falls on the person who has taken the detrimental measure to prove that that measure was “based on duly justified grounds” in cases described under criterion (a) above.	21.5 Recital 93	“Based on duly justified grounds” should be interpreted, in light of recital 93, as “not linked in any way to the reporting or the public disclosure”.	NO
B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE		Indicator Rating (Best practice)		
The legislation can be considered STRONG if, in proceedings relating to a detriment suffered by a reporting person...		Explanatory notes		Meets criteria? (Yes/No)
i)	it is presumed that the detriment was made in retaliation for the report or the public disclosure, once the reporting person has established that they reported or made a public disclosure and suffered a detriment (i.e. criterion (a) above)			NO

ii)	it falls on the person who is responsible for the detrimental measure to clearly and convincingly demonstrate that the detrimental measure was in no way connected with, or motivated by, the report or disclosure, in cases described under criterion (i) above.	<i>The use of language such as “based on duly justified grounds” does not meet this criterion as it might legitimise investigations of a reporting person for the sole purpose of justifying retaliation measures.</i>	NO
In addition, the legislation may be considered even stronger if, in proceedings relating to a detriment suffered by a reporting person...		Explanatory notes	Meets criteria? (Yes/No)
iii)	it presumes that the reporting person qualifies for protection.	<i>If the person who is responsible for the detrimental measure challenges this presumption, that person should carry the burden of proving that the reporting person does not meet the conditions to qualify for protection (as described under indicator 5).</i>	YES

Relevant sources:

TI Principle 8; TI Best Practice Guide pp 55-56; TI Position Paper p7


The legislation can be considered **MODERATE** if it...

iv) meets criterion (i) above; **BUT**


v) does not meet criterion (ii) above.

The legislation can be considered **WEAK** if it...


vi) meets neither criterion (i) nor criterion (ii) above.

No:	Indicator Name:	Indicator Question:		
21	PROTECTION MEASURES AGAINST RETALIATION: WAIVER OF LIABILITY	TO WHAT EXTENT DOES THE LEGISLATION ESTABLISH A WAIVER OF LIABILITY FOR REPORTING PERSONS?		
A. COMPLIANCE WITH THE EU DIRECTIVE		Indicator Rating (Best practice)		
The legislation complies with EU Directive requirements if it...		Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
a)	establishes that reporting persons shall not incur liability of any kind relating to (legal or contractual) restrictions on disclosure of information for making a report or public disclosure . This is on condition that they had reasonable grounds to believe that the reporting or public disclosure of such information was necessary for revealing a breach.	21.2 Recital 91	<i>“Liability of any kind” should cover civil, criminal, administrative and employment-related liability.</i> <i>In respect of internal and external reporting, the latter condition (reasonable grounds...) is not in line with best practice (see criterion B(i) below). Thus, failure of national law to comply with the Directive in this regard need not be highlighted.</i>	Partially
b)	establishes that reporting persons shall not incur liability in respect of the acquisition of or access to the information which is reported or publicly disclosed. This is on condition that it did not constitute a self-standing criminal offence.	21.3 Recital 92	<i>“Self-standing” should be understood as “wholly unrelated to the ability to make a report or disclosure”.</i> <i>Recital 92 clarifies that the waiver of liability should apply in cases where reporting persons:</i> <ul style="list-style-type: none"><i>make copies of documents to which they have lawful access or remove them from the</i>	Partially


		<p><i>premises of their organization, in breach of contractual or other clauses stipulating that the relevant documents are the property of the organisation</i></p> <ul style="list-style-type: none"> • <i>access the emails of a co-worker or files which they normally do not use within the scope of their work, take pictures of the premises of their organisation or access locations they do not usually have access to.</i> 	
c)	<p>establishes that reporting persons shall not incur liability of any kind in legal proceedings as a result of reports or public disclosures. This includes legal proceedings for defamation, breach of copyright, breach of secrecy, breach of data protection rules, disclosure of trade secrets, or for compensation claims based on private, public, or on collective labour law.</p> <p>Those reporting persons have the right to rely on having reported breaches or made a public disclosure to seek dismissal of the case.</p> <p>This is on condition that they had reasonable grounds to believe that the reporting or public disclosure was necessary for revealing a breach.</p>	<p>21.7</p> <p><i>“liability of any kind” should cover civil, criminal, administrative and employment-related liability.</i></p> <p><i>In respect of internal and external reporting, the latter condition (reasonable grounds...) is not in line with best practice (see criterion B(ii) below). Thus, failure of national law to comply with the Directive in that regard need not be highlighted.</i></p>	Partially
d)	<p>provides for effective, proportionate and dissuasive penalties applicable to natural or legal persons for bringing vexatious proceedings against reporting persons and protected third parties.</p>	<p>23.1(c)</p>	NO

In addition, the legislation may (optionally)...	Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
e) establish that, in legal proceedings, the person initiating the proceedings should carry the burden of proving that the reporting person does not meet the conditions to waive their liability.	Recital 97	<i>This is best practice and should be encouraged.</i>	Partially
B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE		Indicator Rating (Best practice)	
The legislation can be considered STRONG if it...	Explanatory notes		Meets criteria? (Yes/No)
<p>i) establishes that reporting persons shall not incur liability of any kind (legal or contractual) in respect of a report or public disclosure.</p> <p>For public disclosures, the waiver of liability in respect of legal restrictions on disclosure of information can be conditioned on the reporting person having reasonable grounds to believe that the public disclosure of such information was necessary for revealing a breach (i.e. that the disclosure was limited to the amount of information reasonably necessary to bring to light the wrongdoing).</p>	<p><i>Fulfilling the conditions and thresholds for protection as described under Indicator 5 is sufficient to waive liability. No additional condition should be required.</i></p> <p><i>The possible exception described opposite:</i></p> <ul style="list-style-type: none"> • does not apply to internal and external reports • only applies in respect of restrictions on disclosure of information • does not apply to contractual restrictions on disclosure of information. 		NO
ii) establishes that reporting persons are immune from disciplinary and legal proceedings (including those related to libel, slander, copyright and data protection) and that the reporting person can rely on having made a report or a public disclosure to seek dismissal of the case.	<p><i>Fulfilling the conditions and thresholds for protection as described under Indicator 5 is sufficient to benefit from immunity.</i></p>		NO

For public disclosures , immunity in respect of legal restrictions on disclosure of information can be conditioned on the reporting person having reasonable grounds to believe that the public disclosure of such information was necessary for revealing a breach (i.e. that the disclosure was limited to the amount of information reasonably necessary to bring to light the wrongdoing).	<p><i>No additional condition should be required.</i></p> <p><i>The possible exception described opposite:</i></p> <ul style="list-style-type: none"> • <i>does not apply to internal and external reports</i> • <i>only applies to disciplinary and legal proceedings relating to (legal) restrictions on disclosure of information.</i> 	
iii) establishes that, in legal proceedings, the person initiating the proceedings should carry the burden of proving that the reporting person does not meet the conditions to waive their liability. (i.e. criterion (e) above).		NO
iv) provides for effective, proportionate and dissuasive penalties for individuals and entities who bring abusive or vexatious disciplinary or legal proceedings against a reporting person.		NO
Relevant sources: TI Principle 10; TI Best Practice Guide pp 25-26; TI Policy Paper p6		
The legislation can be considered MODERATE if it...		
v) meets at least criterion (i) above; AND		
vi) meets criterion (ii) above fully or largely (i.e. establishes that the reporting person can rely on having reported breaches or made a public disclosure as a defence in legal or disciplinary proceedings rather than to seek dismissal of the case).		
The legislation can be considered WEAK if it...		
vii) does not meet at least criteria (v) and (vi) above.		


No:	Indicator Name:	Indicator Question:		
22	PROTECTION MEASURES FOR PERSONS CONCERNED	TO WHAT EXTENT DOES THE LEGISLATION ESTABLISH BALANCED PROTECTION MEASURES FOR PERSONS CONCERNED (LEGAL OR NATURAL PERSON TO WHOM THE REPORTED BREACH IS ATTRIBUTED)?		
A. COMPLIANCE WITH THE EU DIRECTIVE		Indicator Rating (Best practice)		
The legislation complies with EU Directive requirements if it...		Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
a)	ensures that persons concerned fully enjoy the right to an effective remedy and to a fair trial, as well as the presumption of innocence and the rights of defence, including the right to be heard and the right to access their file	22.1 16.2	<i>This criterion should be read in conjunction with article 16, as accessing their file can reveal the identity of the reporting person (either directly or indirectly through information from which the identity can be deducted). The identity of the reporting person may only be disclosed where there is a legal obligation to do so, and such obligation should be confined to the context of investigations by national authorities or judicial proceedings and should be necessary and proportionate, including with the view to safeguard the rights of defence of the person concerned.</i>	YES
b)	requires competent authorities to ensure, in accordance with national law, that the identity of persons concerned are protected for as long as investigations are ongoing	22.2		YES




c)	ensures that the rules relating to the design of external channels, the processing of personal data and record keeping as regards the protection of the identity of reporting persons also apply to the protection of the identity of persons concerned	22.3		YES
d)	provides for measures for compensating damage resulting from knowingly reporting or publicly disclosing false information	23.2	<i>The whistleblower protection legislation itself does not need to provide for such measures and can just refer to existing applicable national law.</i>	NO
e)	provides for effective, proportionate and dissuasive penalties for knowingly reporting or publicly disclosing false information.	23.2	<i>The whistleblower protection legislation itself does not need to include such provision, as in case of knowingly false report or disclosure, the reporting person does not qualify for protection and thus the existing national legislation regarding the making of false statements (such as defamation, libel and slander law) applies.</i>	YES

B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE			Indicator Rating (Best practice)	
The legislation can be considered STRONG if it...			Explanatory notes	Meets criteria? (Yes/No)
i)	ensures that persons concerned enjoy the right to an effective remedy and to a fair trial, as well as the presumption of innocence and the rights of defence, including the right to be heard and the right to access their file, in balance with the obligation to protect the reporting person against retaliation and the duty to maintain the identity of the reporting person confidential.		<i>The identity of the reporting person may only be disclosed where there is a legal obligation to do so, and such obligation should be confined to the context of investigations by national authorities or judicial proceedings</i>	YES

		<i>and should be necessary and proportionate, including with the view to safeguard the rights of defence of the person concerned (see in indicator 14 above).</i>	
ii)	requires competent authorities to ensure, in accordance with national law, that the identity of persons concerned are protected for as long as investigations are ongoing (i.e. criterion (b) above)		YES
iii)	ensures that the rules relating to the design of external channels, the processing of personal data and record keeping, as regards the protection of the identity of reporting persons, also apply to the protection of the identity of persons concerned (i.e. criterion (c) above)		YES
iv)	provides for measures for compensating damage resulting from knowingly reporting or publicly disclosing false information (i.e. criterion (d) above)		NO
v)	ensures that a person can only be held liable if they knowingly reported or disclosed false information	<i>Terms such as “abusive” and “malicious” – which could suggest that reporting persons who reported information that they had reasonable ground to believe was true could be held liable because of their motives – should not be used.</i>	YES
vi)	ensures that penalties for making a report or disclosure demonstrated to be knowingly false (under the whistleblower protection legislation or other legislations such as defamation, libel and slander law) are proportionate and not so severe as to act as a deterrent to actual whistleblowing		YES
vii)	ensures that where it provides for penalties for knowingly reporting or publicly disclosing false information, such penalties are not more severe than, or cumulate with, penalties under existing national legislation regarding the making of false statements (such as defamation, libel and slander law).	<i>The whistleblower protection legislation itself does not need to provide for penalties for knowingly reporting or publicly disclosing false information, as in such case the reporting person does not qualify for</i>	YES

	<i>protection and thus the existing national legislation regarding the making of false statements (such as defamation, libel and slander law) applies.</i>	
viii) stipulates that in cases regarding knowingly false reports or disclosure, the burden falls on the person making that claim to prove that the reporting person knew the information was false at the time of the report or disclosure.		YES
Relevant sources: TI Principle 9; TI Best Practice Guide 14-17; TI Position Paper pp 6-7		
The legislation can be considered MODERATE if it...		
ix) meets criteria (i) – (v) above; BUT		
x) meets only one of criteria (vi) – (viii) above.		
The legislation can be considered WEAK if it...		
xi) does not meet at least criteria (i) – (v) above; OR		
xii) meets criteria (i) – (v) above but meets none of criteria (vi) – (viii) above.		

No: Indicator Name:		Indicator Question:	
23 PENALTIES		TO WHAT EXTENT DOES THE LEGISLATION ESTABLISH PENALTIES AND SANCTIONS FOR RETALIATION, INTERFERENCE, ETC?	
A. COMPLIANCE WITH THE EU DIRECTIVE		Indicator Rating (Best practice)	
The legislation complies with EU Directive requirements if it...	Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
a) provides for penalties for hindering or attempting to hinder reporting	23.1(a)		YES
b) provides for penalties for retaliating against reporting persons and protected third parties	23.1(b)		YES
c) provides for penalties for bringing vexatious proceedings against reporting persons and protected third parties	23.1(c)		NO
d) provides for penalties for breaching the duty of maintaining the confidentiality of the identity of reporting persons	23.1(d)		YES
e) ensures that the above-mentioned penalties are applicable to natural or legal persons	23.1		YES
f) ensures that the above-mentioned penalties are effective, proportionate and dissuasive.	23.1		YES

B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE		Indicator Rating (Best practice)	  
The legislation can be considered STRONG if it...		Explanatory notes	Meets criteria? (Yes/No)
i)	provides for penalties for hindering or attempting to hinder reporting (i.e. criteria (a) above)		YES
ii)	provides for penalties for retaliating against reporting persons and protected third parties (i.e. criteria (b) above)		YES
iii)	provides for penalties for bringing vexatious proceedings against reporting persons and protected third parties (i.e. criteria (c) above)		NO
iv)	provides for penalties for breaching the duty of maintaining the confidentiality of the identity of reporting persons (i.e. criteria (d) above)		YES
v)	provides for penalties for failure to fulfil an obligation to implement internal reporting mechanisms within a given time period.	<i>Penalties should also apply for failure to have regard to meet the minimum standards provided in the law or regulation.</i>	NO
vi)	provides for penalties for failure to follow up on reports		NO
vii)	ensures that the above-mentioned penalties are effective, proportionate and dissuasive (i.e. criteria (f) above).		YES
In addition, the legislation may be considered even stronger if it...		Explanatory notes	Meets criteria? (Yes/No)
viii)	provides for penalties for failure to protect a reporting person		NO
ix)	provides for penalties for failure to provide feedback on the follow-up to the reporting person within a reasonable timeframe		NO

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- | | | |
|---|--|--|
| x) provides for penalties for failure to ensure that information on reporting is published and easily accessible. | | |
|---|--|--|

Relevant sources:

TI Principle 29; TI Best Practice Guide pp 20, 28-30, 33, 47 and 60-62; TI Position Paper pp 9-11


The legislation can be considered **MODERATE** if it...


- xi) meets at least criteria (i) - (iv) and (vii) above.

The legislation can be considered **WEAK** if it...

- xii) does not meet at least criteria (i) - (iv) and (vii) above, regardless of whether criteria (v) and (vi) are met.
-

IV. TRANSPARENCY AND ACCOUNTABILITY MEASURES

No:	Indicator Name:	Indicator Question:		
24	TRANSPARENCY, PARTICIPATION AND REVIEW	TO WHAT EXTENT ARE TRANSPARENT AND PARTICIPATORY DESIGN, MONITORING AND REVIEW OF THE LAW ENSURED?		
A. COMPLIANCE WITH THE EU DIRECTIVE		Indicator Rating (Best practice)		
The legislation may (optionally)...		Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
a) foresee the collection of the following national level data: <ul style="list-style-type: none"> the number of reports received by the competent authorities the number of investigations and proceedings initiated as a result of such reports and their outcome if ascertained, the estimated financial damage, and the amounts recovered following investigations and proceedings, related to the breaches reported. 		27.2	<p><i>The Directive does not require that Member States collect this data. But if a Member State does and data is available at a central level, then the Member State should submit it annually to the European Commission.</i></p> <p><i>Central collection of such data is best practice and should be encouraged.</i></p>	YES

B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE		Indicator Rating (Best practice)	
The legislation can be considered STRONG if it...	Explanatory notes	Meets criteria? (Yes/No)	
i) is a stand-alone legislation (i.e. containing the national whistleblowing legal framework)	<i>A stand-alone legislation will lend both clarity and coherence to the legal framework for protecting whistleblowers. A stand-alone legislation can be completed by regulations and administrative provisions.</i>	YES	
ii) was designed in consultation with key stakeholders including employee organisations, business/employer associations, civil society organisations and academia		YES	
iii) requires the data referred to in criterion (a) above to be collected and published annually		YES	
iv) requires a formal periodic review of whistleblower protection laws, regulations and administrative provisions. Such reviews should be published.		YES	
v) establishes that such a review process should involve key stakeholders including employee organisations, business/employer associations, civil society organisations and academia.		YES	
In addition, the legislation may be considered even stronger if it...	Explanatory notes	Meets criteria? (Yes/No)	
vi) additionally, requires the collection and annual publication of data on: <ul style="list-style-type: none"> the prevalence of wrongdoing in the public and private sectors awareness of and trust in reporting mechanisms the time taken to process cases 		NO	

vii) requires the collection and **annual publication** of similar data on internal reports received by public institutions.

Relevant sources:

TI Principles 24, 25 and 26; TI Best Practice Guide pp 61-63 and 66-68; TI Position Paper p11



The legislation can be considered **MODERATE** if it...

viii) meets criterion (i) above; **AND**

ix) meets two of the four criteria (ii) –(v) above.

The legislation can be considered **WEAK** if it...

x) does not meet at least criteria (viii) and (ix) above.

No:	Indicator Name:	Indicator Question:	
25	WHISTLEBLOWING AUTHORITY	TO WHAT EXTENT DOES THE LEGISLATION FORESEE A SINGLE INDEPENDENT WHISTLEBLOWING AUTHORITY?	
A. COMPLIANCE WITH THE EU DIRECTIVE		Indicator Rating (Best practice)	
In addition, the legislation may (optionally)...	Relevant Article(s)	Explanatory notes	Meets criteria? (Yes/No/Partially)
a) foresee the provision of support measures via an information centre or a single independent administrative authority.	20.3		YES
B. ASSESSMENT OF THE LEGISLATION AGAINST BEST PRACTICE		Indicator Rating (Best practice)	
The legislation can be considered STRONG if...		Explanatory notes	Meets criteria? (Yes/No)
i) it designates a single independent national whistleblowing authority			YES
ii) such single independent national whistleblowing authority is distinct and independent from the competent authority(ies) that handle external reports			YES
iii) it mandates such an authority to provide advice and support to reporting persons as per criterion (v) of indicator 18 above			YES
iv) it mandates such an authority to receive and investigate complaints about retaliation			YES
v) it mandates such an authority to receive and investigate complaints about improper investigations of external reports by competent authorities.			YES

vi)	it mandates such an authority to provide guidance and advice to employers and competent authorities on how to set up effective whistleblowing mechanisms		YES
vii)	it mandates such an authority to monitor and review the functioning of whistleblower protection laws and frameworks, including via the collection and publication of data as per indicator 24		YES
viii)	it mandates such an authority to raise public awareness so as to encourage the use of whistleblower protection provisions and enhance cultural acceptance of whistleblowing.		YES
In addition, the legislation may be considered even stronger if...		Explanatory notes	Meets criteria? (Yes/No)
ix)	it mandates such an authority to order protective measures when there is retaliation and to enforce those measures (including through appropriate penalties).		NO

Relevant sources:

TI Principle 28; TI Best Practice Guide pp 58-65; TI Position Paper p11

The legislation can be considered **MODERATE** if it...

x) meets at least criterion (i) above; **AND**

xi) meets at least three of criteria (ii) – (viii) above.

The legislation can be considered **WEAK** if it...

xii) does not meet at least criterion (i) above; **OR**

xiii) meets criterion (i) above **but** meets fewer than three of criteria (ii) – (viii) above.