# Summary results of the public consultation on whistleblower protection

# 1 Introduction

Between 3 March and 29 May 2017, the European Commission carried out an open public consultation (OPC) to collect views on the issue of whistleblower protection at the national and EU level. The results of this consultation are intended to inform the Commission's assessment of the scope for introducing horizontal or further sectoral action at the EU level to strengthen whistleblower protection, while respecting the principle of subsidiarity.

The present report contains a factual summary[1] of the main results of the consultation, without providing an exhaustive analysis of each individual reply. The individual replies of those respondents who consented to the publication of their contribution, either in full or anonymously, are available on http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=54254. An overall synopsis report covering the results of all consultation activities related to the Commission's impact assessment will be published together with this assessment.

It is in the nature of this form of consultation that respondents and the views they express cannot be taken to be representative of the full population of EU citizens or any particular stakeholder groups (e.g. the general public, sector organisations, public administration/policy stakeholders, and specialists in the subject matter).

Moreover, this summary does not necessarily reflect the position of the Commission and does not prejudge any position that the Commission might take in the future. The Commission cannot be held responsible for any use which may be made of the information contained therein.

[1] This summary has been prepared by the services of the European Commission based on an analysis of the responses by ICF Consulting Services Limited.

# 2 Overview of respondent characteristics

A total of 5,707 replies to the OPC were received. Of these, 97% (5,516) were from respondents taking part in their own capacity as private individuals. The remaining 3% came from respondents acting on behalf of an organisation (191 replies). Hereinafter respondents who participated "in their own capacity" are referred to as "individuals", while respondents "on behalf of an organisation" are referred to as "organisations".

A total of 50 respondents provided position papers (in some cases in addition to their responses to the OPC survey). These were 20 business professional/associations, 8 NGOs, 5 trade unions, 4 institutional stakeholders (three public authorities and a European Parliament political group), three media organisations, 3 enterprises, 1 law firm, and 6 private individuals.

Two-thirds of respondents (individuals and organisations) came from Germany and France (43% and 23% respectively), responses from Spain accounted for 7% of the total, Italy and Belgium 5% each and Austria 6%. The remaining responses were spread across the other Member States.

**Explanatory note**

The main findings presented in this report compare the survey results between individuals and organisations. Overall survey results (i.e. individuals and organisations aggregated) are only presented where appropriate or relevant. This is because the "overall" results are almost identical to the results of individuals as they make up 97% of all survey respondents.

Although the response rate was high for all questions, not all participants responded to all questions, therefore the bases for each question are different due to non-responses. When non-responses represent a high proportion of participants this is highlighted in the text. Analysis of respondent characteristics (such as sector of activity, country of residence/establishment, as well as size and organisations' annual turnover) is not always provided due to high proportions of non-responses to each question. Percentages are not provided for sub-samples below 50. 'Other' responses, and "don't know" responses were included in the base when the option was given.

Some questions invited respondents to provide a response on each of a number of options. For each option/question respondents had to tick 1 (very important), 2 (important), 3 (somewhat important), 4 (not important), don't know, no answer. Therefore, the number of responses to each option varied. Only responses for the rating 1 are provided in this report.

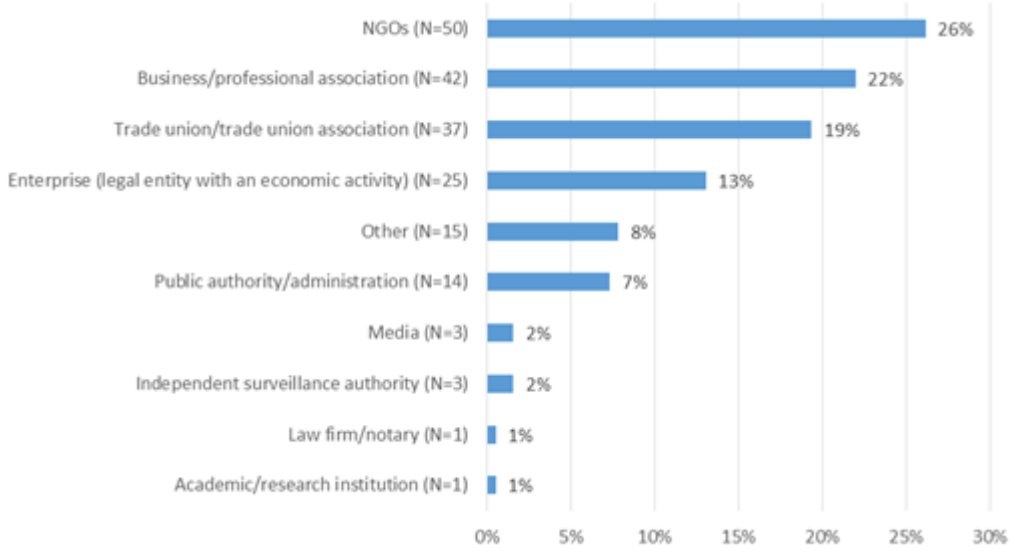
## 2.1 Characteristics of individuals

Of the individuals who responded to the survey, 34% identified themselves as employees, 18% as self-employed, 12% unemployed, 12% civil servants, 4% managers and 1% contractors. A total of 1,024 individual respondents (19%) did not provide any information about their professional status and are classified as "other".

Education, health and academia/research were the three most-represented sectors (15%, 10% and 7% respectively). One third (34%) of individual respondents did not provide any information on the sector of the economy that they work in.

## 2.2 Characteristics of organisations

More than a quarter (26%) of the 191 organisations taking part in the OPC were NGOs, 22% were business associations and 19% trade unions. Only 13% of the replies came from enterprises and 7% from public authorities (figure 2.2).




*Source: ICF from OPC data [N=191] [Q: What is the nature of your organisation?]*

14 responses to the OPC survey were provided on behalf of institutional stakeholders, namely public authorities and a European Parliament political group. The public authorities who provided contributions were from Austria, Denmark, Finland, France, Germany, Hungary, Italy, Lithuania, the Netherlands, Poland (contributions received from two public authorities) Portugal and Slovenia.

A total of 22% organisations were established in Germany, 12% in Belgium, 10% in France, 7% in Spain, 6% in Italy.

## 2.3 Experience of whistleblower cases

**A total of 593 respondents (one in ten respondents) had knowledge of whistleblower cases** from their direct work experience from the last ten years[2]. Organisations were more likely than individuals to state that they had direct knowledge of whistleblowers cases (46% vs. 9%). Organisations were more likely to have acquired the knowledge of whistleblower cases through the collection of information on whistleblower cases (66%), while individuals were directly involved as whistleblowers or witnesses (64%). 16 NGOs, 13 trade unions, 8 business associations and 8 enterprises collected information on whistleblower cases for professional reasons.

The majority (77%) of whistleblower cases occurred in private organisations[3][4], organisations with more than 250 employees (56%) and organisations based in one EU country (56%).

[2] OPC Q: From your direct work experience, do you have knowledge of whistleblower cases in the last ten years?

[3] OPC Q: What is the size of the organisation concerned (i.e. where the whistleblower cases occurred), including self-employed workers? 1 – 9 (micro); 10 – 49 (small); 50 – 249 (medium sized); 250 – 999 (large); 1000 or more (large); 5000 or more (large); Non applicable (the organisation concerned was a public administration); No response.

[4] Is the organisation concerned present?:Also in countries outside the EU; In more than one EU country; In one EU country only; Non applicable (public administration)

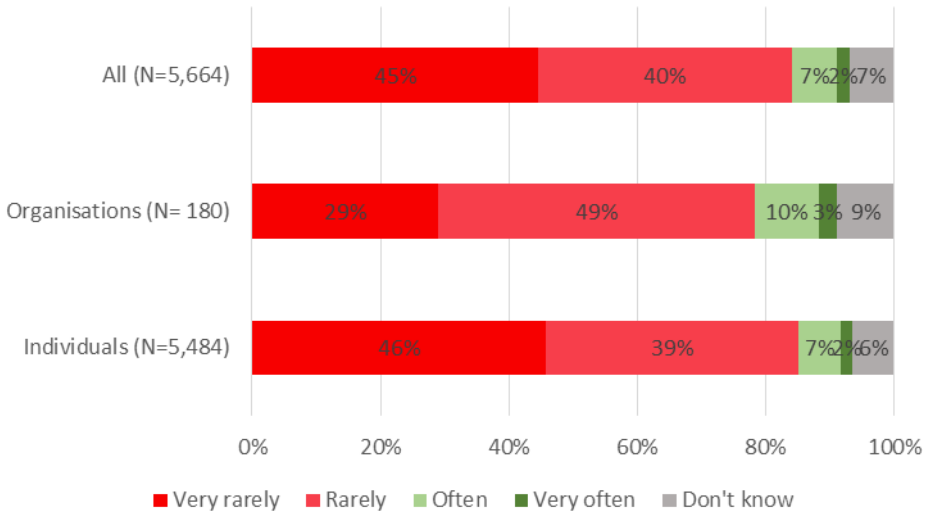
# 3 Perspectives on whistleblower protection

**Almost all respondents (99.4%) agreed that whistleblowing should be protected** (99.6% of individual respondents and 97.3% of responding organisations)[5].

## 3.1 Reporting amongst workers is still rare

**The majority of respondents (85%) believed that workers very rarely or rarely report** concerns about threat or harm to the public interest[6]. Individuals were more likely to state that workers very rarely reported their concerns (46% against 29%) (figure 3.1)

Figure 3.1 Most respondents indicated that workers are unlikely to report wrong-doing




*Source: ICF from OPC data [Base N: individuals=5,484, organisations N=180] [Q: To your mind, how often are workers reporting their concerns about threats or harm to the public interest?]*

Table 3.1 provides an overview of respondents by type of organisation.

Table 3.1 Reporting concerns about threats or harm to the public interest by type of organisations

| | NGOs | Business associations | Trade unions | Enterprises | Public Authorities |
|---|---|---|---|---|---|
| Very rarely | 16 | 5 | 10 | 8 | 2 |
| Rarely | 29 | 14 | 21 | 10 | 7 |
| Often | 1 | 11 | 1 | 3 | 0 |
| Very often | 2 | 0 | 2 | 0 | 0 |
| Don't know | 2 | 6 | 3 | 3 | 1 |
| Total | 50 | 36 | 37 | 24 | 10 |

[5] OPC Q: Do you think that whistleblowing should be protected?

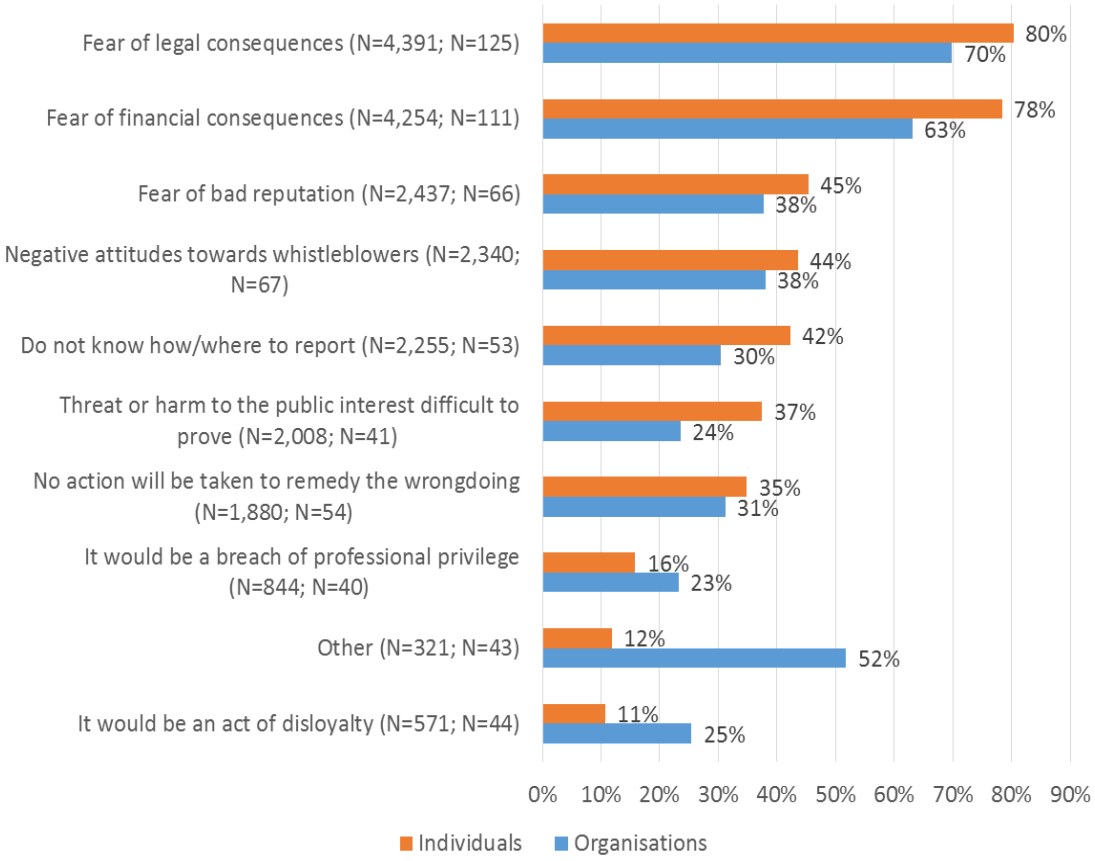
[6] OPC Q: To your mind, how often are workers reporting their concerns about threats or harm to the public interest?

*Source: ICF from OPC data [Base N: individuals=5,484, organisations N=180] [Q: To your mind, how often are workers reporting their concerns about threats or harm to the public interest?] [Q: What is the nature of your organisation?]*

## 3.2 Reasons for not blowing the whistle

Respondents were asked to indicate the reasons why workers do not report wrong-doing[7]. The factors most commonly selected from the list provided **were fear of legal consequences** (80% of individual respondents and 70% of organisations); **fear of financial consequences** (78% of individual respondents and 63% of organisations) and **fear of bad reputation** (45% of individual respondents and 38% of organisations) (figure 3.2).

Figure 3.2 Reasons for not 'blowing the whistle'




*Source: ICF from OPC data [Overall Basel: N=5493 / Individuals: N=5,468 to N=5,324 / Organisations: N=172 to N=179] [Q: To your mind, which of the following are the most important reasons why a person might decide not to blow the whistle?]*

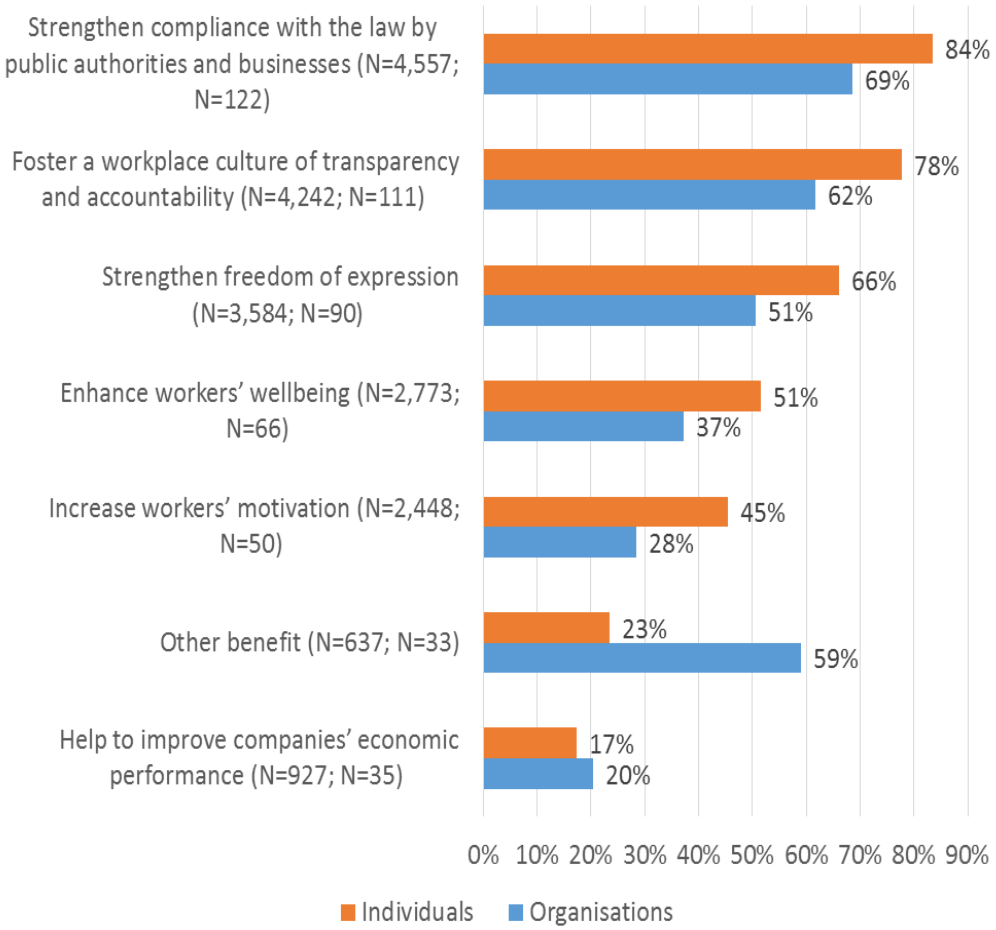
Organisations were more likely than individual respondents to indicate that workers do not report the wrong-doing because it would be seen as an act of disloyalty (25% of organisations and 11% of individuals) or a breach of professional privilege (23% of organisations and 16% of individuals). Many amongst the business associations which responded to this question (15 out of 37 responses) considered the reason "it would be an act of disloyalty" as equally important as the fear of legal or financial consequences, whereas all other organisation types (trade unions, NGOs, public authorities, enterprises) attached much less importance to loyalty considerations.

[7] OPC Q: To your mind, which of the following are the most important reasons why a person might decide not to blow the whistle?

## 3.3 Perceived benefits of protecting whistleblowers

For the majority of respondents, the main benefits of obliging organisations to protect whistleblowers are **enhancing compliance with the law** (84% of individuals and 69% of organisations) and **enhancing transparency and accountability in the workplace** (78% of individuals and 62% of organisations). The survey allowed for other categories of benefits to be provided (via open text responses). The most frequently cited were **fairer competition** and **improved consumer confidence**, for both organisations and individuals. Organisations were much more likely than individuals to identify other benefits (figure 3.3).

Figure 3.3 Benefits of rules obliging public and private organisations to protect whistleblowers




*Source: ICF from OPC data [Bases: individuals N=5,532 to 5,468; organisations N=177 to 180] [Q: To your mind, what are the benefits of rules obliging public and private sector organisations to protect whistleblowers?]*

Other benefits identified through open responses included supporting the fight against terrorism, improving public trust in companies, incentives to speak up against wrongdoing, fight against corruption, stronger feeling of belonging to a community, benefits for patients, improving self-esteem, strengthening democracy.

In the position papers, several stakeholders saw whistleblowers helping the media to perform their public watchdog functions. Two media organisations note that

whistleblowers often share their information only if their anonymity can be guaranteed; the media must thus be able to preserve the anonymity of their sources.

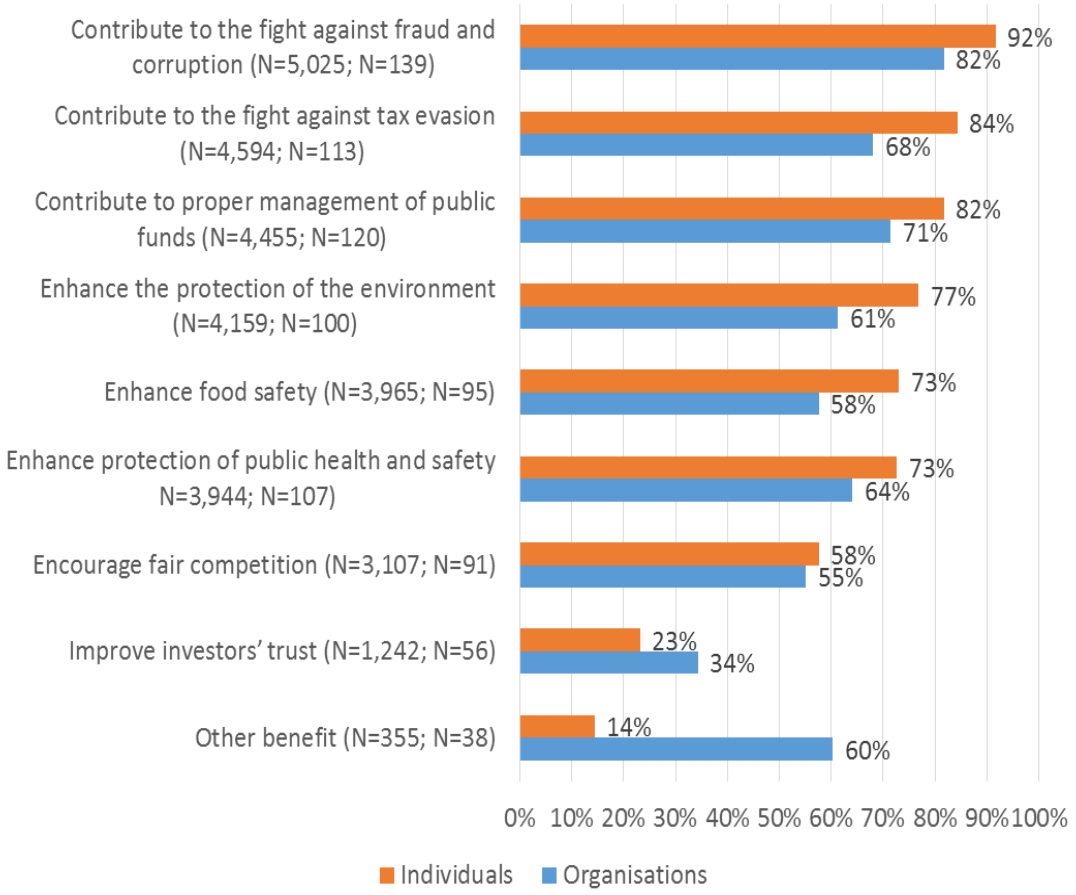
A number of business organisations noted the benefits of whistleblowing for the companies in which whistleblowers work. Two amongst them consider whistleblowers as important sources of information for the companies trying to address the misconduct of their employees, but only as one feature of a comprehensive corporate compliance programme that also includes education, reporting and investigation channels. Another business organisation notes that organisations are estimated to lose around 5% of annual revenues to occupational fraud. Such wrongdoing is most commonly exposed through tips to the organisation. With the right reporting mechanisms, companies can thus avoid financial and reputational losses.

## 3.4 Areas in which whistleblower protection rules are deemed beneficial

According to the majority of respondents, the areas in which rules on whistleblower protection are beneficial are **fighting fraud and corruption** (92% of individuals and 82% of organisations); **fighting tax evasion and avoidance** (84% of individuals and 68% of organisations); **enhancing management of public funds** (82% of individuals and 71% of organisations). Organisations were more likely than individual respondents to indicate that whistleblower protection rules would improve investors' trust (34% vs 23%). Other areas identified as beneficial **were freedom of expression and democracy, as well as workers' health and safety** (Figure 3.4).

Figure 3.4 Whistleblower protection was identified as beneficial in tackling wrong-doing in corruption, fraud and tax evasion and other financial crimes

*Areas in which rules on whistleblower protection are beneficial*

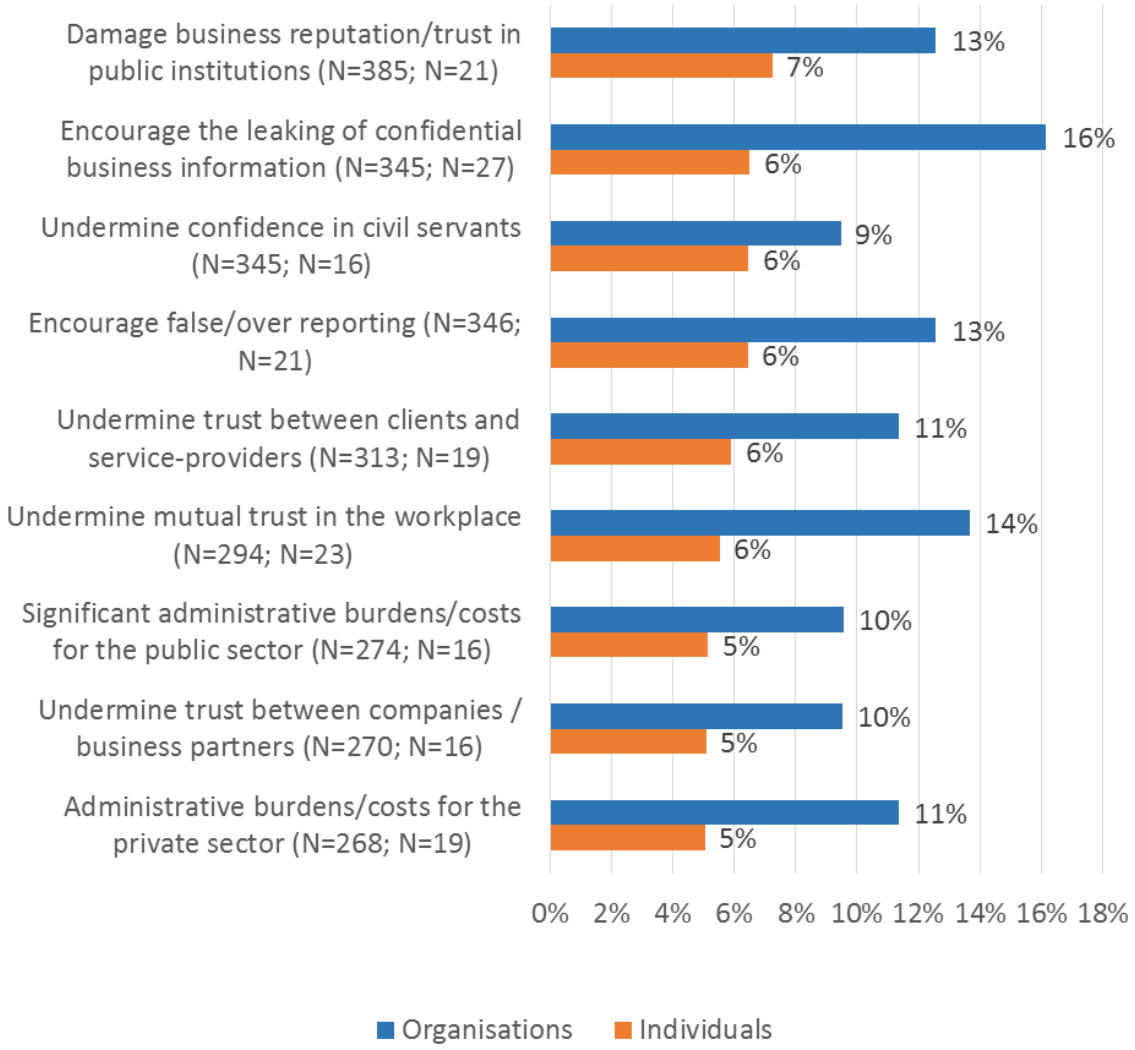



*Source: ICF from OPC data [Bases: individuals: N=5,482 to N=2,458; organisations: N=170 to N=63] [Q: To your mind, in which areas are rules on whistleblower protection beneficial?]*

## 3.5 Perceived drawbacks in encouraging private and public organisations to protect whistleblowers

Only a small proportion of respondents identified such drawbacks. Organisations were more likely than individual respondents to identify disadvantages. The two main drawbacks identified were **encouraging the leaking of confidential business information** (16%), and **undermining mutual trust in the workplace** (14%). The drawback most commonly identified by individuals was **damage to business reputation and trust in public institutions** (7%). 'Encourage false and over-reporting' was identified by 13% of organisations and 6% of individuals. 15 business associations and three trade unions (but no respondents from other groups) identified 'significant administrative burdens' as an issue. A total of 111 individuals and 13 organisations ticked the 'other drawbacks' option, but from an analysis of the open text responses it seems that the majority of comments intended to reinforce the view that there are no disadvantages to providing protection to whistleblowers (figure 3.5).

Figure 3.5 Drawbacks of rules obliging public and private organisations to protect whistleblowers




*Source: ICF from OPC data [Base: individuals N=5,372 to 5,301; organisations N=167 to N=169] [Q: To your mind, what are the drawbacks of rules obliging public and private sector organisations to protect whistleblowers?]*

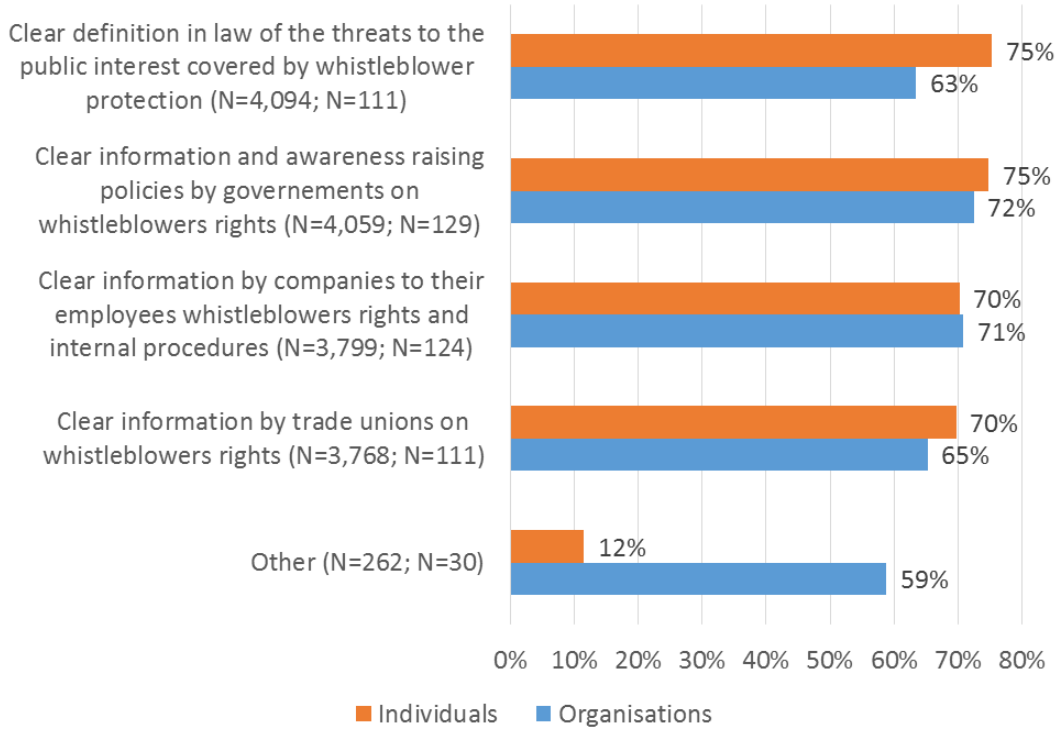
# 4 Key factors for effective whistleblower protection

## 4.1 Awareness raising factors for effective whistleblower protection

The survey investigated the relative significance of factors that raise awareness of whistleblower rights and procedures for effective whistleblower protection[8].

The two factors most commonly selected from a pre-defined list were **clear definition in law of the threats to public interest covered by whistleblower protection** (75% of individuals and 63% of organisations) and **state-led information and awareness-raising campaigns on the rights of whistleblowers** (75% individuals and 72% of organisations). Organisations volunteered other approaches that were not on the pre-defined list provided by the survey. Individuals did so less often. The approaches suggested included the provision of organisation-level training for management and staff; and the public promotion of cases of whistleblowers that have set precedents in the law by their actions (figure 4.1).

Figure 4.1 Effective awareness raising approaches of whistleblower rights and procedures to enhance protection




*Source: ICF from OPC data [Base: individuals N= 5,434 to 2,274; organisations N=175 to N=51] [Q: In your opinion, which of the following aspects that raise awareness of whistleblower rights and procedures are important for effective whistleblower protection?]*

[8] OPC Q: In your opinion, which of the following aspects that raise awareness of whistleblower rights and procedures are important for effective whistleblower protection?

A business organisation in its position paper proposes that, alongside whistleblower protection measures, the European Commission should **encourage European companies to further improve their comprehensive corporate compliance programmes by offering guidance on the effective programmes** and incentivising their maintenance. This need for a holistic package of formal and informal whistleblower protection measures is also called for by another business organisation. A trade union has called for a public **awareness campaign**.

Another business organisation argues that **companies should be invited to have clear whistleblowing policies properly implemented**, decided by their boards and regularly reviewed and revised. More education on company integrity is required, not only to convince companies that whistleblowing should be part of their corporate culture and risk management set up but also to make employees use this tool as a way of building trust within the company and this way embodying the values of codes of ethics. It is important that employees at the same time are properly educated on data-protection and on what constitutes strategic information.

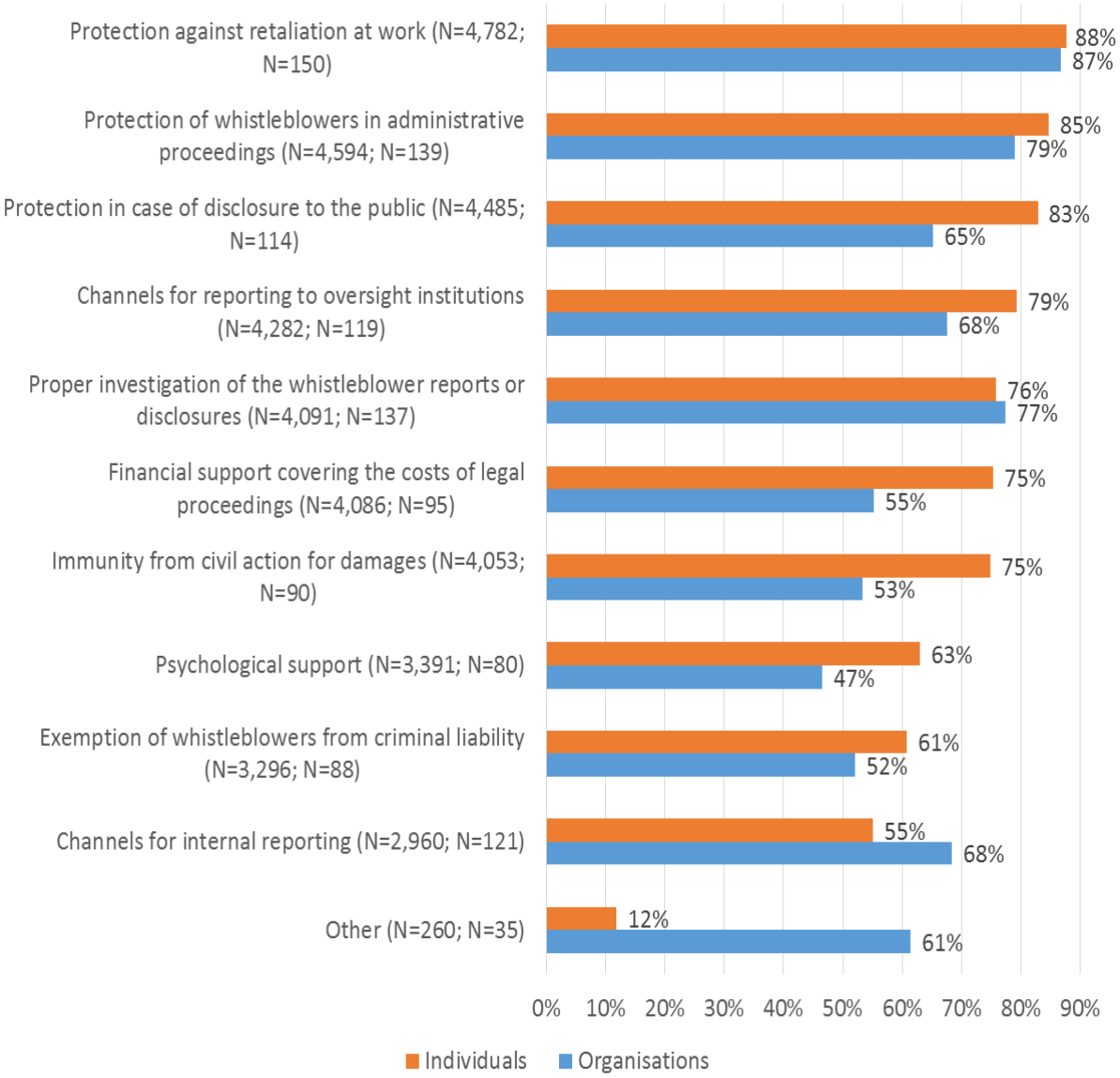
## 4.2 Aspects important for effective whistleblowers protection

Respondents were invited to rank a list of propositions relating to which aspects they consider important for effective whistleblower protection[9].

The items most commonly selected were **measures to protect against retaliation at work** (88% of individuals and 87% of organisations); p**rotection of whistleblowers in administrative proceedings** (for 85% of individuals and 79% of organisations); **protection in case of disclosure to the public where channels for reporting are unavailable or not functioning properly** (83% of individuals and 65% of organisations); **channels for reporting to oversight institutions** (79% of individuals and 68% of organisations) (figure 4.2).

[9] OPC Q: In your opinion, which of the following aspects are important for effective whistleblower protection?

Figure 4.2 Respondents ranked various aspects of whistleblower protection by order of importance




*Source: ICF from OPC data [Base: individuals: N=2,215 to 5,451; organisations: N=57 to N=177] [Q: In your opinion, which of the following aspects of protection against retaliation at work are important for effective whistleblower protection?]*

In relation to **the definition of the whistleblowers,** in their position papers, a number of stakeholders **call for a clear definition of the term 'whistleblowing' as the notion of 'whistleblowing' in the public debate can cover a wide range of situations**. It is therefore important to legislate based on a clear concept of what a 'whistleblower' is. One company also argues that whistleblowing legislation and associated protections **be clear as to where protection begins and ends, and the specific criteria to be applied**. A NGO asks for the whistleblowers to be neither glorified nor vilified but considered to be in situations of extensive risks and dilemmas (e.g. weighing up the risks of whether to blow the whistle in potentially very sensitive situations to expose the wrong-doing and face potentially wide-reaching consequences at the personal and professional level).

Three NGOs and one media organisation support in their position papers the proposition that **assurance that potential whistleblowers can report**

**anonymously is important for facilitating disclosures**. Online dropboxes, which use online privacy and anonymity tools, are making an increasingly significant contribution to this end.

Another common concern raised in the stakeholder position papers related to the use of internal and external **reporting channels**. Two NGOs and a trade union support the introduction of clear guidelines **regulating channels of disclosure**. They would like to see mandatory internal whistleblowing systems and standards to set up which regulate external reporting if internal whistleblowing is not possible. An NGO and a business association also call for effective both internal and external reporting channels (with a clear reporting escalation process). One business organisation, drawing on its experiences of operating an IT system for internal whistleblowing in the Italian banking system, argues for the reporting channels to be secure, protected, and accessible only to persons in charge.

An NGO considers that the provision of **external whistleblower channels** can help in supporting the anonymity of the whistleblowers. The external channels should be protected against disclosure of information to the investigative authorities and they should be obligatory for the public authorities and public law entities.

Three trade unions and an NGO maintain in their position papers that **external reporting channels must be available without having first to consult internal reporting channels.** This was also recommended by an individual respondent, a lawyer specialising in whistleblower cases. These respondents argue internal reporting channels should be maintained, as they are useful, providing they guarantee anonymity.

Four stakeholders (a mix of business associations and public authorities) call for a careful balancing between the protection of legitimate public interests and the interests of companies to see their sensitive business information protected. To this end, they ask that any EU action does not encourage external reporting channels but instead **strengthens internal reporting channels**, which should be easily accessible. One company argues that whistleblowing should be made internally into an environment in which the whistleblowing is protected and the disclosure investigated in a constructive and independent manner that is fair to the whistleblower and the subject of the whistleblowing. Equally, where internal whistleblowing fails, measures should be in place in the EU that strike a clear and appropriate balance between the benefits of external whistleblowing and the commercial importance of securing the confidentiality and legal protection of business data (for example, by disclosure to a defined, independent government agency).

Four business organisations argue that **internal reporting channels must be used first so that the employer must have the opportunity to address the issue before any external disclosure**. Trade secrets, professional secrecy and confidentiality, and the freedom of contract must be protected. Another business organisation asks that the EU promotes internal reporting for whistleblowing as a first reporting line, starting with the employee's supervisor and, if inappropriate or unresponsive, the referee designated by the company (such as the compliance officer if any) - and not have whistleblowers report to the national regulator.

According to yet another business organisation, the protection of whistleblowers should not be extended to individuals who fail to follow internal disclosure procedures. In cases where internal codes of conduct are in place, such individuals are in breach of the client confidentiality principle by way of disclosing sensitive taxpayers' information to the press or the general public, whereby the relevant

quality compliance/ ethics teams have not been duly informed prior to the disclosure.

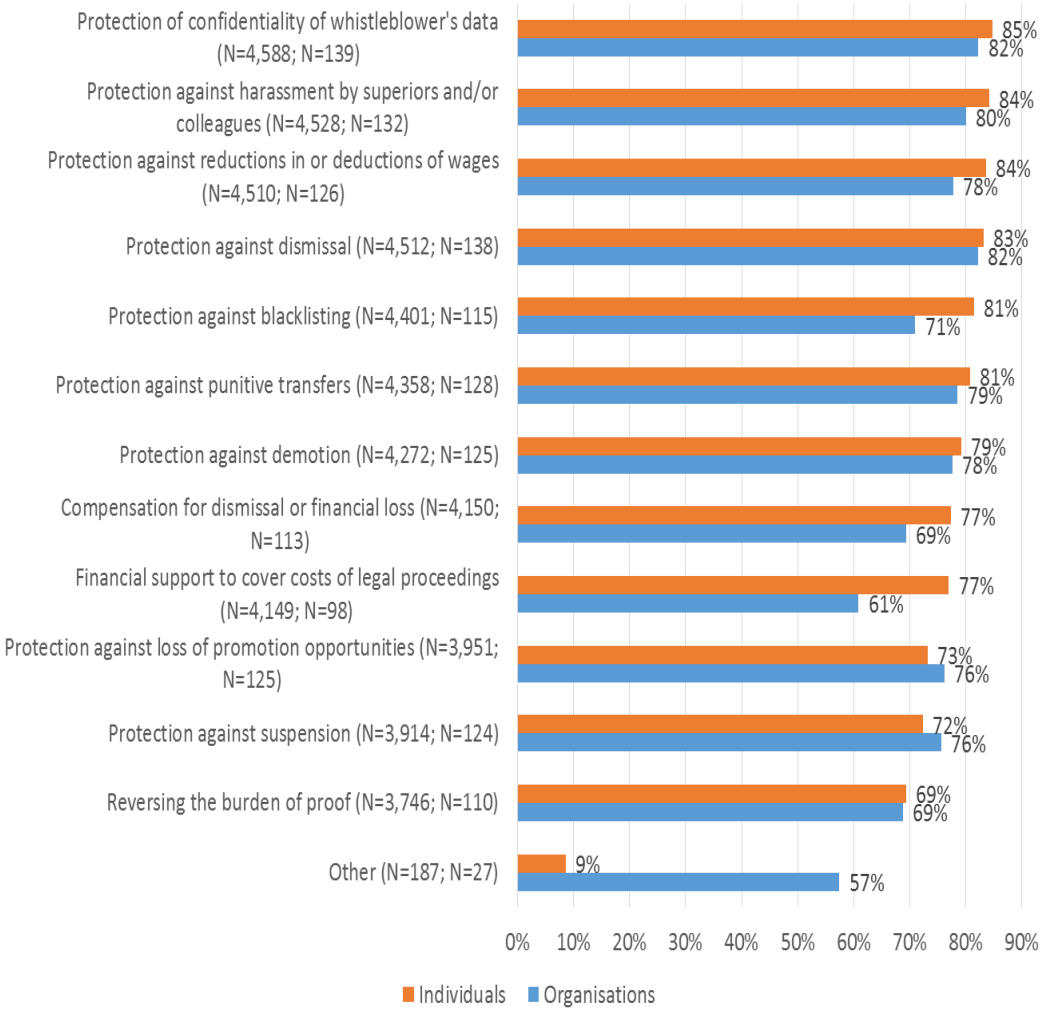
## 4.3 Aspects for effective protection against retaliation at work

The survey asked respondents to identify the most important components of an effective protection of whistleblowers specifically against retaliation at work[10].

The most commonly selected options were **ensuring whistleblower confidentiality** (85% of individuals and 82% of organisations); **protection against harassment at work** (84% of individuals and 80% of organisations); **protection against reductions/deductions in wages** (85% of individuals and 82% of organisations)(figure 4.3)

Figure 4.3 Confidentiality ranked top of the respondents' protection priorities

*In your opinion, which of the following aspects of protection against retaliation at work are important for effective whistleblower protection?*




*Source: ICF from OPC data [Base: individuals: N=5,398 to N=2,114; organisations N=169 to N=47] [Q: In your opinion, which of the following aspects of protection against retaliation at work are important for effective whistleblower protection?]*

[10] OPC Q: In your opinion, which of the following aspects of protection against retaliation at work are important for effective whistleblower protection?

Among respondents with knowledge of whistleblower cases, **protection against dismissal** was identified as effective in protecting whistleblowers from retaliation by 86% of those directly involved in whistleblower cases and 78% of those collecting case information. Protection of **whistleblower confidentiality** was identified as effective with regard to protection against retaliation by 79% of respondents investigating whistleblower cases.

In their position papers, three NGOs, two trade unions and a media organisation ask for the **definition of whistleblower to be broad and horizontal, and include not only employees, but also civil servants or management members and any persons who report valid information**. So, the definition of the whistleblower should not be associated with any formal status in the labour or company law. In contrast, a public authority argues for whistleblowers to be defined within a formal labour market relationship. Similarly, a business organisation argues that the **definition of whistleblowers should be restricted to current employees or former employees with no conflict of interest**, e.g. not working for a competitor.

Thirteen stakeholders (a mix of NGOs, trade unions and public authorities) note that whistleblowers should be **protected against any labour law and civil law or other sanctions** including dismissal and other forms of professional demotion. A trade union also argues for a low threshold to benefit from the protection. Three stakeholders (NGOs and a lawyer) call for **the right to compensation** in cases of retaliation against the whistleblowers, just like victims of discrimination or other violations of personal rights. A further NGO argues that such financial support is part of the support mechanism for the whistleblowers before and after blowing the whistle and constitutes an important element to protect whistleblowers from suffering disadvantages. Another NGO adopts a more nuanced approach, calling for the whistleblowers to be compensated in those cases where they experience pressure to resign from their position in the workplace.

A lawyer specialising in whistleblower cases states that financial awards should be provided to individuals who provide information about significant wrong-doing and where funds are recovered or financial penalties are levied, stressing that a well-structured whistleblower reward programme must recognize the professional and personal risks that individuals take when they blow the whistle. The lawyer also pointed to the experience of US whistleblower financial reward programmes which showed that there have been significant before and after increases of whistleblowing cases and recovered amounts from fraudulent practices after non-discretionary awards were introduced.

## 4.4 Protection measures for third parties

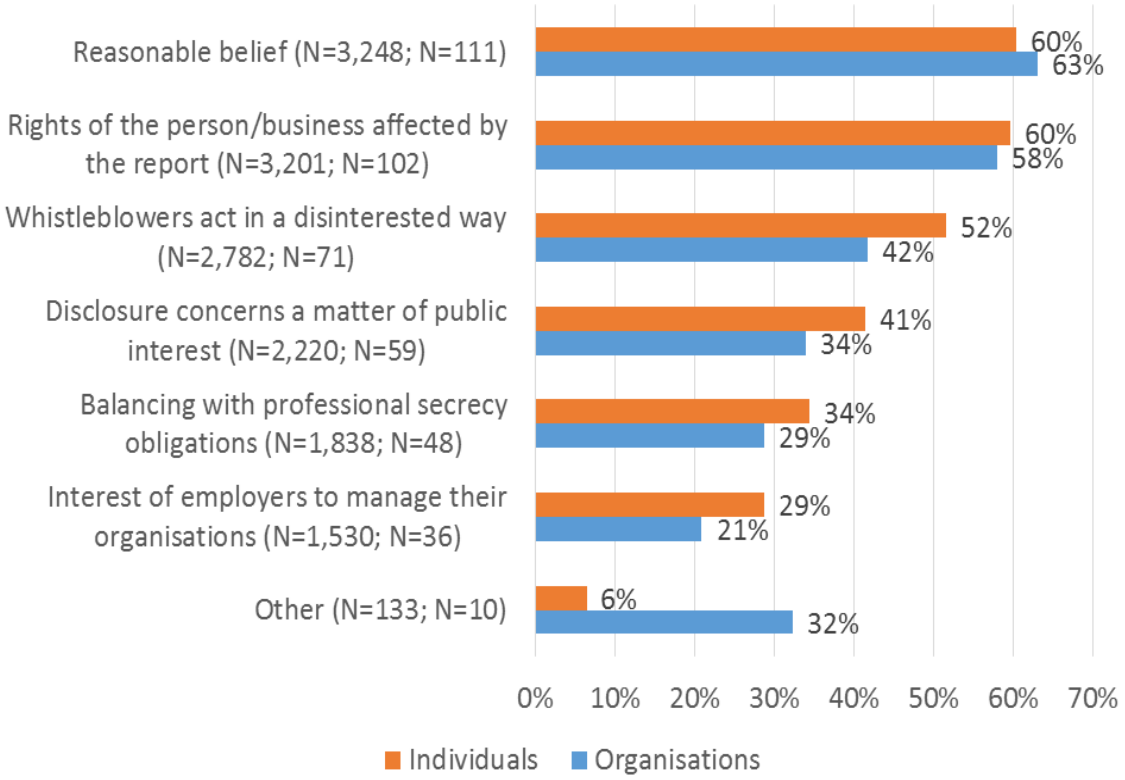
The survey respondents were asked to identify which measures were most important for the protection of third parties in the context of whistleblowing[11].

The top two protection measures identified were the **requirement that the whistleblowers reasonably believe that the information they disclose is true** (60% of individuals and 63% of organisations) and the **protection of the rights of the person or organisation affected by the report** (60% of individuals and 58% of organisations)(figure 4.4).

[11]OPC Q: In your opinion, which of the following protection measures for third parties are important in the context of whistleblowing?

Figure 4.4 Respondents indicated that the most important way of protecting third parties was for there to be a requirement that the whistleblower had a reasonable belief that the report was true

*Protection measures for third parties in the context of whistleblowing*




*Source: ICF from OPC data [Base: individuals N=2,052 to N=5,401; organisations N=31 to N=176] [Q: In your opinion, which of the following protection measures for third parties are important in the context of whistleblowing?]*

A business organisation stressed in its position paper the need for **protection of the third party** (i.e. the one against whom the whistleblower allegations are made) against potentially false allegations which could have legal consequences and /or reputational damages / or negatively affect the enterprises' working culture.

Another business organisation and a public authority argue that the protection of whistleblowers is necessarily constrained where it collides with the obligations to **confidentiality and non-disclosure** set by law or by an enterprise. One other business organisation argues that, if the rule of law is to be upheld, it is essential that the confidentiality attached to the relationship between lawyers and their clients be protected in any new legislation in relation to whistleblowing. Another business organisation stresses the need to safeguard the rights, reputation, financial situation and personal safety not only of the whistleblower but also of the accused person.

In contrast, a media organisation argues that **companies' interests cannot outweigh public interest** and the interests of employers must be balanced with the public's right to know when their interests are at risk, likely to be threatened or when the law is being broken.

A business organisation and a public authority highlight the need to strike **the right balance** between the objectives of the whistleblower protection, and the risk of encouraging false reporting or breach of the confidentiality principle that can seriously undermine the relationship between the client and the tax advisor. Failure to acknowledge the specificity of the relationship between tax advisers and clients

may damage the trust in both tax advisers and in the public institutions in case of publishing taxpayers' confidential information.

According to another business organisation, a special protection for privately employed whistleblowers will **contradict the basic principles of the employee's duty of loyalty towards an employer.** It states that provision of immunity from prosecution in relation to punishment, compensation or employment sanctions, will, in effect, set aside the duty of loyalty and at the same time may lead to unfounded accusations, which can be very harmful to businesses. Any protection of employed whistleblowers against sanctions from an employer should be extended exclusively to whistleblowing about illegal matters of vital societal interest.

# 5 Existing rules and their impact

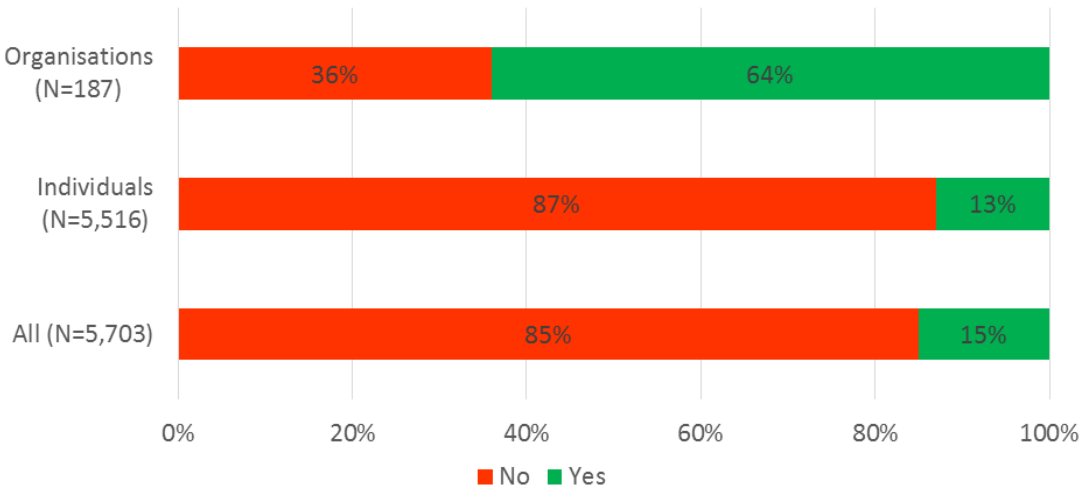
## 5.1 Knowledge of rules and effectiveness

The OPC explored respondents' knowledge of existing rules on whistleblowers protection[12] and perceptions of the rules' effectiveness[13].

**Only 15% (N=861) of all respondents had knowledge of existing rules for whistleblower protection in their country of residence or establishment**. Organisations were much more likely than individuals to know about existing rules (64% vs 13%)(figure 5.1).

Figure 5.1 Few of the individuals responding to the OPC had knowledge of the existing rules on whistleblowing in their country

*Knowledge of existing rules in country of residence/establishment*




*Source: ICF from OPC data [Base: all N=850; individuals N=737; organisations N=113] {Q: Do you believe that the rules in place provide sufficient protection for whistleblowers?]*

[12] OPC Q: Do you know of rules in place in your country of residence (private citizens) or establishment (for organisations) on the protection of whistleblowers?

[13] OPC Q: Do you believe that the rules in place provide sufficient protection for whistleblowers?

## 5.2 Impact of insufficient protection of existing rules within the national context

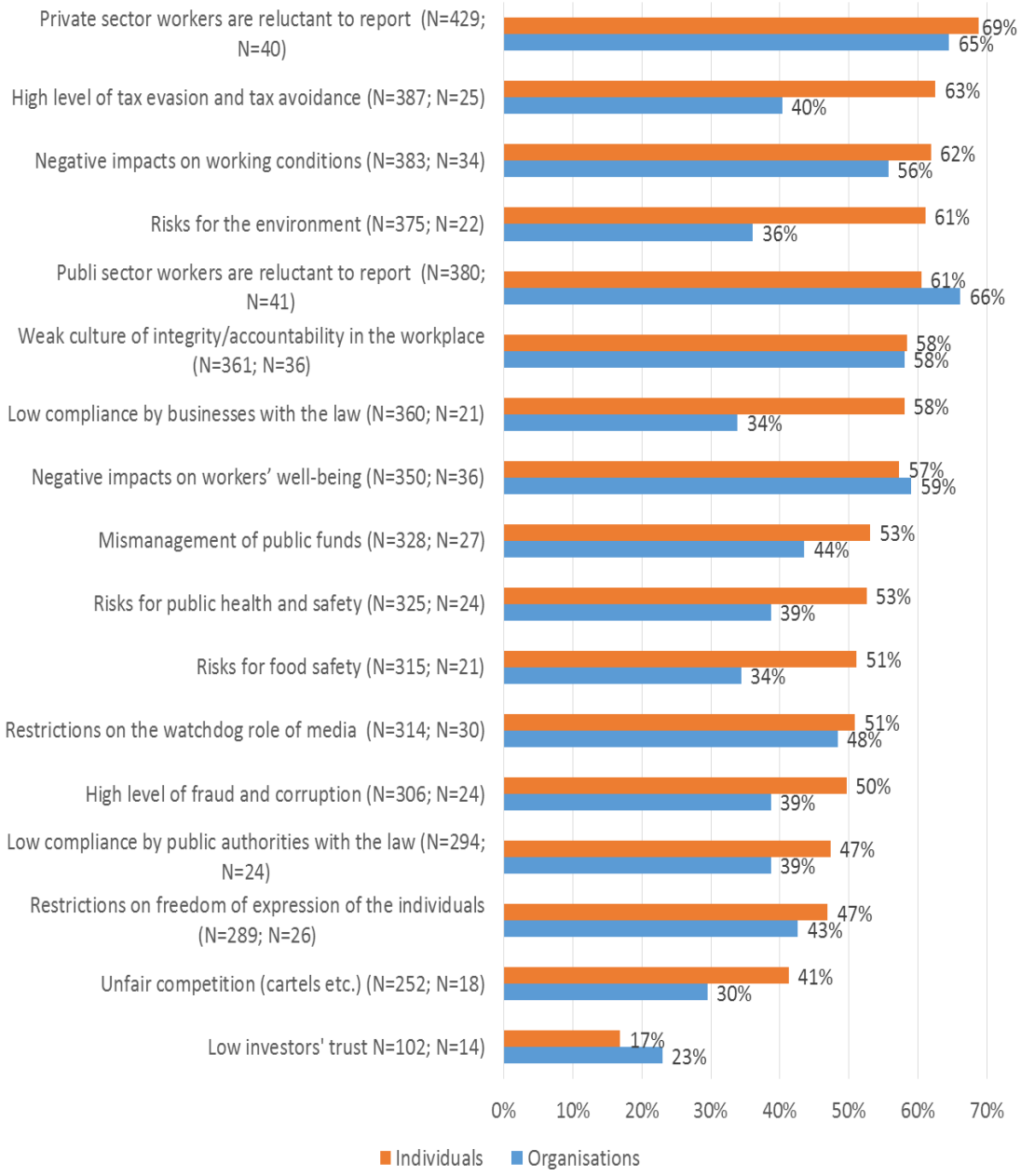
The survey investigated the problems resulting from insufficient protection by legislation within the national context[14].

Respondents indicated that the main problem arising from insufficient protection of whistleblowers is that private workers are reluctant to report wrong-doing (69% of individuals and 65% of organisations). They identified as second and third most important effects of insufficient protection for individuals high levels of tax evasion and negative impacts on working conditions (respectively 63% and 62%). The second and third most important effects identified by organisations were that public sector workers are reluctant to report and the negative impact on workers' well-being (respectively 66% and 59%)(figure 5.2).

Figure 5.2 Reluctance to report is the most significant problem arising from insufficient protection

*Problems arising from insufficient protection*

[14] OPC Q: Thinking about your country of residence/establishment: in your opinion, what are the problems resulting from such insufficient protection?




*Source: ICF from OPC data [Base: individuals N: 102 to N=387; organisation N=14 to N=41] [Q: Thinking about your country of residence/establishment: in your opinion, what are the problems resulting from such insufficient protection?]*

## 5.3 Impact of divergent/insufficient protection at EU level

### 5.3.1 Negative impact resulting from the absence of - or the insufficient - whistleblower protection in some EU countries for other EU countries and the EU as a whole

The survey investigated any negative impacts likely to result from the absence of - or the insufficient - whistleblower protection in some EU countries for other EU countries and the EU as a whole[15]. The non-response rates for the options provided

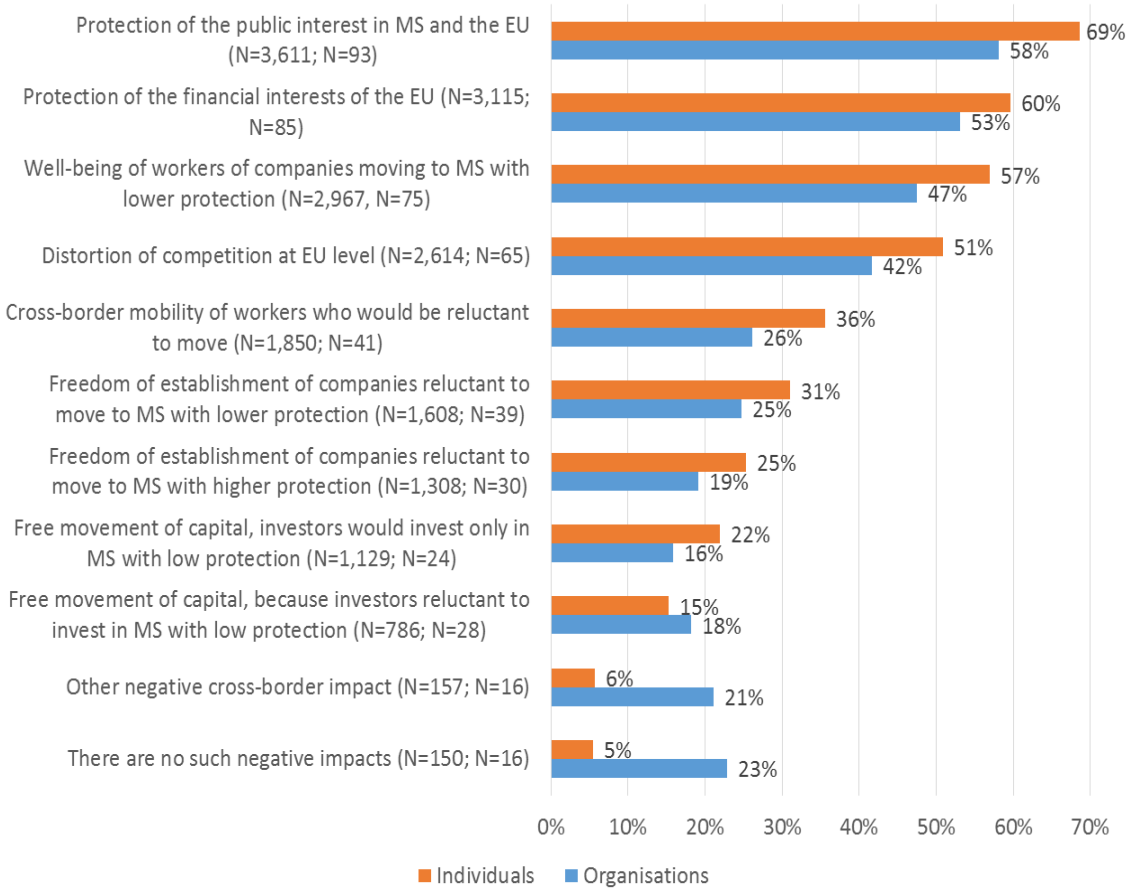
[15] OPC Q: Whistleblowers enjoy very different levels of protection across the various EU countries, and in some EU countries they enjoy limited or no protection at all. In your opinion, what are the negative impacts likely to

under this question were relatively high, from 5% to 50% of the sample of individuals and from 14% to 63% of the sample of organisations.

The top two negative impacts identified by individuals and organisations were on the **protection of the public interest** of the EU as a whole and of those Member States with high levels of whistleblower protection (69% of individuals and 58% of organisations) and on **the protection of financial interests** of the EU (60% of individuals and 53% of organisations) (figure 5.3).

Figure 5.3 Respondents thought that the variation in levels of whistleblower protection across the EU is damaging to the public interest

*Negative impact associated to different levels of whistleblower protection across the EU Member States*




*Source: ICF from OPC data [Base: individuals N=2,734 to N=5,264; organisations N=70 to N=160] [Q: Whistleblowers enjoy very different levels of protection across the various EU countries, and in some EU countries they enjoy limited or no protection at all. In your opinion, what are the negative impacts likely to result from the absence of - or the insufficient - whistleblower protection in some EU countries for other EU countries and the EU as a whole?]*

### 5.3.2 Positive impact resulting from the absence of - or the insufficient - whistleblower protection in some EU countries for other EU countries and the EU as a whole

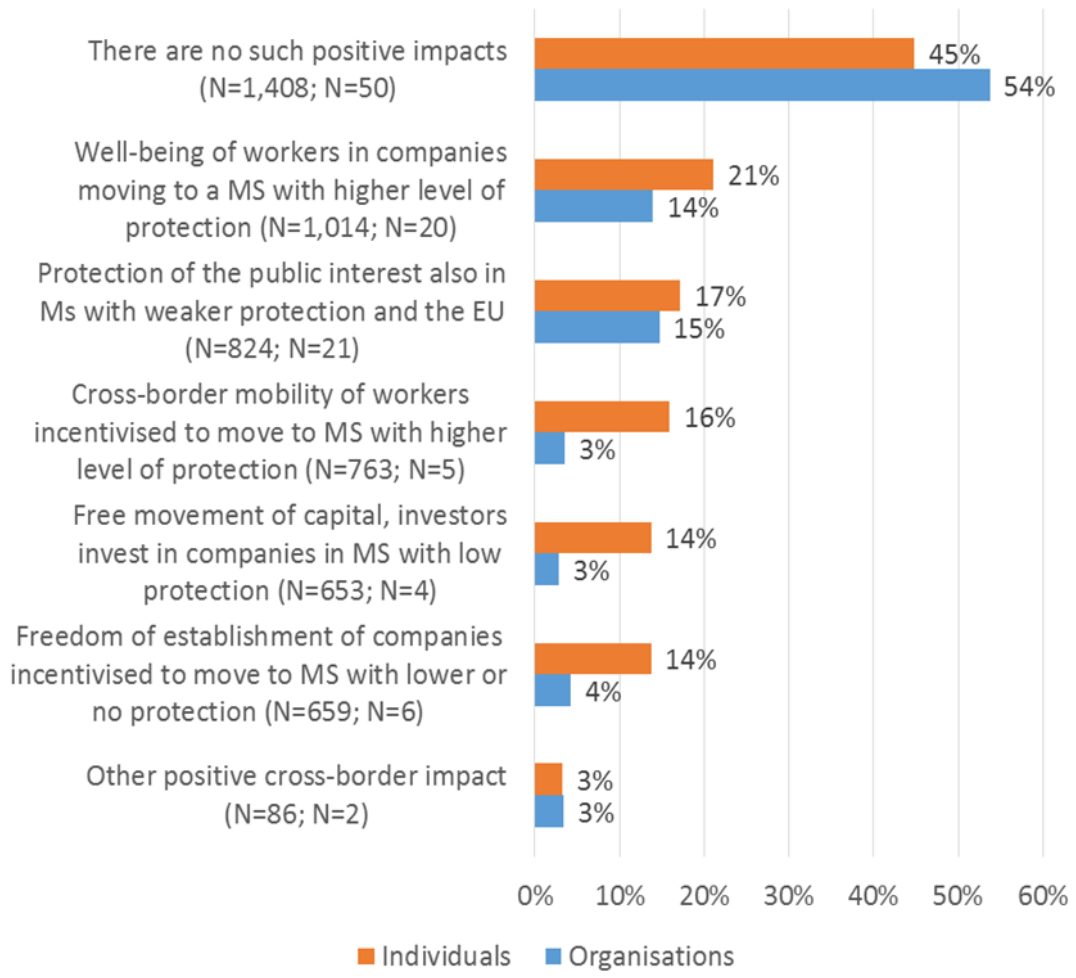
Respondents were asked whether there were any positive impacts likely to result from the absence of - or the insufficient - whistleblower protection in some EU

result from the absence of - or the insufficient - whistleblower protection in some EU countries for other EU countries and the EU as a whole?

countries for other EU countries and the EU as a whole[16]. The non-response rate to this question ranged from 13% to 52% in the sample of individuals and from 24% to 68% within organisations, depending on the option. The majority (54%) of the responding organisations believed that there were **no positive impacts** from a lack of harmonised protection across the Member States, as compared to 45% of individual respondents (figure 5.4).

Figure 5.4 Few respondents saw benefits in the uneven level of protection provided to whistleblowers across the EU

*Positive impact associated to different levels of whistleblower protection across the EU Member States*




*Source: ICF from OPC data [Base: individuals N=2,674 to N=4,813; organisations N=60 to N=143] [: In your opinion, what are the positive impacts likely to result from the absence of whistleblower protection in some EU countries for other EU countries and the EU as a whole?]*

# 6 Need for minimum standards

The OPC investigated respondents' views on who should take action to introduce legally binding minimum standards[17]. The responses show a very strong support for

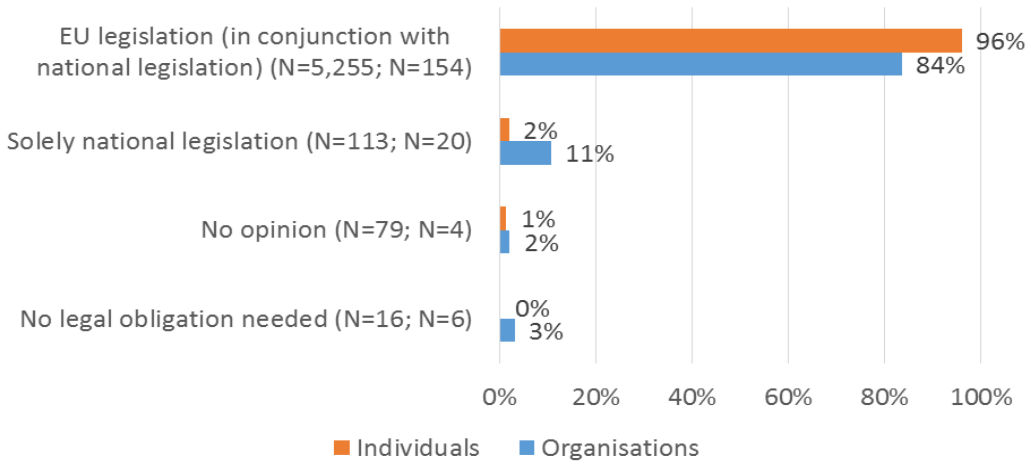
[16] OPC Q: In your opinion, what are the positive impacts likely to result from the absence of whistleblower protection in some EU countries for other EU countries and the EU as a whole?

[17] OPC Q: Considering what you have indicated as important aspects for effective whistleblower protection, in your opinion who should establish legally binding minimum standards on these aspects?

establishment of legally binding minimum standards on whistleblower protection in the EU law; 96% of individuals and 84% of organisations (figure 6.1).

Figure 6.1 There was very strong support for minimum standards for whistleblower protection being codified in the EU law

*Views on responsibility for establishing legally binding minimum standards*




*Source: ICF from OPC data [Base: individuals N=5,463; organisations N=184] [Q: Considering what you have indicated as important aspects for effective whistleblower protection, in your opinion who should establish legally binding minimum standards on these aspects?]*

Table 6.1 provides an overview of responses on which authorities should establish legally binding minimum standards by type of organisations. Amongst the responding business associations, support for EU legally binding minimum standards was not as high as amongst other stakeholders' groups. Out of a total of 40 responses, 20 selected EU legislation as preferred option, 14 solely national law and 5 considered that no legislation is needed.

Table 6.1 Views on responsibility for establishing legally binding minimum standards by type of organisation

| | NGOs | Business associations | Trade unions | Enterprises | Public Authorities |
|---|---|---|---|---|---|
| EU legislation (in conjunction with national legislation) | 47 | 20 | 36 | 21 | 9 |
| Solely national legislation | 3 | 14 | 1 | 1 | |
| No legal obligation needed | | 5 | 0 | 1 | |
| No opinion | | 1 | 0 | 1 | 1 |
| Total | 50 | 40 | 37 | 24 | 10 |

*Source: ICF from OPC data [Q: Considering what you have indicated as important aspects for effective whistleblower protection, in your opinion who should establish legally binding minimum standards on these aspects?; Q: What is the nature of your organisation?]*

In their position papers, nine stakeholders (a mix of NGOs, trade unions, media organisations and public authorities) **call for robust EU legislation to establish minimum levels of protection for whistleblowers across the Union**. These stakeholders argue that **the current patchwork of national regulations means that whistleblowers have no legal certainty**. EU legislation on whistleblowing would provide legal certainty for all stakeholders involved and should be accompanied by a series of soft law measures; it would help protect **common**

**European interests which transcend borders** (e.g. environment, public health) and **support the correct implementation of EU laws and policies** (e.g. in the common market); it would be necessary in view of increasing economic ties between the Member States and the trade in capital and workforce across national borders, and the lack of national laws protecting whistleblowers.

A business organisation asks for European legislation as companies increasingly have to consider the European and international dimensions of their activities and another one sees common rules concerning whistleblowing systems as a prerequisite for fair competition within European borders. Failure to provide common rules risks companies moving to countries with less stringent rules. A trade union points out that tackling cross-border cases can prove to be extremely complicated.

Four stakeholders (three NGOs and a trade union) argue that EU legislation would make a significant contribution towards creating positive attitudes to whistleblowing, enhancing transparency and accountability within the EU and serving the public interest. Ten stakeholders (a mix of NGOs, trade unions, media organisations and public authorities) argue that the protection of whistleblowers is a **necessary element of the protection of rights and for the exercise of freedoms enshrined in the EU Charter of Fundamental Rights** which are among the core values on which the EU is built.

Two media organisations call in their position papers for the EU legislation on whistleblowers to **set minimum standards that would allow freedom of implementation given the different legal frameworks in the Member States**. Similarly, a trade union argues for the combination of EU and national laws on whistleblower protection which should set a harmonised set of minimum standards.

A NGO argues that a **reformed holistic whistleblower protection law can only be implemented with the reforms in the labour, criminal, cartel, tax and public service laws**. This is also the point made by a business organisation, which calls to consider how different legal frameworks will interact (e.g. the Trade Secrets Directive, professional confidentiality duties, as well as the General Data Protection Regulation).

On the other hand, several stakeholders having submitted position papers were against the EU level legislation, considering that **the existing national legislation and voluntary company-level compliance measures are already proving sufficient protection** and that the EU level legislation would undermine the national level measures. One business organisation challenges EU legislation on grounds of subsidiarity as the number of cross-border cases where whistleblowers would contribute is rather limited. Four business organisations consider that their respective (Swedish, Finnish and Danish) domestic legislation is sufficient, that such matters are for national competence, and that a one-size-fits-all approach does not suit the very different systems of the Member States. One business organisation further argues that German and European listed companies have implemented carefully balanced whistleblower protection mechanisms and hence there is no need for any legislative mechanisms at the EU level. Another business organisation notes that whistleblowers are often not exposing crimes or violations of company rules, but are instead motivated by grievances against supervisors or colleagues.

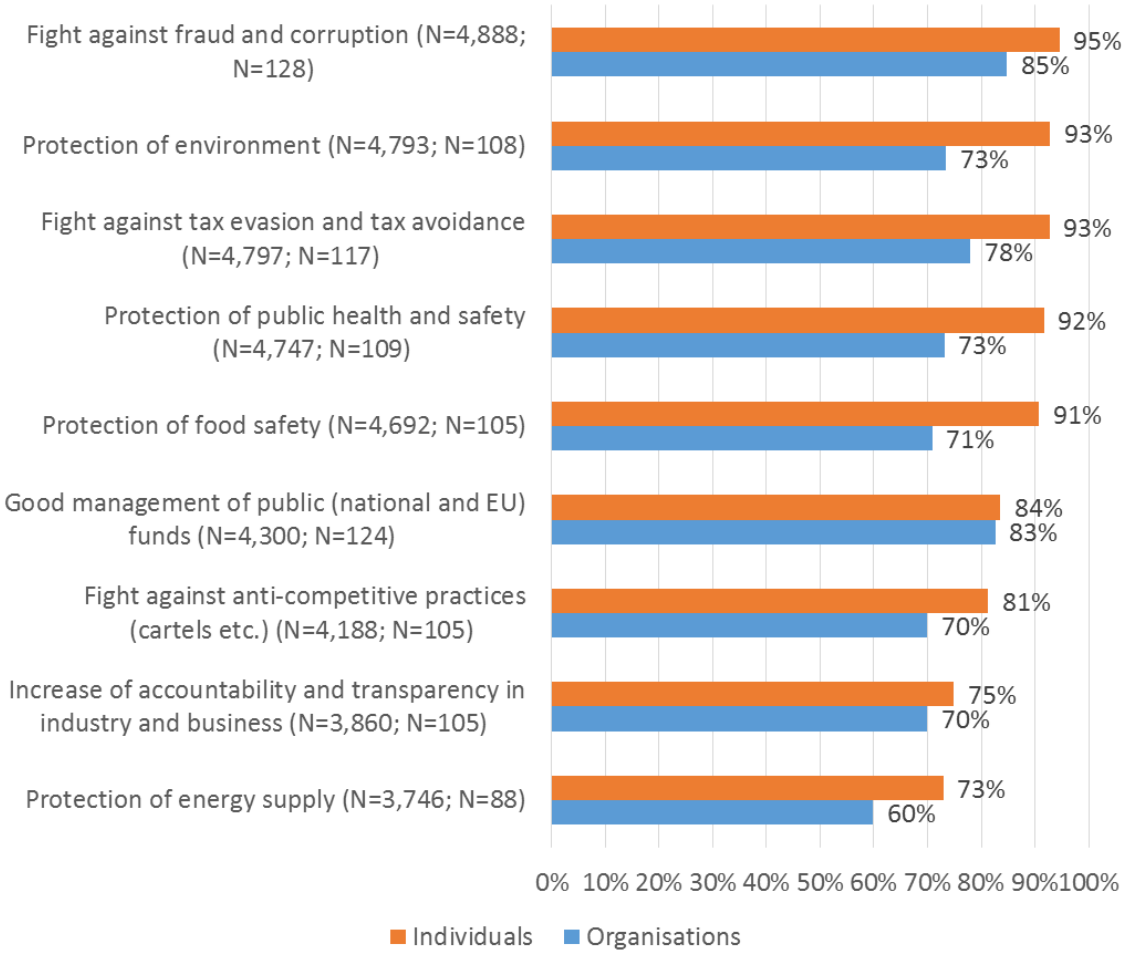
Some of the public authorities that responded to the public consultation drew attention to the need for any EU legislation to have an appropriate legal basis in the Treaties and to respect the principle of subsidiarity as well as the need for an evaluation of existing EU rules. A few presented in detail their domestic legislation on whistleblower protection, as possible models of best practices, and one public authority referred to internal discussions on improving whistleblower protection.

# 7 Where the EU should support Member States

The respondents were asked to identify the areas in which the EU should further support the Member States in order to better protect whistleblowers[18]. The non-response rate to options provided under this question ranged from 6% to 69% amongst individuals and from 19% to 74% amongst organisations.The majority of respondents strongly agreed that the EU should offer more support to the Member States. Between 95% and 91% of individuals and between 71% and 85% of organisations believed that the EU should support the Member States in **fight against fraud and corruption; protection of environment; fight against tax evasion, protection of public health and safety; and, protection of food safety** (figure 7.1).

Figure 7.1 There was strong support for the proposition that the EU should be supporting Member States on whistleblower protection across diverse policy areas

*Areas in which the EU should offer more support to the Member States for the protection of whistleblowers*




*Source: ICF from OPC data [Base: individuals N=5,168 to N=5,174; organisations N=150 to N=150] [Q: In which area should the EU offer (more) support to the Member States to provide whistleblower protection?]*

[18] OPC Q: In which area should the EU offer (more) support to the Member States to provide whistleblower protection. For each item respondents had to respond whether they strongly agreed, agreed, neutral, disagree, strongly disagree and no answer.

One business organisation argued in its position paper for the limitation of the EU legislation to cases involving a cross-border element aiming to protect the financial interests of the European Union, i.e. corruption, embezzlement of European Union funds or breach of EU state aid rules to respect the principles of subsidiarity and proportionality.

Other stakeholders argued for **a careful consideration of the scope and mix of the legislation and soft measures before any further adoption of legislation at the EU level**.

A business organisation noted that **the Commission should conduct a thorough assessment of the financial sector related provisions** before considering additional requirements for the financial industry, which is already well regulated. In particular, the different financial industry group structures and governance models should be taken into account for the determination of the most appropriate and efficient measures.

# 8 Effectiveness of horizontal versus sectorial provisions

For almost all aspects of whistleblower protection, **the policy option favoured by respondents was a combination of EU and national legislation** (Table 8.1 and Table 8.2). The share of respondents favouring this option ranges between 26% and 45% among individuals and 42% and 61% among organisations. The **second most favoured option** was the adoption of **EU horizontal legal provisions**.

A trade union points out in its position paper that the public-sector employees might need additional protection in the whistleblowing situations given their special role. A business organisation asks for special strong protection of internal auditors and chief auditing officers in companies as they come into possession of extremely sensitive information about their firms.

Three NGOs and a law firm argue for **horizontal EU legislation to avoid inequalities** and ensure crimes in all sectors are more reported. Horizontal protection at a European level will increase transparency within all sectors argued a business organisation.

Another business organisation argues **for broad horizontal legislation on the grounds that current sectoral rules have gaps and are incoherent** (it provides examples from the accountancy sector). Two stakeholders argue for a horizontal approach as sectoral protections invariably exclude categories of workers – such as contractors, partners or volunteers – and leave those who would make disclosures in some areas entirely unprotected.

In contrast, a public authority **argues for horizontal EU level legislation that only covers areas of EU law** and leaves the Member States and companies a margin of implementation.

## Table 8.1 Minimum standards within potential EU legislation, by legal provisions (Individuals)

| | A combination of EU and national legal provisions | EU horizontal legal provisions | A combination of EU horizontal and sectorial provisions | EU sectorial legal provisions | Don't know | Total | Total N |
|---|---|---|---|---|---|---|---|
| Channels in an organisation/business for reporting of wrongdoing | 45% | 17% | 14% | 3% | 21% | 100% | 4,734 |
| Channels for reporting to relevant public regulatory bodies (i.e. regulatory agencies in specific sector) | 43% | 18% | 14% | 5% | 20% | 100% | 4,719 |
| Channels for reporting to horizontal independent body (e.g. ombudsman) | 41% | 23% | 12% | 3% | 21% | 100% | 4,692 |
| Channels for reporting to sectorial independent body (e.g. concerning financial services, energy, taxation, etc.) | 42% | 15% | 14% | 8% | 21% | 100% | 4,663 |
| Channels for reporting to law enforcement (e.g. police, prosecution) | 48% | 19% | 12% | 2% | 19% | 100% | 4,705 |
| Protection in case of disclosure to the public (media, web platforms, etc) where internal reporting and reporting to oversight institutions are not available, not functioning properly or cannot reasonably expected to function properly. | 28% | 39% | 12% | 2% | 19% | 100% | 4,722 |
| Right of workers to be informed on the whistleblowing provisions and procedures applicable at the specific workplace | 45% | 21% | 12% | 4% | 19% | 100% | 4,709 |
| Procedure that grants whistleblowers an official status (with rights of information) | 43% | 24% | 11% | 2% | 20% | 100% | 4,698 |
| Procedure to inform whistleblowers on regular basis about the status of the follow-up to their report | 43% | 21% | 12% | 3% | 21% | 100% | 4,684 |
| Rules for contact of whistleblowers with the investigation authority before, during and after an investigation | 45% | 20% | 12% | 3% | 20% | 100% | 4,677 |
| Rules on whistleblowers' access to the file or to documents in the file | 44% | 22% | 11% | 3% | 20% | 100% | 4,662 |
| Proper investigation of the relevant reports and disclosures | 45% | 23% | 12% | 2% | 18% | 100% | 4,680 |
| Protection of the confidentiality of the whistleblower's data | 44% | 27% | 11% | 2% | 17% | 100% | 4,694 |
| Protection of the rights and interests of third parties implicated | 43% | 22% | 12% | 3% | 20% | 100% | 4,658 |
| Protection of whistleblowers against retaliation at work | 46% | 24% | 11% | 2% | 17% | 100% | 4,700 |
| Protection of whistleblowers in administrative proceedings | 46% | 24% | 11% | 2% | 17% | 100% | 4,684 |
| Immunity from civil action for damages | 44% | 24% | 11% | 2% | 19% | 100% | 4,675 |
| Exemption of whistleblowers from criminal liability | 31% | 25% | 10% | 2% | 32% | 100% | 4,682 |
| Financial support covering the costs of legal proceedings | 33% | 21% | 11% | 3% | 31% | 100% | 4,678 |
| Financial or other types of rewards | 26% | 14% | 10% | 3% | 47% | 100% | 4,604 |
| Psychological support | 33% | 18% | 11% | 3% | 35% | 100% | 4,615 |
| Other minimum standard | 10% | 5% | 4% | 0% | 81% | 100% | 2,448 |

*Source: ICF from OPC data (Note: the colours green, yellow and red cluster three groups of responses with decreasing percentages; respectively green between 33% and 45%, orange between 18% and 31%, red between 0% and 18%)*

## Table 8.2 Minimum standards within potential EU legislation, by legal provisions (Organisations)

| | A combination of EU and national legal provisions | EU horizontal legal provisions | A combination of EU horizontal and sectorial provisions | EU sectorial legal provisions | Don't know | Total | Total N |
|---|---|---|---|---|---|---|---|
| Channels in an organisation/business for reporting of wrongdoing | 45% | 27% | 9% | 5% | 14% | 100% | 140 |
| Channels for reporting to relevant public regulatory bodies (i.e. regulatory agencies in specific sector) | 46% | 22% | 17% | 5% | 10% | 100% | 136 |
| Channels for reporting to horizontal independent body (e.g. ombudsman) | 48% | 28% | 8% | 4% | 12% | 100% | 138 |
| Channels for reporting to sectorial independent body (e.g. concerning financial services, energy, taxation, etc.) | 48% | 15% | 13% | 10% | 13% | 100% | 135 |
| Channels for reporting to law enforcement (e.g. police, prosecution) | 61% | 19% | 5% | 2% | 13% | 100% | 138 |
| Protection in case of disclosure to the public (media, web platforms, etc) where internal reporting and reporting to oversight institutions are not available, not functioning properly or cannot reasonably expected to function properly. | 43% | 33% | 9% | 1% | 13% | 100% | 138 |
| Right of workers to be informed on the whistleblowing provisions and procedures applicable at the specific workplace | 47% | 29% | 7% | 6% | 11% | 100% | 139 |
| Procedure that grants whistleblowers an official status (with rights of information) | 48% | 35% | 4% | 4% | 10% | 100% | 136 |
| Procedure to inform whistleblowers on regular basis about the status of the follow-up to their report | 51% | 28% | 6% | 4% | 12% | 100% | 138 |
| Rules for contact of whistleblowers with the investigation authority before, during and after an investigation | 54% | 25% | 6% | 4% | 11% | 100% | 137 |
| Rules on whistleblowers' access to the file or to documents in the file | 50% | 30% | 5% | 2% | 13% | 100% | 136 |
| Proper investigation of the relevant reports and disclosures | 50% | 29% | 7% | 4% | 10% | 100% | 137 |
| Protection of the confidentiality of the whistleblower's data | 45% | 38% | 5% | 2% | 10% | 100% | 140 |
| Protection of the rights and interests of third parties implicated | 48% | 33% | 6% | 2% | 11% | 100% | 138 |
| Protection of whistleblowers against retaliation at work | 48% | 34% | 5% | 4% | 9% | 100% | 139 |
| Protection of whistleblowers in administrative proceedings | 51% | 32% | 4% | 3% | 9% | 100% | 138 |
| Immunity from civil action for damages | 46% | 32% | 5% | 1% | 16% | 100% | 136 |
| Exemption of whistleblowers from criminal liability | 44% | 29% | 5% | 2% | 20% | 100% | 133 |
| Financial support covering the costs of legal proceedings | 47% | 28% | 4% | 3% | 18% | 100% | 135 |
| Financial or other types of rewards | 42% | 20% | 4% | 4% | 30% | 100% | 134 |
| Psychological support | 48% | 26% | 4% | 2% | 20% | 100% | 133 |
| Other minimum standard | 27% | 22% | 2% | 0% | 49% | 100% | 55 |

*Source: ICF from OPC data (Note: the colours green, yellow and red cluster three groups of responses with decreasing percentages; respectively green between 45% and 61%, orange between 22% and 38%, red between 0% and 13%)*