



Mutual Learning Programme
Peer Review on “Enhancing whistleblower protection through better collaboration between responsible authorities – a tool to prevent and tackle work-related crime”

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| Croatia | | | |
| <ul style="list-style-type: none"> • Croatia has high level of undeclared work and suffers from widespread corruption. • Croatian public is becoming increasingly concerned about corruption • The Croatian legal system puts heavy emphasis on the rule of law. However, in practice legal certainty is often limited as regulation is sometimes inconsistent and prone to constant changes, what causes legal insecurity. • There is a need to increase social awareness and courage to point to corruption and other illegal activities. | <ul style="list-style-type: none"> • There is no special law that regulates the legal position and protection of the whistleblowers. • There are several laws that regulate this topic, primarily the Labour Act, which protects workers reporting wrongdoing in good faith. • The expected date of the Act on whistleblowers protection to come on force is January 2020. • The protection of whistleblowers in Croatia is a new area, which will be improved with the new Act. | <ul style="list-style-type: none"> • The improvement of the rule of law and better governance are indirectly related to the whistleblowers issue. • A positive element is the introduction of strategic-management tools that has begun recently in public administration. This included a new system of civil servants’ selection and remuneration according to the results, the system design on measures of de-politicization and professionalization. • Particular attention is given to fight against corruption and strengthening of civil servants’ ethics. | <ul style="list-style-type: none"> • The activities of the Labour Inspection Authority regarding increasing the knowledge and awareness (page 7) are very useful. Is it possible to provide more information about results and/or possible evaluation of these activities, or at give least impressions about the outcome? • Is it possible to explain more about the reasons for significant lower proportion of respondents that were not familiar with available provision? • Was there a public campaign and/or targeted media awareness raising programmes related to whistleblowers protection? • Is there any negative case or experience, for example, the accusation of innocent employer or when employees were not reporting in the good faith? |

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| The Czech Republic | | | |
| <ul style="list-style-type: none"> • In the context of the long-standing struggle against corruption, whistleblowing became associated mainly with the exposure of corrupt behaviour. Thus, whistleblowing in the sense of reporting work-related crime was somewhat pushed into the background. • Legislative support is fragmented and insufficient. | <ul style="list-style-type: none"> • Legal protection of employee whistleblowers is fragmented and covered by a number of different pieces of legislation. • Despite the increased efforts of the government to prepare one uniform legislative regulation concerning whistleblowing, legislation proposed in this area has, to date, not found sufficient support and has yet to be enshrined in law. • According to lawyers, the status of whistleblowers concerning the process of notifying unfair practices and their protection against compensation claims are insufficiently regulated • If an employee suspects or witnesses unfair behaviour on the side of the employer, the easiest way is to contact State Labour Inspection Office (SÚIP). However, the main complication for whistleblowers (employees) is the fact that some work-related crimes do not fall under the competence of the SÚIP, but other public institutions. It follows, therefore, that the notification of suspicious practices is far from being simple and flexible. | <ul style="list-style-type: none"> • The Norwegian model is much more developed. • Social dialogue could play a more active role in this area in the Czech Republic, however, the issue of whistleblowing remains outside the interest of the various social partners. • The awareness-raising measures should be applied in relation to whistleblowing, • The cooperation of public institutions (SÚIP, financial offices, Czech Social Security Administration etc.) in relation to whistleblowing could help whistleblowers. | <ul style="list-style-type: none"> • From which sources are advisory seminars, manuals etc. (public source, social partners) financed? • Do collective agreements contain arrangements pertaining to whistleblowing concerning work-related crime? • Do different practices apply to different employee groups (public versus private sector)? |

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| Greece | | | |
| <ul style="list-style-type: none"> • After eight years of recession, the Greek economy started showing signs of recovery in 2018 and is projected to grow over the next two years. • A SEPE study from 2012 assessed the rate of undeclared work to be over 30%, and even higher in sectors with seasonal employment (e.g. agriculture and tourism). The percentage of undeclared work reported/estimated by entrepreneurs themselves is also high at 26%. • Employers' assessment of wrongdoing is associated with uninsured work (59%), followed by non-issuance of a social insurance voucher (10%), non-notification of overtime (6%), not respecting the 5-day week (8%), exceeding the hours of part-time work (9%), working outside the registered working hours (6%). • Undeclared work remains a significant feature of the economy, despite measures taken in recent years to | <ul style="list-style-type: none"> • The ILO, in close collaboration with the Greek government and the social partners, set up a European Commission-funded project which will run until December 2019. • The programme 'Supporting the transition from informal to formal economy and addressing undeclared work in Greece: Identifying drivers and ensuring effective compliance' aims to map undeclared work, exploring its causes and forms while simultaneously engaging the social partners • A pilot project of joint inspections (carried out in the context of the three-year road map for the implementation of a holistic strategic approach to tackle undeclared work in Greece) has offered promising results so far and will be fully evaluated during 2019. | <ul style="list-style-type: none"> • One success factor related to the policy emphasis given to fighting undeclared work in Greece is the existence of tripartite commitment to the cause and the ability of the government and the social partners to agree on the adoption of practical policy measures. • The results so far are promising and the establishment of a roadmap for combating undeclared work is one of the few cases of tripartite agreement at a time when social dialogue faces several challenges in Greece. | <ul style="list-style-type: none"> • Greece would be interested to find out more details on the methodologies of the surveys carried out in 2010, 2013, 2016 and 2018 exploring the whistleblowing process. For example, is the survey based on questionnaires or qualitative interviews? Are statistical validity checks carried out, how is the validity/reliability of responses ensured? |

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| <p>address the issue. The size of the undeclared economy in Greece is estimated to be equivalent to 25% of GDP.</p> | | | |
| Latvia | | | |
| <ul style="list-style-type: none"> No institution has so far been responsible for collecting statistics on work-related crime in Latvia: very limited data is available for only a few aspects of wrongdoings in the workplace. The amount of envelope wages and the number of unregistered employees are both important problems in Latvia. 32% of Latvians admit that they have friends or relatives who have worked in the shadow labour market. Low level of trust in government, low satisfaction with quality and availability of services provided by the state, level of labour taxes and severity of punishment are key determinants of high envelope wages and the number of underreported employees. | <ul style="list-style-type: none"> Currently Labour Law, Article 9 states that it is forbidden to punish an employee if she/he informs competent institutions about wrongdoings and in case an employee is punished, the employer should prove that it was not because of such reporting. State Administration Structure Law determines that state institutions should exchange information and cooperate in Latvia. Cooperation between social partners and stakeholders is 'regulated' by mutual agreements between various institutions. Most if not all institutions in Latvia have developed internal mechanisms allowing to report work-related wrongdoings. The Whistleblowers Law has been approved by Parliament of Latvia on 11 October 2018 and will come to force on 1 May 2019. This is the first law in Latvia that defines whistleblowers, the scope of whistleblowing activity and mechanisms for reporting wrongdoings. How the law will work in reality is yet to be seen. | <ul style="list-style-type: none"> Not yet possible since the Whistleblowers Law is not yet in power in Latvia and the concept was only recently defined. A number of initiatives are in progress, such as plans to inform society as well as institutions about possibilities for reporting wrongdoing in the workplace. There are a number of concerns on whether there will be positive changes with regard to protection of whistleblowers after introducing the new law related to: efficiency of court system; perceptions about importance of protecting whistleblowing in state institutions and among general public; available funding to implement mechanisms; efficiency of public sector in Latvia. | <ul style="list-style-type: none"> What is the best strategy for informing society about the role of whistleblowing and possibilities to report work related wrongdoings, including how to motivate to report? What strategy could be best suited to educate state officials about the importance and positive impact of whistleblowing activity? Which are the most efficient methods to train public sector employees dealing with whistleblower reports to ensure their efficient reception and review, including coordination with other state institutions? What is the procedure and practical tools for protecting identity? What is the practice and challenges to prove the causal link between whistleblowing and reprisal? What are the good practices in the host country that demonstrates how good cooperation has been achieved between state institutions and stakeholders to encourage whistleblowing activity and to provide protection to whistleblowers? |

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| | | | <ul style="list-style-type: none"> • What are evidence based arguments proving that protection of whistleblowers has positive effects (i.e. arguments that 'convince' policy makers)? |
| The Netherlands | | | |
| <ul style="list-style-type: none"> • An increase in cases and forms of dishonest work as well as an increase of industrial accidents. • Trend to stand-alone whistleblowing legislation covering both public and private sector and the installation of a government funded whistleblowing authority. | <ul style="list-style-type: none"> • Several channels for workers to report wrongdoing. • House for Whistleblowers and House for Whistleblowers Act. • Sectoral legislation, protecting whistleblowers in a particular field. | <ul style="list-style-type: none"> • Different channels for different perspectives. • Voice through trade unions and Works Councils. • Department giving workers free (legal) advice in every step of the reporting procedure. • Low barriers to report wrongdoing. • Cooperation between Labour Inspectorate and trade unions. | <ul style="list-style-type: none"> • What are the aims and expectations of the public interest test? Does this test mean that a complaint that concerns the conditions for a single employee will no longer be protected or only that it will no longer be considered to be a ground for whistleblowing? • What are the aims and expectations of establishing a separate ombudsman for whistleblowing? Will this ombudsman also advice and support posted and self-employed workers? • Should the initial notification always be submitted internally in the enterprise concerned, without exceptions? What is the purpose of this proposal? • How and with what aim should the relationship between whistleblowing and a favourable workplace climate be reflected in the objects clause of the Working Environment Act? • What would be the nature of the conflicts the separate tribunal should resolve? Will this tribunal |

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| | | | deal with violation of provisions? If so, which provisions? |
| Poland | | | |
| <ul style="list-style-type: none"> • According to statistics of 2017, the offences reported most frequently to labour inspectorates were connected to remuneration, although according to results of inspections a violation of HSE regulation took place more often; • An increasing number of employees from Ukraine are particularly vulnerable for violation of their rights, which is connected with illegal work; • The small percentage of mobbing and discrimination cases reported to labour inspectorates do not reflect the real scope of the problem; • The tolerance of employees for work-related offences is connected with the limited access in Poland to well-paid jobs; • Trade unions seem to be too weak to protect the rights of employees effectively. | <ul style="list-style-type: none"> • Elements of protection that are guaranteed by labour code are considered as insufficient and addressed only to part of employees. Other legislation does not provide effective measures to stop retaliation against whistleblowers; • Public authorities that deal with whistleblowers' cases require capacity development, trainings and educational actions to handle these problems properly; • Processes for internal reporting adopted voluntary or under EU pressure are adopted only in particular entities, mainly in the private sector, and there is a lack of standards how they should be implemented; • The attempts thus far to build broad consensus among main stakeholders involved in whistleblower protection policy failed; • The government is active in issuing controversial, corruption-oriented draft laws, although declarations about protection of whistleblowers in uniformed services or social campaigns about the public benefits of whistleblowing are still waiting to be implemented. | <ul style="list-style-type: none"> • Factors related to collaboration of social partners and initiatives taken by public authorities and more influential trade unions put Norway in a better position than Poland to create successful policies; • The country context, such as a culture of reporting, the perception towards whistleblowers or labour market conditions, can be decisive in making the policy effective or not; • Institutions that execute labour regulations need to have the right capacities to effectively prevent activities which whistleblowers may suffer from; • In-depth research provided on regular basis is necessary to properly define objectives and measures of the policy. | <ul style="list-style-type: none"> • How does protection of whistleblowers against retaliation work in practice? What measures do you implement to prevent unfair dismissal and/or blacklisting? • What types of work-related offences are reported to labour inspectorates? How many of these would you define as information from whistleblowers or concerning whistleblowers? • Are there more external agencies in Norway, besides labour inspectorates, which handle whistleblowers' notifications? Do labour inspectorates collaborate with these institutions on a regular basis? • Do labour institutions in Norway provide any systemic and regular evaluation of whistleblowing procedures? Does any public entity have the power to assess and control to what extent their standards and effectiveness meet expectations of employees? • Are public sector institutions committed to establish processes for internal reporting similar to the processes in enterprises with at least five employees? Is whistleblowing of uniformed |

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| | | | <p>services personnel based on the same principles as in other workplaces?</p> <ul style="list-style-type: none"> • How do trade unions and health, safety and environment representatives who receive whistleblowers' complaints proceed with investigation afterwards? What measures do they use to identify and eliminate potential wrongdoings? • How are business associations and employers' organizations engaged in actions to strengthen the rights of whistleblowers in the workplace? |
| Sweden | | | |
| <ul style="list-style-type: none"> • Work related crime and unhealthy competition, and the need to prevent and curb these practices, are issues that have been high on the political agenda in Sweden the past ten years. • The possibility to 'shop' between different economic and social regimes in order to press down labour costs is a structural problem in the enlarged EU single market that implies increased risks of low-wage competition and social dumping. • The debate has been intense in the academy, which has | <ul style="list-style-type: none"> • Since the first of January 2017, whistleblowers are legally protected against reprisals from the employers (SFS 2016:749). The Act shall complement the existing legislative protection for informants laid down in the constitution. • Since July 2017, workers in private organizations that are completely or partially tax financed are (like workers in the public sector) legally entitled the right to anonymously provide information to the media or journalists. • Cross-agency cooperation against undeclared work and unhealthy competition has been established at the national as well as Nordic level, | <ul style="list-style-type: none"> • The government's drive for 'Orderliness in the labour market is an important basis for the measures taken to combat unhealthy competition and social fraud, including regulations aimed to facilitate whistleblowing. • The regional safety representatives are particularly important as they also can represent employees in poorly organized workplaces without own safety representatives. • As regards cross-cooperation at the national | <ul style="list-style-type: none"> • How does cross-agency cooperation aimed to protect whistleblowing works in practice in Norway, for example, in the context of labour inspections at the workplaces? • To what extent are the social partners involved in the Norwegian cross-agency cooperation? • Which structural conditions facilitate and/or complicate the Norwegian project? • What is the long-term perspective of Norwegian measures? • How can this aspect be included in the Nordic (and in the future also Baltic) cross-agency and cross-national cooperation on inspections |

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| <p>resulted in new reforms that facilitates whistleblowing.</p> | <p>and at Nordic-Baltic cooperation has recently started.</p> <ul style="list-style-type: none"> • A project on cross-agency cooperation with a focus on the elaboration of methods launched in 2018 will also include cooperation on how to organize and handle tips to the authorities. • Trade union representatives and safety representative are important channels for workers for discussing issues on misconduct in the employers' organization, such as undeclared work and social fraud. Whistleblowing is, however, not included in the Swedish Work Environment Act. | <p>level in Sweden, the establishment of five regional teams for joint work-place inspections, which have become permanent bodies, is a good example of a success factor.</p> <ul style="list-style-type: none"> • There is a continuity in the work on cross-agency cooperation that started in 2015. In the light of the first project, SWEA initiated a new, Nordic-based project, which in turn led to Nordic-Baltic project. • Regarding the new project on cross-agency cooperation that started in 2018 with a focus on methodological development, the governmental assignment concerns all of the eight agencies involved. | <p>against unhealthy competition (work-related criminality).</p> |
| United Kingdom | | | |
| <ul style="list-style-type: none"> • UK employees increasingly likely to speak up about wrongdoing • Responsible UK employers increasingly likely to have confidential reporting lines • These trends are particularly developed in finance and health sectors, as a response | <ul style="list-style-type: none"> • Since 1998, whistleblowers are easily protected if they go to listed regulators, even without approaching their employers. • The list has gaps as regards employment regulators which should be fixed. • Listed regulators have a new duty to report annually on whistleblowing. First reports are of variable value. | <ul style="list-style-type: none"> • Constant throughput of cases under 1998 Act ensures law is kept under spotlight and need for change identified. • 2013 model code of practice increasingly used • Question of whether cases might be better heard by specialist tribunals | <ul style="list-style-type: none"> • Would the proposed whistleblowing Ombudsman (2.5) be limited in his role to advice and support? Should he not also act as a regulator of the regulators? • 2.5 might imply that the 2018 Norwegian Commission propose to require internal whistleblowing first. That would introduce a |

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| <p>to crises over the last decade.</p> <ul style="list-style-type: none"> Some modern working practices are aimed at evading employment rights and these have seldom given rise to whistleblowing cases | <ul style="list-style-type: none"> Guidance to regulators issued by BEIS in 2017 rather soft compared with sectoral action in finance and health. Variable results in different sectors suggest need for more central co-ordination/oversight. | <ul style="list-style-type: none"> The treatment of the issues of 'good faith' and 'public interest' in the UK may provide pointers for Norway in considering these issues Norwegian obligation for companies to establish reporting procedures might be worth considering in UK. | <p>regrettable new restriction on access to regulators.</p> <ul style="list-style-type: none"> Only 2% of Norwegian whistleblowers approach regulators (2.4). Would it help to have an obligation for employers to inform workers of their right to do so? To what extent is feedback given to whistleblowers? Are there any relevant obligations? Are trade unions effective in their role as recipients of notifications? |