Mutual Learning Programme

DG Employment, Social Affairs and Inclusion

Host Country Discussion Paper - Norway

What do we know about whistleblowing and work-related wrongdoing in Norway?

Peer Review on "Enhancing whistleblower protection through better collaboration between responsible authorities
– a tool to prevent and tackle work-related crime"
Norway, 14-15 February 2019

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1 Situation in the host country

1.1 Introduction

In any workplace, censurable conditions or wrongdoings that need to be addressed may occur. Pursuant to the amendment to Section 100 of the Norwegian Constitution, adopted in 2004, and the incorporation of provisions on internal and external notification in the Working Environment Act in 2007 (WEA), employees shall be protected against retaliation from their employer when giving internal or public notification of seriously censurable conditions if they do so in an appropriate way. The amendments in the Constitution and the WEA, followed a tradition of workplace democracy, two core concepts of which are participation and co-determination. Participation and co-determination are central concepts embedded in the Norwegian and Nordic model of labour relations.

This paper presents available information regarding whistleblowing of wrongdoing in the Norwegian working life. Section 1 describes how whistleblowing is defined, and why whistleblowing is important. In section 2 we outline the Norwegian labour market model and the legal provisions regulation free speech and whistleblowing. In this section we also present the joint action plan in order to increase the knowledge about whistleblowing among public authorities in Norway. Section 3 discuss some labour market challenges related to the EU enlargement, to give background to findings from more than ten years' research linked to whistleblowing and its significance in Norway, and the impact of whistleblowing on the quality of the labour market and economy in section 4. Section 5 contains a summary of main findings and conclusions.

1.2 What is considered wrongdoing for the purposes of whistleblowing and why does whistleblowing matter?

What is considered reprehensible and consequently a legitimate reason for whistleblowing could be based on perspectives of welfare, effectiveness or workplace democracy. In this section we look into these different perspectives, but we start with how to define wrongdoing and whistleblowing.

Definitions

Research shows that the definitions that are used for wrongdoing and whistleblowing have a major impact on the reported findings, and hence the possibility to compare findings between different studies (cf. Trygstad, 2017; Skivenes & Trygstad, 2012). Whistleblowing is a fairly new field of research in Norway and the Nordic region, but internationally we can look back on about 30 years of research. The research field has been particularly strong in the US, which explains why the definition outlined by Janet P. Near and Marcia P. Miceli is used as the standard basis. The definition was developed in the early 1980s:

> *'The disclosure by organization members (former or current) of illegal, immoral, or illegitimate practices under the control of their employers, to persons or organizations that may be able to effect action' (Near & Miceli 1985:4).*

The definition encompasses both what should be considered as wrongdoings and what should be considered whistleblowing. Although this is a widely used definition (Near & Miceli 2016; Fasterling 2014), it has been criticised. Lewis and co-authors (2015) point

out that even though the definition encompasses both internal and external whistleblowing, it deviates from the definition of whistleblowing provisions in legal systems in different countries. Moreover, the definition has been criticized for assuming that censurable conditions can be objectively identified. Fasterling (2014), for example, points out that the "whistleblower discloses information that he or she believes will provide evidence or at least a substantiated indication of illegal, immoral or illegitimate practice' (ibid.:334)." A certain subjective element will thus invariably be present in the understanding of what constitutes an illegal, immoral or illegitimate act. This is also one of the reasons why conflicts may arise, quite simply because there may be diverging opinions as to whether an act or an incident is immoral or illegitimate. Internationally, there is widespread consensus among scholars in the field that the matters to be defined as wrongdoings in a whistleblowing process need to cover a wide range of issues (cf. Skivenes & Trygstad, 2015). Despite criticism, the definition outlined by Near and Miceli (1985), is used in the Norwegian research on whistleblowing. Further, the definition used in the legislation is also close to the one used by Near and Miceli.

1.2.1 Why whistleblowing may make a difference

As noted above, wrongdoings will inevitably include a certain element of subjectivity. This emerges also in the preparatory works for the legal provision in the Working Environment Act and has also been highlighted in the work of the commission on whistleblowing (NOU 2018:6). What is considered reprehensible and consequently a legitimate reason for whistleblowing could also be based on perspectives of welfare, effectiveness or workplace democracy.

From a *welfare perspective*, whistleblowing can serve to ensure health, safety and the environment in a broad sense – within the enterprise as well as in society. This may involve pointing out flaws and omissions in the physical and/or psychosocial working environment that may entail serious consequences for the person or persons affected. Use of illegal chemicals or gases that may harm the workers, insufficient protective or safety equipment, or bullying and harassment, are issues that should be subject to notification in a welfare perspective. As regards external conditions, environmentally harmful emissions serve as an example. Other issues may include gross negligence in service provision, sale of harmful products or violence and abuse of users/clients.

In an *efficiency perspective*, classical examples include wasteful use of the enterprise's resources, or conditions, incidents or practices that may harm the enterprise's finances or reputation, tax evasion etc. Whistleblowing thus represents a strategy to maintain or improve the quality of the work undertaken or to maintain or improve the enterprise's competitiveness in a market (Skivenes and Trygstad, 2012). Responding positively to whistleblowing may help the management improve the efficiency of their organizations (Miceli et al. 2008). In this perspective, whistleblowing is often linked to concepts such as corporate governance and corporate social responsibility. It is also considered an instrument to ensure the enterprise's reputation.

Whistleblowing can be defined as an individual right and linked to a *democratic perspective*, and it can provide individual employees with a greater degree of freedom within the work organization. However, whistleblowing can also be justified based on a wider democracy perspective that emphasises the need for transparency around important societal processes. Eggen (2009) points out clear parallels between whistleblowing and corporate democracy in the workplace: the employees shall be

included in and have influence on key decisions. This strengthens the rights of individuals.

1.2.2 Weighting of the different perspectives

Welfare, efficiency and democracy will be given different weight. This weighting will vary among workers, between managers and workers and among managers. Different enterprises, sectors and countries may also assign varying weight to these concerns. Legal texts or internal guidelines regarding issues that are considered to be subject to notification may also help clarify which matters are deemed important (Skivenes and Trygstad, 2012). For instance, in the Norwegian Working Environment Act, whistleblowing is primarily defined as an entitlement or democratic right. The democracy principle also appears in 'On amendment of Section 100 of the Constitution' (see section 2.2). Whistleblowing is however also emphasized in line with the welfare perspective. Pursuant to the Working Environment Act, employees have an obligation to notify in cases of harassment and serious violations of safety provisions or other aspects of the physical working environment that may represent a risk to life and health (Section 2-3). Furthermore, Section 6-2, third paragraph, of the WEA imposes on HSE representatives a special obligation to notify. Healthcare personnel are under an obligation to notify pursuant to Section 17 of the Health Personnel Act. In the healthcare services, reprehensible conditions such as errors, unethical conduct and negligence may seriously affect third parties (Hippe and Trygstad, 2012). These are all examples of issues that can be viewed in a welfare perspective. On the other hand, the law places less emphasis on the efficiency perspective, although this may be heavily weighted in various forms of management strategies and whistleblowing procedures.

2 The Norwegian labour market model

Fasterling (1014:334) argues for the necessity of linking whistleblowing to other nationally specific institutional features, such as the labour market model and freedom of speech in working life. We start with the Norwegian labour market model.

2.1 Voice through trade unions and HSE representatives

Norway can be considered an inclusive employment regime (Gallie 2007:17) designed to extend employment and common employment rights as widely as possible. At a general level, there are well-established channels for representative and individual voice. The basic protection of employees is ensured through a comprehensive WEA with provisions for health, working environment and safety, working hours, hiring and dismissal, whistleblowing etc. The Act signals a high level of ambition as regards the physical and organizational working environment, and stipulates that the employer in cooperation with the company's safety organization is responsible for this. A key remit of the monitoring authorities (The Labour Inspection Authority) is to assist companies in facilitating appropriate routines for improving the working environment, including whistleblowing procedures, and to monitor compliance. Several of the provisions in the Norwegian WEA allow flexibility in implementation through collective agreements.

The Norwegian model of labour relations is characterized by a relatively high and stable union density and a medium level of collective bargaining coverage. In the public sector,

80 per cent of the employees are members of a trade union, compared to 38 per cent in the private sector (average: 52 per cent) (Nergaard, 2018, p. 16). Furthermore, all employees in the public sector are covered by a collective agreement, while 50 per cent are covered in the private sector (average: 70 per cent) (Nergaard, 2018, p.24).

Collective industrial relations and collective agreements fulfil a key function in the regulation of wages and working conditions (Nergaard, 2014). Collective agreements play a major role in regulating wages, since Norway has no statutory minimum wage. Further, co-determination at the workplace occurs through the elected trade union representatives, primarily. The Norwegian representation system is based on so-called single-channel representation, meaning that the representation at workplace level is based on representatives of the trade union organisations. The trade union representatives will have a say in work organisation and working conditions, and will also be involved in matters pertaining to the working environment. Working environment issues are however regulated in the WEA. All enterprises with ten employees or more are obliged to have a Health, Safety and Environment (HSE) representative at the workplace who is to be elected by and among the employees. In sum, trade unions, HSE representatives and employees play important roles as stakeholders. The role of trade union and HSE representatives (safety inspectors) in whistleblowing cases is emphasized in the WEA. According to the law, reporting wrongdoing to trade union representatives and/or HSE representatives is always regarded as appropriate.

2.2 The constitution and free speech

The right to free expression is an essential precondition of democracy. Participating in discourse is deemed important for strengthening individual development and competence (Pateman, 1970; 2012, Elvestad, 2011 p. 130). Pateman is concerned with how participation promotes educational, intellectual and emotional development, and the workplace is seen as a key arena for training in politics (Pateman, 1970 p. 42-43). The general right to free expression is protected by Section 100 of the Norwegian Constitution and by Article 10 of the European Convention on Human Rights (ECHR).

In principle, employees in the Norwegian working life enjoy the same freedom of expression as everybody else in the society (Elvestad, 2011, p.:31). Grounds must be given for restricting the freedom of expression of employees, not the other way around. Moreover, the government White Paper on the amendment in Section 100 of the Norwegian Constitution (2003-2004), p. 14) states that employees are likely to have a special motivation to participate in public debate when they possess specialized knowledge in a field which is discussed and debated, and 'whistleblowing' is referred to in the following way:

> *(…) this applies to statements that would, when seen in isolation, be of an obviously disloyal nature. Such statements may nevertheless be both permissible and desirable, because it is the public notification of the fact that the workplace of the person in question is involved in corrupt, illegal, immoral or other harmful practices that in itself constitutes the means to bring this activity to a halt (ibid. p. 101).*

Taken together, the Section 100 of the Norwegian Constitution and the WEA gives Norwegian employees a strong legal protection when it comes to internal as well as external whistleblowing.

2.3 The Norwegian Working Environment Act and the right to notify

In a historical perspective, it could be argued that statutory provision has required employees to report wrongdoings in the organizations since 1956, when the provision on HSE representatives was incorporated in the Norwegian Working Environment Act (Skivenes & Trygstad, 2015). As mentioned above (section 2.1), the HSE representatives play an important role as whistleblowing receivers, as it is always considered appropriate for an employee to report a wrongdoing through that channel. The concept of 'whistleblowing' is however new, as well as the sections concerning whistleblowing in the WEA. The background for giving the right to notify a statutory basis lies in the recognition that challenging persons in positions of power within an organization may involve the risk of retaliations (Bjørkelo, 2010, Skivenes &Trygstad, 2010; Brown et al., 2016). Employers and employees may have varying and contradictory interests, which can affect how notifications of censurable conditions are handled. This is a major reason why the provisions on notification were incorporated into the WEA in 2007.

For grounds for whistleblowing to exist, something censurable must be occurring. The preparatory works for the provisions on notification in the WEA state that censurable conditions include violations of relevant legislation or breaches of ethical codes of conduct. It is thus specified that 'by censurable conditions are meant not only criminal (i.e. punishable) acts, but also contraventions of other legally defined prescriptions or prohibitions' (Ot.prp. nr. 84 (2005–2006) p. 37). Breaches of ethical codes of conduct refer to such codes that have been issued by the enterprise in question, or norms generally accepted in society (ibid.).[1] The definition is in line with the one given by Near and Miceli (cf. section 1.2).

According to WEA, effectuated in 2007 and once again amended 1 July 2017, an employee has 'a right to notify concerning censurable conditions at the undertaking', and this concerns both internal and external whistleblowing[2] (§2A-1). The provisions specify that employees have the right to report censurable conditions in the workplace, and that whistleblowers who have followed the appropriate procedures should be protected against retaliation (Section 2A-2). Enterprises with at least five employees are obliged to establish processes for internal reporting. Such processes should be drawn up in consultation with the employees and their elected representatives (WEA Section 2A-3 (2) (3)). In addition, the processes must comply with specific requirements: they must be available in writing, encourage reporting of censurable conditions and describe the procedures for reporting, receipt, processing and follow-up of reports. Moreover, inspectorates that receive whistleblowing reports have a duty of confidentiality (Section 2A-4). The last legal amendment to the Act also included posted workers.

[1] This is in contrast to "... conditions that the employee holds to be censurable in light of his or her own political or ethical convictions are thus not encompassed by this provision" (ibid.:50).

[2] Section 2-4 (1) WEA 2005. There appears to be no definition of censurable conditions. An earlier proposal which specifically mentioned that the right was to notify *the public* was not implemented.

Although the Nordic countries share several common features and are usually referred to as sharing the Nordic labour market model, Norway and Sweden (from 2017) are so far the only Nordic countries that give employees a statutory right to notify. Together with the United Kingdom and Ireland, Norway and Sweden are among those countries with the most extensive whistleblowing legislation in Europe (Lewis & Trygstad, 2009; Vandekerckhove, 2010). All the above mentioned countries have a three tiered system of whistleblowing.

2.4 The three-tiered system and the role of the supervisory authorities

In light of whistleblowing legislation in EU countries, Vandekerckhove has developed a three-tiered model of whistleblowing. The employees' rights vary according to the level or levels that are encompassed by the legislation. At the first level, the employees have the right to report wrongdoing, but only internally in the enterprise. At level two, the whistleblower has the right to report also externally to an agency that acts on behalf of society. In Norway this would be the inspectorates, while some other countries have an ombudsman (e.g. Germany and the Netherlands). At level three, the employees also have the opportunity to notify the general public. For the employee to be provided with sufficient protection, Vandekerckhove (2010) emphasizes the following:

1. Legislation must cover all three levels. If the third level is omitted, the law will not protect employees who go public with their report. The principle of balance and the norm saying that society has the right to know will be broken.
2. The second level must be located outside the enterprise and must be able to execute control over the first level.
3. Requirements for availability (status as employee and what the issue is about) must be identical at all three levels.

All the three levels are included in the Norwegian legislation. Empirical findings show that employees report the misconduct internally, most often to their immediate supervisor, before reporting the issue outside the organization if no action is taken internally (ibid., Trygstad et al., 2014). However, it is always appropriate to report wrongdoing directly to supervisory authorities (i.e. Labour Inspection Authority) (level 2) without reporting the issue internally. When it comes to reporting the wrongdoing directly to the public (level 3), the preparatory documents suggest that it would be appropriate to make a public disclosure if: i) the employee has reason to believe that they would be obstructed; ii) there has been a criminal act or other serious event; iii) the employee has reason to believe that he or she will suffer retaliation, or vi) if she or he fears that evidence will be destroyed (Ot.prp. nr. 84 (2005–2006), Lewis & Trygstad, 2009.

Research indicates that employees and employers are not very aware of the right to notify to supervisory authorities, despite the fact that this will always be regarded as appropriate. Only 2 percent of the employees who file notifications do so to the supervisory authorities, and few enterprises mention the right to notify to the public authorities in their whistleblowing procedures (Trygstad et al. 2017). The same research indicates that some of the authorities are not aware that they have a key role when it comes to whistleblowing (Trygstad et al. 2014; 2017). Based on these findings the Labour Inspection Authority were given a prominent role, to which it was appointed by

the Ministry of Labour and Social Affairs in December 2015. The Labour Inspection Authority invited 13 other relevant public authorities, and a joint action plan for public agencies was prepared for the period from 2018 to 2020. The public authorities are: The Norwegian Data Protection Authority (DPA), Finanstilsynet (Supervision of the financial market), County Governor of Rogaland, Norwegian Competition Authority, The Equality and anti-discrimination Ombud, The Civil Aviation Authority of Norway, The Norwegian Food Safety Authority (NFSA), Norwegian Environment Agency, Petroleum Safety Authority Norway, The Norwegian Tax Administration, Department for Operational Health Supervision, Norwegian Railway Authority, Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime. From 2016 to December 2018, five workshops have been arranged. During these workshops, the findings from the above mentioned research were emphasized: the knowledge about the authorities' important role in the whistleblowing legislation, was in some cases very poor. The same goes for general knowledge about the WEA whistleblowing legislation. To increase the knowledge and awareness, the Labour Inspection Authority has implemented and continues to work in four main areas:

- Public authorities and better interaction related to notifications (in preparation – further measures will be launched 24 January 2019). The objectives are:
  - to increase public authorities' competence on whistleblowing
  - to prepare shared principles for appropriate receipt and handling of notifications
  - ongoing follow-up of public authorities
- Advisory seminars on whistleblowing, with employers, trade union representatives, HSE representatives and the corporate health services as target groups
- A national manual on whistleblowing (in preparation)
- Development of a service function for guidance regarding whistleblowing (in preparation):
  - Advise whistleblowers, enterprises and other target groups about the rules for notification
  - Advise employees who are considering filing a notification
  - Advise employers in the handling of notifications
  - Advise public authorities in their role as recipients of notifications

Research shows that no more than two per cent of the employees who file notifications do so to the supervisory authorities, (Trygstad, 2017). It remains to be seen whether the efforts that have recently been initiated through the coordination project will cause more people to use the supervisory authorities as a channel for filing notifications in the future. It is too early to say whether this will increase the authorities' knowledge about the legislations and their awareness about the important role they have as receivers of reported wrongdoing. y. For the time being, no activities and documents are finalized. The work will be intensified in 2019.

2.5 New provisions?

In the autumn of 2016, a public commission was appointed to assess the need for legal amendments or other initiatives that could enhance the protection of whistleblowers in

Norwegian working life. The commission submitted its recommendations and proposals in the spring of 2018 (NOU: 2018:6).

One key point is that the rules for submitting a notification can be hard to interpret and that specifications are needed – for example with regard to what constitutes 'censurable conditions'/wrongdoings and 'appropriate notification'. It is proposed that the legal text specify what is meant by censurable conditions: corruption/economic crime, risk to people's life and health, non-compliance with requirements for data protection and information safety, abuse of authority, non-compliance with working environment provisions and issues that pose a risk to the environment and climate. The majority of the commission's members also proposed to delete the term 'appropriate' and instead define criteria for the procedures. These imply that the employee must act 'in good faith', that the censurable condition is of 'public interest', and that the initial notification should be submitted internally in the enterprise concerned. The commission also specifies that a complaint that concerns the conditions for a single employee does not constitute grounds for whistleblowing.

The commission was concerned with the relationship between whistleblowing and a workplace climate favourable to reporting censurable conditions, and believes that this should be reflected in the objects clause of the Working Environment Act.

As regards organizational measures, the commission proposes to establish a separate ombudsman for whistleblowing, and the majority also calls for a separate tribunal that can resolve conflicts related to whistleblowing cases, and possibly also grant compensation and redress to the whistleblower. The ombudsman's remit should be to provide advice and support to whistleblowers in specific cases. The commission believes that the establishment and remit of the ombudsman and the board ought to be regulated in separate legislation related to whistleblowing, whereas the other provisions should remain in the Working Environment Act.

The commission believes that in general, the access to redress and compensation should be expanded and that the levels should be raised. The commission's proposals and recommendations are currently under consideration, and the outcome is thus not known at the time of writing.

3 EU enlargement and new challenges

This section discuss why work-related crime has become a hot topic in the Norwegian labour market and how this can affect wrongdoings.

3.1 The EU enlargements and inflow of labour

Through the EEA Agreement, Norway has been part of the EU single market with its free movement of goods, services, labour and capital for the last 25 years. As a small and open economy, Norway has been dependent on close trading relations inside as well as outside of Europe. Internationalization of the economy has also caused a shift in the form of a greater element of foreign ownership in Norwegian industry. For example, in the period 2012-2016, the number of foreign-controlled enterprises increased by 23 per cent.[3] Foreign ownership may entail increased distance between management and workers, less transparency and thus a poorer climate for cooperation in the workplaces. This may affect the climate for whistleblowing. Research indicates a correlation between the choice to notify and the belief that the alert will make a difference (Trygstad, 2017). Furthermore, the EU enlargements in 2004 and 2007 led to high inflow of labour migrants and service providers. This inflow encompasses the free movement of both people and services, and can be divided into three groups:

- Individual workers
- Workers posted for service assignments, tenders and construction projects
- Solo self-employed

Immigration has given rise to problems in those parts of the labour market that have received the highest number of workers and service providers from abroad. Concepts such as 'social dumping' and 'labour market crime' have become commonplace in Norwegian public debate, and issues associated with the life and health of employees, matters that were assumed to be a thing of the past, have returned to the political agenda (Nergaard & Trygstad 2013). Social dumping occurs when foreign workers receive unacceptably low wages and/or poor labour conditions. Labour market crime is defined as violations of Norwegian regulations on wages and labour conditions, social benefits, taxes and duties, that involve exploitation of employees, distortion of competition or undermining of the social structure (The Government 2017).

A large inflow of labour with scarce knowledge of the Norwegian labour market model and the willingness of many labour migrants to accept poorer conditions than what is common in Norway have given rise to low-wage competition and provided fertile ground for social dumping. Unregistered work is also one of the most commonly occurring forms of labour market crime (NTAES 2017). Moreover, some methods for avoiding employer responsibility appear to have become more widespread, especially the hiring of self-employed persons in what is essentially an employment relationship (ibid.). Additional issues are lack of documentation and language challenges that give rise to problems in terms of health, safety and the environment (HSE). Labour market crime also appears to have spread to industries where this was previously unknown. Rogue operators who were previously active in the construction industry have now been observed in price-sensitive parts of the public sector, for example in cleaning and health and care services

[3] https://www.ssb.no/statbank/table/08086/tableViewLayout1/

such as home-based services, child protection services and youth programmes. Their common denominator is low-price tenders for provision of services to both private and public enterprises (NTAES 2017).

The government collaborates with the social partners to combat labour market crime, such as use of unregistered labour, illegal working time arrangements, illegal and dangerous working conditions. Tripartite industry programmes, collaborative programmes between the authorities and the social partners, have been established in the cleaning, catering and parts of the transport industries.

Box 1: Tripartite programme in cleaning industry

The cleaning sector was a vanguard in the tripartite industry programmes. Since 2012, approval has been required for all cleaning providers, self-employed cleaners included. In order to be approved, companies need to document that they comply with the minimum wage rate and other legal obligations such as employment contracts and health and safety regulations. For professional customers, it is illegal to buy cleaning services from non-approved suppliers. The approval scheme also requires that employed as well as self-employed cleaners must carry ID cards authorised by the Labour Inspectorate in order to fight undeclared work (Trygstad et al. 2018).

In these industries we find many labour immigrants, both mobile and those who have settled down in Norway. The programmes' objective is to promote compliance with regulations and improve labour conditions. In the construction industry, the authorities and the social partners have established a regulatory collaboration forum. A number of regulations have also been introduced to combat social dumping and labour market crime. Minimum wage regulations in collective agreements have now been extended in nine industries[4]. The regulation also stipulates joint and several liability for wages in the supply chain in the areas in which the collective agreements are extended, as well as information and supervisory responsibility for hiring companies and right to look into what wage and labour conditions that are applied for local trade union representatives.

Since 1 July 2017, the provisions on notification encompass leased workers, but not posted or self-employed workers. The effect of the amendment, and the above-mentioned measures do however depend on functioning collaboration between management, trade unions HSE representatives at company level. Unfortunately, violations of basic rights in working life are an everyday occurrence for many labour immigrants who work in industries with low coverage of collective agreements and were the union density is even lower. Among these workers, there is a lack of familiarity with Norwegian laws and regulations, including with the possibility of filing a notification. The cleaning sector, which are characterized by a high share of labour migrants and social dumping, has been a prioritized area for the Labour Inspection Authorities, from 2013 and onwards (Trygstad et al. 2018). Nevertheless, labour migrants as well as other employees in the lower end of the private service sector are likely underrepresented in surveys mapping incidents of wrongdoings and whistleblowing in Norway (cf. Berge et al. 2013). Furthermore, these workers are probably less likely to report wrongdoing in

[4] As of 2018, provisions in collective agreements are extended in the construction, shipbuilding, agriculture and horticulture, cleaning, fish processing, electric installation, tour bus services, goods transport and hotel/catering industries.

fear of losing their jobs. In this part of the Norwegian working life, the presence of HSE representatives as well as trade union representatives are missing.

Nevertheless, in 2016 8 percent of those who had been witnessing wrongdoing during the last 12 months had observed incidents of social dumping (Trygstad & Ødegård, 2016).

4 Knowledge about whistleblowing in Norwegian working life

This section focusses on whistleblowing in Norwegian working life. During the last ten years, several surveys which explored the whistleblowing process, have been conducted. The surveys on representative samples of employees across sectors and industries used similar definitions, which allows to compare their findings.

4.1 Available survey research

A precondition for becoming a whistleblower is that there is an opinion that an incidence of wrongdoing has occurred at the workplace. In the survey respondents were given the following definition, when they were asked if they had experienced wrongdoing:

'During the last 12 months have you witnessed, discovered or experienced wrongdoing that should have been corrected at your workplace? By wrongdoing we mean unethical and/or illegal incidents, occurrences or practices.'

We then presented a list of sixteen different types of wrongdoing that are regarded as violation of laws or professional guidelines regulating Norwegian working life.[5] The most frequently observed wrongdoings in 2018 are 'Destructive management practices that harm the working environment' (51 per cent), 'other forms of bullying/harassment of colleagues' (33 per cent), 'unwillingness to rectify serious flaws in the service or product', 'violations of the statutory duty of confidentiality' and 'violations of ethical guidelines' (all 18 per cent). At the other end of the scale are 'unregistered work/tax evasion' (1 per cent), 'corruption' (2 per cent) and 'use of illegal chemicals/illegal emissions of environmental toxins' (2 per cent). A large proportion of the reprehensible conditions observed are issues that can be grouped under the collective term of 'psychosocial working environment problems'. Such issues tend to be characterized by a greater degree of subjectivity and difference of opinion than more fact-based incidents such as theft and embezzlement, and this may make for a more arduous whistleblowing process.

We asked the respondents to base their responses on the most recent wrongdoing they disclosed. Employees who had observed wrongdoing and not reported any issues were asked to base their responses on the most recent wrongdoing they observed, when responding as to why they chose not to report the issue.

4.2 Wrongdoing and whistleblowing activity

Familiarity with the provisions on whistleblowing and the availability of a system that facilitates this in the workplace are a key premise for ensuring real protection of whistleblowers. Viewing the entire sample in 2018 as a whole, 27 per cent of the respondents state that they were not familiar with these provisions before being introduced to them in the study. This is a significantly lower proportion than in 2016 and 2010. In 2016 the corresponding share was 38 per cent.

When it comes to whether or not there are whistleblowing procedures at the workplace, the proportion who answer 'yes' or 'routines are being established' has increased

[5] See appendix 1 for more information.

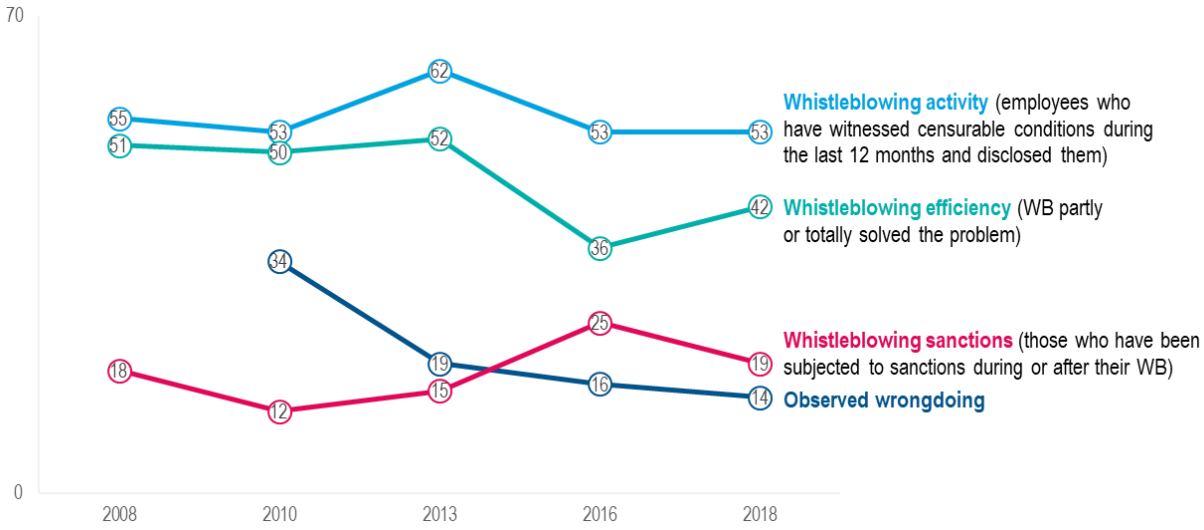
steadily from 19 per cent in 2008, 41 per cent in 2010, 51 percent in 2016 to 62 per cent in 2018.

4.3 Activity, responses and changes

Actors can have access to power, and use power to ensure that conflicts never arise, at least not in 'public'. When the subject is wrongdoing, wrongdoing can be under-reported, or if reported, not dealt with in an appropriate way (Lukes, 2005). Or it could influence the type of wrongdoing seen as appropriate to notify. This section presents findings from different surveys on whistleblowing in Norway to discuss whether the legal amendments increased instances of whistleblowing, and made reporting (and follow-up) more efficient and safe.

Figure 1 summarizes the main points in the surveys when it comes to mapping and analyses of self-reported whistleblowing and the consequences of this activity. Thus, the basis of the analyses is the reporting by employees of their experience of censurable conditions in the workplace.

Figure 1. Norwegian research on whistleblowing (WB) processes (%)



Source: 2008 Matthiesen et al. (N=1604); 2010 Trygstad (N=6000); 2013 Trygstad & Ødegård (N=1200); 2016 Trygstad & Ødegård (N=3000); 2018 Trygstad & Ødegård (N=4000)

Figure 1 shows a clear decrease when it comes to observed wrongdoing (observed WD). We lack a good explanation for this, but at least three potential reasons can be mentioned. The first may be related to an improved situation in the Norwegian working life, when it comes to wrongdoing. The second may be that the threshold for what employees regard as wrongdoing has been raised. The third explanation may be that there is a growing ignorance among the employees with regard to what is considered to be a censurable condition. Most likely, the explanation is a combination of the afore mentioned three. What is interesting is the high degree of stability when it comes to whistleblowing activity. This stability indicates that there has been no major increase in whistleblowing activity over this timespan. The numbers also tell us that a rather large proportion choose not to blow the whistle. When asked why, 44 per cent of respondents

reported that they refrained from submitting a notification because they 'believed that it would have been too unpleasant'.

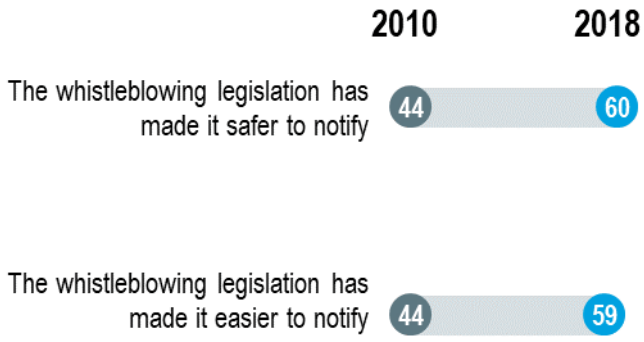
Figure 1 shows more variation around factors such as the effectiveness of disclosure and the use of sanctions. As regards the efficiency of whistleblowing, the results indicate a negative trend from 2008/2010 to 2016. The situation seems better in 2018 compared to the data from 2016. However, the difference is not significant. When it comes to sanctions, a significant increase from 2010 to 2016 is observed. In 2018 the share is somewhat lower compared to the numbers in 2016, but again the difference is not significant.

It is still worth noting that the findings reported here give *no* indication that the proportion of employees who experience efficiency and face retaliation is significantly increasing or decreasing in Norwegian working life.

4.3.1 Factors impacting the level of whistleblowing?

Trade union representatives are given a central role in whistleblowing processes. To notify to trade union representatives (as well as a HSE representatives) is always considered appropriate. Around 15 per cent notify trade union representatives and HSE representatives first. In 2010 and 2018 trade union representatives, HSE representatives and managers were asked if they think the whistleblowing legislation has had any impact upon the whistleblowing process (see Figure 2). The proportions of trade union and HSE representatives that agree or partly agree with the statements 'The WB legislation has made it safer to notify' and 'The WB legislation has made it easier to notify' have increased significantly from 2010 to 2018.

Figure 2. Do trade union representatives and HSE representatives think that the legislation has made any difference (those who agree or partly agree)? (%)



Source: Trygstad 2010, Trygstad & Ødegård 2019 (N=1062/805).

Several studies have concluded that demographic variables such as gender, length of service, education etc. do not seem to have a great impact either on who blows the whistle or the outcome (Miceli et al., 2008; Skivenes & Trygstad 2010, 2015). Skivenes and Trygstad (2015) find that institutional arrangements at the workplace make a difference. In the 2010 study, the presence of trade union representatives at company level, as well as whistleblowing procedures, did increase the probability of success when

reporting wrongdoing. While trade union representatives can function as a safety net, whistleblowing procedures seem to contribute to predictability in whistleblowing processes (Skivenes & Trygstad, 2015). In 2018, we find that whistleblowing procedures still have an impact, but not the presence of local trade union representatives. But even in enterprises where whistleblowing procedures are present, whistleblowing can be risky. The obvious explanation is that whistleblowers can challenge power structures and harm powerful people inside and outside the organization. One key finding in the studies FAFO has undertaken from 2010 to 2018 is that the risk of sanctions increases significantly if the person responsible for the reprehensible conditions is a superior or a senior executive, all other things being equal, while whistleblowing activity decreases significantly.

4.4 Can whistleblowing affect the attractiveness and the economy?

In Norway, very little research has studied the effect of whistleblowing on the economy or attractiveness of enterprises or indeed the operation of the labour market. As regards to economy, Oslo Economics has attempted to estimate the value of whistleblowing. These estimates are uncertain, but it is assumed that Norwegian society may save up to NOK 12 billion if employees notify reprehensible conditions that are subsequently rectified (Oslo Economics 2017, p. 6). A culture that promotes openness also helps expand the opportunities for co-determination by employees. In other words, this is a matter of safeguarding health, safety and the environment in a broad sense, avoiding errors and disclosing dishonest practices that may harm the enterprise, as well as ensuring democratic rights in working life.

Based on studies that include Trygstad and Ødegård's survey from 2016, Oslo Economics has concluded that employees who blow the whistle may 'help rectify reprehensible conditions such as destructive management practices, health hazards and corruption. Because of whistleblowing, we now have a better working environment, better HSE practices, better treatment of customers/users and a more well-functioning economy and higher tax revenues than we would have had in the absence of notification procedures. In addition to direct disclosure and improvement of reprehensible conditions, notification practices provide indirect benefits in helping prevent other such conditions. To society, savings may amount to sums ranging from one-half to twelve billion kroner annually' (2017, p. 45).

On the other hand, research also shows that reprehensible conditions that are inadequately addressed may reduce the willingness of other employees to file notifications as well as harm the legitimacy and reputation of the enterprise in the long term (Trygstad et al. 2014; Trygstad & Ødegård, 2016; Trygstad et al. 2017).

5 Discussion

In light of these findings, we need to ask: i) how to interpret the Norwegian data and ii) what can explain the relative stability observed in the whistleblowing activity, but the changes in efficiency and reactions?

5.1 Findings in a comparative perspective

Unfortunately, comparable whistleblowing studies have not been conducted in the other Nordic countries, but when compared to most findings published internationally, whistleblowing activity in Norway can be described as high; giving notification is frequently effective, and employees face retaliation more rarely than is reported in other studies. Since the 1980s, studies in the U.S. undertaken by Merit Systems Protection Board have indicated that more than half of all federal employees have observed censurable conditions in the organization where they are employed, and approximately 30 per cent of them have filed a report. In other words, those who remain silent outnumber those who file notifications (Miceli & Near, 2005). Norway stands out also in terms of reactions, as a smaller proportion of whistleblowers experience sanctions. A study among civilian and military personnel at a large U.S. air force base showed that a total of 37 per cent of whistleblowers had been subjected to sanctions (Near et al., 2004). Furthermore, Rothschild and Miethe (1999) found that two out of three whistleblowers experienced sanctions due to their actions. In Norway, Table 1 indicates that in 2018 around 19 per cent of those who blow the whistle are the subject of retaliation. Similar numbers are found in research for the Francis review of whistleblowing in the National Health Service in England (Lewis et al., 2015).

In terms of the effectiveness of whistleblowing, Norwegian findings are also different from those observed elsewhere. Even though research findings here are more limited, Van Scotter et al. (2005, quoted in Miceli et al., 2008, p. 25) found that 26 per cent of whistleblowers reported that the censurable issue had been partly or fully resolved. Miceli and Near (2002, p. 463) found that 31 per cent of their respondents reported that, in their opinion, their whistleblowing had been effective in the sense that the censurable issue had been addressed or most likely would be addressed. In Table 1, we see that four out of ten whistleblowers answer in 2018 that the wrongdoing was changed for the better.

On the basis of available knowledge, it is reasonable to conclude that whistleblowers in Norway are less frequently exposed to retaliation and that whistleblowing is more effective than what is indicated by findings in international literature. Skivenes and Trygstad (2015, 2010) link this difference with institutional structures in industrial life, and argue that institutional arrangements in the workplace may promote whistleblowing activity and efficiency, and reduce the risk of retaliation (Skivenes & Trygstad, 2015). It is reasonable to assume that the WEA, which encompasses the bulk of Norwegian industry, as well as collective agreements and extensive cooperation between trade unions and employers' organizations locally and nationally, all help provide latitude for this type of expression of opinion than is the case in countries where such frameworks are partly absent. That said, not all Norwegian employees are covered by collective agreements, and not all employees are unionized, and the data show that also in Norway whistleblowing can be a risky activity. Labour market sectors with no collective

agreements and a low unionization rate are also more vulnerable to social dumping and such forms of labour market crime as unregistered work.

5.2 Changes in efficiency and reactions

The objective of the provisions on whistleblowing that were added to the Working Environment Act in 2007 was to provide employees with a right to report wrongdoing in the workplace without needing to face retaliation.

Familiarity with the provisions on whistleblowing and the availability of a system that facilitates this in the workplace are therefore key premises for ensuring real protection of whistleblowers. Viewing the entire sample as a whole, one in four respondents states that they were *not* familiar with these provisions before being introduced to them in the study. This is a lower proportion than the one we found in 2010. We also find that there has been an increase in employees who answer that whistleblowing procedures have been established at their workplace. This is good news, as whistleblowing procedures have a positive impact upon the outcome of a whistleblowing process, also in 2018.

In 2018, altogether 14 per cent of those who responded to the survey had witnessed, experienced or disclosed wrongdoing during the preceding year. The most prevalent issues include 'destructive leadership that is detrimental to the working environment', 'violations of ethical guidelines' and 'conditions that may pose a risk to life and health'. Altogether 53 per cent of those who had witnessed, disclosed or experienced one or more incidences of wrongdoing during the preceding year had reported it. Few have reported the incident to the Labour Inspection Authority. As outlined in this paper, a joint action plan for public agencies is in the making, and shall be launched in January 2019. Research indicates a need for raising the level of awareness and knowledge among public authorities when it comes to whistleblowing legislation as well as their important role as whistleblowing receivers. In Norway, it is always appropriate to notify the authorities, even without notifying internally first.

We find that a considerable proportion do not report observed wrongdoings. The main reasons for remaining silent are an apprehension of severely unpleasant consequences as a result of making such a report, and also fears of retaliations. Some disconcerting findings indicate that such fears may be justified. One in every five Norwegian employees who makes such a report is met with reprisals. Our data indicate an increase in this field.

5.3 Does whistleblowing have any effect?

So what about the cases that are reported? In 2018, four out of ten of the respondents believed that whistleblowing had an effect. This is a lower proportion than we found in 2010, but slightly (but not significantly) higher than what we observed in 2016.

Previous studies have shown that witnessing reprehensible conditions is a strain on those involved, and it also has a demoralizing and demotivating effect (Miceli et al. 2012). On the other hand, the same studies show that if these conditions are rectified, the negative consequences are minimized. Four out of ten respondents in our study believed that their whistleblowing had no effect, and an additional 5 per cent believed that the wrongdoing became even more illegal, immoral, or illegitimate. In addition to

the consequences described above, it is reasonable to assume that this may have the effect of silencing other employees who are in a position to blow the whistle.

We have seen that the majority of the cases are related to the working environment in general and management in particular. In conjunction with the trade union representatives and the HSE representatives, the management has a particular responsibility for ensuring a fully acceptable working environment, pursuant to the Norwegian Working Environment Act. We have also seen that fear of reprisals is a key reason for failing to blow the whistle. Overall, this indicates that a significant proportion of the employees find it difficult to voice criticism and report wrongdoing.

The proportion reporting to have witnessed, experienced or disclosed wrongdoings has been halved during the period from 2010 to 2018, and we have pointed out three possible explanations for this observation. The first is that the threshold to what employees regard as wrongdoing has been raised. The proportion of employees who blow the whistle has remained stable, however. If the threshold to what is considered reprehensible has been raised, this *may* mean that a greater proportion of the conditions reported in 2018 are of a more serious nature than in 2010. For example, in 2018 altogether 7 per cent of the respondents report to have experienced social dumping during the last 12 months. Social dumping may include serious labour market crime that the employer will have a great interest in concealing. This will entail a greater risk in filing a notification, because by doing so, the employee will defy powerful forces in his or her enterprise. If so, this may constitute one of several possible explanations for the other two development trends: the increase in the proportion of employees who respond that they face reprisals from 2010 to 2018 because of having blown the whistle on censurable conditions, and a reduced proportion who report efficiency issues. As we have seen, the risk of sanctions increases and the effectiveness of whistleblowing is reduced if the person responsible for the censurable condition is a top executive. A further explanation could be that the climate for whistleblowing has deteriorated in Norwegian working life, despite the legal amendments in 2007. Irrespective of the reasons, there are grounds for underscoring the reasons for concern over developments in Norwegian working life when it comes to whistleblowing.

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Annexes

Lists of wrongdoing in 2010, 2016 and 2018

Table 2. Employees who have witnessed, disclosed or experienced censurable conditions that should have been brought to a halt during the last twelve months.

Censurable conditions	2010 %	2016 %	2018 %
Violations of HSE regulations	17	NA[6]	NA
Conditions that may pose a risk to life and health	NA	21	16
Harassment of colleagues because of their ethnicity/life stance	2	6	6
Harassment of colleagues because of their gender/sexual orientation	2	3	6
Sexual harassment	-	-	6
Destructive management practices that harm the working environment	NA	50	51
Other bullying/harassment of colleagues	11	37	33
Use of intoxicants in the workplace	5	10	5
Treatment of customers/users that violates prevailing legislation	6	8	7
Violence or unjustified abuse of force against customers/users	1	6	2
Disrespectful conduct vis-a-vis customers/users	12	NA	NA
Unwillingness to rectify serious flaws in the service or product	10	17	18
Violation of statutory duty of confidentiality	NA	10	18
Violation of ethical guidelines	NA	24	18
Corruption	1	2	2
Embezzlement, theft and/or financial irregularities	5	9	4
Unregistered work/tax evasion	2	2	1
Social dumping (unacceptable wage levels and labour conditions)	NA	8	7
Use of illegal chemicals/illegal emissions of environmental toxins	3	3	2
Other	2	6	14
Proportion who have witnessed, disclosed or experienced censurable conditions	34	16	14

Source: Trygstad & Ødegård 2018; Trygstad & Ødegård 2016:33; Trygstad 2010

[6] NA=Not asked


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