



Mutual Learning Programme

DG Employment, Social Affairs and Inclusion

Peer Country Comments Paper - Latvia

Waiting for the New Law on Whistleblowers to be Enforced and Open to Learn from the Best Practices

**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



EUROPEAN COMMISSION

Directorate-General for Employment, Social Affairs and Inclusion

Unit A1 - Employment and social aspects of European semester

Contact: Kim Henriksson

E-mail: EMPL-A1-UNIT@ec.europa.eu

Web site: <http://ec.europa.eu/social/mlp>

European Commission

B-1049 Brussels

Mutual Learning Programme

DG Employment, Social Affairs and Inclusion

Directorate-General for Employment, Social Affairs and Inclusion

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

January, 2019

**Europe Direct is a service to help you find answers
to your questions about the European Union.**

Freephone number (*):

00 800 6 7 8 9 10 11

(*) The information given is free, as are most calls (though some operators, phone boxes or hotels may charge you).

LEGAL NOTICE

The information contained in this publication does not necessarily reflect the official position of the European Commission

This document has received financial support from the European Union Programme for Employment and Social Innovation "EaSI" (2014-2020). For further information please consult:
<http://ec.europa.eu/social/easi>

© European Union, **2019**

Reproduction is authorised provided the source is acknowledged.

Table of Contents

1	Introduction	1
2	Overview of key trends	1
2.1	The number of wrongdoings in the workplace in Latvia and its nature	1
3	National policy / measures	2
3.1	Whistleblower protection in Latvia	2
4	Assessment of public policy implications and success factors	5
4.1	Towards reporting success factors in the future: number of challenges to be resolved	5
5	Questions	6
6	List of references	6
	Annex 1 Summary table	7

1 Introduction

This paper has been prepared for the Peer Review on "Enhancing whistleblower protection through better collaboration between responsible authorities – a tool to prevent and tackle work-related crime" within the framework of the Mutual Learning Programme. It provides a comparative assessment of the policy example of the host country (Norway) and the situation in Latvia. For information on the host country example, please refer to the Host Country Discussion Paper.

2 Overview of key trends

2.1 The number of wrongdoings in the workplace in Latvia and its nature

Information on the nature and the number of wrongdoings in the workplace is collected by the State Labour Inspectorate (SLI) of Latvia. According to the SLI, the number of reports that SLI has received on wrongdoings in the workplace has increased in recent years: in total 3,824 reports (including anonymous) were received in 2018, compared to 3,464 in 2017 and 3,238 in 2016. In 2017 (most recent data), when 3,464 natural and legal persons reported on wrongdoings in the workplace to the SLI, 4,729 potential violations were indicated in those reports. In 92% of those cases violations of workers' rights were reported. These were mainly labour law violations (4,310 cases: 98% of the total violations of workers' rights) including issues related to dismissal (38%), employment contracts (27%) and wages (21%) (SLI, 2018)¹.

The inspections of those reports, which included visits to the companies, resulted in the detection of 1915 violations of labour relations and 1,223 violations of labour protection norms². Employers were given 456 orders to rectify the detected violations, and in 902 cases employers were subjected to administrative penalties (216 warnings, 686 fined) (SLI, 2018).

Moreover, in 2017, the SLI conducted 3,017 inspections in companies targeted to reduce the amount of unregistered employment in Latvia. In almost one third of the visits (29.5% of the cases) the SLI identified cases of unregistered employment: 1393 unregistered employees were identified working either without a written employment contract or without being declared as employees in the State Revenue Service (SRS). 1,405 and 1,344 such cases were identified in 2015 and 2016, respectively. The majority of unregistered employees were found in the construction sector (410 of 1,393 cases in 2017), manufacturing sector (190), accommodation and catering sector (173) and trade sector (172). Following the Latvian Administrative Violations Code, the SLI issued 850 administrative penalties related to unregistered employment in companies in 2017, for the total amount of EUR 633,988³. (SLI, 2018).

Depending on the research methodology the share of envelope wages (salaries concealed from the government) in Latvia is estimated between 19.9% (State Revenue

¹ According to the SLI, in 2017, when the number of total submitted reports increased by 7% as compared to 2016, the amount of reports that were received anonymously increased by 26%. This might be because employees have become more aware of their rights and take a more active stand with regard to reporting on the violations in the workplace. One of the explanations for this could be the various communication activities that the SLI has initiated via social networks, including Facebook (infographics etc.) and Twitter (consultations, explanations etc.)

² All violations found during visits carried out for the purpose of examining the reports. Those visits also identified violations that were not included in the specific reports.

³ For more information on the amount of other wrongdoings in the workplace please see http://www.vdi.gov.lv/files/vdi_darbibas_parskats_2017.pdf (in Latvian)

Service) and 20.9% (Putniņš and Sauka (2018)⁴) in 2017. According to State Revenue Service the total amount of envelope wages in Latvia was EUR 927 million in 2017.

Another recent survey exploring key components of the shadow economy was conducted by Žukauskas in 2018. Drawing on survey results from the adult population, Žukauskas (2018) finds that 32% of respondents from Latvia admitted that they have friends or relatives who have worked in the shadow labour market (i.e. without labour contracts or receiving part of their wages as envelope wages) over the last twelve months. Construction and renovation, auto and other repairs as well as farming, forestry and fishery were amongst the most commonly mentioned sectors for involvement in unregistered work in Latvia. According to Žukauskas (2018), the weighted average hours spent in shadow employment in Latvia reaches twenty hours per week. Meanwhile, the weighted average income earned from shadow employment by friends and relatives per month as reported by respondents in Latvia is EUR 634 (2018 data).

Key influential factors for involvement in unregistered labour in Latvia are as follows (i.e. Putniņš and Sauka, 2018; Žukauskas, 2018):

- Low level of trust in government, in particular, that tax money will be spent appropriately;
- Low satisfaction with the quality and availability of services provided by the government;
- Severity of punishment if detected while underreporting is relatively low;
- Size of taxes: findings show that the Latvian population is less satisfied (as compared to the population of neighbouring countries) with the amount of labour taxes (Žukauskas, 2015).

3 National policy / measures⁵

3.1 Whistleblower protection in Latvia

Latvia is still at a very early stage in development of mechanisms to protect whistleblowers. Employees' right to report wrongdoings and also – at least partly – to be protected is regulated by Article 9 of the Labour Law which states that it is forbidden to punish an employee if she/he informs competent institutions about wrongdoings and that in case an employee is punished, the employer should prove that it was not because of such reporting. Furthermore, Article 22 of the Law on Taxes and Fees protects anonymity of those that report on tax evasion or other tax related wrongdoings. Article 2 of the State Civil Service Law states that it is forbidden to cause adverse consequences in the workplace. Article 29 of the Labor Law, stipulates that if the prohibition to cause adverse consequences is violated, the employee has the right to claim damages and compensation for non-pecuniary damage.

There is no specific legal framework in Latvia that determines how state institutions cooperate with each other or how state institutions cooperate with social partners and other stakeholders in protecting whistleblowers. The State Administration Structure Law determines that state institutions should exchange information and cooperate. However, as exemplified by interviewees, even though cooperation between various ministries is well described on paper, it does not always work that well in practice. Arguably, one of

⁴ Putniņš and Sauka (2018) measure two aspects of undeclared work in Latvia: the amount of envelope wages and the number of unregistered employees based on representative surveys with company managers.

⁵ This section draws upon the analysis of relevant legislation and interviews with key persons involved in the development of legislation for protecting whistleblowers and/or involved in whistleblower protection activities in Latvia. This includes representatives of the State Chancellery of Latvia, the Ministry of Finance, the State Revenue Service, "Delna" (Transparency International Latvia office) and the Ombudsman of the Latvia office. The interviews were conducted during January 2019; in some cases respondents expressed their own opinion which might not always reflect the official position of the represented institutions.

the reasons for that is that different ministries are led by ministers appointed by different political forces which not always foster cooperation.

Furthermore, as emphasized by a number of interviewed experts, it is common practice that various state institutions sign agreements with social partners or stakeholders aimed to strengthen the cooperation. For example, the Latvian Chamber of Commerce and Industry, the Latvian Employees Confederation, the Free Trade Union Confederation of Latvia and various industry associations have agreements with ministries or institutions affiliated with ministries in Latvia. Yet, according to our best knowledge, there no cooperation agreements has been signed specifically related to the protection of whistleblowers.

As stated by representatives of the Ministry of Welfare and State Revenue Service, similar to Norway, most if not all institutions in Latvia have developed internal mechanisms allowing for the reporting of work related wrongdoings. For example, the State Labour Inspectorate of Latvia utilizes both an anonymous phone line and online forms where employees can report wrongdoings in the workplace. The State Revenue Service is using a similar means for reporting tax evasion. Strict mechanisms protecting the anonymity of whistleblowers (reporting financial crime, corruption, etc.) is also developed by various financial institutions, including banks as well as the Corruption Prevention and Combating Bureau (KNAB). All interviewed experts claim that the institutions they represent are doing their best in order to protect the anonymity of reporters. In contrast to the situation in Norway, the challenge in Latvia is a lack of definition of the concept of whistleblowing. There are no clear guidelines in the legislation, neither with regards to how whistleblowers can report on the wrongdoings, nor a legislative framework on how whistleblowers are protected.

Data on the number of work-related crimes such as violations of HSE regulations, conditions that may pose a risk to life and health, harassment of colleagues, use of intoxicants in the workplace and many other areas explored in depth in the case of Norway, is very limited if not non-existent. Nevertheless, as exemplified by the number of tax evasion, including underreporting employees and salaries, there are reasons to believe that at least in some of those areas wrongdoings are not uncommon in Latvia.

Migration, especially migration from Ukraine, is becoming more important issue in Latvia (as compared to situation only 3-4 years ago) in the context of the wrongdoings in the workplace and reporting of those. It is still of course, far from the scale as experienced in, for example, Norway or other Scandinavian countries. Recognizing the importance of the issue, LSI and Norway Labour inspectorate are planning to sign cooperation agreement that will provide with the better scope of information exchange and other activities in respective countries, including reporting wrongdoings of/ from Latvian workers in Norway and vice versa, if applicable. In addition, the Nordic countries will start joint project that will deal strengthening with cooperation in fighting unregistered labour, including cooperation with regards to (unregistered) employment from third countries.

Even though the situation is slowly improving, the impact of trade unions in Latvia is little compared to the impact of trade unions in Scandinavian countries like Norway. Latvia is still at a rather early stage in this regard. In fact, there are a number of very influential institutions who primarily aim to protect the interests of employers, including the Latvian Chamber of Commerce and Industry, the Latvian Employers Confederation and various industry associations.

Still, whistleblower protection is on the agenda of both state institutions and a number of social partners and stakeholders (such as Delna – Transparency International Latvia office, the Free Trade Union Confederation of Latvia and the Ombudsman of the Republic of Latvia) which play an active role in this debate. These initiatives have resulted in new legislation, the Whistleblowers Law that has been approved by the Parliament of Latvia on the 11th October 2018 and will be in force from the 1st May 2019. Thus, in comparison to Norway, even though a 'proper' legislative framework for defining and protecting

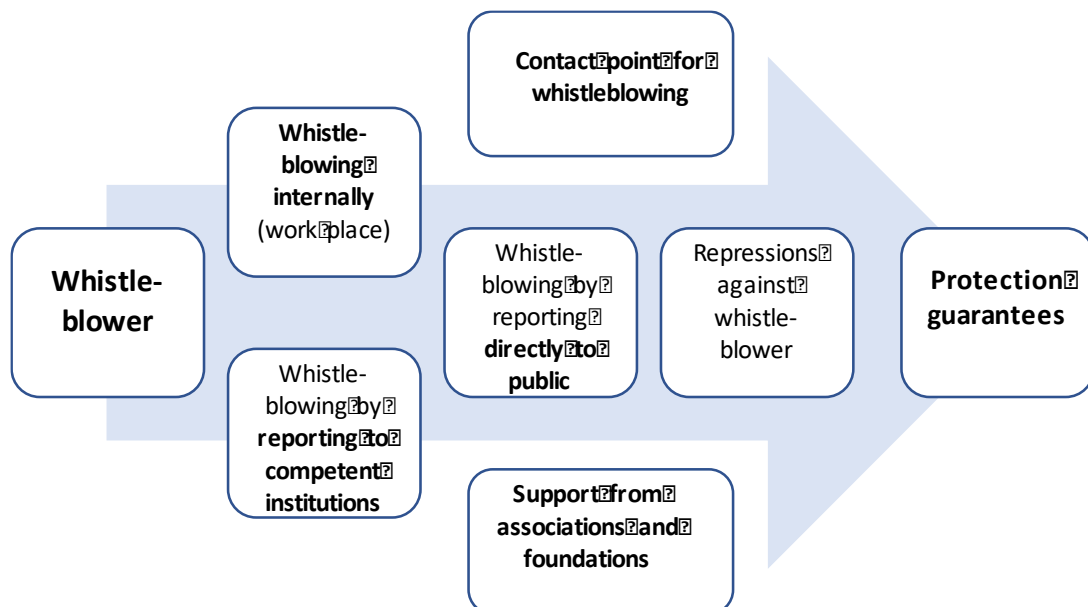
whistleblowers in Latvia has not yet entered into force, a number of initiatives have been initiated in this regard.

Namely, for the first time in Latvia, the law defines the "whistleblowers" and the scope of whistleblowing. Similar to the law in Norway, the law in Latvia determines that whistleblowing can take place via three channels: internal reporting, reporting externally to authorities/social partners/stakeholders or reporting directly to the public. Whistleblowers in Latvia can also choose any of the aforementioned channels to report wrongdoings. Public disclosure, however, is allowed only if reporting internally or externally is not possible for objective reasons or report has not been followed-up for a long time. Also non-disclosable information (state secrets, etc.- as defined by law), cannot be disclosed publically.

The law also defines the involvement of social partners and stakeholders in the process as intermediaries in encouraging reporting and ensuring effective protection of whistleblowers. Similar to the legislation in Norway, the law also describes the protection of whistleblowing – in more depth than currently done by the Labour Law⁶. Even though the law does not provide clear procedure for cooperation between social partners and public authorities, it clearly states that (i) social partners are one of the points where whistleblowers can report wrongdoings, and (ii) all institutions should react (swiftly) in case of whistleblowing and protect whistleblowers, including cases in which information is delivered to appropriate state institutions by social partners.

Furthermore, the law considers that one "contact point for whistleblowers" has to be established in Latvia. The contact point most likely will be either a new institution or a person working within the State Chancellery (i.e. not yet decided) and will be obliged to collect statistics on whistleblowing cases as well as to ensure the smooth functioning of the mechanisms. A scheme of the whistleblower protection mechanisms is presented in Figure 1.

Figure 1. Scheme of whistleblower protection mechanisms



Source: State Chancellery of Latvia, 2019

⁶ E.g. it covers broader range of parties involved in the protection of whistleblowers, sets clear guidelines for actions, including necessity to react fast.

How the law will work in practice is yet to be seen. Next section provides opinions in this regard of social partners and state institutions.

4 Assessment of public policy implications and success factors

Providing public policy implications for Latvia or comparing implications between Norway and Latvia is not yet possible since the Whistleblowers Law is not yet in force in Latvia and the concept has only recently been defined. However, it is expected that Latvia might face very similar challenges as already encountered by Norway (and other countries with longer experience with regard to protecting whistleblowers). This provides a good background for learning from the best practices and all interviewed experts emphasized the openness of Latvia to actively engage in this process.

4.1 Towards reporting success factors in the future: number of challenges to be resolved

There are a number of initiatives in progress, such as plans to inform society as well as institutions about possibilities for reporting wrongdoing in the work-place. These initiatives are planned to be implemented later in 2019, before the law on whistleblowers is enforced on 1 May 2019. At this stage, it is too early to talk about 'good practices' and 'success factors' in Latvia. A number of concerns were expressed during the interviews on whether there will be a positive change with regard to protection of whistleblowers and how the law will work in practice:

Perception/ 'mindset' of state institutions and among general public

As emphasized by experts representing social partners/stakeholders, activities to protect whistleblowers are not always received with 'great enthusiasm' by the state institutions. A representative of Delna, for example, notes that the issue of protecting whistleblowers was very much fostered by the accession of Latvia to the OECD and might be seen by many institutions as 'a formality to be done' due to the lack of understanding about the importance of such initiatives. These concerns correspond to the findings of studies reported by the host country.

Furthermore, the involvement of the general public into whistleblowing activity might be limited due to negative perceptions on reporting. This is (at least partly) still a heritage from the previous regime, despite of circa 25 years of independence. Contrary to Scandinavian countries, where reporting on wrongdoings is overall perceived as acceptable and often necessary to protect interests of society, in Latvia such perceptions are likely to exist.

Funding

Informing the employees about their rights and possibilities for reporting work-related crime as well as coordinating the whistleblower mechanisms requires substantial resources. Interviewed experts expressed concerns that funds allocated for these activities in Latvia are very limited and are likely to be too small.

Efficiency of public sector when it comes to dealing with whistleblowing mechanisms, including smooth cooperation between state institutions as well as state institutions and public sectors.

Even though protection of whistleblowers and cooperation mechanisms are determined by the new law, interviewed experts representing social partners expressed concerns whether this will always work in practice. The efficiency of the public sector in Latvia is also questioned in several other studies. For instance, key foreign investors in Latvia emphasize efficiency of the public sector to be one of the key challenges for a successful entrepreneurship climate in Latvia, suggesting that (i) it is important to increase quality of the public sector, (ii) reduce overlapping of activities, (iii) and more extensively use IT technologies in communication (Sauka, 2019).

Efficiency of the court system in Latvia

Experts emphasized the role of the court system admitting that court cases in Latvia tend to be rather long and the efficiency of the court system has potential for improvement.

5 Questions

Given that host country Norway has also encountered several challenges during the process of implementing whistleblowing mechanisms, Latvia could benefit from advice or evidence on activities that are planned to overcome these issues in Norway, especially regarding the following aspects:

- 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?
- What are evidence based arguments proving that protection of whistleblowers has positive effects (i.e. arguments that 'convince' policy makers)?

6 List of references

Putniņš, T., & Sauka, A. (2018). *Shadow economy in the Baltic countries, 2009-2017* (Report by the Centre for Sustainable Business at the Stockholm School of Economics in Riga), Riga, Latvia.

Putniņš, T., & Sauka, A. (2015). Measuring the Shadow Economy Using Company Managers. *Journal of Comparative Economics*, 43(2015), 471-490.

Sauka, A. (2019). *FICIL Sentiment Index 2015-2018*. (Reprt by Foreign Investment Council of Latvia and Stockholm School of Economics in Riga), Riga, Latvia.

SLI (2018) *State Labour Inspectorate, 2017 overview of activities*. (Report by State Labour Inspectorate), Riga, Latvia.

Žukauskas, V. (2018). (Ed.) *Shadow economy: understanding drivers, reducing incentives* (Report by the Lithuanian Free Market Institute), Vilnius, Lithuania.

Žukauskas, V. (2015) (Ed.). *Shadow economies in the Baltic Region* (Report by the Lithuanian Free Market Institute), Vilnius, Lithuania.

Annex 1 Summary table

The main points covered by the paper are summarised below.

Overview of key trends

- 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.

National policy / measures

- 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.

Assessment of public policy implications and success factors

- 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.

Questions

- 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?
- What are evidence based arguments proving that protection of whistleblowers has positive effects (i.e. arguments that 'convince' policy makers)?

