



W!S-H

A WHISTLEBLOWING HABITAT
IN SOUTHERN EUROPE

Whistleblower protection under EU Directive 2019/1937: the cases of Spain and Portugal

PARTNERS



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List of Abbreviations

AINPI	National Independent Authority on Informant Protection, Autoridad Independiente Nacional de Protección del Informante
AVAF	Valencia Antifraud Agency, Agencia Valenciana Antifraude
MENAC	National Mechanism on Anticorruption, Mecanismo Nacional Anticorrupção
OAC	Catalan Antifraud Office, Oficina Antifrau de Catalunya
UMU	Universidad de Murcia
UNL	Universidade Nova de Lisboa
WiS-H	A Whistleblowing Habitat in Southern Europe

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Executive Summary

This report examines whistleblower protection in Spain and Portugal following the transposition of EU Directive 2019/1937 through the respective national laws (Law 2/2023 in Spain and Law 93/2021 in Portugal). Combining stakeholder interviews, whistleblower surveys, and desk research, the report evaluates, through two case studies, the system of protection of whistleblowers existing in each country, as well as their practical implementation, to identify shortcomings and propose policy recommendations to improve those systems.

Portugal was one of the only three EU countries which transposed the directive in due time. On the contrary, Spain did this process with fifteen months of delay and just before the beginning of the sanctioning process in the Court of Justice of the EU. Both Law 93/2021 in Portugal and Law 2/2023 in Spain introduced key advances, including mandatory reporting channels, protections for anonymity and confidentiality, and measures against retaliation. However, the rushed legislative process and constrained political and institutional conditions have limited the scope of progress, resulting in an imperfect protection system in both countries.

Moreover, this study reveals that several legal provisions appear to be misaligned with the Directive. In the Portuguese case, particularly the cumulative requirement of “good faith” and “serious grounds” for protection (Article 6), the prioritisation of internal reporting channels (Article 7), and the limited scope of protected retaliation (Article 21). In the Spanish case, the limited material scope (Article 2) and the possibility to dismiss protection if it has been previously rejected in an internal channel (Article 35) are the more serious weaknesses in relation to the European text. In both countries, we find a two-year limited timeframe for protection (Article 36 in the Spanish law and 21 in the Portuguese law). However, the major deficiency of the protection system in Spain is that the independent agency in charge of the external channel is not operational yet. All these circumstances undermine legal certainty and may reduce effective access to protection.

The results of the empirical analysis, both the interviews and the survey among whistleblowers, show relevant barriers to reporting. The case studies reveal similar major obstacles to whistleblowing in Spain and Portugal, such as the fear of labour, legal and economic consequences, or the perceived futility of whistleblowing (“nothing will be done”). While most survey respondents say they would report wrongdoing, these barriers may help explain why the perception of actual reporting remains low.

The lack of psychological, legal, and informational support emerged as one of the most critical gaps in both countries following the opinions of whistleblowers. Available information remains fragmented and complex to obtain in practice. Many protections, while legally guaranteed, are not clearly communicated or operationalised. Another point in common in both countries, even if more outstanding in Portugal, is the remaining cultural stigmas that reinforce these gaps, with whistleblowing still framed negatively. These perceptions, rooted in

historical and symbolic narratives, contribute to silence even in the face of wrongdoing.

The evidence from both countries supports the need to establish a dedicated public office to support whistleblowers, capable of providing independent legal, psychological, and procedural assistance throughout the reporting process. Without it, formal legal guarantees risk remaining symbolic. However, in Spain, the independent agency is not operational yet and in Portugal, although the government announced in its Anti-Corruption Agenda its intention to revise Law 93/2021, no concrete steps have been taken to date.

Immediate action is needed on three fronts for an effective whistleblowers' protection in the Iberian countries: aligning the legal framework with EU standards, investing in an effective institutional framework for whistleblowers' support, and promoting a cultural shift that recognises whistleblowing as a public service through public awareness campaigns, professional training programmes, and educational initiatives that challenge historical stigmas and reframe reporting as civic duty. **The path forward is clear, and the time to act is now: either we turn whistleblower protection from a paper promise into real-world practice, or we perpetuate a culture of silence, leaving those who speak up vulnerable.**

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1. Introduction

An effective protection of whistleblowers against any kind of retaliation is a central tool for a complete institutional integrity system in a country and, thus, to strengthen democratic societies (NEIWA, 2022). The revelations of whistleblowers have been crucial to uncover some of the more serious corruption cases all around the EU, as is also the case in the Iberian countries. Spain and Portugal share similar characteristics regarding citizens' attitudes towards corruption, which makes us think that the improvement of the whistleblowers' protection measures in these countries would be especially desirable and fruitful.

The project WiS-H: Whistleblowing Habitat in Southern Europe was born with the aim to detect possible deficiencies or weaknesses in the protection system of whistleblowers in the Iberian countries as a basis to propose recommendations for improvements and, at the same time, disseminate the relevant of whistleblowers protection and the crucial role they play for the integrity of our countries.

To sum up, the project that gave rise to these Final Studies had the following objectives:

General objective: Support an enabling environment for the protection of whistleblowers in the Iberian countries.

- Specific objectives:
 1. Analysing the whistleblower protection environment in the Iberian countries.
 2. Facilitating mutual learning, exchange of best practices and cooperation between whistleblowing relevant public authorities (national, regional and local level) and Civil Society Organisations within these two countries to monitor and support the implementation of the EU standards on whistleblower protection.
 3. Raising awareness and increasing understanding on the reporting channels and protection measures in Spain and Portugal, while promoting a positive perception of whistleblowers.

The document at hand is the result of the empirical work consisting of the development of two case studies, one in Spain and one in Portugal, that led us to an analysis of the whistleblower protection in the Iberian countries and the proposal of policy recommendations for the improvement of this protection.

1.1. Purpose of the document

The document at hand consists of the final study including the two case studies carried out within the research project WiS-H. The case studies on the protection of whistleblowers in Spain and Portugal have been the central element of the Work Package 2, this is, the analytical study of the project coordinated by Universidad de Murcia (from now on, UMu) with the

collaboration of Universidade Nova de Lisboa (from now on, UNL). The present document conforms deliverable 2.3. The analysis of the empirical work included in this final study has been enriched by the contributions received in the online key findings session for external validation, which took place on April 22, 2025. In this session a group of experts from different countries gave their feedback on the preliminary results of both case studies presented by the research team from UMU and UNL. Section 8 of this document presents a summary of the session. As planned in the initial research design, two external reviewers also gave their feedback on the final document that has been reviewed following their advice.

1.2. Reading guide

This document presents the results of two empirical case studies conducted within the framework of the research project WiS-H, one in Spain and one in Portugal. The document is structured in the following sections:

- Introduction (section 2)
- Theoretical framework (section 3)
- Data collection and analysis methodology (section 4)
- Case studies: Spain (section 5) and Portugal (section 6)
- Conclusions (section 7)
- Summary report of the external validation workshop (section 8)
- Annex 1. Interview templates.
- Annex 2. Whistleblower online survey questionnaire.
- Annex 3. Results of the empirical work of the Spanish case study
 - Annex 3.1. Summary report of interviews
 - Annex 3.2. Summary report of the online survey
- Annex 4. Results of the empirical work of the Portuguese case study
 - Annex 4.1. Summary report of interviews
 - Annex 4.2. Summary report of the online survey

2. Theoretical Framework

Literature on whistleblowing has consistently found a positive impact on public integrity of the existence of a regulatory framework to protect whistleblowers and how the fear of retaliation has a strong negative impact on the decision to share information on potential wrongdoing (Krambia-Kapardis, 2020; Mesmer-Magnus and Viswesvaran, 2005). Empirical evidence from Portugal suggests that the perceived futility of whistleblowing may be a significant deterrent to reporting corruption. Clemente et al. (2023) found that 33% of respondents believe “nothing useful will be done about it”¹. Similarly, respondents to the 2025 Special Eurobarometer survey in Portugal indicated as a key reason for not reporting corruption the perception that doing so is pointless, as those responsible would remain unpunished (41%).

In a similar vein, the perception of the limited utility of the disclosure related to a low confidence in the investigation procedures disincentivises whistleblowing. For instance, 87% of the respondents to the survey among whistleblowers in Spain carried out in the framework of this project consider that a very or quite important reason not to report is that “nothing will be done” (see Table A1 in page 102). In the case of Portugal, the percentage amounts to the 66,6% of respondents (see Table A1 in page 128) As one of the survey respondents expressed in those terms “The person who receives the information isn’t going to do anything” (Spanish survey open response, respondent n. 21). Moreover, the effective whistleblower protection is crucial to enabling the “watchdog” role done by investigative journalism in democratic societies (EU Directive, (46)). It also helps address the collective action problem in the fight against corruption fostering greater, generating social empowerment (Johnson, 2002, pp. 9, 14–16).

From a legal perspective, the promotion of an effective framework for the protection of whistleblowing goes in line with the Charter of Fundamental Rights, which protects freedom of expression and pluralism of the media (article 11). However, as stated in the EU Directive, regulations should balance an effective protection of whistleblowing and the protection of the interest of employers to manage organisations and the interest of the public to be protected from harm (EU Directive, (33)).

¹ Additional barriers include: consider that “the costs outweigh the benefits” (17%), “fear of reprisals” (15%) uncertainty regarding reporting channels (10%), personal reluctance to report on others (8%), concerns about harming someone’s life (7%), and recognition that “sometimes we are forced to act unethically” (4%). The study also finds that employees in higher job positions are more inclined to report corruption, whereas individuals in lower positions more frequently invoke cost-benefit reasons for their reluctance. Moreover, respondents who adopt minimalist definitions of corruption (understanding it strictly as a legal violation) show greater hesitation in reporting wrongdoing.

The protection of whistleblowing can be remarkably relevant in the Iberian countries due to their traditional high perception of corruption among citizens. Following data from the Special Eurobarometer 561 (European Commission, 2025b), 91% of Portugal respondents and 89% of Spain respondents considered corruption to be widespread in their country. Nonetheless, in contrast to other countries with high corruption perception like Greece, the Iberian countries are among the EU countries with a higher citizens' intolerance to corruption (considered as "unacceptable" by 88% of Portuguese respondents, the highest rate among all EU countries, and 81% of Spanish ones, the second highest rate). It should be noted that, even if these rates on corruption intolerance are still very high in European standards, recent data shows a possible declining tendency on corruption intolerance at least in the case of Portugal, which could be linked to the high corruption perception combined with the low quality of public services or the mistrust in public institutions (Megías et al., p. 7).

Nonetheless, last year's data shows, fortunately, a recover in the tendency to corruption intolerance in Portugal with a 14% increase from 2024 to 2025 (European Commission, 2025b). Despite the low political will observed to date, citizens' clear rejection of corruption in the Iberian countries increases interest in effectively protecting whistleblowers and promoting awareness campaigns about the existing protection measures, considering that the population may be willing to report potential irregularities and, thus, contribute to improving public integrity, in case citizens trust the newly built protection system.

Regarding citizens' consideration on the reasons not to report corruption, Spain is in line with the rest of the EU in citizens response on the difficulty to prove anything (43% of respondents at the EU level, 38% in Spain), the idea that those responsible would not be punished (27% of EU respondents, 29% in Spain), and the perception that there is no protection for those who report corruption (27% at the EU level, 26% in Spain). Nevertheless, as mentioned above, Portugal stands out in the responses arguing that corruption will not be punished (41% of respondents), while is also in the same line regarding the other reasons (36% alleged difficulty to prove corruption as a relevant reason and 30% the lack of protection mechanisms for whistleblowers). However, we should note that both countries are below the EU average in terms of people who would not report a case of corruption. While 55% of the whole EU respondents say they would not report a case of corruption, the figure stays at 43% in Spain and 52% in Portugal. Regarding the institutions that people trust most to report corruption, the police remarkably stand out among almost all EU countries with an average of 61% of respondents, 63% in Spain and 54% in Portugal. It is followed by the justice in many of the countries (23% of respondents at the EU level), including Spain (34% of respondents), which is the third preferred option in Portugal (15% of respondents). The third preferred institution at the EU level are specialised anti-corruption agencies (19% of EU respondents, 13% in Spain and 24% in Portugal, thus, in the second place in this country) (European Commission, 2025b).

As regards measures to encourage whistleblowers, Spanish companies are largely convinced of the effectiveness of workers' reports in combating corruption (71% agree, 10 points above the EU average). However, they are extremely sceptical about the value of internal channels

within companies (the third worst country in the EU in terms of their effectiveness, with 32% agreeing) and, in line with most EU companies, they are mostly critical of whether whistleblowers receive effective protection against retaliation (only 33% of companies agree, although the EU average stands at 29%). In the case of Portugal, only around one-third of companies consider protection measures against retaliation to be effective (36%), despite Portugal ranking above the EU average on this dimension (6th position, seven percentage points above). Confidence in the effectiveness of internal reporting channels is also modest (40%), although close to the EU average. Notably, only 36% of companies believe that workers' reports to public authorities are effective in addressing corruption, placing Portugal among the lowest in the EU (20th position, 25 percentage points below the EU average). These critical perceptions of Portuguese companies are consistent with the implementation limitations of Law 93/2021 identified in this study, despite more than three years having passed since the law entered into force (European Commission, 2025a).

Even if these data point to the interest in improving whistleblowing protection in Spain and Portugal to fight the traditional high corruption perception and improve public integrity, both countries have been late in the implementation of effective measures in this area. It should be noted that some authors assess that the past dictatorship contexts could have generated a negative perception of whistleblowers in these countries (Parramón and Roca, 2013). Some authors suggest that authoritarian legacies and inquisitorial religious traditions in both countries may help explain the negative perception of whistleblowers, stemming from their undue association with denunciation practices during those historical periods, practices that may have become culturally embedded over time (de Sousa and Triães, 2008; Parramón and Roca, 2013).

Regarding a more general institutional and legal approach, the EU directive 2019/1937 on whistleblowing was transposed with more than one year delay in the case of Spain. At the time this report is being written, the national independent agency for the protection of whistleblowing (Autoridad Independiente Nacional de Protección del Informante, AINPI, in its Spanish acronym) is not operational yet due to budget and personal limitations, even if the President was appointed in April 2025 (Royal Decree 328/2025). In the case of Portugal, the country was one of the only three Member States to completely transpose the Directive by the established deadline (December 2021), The National Anticorruption Mechanism (Mecanismo Nacional Anticorrupção, MENAC) (European Commission, 2024) is responsible for overseeing and enforcing sanctions under Law 93/2021. However, MENAC has encountered delays in becoming fully operational, primarily due to a shortage of human resources. MENAC has received strong criticism from the current government, which recently amended the legislation to modify its governance structure and address some operational issues. Nonetheless, doubts persist regarding whether these amendments will effectively change the current situation. Therefore, both countries show significant weaknesses and challenges in effective whistleblowing protection measures in place, that have been thoroughly analysed in the corresponding case studies presented in the document at hand.

3. Data collection and analysis methodology

The empirical work for this study has consisted of three types of research activities carried out in both countries: desk research, interviews, and an online survey of whistleblowers. The collection of empirical data after the initial desk research was conducted from November 2024 to March 2025.

3.1. Preliminary desk research

With the aim to build a theoretical framework in which to base the whole research work, we started the research process with the preliminary desk research for each of the countries. The resulting information was also used as a basis for designing the semi-structured interviews scripts and the online survey.

The desk research consisted of the thorough revision of the legislation and regulations for the protection of whistleblowers, official data on the application of the whistleblower protection statute, and also other information on the practical implementation of these measures. One of the central sources of information have been the documents and statistics from the MENAC, in the case of Portugal, and the Spanish regional authorities, mostly the Valencian Anti-Fraud Agency, as well as journalist works and interviews previously recorded by Fundación Hay Derecho in its research activities.

3.2. Interviews

We have carried out 27 semi-structured interviews in Spain and 25 in Portugal among different profiles selected due to their capability to facilitate a holistic approach to the protection of whistleblowers in place in each country, as well as the challenges and limitations of this protection systems. Table 1 shows the number of interviews by each profile and country. The template scripts of these interviews can be consulted in Annex 1 of this document².

Participants were selected based on their roles and expertise in the fields of compliance and whistleblowing. Whistleblowers were selected based on their experience attempting to report misconduct, whether internally within organisations or externally, to regulatory bodies, investigative, or law enforcement authorities. In the case of Portugal, the sample also included two individuals who felt unable to file a report due to fear of retaliation and lack of institutional support. Notably, recruiting whistleblowers proved challenging, with one prospective participant withdrawing from the study after initial contact, likely due to concerns about personal risk.

² The templates were already included in Deliverable 2.1 Methodology of the Studies, but have been included in the document at hand to facilitate the understanding of the whole research process.

It is worth mentioning that strict anonymity measures have been taken to face the ethical concerns linked to interviewing whistleblowers or people having personal or detailed information on cases of whistleblowing. Recognising the sensitive nature of whistleblowing experiences, the research team adopted several protective measures. Participants could pause or skip questions at their discretion. One whistleblower requested an interview in English, believing this would make voice identification more difficult; we accommodated this request. Throughout the data collection process, researchers remained attentive to signs of participant distress and prioritised their well-being.

All the interviews have been strictly confidential, the recordings have only been available, when previously accepted by the interviewee, to the research team in the corresponding country, and only the anonymised transcriptions have been shared among the whole research team. The treatment and storage of the information comply with all the current regulations on data privacy, as well as the recommendations issued by UMU and Nova ethical committees.

Table 1. Number of interviews by country and profile

Interviewee profile	Spain	Portugal
Whistleblowers	9	10
Agencies with competences in whistleblowing protection	5	1
People in charge of internal channels	4	4
Academia and other experts	6	7
Compliance officers	2	3
EC (DGJUST) public official	1	0
Total	27	25

To maintain anonymity and for a more detailed classification, the interviewees have been identified by codes using the abbreviations shown in Table 2. The first two letters identify the country of the case study, the following two letters identify the profile of the interviewee, and finally, a number identifies the specific interviewee within that country and profile. For instance, SP-AC1 would mean that we are referring to an interviewee from the Spanish case study, who was an academic identified by number 1.

Table 2. Abbreviations used for interviewees' identification

Country of the case study	
Abbreviation	Meaning
PT	Portugal
SP	Spain
Interviewee profile	
Abbreviation	Meaning
AC	Academic
AG	Agency with competencies for the protection of whistleblowers
CO	Compliance Officer
CS	Civil society representative
EU	European Commission officer
IC	Responsible for an internal channel
PE	Professional from a public entity
WB	Whistleblower

3.3. Online survey to whistleblowers

The second empirical data collection activity consisted of an online survey that was run in Portugal and Spain among whistleblowers. The same survey was carried out in each of the countries translated into the local language. The complete questionnaire in its English version can be found in Annex 2³ of this document.

The survey asked respondents about their perceptions of the legal and regulatory framework around whistleblowers' protection, the practical measures applied to protect whistleblowers, and other personal perceptions on the issue related to their personal experiences.

The survey responses amount to 31 in Spain and 12 in Portugal. Taking into account that the respondents' profile was very specific and that whistleblowers can have remarkable reservations related to confidentiality, the research team considered these results satisfactory and as a relevant tool to enrich the qualitative information coming from the interviews.

The Spanish respondents are mostly workers in a labour relationship (39%) or civil servants (35%) who work for public entities (81%), mostly working in big organizations of more than 1.000 employees (52%). Tables B1 to B5 in pages 112-114 show the detailed demographic information of the Spanish survey respondents. In the case of Portugal, the sample showed equal distribution between private and public sectors (50% each).

³ The survey questionnaire was already included in Deliverable 2.1 Methodology of the Studies, but has been included in the document at hand to facilitate the understanding of the whole research process.

Respondents from medium-sized organisations represent the largest share (33.30%), while those from micro, small and large organisations are evenly distributed (each accounting for 16.70%). Tables B1 to B5 on pages 139–141 show the detailed demographic information of the Portuguese survey respondents. The demographic differences between the two surveys are due to the difficulties in getting whistleblowers to respond, which introduced some unforeseen biases that were not considered relevant to the aims of the study.

For both case studies, survey findings are integrated throughout the analysis. Results are available in Annexes 3.2 for the Spanish case and 4.2 for the Portuguese case.

In a similar manner to the case of the interviews, strict measures for assuring anonymity and confidentiality were applied in the collection and storage of the information.

4. Case studies

The preliminary desk research showed us some similarities in the regulatory frameworks of whistleblowing protection in Spain and Portugal, but also relevant differences. The case studies below present an in-depth analysis of these existing regulations and their practical implementation, focusing on their positive aspects as well as the weaknesses observed and future challenges to face for an effective protection of whistleblowers in Southern Europe.

4.1. The case of Spain

General Findings

Considering both the desk research and the empirical study, we could summarise the development and current situation of the protection of whistleblowing in Spain in three main aspects. First, Spain had an imperfect beginning of the transposition of the European directive and of the passing of the Spanish law. In this first stage of the process, we observe a perception of weak will and political commitment to whistleblowers' protection, shown particularly by the late transposition and the delay in the creation of the independent agency for the protection of whistleblowers. Second, we should underline that there is a general consensus on the opportunity that these regulations imply for whistleblowers' protection and, broadly speaking, for the integrity framework in Spain. Finally, considering the results of the interviews and the survey, we detect relevant future challenges to keep improving whistleblowers' protection to tackle the adverse effects of the initial delays and weak political commitment, as well as to work on the expectations and potential frustrations generated by these new regulations and policies.

An imperfect beginning: perception of weak will and political commitment

Regarding the initial steps on the construction of a framework for whistleblowers' protection in Spain, firstly, we observe a late transposition of the European directive, which took place in February 2023, fifteen months after the official deadline established by December 2021. The law transposing the directive into the Spanish internal legal framework was only approved after the opening in January 2022 by the European Commission of infringement proceedings against Spain and 23 other Member States that had not respected the deadline. Spain barely avoided the sanctioning proceeding in the Court of Justice of the EU that began in March 2023 when the Commission referred to the Court six Member States which had not yet notified the transposition measures (European Commission, 2024). However, there is a certain contradiction in the sense that, despite the long time elapsed from the entry into force of the directive in December 2019, the transposition seems precipitated, considering some technical deficiencies that will be commented on below, which add difficulties to an already complex institutional architecture. Considering the opinions of the surveyed whistleblowers, in general the perception on how the law covers some of the aspects of the Directive is negative (none of the four items requested are considered perfectly or quite covered by more than 16% of respondents, Table A7 in page 106).

● A complex institutional architecture

First, a central element of the institutional architecture for effective whistleblowers' protection is the creation of the Independent AINPI that should be responsible for the external reporting channel (Law 2/2023, Title III and Article 43.1) and the application of protecting measures (Article 43.2), even if in the Spanish case there are also competent regional agencies as will be commented in next section. At the same time, the AINPI will have a central role in improving the protection framework through informing about the regulatory projects regarding whistleblowing protection (Article 43.3), leading the sanctioning proceedings for infringement of the information obligations regarding the internal channels (Article 43.4), and in the promotion and dissemination of the culture of information (Article 43, 5). The actions of the AINPI will be crucial to define the interpretation and practical implementation of the measures foreseen in the law, which would be useful also for the coordination and harmonised action of the different state and regional authorities involved in the whistleblowing protection. Indeed, although the law provides for a rapid implementation, this may result in shortcomings such as inconsistent or non-uniform protection for whistleblowers, especially depending on the territorial jurisdiction of each competent authority. However, it could be argued that the law is hardly enforced at present, since it requires an independent authority at the state level that has yet to be fully operational. In spite of the explained difficulties, we should mention that the existing regional anticorruption agencies created in 2018 a collaborating network to exchange good practices and unify action criteria (OAC, n.d.), although it has a very informal and no very active nature.

Second, the institutional framework of whistleblowing protection in Spain has an added complexity given the decentralised nature of the state. Thus, it is important to mention the role of **regional external authorities** created for anti-fraud and anti-corruption or other goals, but which have since assumed responsibilities related to the protection of whistleblowers. Law 2/2023 states that citizens will have the possibility to report potential wrongdoing in front of the AINPI or the corresponding regional authorities (Article 16.1), which will be competent to receive information regarding the regional and local public sector of their respective territory, the regional institutions with constitutional relevance and similar ones, and private sector entities within the territorial scope of the corresponding autonomous community if the respective regional laws so provide (Article 24.2).

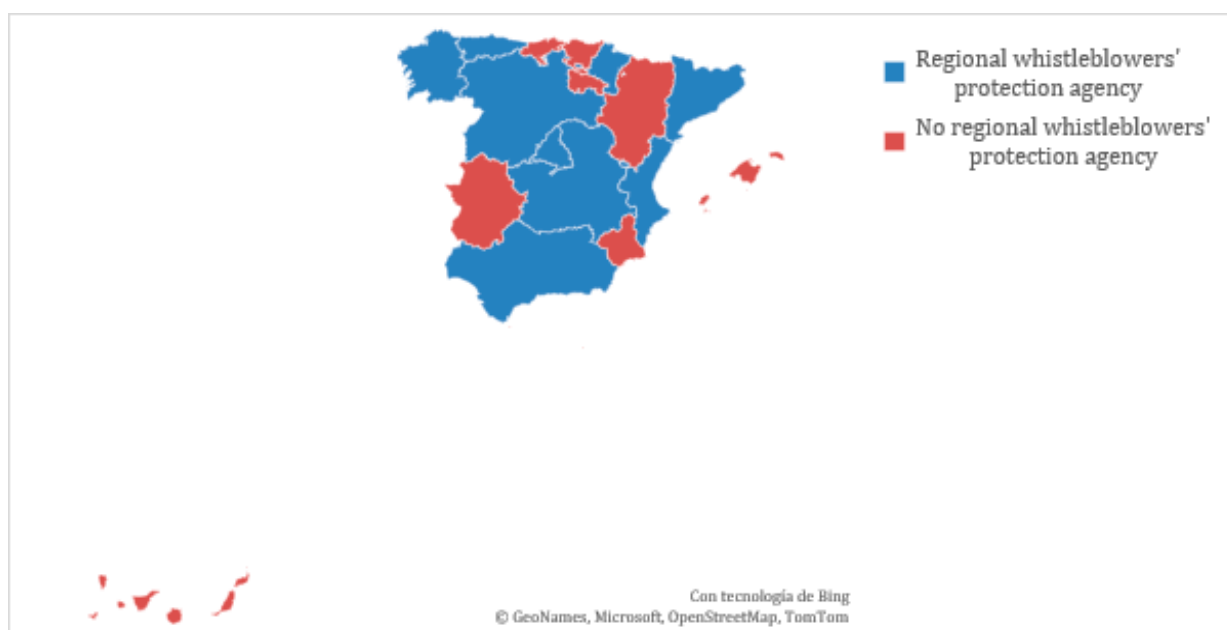
Interviews conducted with representatives of these regional authorities highlight the complexities they encounter in seeking to balance the prompt implementation of protective measures for whistleblowers with the maintenance of a strict adherence to the legal framework, including respect for jurisdictional boundaries and the constraints imposed by limited resources. Some interviewees from these agencies also underlined the usefulness that the work of the AINPI could have in facilitating their interpretation and implementation of the protective measures and other provisions of the legal framework. For instance, the scope of competences among the different public authorities is not always easy to determine, and even less so for the ordinary citizen.

By now, we have not exercised the sanctioning powers. Why?

Because it made no sense that in Catalonia legal obligations are the same as in the rest of Spain, exactly the same, but when you enter Catalonia, there is an authority with these sanctioning powers. However, when you are in a nearby community, the private company or the public entity has the same obligation, exactly the same, because the law was in force, but there is no authority that can apply [sanctions].

*Declarations of the OAC director at the
Seminar on Integrity and Whistleblowers' Protection at UNED, 13 May, 2025⁴.*

Figure 1. Spanish regions with whistleblowers' protection agencies



Source: Authors' own creation.

Regarding the regional authorities, even if all the regional agencies have external channels to report wrongdoing foreseen in their creation laws, the ones which have relevant activity to be analysed are mostly the entities existing in Valencia, Catalonia and, to a certain extent, also Andalucía. Navarra, Asturias, Castilla y León, Galicia, Madrid and Castilla-La Mancha also have agencies with external channels in place, even if the information available suggests that these are more limited entities in terms of resources and activity⁵. For instance, the agency in Castilla y León has 5 employees and the one in Galicia only 3 (information coming from personal communications of members of both agencies in June 2025; AGPI, n.d.). In consequence, we will focus on commenting on the protection activities of the more active regional agencies, among which there are some experiences which are remarkably interesting to analyse.

⁴ The video of the seminar can be retrieved from the following link: <https://canal.uned.es/video/6826f-069468b86c94708a4b4>

⁵ Thus, the following regions do not count with a regional agency for the protection of whistleblowers: Aragón, Balearic Islands, Canary Islands, Cantabria, Extremadura, Murcia Region, Basque Country, La Rioja, and the Autonomous cities of Ceuta and Melilla.

The Valencian Antifraud Agency (AVAF, in its Spanish acronym) is the only regional agency that, from its creation in 2016, has been given clear responsibilities for the protection of whistleblowers. Moreover, in June 2024, the law was modified to explicitly assume the information proceeding and the level of protection established in the State law (see AVAF, 2023 and Law of the Community of Valencia 11/2016). The experience of AVAF, at least until the change in its leadership in July 2024, stands out among the regional agencies and should have been given more relevance to guide the design of the state legal framework for the protection of whistleblowers. In fact, Law 2/2023 in some practical respects provides lower protection than the one from AVAF, despite the remarkable improvement consisting of the inclusion of the private sector in the scope of protection in the state regulation. Unfortunately, since the appointment of the new director of the AVAF in July 2024, this agency is not known to have granted any new protection status to any whistleblower. It is also worth mentioning the amendments to the regulatory framework through Law 3/2024 of the Valencian Community, which imply a significant restriction in the powers and competences of the AVAF.

Table 3. Regional agencies by assisted and protected whistleblowers

	AVAF			OAC		
	2022	2023	2024	2022	2023	2024
Assistance and advising (number of actions)	115	128	91	NC	NC	74
Number of protection status requested by year	3	5	4	2	30	41
Number of protection status accepted by year	Not available			2	22	16
Number of protection status in force by December 31, 2024	36			60		

Source: AVAF, 2024b and 2025; OAC, 2023, 2024 and 2025; Interview SP-AG5.

The pioneering regional anticorruption agency was the Catalan Antifraud Office (OAC in its Catalan acronym) created in 2008 by Law of Catalonia 14/2008, of November 5, of the Anti-Fraud Office of Catalonia. The law gives very diffuse powers on the protection of whistleblowers to the Catalan agency, citing only the obligation to maintain anonymity if required by the whistleblower (Article 16) and has not been modified since the passing of the Spanish law to adapt to the new regulations. However, while waiting for a more specific Catalan legal framework for the protection of whistleblowers that the Catalan Parliament should push forward, the Law of Catalonia 3/2023 assigned the agency with the competencies for the protection of whistleblowers of Law 2/2023 and gave to its director the powers for the forced execution of sanctions (7th Additional Disposition).

A central criticism of the OAC functioning is the absence of any sanctions for retaliation against whistleblowers, in spite of 40 people having received the protection status in the last three years⁶ (OAC, 2023, 2024 and 2025; Interview SP-IC2, see citation below and declarations of the OAC director in the Seminar on Integrity and Whistleblowers' Protection at UNED, 13 May, 2025 cited in page 14). The problem of the very limited sanctioning activity, which is not only the case in Catalonia, will be commented in the next section.

We haven't sanctioned anyone yet—obviously, the law is still very new, and we need more time for its implementation, its application, and, when appropriate, to determine cases where there may be a punishable offence.

Interview SP-AG5

In 2016, the Balearic Islands also created their regional anticorruption agency (Office for the Prevention and Fight against Corruption in the Balearic Islands, created by Law of the Balearic Islands 16/2016). The law established the creation of a protocol for the protection of whistleblowers. Nevertheless, the law was revoked in April 2024, and the agency was suppressed (Law of the Balearic Islands 2/2024). From that moment on, the regional competences for whistleblowers' protection were transferred to the General Inspection for Quality, Organisation and Services of the Balearic Islands, an internal entity within the regional Ministry for Presidency and Public Administrations (Law of the Balearic Islands 2/2024, 1st Transitory Disposition). It is worth noting that the suppression of the agency coincided with a change in the parliamentary majority and that there was a preceding political campaign that labelled the agency as an unnecessary and wasteful public body (Bohórquez, 2024). This context suggests the existence of political motivations behind the legislative amendment.

The Andalusian Office Against Fraud and Corruption was created in 2021 by the Law of Andalusia 2/2021, which dedicates one title to the protection of whistleblowers including a detailed definition (Article 35), the creation of an external channel following the mandate of the EU Directive (Article 36), the rights of whistleblowers and the corresponding duties of the Office (Article 37), the protection measures (Article 38), and a prevision of publication of information of the denounces received and the protected whistleblowers (Article 39). From 2024, the Andalusian Office has processed 23 files with protection measures for potential acts of retaliation, consisting mostly of communications to public administrations. Even if it should be mentioned that resources are very limited, the agency in no case considered it justified to facilitate financial or psychological support due to the nature of the cases and, thus, they do not have any person under the whistleblower protection status (Personal communication with a member of the Andalusia Office, June 2025).

The Autonomous Community of Aragon also formally created the Agency for Integrity and Public Ethics through Law 5/2017, which included a section on the definition and statute of the whistleblowers and the means to ensure their confidentiality (arts. 46 and 47). However, the agency was never effectively created, and thus, the law is not effectively in force. Navarra created the Office of Good Practices and Anti-Corruption by the Foral Law of Navarra 7/2018, which dedicates articles 24 and 25 to establish obligations for the office regarding

⁶ It is worth to clarify that, as shown in Table 3, OAC had 60 people under the protection status by December 2024, even if only 40 corresponded to protection requests accepted in the last three years.

the protection of whistleblowers. The Office of Good Governance and Fight Against Corruption in Asturias was created by Law of Asturias 8/2018 which includes the definition and statute of the whistleblower, establishing its rights to confidentiality and indemnity (arts. 59 and 60). In 2019 Madrid created the Council for Transparency and Data Protection, which manages the external reporting channel of the autonomous community (Consejo de Transparencia y Protección de Datos, n.d.). Galicia has an authority specifically for the protection of whistleblowers (Autoridad Gallega de Protección de la Persona Informante, AGPI, in Spanish) located at the Ombudsperson Office and created in December 2023 (AGPI, n.d.; Law of Galicia 10/2023). Castilla y León created the Independent Authority in matters of corruption by Law of Castilla y León 4/2024 and gave the powers to protect whistleblowers to this agency in December 2024 by the Resolution 6/2024. In July 2024, Castilla-La Mancha also gave the powers of Law 2/2023 for the protection of whistleblowers in the region to the Regional Council of Transparency and Good Governance (Law of Castilla-La Mancha 4/2016). We should also comment that sometimes problems arise because agencies concentrate multiple competences within a single body, for instance, related to transparency supervision, as this can raise challenges related to effectiveness and oversight. Additionally, it is worth noting certain limitations in existing agencies; for example, the agency in Madrid does not have competences for the supervision of the private sector, which represents a significant gap in whistleblower protection.

Third, there is another element which adds complexity to the institutional framework in Spain. Apart from the existence of multiple regional authorities, there are also a number of **other public authorities** in the country which, although they do not have direct or specific competences in the protection of whistleblowers, have functions and duties closely related to this area. This is the case, clearly, of the labour inspectorate or the public prosecutor, but also of other entities such as the National Commission for Markets and Competence (CNMC in its Spanish acronym) and some other independent agencies in the Spanish public administration. Therefore, there is undoubtedly a complex institutional framework which represents a challenge that must be addressed, but also an opportunity to build a more comprehensive and robust framework for the protection of whistleblowers in Spain. Thus, as already mentioned, given this institutional complexity, the coordinating role of the AINPI is crucial, even if the existence of the above-mentioned informal coordination network among the regional agencies is a positive point, although not very proactive. Hence, the agency should begin to operate effectively as soon as possible, something that requires its own budget and dedicated staff, that nowadays are still lacking.

● Technical weaknesses of the regulation on internal channels

The Spanish law includes some weaknesses in relation to the internal channels that are closely related to the complex institutional structure in place for the protection of whistleblowers. The Spanish law lacks specificity on the characteristics and functioning that should be required of the reporting channels within the organisations.

The law dedicates Chapter I of Title II to the general regulations of the internal channels, but these dispositions offer no details on how to act in practical situations. For example, there are no regulatory provisions on how to ensure the confidentiality and proceed with the in-

vestigations in cases like small company sections or when only a few people have the information disclosed in relation to the internal channels' obligation of confidentiality in Article 5 b and of correctly managing the information received, Article 5.i. The law also fails to address how to maintain anonymity when there is the obligation to inform the public prosecutor due to the potential criminal nature of the facts disclosed (Article 9, j). The interviews with people in charge of internal channels revealed their doubts and uncertainty regarding how to properly fulfil their duties.

*There are many, many aspects [of the law] that will need
to be studied and analysed on a case-by-case basis.
And in the end, I suppose we'll also eventually have some case law...*
Interview SP-IC1

*From my point of view, the regulation is very limited, and on top of that, it's going to be
highly heterogeneous—which is very significant when it comes to protecting whistleblowers.*
Interview SP-IC2

*There is no established procedure.
You have to, in quotes, "make it up" yourself or turn to the law for guidance.*
Interview SP-IC2

*The law doesn't really regulate anything regarding the Internal reporting channel
in a minimally solid way. In other words,
it regulates the external channel, but not the internal one.*
Interview SP-AC 3

Another technical problem of the law is that it does not include many relevant differences between the regulation of the internal channels and the related organisational obligations between public and private entities. Basically, the regulation only differentiates when establishing which entities are obliged to have an internal channel. Indeed, regarding public entities, the legal text states which entities have the obligation to have an internal channel, in which cases some public entities can share the reporting channel (municipalities below 10.000 inhabitants, and entities with less than 50 workers depending on a superior entity), and the limitation for the external management only to those cases demonstrating a lack of enough internal resources (arts. 13–15). Concerning the private sector entities, the text also establishes which entities may have an internal channel (private entities with 50 workers or more; other entities obliged because of their responsibilities in the EU regulations in service, products and financial markets, anti-money laundering, or security in transport and environment protection; political parties, trade unions, associations of private companies and the foundations created by these three kinds of entities), and in which cases groups of companies can share the channel (arts. 10–12). However, the legal nature determines relevant differences in terms of organisation, responsibilities and legal liability that in practical terms need to be translated to a different functioning of the internal channels. In this sense, it is worth highlighting the particularity of Spain's large number of very small local entities (there

are 8.138 municipalities in Spain of which 4.981 have less than 1.000 inhabitants, INE, 2025), which are always severely understaffed, not to mention insufficient oversight mechanisms, and where a significant number of corruption cases tend to occur. This structural feature is relevant when analyzing the challenges of implementing internal reporting channels for effective whistleblower protection at the local level.

The inadmissibility of an internal system, if it occurs in the public sector, may still carry the procedural safeguards, because we're dealing with the public sector. But imagine a private company, where there may not even be the legal rigour or the safeguards provided by administrative procedures.

Interview SP-IC 4

In relation to those responsible for the internal channels, the legal text does not specify any conditions or requirements regarding previous professional experience and legal knowledge to be met. At the same time, some interviewees in charge of internal channels claim that there is insufficient orientation and training on how to promptly fulfil their duties. At the same time, they express a perception of not having enough protection measures and the feeling of being in a “sandwich”, receiving pressure from the organisation’s leaders and workers at the same time.

I can't even imagine how someone must feel when they genuinely want to do their job well—especially in a smaller administration—while facing political pressure.

In my case, I didn't have political pressure, but I did feel it from my superiors and my colleagues.

It's not just from the person who might dismiss you—it's from the person affected by the complaint, and you're working right next to them.

You might not even have your own office. You might be seated right next to the person who's been reported, and you're supposed to be handling these tasks.

You're not even symbolically protected—physically, I don't know how to put it—it might sound silly, but that's the reality.

And you have no support. And I've also felt a certain loneliness, and a shift in how people treat me.

Interview SP-IC2

Many internal channel managers are not trained, and there's no one who's going to train them either.

I believe they don't really know what they're supposed to do or how to do it.

Interview SP-AC2

The independent authority needs to be the point of contact, training, and support for the thousands of people across Spain who are [...]

those in charge of the internal reporting channel. And when you speak with them, they're often completely lost; they don't really know what to do.

From what I've seen in many cases, their main concern right now is simply not getting into trouble themselves.

Interview SP-AC3

A great opportunity: positive aspects of Law 2/2023

Despite the initial limitations in the development of the Spanish legal framework for the protection of whistleblowers discussed above, Law 2/2023 also introduces relevant positive aspects that should be seen as opportunities to take advantage of. To illustrate this conception on the possibilities of the law, we should mention that 72% of survey respondents have an extreme or big support for this policy of whistleblowing protection (see Table A12 in page 111).

First of all, Article 1 is clear in stating that the objective of the law is to grant adequate protection against retaliation that may suffer any individual who reports potential irregularities (Article 1.1) and to strengthen the integrity structures within organisations and the culture of information as a mechanism to prevent and detect threats to public interest (Article 1.2). However, a thorough analysis of the full legal text is needed to assess whether its provisions are enough to advance on these integrity goals.

The survey responses prove that improving the culture of information is essential, since 90% of the respondents consider that the negative attitudes against whistleblowers can be a reason to decide not to report wrongdoing (see Table A1 in page 102). Most respondents also consider that one relevant benefit of requiring public and private organisations to protect whistleblowers is that these regulations reinforce the compliance with law of companies and public authorities (77% of respondents consider this to be an important or very important benefit) (see Table A3 in page 103). In a similar vein, 78% of respondents consider that this mandatory protection is very or quite important to stimulate a culture of transparency and accountability in the workplace (see Table A3 in page 103).

The figure of the snitch is stigmatised; saying something won't bring me anything—it will only cause problems...

Survey open response. Respondent n. 30

● The guarantee of anonymity

The legal text guarantees the anonymity of whistleblowers, a central point for effective protection, and to facilitate a culture of informing about potential irregularities. Article 7 of the law, which regulates internal channels, established that they should permit the presentation and processing of communications anonymously (Article 7.3). Similarly, Article 17 determines that the reception of information in the external channels of the AINPI or the regional authorities may also permit anonymous disclosures (Article 17.1). The same Title of the law provides in the article on rights and guarantees of whistleblowers in front of the AINPI that the decision to formulate anonymous or non-anonymous communications is a right of the whistleblower and, in the case of renouncing to anonymity, there should be means to reassure that his or her identity is not disclosed to third parties (Article 21.1º). Indeed, to violate the guarantees of confidentiality and anonymity is considered a serious or very serious breach of the law (Article 63.1.c) and 63.2.b)). It should be also noted that the sanctioning regime under Law 2/2023 must be concretised and developed by the external reporting channels, that is, the AINPI.

The interviewed whistleblowers unanimously consider that anonymity is a central legal safeguard to protect them:

*The most dangerous breach is having your anonymity revealed.
I'm absolutely certain that in most of our cases,
if our anonymity—our identity—had not been exposed,
we'd still be living normal lives today.
The point is for you to provide enough evidence, solid and verifiable proof.
So why should it matter who brings it forward?
Interview SP-WB4*

However, it is also the case that the legal framework may not always provide comprehensive solutions for the effective preservation of anonymity. For instance, in the case of some subjects such as public prosecutors, the identity could be revealed during the investigation proceedings. As commented before, this is particularly evident in small organisations or units, where it may be relatively easy to deduce the identity of the individual disclosing the information, either because of the nature of the information itself or due to the limited number of individuals who had access to it. In this line, the protection of confidentiality of whistleblowers' personal data, even when it is anonymous but identifiable, is considered not protected at all in the Spanish law by 55% of the survey respondents and slightly protected by 26% (see Table A10 in page 109).

● Prohibition of retaliation

The legal framework also establishes the prohibition and nullity of retaliation actions. This point should represent a significant protection and legal safeguard for those who report potential wrongdoing. However, the legal text is not clear since, even if it seems to link the prohibition of retaliation to the status of protected person, there are also protection measures that could be more generally applicable, for instance, to the person affected by the report (Article 37.1 a)) The law dedicates its Title VII to the protection measures for whistleblowers. Article 36 explicitly prohibits any act implying retaliation, including threats and tentative retaliation (Article 36.1), defined as any acts or omissions that are prohibited by law, or that, directly or indirectly, result in unfavourable treatment placing the individuals affected at a particular disadvantage compared to others in a work or professional context, only because of their status as whistleblowers or for having made a public disclosure (Article 36.2). The article also includes a non-exhaustive list of possible acts of retaliation: suspension of the employment contract or firing; harm, including reputational damage, or economic losses, coercion, intimidation, harassment, or ostracism; negative evaluation or references concerning work or professional performance; blacklisting or the dissemination of information within a specific sector, which hinders or prevents access to employment or the awarding of contracts for works or services; denial or revocation of a license or permit; denial of training; discrimination, or unfavourable or unfair treatment (Article 36.3). Finally, the article states that the actions of retaliation or discrimination, as well as the acts to prevent or make difficult the presentation of communications or disclosure of information, will be null and give rise to corrective disciplinary or liability measures, which could include compensations for damages suffered (Article 36.5).

Some of the interviewed whistleblowers express that the measures of protection and against retaliation are crucial:

You end up like a superheroine who has to endure everything.

Interview SP-WB 7

I believe that, fundamentally, whistleblowers fear retaliation.

Survey open response. Respondent n. 20

Retaliation is guaranteed.

Survey open response. Respondent n. 24

I know why I wouldn't report again [...]. The height of double victimisation isn't just that no protection is applied, and you're left to face the legal process alone, but that judges and anti-corruption agencies actually go after you.

Survey open response. Respondent n. 26

Indeed, negative labour consequences (dismissal, lack of promotion...) are the principal reason that respondents consider more important to explain why some people decides not to report (94% of respondents consider this a very important reason) (see Table A1 in page 201). Fear to legal or economic consequences are also among the more relevant ones (90% consider legal consequences to be very or quite important and 87% in the case of economic consequences) (see Table A1 in page 201). The more relevant benefit that survey respondents find on the regulations to oblige public and private entities to protect whistleblowers is to prevent retaliation against them (81% consider it a very important reason and 6% a quite important one) (see Table A3 in page 103).

Nevertheless, as previously discussed, it is essential to have an independent authority in place to implement and oversee the legislation, including the power to impose sanctions when necessary. The AINPI is vital, as the protection measures can only be fully understood through their implementation, and the practical challenges to address cannot be resolved by a legal text alone. This point, expressed by one of the survey respondents, will be developed more in depth in the next section on future challenges of the protection system.

The independent authority does not implement the support measures.

Survey open response. Respondent n. 22

● A system of reporting channels

The law builds a general system of reporting channels that constitutes an institutional structure to guarantee specific internal and external procedures to facilitate whistleblowing. In the previous section, we have explained the structure of internal channels of reporting (legally required for both public and private entities) and the external channel in the hands of the AINPI and the regional authorities with competencies on the protection of whistleblowers. However, as already mentioned, there is an urgent need for the AINPI to orient the obliged entities and promote a smooth functioning of the new framework, since the law alone is

not enough to make the protection effective. At the same time, it should also be a central concern to reinforce the system of internal reporting channels since their proper functioning and trustworthiness is crucial for a complete and effective system for the protection of whistleblowers.

Future challenges to keep improving WB's protection

Therefore, in line with the analysis of the previous sections, the Spanish Law 2/2023 represents a relevant opportunity to improve the integrity system in the country through an effective protection of whistleblowing. However, the legal framework presents some shortcomings and limitations which open the door to future challenges that should be faced to keep improving whistleblowers' protection.

● Difficulties to prove and sanction retaliation

Even if the law states the acts of retaliation and clearly establishes their nullity and possible sanctions against the people or organisations carrying out these actions, the empirical work reveals a lack of sanctioning activity by the regional agencies and the AINPI is not yet functioning. However, retaliation seems to be the norm since 96% of the survey respondents declare to have suffered some retaliatory action (see Table B9 in page 115).

In some specific cases, the interviewees related to regional agencies with competencies in the protection of whistleblowers argue that difficulties arise to identify retaliation in practice and, at the same time, they fear the subsequent difficulties in sustaining sanctions in the contentious jurisdiction. One of the interviewed whistleblowers strongly states that states that it is very difficult to have workplace harassment recognised within the criminal jurisdiction, in line with the views of a criminal law scholar. However, several interviewees seem to agree that it is easier to obtain the nullity of retaliatory measures in the labour jurisdiction, even if they consider that sanctions are not imposed by the part of the labour inspection. In any case, it would be worth mentioning that, despite the formal nullity of retaliatory acts, the burden still falls on the whistleblower to initiate legal proceedings, sustain the action, and often wait a considerable amount of time for a final judgment to be issued. This is a crucial aspect, particularly in light of the lack of precautionary measures that could suspend the effects of the retaliation while the judicial process is ongoing.

*It ends up being completely exhausting.
[Referring to the difficulties in proving retaliation in the criminal jurisdiction]
Interview SP-WB1*

*Workplace harassment through criminal proceedings is very hard to win.
In fact, I managed to get a ruling—Though I didn't even realise at the time that the decision
from the Provincial Court was actually relatively favourable,
because it acknowledged that I had been treated in a degrading way...
but not degrading enough. It wasn't humiliating degradation—just degrading. [...]
It's unbelievable. That's how the criminal route works.
Interview SP-WB7*

*It is extremely exhausting; the processes are very long and involve many reprisals.
Survey open response. Respondent n. 30*

Another relevant point is that retaliation is difficult to prove. Thus, some potentially retaliatory actions which are not considered a felony, for instance, dismissal, are more difficult to prevent since there is a need to prove that they are retaliatory actions related to a previous disclosure. On the contrary, acts such as threats or verbal aggression can be considered a felony per se, and this consideration facilitates their punishment, even if not always as retaliatory actions against a case of whistleblowing. In this sense, 78% of respondents have the perception that the law gives no protection or a slight protection in relation to promote the reversal of the burden of proof and, thus, oblige the organisation to prove that any measure against the whistleblower has not been a retaliatory action (see Table A10 in page 109). In fact, the law does not establish this reversal of the burden of proof.

*It's really surprising that taking or imposing reprisals
against a whistleblower, for example, isn't considered a criminal offence.
In the United States, where all of this originally comes from, it is a crime, and a serious one.
Threatening, firing, or retaliating against a whistleblower can even lead to prison
sentences.
Here, however, they've chosen to go with administrative sanctions instead, which, in practice,
will likely be paid by the company or, in the public sector, by the organisation itself.
Interview SP-AC6*

*The reversal of the burden of proof seems fundamental to us
in order to provide help and support to whistleblowers.
Interview SP-EC1*

*All they [whistleblowers] see is that there is total impunity.
Interview SP-WB1*

*There are no real guarantees of protection.
The State also lacks a national anti-corruption strategy.
It seems the transposition is being carried out due to pressure from the European Union
Court, rather than as part of any genuine intent on the part of the State.
Survey open response. Respondent n. 20*

We should also mention that some of the people responsible for external channels, but also internal ones, express the difficulties in balancing agility and rigour in the development of their tasks and, particularly, regarding the protection against retaliatory actions:

*Retaliation, according to the definition given in the Directive and as set out—at least in
the wording provided by Law 2/2023—must be based exclusively on the act of reporting.
But in practice, how many retaliatory measures — Let's say, dismissals or other types of
actions—
Are truly based only on the fact that someone filed a report?*

The reality is, these actions often stem from a multitude of factors related to that working relationship, not just the act of whistleblowing.

Interview SP-IC1

Someone can file a complaint for workplace harassment, and the truth is that nowadays, the concept of workplace harassment is also something that some people misuse.

Interview SP-AG5

● The two years protection limit

Another most relevant weakness of the law that should be solved in its practical implementation is that whistleblowers' protection against acts of retaliation is, in principle, limited to a period of two years (Article 36.4), from the conclusion of the investigations according to the preamble of the law. This limitation that is not included in the Directive could be a serious weakness (following Interview SP-EC1), especially considering the long judicial procedures in which whistleblowers can be involved as a consequence of the disclosure and retaliatory actions. However, we should note that the competent authority can exceptionally extend the period of protection with a prior audience of the affected parties and always justifying the decision to extend or not the protection (Article 36.4).

Another problem with the law, as you may recall, is the two-year time limit on protection.

*So, of course, if no action is taken once the report is filed,
those two years will pass—and then nothing.*

The protection will expire, and the whistleblower will be left unprotected.

Interview SP-AC3

● Limitations on the material scope of the law

The law also presents a remarkable limitation regarding the material scope, that is, the kind of information reported to allow for the protection of the disclosing person. Article 2, referred to the material scope of the law, first replicates the scope included in Article 2 of the Directive, that is, breaches affecting several areas of the EU law, the financial interests of the EU or the internal market. However, Article 2.2 of the Directive enables Member States to enlarge the material scope of the protection. Following this precept, the Spanish law includes in Article 2.1 b) "Actions or omissions that may constitute a criminal offence or a serious or very serious administrative violation."

However, this legal text implies a quite limited material scope in the sense that acts that could be against public integrity but are not always considered a criminal offence or a serious or very serious administrative violation are outside the protective framework. This could be the case of breaches to ethical codes or irregular financial expenditures of low quantities.

A relevant deficiency of this definition, as stated by some of the interviewed experts, is that a potential whistleblower should analyse before the disclosure whether the information he or she has can be included within the realm of the legal protection or not. This limitation

could lead some people to decide not to disclose potential wrongdoing if they are not sure of the qualification as a criminal offence or a serious or very serious administrative violation. In addition, as it will be explained below, it should be taken into account that if a report is deemed inadmissible by the internal channel, this may result in the whistleblower not being granted protection. This further highlights the need for clear admissibility criteria and robust safeguards to prevent potential gaps in protection.

It raises some doubts for me that the person who holds the information has to assess whether it falls within the category of serious or very serious [administrative violation], or if it's minor—because if it's minor, then... well, hold on, I'll think twice.

Maybe I won't report it, because I won't be protected.

Interview SP-AC2

- Limitations on the subjective scope of the law

The initial provisions of the law contain also a relevant limitation regarding the subjective scope of people who could be protected for their whistleblowing activity. In line with Article 4 of the Directive, the Spanish law defines its personal scope of application in Article 3, including basically people working in the private or public sector who have obtained information on potential wrongdoing in a labour or professional context (public officials, self-employed people, shareholders, managers...). Article 3.2 also covers other relevant situations that should not be overlooked, such as fellows or volunteers. Nevertheless, the text does not include people who are not in a labour or professional situation, like students, clients of a company or beneficiaries of a public service.

- Loss of protection in case of dismissal by the internal channel

Another concern raised by several interviewees is the possibility that, if a whistleblower's report is not accepted through the internal reporting channel, it may result in the individual being excluded from the legal protection framework, since Article 35.2 a) explicitly excludes from protection "information included in communications which are not admitted by any internal channel". This implies a critical issue (following Interview SP-EC1) that the independent authority should address to ensure that internal channels are not misused to unfairly deny protection. It is essential to guarantee that the interpretation and application of this aspect of the law do not leave certain whistleblowers unprotected due to procedural or discretionary decisions.

The problem is that if it [the report] is not admitted, it's outright rejected. This is very serious because that means you're excluded from the start just because they claim it doesn't fall within scope, and there's no appeal, which is another thing that's unclear when it comes to the internal system: the question of appeal mechanisms. [...]

This is something horrible. I mean, this is the worst point of the norm.

Interview SP-IC3

*It's not trivial—on the contrary,
it's quite important not to make a mistake when choosing the reporting channel.
Interview SP-IC2*

● Need for psychological and financial support resources

Several interviewees, not only whistleblowers, highlighted the need for more specific protective measures against retaliation, as well as for additional resources. Psychological and financial support were among the most commonly mentioned forms of assistance that whistleblowers felt were necessary to ensure a greater sense of protection. Nowadays, apart from the limited resources of the regional agencies with competencies to protect whistleblowers, there are some options through the Office for Victims' Assistance of the Ministry of Justice, in case of recognition of the status of victim that could be recognised for some whistleblowers. However, these options are not generally known and, indeed, the resources available are also scarce.

*There, they only give you psychological support—
but yes, that's the only thing we've been given.
[Referring to the Office for Victims' Assistance of the Ministry of Justice].
Interview SP-WB9*

Among the survey respondents, among the measures considered more relevant to make protection effective within organizations are financial assistance to cover the costs of legal procedures (87% find it very important and 6% quite important) and psychological support (74% find it very important and 16% quite important) (see Table A6 in page 105). At the same time, these are also the aspects of the law that survey respondents consider worst protected (87% consider psychological support not protected at all and 81% has this opinion for financial assistance to cover judicial expenses, see Table A8 in page 107).

● Equivalent protection for those affected by the complaints

Another technical deficiency of the Spanish Law that could be considered as a bad transposition of the Directive is the equivalence of whistleblowers' protection to the protection that should receive those who could be affected by the information disclosed. Article 39, first, recognises the principles for a fair procedure, establishing that during the processing of the case, the individuals affected by the report may have the right to the presumption of innocence, the right to defence, and the right of access to the case file under the conditions established by the law. However, the final part of the article states that those people affected by the disclosure have the right to "the same protection established for whistleblowers, with their identities preserved and the confidentiality of the facts and data related to the proceedings guaranteed". In an administrative procedure it is understandable that confidentiality should be preserved until the end of the investigation. Once an administrative offence or a felony is confirmed, the matter must be referred to the competent authority, at which point confidentiality no longer applies. Moreover, maintaining confidentiality is es-

essential to safeguard the presumption of innocence and the right to honour of the person concerned, although questions remain about to which extent. However, this broad mention to the equivalence on the levels of protection could generate difficulties for the investigation and undermine the rights of the whistleblower to be protected against retaliation and have his or her confidentiality guaranteed.

● Opportunities to apply sanctions

In addition to the mentioned challenges, the new legal framework also offers important opportunities. It provides a range of sanctions in Article 65 that can be employed to protect whistleblowers and should be effectively put in place, especially to target serious or high-profile violations that can serve as an example of the clear will to protect whistleblowers against any retaliatory action. In some cases, it may be necessary to demonstrate the law's effectiveness by applying sanctions to relevant public authorities or major companies that have failed to provide adequate protection to whistleblowers. Such actions would send a clear message that the law is in force and is being actively implemented to safeguard whistleblowers.

We haven't sanctioned anyone yet [...]. But, clearly, when the time comes, we will act. And when we do, we know it will have a positive effect in terms of general deterrence, [...], and we hope it will help entities become more aware of what whistleblower protection truly means.

Interview SP-AG5

It's not just about restoring violated rights—it's also about imposing sanctions. Both things need to be done.

Interview SP-WB1

● Accepting the "obligation of ingratitude"

Although all the mentioned weaknesses of the protection framework should be addressed and acknowledging that every effort must be made to protect whistleblowers, there is also a need to recognise the limitations that public administrations may face. In this sense, the notion of an "obligation of ingratitude" proposed by Rosanvallon (2011) emerges regarding the independence of administrative authorities to perform their responsibilities as expected without looking for the acceptance of those who appointed them. The reality is that protection agencies may not always receive the recognition or appreciation they might expect due to the high sensitivity of the information that they may disclose for the people who are leading the government. Nevertheless, it is essential to encourage a culture of early response to irregularities, especially in Southern Europe, where its development requires sustained and focused efforts.

● Recent indications of progress

It is worth highlighting some recent indications of progress. The ruling 28/2025 issued in February by the Spanish Constitutional Court, although related to a case before the passing of Law 2/2023, draws on the spirit and principles of that legislation. In its decision, the Court concluded, explicitly inspired by the principles of Law 2/2023 even if it was not yet in force, that a whistleblower had been subjected to retaliatory actions and did not receive the due judicial protection in previous instances. Thus, the Court recognised the violation of the individual's fundamental right to protection of physical and moral integrity and the right to effective judicial protection. This acknowledgement implies a positive development in the constitutional protection of whistleblowers in Spain, proves that the new law can be a source of effective protection against retaliation, and underlines the need to build an effective administrative and judicial system for a stronger safeguard of whistleblowers' protection and rights. Another positive advance is the appointment by the Spanish Government and the ratification by the Congress in April 2025 of a recognised expert as the new President of the AINPI, who has an unquestionable expertise on the subject and knowledge of the challenges to face.

To sum up, the existence of regulations for the protection of whistleblowers should be an opportunity for improving integrity in Spain and we should take advantage of it. The interviews with some of the relevant stakeholders suggest that the passing of these regulations raised expectations regarding the effective protection of whistleblowers. However, two years after the approval of the law, there are still relevant weaknesses in the regulation and its effective implementation that need to be addressed. Thus, in the next section we present target recommendations to keep working hard to avoid those expectations from turning into frustration.

Target recommendations

After the analysis of the empirical case study presented in the previous sections, below we propose several recommendations to improve the system for the protection of whistleblowers in Spain:

● More resources for protective measures

Currently, there are few protective measures effectively available to whistleblowers, especially in terms of legal advice, psychological support, and financial support. Even if these measures are foreseen in the law, by now, independent authorities do not have enough resources to guarantee these protective measures or, at least, not to the extent needed, considering the interviews with whistleblowers commented in this case study. In this sense, as this is a general weakness in most EU Member States, an open call for reliable NGOs from the EU Commission to fund the costs of providing these resources for legal counselling, psychological support and financial help for whistleblowers would likely be very welcome. It is also essential to ensure that public resources are not used to defend individuals accused by whistleblowers simply because they hold institutional positions.

PARTNERS

● Specific activities to facilitate sanctioning when needed

The empirical work reveals a general impression that regional authorities, despite already having the competencies to impose sanctions in cases of retaliation, are either not exercising this power or are rarely making use of it. In this regard, it could be interesting to organise targeted training for public officers of the AINPI, once it becomes operational, as well as for those in the regional authorities. These activities should aim to clarify the scope and limitations of their sanctioning powers and to facilitate the exchange of experiences regarding the difficulties encountered and possible solutions. It would also be necessary to clarify the procedure for enforcing the collection of any applicable sanctions through administrative enforcement measures. In practice, this will very likely require an agreement with the tax authorities to ensure effective collection of the economic sanctions.

● Prevision of more specific precautionary measures

The results of the empirical work, both the survey and the interviews, clearly show that whistleblowers are usually victims of retaliatory actions that can have very serious consequences in personal and labour terms. Thus, there is a clear need for a prevision of more specific precautionary measures to avoid these punishments of whistleblowers. The indication by the AINPI of potential precautionary measures to be applied and its example on the practical implementation of these provisions could be a central tool to inspire regional agencies for a more effective protection of whistleblowers. This enlargement of the precautionary measures could be especially useful to avoid retaliatory actions which are not a felony and, as explained above, are more difficult to prove and prevent.

● Correct the technical problems of the law

Despite the difficulties in changing the law, several technical deficiencies that have been commented on in the previous section should be corrected to ensure effective protection of whistleblowers. A legal reform in this sense should include at least the following reforms:

- Eliminate the two-year timeframe for protection (Article 36.4).
- Enlarge the material scope of the law (Article 2) to irregular actions that do not constitute a felony or serious administrative fault or, at least, to enlarge it in line with Article 5.1, ii of the Directive to include any breach that defeats the object or the purpose of the rules. For instance, the law should protect disclosures on breaches of ethical codes or irregular financial expenditures. The material scope should also be enlarged through the elimination of the limitations included in Article 2.4 and 2.5, which are not foreseen by the EU Directive. In this sense, the law should not exclude information protected by medical and legal professional privilege, the confidentiality duties of law enforcement bodies, judicial deliberation secrecy, and classified or secret information related to procurement procedures or essential national security interests.

- Regarding the subjective scope of the law (Article 3), particularly relevant should be that the law also explicitly and clearly protects the people in charge of internal channels against potential retaliatory actions. This protection could be included in the measures foreseen in Article 41 of the law, but more specific provisions are lacking. It should also be noted that legal persons do not appear to be explicitly covered by the law, even though they too may be subject to retaliatory actions and, thus, they should also be considered as potential subjects of protection.
- Eliminate the loss of protection in case of dismissal by the internal channel Article 35.2 a)) and the need to assess if the information disclosed is included in the objective scope of the law (Article 35.2 d)).
- Eliminate the right of those affected by the disclosure to receive equivalent protection to whistleblowers (Article 39).
- The law should also include specific provision about the mechanism allowing the agencies to adopt precautionary measures, which is essential to guarantee real and immediate protection for whistleblowers.

● Explore potential reforms in related laws, mostly the Criminal Code

The rush in the initial passing of the law is probably the cause of why some related regulations were not modified even if they could, in some senses collude with the objective of the protection of whistleblowers. This is clearly the case of the Criminal Code in relation to the felony of disclosure of secrets. The interviews to whistleblowers showed how in many cases they have been sued in the criminal jurisdiction for disclosing secrets, even if the law includes an exception to this felony in the case of whistleblowers (Article 38.5). Thus, probably the more useful mechanisms for protection in this regard would be through the training of judges on the specificities of whistleblowing cases.

● Training activities for judges and public prosecutors

In line with the recommendation of the EC official interviewed, there is a need to put in place new measures for the training of judges and public prosecutors on the existing legal framework for the protection of whistleblowers and how to implement it in practical cases. In fact, this training is especially relevant for the judiciary, but it would also be needed among all public officials that can be involved in situations that require to act against retaliation and protect whistleblowers, for instance, within the public prosecution, judicial police, internal channels in public and private entities, agencies with competences on the protection of whistleblowers, the labour inspection.

● Dissemination actions on the whistleblowers' protection framework

The lack of knowledge on the existing legal measures for the protection of whistleblowers is not only a problem among public officials who can be involved in such situations. To promote a culture of information and public integrity, it is also crucial that general citizens know that this institutional and legal framework exists and that there are means to protect them in case of disclosing information on potential wrongdoing. 67% of the survey respondents consider that dissemination actions on the rights of whistleblowers are not at all covered or slightly covered by the law (see Table A7 in page 106). However, in line with previous reflections in this study, this knowledge could easily turn into frustration if the expected protection does not work properly when needed. Thus, it is crucial to have effective protection and, at the same time, to be clear and realistic about the available resources and the difficulties that whistleblowers can face. On the contrary, 89% of survey respondents declare that they do not trust at all or only trust slightly in the external protection given by the Spanish law (see Table A12 in page 111).

● Promoting collaboration agreements among relevant public entities

To make the intricate institutional system for the protection of whistleblowers work correctly, it is also relevant to improve the collaboration and coordination between all public entities involved. In this sense, it could be useful to promote collaboration agreements between the different institutions that have, in some sense, competencies on the protection of whistleblowers and reinforce the existing collaboration network among the regional agencies with competencies in this area. These agreements should include, as a priority, the AINPI and the regional authorities, but collaboration should also be promoted with all public entities and independent agencies related to this protection, for instance, the labour inspection.

Conclusions on the Spanish case study

The analysis of the legal framework for the protection of whistleblowers in Spain presented in this study, along with its practical implementation, reveals both strengths and weaknesses. On one hand, significant deficiencies are identified in Law 2/2023 and in the existing institutional framework to protect whistleblowers. On the other hand, the existence of a specific legal instrument and the initial development of an institutional system to implement these measures effectively represent an opportunity to strengthen the Spanish integrity system that should not be disregarded.

The empirical work focused on interviews with relevant stakeholders and a survey to whistleblowers shows how a rushed approval of the law, after a long delay in the transposition of the Directive and under the threat of a sanctioning procedure by the European Commission, as well as the low political will in this first stage, ended in remarkable technical deficiencies both in the legal text and the institutional framework. Among these weaknesses, we should underline the delay in the creation of the AINPI, which is still not effectively functioning even if its President was appointed in April 2025.

The case study ends with the proposal of several recommendations that aim to take advantage of the existing legal and institutional framework and prevent the expectations that have been generated from turning into frustration. However, a clear political will is essential to seize this opportunity to promote public integrity in Spain.

4.2. The case of Portugal

General Findings

- **From Normative Fragmentation to Law 93/2021: A Constrained Step Towards Whistleblower Protection**

Prior to the transposition of Directive (EU) 2019/1937, Portugal's whistleblower protection framework⁷ was fragmented and underdeveloped. Protections were dispersed across multiple legal instruments, such as Law 93/99 (witness protection), Law 19/2008 (anti-corruption), and Law 83/2017 (anti-money laundering), but lacked coherence and enforceability. Scholars characterised the pre-directive regime as "timid and sparse," with enforcement by public authorities described as "weak and limited" (Brandão 2020, 112; Freitas 2021, 577). In the context of worker protection (private sector), Portuguese scholars and courts often assumed existing labour protections were sufficient for whistleblowers (Gomes 2016).

Directive 2019/1937 was transposed through Law 93/2021, passed just three days after the European deadline. The process was shaped by exceptional political circumstances: COVID-19 restrictions, the rejection of the 2022 State Budget, and the imminent dissolution of Parliament ahead of snap elections. Although whistleblower protection had been included in the National Anti-Corruption Strategy 2020–2024 (Governo de Portugal, 2020), the Law 93/2021 was passed during a compressed and politically unstable period, coinciding with the approval of a broader anti-corruption package (ECO, 2021).

Interviewees described the process as rushed: "There wasn't the care that I thought should have been taken in transposing the directive" (PT-PE3). Specific concerns were raised about the lack of coordination with existing legal regimes, particularly labour law and legislation related to religious secrecy, classified information, security, and the national defence sector (PT-PE2, PT-AC3). The absence of political consensus and insufficient previous policy analysis (PT-AC3) could, therefore, further explain the legislation's shortcomings, as explored in the following sections.

The institutional framework established to implement the law also reveals ongoing implementation challenges. MENAC, the authority responsible for oversight and enforcement, has faced delays in becoming fully operational. These obstacles suggest that institutional implementation has progressed more slowly than anticipated, raising questions about the degree of prioritisation afforded to whistleblower protection.

⁷ For a comprehensive list, Brandão (2020); Freitas (2021); Pinto (2021, 610–615).

Many of today's implementation challenges were already documented over a decade ago. One of the earliest assessments of whistleblower protection in Portugal, published in 2013 by the national chapter of Transparency International, highlighted several shortcomings.

These included the lack of a comprehensive legal protective framework, the absence of a dedicated body to receive complaints and monitor the situation of whistleblowers, negative public perceptions of whistleblowers and the justice system, the vulnerability of whistleblowers to legal retaliation (such as defamation lawsuits), and the lack of protection in the private sector and for certain public sector employees (TIAC 2013, 28). While the legal framework has since evolved with the transposition of the EU Directive, findings from this study suggest that some of these obstacles persist.

● Institutional Framework Challenges

The institutional framework created to support whistleblower protection in Portugal is somehow centred on MENAC, established by Decree-Law 109-E/2021. Although MENAC has administrative and financial autonomy, it has struggled to fulfil its mandate due to significant operational constraints.

As of late 2024 (MENAC, 2025b, p. 21), only 51% of MENAC's staff positions had been filled, largely because recruitment was limited to civil servant mobility mechanisms rather than open hiring. A recent legislative revision (Decree-Law 70/2025) did not appear to correct this misalignment fully.

In addition to human resource limitations, MENAC's legal mandate might reveal a structural misalignment. While Law 93/2021 covers a wide array of public interest violations, MENAC's mission, as set out in Article 2(3) of Decree-Law 109-E/2021 focuses narrowly on corruption and related offences. This thematic restriction could limit the institution's engagement with broader categories of wrongdoing that fall under the scope of whistleblower protection.

An interviewee (PT-AC4) highlighted that MENAC's national scope, unlike sector-specific regulatory authorities, may limit its effectiveness beyond producing guidelines. Another interviewee emphasised the absence of any institutionally embedded advocacy for whistleblower protection:

I don't see a body that speaks for whistleblowers or defends them
Interview PT-CO2

Decree-Law 70/2025 of 29 April did not revise Article 2 of Decree-Law 109-E/2021 to explicitly incorporate the broader set of public interest violations covered by Law 93/2021, particularly those relevant to whistleblower protection, a step that could have clarified and strengthened MENAC's mandate in this domain.

MENAC has prioritised educational outreach over enforcement. The institution⁸ has acknowledged widespread low awareness of both the General Corruption Prevention Regime (RGPC) and Law 93/2021 and has opted for a pedagogical approach. Notable recent efforts⁹ include the publication of a “Manual for Whistleblowers” (MENAC 2025a). However, its primary focus remains on bribery and corruption, reinforcing the persistent mismatch between institutional priorities and the broader scope of the law.

Positive Aspects of Law 93/2021

● Anonymity and Confidentiality Protections

Law 93/2021 introduced significant advancements in protecting the identities of whistleblowers through anonymity and confidentiality provisions. Interview participants consistently identified anonymity as a critical factor in encouraging reporting.

Anonymity (...) is what makes (...) the person feel safer and more protected
Interview PT-WB8

[The new regime creates] conditions so that, with greater security and protection of anonymity, all those who actually perform functions in organisations can report non-compliant situations.

Interview PT-PE2

Article 18 of Law 93/2021 establishes comprehensive confidentiality protections, restricting access to the identity of whistleblowers to authorised personnel only, with this obligation extending to anyone who receives information about complaints. Identity disclosure is permitted only through legal obligation or judicial decision (Article 18(3)), and whistleblowers must be notified in writing of any disclosure, except when it would compromise investigations (Article 18(4))¹⁰.

The law explicitly protects anonymous reporting across all channels. Both internal and external channels must accept written and verbal complaints, whether anonymous or identified (Arts. 10(1-3) and 14(1-2)). Importantly, anonymous whistleblowers who are subsequently identified retain full legal protection if they acted in good faith with reasonable grounds to

⁸ Information obtained through institutional consultation with MENAC via a virtual meeting conducted on May 6, 2025, as part of the research process for this report.

⁹ MENAC’s Guide No. 1 provides methodological guidelines for channel implementation but does not address whistleblowers directly (MENAC 2023).

¹⁰ However, as highlighted by Gonçalves, the exception allowing authorities to withhold notification about confidentiality breaches when it might compromise investigations raises concerns about potential indefinite non-disclosure without adequate oversight mechanisms. The author underlines that confidentiality and protection against retaliation constitute the primary framework of the law, suggesting that exceptions should be narrowly interpreted and carefully monitored (Gonçalves 2023).

believe their information was true (Article 6(2)). While the legal guarantee is in place, further procedural clarification is needed regarding when an anonymous whistleblower is later identified. Moreover, technical safeguards must ensure the security and confidentiality of all complaint data and prevent unauthorised access to it.

● Establishment of Reporting Channels

Law 93/2021 mandates the creation of internal channels across public and private sectors. Entities with 50+ employees and those listed in the Directive's Annex, regardless of size, must implement secure internal channels. Municipalities with ≤10,000 inhabitants and more than 50 employees are exempt. Private-sector entities with 50–249 employees may share reporting mechanisms for receiving and following up on reports.

Under certain conditions, such as when internal reporting is ineffective or inappropriate or there is a risk of retaliation, external channels may be used (Article 7(2)). The law provides a list of authorities who must implement external reporting channels (Article 12(1)).

Both channel types must acknowledge receipt within seven days and respond within three months, with an extension to six months for complex cases (Arts. 11 and 15). Public disclosure is permitted only under strict conditions, such as imminent danger or systemic channel failure (Article 7(3)). Public reporting is legally permissible, but only under specific and restrictive conditions, such as an imminent danger to the public interest or a lack of effective response to prior internal and external reports.

According to data from the MENAC platform,¹¹ approximately 6,500 entities are registered on the platform, with 6,459 successfully establishing whistleblowing channels. This widespread implementation represents a fundamental shift in Portugal's approach to whistleblower protection, creating formalised pathways for reporting that previously did not exist in many organisations. However, the quality of these internal mechanisms has yet to be verified¹².

● Explicit Prohibition of Retaliation

Law 93/2021 explicitly prohibits retaliatory acts against whistleblowers (Article 21(1–3)), introducing a crucial shift in the burden of proof. The law lists adverse employment measures that, occurring within two years of disclosure, are presumed retaliatory unless employers prove legitimate motives (Article 21(6)), with disciplinary sanctions during this period presumed abusive (Article 21(7)). Whistleblowers are entitled to compensation for material and non-material damages (Article 21(4)).

¹¹ The RGPC Platform provides a digital tool for submitting to MENAC the documents related to the compliance program components required by the RGPC, such as their corruption risk prevention plan, code of conduct, training program documentation, and whistleblowing channel.

¹² As mentioned by MENAC's representative via virtual meeting conducted on May 6, 2025, as part of the research process for this report.

This prohibition represents a crucial advancement, as Portuguese courts have historically upheld dismissals of employees who reported wrongdoing, revealing a limited recognition of whistleblowing's societal value (Brandão 2020). These rulings occurred in sectors lacking specific whistleblowing regulations, where workers faced termination or other disciplinary measures for reporting¹³.

Article 26 further strengthens protection by declaring null and void any contractual provisions that restrict reporting, addressing the historical use of “gag clauses” in various forms. While Gomes notes that post-contractual confidentiality agreements may remain generally valid, they cannot impose liability on whistleblowers making protected disclosures. However, such clauses may still create a chilling effect if whistleblowers do not understand their limited enforceability (Gomes 2021).

● *Recognition of support measures*

Law 93/2021 establishes comprehensive support measures for whistleblowers through Article 22. The law guarantees whistleblowers' right to legal protection under general terms (Article 22(1)) and extends witness protection measures typically reserved for criminal proceedings to whistleblowers (Article 22(2)). It mandates inter-institutional cooperation for protection, requiring competent authorities to provide necessary assistance and collaborate with other authorities, including issuing certifications confirming whistleblower status (Article 22(3))¹⁴. The Directorate-General for Justice Policy must provide information about whistleblower protection on the Justice Portal (Article 22(4)). Article 23 reinforces these provisions by guaranteeing adequate judicial protection and full access to courts for defending legally protected rights and interests.

¹³ In the first case, an employee of a butcher shop submitted an anonymous complaint to sanitary authorities regarding hygiene violations and non-compliance with health safety regulations. Despite the anonymity attempt, the employer's legal team successfully identified the whistleblower through the complaint documentation, leading to disciplinary proceedings and eventual dismissal. The court upheld the termination, establishing two problematic precedents: first, that employee confidentiality duties extend to employer legal violations unless they constitute criminal offenses, and second, that attempting to maintain anonymity serves as evidence of the employee's awareness of contractual breach. The court further noted the employee's failure to demonstrate either the truthfulness of the allegations or prior internal reporting attempts (Acórdão Tribunal da Relação de Coimbra de 27/09/2012, Processo n.º 471/11.OT4 AGD.C1, Relator Luís Miguel Ferreira de Azevedo Mendes). In the second case, an employee filed a non-anonymous complaint with workplace safety enforcement authorities. Despite the transparency of this approach, the court again ruled in favour of the employer, justifying the dismissal based on insufficient evidence substantiating the reported violations (Acórdão do Tribunal da Relação do Porto de 08/10/2012, Relatora Paula Leal de Carvalho, Processo n.º 346/11.2TTVRL.P2) (Brandão 2020; Gomes 2015, 2016).

¹⁴ While Law 93/2021 extends witness protection measures to whistleblowers, Marques (2021, 593–594) explains that these measures are subject to strict legal requirements because they are, by definition, exceptional. Therefore, the high threshold and strict requirements mean such protection should only be available in the most extreme cases. See also Patrício (2022).

Critical Limitations and Implementation Gaps

● Limitations in Material Scope

Restricted coverage and thematic exclusions

As previously noted, Portugal not only incorporated all matters listed in Article 2 of the EU Directive but also made use of its discretion to broaden the material scope, notably by including areas such as corruption and serious organised crime. However, the law does not extend protection to disclosures concerning serious workplace misconduct, such as sexual and moral harassment, as well as human trafficking. Although the Directive does not mandate their inclusion, Portugal had the discretion to expand the scope.

As a result, harassment cases fall under the Portuguese Labour Code rather than the whistleblower protection regime. Silva notes that when employers allow such matters to be reported through whistleblowing channels, they must clearly inform employees that these are not covered by Law 93/2021 and must be handled through labour law procedures (Silva 2023, 335).

This exclusion has practical and legal consequences. In a recent decision, the Portuguese Supreme Court clarified that harassment in the workplace is not among the areas protected under Law 93/2021. Therefore, confidentiality internal rules modelled after the whistleblower regime cannot be used to restrict access to evidence in disciplinary proceedings. The Court emphasised that the Labour Code, which guarantees the right to a full defence, takes precedence in such cases (Supremo Tribunal de Justiça 2024).

This division between protected and unprotected areas creates what some commentators describe as a “two-speed” protection system, somehow incoherent, if “the national legislator does not protect whistleblowers from violations of domestic law with the same intensity” (Gomes 2021, pp. 162–163, and footnote 35 citing Klaus Ulrich Schmolke). Such asymmetric protection could discourage individuals from reporting serious misconduct.

Broad exclusions and exemptions

In addition to thematic limitations, Law 93/2021 includes specific exclusions that narrow the scope of protection in sensitive areas. Article 2(2) restricts protection in defence and security contexts to breaches of EU procurement rules. Article 3(3)(a) excludes all classified information, and other provisions extend exemptions related to professional and judicial secrecy beyond what the Directive requires. For instance, the law includes religious and journalistic confidentiality, as well as broad exemptions covering judicial activities beyond deliberations. Neves (2024, 253–254) argues that these expanded exemptions could weaken protection by exposing whistleblowers to potential liability in many scenarios.

The European Commission has similarly criticised overly broad exclusions as emphasising that Member States must carefully balance national security and confidentiality with the need for effective protection, according with the Directive’s objectives (European Commission 2024).

Possible conceptual ambiguity

Finally, Law 93/2021 introduces key concepts, such as “public health,” whose meaning is not clearly articulated within the law itself. While definitions may exist in other legal instruments, the absence of explicit references or guidance within the whistleblower protection framework raises concerns about how such terms will be understood by potential whistleblowers in practice. Interviewees (PT-WB5 and PT-PE3) raised concerns that this vagueness could create uncertainty for potential whistleblowers. The European Commission has emphasized that legal certainty is essential for effective whistleblower protection. Individuals must be able to fully understand their rights and the conditions for protection and make informed decisions about reporting without risking exclusion due to vague or ambiguous rules (European Commission, 2024).

● Personal Scope Limitations

Obligated entities and the Portuguese reality: rethinking size thresholds

Law 93/2021 limits the obligation to establish internal reporting channels to entities with 50 or more employees, in line with the threshold set by the EU Directive. However, this threshold excludes a significant portion of Portuguese organisations, particularly those in the public sector, where many bodies fall below this size (L.F.M. Almeida 2023). Moreover, given the prevalence of small private legal persons in Portugal,¹⁵ this could reduce the law’s practical reach.

¹⁵ According to data from Pordata (the Portuguese official statistics database), in 2023, Portugal had a total of 1.510.274 active enterprises. Of these, 1.450.548 were classified as micro-enterprises (employing fewer than 10 individuals) and 49.794 as small enterprises (employing between 11 and 50 individuals). Collectively, these two categories represent approximately 99,3% of the total. Consequently, only about 0,7% of Portuguese companies employed more than 50 workers (Pordata).

While external channels remain available, the lack of internal mechanisms in small entities (particularly given that 75% of survey respondents identified not knowing how or where to report as a very important deterrent – question A1), may discourage early-stage reporting and reduce opportunities for timely internal resolution, even though many of these entities manage public funds or operate in high-risk sectors. One interviewee (PT-WB5) criticised this legal threshold, emphasising that these entities regularly manage significant resources, including public procurement processes, international and European funding. As the interviewee mentioned, they pose substantial corruption risks despite their smaller size, yet they are not legally required to have codes of conduct, corruption prevention plans, or whistleblowing channels and procedures to handle reports. Importantly, in the absence of a mandatory code of conduct, these organisations may lack formal standards of behaviour to guide the handling of whistleblower complaints, monitoring mechanisms, or sanctioning procedures. This gap may leave them unprepared to respond to complaints, often resulting in ad hoc responses, a lack of follow-up to whistleblowers, and improper disclosure of sensitive information regarding the reports they receive.

Conversely, in family-based firms or closely held entities, where interpersonal ties and informal hierarchies can influence decision-making and confidentiality may be harder to ensure, the viability and perceived trustworthiness of internal channels may require careful consideration. Therefore, it is necessary to assess whether the current threshold remains appropriate to ensure effective access to reporting channels and whistleblower protection in the Portuguese context, or whether alternative solutions should be implemented.

The law allows for certain forms of resource sharing. Private-sector entities with 50 to 249 employees may jointly manage reporting procedures (Article 8(2)), and local authorities are permitted to share reporting channels (Article 8(7)). However, as Almeida (2023) highlights, referring to the public sector, these mechanisms remain underused. Both public and private entities could benefit from greater use of shared infrastructures (such as inter-municipal platforms or centralised reporting services) to expand protection coverage without imposing disproportionate burdens or compromising confidentiality.

Exclusion of Key Support Actors in the Protection Framework

Safeguarding Compliance and Investigation Personnel

The law lacks explicit protection for those who manage reporting systems or investigate whistleblower complaints. As one interviewee noted, these individuals often work within closely networked environments, including family-owned businesses, where internal dynamics can create pressure:

*We talk a lot about protecting whistleblowers,
but what about those who investigate the case?*
Interviewee PT-CO2

Survey results reinforce this concern: 66,7% of respondents identified informal power structures as a major barrier to effective whistleblower protection (able A11 in page 137). Without safeguards, those responsible for implementing internal investigations remain vulnerable to retaliation or manipulation.

This issue is not unique to Portugal. In the U.S., compliance officers in sectors such as securities and employment law have been denied whistleblower protections on the grounds that their roles fall outside legal definitions. As the authors argue, this legal gap discourages proactive oversight and undermines internal accountability systems (Boles, Eisenstadt, and Pacella 2025).

While the Directive does not require such protections, Portugal could have taken the opportunity during transposition to align the framework with the structural realities of Portuguese organisations.

Legal entities and facilitators: Limitations of the current protection framework

Law 93/2021 reflects the framework established by the EU Directive for legal entities acting as whistleblowers or facilitators. Under Article 6(4)(c), legal persons are afforded protection solely when explicitly linked to a natural person whistleblower through direct professional or control-based ties. This provision, however, significantly limits the capacity of organisations, particularly NGOs, to independently report wrongdoing or support whistleblowers effectively without risking their exposure to retaliation.

Pinheiro (2022) argues that organisations are recognised in Portugal as independent legal actors. Therefore, recognising legal persons as whistleblowers could enhance reporting and reduce risks to individuals.

Similarly, the concept of “facilitators” delineated in Article 6(4)(a) primarily encompasses natural persons and does not sufficiently extend protection to independent civil society organisations. Although Article 6(4)(c) extends protection to entities “controlled by” or professionally linked to the whistleblower, this does not cover independent NGOs without formal ties, for example. This provision creates a protection gap for civil society actors who enable disclosures in the public, a function supported by organisations like Transparency International. As interviewee PT-AC3 noted, the exclusion of NGOs as legitimate intermediaries could weaken the support network for whistleblowers.

Although the Directive does not explicitly include legal entities such as NGOs as facilitators, Portugal could have adopted a broader transposition approach, particularly given the essential role that organisations like Transparency International play in supporting whistleblowers.

- Conditions for protection

The “good faith” and “serious ground” requirements for protection

Portuguese Law 93/2021 transposes Article 6(1) of the Directive by requiring both “good faith” (“*boa-fé*”) and “serious grounds” (“*fundamento sério*”) for protection, seemingly introducing a dual condition not found in the Directive, which requires only “reasonable grounds to believe” the report was accurate at the time.

This cumulative requirement risks diverging from Recital 32 of the Directive, which states that the whistleblower’s motives are irrelevant for protection. The use of “and” (“*e*”) implies that even with objectively reasonable grounds, protection may be denied if subjective good faith is questioned. However, legal scholars argue that these criteria must be interpreted restrictively, aligning with the Directive’s standard, i.e., protection should apply unless the person knew the information was false (Gomes 2021; Neves 2024). It remains unclear, however, whether or how this interpretation will be adopted in practice.

The European Commission has raised similar concerns in its 2024 implementation report, noting that some Member States may have incorrectly transposed Article 6(1) by incorporating motive-based elements. The report reiterates that reporting incorrect information by honest mistakes do not disqualify whistleblowers from protection and that motives should not be a factor (European Commission 2024, 5).

In response to these concerns, one of the recommendations is to amend Article 6 of Law 93/2021 by removing the cumulative “good faith” and “serious grounds” requirement, aligning the standard with the Directive’s provision of “reasonable grounds to believe,” regardless of the whistleblower’s motives.

Scope of Protection Against Retaliation

The Directive offers a broad and non-exhaustive list of retaliatory acts in Article 19, while Article 21(5) establishes protective measures against retaliation by shifting the burden of proof. Under this provision, when a whistleblower demonstrates before a court or other authority that they made a report or public disclosure and subsequently suffered detriment, it shall be presumed that the detriment constitutes retaliation. Notably, the Directive establishes no time limit for this presumption to apply. In such cases, the burden falls upon the person who took the detrimental measure to prove that it was based on duly justified grounds unrelated to the whistleblowing.

Article 21(2) of Law 93/2021 sets out a broad definition of retaliatory acts, as mentioned. However, paragraph 6 of the same article introduces a closed list of situations in which retaliation is presumed to have occurred within a two-year period. This list omits several forms of retaliation explicitly mentioned in Article 19 of the Directive, such as coercion, intimidation, social ostracism, and harassment (Gomes 2021, 190–191; Pinheiro 2022, 40, both interpreting that Article 21(6) encompasses a closed list).

Therefore, despite the general definition of retaliation, only acts listed under 21(6) benefits from the burden-of-proof reversal. As a result, whistleblowers may face the burden of proving intent in cases of excluded acts, potentially weakening protections.

The two-year presumption period also presents challenges. Gonçalves (2023, 146) highlights that criminal proceedings, particularly those involving organised and violent crime, frequently exceed two years. Consequently, whistleblowers might find themselves unprotected after this period expires, facing the substantial burden of proving, often with considerable difficulty, that acts or omissions against them constitute retaliation.

Interviewees noted that retaliation can be delayed or persist well beyond two years (PT-WB3, PT-WB2 and PT-WB10), especially in corruption-related cases where investigations are prolonged. Experts noted that the short duration of the presumption period could discourage the reporting of wrongdoing harmful to the public interest (PT-AC2), and whistleblowers might feel more secure and protected if this period were extended (PT-AC5). These concerns align with the Commission's 2024 report, which criticises Member States for setting such fixed protection periods (European Commission 2024, 8).

Another issue is the lack of specific provisions in Law 93/2021 addressing sanctions for vexatious legal actions, despite Article 23(1)(c) of the Directive requiring deterrents against such retaliation. As noted by Gomes, the law does not engage with some of the structural challenges faced by whistleblowers in litigation, such as power asymmetries and the lack of specific mechanisms to deter abusive legal action against them (Gomes 2021, 192).

As part of its Anti-Corruption Agenda, the government has announced plans to revise whistleblower protection legislation, including an evaluation of Law 93/2021, specifically the two-year presumption period and the anti-retaliation framework (XXIV Governo 2024, 27–28). The agenda also refers to the new SLAPP Directive (Directive (EU) 2024/1069), although this instrument primarily targets civil and commercial cases. Interviewees emphasised the need for procedural safeguards in criminal contexts and a more active role for public prosecutors in upholding protections (e.g., PT-WB1, PT-WB5, PT-WB6).

The Commission's 2024 evaluation report reinforces these concerns, criticising Member States that failed to correctly transpose the penalties for vexatious proceedings by not laying down a specific penalty or by not including a cross-reference to other relevant legislation (European Commission 2024, 9). While the Portuguese legal system addresses the abusive use of judicial mechanisms through general procedural norms and the Penal Code, the recommendations of this study include incorporating explicit safeguards into Law 93/2021 to provide more targeted protection and help reinforce the overall legal framework.

● Procedural Shortcomings

Internal channel precedence requirements

Law 93/2021 establishes a hierarchy that prioritizes internal reporting. Article 7(2) permits reporting to external channels only under certain conditions: absence or inaccessibility of internal channels, risk of retaliation, lack of timely response, or when the whistleblower has “reasonable grounds” to believe internal resolution is unlikely.

Scholars question this approach. Gomes describes it as a “weak priority” considering the Portuguese legislative option “rather complex” (Gomes 2021, 178–181). Pinheiro, referencing Recital 33 of the Directive, argues that Portuguese law unnecessarily restricts whistleblowers’ choices and increases their exposure to retaliation (Pinheiro 2022, 38–39). Gonçalves adds that the “reasonable grounds” criterion is vague, generating legal uncertainty and will require further interpretation by courts and legal doctrine. The author asserts that, to receive the legal protections offered by the law, whistleblowers must properly substantiate such grounds, as merely stating them would not suffice (Gonçalves 2023, 140). This requirement could burden whistleblowers with having to justify their decision to report externally, potentially having a chilling effect, since individuals need to feel safe and comfortable when reporting.

The Directive encourages internal reporting but does not impose it as mandatory. Article 7 establishes that “information on breaches may be reported through the internal reporting channels,” thereby creating a preferential, rather than compulsory, framework. Crucially, Recital 33 reinforces this interpretation by stating that “the reporting person should be able to choose the most appropriate reporting channel depending on the individual circumstances of the case. The European Commission has highlighted that several Member States have incorrectly mandated internal-first obligations or restricted direct external reporting (European Commission 2024, 5). Portugal’s approach appears to align with these non-compliant practices.

Interview data reinforces these concerns. Respondents (PT-CO1, PT-CO2) noted that the procedural conditions are difficult to interpret, especially for individuals without legal training.

Considering these concerns, the recommendations include removing the prioritisation of the internal channel under Article 7(2), aligning the legal framework with the Directive’s intention to allow whistleblowers to choose the most appropriate reporting path based on their circumstances, without having to justify or substantiate that choice in advance.

Aligning Legal Frameworks

Despite progress in establishing reporting channels and whistleblower protections, Portuguese law still lacks a clear legal framework for internal investigations in the public sector. Serra argues that the public sector currently lacks comprehensive normative frameworks that define internal investigations in the context of Law 93/2021. According to the author,

there are no specific rules outlining the investigative phases, establishing the authority and competencies of investigators, or clarifying the rights, duties, protections afforded to employers, whistleblowers, and accused parties, guidelines regarding evidence collection procedures, their limitations, and applicable statute of limitations (Serra 2023, 216; 218).

Another point is the handling of confidentiality and due process when labour law governs the relationship. Whistleblower protections demand confidentiality and often anonymity, while labour law guarantees the accused employee's right to access evidence. Pinheiro emphasises the need to balance the employer's duty to investigate misconduct and the obligation to protect the whistleblower's identity, proposing the use of confidential or anonymised disciplinary procedures whilst ensuring due process (Pinheiro 2022, 60–61). In the same vein, Silva suggests two distinct versions of the disciplinary files: a complete version with restricted access, and an anonymised or confidential version provided to the accused, ensuring their right to defence without compromising the whistleblower's protection (Silva 2023, 348–349).

Interviewees highlighted a potential gap in the articulation between whistleblower protection against retaliation and access to unemployment benefits. PT-CS2 noted that the law remains vague regarding compensation and questioned whether a whistleblower who suffers retaliation, such as dismissal, would be automatically entitled to benefits, as is the case with contested dismissals. PT-AC5 expanded on this aspect, explaining that while a worker dismissed in retaliation would ultimately be eligible for benefits if the dismissal is found unlawful by a court, in practice, the initial application could be rejected. This is because Social Security services typically require evidence that the dismissal was not due to the worker's actions. Without appropriate documentation, such as proof that the worker has initiated legal proceedings challenging the dismissal, the request may be denied. PT-AC5 suggested the need for legislation establishing institutional coordination between courts and the social security authority. Such coordination would enable preliminary verification of whether a case falls under whistleblower protection, preventing an unjust denial of benefits during ongoing litigation.

● ***Institutional Coordination of External Reporting Channels***

Article 12 of Law 93/2021 allows various public authorities to operate external reporting channels; however, this decentralisation appears to create coordination challenges. The co-existence of parallel channels seems to generate confusion among whistleblowers regarding the appropriate authority to handle specific reports, often resulting in duplicated or misdirected submissions.

Survey data indicates limited knowledge or confidence in how to report wrongdoing: 33,3% of respondents reported very low awareness ("not at all" or "slightly"), and another 25% indicated only a moderate understanding (Table A12 in page 138).

According to the MENAC's annual report, a large share of the reports received by the institution were considered unfounded, implausible, or repetitive (MENAC 2025b, 88–91).

PT-PE4 noted that repeated submissions to multiple institutions frequently result in the same complaint being processed several times, both through direct reports and inter-institutional referrals, which could overburden administrative capacity.

To mitigate the institutional dispersion created by the multiplicity of competent authorities and external channels (Article 12), the recommendations of this study include the establishment of formal coordination protocols between authorities and the creation of a dedicated Whistleblower Support Office.

● Absence of Targeted Support Mechanisms

Lack of psychological support provisions

Although the EU Directive acknowledges the importance of psychological support for whistleblowers, Portugal's transposition via Law 93/2021 does not include any formal provision in this area. While the Directive uses discretionary language ("may"), the choice not to include this support overlooks its importance.

Survey data reflect the strong demand for psychological support: 91,7% of respondents deemed psychological support "very important" for effective protection, and the remaining 8,3% rated it "important" (Table A6 in page 132). However, only a marginal share of respondents (8,3%) find this aspect well protected or "somewhat protected" (8,3%) under Portuguese law¹⁶ (Table A8 in page 134).

Interview data reinforce these findings. Several participants (PT-WB1, PT-WB2, PT-WB3, PT-WB9, PT-WB10) described experiences of severe stress, anxiety, and long-term psychological impact following their disclosures.

These findings underscore the need for specific, timely, and easily accessible psychological support mechanisms.

Support implementation deficiencies

The implementation of support provisions under Law 93/2021 is limited, fragmented, and seems to lack the institutional backing necessary to make them operational in practice. While it nominally aligns with the Directive, key measures, particularly access to legal information and guidance, are insufficient in practice.

Article 21(5) allows whistleblowers to request protective measures, but operationalising this right requires navigating complex and crossing legal domains without integrated support.

¹⁶ This perception may stem from general mental health services provided by the National Health Service, such as psychology appointments or the counselling line. However, consultations are often inaccessible due to long wait times (Renascença 2024).

A key implementation deficiency concerns the lack of clear procedures and information for certifying whistleblower status, as outlined in Article 22(3) of Law 93/2021. While the law mandates that competent authorities collaborate with each other to grant protection and issue such certificates, the absence of public procedural guidelines targeting whistleblowers means that they may remain unaware of this possibility. No standard form, procedural timeline, or designated authority, apart from the mention of “competent authorities”, has been established to determine how and under what conditions individuals can request or obtain formal recognition as whistleblowers entitled to protection.

Furthermore, the obligation under Article 20(1)(a) of the Directive to provide comprehensive, independent, and easily accessible advice seems inadequately met. Although the Directorate-General for Justice Policy (DGPJ) is responsible for information dissemination, the Justice Portal lacks completeness, clarity, and navigability. Some pages contain placeholder text¹⁷ or are difficult to locate, falling short of the Directive’s requirements for proactive and user-friendly access. Legal aid mechanisms are similarly inadequate. Existing guidance focuses on general eligibility for low-income individuals and fails to clarify whether or how these provisions apply to whistleblowers (DPGJ). This ambiguity could lead to legal uncertainty and discourage potential whistleblowers from seeking protection.

The reliance on online dissemination assumes both digital literacy and internet access, overlooking the barriers faced by vulnerable groups. It also overlooks the contextual complexity of real-world whistleblowing, which often necessitates individualised, professional guidance.

The European Commission has criticised Member States for limiting support to online content without ensuring meaningful access to advice (European Commission 2024, 7). Portugal’s current model seems to fit this pattern.

Interview data underscore the need for specialised and sustained legal support. Whistleblowers reported both the high cost and the limited availability of qualified legal representation¹⁸ (PT-WB7) and noted that such support must be ongoing and encompass legal, informational, and psychological assistance, including financial provision for legal services (PT-WB9).

To address this institutional fragmentation, we recommend the creation or formal assignment of a public office explicitly dedicated to supporting whistleblowers throughout the reporting process. This structure should consolidate key support functions, including psychological assistance, legal counselling, procedural guidance, and case follow-up, in a single, coordinated framework. Crucially, it must be independent and adequately staffed and financed. Without sufficient human and financial resources, as exemplified by the persistent staff capacity deficits of MENAC, any such structure risks replicating existing limitations rather than resolving them.

¹⁷ E.g., the only information available is: “Title 1 – Text,” “Title 2 – Text” (DPGJ).

¹⁸ Transparency International Portugal’s report, based on whistleblowers’ experiences, already noted the disparity between whistleblowers’ legal representation, typically provided by individual lawyers, often pro bono, and that accessible to accused parties, frequently provided by law firms with greater human resources and expertise (TIAC 2013, 26–27).

PT-WB10 suggested establishing “a whistleblower protection office” that would integrate legal aid, psychological counselling, and follow-up, “like what exists for victims of domestic violence,” they noted. The Transparency International Portugal’s report on also recommended the creation of a designated body (although with broader competencies) to provide support, advice, and legal counsel to potential whistleblowers (TIAC 2013, 33).

Whistleblower Experiences with Lack of Institutional Support

Interview data indicate that while whistleblowers occasionally receive respectful and attentive treatment at the beginning of the reporting process, institutional support often deteriorates as the case progresses.

PT-WB10 described an initial phase marked by professionalism and responsiveness, including timely communication and procedural guidance, which later declined. Later, they reported difficulties in obtaining updates or information, describing the need to “insist repeatedly just to get any information,” which highlighted a shift from proactive communication to minimal or reactive engagement.

Lack of institutional support can also come from the employer. PT-WB2, who received support from authorities, including advice, work referral, and the possibility of protection, reported a sense of disloyalty by organisational leadership, who were perceived as complicit with those responsible for the wrongdoing.

One interviewee (PT-WB8) described being treated as a mere procedural source rather than as an individual entitled to protection. Investigators, they noted, engaged only to extract information, with no regard for their well-being. This participant explicitly stated that, given the lack of follow-up and support, they would not report misconduct again under similar circumstances.

*I helped them so much, and in the end, I was left completely alone.
Not even the Public Prosecutor’s Office offered support.
Interview PT-WB8*

These accounts suggest a pattern in which institutional responses have frequently failed to provide sustained and meaningful support, contributing to a sense of abandonment. While most of these experiences reflect limitations that predate the current legal framework, they seem to shape how whistleblowers perceive institutional protection today. This underscores the urgency of translating formal legal safeguards into credible and long-term institutional support.

Knowledge and Awareness Deficit

● Knowledge Gap Analysis

The findings suggest a widespread lack of knowledge regarding whistleblower protection mechanisms.

Interviewees across all stakeholder groups identified poor communication and insufficient guidance¹⁹ as a significant concern. Whistleblowers reported limited awareness of procedural steps, relevant authorities, and available protections. As PT-WB10 explained, “Most people don’t know how to structure a complaint; secondly, they don’t know who to turn to.” Three whistleblowers interviewed were unaware of the content of Law 93/2021.

Another aspect is the technical nature of the legal language used in Law 93/2021. The lack of plain-language materials that can help potential whistleblowers understand their rights and obligations appears to exacerbate this barrier. An expert highlighted that the complexity of the law, coupled with the fear of reprisals, could become a barrier to reporting (PT-AC1).

The law is made for lawyers, and people don’t read laws.

They don’t understand what is written.

Interview PT-WB5

Survey results appear to reinforce these concerns. When asked whether they knew their rights in the context of filing a complaint (Table A12 on page 138), only 25% of respondents said “extremely,” while 50% responded “moderately,” and 16,7% answered “not at all.” A similar distribution was observed in responses regarding knowledge of how to report wrongdoing and awareness of being protected under the law. These patterns indicate a fragmented and uncertain understanding of core legal guarantees. Paradoxically, as mentioned, 41,7% of survey participants indicated being extremely inclined to report corruption.

Public officials also reported a high volume of reports that fall outside the legal framework. Several attributed this to a lack of public understanding regarding what constitutes a whistleblower report under Law 93/2021. Other observed that many submissions were vague, anecdotal, or lacked supporting evidence (PT-PE5).

*A substantial proportion of the reports received through our channel
do not meet the legal criteria.*

Interview PT-PE3

Survey data from questions A7 (informational aspects covered by Portuguese law), A8 (aspects protected under Portuguese law) and A10 (retaliation-protection aspects covered by the Portuguese law) reveal that between 8.3% and 16.7% of respondents selected “don’t know” across several items, further evidencing the knowledge gap (Tables A7, A8 and A10 on pages 133, 134 and 136).

¹⁹ As mentioned, MENAC has issued a Guidance for Whistleblowers, but it focuses on corruption (MENAC 2025a).

There appears to be a discrepancy between respondents stated intentions and their perceptions of how whistleblowing occurs in practice. While 41,7% of survey participants reported being “extremely” likely, and 25% “very likely,” to denounce corruption if they became personally aware of it (Table A12, page 138), responses to question A2 reveal pessimism regarding real-world whistleblowing frequency. Specifically, 91,7% of respondents believe that whistleblowing occurs “rarely,” and only 8,3% consider it to happen “sometimes.” No respondent selected “often” or “very often”. This gap suggests that, despite a strong individual commitment to integrity, whistleblowing is still perceived as an exceptional act rather than a normalised practice. Such findings reinforce the conclusion that legal reforms have yet to produce a significant shift in institutional trust, perceptions of the effectiveness of protection, or even cultural acceptance of whistleblowing.

A critical but overlooked aspect of the current awareness gap concerns training legal and investigative professionals to handle whistleblower cases. Interviewees highlighted the need for targeted training not only for compliance officers and channel operators but also for magistrates, public prosecutors, and police authorities (PT-AC5, PT-PE3).

Taken together, these findings appear to indicate a persistent and multidimensional knowledge gap. Without significant investment in clear, accessible, and targeted information strategies, the legal protections introduced by Law 93/2021 risk being ineffective in practice.

● Cultural obstacles to whistleblowing

While the legal framework establishes robust safeguards for anonymity and confidentiality (previously mentioned as a positive aspect of the law), interview data reveal that these protections may be challenging to uphold in practice, particularly in small or networked organisational environments, where maintaining whistleblower identity can be difficult despite formal guarantees. This limitation is both structural and cultural, which could impact the effectiveness of protection.

Whistleblowing in Portugal remains significantly constrained by cultural stigmas that frame reporting as a breach of social and moral loyalty. Historical and symbolic legacies continue to influence contemporary attitudes. As mentioned in the introduction, scholars have linked these dynamics to the authoritarian past, during which denunciation was associated with political repression and betrayal. Religious-cultural imagery, such as the comparison of whistleblowers to Judas Iscariot, and expressions like “acusa Cristo” or “bufo,” continue to reinforce these stigmas (Almeida 2022; De Sousa and Triães 2009).

Interview data reveal that these cultural narratives are still active in professional and social settings. Several whistleblowers reported being discredited or isolated after making disclosures. One participant noted that loyalty is typically extended to the authority figure, even when misconduct is evident. Thus, in workplace contexts, speaking out is often seen as disloyalty to the group. Another interviewee further noted the social rejection of anonymity since although anonymity is protected by law, cultural norms continue to associate it with cowardice or illegitimacy.

*In Portugal, when a student reports a teacher's misconduct,
the rest of the class sides with the teacher
Interview PT-WB7*

*An anonymous report? First reaction: It goes to the trash. [...]
It has no importance whatsoever.
Interview PT-WB6*

Cultural pressures are particularly intense in small institutions or highly interconnected organisations, where social proximity increases the risk of exposure. In the context of smaller entities lacking compliance procedures like internal rules or codes of conduct, PT-WB5 emphasised that “everyone knows who reported what,” exposing whistleblowers to gossip and retaliation.

These findings suggest that legal protections alone are insufficient if not accompanied by sustained efforts to shift public and institutional attitudes. Institutional responses also reflect cultural resistance. One participant recalled an old case where prosecutorial focus was directed at identifying the whistleblower rather than investigating the substance of the report (PT-PE2), highlighting an institutional culture where confidentiality was not always prioritised.

Survey data corroborate these observations. In response to question A1, 58,3% of participants identified negative social attitudes toward whistleblowers as a “very important” deterrent. Additionally, 25% highlighted the perception that reporting is unprofessional, while 33,3% adopted a neutral stance, suggesting this view may be context-dependent but still present. Notably, 25% of respondents agreed with the statement that “everyone knows about these cases, and no one reports them,” suggesting the normalisation of silence in organisational contexts.

Together, these results suggest that whistleblowers in Portugal operate within an unsupportive cultural context, where reporting is discouraged and often perceived as a betrayal of social and professional norms. Addressing this challenge will require cultural change initiatives in conjunction with institutional and legal reforms.

Target recommendations

Portugal's transposition of Directive (EU) 2019/1937 through Law 93/2021 marked a major legal milestone. However, multiple gaps (legal, institutional, and cultural) could undermine its practical effectiveness. These are not limited to issues of transposition; rather, they reflect a missed opportunity to extend protections beyond the minimum standards set by the Directive. In the 2024 Anti-Corruption Agenda, the government announced its intention to revise Law 93/2021, including a review of the two-year retaliation presumption and other aspects. Although no concrete steps have yet been revealed, this statement constitutes a critical window of opportunity to pursue meaningful and evidence-based reforms.

Immediate Measures

● Initiate and conclude a formal evaluation of Law 93/2021

Recommendation: Urge the Government to initiate an independent evaluation of Law 93/2021, as committed to in the 2024 Anti-Corruption Agenda.

This assessment must address at least the following aspects:

- **Material scope:** The law currently does not apply to broad national law. The current material framework creates a fragmented protection regime, undermining the principle that whistleblowing is in the public interest, regardless of the type of misconduct.
 - Assess the need to amend Law 93/2021 to expand coverage, ensuring comprehensive protection regardless of the legal classification of wrongdoing.
- **Conceptual ambiguity:** Terms like “public health” are not clearly specified within the whistleblower protection framework, which could deter reporting and lead to legal uncertainty. There is a need to harmonise and standardise key terms across administrative and legal instruments.
 - Assess the need to (a) develop clear legal definitions for all ambiguous terms in the law, (b) create a standardised glossary applicable across all relevant legislation, and (c) publish official interpretative guidelines to ensure consistent understanding and application.
- **Limited personal scope:** The law excludes most small public bodies and private entities due to the 50-employee threshold, and it fails to protect key actors, such as compliance officers or NGOs acting as facilitators.
 - Evaluate whether the 50-employee threshold remains adequate in the Portuguese context, given the predominance of micro and small entities in both the private and public sectors.
 - Based on this assessment, consider options for lowering or removing the threshold and examine the feasibility of expanding shared or sector-specific internal reporting mechanisms among small entities.
 - Examine the feasibility of extending protection to compliance personnel and facilitators (such as NGOs).

- **Harmonising regimes:**

- The potential misalignment with labour law and the absence of a legal framework for internal investigations, particularly in the public sector, can lead to implementation shortcomings.
- Assess the conflicts between whistleblower protection and labour law provisions, develop a comprehensive framework for internal investigations with clear procedural rules, and establish protocols for coordinating between different legal regimes to ensure continuous protection throughout the reporting process.
- Overbroad exclusions and exemptions: Portugal's law introduces exemptions (e.g., religious and journalistic secrecy, judicial confidentiality) that seems to be beyond those foreseen in the Directive. These must align with EU standards.
 - **National security/secret information cases:** Designate a single independent entity to receive reports involving classified or national security information.

- **Support infrastructure gaps:** Identify which legal, psychological, and informational support mechanisms exist and assess their adequacy, accessibility, and effectiveness.

- **Whistleblower Support Office design and requirements:** Assess:

- Institutional structure and governance model.
- Required competencies and staffing levels.
- Budget estimates for sustainable operation, including psychological support, legal aid, and case management.
- Coordination mechanisms with existing authorities while maintaining independence.
- Benchmarking against successful models in other jurisdictions.
- Integration requirements with the broader whistleblower protection regime.

- **Establish a Whistleblower Support Office (interim and long-term phases)**

Recommendation: Create, through legislation, a dedicated Whistleblower Support Office with a clear and autonomous mandate.

Phase 1 (Interim Measures):

- **Psychological support:** Allocation of emergency funding and publishing referral protocols for specialised psychological care.
- **Legal assistance:** Bar Association and Ministry of Justice to deploy a pro bono with legal assistance specialised in whistleblowing or publicly funded legal aid programmes.
- **Online portal:** The Ministry of Justice should establish a centralised, user-friendly portal that consolidates existing fragmented information.

Phase 2 (Permanent Office):

- **Draft legislation** to establish the Whistleblower Support Office as an independent and permanent body, informed by the evaluation of Law 93/2021 and drawing on lessons from interim measures.
- **Approve the decree-law draft** through the appropriate channels.
- **Operationalisation:** Ensure the full operationalisation of the Office, with appropriate staffing, budget, and mandate, to provide comprehensive legal, psychological, and procedural support to whistleblowers.

● Clarify and Operationalize Whistleblower Certification Procedures

Rationale: There is no public information regarding the legal right to certification acknowledging the whistleblower status (Article 22(3)). The Ministry of Justice, in coordination with MENAC and relevant competent authorities, should:

- Publish a standard certification form and procedure.
- Designate competent authorities to process certification requests.
- Include appeal rights in case of denial.

Legislative and Regulatory Improvements

Focus (1): Address key implementation issues identified by the European Commission (2024) that Portugal seems to fit in.

- **Amend Article 6:** Eliminate the cumulative requirement of “good faith” and “serious grounds.” Adopt the Directive’s standard of “reasonable belief” alone.

- **Amend Article 7(2):** Remove the mandatory prioritisation of internal channels. Allow whistleblowers to choose the reporting route that best fits their case without preconditions.
- **Amend Article 21(6):**
 - **Remove the two-year presumption period:** Retaliation presumptions should last throughout the proceedings and appeal processes, at least.
 - **Expand the presumption of retaliation** to cover all forms listed in the Directive, including isolation, threats, blacklisting, or vexatious litigation.
- **SLAPP deterrents:** Introduce procedural safeguards against retaliatory lawsuits (criminal, civil, and administrative). Prosecutors should have a proactive role in protecting whistleblowers in criminal contexts.

Focus (2): Other reforms.

- **Broaden the material scope** to include workplace harassment and discrimination, adapting the labour code and public employees' legislation when necessary.
- **Unemployment protection linkage:** Establish a legal mechanism for courts and Social Security to coordinate on dismissal cases involving whistleblower retaliation, ensuring access to benefits during litigation.
- **Mandatory review mechanism:** Introduce a legal provision requiring a comprehensive evaluation of Law 93/2021 every three years, including:
 - Assessment of implementation effectiveness using measurable indicators.
 - Participation of whistleblowers, civil society organisations, and institutional stakeholders.
 - Public consultation process.
 - Obligation to present findings and legislative proposals to Parliament.

Institutional Coordination

Recommendations: Establish an operational coordination framework.

- **Develop inter-institutional protocols** specifying case referral procedures, information-sharing rules, and response timelines.
- **Designate official contact points** within each institution with external reporting duties, with clear procedures for sharing information and case management.

PARTNERS

● **Enhance data collection and knowledge production:**

- Designate a dedicated body to collect and analyse data on the implementation of whistleblower protection, articulating its work with the annual reporting obligations of competent authorities to the Portuguese Parliament under Article 17 of Law 93/2021.
- Monitor key indicators, including reporting patterns, protection outcomes, retaliation incidents, procedural shortcomings, and institutional response times, to identify potential legal, procedural, and institutional gaps and produce evidence-based recommendations for targeted improvements.

Literacy and Training

Recommendations:

- Launch **public awareness campaigns** that reframe whistleblowing as a civic duty and combat the stigma that associates it with disloyalty or betrayal.
 - Partner with respected public figures, business leaders, and civil society champions to serve as “integrity ambassadors”.
 - Develop positive storytelling campaigns that feature whistleblowers who prevent harm rather than focusing solely on victim narratives.
- Develop a **National Whistleblower Manual** written in plain language, with FAQ sections, standard templates, and sector-specific guidance.
- **Train magistrates, law enforcement, lawyers, and other legal professionals** in both the legal aspects of protection and psychosocial risks and trauma-sensitive procedures.
 - Implement peer-to-peer training programs in which employees from similar organisational contexts share their experiences.
 - Develop training programs focusing on creating psychologically safe environments.
- Integrate whistleblowing and integrity education into **school curricula and professional programmes** to foster literacy and a positive culture of whistleblowing.

Conclusions on the Portuguese case study

This study reveals a paradox at the heart of Portugal’s whistleblower protection framework: while Law 93/2021 represents significant legislative progress, its implementation appears to be undermined by a lack of credible, sustained support for whistleblowers, combined with deep-rooted cultural resistance.

Portugal’s transposition of the EU Whistleblower Protection Directive through Law 93/2021 introduced key safeguards that were previously absent or fragmented, including anonymity and confidentiality protections, an explicit ban on retaliation, and mandatory reporting

channels. However, this study reveals that the legal aspects of the law require re-examination and possible amendment and that implementation challenges persist, which could limit the law's effectiveness in practice.

Fear of retaliation and legal, labour, and economic consequences persist. Meanwhile, sustained legal, psychological, and informational support remains absent mainly or at least poorly communicated to those who need it. Interview and survey data support the creation of a dedicated office, adequately resourced, that can inform, guide, and assist whistleblowers at every stage of the reporting process. This structural measure is crucial to translate formal protections into real-world safeguards.

Cultural barriers increase these challenges. In many workplaces, especially smaller or more hierarchical ones, whistleblowers are still seen as disloyal or troublemakers. These perceptions are rooted in Portugal's social and historical context, creating intense pressure to remain silent. Legal protections alone are not enough to shift this dynamic.

The announcement in the 2024 Anti-Corruption Agenda to revise Law 93/2021 presents a critical opportunity, with favourable conditions to pursue evidence-based improvements. Without concrete action, Portugal risks having a system that offers protection in theory but abandonment in practice.

Realising the law's full potential will require coordinated efforts among legal, institutional, and cultural stakeholders. Most importantly, whistleblowing must be recognised as a legitimate and necessary act in defence of the public interest, not as a betrayal. Without a change in both institutional practice and public perception, even a well-designed legal framework will be insufficient. Law 93/2021 provides a necessary foundation, but its goals will remain out of reach unless these broader changes are made.

The evidence is clear, the recommendations are concrete, and the moment for action is now. The question remains: Will Portugal seize this opportunity to lead by example, or will it risk falling short in protecting those who dare to report wrongdoing?

5. General conclusions

This document presented the results of two cases studies, one in Spain and one in Portugal, carried out intending to analyse the legal and institutional framework for the protection of whistleblowers in both countries, detect weaknesses and shortcomings, and propose policy recommendations for an effective protective that could improve the public integrity systems in place.

The comparison of the two case studies reveals a shared tension between legal measures and their practical implementation. Both countries have recent laws that transpose the EU Whistleblower Protection Directive, even if Portugal respected the transposition deadline with the adoption of Law 93/2021 while Spain had more than one year delay with the approval of Law 2/2023. These legislative texts mark significant progress in establishing formal protection measures, but the case studies make it clear that an effective protection of whistleblowers still presents a lot of weaknesses in both countries due to institutional complexities and deficiencies, the lack of political will, and a clear shortage of resources for support.

In Portugal, Law 93/2021 introduced essential mechanisms that had previously been fragmented or almost absent, such as provisions for anonymity, confidentiality, and a formal ban on retaliation. In a similar vein, Spain's Law 2/2023, although delayed and hastily enacted under EU pressure, represents the first attempt to structure a whistleblower protection system including the formal guarantees commented on for Portugal. In both contexts, the new laws are relevant improvements that should not be disregarded.

However, in both countries, the potentialities of the new legal frameworks are offset by significant shortcomings in the practical implementation. Portugal's framework lacks an effective operational infrastructure to support whistleblowers adequately, in spite of the existence of MENAC. The case study shows an absence of enough legal, psychological, and informational support, as well as the lack of a body that offers complete guidance and protection throughout the reporting process. Spanish implementation suffers from parallel issues worsened by the absence of a national agency, considering that the AINPI has yet to become fully operational, despite the formal appointment of its President in April 2025. The delay both in the transposition and the creation of this public entity reflects a lack of political will and is having significant consequences in the effectiveness of the protection measures against retaliation and in supporting whistleblowers.

Cultural barriers are also present in both countries. In Portugal, we observe remaining social stigmas surrounding whistleblowing, which can discourage potential whistleblowers despite formal legal protections. Spain has a similar historical background and, in some sense, certain doubts on the legitimacy of whistleblowing remain. Nonetheless, we should also remember the high intolerance to corruption in both countries, which implies an opportunity to use whistleblower protection to trigger the public integrity system through citizens' engagement against corruption.

The case studies developed include target recommendations that are crucial to improving the practical implementation of the protection system and, thus, taking advantage of a legal framework that represents an opportunity. The recommendations from both case studies converge on several key points. First, the establishment of independent institutions fully dedicated to supporting whistleblowers with enough personal and material resources. Second, training for judges, public prosecutors and other civil servants linked to the protection system is crucial. In a similar sense, public awareness campaigns are needed to promote a culture of information and accountability. Third, in each case, there are several revisions to the current legal frameworks that, following the results of the empirical work, are essential for effective protection.

In conclusion, the Iberian countries are in a crucial moment regarding the construction of public integrity systems that may include effective protection for people who report wrongdoing. Political will is a central factor in translating the opportunities that the directive and national laws represent and carrying out the proposed legal and institutional reforms for an effective protection of whistleblowers that can clearly improve the national integrity systems in Spain and Portugal.

6. Summary Report of the External Validation Workshop

The online key findings validation session for external validation was conducted on April 22nd, 2025. This session had to be delayed due to internal and external difficulties that arose during the first months of the development of the research project. Among other issues, one of the more remarkable ones was related to the change of leadership and priorities in the Valencian Anti-Fraud Agency, former associated partner of the project, which implied the need to redesign part of the activities and affected the pace of the calendar of activities initially planned.

The external validation session was organised to target relevant external stakeholders and networks linked to the protection of whistleblowers, since these were considered the best-suited actors for an external evaluation that could enrich the preliminary analysis of the empirical results previously done by the research team.

The session consisted of the presentation of the preliminary findings of the analytical studies for Spain and Portugal, followed by a roundtable discussion in which attendees shared their impressions, experiences and insights. In line with the key findings presented, the stakeholders discussed several ideas on how to move forward with the analysis of results and potential conclusions and recommendations that could arise from the project.

Some of the more relevant discussions were about tools and networks that could be useful to get more information on the protection of whistleblowers in the studied countries but also in a more global perspective. **For instance**, similar projects and empirical research activities developed by the attendees were briefly commented, as well as the existence of the UNCAC Coalition Working Group on the Protection of Whistleblowers.

Attendees to the external validation session included the UNCAC Coalition, the Whistleblowing International Network, Agence Française Anticorruption, COSITAL, Transparency International, Expert Forum Romania, Blueprint for Free Speech, and the EDHEC Business School.

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8. Annexes

Annex 1. Interview templates

Professionals in agencies with competences for the protection of whistleblowers

Information of the interviewee	
Date of the interview	
Type of interview (online / in-person)	
Lead interviewer	
Other interviewers	

1. Could you explain which are the main gaps and weaknesses in whistleblower protection legislation in both the public and private sectors?
2. What are the implications of the new legal regime on the protection of whistleblowers with respect to the previous situation?
3. What are the main obstacles for a person who wants to report irregularities in their organization (public or private). Does the new legislation encourage the filing of complaints?
4. To what extent are the restrictions established by law easy to interpret and apply when it comes to reporting irregularities? What do you think about the existing protection measures to cover whistleblowers?
5. Do you think the existing restrictions deter whistleblowers? (Obligations to use internal and external channels, restrictions on public reporting, limitations on the type of irregularities that can be reported...).
6. Traditionally, irregularities in the workplace have been channelled through trade unions, to what extent does the new regulatory framework affect the role of trade unions?
7. NGOs have also played a relevant role in some cases of whistleblowing, to what extent does the new regulatory framework affect the role of NGOs?
8. Could you assess the effectiveness of the measures envisaged to protect against retaliation? What do you think of the two-year period and the procedure for its extension? Do you think they will be effective enough?

9. How does this new regulation of whistleblower protection fit in with labour legislation? To what extent are measures to prevent or punish retaliation harmonized with labour legislation in the public and private sectors? Are conflicts with the courts foreseeable due to the assignment of the protection status for whistleblowers?

10. Are the courts prepared to appreciate the specificities of whistleblower protection? What challenges do you anticipate in the application of this new legislation by the courts? Do you think that the reversal of the burden of proof in lawsuits against acts of retaliation will be effective enough?

11. How do you think compensatory measures and compensation for retaliation will work? Specifically, is a whistleblower who has been dismissed entitled to unemployment benefits? Who should set such measures?

12. Finally, what improvements or legal reforms do you think are essential to ensure effective whistleblower protection? Particularly, what kind of sanctions do you think that would allow to improve the protection system of whistleblowers?

Authorities and officials responsible for internal channels in public organizations

Information of the interviewee	
Date of the interview	
Type of interview (online / in-person)	
Lead interviewer	
Other interviewers	

1. Could you explain which are the main gaps and weaknesses in whistleblower protection legislation in both the public and private sectors?
2. What are the implications of the new legal regime on the protection of whistleblowers with respect to the previous situation?
3. What are the main obstacles for a person who wants to report irregularities in their organization (public or private). Does the new legislation encourage the filing of complaints?
4. To what extent are the restrictions established by law easy to interpret and apply when it comes to reporting irregularities? What do you think about the existing protection measures to cover whistleblowers?
5. Do you think the existing restrictions deter whistleblowers? (Obligations to use internal and external channels, restrictions on public reporting, limitations on the type of irregularities that can be reported...).
6. How difficult is to investigate the claims or denounces that you receive? Is there an administrative procedure to guarantee the rights of all parties affected?
7. Traditionally, irregularities in the workplace have been channelled through trade unions, to what extent does the new regulatory framework affect the role of trade unions?
8. NGOs have also played a relevant role in some cases of whistleblowing, to what extent does the new regulatory framework affect the role of NGOs?
9. Could you assess the effectiveness of the measures envisaged to protect against retaliation? What do you think of the two-year period and the procedure for its extension? Do you think they will be effective enough?
10. How does this new regulation of whistleblower protection fit in with labour legislation? To what extent are measures to prevent or punish retaliation harmonized with labour legislation in the public and private sectors? Are conflicts with the courts foreseeable due to the assignment of the protection status for whistleblowers?

11. Are the courts prepared to appreciate the specificities of whistleblower protection? What challenges do you anticipate in the application of this new legislation by the courts? Do you think that the reversal of the burden of proof in lawsuits against acts of retaliation will be effective enough?

12. How do you think compensatory measures and compensation for retaliation will work? Specifically, is a whistleblower who has been dismissed entitled to unemployment benefits? Who should set such measures?

13. Do you feel sufficiently protected in your role against potential retaliations?

14. How were you chosen for this responsibility and how was the process of selection?

15. Finally, what improvements or legal reforms do you think are essential to ensure effective whistleblower protection?

Compliance Managers in Private Sector Companies

Information of the interviewee	
Date of the interview	
Type of interview (online / in-person)	
Lead interviewer	
Other interviewers	

1. Could you explain which are the main gaps and weaknesses in whistleblower protection legislation in both the private sectors?
2. What are the implications of the new legal regime on the protection of whistleblowers with respect to the previous situation?
3. What are the main obstacles for a person who wants to report irregularities in a private organization. Does the new legislation encourage the filing of complaints?
4. To what extent are the restrictions established by law easy to interpret and apply when it comes to reporting irregularities? What do you think about the existing protection measures to cover whistleblowers?
5. Do you think the existing restrictions deter whistleblowers? (Obligations to use internal and external channels, restrictions on public reporting, limitations on the type of irregularities that can be reported...).
6. How difficult is to investigate the claims or denounces that you receive? Are there any internal policies or procedures procedure to guarantee the rights of all parties affected?
7. Traditionally, irregularities in the workplace have been channelled through trade unions, to what extent does the new regulatory framework affect the role of trade unions?
8. Could you assess the effectiveness of the measures envisaged to protect against retaliation? What do you think of the two-year period and the procedure for its extension? Do you think they will be effective enough?
9. How does this new regulation of whistleblower protection fit in with labour legislation? To what extent are measures to prevent or punish retaliation harmonized with labour legislation in the public and private sectors? Are conflicts with the courts foreseeable due to the assignment of the protection status for whistleblowers?
10. Are the courts prepared to appreciate the specificities of whistleblower protection? What challenges do you anticipate in the application of this new legislation by the courts? Do you think that the reversal of the burden of proof lawsuits against acts of retaliation will be effective enough?

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11. How do you think compensatory measures and compensation for retaliation will work? Specifically, is a whistleblower who has been dismissed entitled to unemployment benefits? Who should set such measures?
12. Do you feel sufficiently protected in your role against potential retaliations?
13. How were you chosen for this responsibility and how was the process of selection?
14. Finally, what improvements or legal reforms do you think are essential to ensure effective whistleblower protection?

Whistleblowers

Information of the interviewee	
Date of the interview	
Type of interview (online / in-person)	
Lead interviewer	
Other interviewers	

1. Thinking about the experience you had when you reported the irregularities, to what extent do you think the new regulation represents a relevant progress? What do you think are its main problems?
2. When you made the complaint, were you informed at all times of how the file was progressing? How important is it to be informed about its progress? Would the number of whistleblowing reports increase if there were better information on new developments?
3. Were you informed of the risks to which you were exposing yourself with your complaint? Did you miss this information? Would you denounce the same facts today knowing what happened next?
4. What reprisals did you suffer? What help did you have to deal with them? Do you think that the new regulation provides an effective system to avoid, punish and compensate for potential retaliation received? What do you think is the most worrying thing about the new regulation in this regard?
5. What kind of legal advice did you have? What did you miss? Do you think that the situation has changed effectively with the new legislation?
6. Were you informed punctually about the progress of the investigation of your denounce? How frequently did you receive information from the investigators? Did you receive further requests of information or were you requested to provide further evidence about the deeds you disclosed?
7. What were the labour and economic consequences for you when filing the complaint? Did you receive any help? What would be the best way to avoid these consequences? (automatic change of workstation or organization, others).
8. Did you have to face lawsuits? Did you pay for legal assistance from your own funds?
9. Were there any psychological consequences for you? What kind of help would you have needed? Do you think that with the new legislation this problem is solved?

10. Do you think a two-year protection period is enough?

11. What is your overall assessment of the current regulation of whistleblower protection?

Academics and experts

Information of the interviewee	
Date of the interview	
Type of interview (online / in-person)	
Lead interviewer	
Other interviewers	

1. Please, describe which is your knowledge or expertise on the whistleblowing protection regulations.
2. Could you explain which are the main gaps and weaknesses in whistleblower protection legislation in both the public and private sectors?
3. What are the implications of the new legal regime on the protection of whistleblowers with respect to the previous situation?
4. What are the main obstacles for a person who wants to report irregularities in their organization (public or private). Does the new legislation encourage the filing of complaints?
5. To what extent are the restrictions established by law easy to interpret and apply when it comes to reporting irregularities? What do you think about the existing protection measures to cover whistleblowers?
6. Do you think the existing restrictions deter whistleblowers? (Obligations to use internal and external channels, restrictions on public reporting, limitations on the type of irregularities that can be reported...).
7. Traditionally, irregularities in the workplace have been channelled through trade unions, to what extent does the new regulatory framework affect the role of trade unions?
8. NGOs have also played a relevant role in some cases of whistleblowing, to what extent does the new regulatory framework affect the role of NGOs?
9. Could you assess the effectiveness of the measures envisaged to protect against retaliation? What do you think of the two-year period and the procedure for its extension? Do you think they will be effective enough?
10. How does this new regulation of whistleblower protection fit in with labour legislation? To what extent are measures to prevent or punish retaliation harmonized with labour legislation in the public and private sectors? Are conflicts with the courts foreseeable due to the assignment of the protection status for whistleblowers?

11. Are the courts prepared to appreciate the specificities of whistleblower protection? What challenges do you anticipate in the application of this new legislation by the courts? Do you think that the reversal of the burden of proof in lawsuits against acts of retaliation will be effective enough?

12. How do you think compensatory measures and compensation for retaliation will work? Specifically, is a whistleblower who has been dismissed entitled to unemployment benefits? Who should set such measures?

13. Finally, what improvements or legal reforms do you think are essential to ensure effective whistleblower protection?

Annex 2. Whistleblower online survey questionnaire

Good morning. This questionnaire is aimed at people who have reported fraud, corruption, serious and very serious crimes or infractions in the organizations they work for/with. It is part of the study on whistleblower protection in Spain and Portugal being carried out by the project WiS-H A whistleblowing habitat in Southern Europe, which is funded by the European Commission (CERV-2023-CHAR-LITI-WHISTLE #101143143).

Your collaboration with this research is decisive in proposing the necessary changes to improve the whistleblower protection system in these two countries. We thank you very much for your involvement.

Before we begin, we would like to assure you that your responses are confidential and will be treated together with the responses of the other respondents and never individually, in accordance with the General Data Protection Regulation.

Filling out the questionnaire will take no more than 10 minutes.

SECTION A: PERCEPTIONS AND ATTITUDES ABOUT WHISTLEBLOWER PROTECTION

A1. What are, in your opinion, the most important reasons why a person might decide not to report these behaviours that threaten or damage the interest of the organization and/or the general interest? Check 1 when that reason is not important at all and 5 when it is very important.

	1 (NO IMPORTANT AT ALL)	2	3	4	5 (VERY IMPORTANT)	DON'T KNOW
Not knowing how or where to report.						
Difficulty proving the threat or damage to the general interest.						
It won't work because nothing will be done.						
Everyone knows about these cases and no one reports them						
It is not worth the effort of reporting it						
Fear of legal consequences.						
Fear of economic consequences.						
Fear of employment consequences (layoffs, dismissals, loss of promotion, etc.).						
It would be an act of disloyalty.						
It would not be professional to report.						
There are negative attitudes towards whistleblowers.						
Fear of the organization's bad reputation.						
Fear that it will affect my reputation in the organization.						
Other*						
*Specify						

A2. In your opinion, how often do workers report threats or damage to the general interest? Indicate your answer on a scale of 1 to 5, knowing that 1 means never and 5 always.

1 (NEVER)	2 (RARELY)	3 (SOMETIMES)	4 (OFTEN)	5 (ALWAYS)

A3. What are the benefits of requiring public and private sector organizations to protect whistleblowers? Check 1 when that benefit is not at all important and 5 when it is very important.

	1 (NO IMPORT- ANT AT ALL)	2	3	4	5 (VERY IM- PORTANT)	DON'T KNOW
Strengthen compliance with the law of companies and public authorities						
Strengthening freedom of expression						
Help improve a company's economic goals						
Stimulating a culture of transparency and accountability in the workplace						
Increase employee motivation						
Increasing worker well-being						
Avoiding reprisals against whistleblowers						
Other*						
*Specify						

Use the space below if you want to add more comments. (Max. 500 characters).

A4. In your opinion, how important are these objectives for the adoption or implementation of whistleblower protection laws? Mark 1 when the standards for protecting whistleblowers in that field are not at all important and 5 when they are very important.

	1 (NO IMPORTANT AT ALL)	2	3	4	5 (VERY IMPORTANT)	DON'T KNOW
Contribute to the fight against fraud and corruption.						
Contribute to the proper management of public funds (national and European).						
Improve investors' confidence.						
Contribute to the fight against tax evasion and elusion.						
Improve the protection of public health and safety.						
Improve food security.						
Promote environmental protection.						
Stimulate fair competition.						
Other*						
*Specify						

Use the space below if you want to add more comments. (Max. 500 characters).

A5. And how important are the following effects of the implementation of whistleblower protection laws? Check 1 when whistleblower protection standards are not at all important for that disadvantage to occur and 5 when they are very important.

	1 (NO IMPORT- ANT AT ALL)	2	3	4	5 (VERY IM- PORTANT)	DON'T KNOW
Encourage false or excessive alerts.						
Undermine public trust in public institutions if information considered secret or protected is disclosed by public employees (personal tax information, for example).						
Undermine mutual trust in the workplace.						
Generate significant administrative burdens or costs in the public sector.						
Undermine trust between companies or business partners.						
Undermine trust between clients and service providers (such as lawyers, tax advisors, accountants, or consultants).						
Damage the reputation of the company or public institution.						
Encourage the leakage of confidential technical knowledge and business information (trade secrets).						
Other*						
*Specify						

Use the space below if you want to add more comments. (Max. 500 characters).

A6. In your opinion, which of the following measures are relevant to the effective protection of whistleblowers within your organisation? Check 1 when that aspect is not at all important and 5 when it is very important.

	1 (NO IMPORTANT AT ALL)	2	3	4	5 (VERY IMPORTANT)	DON'T KNOW
Clear definition in legislation of threats to the public interest covered by whistleblower protection.						
Clear general information and awareness-raising policies by the State (e.g. information campaigns) on whistleblowers' rights (including advice and assistance) and applicable procedures.						
Clear information from private or public organisations to their employees on whistleblower rights (including advice and assistance) and relevant internal procedures.						
Clear information and awareness from trade unions on whistleblower rights (including advice and assistance) and applicable procedures.						
Channels in organizations and companies for internal whistleblowing.						
Channels for reporting irregularities to control institutions.						
Protection in case of disclosure to the public (e.g. media, web platforms, etc.) where internal information and reporting channels to supervisory institutions are not available, do not function properly (or cannot reasonably be expected to function properly).						

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Proper investigation of whistleblower allegations or disclosures.						
Protection from retaliation at work.						
Protection of whistleblowers in administrative proceedings.						
Exemption from criminal liability for whistleblowers.						
Immunity from civil actions for damages.						
Financial assistance to cover the costs of legal proceedings.						
Psychological support.						
Other*						
*Specify						

Use the space below if you want to add more comments. (Max. 500 characters).

A7. And speaking of those same aspects, to what extent do you think that the Spanish/Portuguese law that transposed the European Directive 1937/2019 covers each of these aspects well? Check 1 when that aspect is not well covered at all by Spanish/Portuguese law and 5 when it is perfectly covered.

	1 (NO WELL COVERED AT ALL)	2	3	4	5 (PERFECTLY COVERED)	DON'T KNOW
Clear definition in legislation of threats to the public interest covered by whistleblower protection.						
Clear general information and awareness-raising policies by the State (e.g. information campaigns) on whistleblowers' rights (including advice and assistance) and applicable procedures.						

Clear information from private or public organisations to their employees on whistleblower rights (including advice and assistance) and relevant internal procedures.						
Clear information and awareness from trade unions on whistleblower rights (including advice and assistance) and applicable procedures.						
Other*						
*Specify						

Use the space below if you want to add more comments. (Max. 500 characters).

A8. And speaking again of Spanish/Portuguese legislation, to what extent are each of these aspects that have been mentioned protected in the Spanish/Portuguese law? Check 1 when that aspect is not well protected at all by Spanish/Portuguese law and 5 when it is perfectly protected.

	1 (NO WELL PROTECTED AT ALL)	2	3	4	5 (PERFECTLY PROTECTED)	DON'T KNOW
Channels in organizations and companies for internal whistleblowing.						
Channels for reporting irregularities to control institutions.						
Protection in case of disclosure to the public (e.g. media, web platforms, etc.) where internal information and reporting channels to supervisory institutions are not available, do not function properly (or cannot reasonably be expected to function properly).						

Proper investigation of whistleblower allegations or disclosures.						
Protection from retaliation at work.						
Protection of whistleblowers in administrative proceedings.						
Exemption from criminal liability for whistleblowers						
Immunity from civil actions for damages.						
Financial assistance to cover the costs of legal proceedings.						
Psychological support.						
Other*						
*Specify						

Use the space below if you want to add more comments. (Max. 500 characters).

A9. In your view, which of the following aspects of protection against retaliation at work are important for effective whistleblower protection? Check 1 when that aspect is not at all important and 5 when it is very important.

	1 (NO IMPORTANT AT ALL)	2	3	4	5 (VERY IMPORTANT)	DON'T KNOW
Protection of the confidentiality of the whistleblower's data, even when they are anonymous but identifiable.						
Protection against dismissal, e.g. precautionary measures to suspend dismissal, right to reinstatement, etc.						
Suspension protection.						
Protection against demotion (downgrading).						
Protection against missed promotion opportunities.						

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Protection against punitive transfers.						
Protection against wage reductions or deductions.						
Protection against harassment from superiors and/or colleagues.						
Guarantee that the employer has the burden of proving that any action taken against a whistleblower is unrelated to the disclosure of information by the complainant.						
Blacklist protection.						
Financial assistance to cover the costs of legal proceedings.						
Compensation for dismissal or economic damage.						
Other*						
*Specify						

Use the space below if you want to add more comments. (Max. 500 characters).

A10. And returning to Spanish/Portuguese legislation, to what extent are these same aspects of protection against retaliation well protected? Check 1 when that aspect is not well protected by the Spanish/Portuguese law and 5 when it is perfectly protected.

	1 (NO WELL PROTECTED AT ALL)	2	3	4	5 (PERFECTLY PROTECTED)	DON'T KNOW
Protection of the confidentiality of the whistleblower's data, even when they are anonymous but identifiable.						
Protection against dismissal, e.g. precautionary measures to suspend dismissal, right to reinstatement, etc.						
Suspension protection.						

Protection against de- motion (downgrading).						
Protection against missed promotion op- portunities.						
Protection against pu- nitive transfers.						
Protection against wage reductions or deductions.						
Protection against ha- rassment from superi- ors and/or colleagues.						
Reverse the burden of proof so that, in a retaliation case, the employer has the bur- den of proving that any action taken against a whistleblower is unre- lated to the disclosure of information by the complainant.						
Blacklist protection.						
Financial assistance to cover the costs of legal proceedings.						
Compensation for dis- missal or economic damage.						
Other*						
*Specify						

Use the space below if you want to add more comments. (Max. 500 characters).

A11. Thinking about the country in which you reside, what do you think are the main problems for effective protection of whistleblowers of corruption, fraud and other serious crimes and infractions? Check 1 if that problem is not at all important in your country and 5 if it is very important.

	1 (NO IMPORTANT AT ALL)	2	3	4	5 (VERY IMPORTANT)	DON'T KNOW
Restrictions on people's freedom of expression.						
Restrictions on the monitoring function of journalists and the media and on the public's right to know.						
Negative impact on working conditions.						
Negative impact on workers' well-being.						
Weak workplace culture of integrity and accountability.						
Informal norms (clientelism) and personal relationships are more important than legal norms.						
Public sector workers are reluctant to report threats or harm to the public interest.						
Private sector workers are reluctant to report threats or damage to the public interest.						
Poor enforcement of the law by public authorities.						
Poor compliance with the law by companies.						
Low investors' confidence.						
Unfair competition (cartels, etc.).						
High level of fraud and corruption.						
Mismanagement of public funds.						
High level of tax evasion and avoidance.						
Risks to public health and safety.						
Food safety risks.						
Environmental risks.						

PARTNERS

Other*						
*Specify						

Use the space below if you want to add more comments. (Max. 500 characters).

--

A12. Regarding the recent act approved in this country, could you answer the following questions? Check 1 if you do not at all know/trust/believe extremely in the mentioned issue and 5 if you know/believe extremely in the mentioned issue.

	1 (NOT AT ALL)	2	3	4	5 (EXTREMELY)	DON'T KNOW
Do you know that under the law you can report a wrongdoing and you will be protected?						
Do you know how to report a wrongdoing?						
Do you believe that the law will be respected in your organization?						
Do you know which are your rights in case of a complaint?						
Do you know the existence of external protection?						
Do you trust the external protection?						
To what extent do you believe you would report a case of corruption if you knew it?						
To what extent do you support this whistleblower protection policy?						

SECTION B: PROFESSIONAL AND ORGANIZATIONAL INFORMATION

B1. What is your current situation?

AUTONOMOUS	
EMPLOYEE	
MANAGERIAL	
CONTRACTOR	
OFFICIAL	
I DON'T WORK	
OTHER*	
*Specify	

B2. And what sector are you or have you been linked to, public or private?

PUBLIC	
PRIVATE	
OTHER*	
*Specify	

B3. What does the organisation in which you work, have you worked or had relationships do?

Business/Professional Partnership	
Union/Trade Union Association	
Company (legal person with an economic activity)	
Academic/Research Institution	
Law Firm/Notary	
Hospital	
Media	
Non-Governmental Organization (NGO)	
Authority/public administration	
Independent supervisory authority (e.g. independent body dealing with consumer protection, competition, energy sector regulation, central banks, audit bodies, etc.)	
Judicial authorities and law enforcement	
Other*	
Not applicable*	
*Specify	

PARTNERS

B4. In which area of activity does/did your organisation work?

Manufacturing	
Retail	
Transport	
Health	
Education	
Energy	
Food safety	
Environment	
Safety	
Banking/other financial services	
Financial or tax advice	
Legal advice	
Justice/Law Enforcement	
Consulting	
Media	
Human rights	
Academic/Research	
Other*	
*Specify	

B5. What is/was the size of your organisation?

1 – 9 (micro)	
10 – 49 (small)	
50 – 249 (medium)	
250 – 999 (large)	
1000 or more (large)	
5000 or more (large)	

B6. From your direct work experience, are you aware of any whistleblowing cases in your organisation in the last ten years?

YES	NO

B7. How did you hear about such cases in your organisation?

1. I was directly involved (as a whistleblower or as a witness to whistleblowing cases, e.g. disclosure by a colleague)	
2. I participated in the investigation of whistleblowing cases	
3. I professionally collected information on whistleblowing cases	
4. Other: specify:	

B8. Research suggests there are four types of whistleblowers. All of them think the organization they work for is doing something wrong. I would like to know which type you think most whistleblowers fit in to.

Seek first to PROTECT THE PUBLIC INTEREST	
Seek to PROTECT THEIR ORGANIZATION from getting into trouble.	
HOLD A GRUDGE AND RETALIATE for something done previously to them.	
STAND TO GAIN PERSONALLY from whistleblowing.	

B9 If so, did you suffer retaliation when reporting the case?

NO	
YES (Please specify) (Max. 500 characters)	

We have reached the end of the questionnaire. Thank you very much for your contribution. If you want to add something else, you can do so in the text box below (Maximum 1.000 characters).

PARTNERS

Annex 3. Results of the empirical work of the Spanish case study

Annex 3.1. Summary report of interviews

Whistleblowers

SP-WB1

The interviewee, a former interim civil servant in a municipal urban planning department, describes her experience as a whistleblower after facing workplace harassment from her superior. She filed multiple complaints, but each was met with retaliation, including the leaking of confidential information. Despite her efforts to highlight administrative irregularities, including illegal hiring practices, the response from the authorities was slow and ineffective. While the new law allows for sanctions, it took over a year to confirm the irregularities, and no meaningful action was taken. The interviewee experienced significant bureaucracy, delays, and a lack of real protection. She believes the process is overly complex and serves to protect wrongdoers rather than whistleblowers. She stresses the importance of both restoring violated rights and imposing sanctions. Her experience with the authorities, including the Office of the Catalan Ombudsman, was marked by inefficiency and failure to enforce consequences. The case illustrates the challenges whistleblowers face within the existing legal framework, highlighting the need for an independent and effective protection system.

SP-WB2

The interviewee expressed concerns about the implementation of the whistleblowing law in Spain, specifically focusing on the challenges faced in the region of Catalonia. Despite the creation of the Anti-Fraud Office, the interviewee highlighted its lack of resources and unwillingness to enforce the law effectively, particularly against municipalities. The issue of “impunity” was emphasised, as local authorities, such as mayors, could defy legal requests with little consequence. The interviewee also stressed the vagueness of the new law, which could be exploited by authorities and hinder real protection for whistleblowers. The absence of political will to genuinely address corruption was noted, and the interviewee voiced scepticism about the law’s potential effectiveness without proper implementation and incentives for enforcement. Despite these challenges, the interviewee remains active in advocacy, seeking legal support and improvements in the law’s enforcement.

SP-WB3

The interviewee reflected on their experience as a whistleblower, emphasising the personal and professional risks they faced. They described the ongoing challenges with reporting corruption, noting that although the new anti-corruption framework promises anonymous reporting and some protection, in practice, internal reporting channels often lack credibility and support. According to the interviewee, internal complaints are frequently dismissed unless they are well-documented, and even then, there is often little follow-up or protection for whistleblowers. The interviewee expressed concerns that the new legal framework does not effectively address the need for cultural change within organisations, where whis-

tleblowers are still viewed as troublemakers. They also pointed out the inefficiencies in the judicial system and the limited effect of the law on press coverage, which often harms the reputations of whistleblowers without providing real legal protection.

SP-WB4

The interviewee expressed significant concerns about the current state of the whistleblower protection system in Spain, highlighting several gaps in the implementation of the EU directive. While acknowledging the legislative progress, they emphasised that the lack of an independent authority to oversee the law's application severely hinders effective protection for whistleblowers. The interviewee criticised the inadequate legal and psychological support offered to whistleblowers, particularly the financial burdens they face during long and costly legal battles. They also proposed the creation of an employment fund to help those who lose their jobs due to whistleblowing. Moreover, the interviewee raised concerns about the limited scope of the law, which only protects employees with a formal contract, leaving citizens who report corruption in their local communities without adequate safeguards.

SP-WB5

The interviewee discussed the challenges faced by whistleblowers, particularly the lack of real protection and the risk of retaliation. They highlighted that, despite existing laws, whistleblowers often face severe consequences when their identity is not kept anonymous. The interviewee stressed that corruption in Spain is widespread, particularly within the judiciary and politics, where those in power benefit from a system that allows such misconduct to continue unchecked. They shared their personal experience of blowing the whistle, recounting legal battles, personal distress, and financial strain, which eventually led to the failure of the system in holding wrongdoers accountable. The interviewee emphasised that while the legal framework for protecting whistleblowers exists, it is largely ineffective, with the fear of retaliation preventing many from reporting corruption. They concluded that meaningful reform is needed to ensure both the safety and encouragement of whistleblowers.

SP-WB6

The interviewee shared his disillusionment with the current whistleblowing system in Spain, criticizing the inefficiency of the regulatory framework, especially in handling complaints. He discussed his personal experience with whistleblowing, where his clear case was dismissed by both internal channels and external institutions like the Bank of Spain. He mentioned the lack of accountability, as well as the failure of authorities to protect whistleblowers or even inform them about the progress of their cases. He also highlighted the absence of an independent body to oversee these processes, which weakens the enforcement of laws. His experience led him to question the effectiveness of the Spanish law and the EU Directive in fostering a genuine culture of whistleblowing, noting that the legal system often undermines those who attempt to expose wrongdoing.

SP-WB7

The interviewee shared their personal experience as a whistleblower, detailing how their work in a local municipality led to multiple instances of corruption and mismanagement, including illegal land deals and misuse of public funds. Despite uncovering these issues, they

faced retaliation, including being falsely accused of breaching confidentiality, resulting in psychological distress and professional isolation. They were forced to fight legal battles, involving multiple avenues such as criminal, labour, and civil courts, all while receiving minimal protection under the current laws. They criticised the lack of support from both the legal system and political parties, highlighting how whistleblowers are often left vulnerable. The interviewee expressed frustration with the legal system's inefficiency, especially in enforcing the protection laws meant for whistleblowers, and emphasised the need for stronger, more practical safeguards for those exposing corruption. They also noted the ongoing struggles, with little hope of resolution despite significant personal and professional tolls.

SP-WB8

The interviewee shared her experience as a whistleblower in the Consell of Ibiza, where her efforts to report irregularities, such as an emergency contract involving questionable practices, led to significant personal and professional retaliation. After putting forward an unfavourable report, she faced threats and bullying from her superiors, including being isolated by colleagues and having her department undermined. Despite receiving support from the Anti-Corruption Office, her protection was revoked when the office was closed. She expressed frustration with the lack of effective whistleblower protection, the manipulation of internal systems, and the public smear campaigns against her. The interviewee remains hopeful that future initiatives will bring real change, emphasising the importance of proper institutional frameworks and support systems for those challenging corruption.

SP-WB9

In this interview, a public servant recounts the retaliation and institutional neglect she and a colleague faced after exposing potential corruption cases in the local government where they were working. Despite reporting serious irregularities in urban planning and administrative processes, their complaints were dismissed or did not receive enough attention at multiple levels, including by prosecutors, the regional authorities, and ministerial agencies. She describes how both women endured professional reprisals, legal harassment, and social ostracism, leading to mental health struggles and high financial expenses due to legal costs. Lacking protection from whistleblower laws or support from unions, she relocated to another region for a temporary research position. She expresses deep frustration with the Spanish justice and authorities and hopes for future reforms that effectively protect whistleblowers.

Regional agencies with competences in whistleblowing protection

SP-AG1

The interviewee discusses the challenges in the implementation of whistleblower protection laws, particularly the limitations of the Spanish law compared to the European Directive. Key issues include the requirement of an employment relationship for protection, the lack of concrete support measures like psychological, legal, and financial assistance, and the difficulty in ensuring confidentiality, especially when cases become judicialized. They mention that the Andalusian law is more ambitious, especially in defining conflicts of interest and

protecting whistleblowers outside of the employment context. The interviewee emphasises that the lack of clear guidelines and resources makes it difficult to effectively protect whistleblowers, and that while some improvements have been made, the system is still in its early stages. They highlight the need for standardised measures for psychological and financial support and a clearer framework for legal assistance to better protect whistleblowers in Spain.

SP-AG2

The interviewee discusses the process for granting whistleblower protection in their organization, which remains largely unchanged since the approval of Spain's 2/2023 law. Initially, a veracity check is conducted by the investigative team to determine if the complaint is valid. Protection is granted if the information is verified, and if the complaint comes from a court or prosecution, protection is granted depending on whether there are prior proceedings. Despite a rise in awareness and requests for protection in 2023, only a few requests were processed, and only one was granted. The interviewee emphasizes that the law has not drastically altered the internal procedures but has introduced psychological support for whistleblowers. While the organization maintains confidentiality until protection is requested, the challenge often lies in determining whether actions against whistleblowers qualify as retaliation. The interviewee notes that there have been no significant issues with sanctions or retaliations, but some cases have required careful consideration.

SP-AG3

The interviewee criticizes Law 2/2023 for being confusing and underdeveloped in protecting whistleblowers. They highlight that courts are unprepared to protect whistleblowers effectively and stress the importance of sensitivity from those handling such cases, ideally having been whistleblowers themselves. They note that most whistleblowers are career civil servants, and strong guarantees are needed for them to feel safe coming forward. The interviewee also points out flaws in Law 19/1994, particularly regarding the lack of protection for witnesses. They emphasize the need for whistleblower support and protection from retaliation, noting that mediation can help in less entrenched cases, though it is not addressed in Law 2/2023. While acknowledging the law's sanctions for SLAPP lawsuits, they criticize the inadequate thresholds for accessing free legal aid. Finally, they suggest that the same unit should handle both the credibility assessment and protection of whistleblowers.

SP-AG4

The interviewee addresses the challenges of whistleblower protection in Spain, particularly after the implementation of the new law in 2023. They emphasize the significant increase in whistleblower cases, with around 60 cases currently under protection, although no sanctions have been initiated yet. The interviewee discusses the difficulties faced due to the lack of a specific independent authority for whistleblower protection, with cases currently being handled by units within existing fraud agencies. They highlight the operational complexities of applying the law to both public and private sectors and the logistical challenges of coordinating between multiple authorities. Furthermore, they express concerns over the practical limitations in providing comprehensive support for whistleblowers, such as psychological

and legal aid. The interviewee shares personal frustrations about the system's inability to effectively support those who report wrongdoing, despite their increasing numbers and legal backing.

SP-AG5

The interviewee, responsible for overseeing the new whistleblower protection unit in Catalonia, discusses the challenges faced since its creation. The unit was established in 2023 as part of Spain's implementation of the EU directive, and while it has been in operation for just over a year, the complexities of the task are evident. The primary focus is on ensuring the protection of whistleblowers, which involves quickly recognizing and mitigating reprisals. Agility in response is crucial, as delays can exacerbate the risk of retaliation. However, the legal system, especially in administrative cases, does not yet have the same established protections as in the social courts, where retaliatory actions like dismissals are more easily recognized. The interviewee emphasizes the importance of cultural change within organizations, where whistleblowers are often viewed negatively. Efforts to instill a "culture of alert" are seen as essential for encouraging early reporting and preventing harm. Despite challenges, the unit remains committed to improving the system, with plans for more resources and coordination with other entities. The interviewee highlights the importance of collaboration within the European and national networks to share best practices.

People in charge of internal channels

SP-IC1

The interviewee oversees the internal whistleblowing system at their office, which allows anonymous reporting of misconduct. They work closely with a system manager to investigate valid alerts, though challenges arise in verifying the credibility of some reports. The interviewee reflects on the Spanish whistleblowing legislation, highlighting its ambiguity around protections and retaliations, which may discourage whistleblowers. While external channels see a rise in reports, internal systems are underused, and the interviewee stresses the lack of sufficient resources for whistleblower support. They also note the diminished role of unions in the whistleblowing process under the new law and the unclear position of NGOs. Despite these challenges, the interviewee remains hopeful that the system will improve over time, with better protections and more resources for whistleblowers as the framework evolves.

SP-IC2

The interviewee shared insights into the internal whistleblowing system at the Valencian Anti-Fraud Agency, which had established a reporting channel aligned with its ethical code before the 2023 law was implemented. With the new law, the agency had to adjust its system to handle serious violations and integrate external reports. The interviewee pointed out several challenges, including the lack of protection for those managing the internal system, the confusion around where to report issues, and the absence of clear procedural guidelines. Additionally, they expressed concerns about political pressures undermining the independence of anti-corruption agencies, limiting their effectiveness. Despite these chal-

PARTNERS

lenges, the interviewee emphasized the need for ongoing efforts to improve the system and protect whistleblowers.

SP-IC3

The interviewee discussed the challenges of Spain's whistleblowing laws, emphasizing that Barcelona's system, which started in 2017, is more advanced than both the national law and EU Directive. They criticized the law for treating public and private sectors equally, despite significant differences in legal frameworks. The interviewee also highlighted the lack of clarity regarding the roles and protections of internal reporting systems, which can be undermined by political pressures and insufficient resources. While they acknowledged some positive aspects, like recognizing anonymity, they stressed the need for more public awareness and cultural change. Additionally, the interviewee pointed out the legal gaps in how internal and external reporting systems should interact, leaving whistleblowers vulnerable.

SP-IC4

The interviewee describes their experience managing an internal whistleblower reporting system in a public administration, reflecting that the role is often isolating and unpleasant due to the nature of constantly handling complaints. They highlight that most reports received do not pertain to significant corruption but instead to administrative or HR-related grievances, often misdirected or stemming from misunderstandings about the system's purpose. The interviewee emphasizes the bureaucratic and technical challenges of implementing the reporting system within the framework of Spanish administrative law, especially in the absence of clear guidance from the national whistleblower protection authority, which only recently began operating. Despite these challenges, they report that the system is functioning well, with clear procedures and strong internal controls. The interviewee believes the low number of serious corruption cases reflects the robustness of existing administrative oversight, rather than underreporting. They also express concern over legal inconsistencies that may discourage whistleblowing and discuss efforts to support and train other institutions within the region.

Academia

SP-AC1

In this interview, the interviewee discussed their work and experiences related to the legal and procedural challenges of whistleblowing. They described their involvement with various academic and professional projects related to governance, where they observed a tendency to treat whistleblowing as a highly complex issue due to its intersection with multiple areas of law—civil, labour, and penal. The interviewee emphasised the difficulty of navigating these legal realms, particularly when addressing the need for reform in existing laws. They also expressed concerns about the quality of writing and analysis in some legal texts, stressing that a more nuanced, professional approach was needed. The conversation also highlighted their ongoing commitment to making a positive impact, despite the challenges, and their intention to share insights through various publications.

SP-AC2

In this interview, the interviewee highlighted the strengths and weaknesses of the current whistleblower protection law. A key strength is the existence of the law itself, which was a significant step forward, even though it arrived late. The law's broad material scope, covering areas like administrative and environmental infractions, was also seen as a positive. However, doubts were raised regarding the management of information channels, which could be overwhelming due to the diversity of cases they must address. The complexity of determining the severity of infractions and the lack of protection for reports on minor violations are seen as major concerns. The interviewee also expressed concern over the law's lack of clarity and the potential for procedural delays. They stressed the importance of fast, efficient implementation of protection measures to minimize harm to whistleblowers and ensure real protection against reprisals. The need for clear protocols, adequate training, and coordination among authorities was emphasized, as was the requirement for legislative reforms to align with the law's objectives.

SP-AC3

The interviewee shared their experience as a whistleblower, highlighting the pressure and retaliation faced after reporting unethical practices in their workplace. They emphasised the need for proper protection for whistleblowers, particularly for those reporting less severe violations, like ethical breaches or wasteful behaviour.

Regarding the anti-corruption law, the interviewee acknowledged its positive aspects but criticised the lack of regulation for internal reporting channels. They argued that these systems must offer better protection and clear protocols, especially in small organisations. The interviewee also expressed concerns about the independence of the new authority, fearing political influence, but remained cautiously optimistic that incremental changes could improve the situation. They stressed the importance of support systems, including financial and psychological aid, for whistleblowers.

SP-AC4

The interviewee reflects on the significant differences between countries in how they have transposed the EU directive into national law, noting that while many have opted for a broad transposition, this has led to complex legal overlaps. From her experience, one of the main concerns lies in the procedural confusion caused by multiple bodies, such as the independent authority (AINPI) and the judiciary, potentially conducting parallel investigations. This lack of coordination can undermine both the investigation and the protection of the whistleblower. She critiques the current design of the AINPI, describing it as overly centralised and lacking sufficient resources, institutional clarity, and procedural guarantees. The interviewee emphasizes that confidentiality is essential but must be balanced with the right of defence for those under investigation. She argues that the focus should not be on criminal offenses alone, but rather on identifying early warning signs of systemic failures. Ultimately, she calls for a more pedagogical approach, stronger institutional design, and judicial awareness to ensure the law's effectiveness.

SP-AC5

The interviewee highlighted several issues with the implementation of whistleblowing mechanisms in Spain, particularly in the public sector. She pointed out that while many public entities have formal policies in place, the actual implementation is lacking, especially in local governments. Key challenges include the reluctance of staff to assume responsibility for managing internal reporting systems, often due to concerns about conflicts of interest and potential retaliation. The complexity of the law and the lack of clear guidance further complicate its application.

Additionally, there is a lack of trust in internal channels, with many potential whistleblowers preferring to wait for the external, independent authority to be established. The interviewee also emphasised that without clear enforcement and visible consequences, including the use of sanctions, the system is unlikely to work effectively. The law's focus on compliance due to EU funding obligations is seen as a key motivator for improvement, but cultural change remains slow.

SP-AC6

The interviewee expressed significant concerns about the Spanish whistleblowing law, particularly its lack of alignment with existing legal frameworks. They criticized the failure to amend the Penal Code or Criminal Procedure Law, pointing out that retaliating against whistleblowers is not considered a crime, only subject to administrative sanctions. The interviewee also emphasized the law's focus on legal protection, which they argue comes too late, particularly in terms of financial security for whistleblowers facing retaliation such as dismissal. They proposed more proactive measures, such as mandatory wage continuation for whistleblowers during legal proceedings. Furthermore, they questioned the coordination between the new independent authority and judicial bodies, raising concerns about inefficiencies and potential conflicts. Ultimately, the interviewee voiced doubts about the law's effectiveness, given the political resistance and cultural barriers surrounding whistleblowing in Spain.

Compliance officers

SP-CO1

The interviewee discusses the management of whistleblowing channels within their organization, highlighting that they have had such a system in place even before the implementation of the law. The system is globally accessible, offers anonymity, and is available in multiple languages. The company has seen an increase in reports since the law's approval, with most complaints being handled by internal audit and HR, with cases being reported every two months to the audit committee. While no retaliation has been reported, the company has protocols in place to handle potential retaliation, including an annual review process for key personnel. The interviewee also comments on the challenges of managing small companies under the new law, noting that they already had robust systems in place but recognize the difficulties smaller organizations may face in implementing and maintaining such protocols. Additionally, they express concerns about false claims and the potential misuse of the system.

SP-CO2

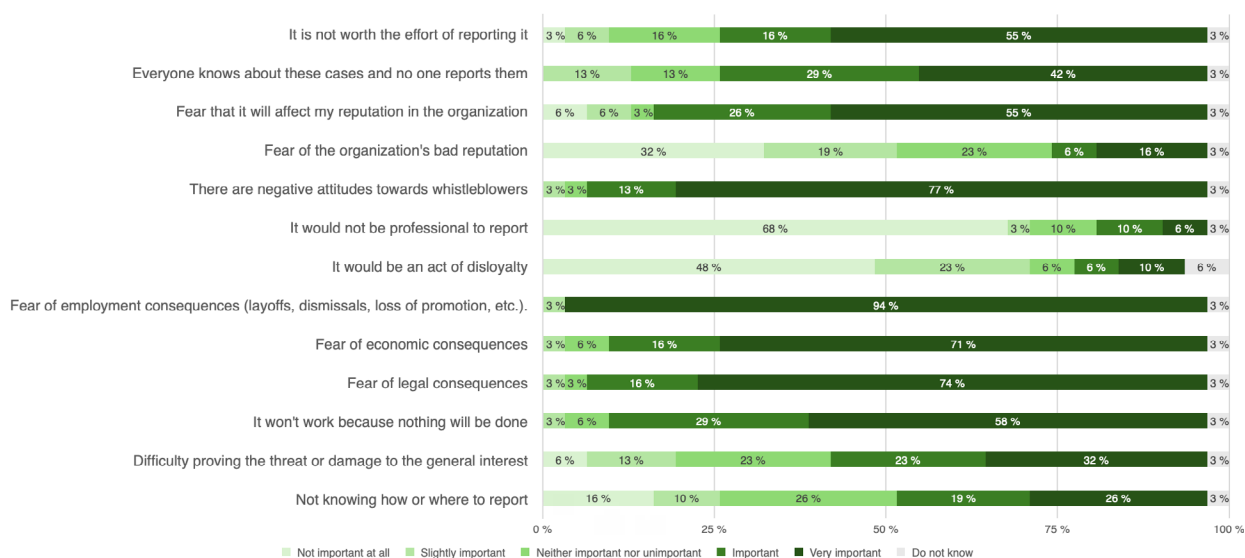
The interviewee discusses how the whistleblower protection law has impacted their organization's internal compliance processes. Previously, there was a focus on a formal internal reporting channel, but the law has strengthened confidentiality measures and formalized procedures for investigating complaints. Despite this, the interviewee notes that the majority of reports are related to internal workplace issues, such as labour disputes and minor ethical violations, rather than the serious misconduct that the law intends to address. They mention that the number of valid complaints has been low, with most reports either being inadmissible or related to minor infractions like managerial pressure or workplace harassment. The interviewee sees the law as useful in terms of providing a clearer framework for addressing issues, though they express limited concern about the new authority for whistleblower protection, as the existing regulatory bodies like the Bank of Spain and CNMV have already been handling such matters. They highlight the importance of training and communication within the organization, ensuring that employees understand the purpose of the whistleblowing channel and the broader anticorruption policies.

EC (DGJUST) public official

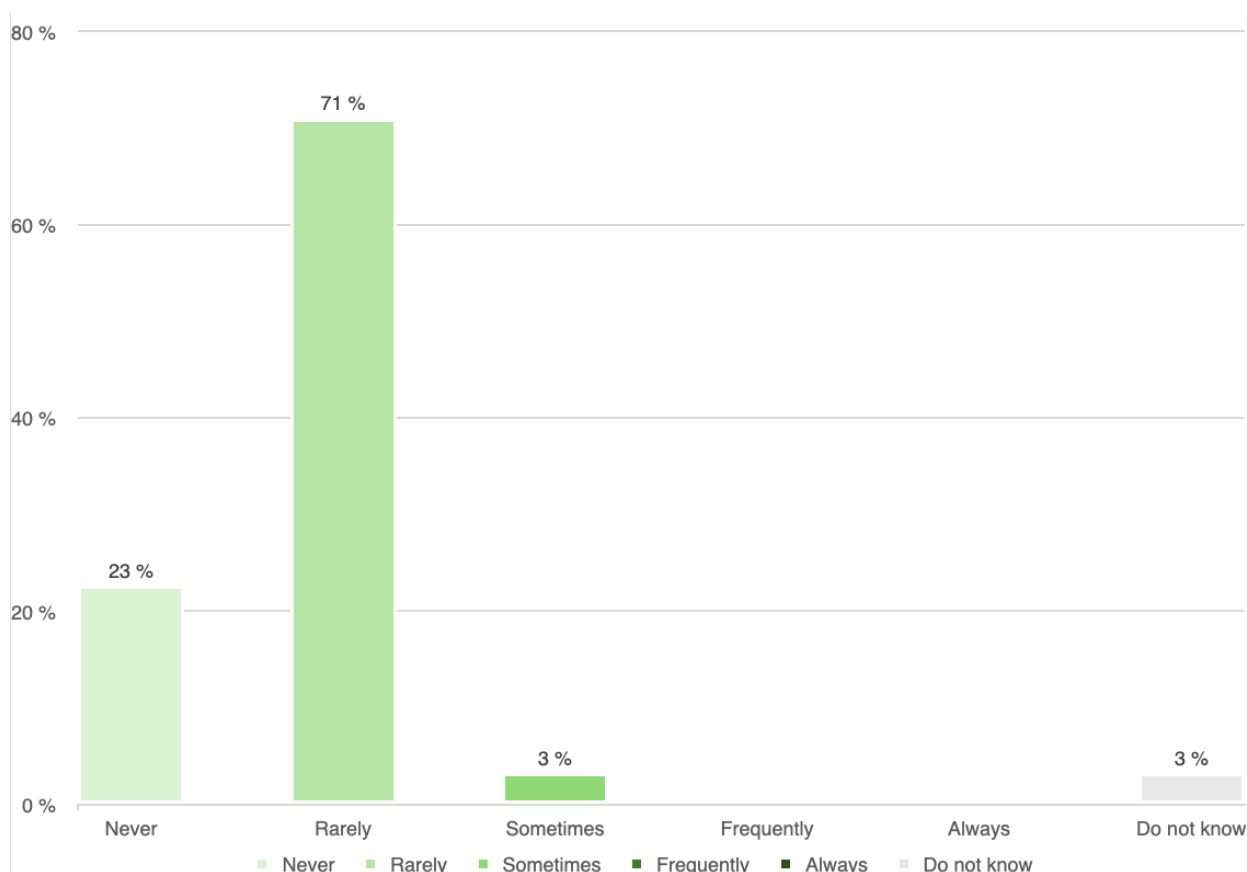
The interviewee discusses the late implementation of the EU Whistleblower Directive in Spain and the complexities involved in the transposition process. They emphasize that the Directive suggests having a single national authority as a point of contact for whistleblowers but leaves room for variations based on the country's structure. For example, some countries like Ireland have decentralized responsibilities across various ministries. The interviewee notes that Spain adopted a similar model, with the possibility of forwarding investigations to the police or the prosecutor's office. They highlight the importance of ensuring that whistleblowers do not lose protection if a complaint is inadmissible in an internal channel, except for cases where information is already public or manifestly false. The interviewee stresses the need for clear legal procedures and long-term protection for whistleblowers, along with campaigns to raise public awareness. They also mention efforts to train judges and the challenges posed by Spain's regional divisions, which could complicate the law's implementation across the country.

Annex 3.2. Summary report of the online survey

A1. What are, in your opinion, the most important reasons why a person might decide not to report these behaviours that threaten or damage the interest of the organization and/or the general interest?

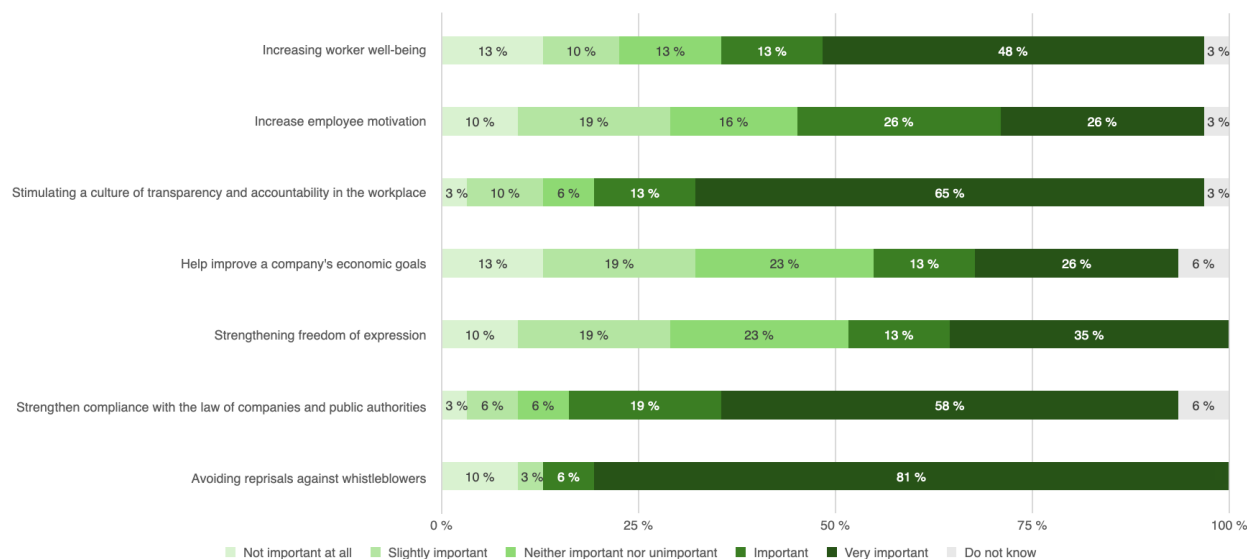


A2. In your opinion, how often do workers report threats or damage to the general interest?

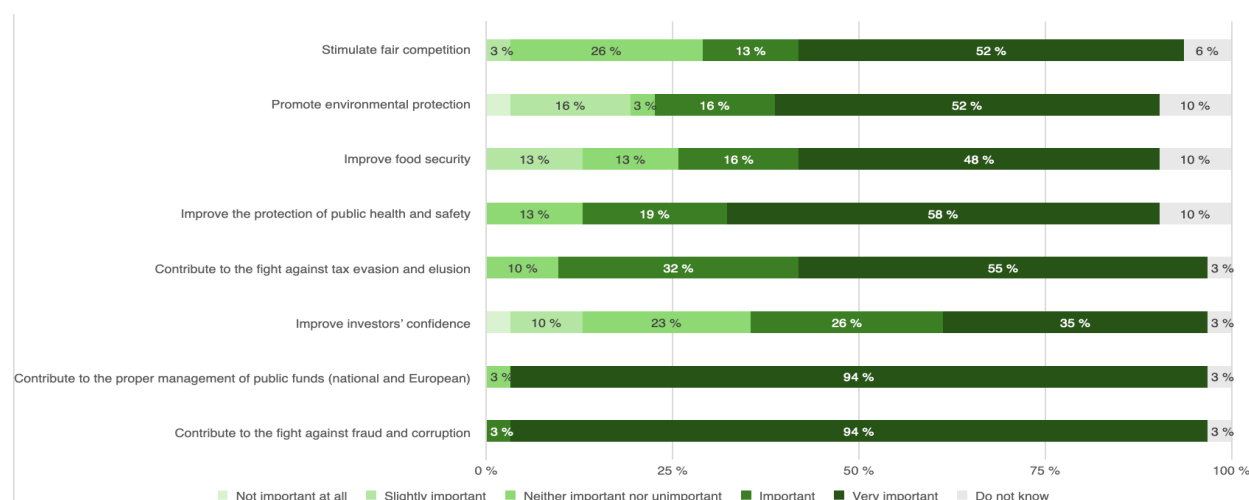


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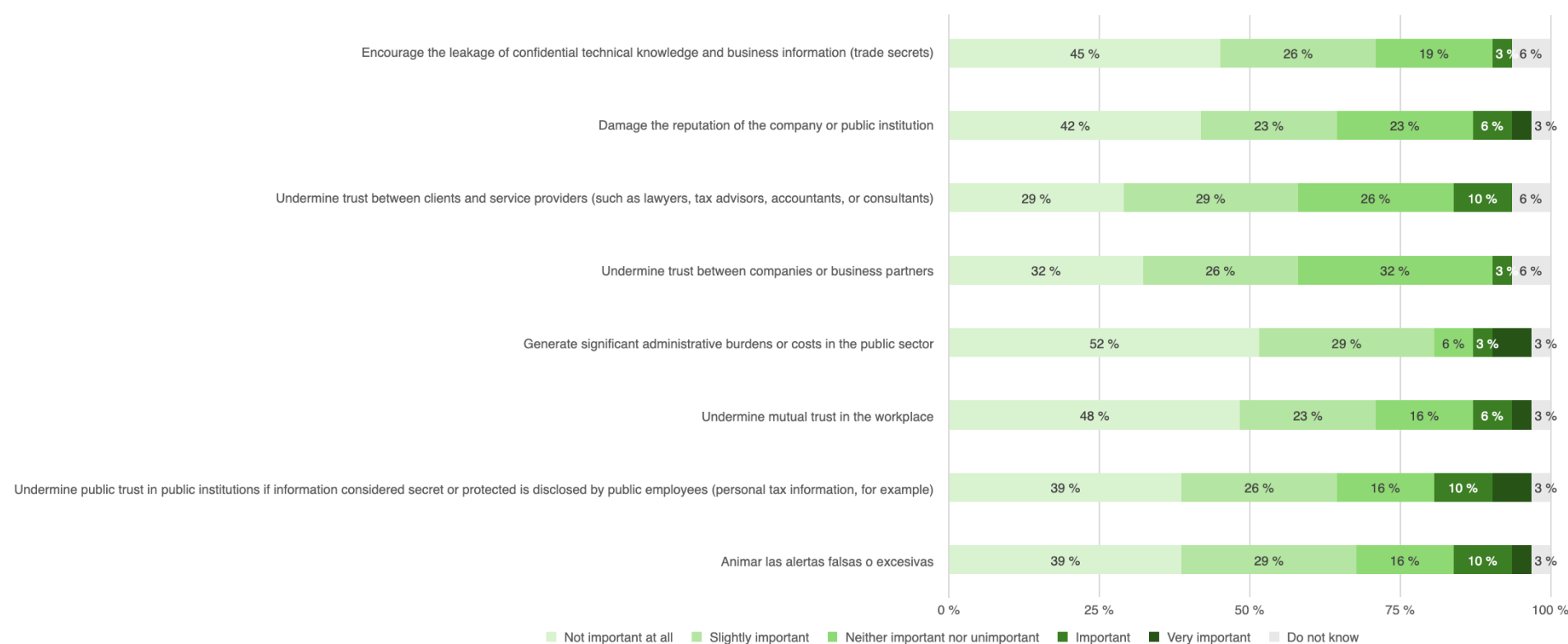
A3. What are the benefits of requiring public and private sector organizations to protect whistleblowers?



A4. In your opinion, how important are these objectives for the adoption or implementation of whistleblower protection laws?

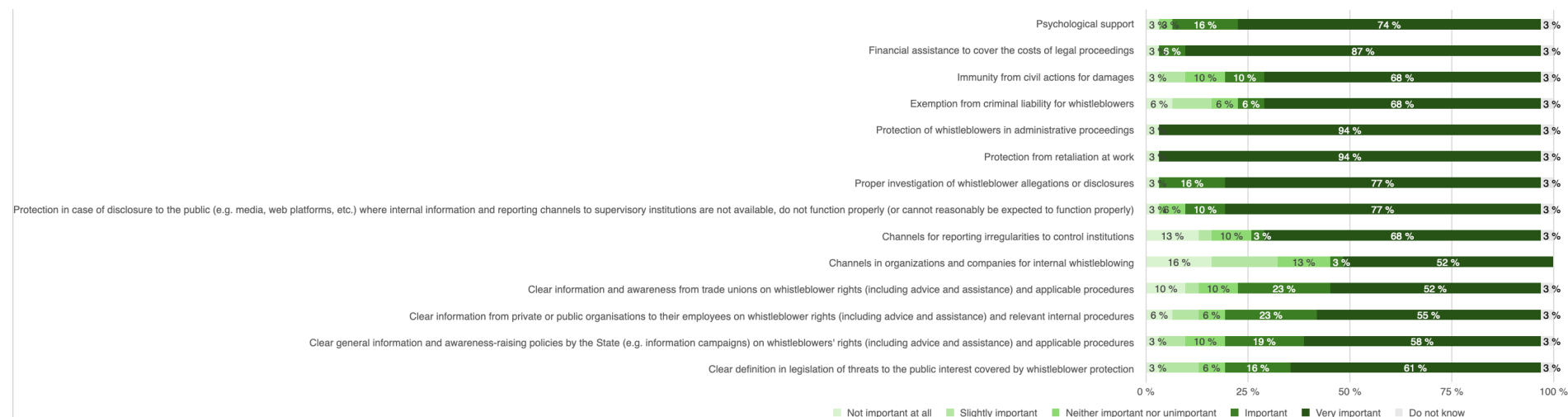


A5. And how important are the following effects of the implementation of whistleblower protection laws?

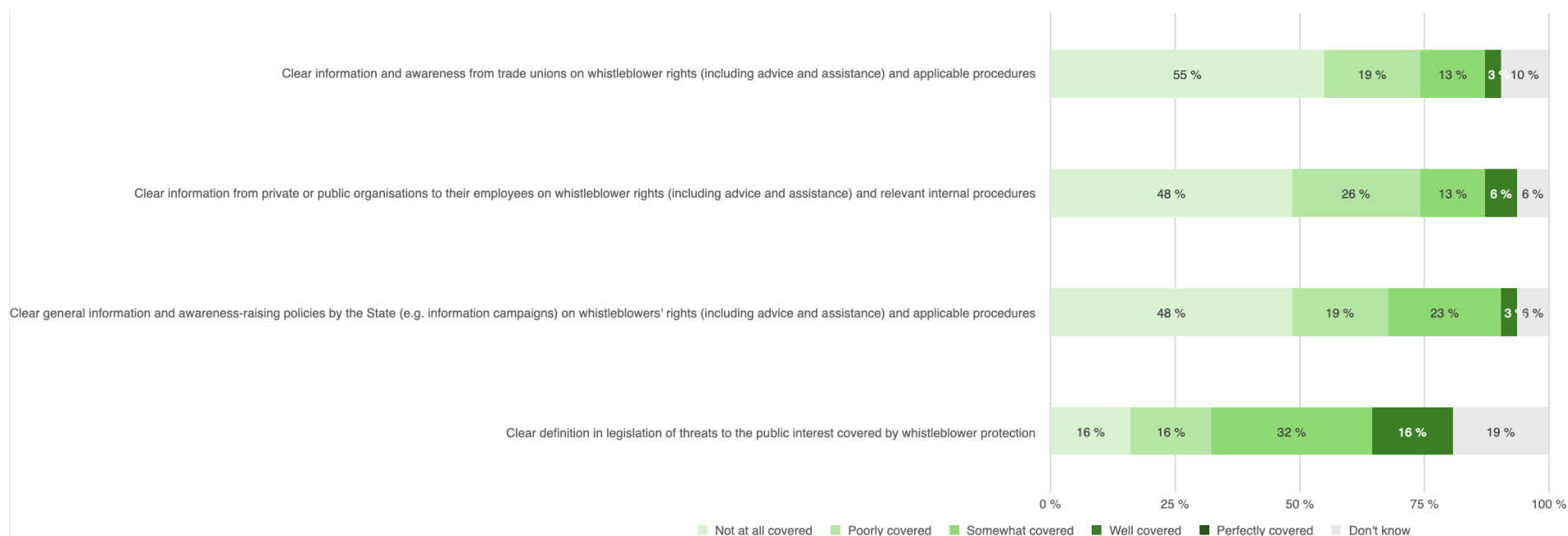


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A6. In your opinion, which of the following measures are relevant to the effective protection of whistleblowers within your organisation?

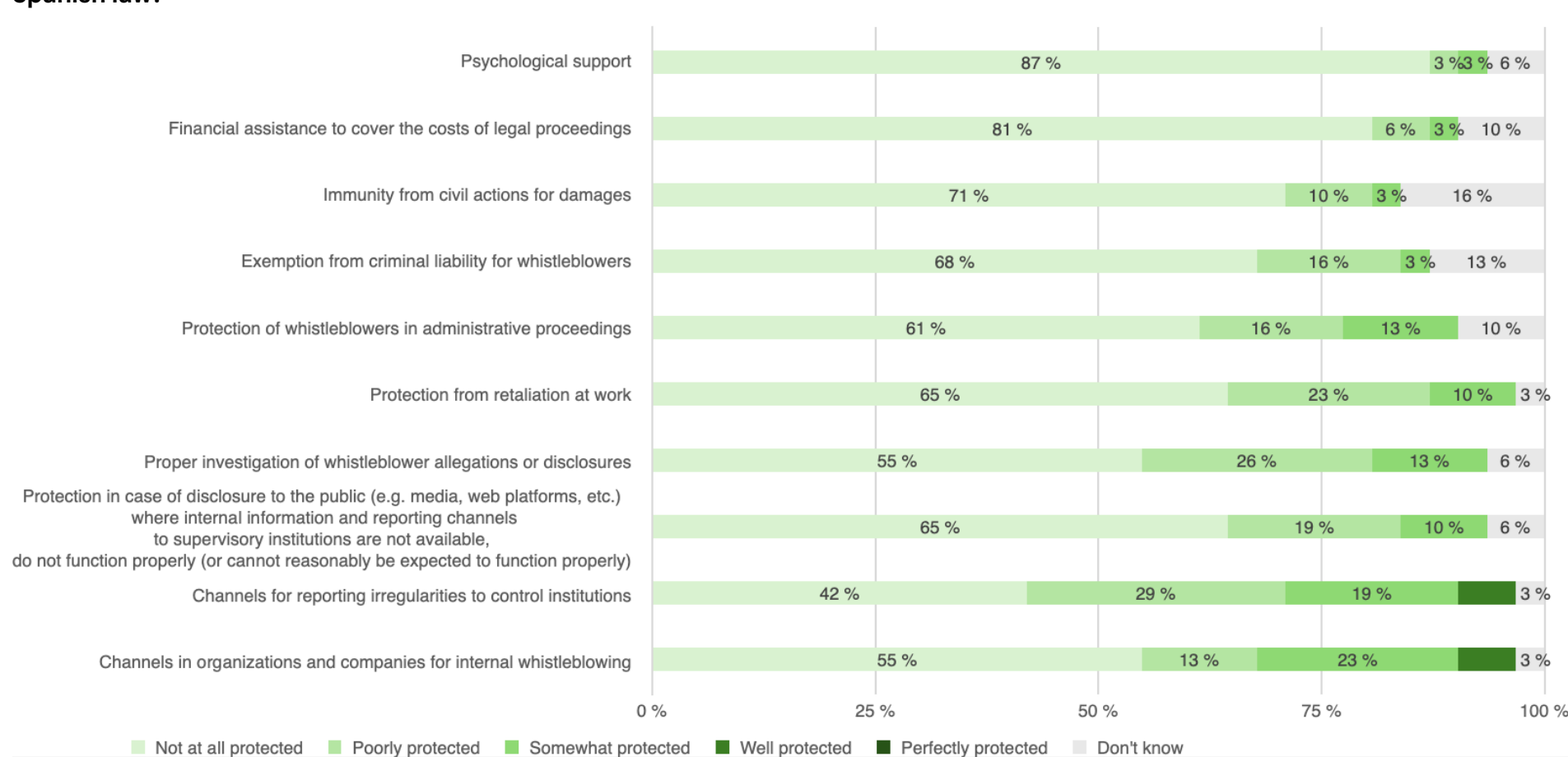


A7. And speaking of those same aspects, to what extent do you think that the Spanish law that transposed the European Directive 1937/2019 covers each of these aspects well?



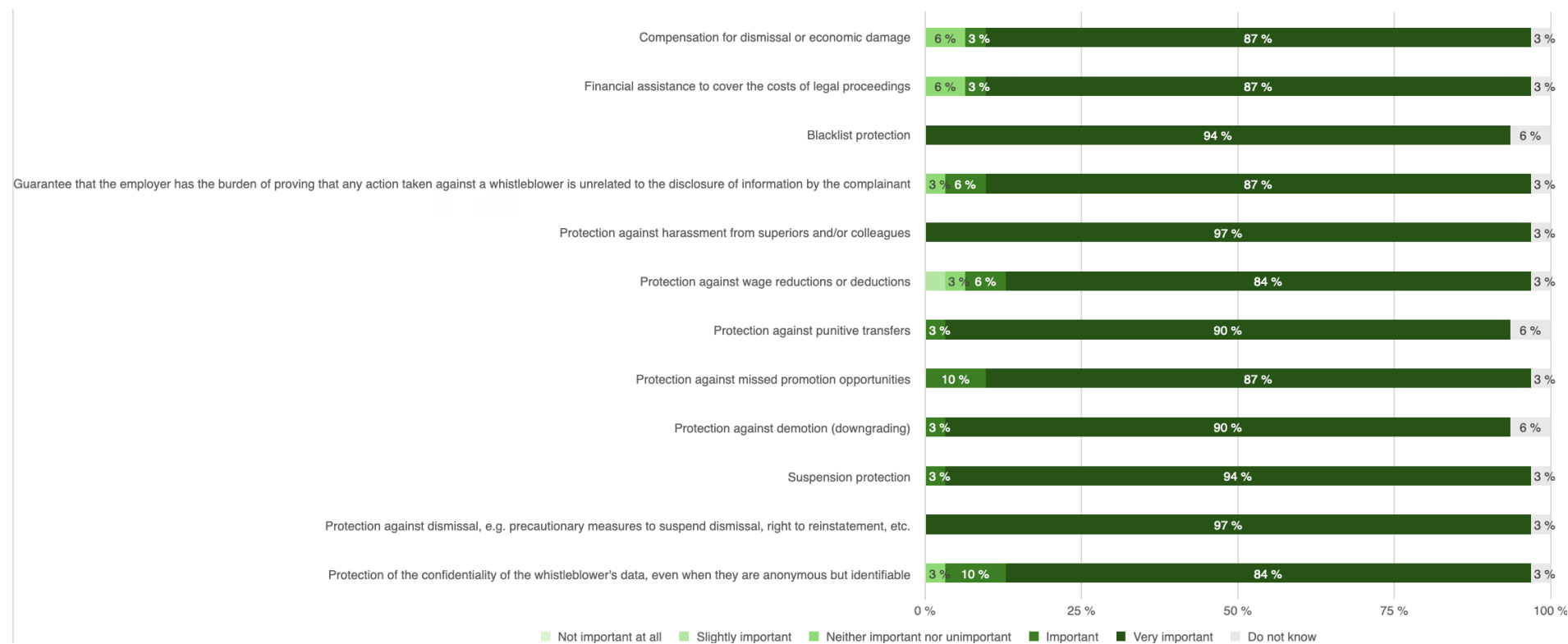
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A8. And speaking again of Spanish legislation, to what extent are each of these aspects that have been mentioned protected in the Spanish law?

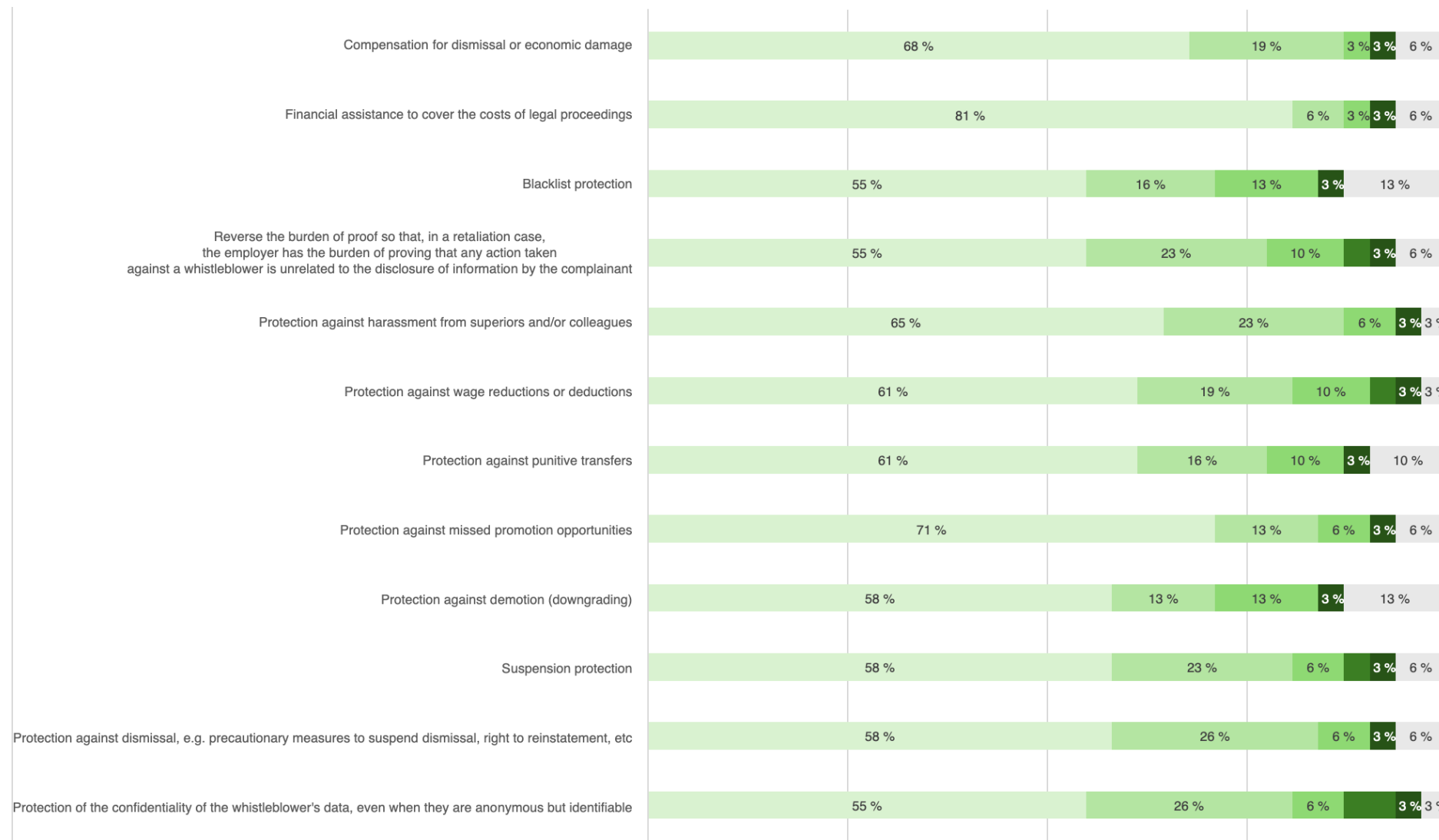


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A9. In your view, which of the following aspects of protection against retaliation at work are important for effective whistleblower protection?

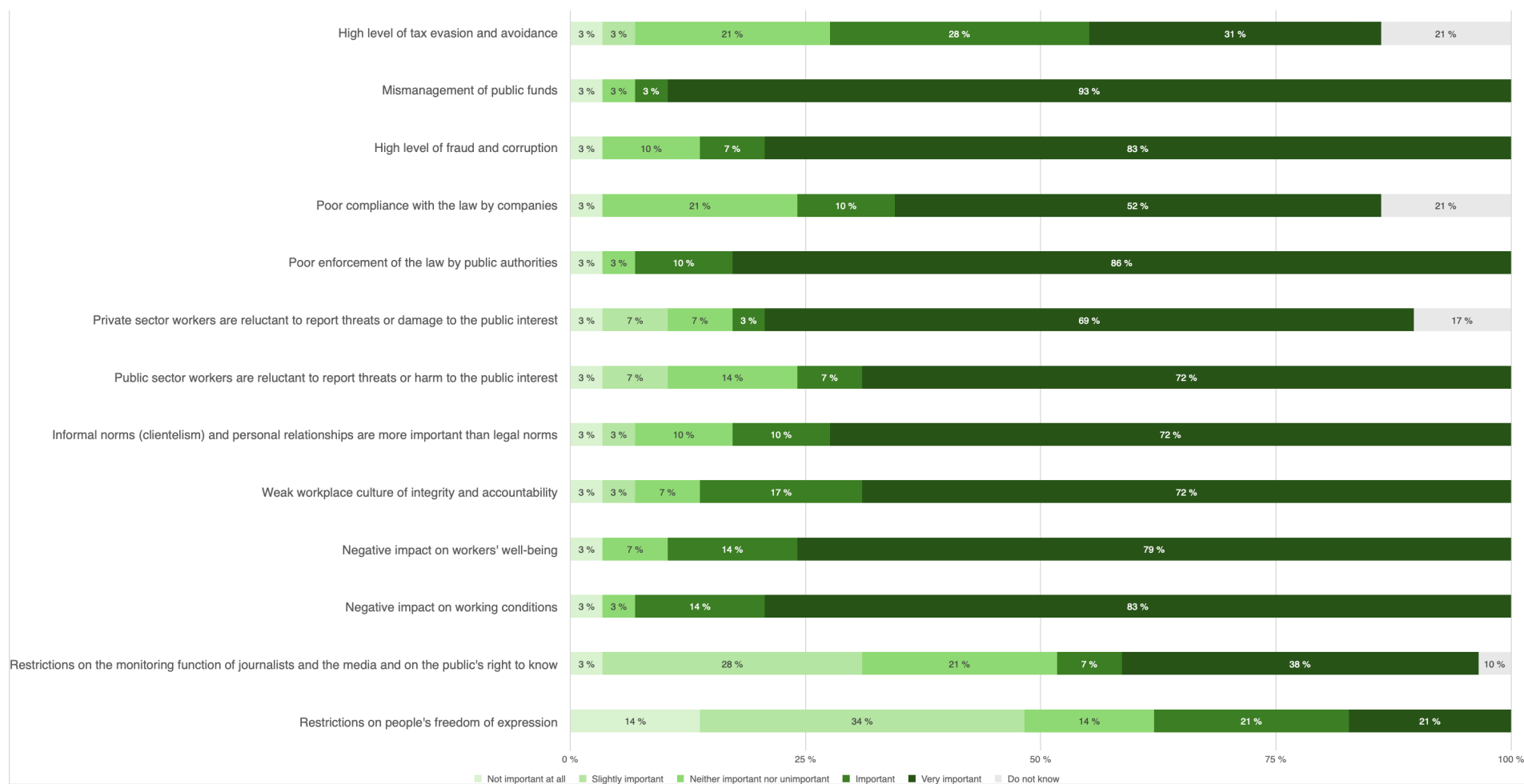


A10. And returning to Spanish legislation, to what extent are these same aspects of protection against retaliation well protected?



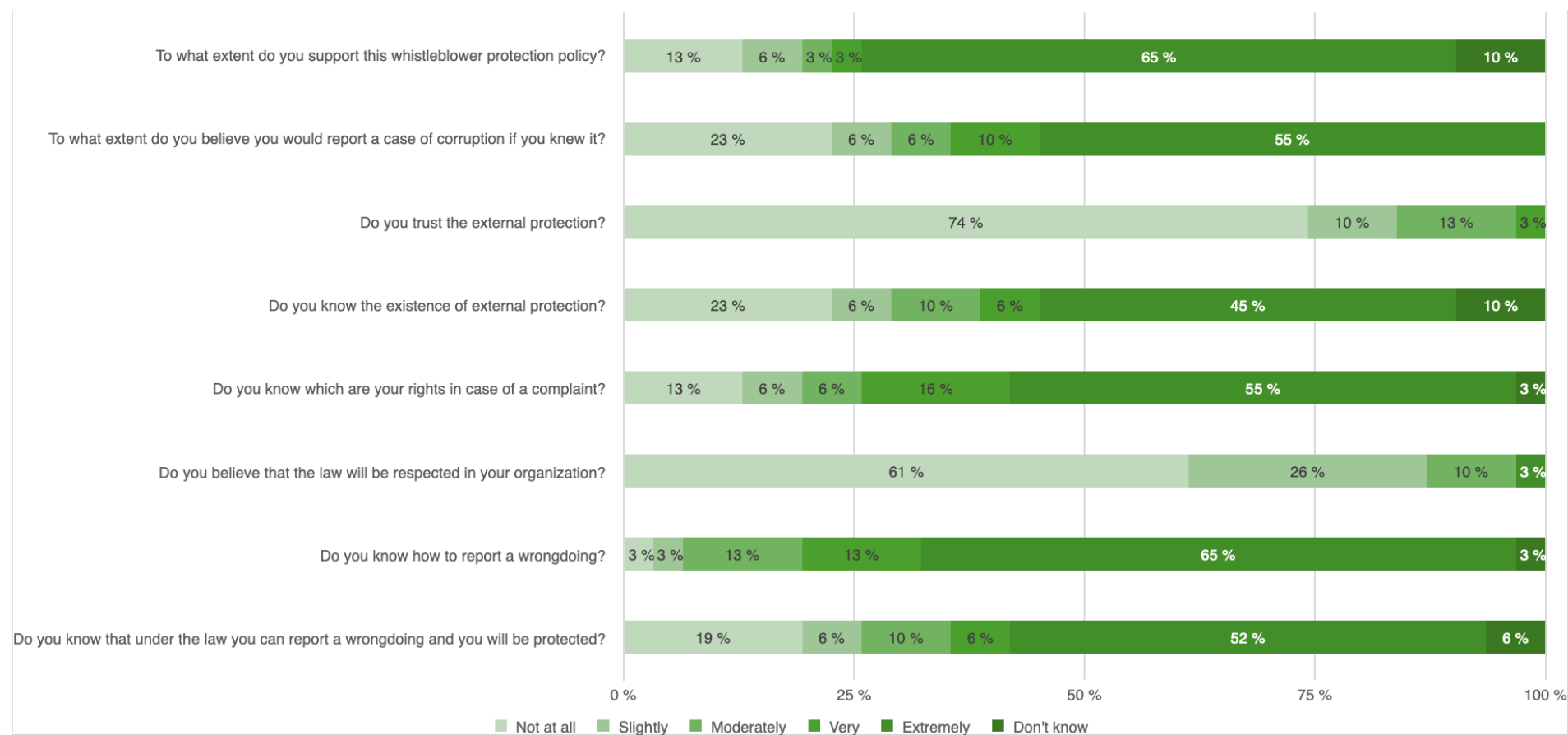
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A11. Thinking about Spain, what do you think are the main problems for effective protection of whistleblowers of corruption, fraud and other serious crimes and infractions?



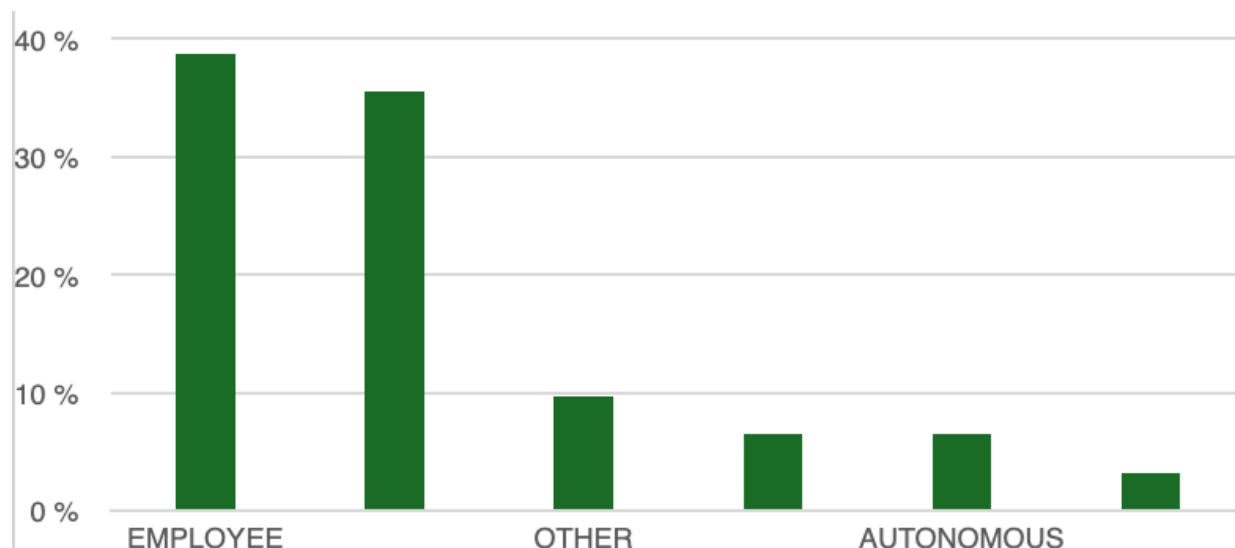
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A12. Regarding the recent act approved in this country, could you answer the following questions?



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B1. What is your current situation?

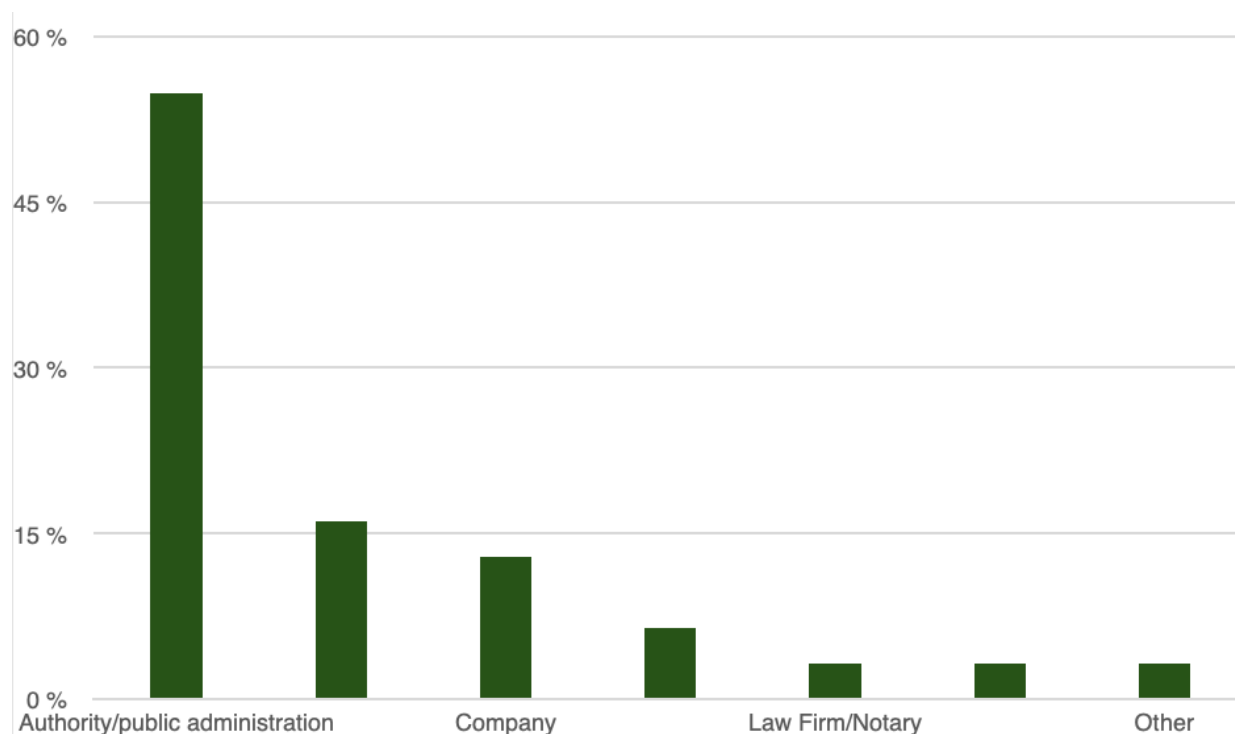


B2. And what sector are you or have you been linked to, public or private?

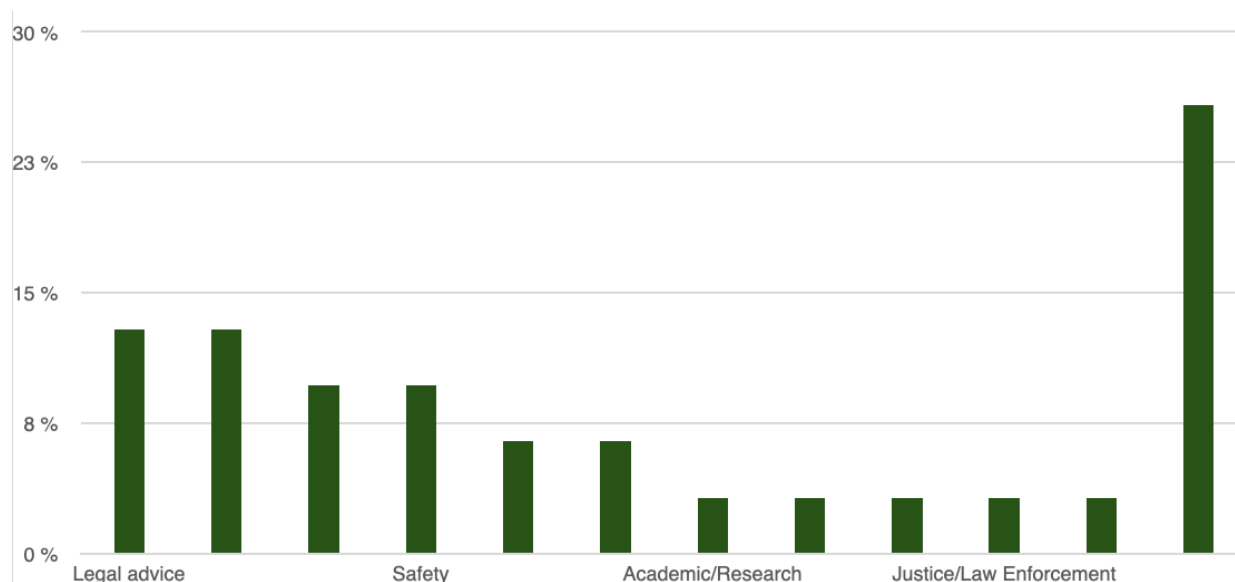


PARTNERS

B3. What does the organization in which you work, have you worked or had relationships do?

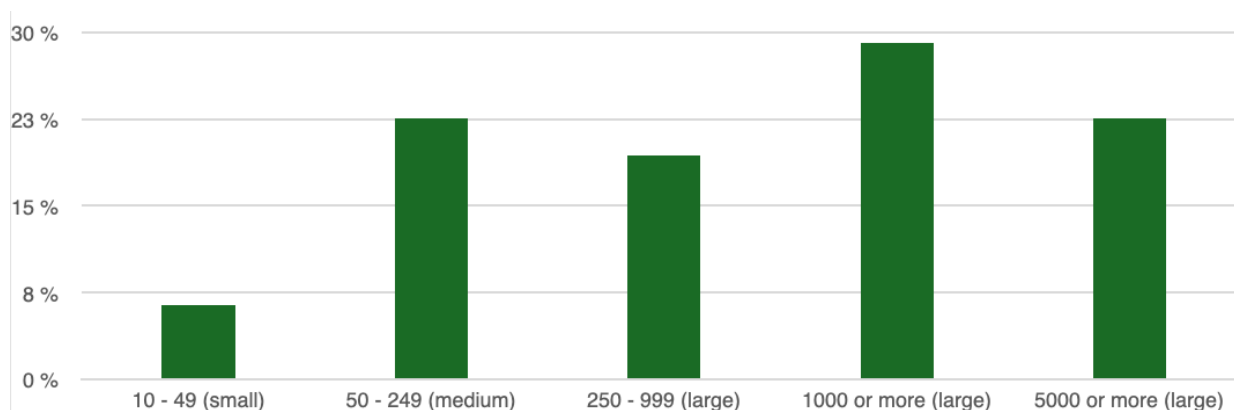


B4. In which area of activity does/did your organization work?

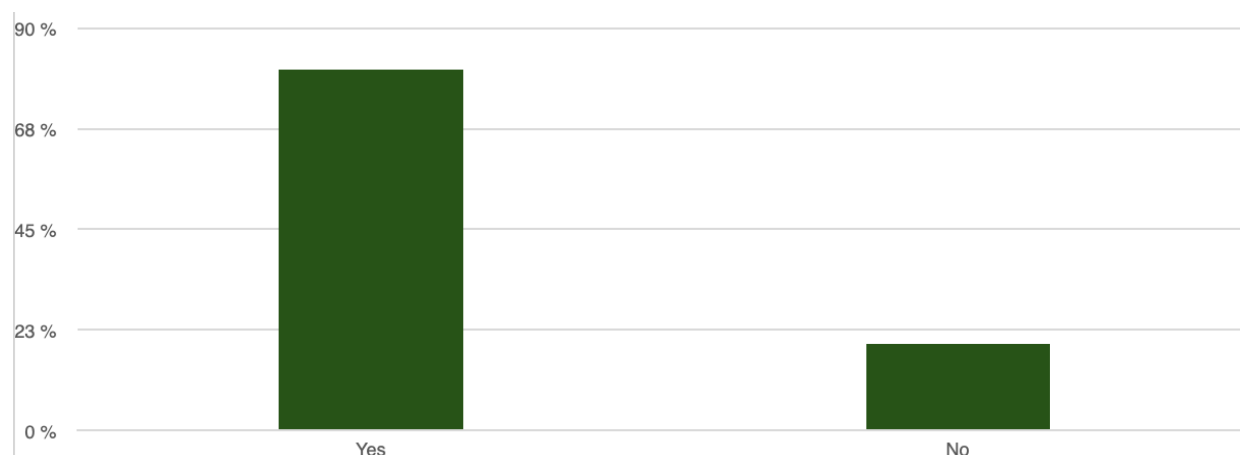


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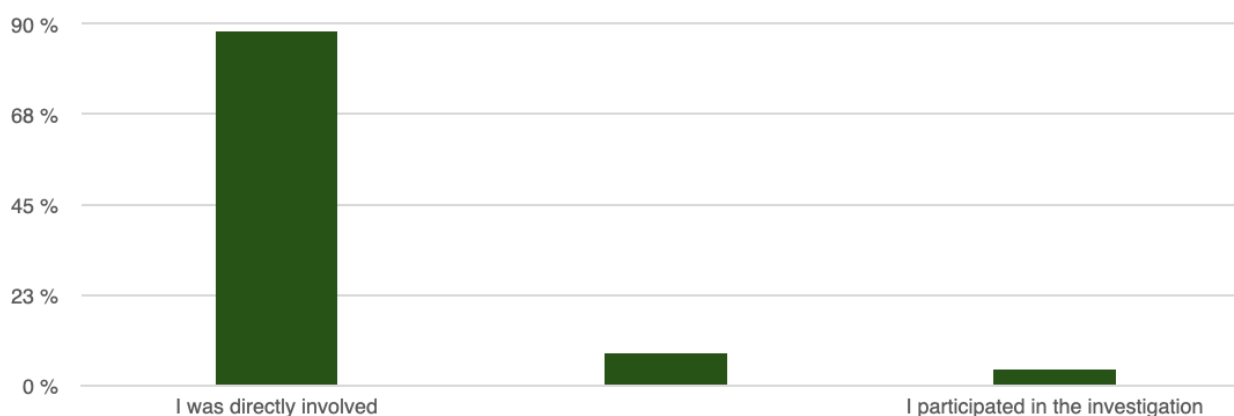
B5. What is/was the size of your organisation?



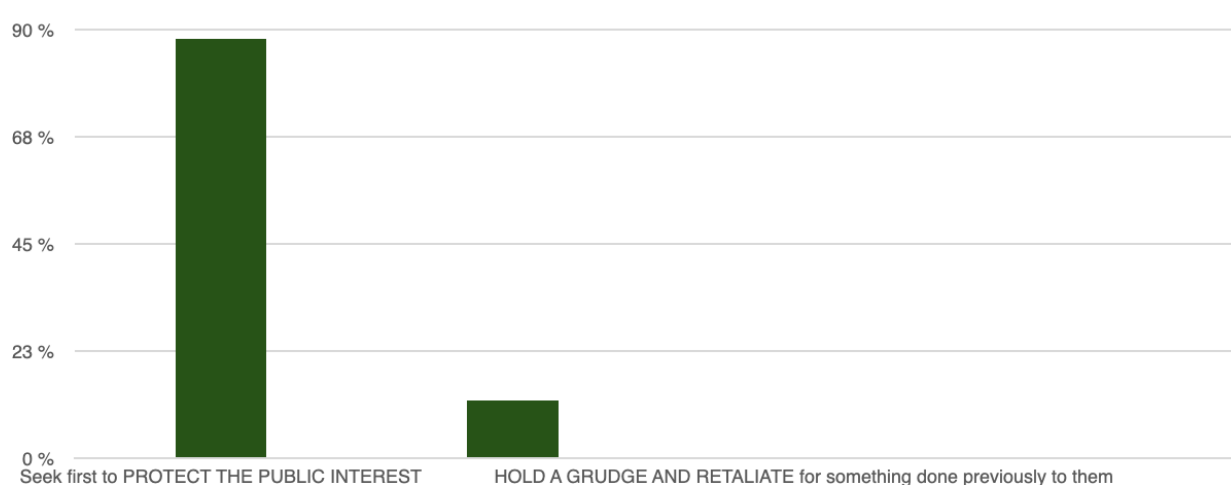
B6. From your direct work experience, are you aware of any whistleblowing cases in your organisation in the last ten years?



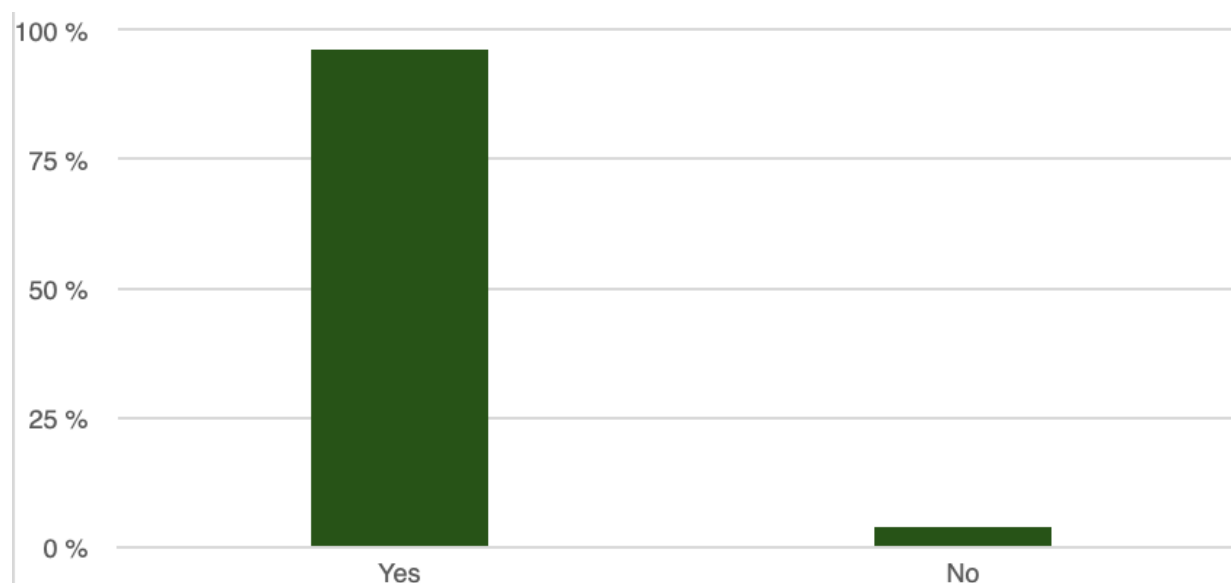
B7. How did you hear about such cases in your organisation?



B8. Research suggests there are four types of whistleblowers. All of them think the organization they work for is doing something wrong. I would like to know which type you think most whistleblowers fit in to.



B9. If so, did you suffer retaliation when reporting the case?



Annex 4. Results of the empirical work of the Portuguese case study

Annex 4.1. Summary report of interviews

Whistleblowers

This section of the report includes contributions from PT-WB1 to 5, PT-WB6, PT-WB7 to 13. Three interviewers (PT-WB1, PT-WB4 and PT-WB9) did not know the new Portuguese legislation and, therefore, did not answer questions directly related to it.

Gaps and Shortcomings in Legislation: There is a consensus amongst the interviewers that this legislation represents significant progress in the protection of whistleblowers. However, the interviewers highlighted critical limitations: the law excludes entities with fewer than 50 employees, leaving gaps in accountability and protection; it lacks clarity and real-world applicability. Some protections provided by the law do not translate into practice, specifically anonymity. It neglects the emotional impacts and psychological support by focusing solely on legal protection, without considering the social and cultural dimensions related to stigma.

Compensatory Measures, Damages, and Consequences for the Whistleblower: The interviewers highlight the lack of legal, psychological and financial support, and compensations are perceived as insufficient or even non-existent. Most faced mental health issues, legal proceedings and retaliations that had consequences on their economic and professional lives. Some of them received personal threats. Predominance of informal support from family, colleagues, unions, etc., rather than institutional. Some interviewers even emphasise peer and social isolation, ostracism, and exposure in the media. Nonetheless, the majority of the interviewers would still be a whistleblower even after going through all the process.

Future Legal Improvements and Reforms: Interviewers agree on the need to extend protection, especially from professional and legal reprisals and enforcement mechanisms. Moreover, the need for emotional and social support systems is also highlighted. Educational and awareness campaigns emphasising whistleblower rights, as well as efforts to create social awareness and cultural change, are also highlighted.

Internal Reporting Channels, Compliance Policies, and Management Responsibility: Interviewers highlight the lack of internal mechanisms of reporting, ineffective reporting channels and leadership complicity. These concerns are often accentuated in small teams and by cultural obstacles, which hinder anonymity and create an environment conducive to gossip.

Role of Representative Entities (Unions and NGOs): NGOs were rarely mentioned, although some recognised that they could have a relevant role in providing juridical support. Unions were also often absent but, when present, provided substantial legal support. An interviewer highlighted that the union's lawyer might not be available to help in this type of case (PT-WB7)).

Relationship with Labour Legislation and Judicial Practice: there is no mention of the relationship between this and labour legislation. Concerns on the adequacy of judicial processes: The judicial system is slow, and judicial processes were self-financed due to a lack of financial support.

PARTNERS

Protection Against Retaliation and Effectiveness of Measures: A two-year period was considered insufficient because judicial processes in Portugal last for long periods of time and because retaliations can happen even after that period. Lack of financial and emotional support, the legislation only prevents retaliation on paper, not in practice.

Obstacles and Associated Incentives to Reporting: Fear of exposure and retaliation (especially economic, professional, and psychological), issues regarding weak guarantees of anonymity, and a lack of effective communication and information means. Most interviewers agree that if there were more information available about the developments of the process and about the legislation, people would feel more encouraged to report. No incentives were highlighted other than a strong personal commitment to ethics and justice.

Implications of the New Legal Regime: Most interviewers believe that the legislation represents an important step forward in protecting whistleblowers. Nonetheless, culture remains unchanged within the organisations and society, and there are no proper implementation and enforcement mechanisms, and practical change remains limited.

Important Citations:

It's very simple. In theory, everything is fine; in practice, everything is wrong.

Well, it's well-intentioned, it's nice, but it's very ineffective, in my opinion, because it has no official effectiveness.

I only intend to report and do what I believe is morally right, but none of it actually materialises, and it's a great pity and a big disappointment.

The law is born dead. Because it won't apply. It doesn't protect. It goes from the wrong perspective. It is not directed to protect persons and can create victims.

Compliance Officers

This section of the report includes contributions from PT-CO1, PT-CO2 and PT-CO3.

Gaps and Shortcomings in Legislation: The main view is that there are no major formal gaps in the law, even though it is not being effectively implemented. However, the main issues are related to the lack of awareness and training among personnel responsible for these reports, especially in the private sector, the absence of a supervision and monitoring authority to ensure the effective application of the legislation, and cultural resistance.

Compensatory Measures, Damages, and Consequences for Whistleblowers: The interviewers defended the existence of an effective system that protects whistleblowers acting in good faith. Especially considering professional reprisals, if wrongfully dismissed, they should have access to compensation or reinstatement. The new legal regime still lacks effective

monitoring mechanisms.

Future Legal Improvements and Reforms: The reforms proposed focus on implementation issues and enforcement. On the one hand, whistleblower protection should align more clearly with the Portuguese Labour Code; on the other hand, an independent body should be created to monitor implementation and compliance. Finally, educational campaigns and cultural changes are crucial to normalize whistleblowing and to correctly implement the legislation. PT-CO1 believes that the proposal of reforms will depend on the current and future judicial implementation of the legislation.

Internal Reporting Channels, Compliance Policies, and Management Responsibility: The interviewers emphasise that their organisations have established internal policies and procedures to address whistleblowing complaints. However, they lack information and real case tests on full compliance with some demands, such as anonymity. It will depend on internal independence.

Role of Representative Entities (Unions and NGOs): Divergent opinions. PT-CO1 does not know. PT-CO1 believes that the traditional role of unions won't be affected, and PT-CO3 believes that this new regulation might reduce the influence of unions.

Protection Against Retaliation and Effectiveness of Measures: The legal framework is seen as theoretically solid but untested and potentially weak in practical enforcement. Effectiveness depends on organisational integrity. There is no general agreement on the topic period of two years of protection against retaliation. PT-CO1 believes it is enough. Some highlight the need to extend this protection to those responsible for the investigations.

Obstacles and Associated Incentives to Reporting: Highlight fear of retaliation and lack of trust in anonymity and cultural stigma as the main obstacles to these actions. Legal incentives alone might not be enough to encourage whistleblowers (PT-CO1 believes that represents an incentive).

Implications of the New Legal Regime: The regulation is generally perceived as an improvement, clarifying the scope of protections. There are, however, uncertainties about the preparedness of Portuguese courts to implement this legislation, especially their capacity to maintain anonymity. There is uncertainty about the general application of this regulation nationwide.

Important Citations:

"I personally see a significant gap, because while the legislation and the European Directive provide for whistleblower protection, I don't see—especially when it comes to Portugal—any authority actively defending whistleblowers."

"I would say that perhaps the biggest obstacles are precisely that: the lack of awareness that this anonymity is real and effective."

"In my experience it is not that irregularities don't exist; I think it's more that employees still

don't truly know the rights they have when making a report. And I believe they still do, in fact, have some fear of retaliation after making a report."

Authorities and officials responsible for internal channels in public organisations | Authority responsible for Whistleblower protection (PT-PE4)

This section of the report includes contributions from PT-PE5, PT-PE1, PT-PE6, PT-PE2, PT-PE3 and PT-PE4.

Gaps and Shortcomings in Legislation: All interviewers have highlighted that the new regulation on whistleblowing represents a significant step forward in consolidating rights and guarantees. However, the fact that the legislation is recent means it is still too early to assess its implementation and that it is normal to identify some ambiguities. Ongoing judicial practice and empirical studies will be crucial for evaluating the law's effectiveness and informing future improvements. However, they highlight that the lack of detailed procedural guidance and the challenge of applying a uniform regime to both public and private sectors represent challenges to this regulation.

Compensatory Measures, Damages and Consequences for the Whistleblower: There is concern about whether the current compensatory measures will be sufficient to protect whistleblowers. Once again, the interviewers emphasised the fact that the legislation has been implemented for a short time and, therefore, there is no available data that allows us to assess properly whether these compensatory measures are enough, but the general trend is that the legal framework for compensation is vague and not fully operational. Jurisprudence will be an important element in this context.

Future Legal Improvements and Reforms: Most participants agree that future reforms should be data-driven and reflect practical experience and flaws. Moreover, they insist on the need for clearer legislation accessible to all citizens, along with more staff training and fostering a culture of whistleblowing. Additionally, structural reforms to improve the judicial system are crucial for enhancing enforcement.

Internal Reporting Channels, Compliance Policies, and Management Responsibility: Implementation quality varies, but most confirm that internal frameworks are in place. Without trustworthy internal channels, whistleblowers may bypass them, resulting in less effective outcomes and reduced organisational learning.

Role of Representative Entities: Union action will not be negatively affected by the legislation. NGOs will be relevant as a complement through advocacy and monitoring.

Relationship with Labour Legislation and Judicial Practice: The integration of whistleblower protections into broader employment law frameworks poses challenges. Interviewees emphasised the need for clearer judicial guidelines and harmonisation to ensure that whistleblowers receive adequate legal protection and access to justice.

Protection Against Retaliation and Effectiveness of Measures: In general, interviewers be-

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lieve that the law is solid. However, real-world enforcement remains untested. Strengthening monitoring, enforcement, and follow-up actions were repeatedly emphasized to ensure that protective measures have a tangible impact and serve as a deterrent against reprisals.

Obstacles and Associated Incentives to Reporting: The main deterrents are fear of retaliation, stigma, and proof-gathering difficulties. Additionally, interviewees emphasised that the protection afforded by the law is insufficient if organisational cultures do not foster transparency and accountability.

Important Citations:

“Because it is also a fact—and the legislation is very clear, the law is very clear on this, and so is the directive—that in addition to acting in good faith, a person must be convinced that what they are saying corresponds to reality. It’s not enough for me to think that what I’m saying is true—I have to make an effort to obtain additional information.”

“We have a point of contact, we have a type of regulation here that is called responsive regulation, and we engage in a lot of direct dialogue. When we receive communications from other entities, we lose control over the facts—and when it involves the Public Prosecutor’s Office, then it’s completely out of our hands; it’s like a black hole.”

“But [...] the existing measures are appropriate, effective, and proportionate, proportionate in the sense of the safeguards they provide. However, people always have doubts about their actual applicability, which holds them back from moving forward with making a report.”

“I believe that the main implication of the new regime was to provide, for the first time, a greater degree of safety and reassurance—or at least a greater sense of confidence, safety, and comfort—to whistleblowers. In other words, to create conditions in which, with greater security and protection of anonymity, all those who actually work within organisations can report irregularities, long-standing issues, and situations potentially involving criminal indications or other kinds of noncompliance.”

Experts and Academics

This section of the report includes contributions from PT-CS2 (inception interview), PT-AC4 (inception interview), PT-CS1 (inception interview), PT-AC3 (inception interview), PT-AC2 (inception interview), PT-AC5 and PT-AC1.

Gaps and Shortcomings in Legislation: There is a broad consensus that the legislation is overly formalistic and limited, and it is inadequate to the Portuguese institutional and legal reality and organisational culture. It creates high expectations without structurally changing institutional culture. Even still, recognition of the, at least formal, advances of this legislation compared to the previous framework.

Compensatory Measures, Damages, and Consequences for the Whistleblower: Ineffective–

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ness or absence of real compensatory mechanisms and protection. No effective guarantee of non-retaliation is also a result of the lack of trust in institutional and internal mechanisms.

Future Legal Improvements and Reforms: Broaden the scope of the legislation, update the scope of the whistleblower statute, clarify definitions, namely the ambiguity between internal and external channels, better harmonization with other pre-existing regulations, clarification how the private sector should implement these reporting channels and ensuring monitorization mechanisms.

Internal Reporting Channels, Compliance Policies, and Management Responsibility: Internal systems are perceived as insufficient and unclear. Moreover, these systems depend on cultural change and employee engagement, which is more relevant in smaller companies.

Role of Representative Entities (Unions and NGOs): The main view is that there might be a positive role of Unions and NGOs as informative and supporting mechanisms (although absent in the law) but also worries that their intervention might undermine the application of the legislation, for instance, in questions of anonymity, manipulation risks and attribution of the whistleblowing status.

Relationship with Labour Legislation and Judicial Practice: Lack of clarity and harmonization with labour law and labour courts, namely the uncertainty on the legal standing of Union-based reports. Doubts about the maintenance of anonymity with the action of the courts.

Protection Against Retaliation and Effectiveness of Measures: Interviewers demonstrate a real trend of scepticism regarding real protection against retaliations. Although the legislation exists, its practical enforcement appears to be weak. Once again, organisational culture and a lack of anonymity may undermine these processes. The retaliation window is seen by many as insufficient.

Obstacles and Associated Incentives to Reporting: Lack of trust in the institutions and their reporting channels, anonymity assurances, and fear of retaliation might undermine the efficiency of these measures. The legal requirement to report internally in the first place might reduce the likelihood of reporting. A lack of literacy on this matter might also discourage reporting.

Implications of the New Legal Regime: Interviewers express mixed Feelings. On the one hand, the legislation presents an evolution from past frameworks. On the other hand, there is a broad concern about its limited scope and over-reliance on EU directive wording without proper adaptation to national reality and cultural obstacles. Moreover, there is a gap between formal rights and real-life experiences.

Important Citations:

“So, I would say we are facing a somewhat complex situation of balancing what is reasonable and what might, at some point, be unreasonable. Now, to answer the question again, I believe that any worker who, for example, reports something concerning their company’s manage-

ment is fully aware—or at least has a clear sense—that despite the legal guarantees in place, things might not go so well in practice.”

“However, I believe that nowadays, there are sufficiently reliable mechanisms in place to guarantee whistleblower anonymity. So, frankly, I don’t see any reason why someone who is aware of an illegal practice and wishes to report it—whether internally within the institution or externally—shouldn’t be able to do so while ensuring their protection and anonymity, and by a variety of means.”

“Now, if the report concerns facts involving criminal liability, as in some major whistleblowing cases, the proposed two-year protection period falls short of the statute of limitations for disciplinary responsibility. The whistleblower’s fear and the weighing of whether or not to report could be addressed with greater confidence and effectiveness if the protection period were extended.”

“My impression is that, in employment contexts, no whistleblower moves forward without first seeking legal support, out of fear of the consequences and repercussions at work—and rightly so.”

Annex 4.2. Summary report of the online survey

A1. What are, in your opinion, the most important reasons why a person might decide not to report behaviours that threaten or harm the interest of the organisation and/or the public interest?

Respondents highlight significant barriers to reporting misconduct. A majority emphasizes critical deterrents, such as fear of professional consequences (83,3%), economic and legal repercussions (both 75%), not knowing how or where to report (75%), difficulty in proving the threat or damage (58,3%), and a pervasive belief that reporting will be ineffective due to organisational inaction (58,3%). Furthermore, respondents perceive negative attitudes towards whistleblowers (58,3%) and recognise the importance of misconduct awareness without corresponding accountability (41,7% as combined “important” and “very important”). Thus, the reluctance to report harmful behaviour appears driven primarily by fear of repercussions, practical obstacles, perceived futility, negative cultural attitudes, and systemic acceptance of misconduct.

A2. In your opinion, how often do workers report threats or harm to the public interest?

Regarding the frequency of whistleblowing, respondents overwhelmingly perceive reporting as infrequent. Specifically, 91% indicate that workers “rarely” report threats or harms to public interest, whereas only a minor segment (8%) suggests it occurs “sometimes.” This predominant perception suggests a broadly shared view that whistleblowing remains sporadic and relatively uncommon.

A3. What are the benefits of requiring public and private sector organisations to protect whistleblowers?

Most Portuguese respondents perceive substantial benefits arising from the legal requirement for public and private sector organisations to protect whistleblowers. A significant majority recognises that mandated protections strongly help avoid reprisals against whistleblowers (91,7%), stimulate a culture of transparency and accountability within organisations (75%), and strengthen organisational compliance with legal standards (75%). Respondents also acknowledge potential positive impacts on strengthening freedom of expression (75% combined: 50% “very important”, 25% “important”) and helping organisations achieve economic goals (66,6% combined: 33,3% “very important”, 33,3% “important”), albeit with somewhat less unanimity. Thus, while a broad consensus exists on the core advantages, respondents exhibit more nuanced views concerning secondary or indirect benefits.

A4. In your opinion, how important are these objectives for the adoption or implementation of whistleblower protection laws?

A significant majority highlights the importance of contributing to the fight against fraud and corruption (83,3% “very important”), improving public fund management (83,3% “very important”), and combating tax evasion and fiscal fraud (75% “very important”). Additionally,

stimulating fair competition is considered important (33%) or very important (50%). Other significant objectives include improving investors' confidence (58,30% "very important") and enhancing public health and safety (50% "very important"; though 8,3% indicated "don't know"). Objectives like promoting environmental protection (41,7% "very important"; though 8,3% indicated "don't know") and improving food security (25% "very important") are viewed with less consensus. These results highlight robust agreement on core strategic goals alongside varied perceptions of secondary benefits.

A5. How important are the following potential negative effects of implementing whistleblower protection laws?

In question A5, respondents in Portugal evaluated potential negative effects arising from the implementation of whistleblower laws. Half of the respondents (50%) consider significantly important the risk of undermining public trust in institutions if protected or confidential information is improperly disclosed; notably, 8,3% were uncertain ("Don't know"). Additionally, a substantial portion (33,3%) is notably concerned that whistleblower protections may potentially encourage false or excessive alerts, thereby deteriorating mutual trust in the workplace. Moreover, 25% highlighted the significant administrative burdens that whistleblower laws might generate in the public sector. Respondents were also uncertain (8,3% "Don't know") about the potential harm to the reputation of companies or public institutions.

A6. Which of the following measures are relevant for the effective protection of whistleblowers within your organisation?

A significant majority consider psychological support (91,7%), protection from retaliation at work (91,7%, with 8,3% indicating "Don't know"), and protection in administrative proceedings (91,7%) as very important. Additionally, strong importance is attributed to financial assistance to cover legal proceeding costs (83,3%), proper investigation of whistleblower allegations (83,3%), clear organisational and external informational efforts about whistleblower rights (75%; with 8,3% indicating "Don't know"), appropriate internal organisational reporting channels (75%), external channels for reporting to competent authorities (75%), and protection in cases of public disclosure (75%). Moreover, respondents strongly support the inclusion of clearly defined threats for whistleblowers in legislation (66,7%). These findings highlight respondents' comprehensive perspective, emphasizing both informational clarity and robust, practical safeguards, notably psychological, financial, and legal protections, despite some minor uncertainty.

A7. To what extent do you think the Portuguese law transposing EU Directive 2019/1937 covers each of these aspects well?

Regarding the perceived adequacy of Portuguese legislation in transposing EU Directive 2019/1937, responses reveal varied levels of satisfaction. A significant portion of respondents indicates the clear definition of threats covered by whistleblower protection as insufficiently addressed, with 66,6% evaluating this aspect as only "somewhat" or "poorly" covered. Information and awareness from private or public organisations about whistleblower rights are similarly viewed as inadequately covered (58,3% combined), with 16,7% expressing un-

certainty (“Don’t know”). Awareness and guidance from trade unions are dispersed, with an additional 8,3% uncertain. The largest gap appears concerning state-led general information and awareness policies, where 58,3% perceive these as “poorly covered” or “not at all well covered,” alongside an uncertainty rate of 8,3%.

A8. To what extent are these aspects protected under Portuguese law?

Respondents offer mixed evaluations regarding the adequacy of protections provided by Portuguese law. Internal organisational reporting channels are viewed as inadequately protected by approximately one-third (33%, considering them either “not protected at all” or “poorly protected”). Channels for external reporting are perceived as somewhat protected by half of respondents (50%), with 8,30% explicitly considering them as “not protected at all”. Protections in public disclosure cases (42%) and thorough investigation of whistleblower allegations (50%) are also identified as insufficiently addressed. Respondents identify notable shortcomings in the provision of psychological support and financial assistance for legal costs (both support measures scoring 67% “not protected at all”), as well as protection from retaliation at work (83%, with 50% “not protected at all” and 33% “poorly protected”). Furthermore, the consistent presence of respondents selecting “don’t know” (8%) highlights the need for enhanced literacy and informational initiatives concerning the specifics of legal protections available to whistleblowers.

A9. Which aspects of protection against workplace retaliation are important for effective whistleblower protection?

Protection of confidentiality (91,7% “very important”) and blacklist protection (91,7% “very important”) is deemed crucial by nearly all respondents, followed closely by protection against harassment from superiors or colleagues, punitive transfers, reversal of the burden of proof, and compensation for dismissal or economic damages (each 83,3% “very important”). Additionally, significant majorities underscore protections against dismissal (75% “very important”, 8,3% “quite important”), suspension (75% “very important”, 16,7% “quite important”), demotion (58,3% “very important”, 25% “quite important”, 8,3% “Don’t Know”), and the provision of financial assistance to cover legal costs (66,7% “very important”, 25% “quite important”, 8,3% “Don’t Know”), clearly reflecting strong concern for whistleblowers’ labour and financial security..

A10. To what extent are these retaliation-protection aspects well covered by the Portuguese law?

Respondents express mixed to negative evaluations regarding how effectively retaliation-protection aspects are covered by Portuguese law. Confidentiality protection for whistleblowers, considered crucial by respondents, appears inadequately addressed, with a notable majority (83,3%) viewing it as “not protected at all,” “somewhat protected,” or “neither well nor poorly protected,” alongside 8,3% uncertain (“Don’t know”). Similarly, critical protections such as against dismissal (91,7% inadequate or neutral), suspension (83,3% inadequate or neutral), demotion (83,3% inadequate or neutral), harassment from colleagues or superi-

ors (83,3% inadequate or neutral), and punitive transfers (83,3% inadequate or neutral) are widely seen as insufficient. Moreover, respondents highlighted significant inadequacies in provisions related to reversing the burden of proof (75% inadequate or neutral), financial assistance for legal costs (91,7% inadequate or neutral), blacklist protection (83,3% inadequate or neutral), and compensation for economic damages (91,7% inadequate or neutral). The consistent selection of “Don’t know” (8,3% in all categories) further underscores a clear need for enhanced information dissemination about these protective measures.

A11. What are the main obstacles to effective whistleblower protection in your country?

Portuguese respondents identify multiple critical barriers to effective whistleblower protection, emphasizing obstacles at individual, organisational, and societal levels. Foremost among respondents’ concerns is the reluctance of public (83,3%) and private sector workers (75%) to report threats or harm to the public interest, signalling significant systemic apprehension. Respondents further underline the negative impact on workers’ well-being (75% “very important”) and working conditions (66,7% “very important”), suggesting prevalent concerns about retaliation through isolation, demotion, harassment, or punitive transfers. Additionally, a substantial majority highlight informal norms, such as clientelism, prioritising personal relationships over legal norms (66,7% “very important”), and a weak workplace culture of integrity and accountability (66,7% “very important”). Poor compliance by companies (58,3% “very important”) and inadequate enforcement of laws by public authorities (50% “very important”) also emerge as significant structural impediments.

A12. Regarding the recent whistleblowing law in your country, answer the following.

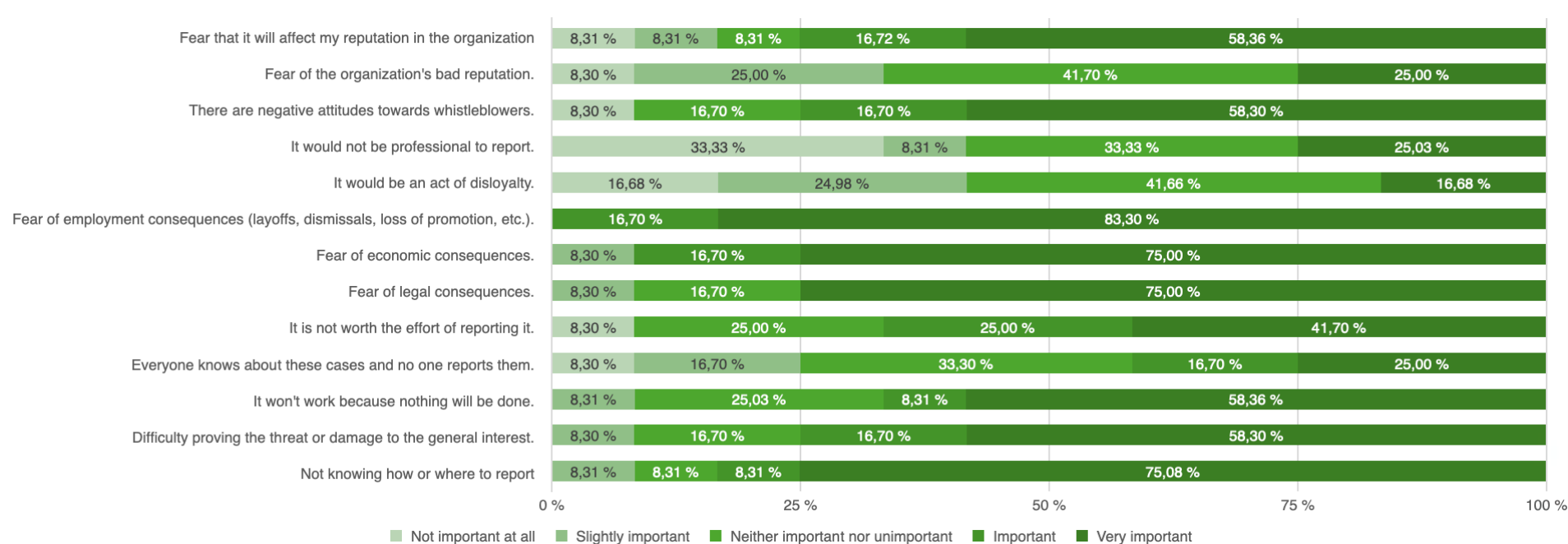
Regarding perceptions of the recent Portuguese whistleblowing law, respondents demonstrate varied levels of awareness and confidence. While about 42% express high or very high awareness of their right to confidential or anonymous reporting under the law, a significant segment indicates low or no awareness (25%). Familiarity with the practicalities of reporting wrongdoing is somewhat stronger, with 66,7% reporting high or very high knowledge. However, there is substantial scepticism regarding the law’s effectiveness in practice, with approximately 75% expressing limited confidence that the law will be respected within their organisations (combining “slightly” and “not at all”). Additionally, respondents indicate uneven knowledge of their rights in retaliation cases, as a notable portion (66,7%) reflects only moderate to low familiarity. A discrepancy emerges between respondents stated intentions and their perceptions of actual whistleblowing behaviour. Respondents indicate a strong likelihood to personally report corruption (41,7% “extremely” and 25% “very”). However, question A2 reveals a pessimistic perception about the actual frequency of whistleblowing, with 91% considering that whistleblowing occurs “rarely” and only 8% suggesting it happens “sometimes.”

Furthermore, while most respondents (58,3%) exhibit moderate to high awareness of external protection mechanisms, actual trust in these external protections is strikingly low, with about 83,3% expressing limited to no trust.

Questions B1 to B9:

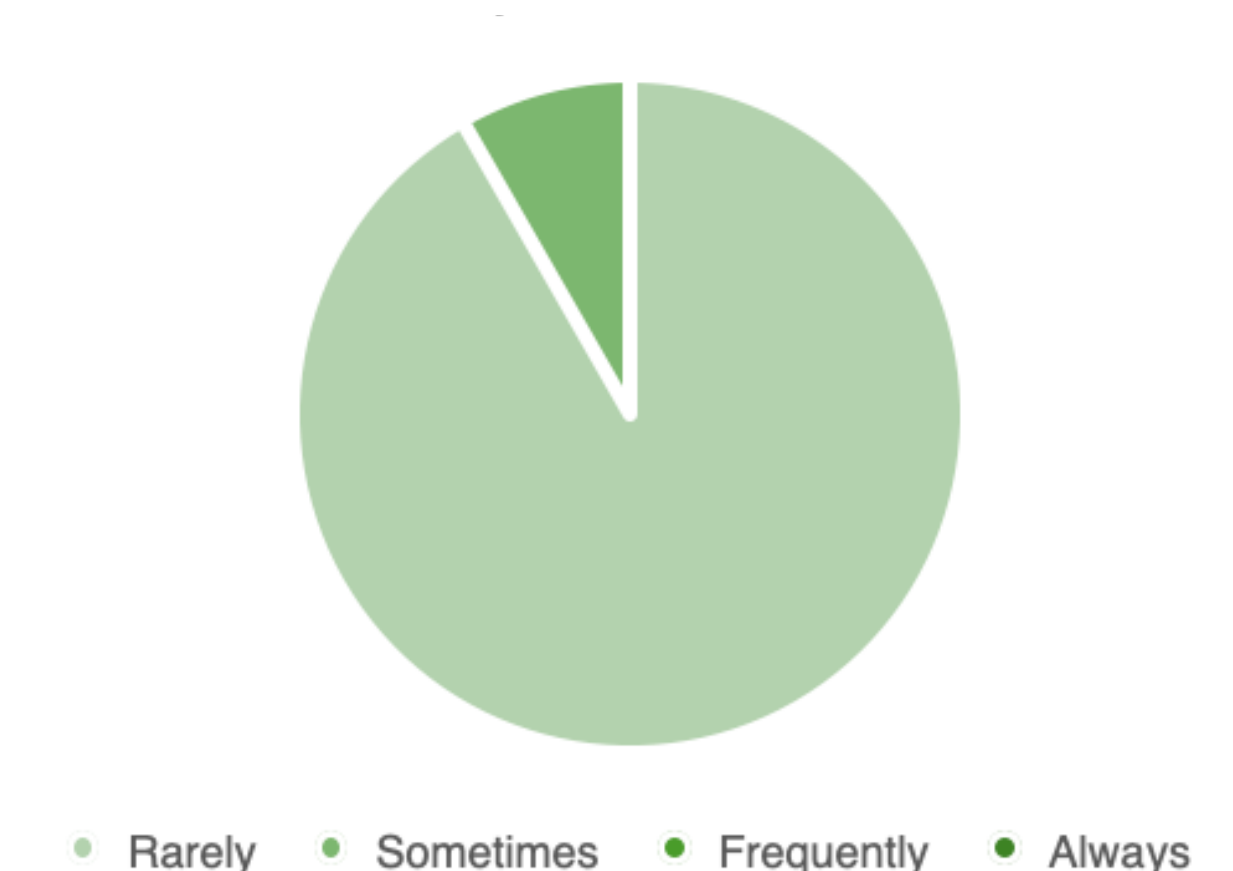
Respondents primarily occupy regular employee roles (33%), followed by contractors (25%), autonomous workers and officials (17% each), and managerial positions (8%). They represent the public and private sectors equally (50% each), with the majority within public authorities (25%), followed by academic institutions, companies, and other types (17% each). Respondents primarily belong to large organisations (33% have 1,000 or more employees), with diverse fields, including education (16,7%), financial services (16,7%), and various other sectors (25%). While most respondents (58,3%) did not hear about any whistleblowing cases in their organisations over the last decade, a notable proportion (41,7%) did, predominantly experiencing them directly as whistleblowers or witnesses (71,4%); from those, 71,4% suffered retaliation, and 28,6% did not. Regarding motivations, the overwhelming perception (86%) is that whistleblowers act primarily to protect the public interest, while a minority (14%) believes that personal motives, such as retaliation or grievances, might also play a role.

A1. What are, in your opinion, the most important reasons why a person might decide not to report behaviors that threaten or harm the interest of the organization and/or the public interest?

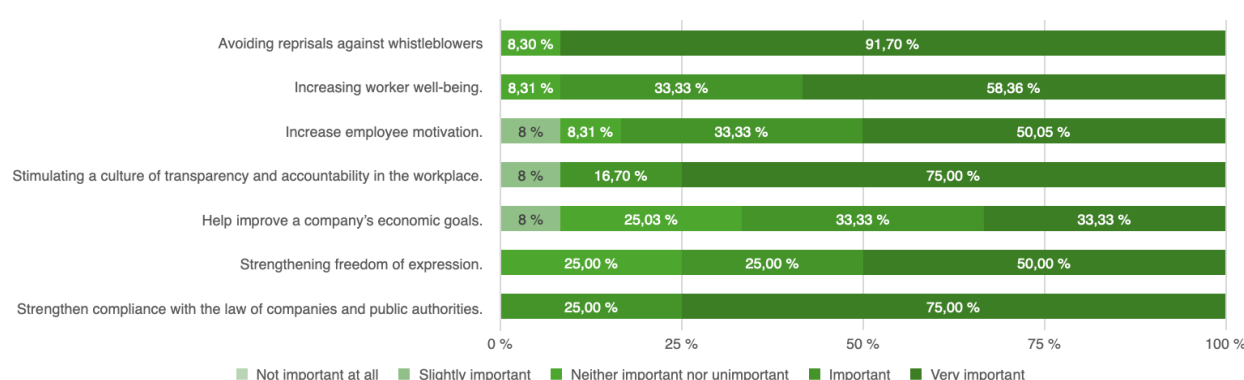


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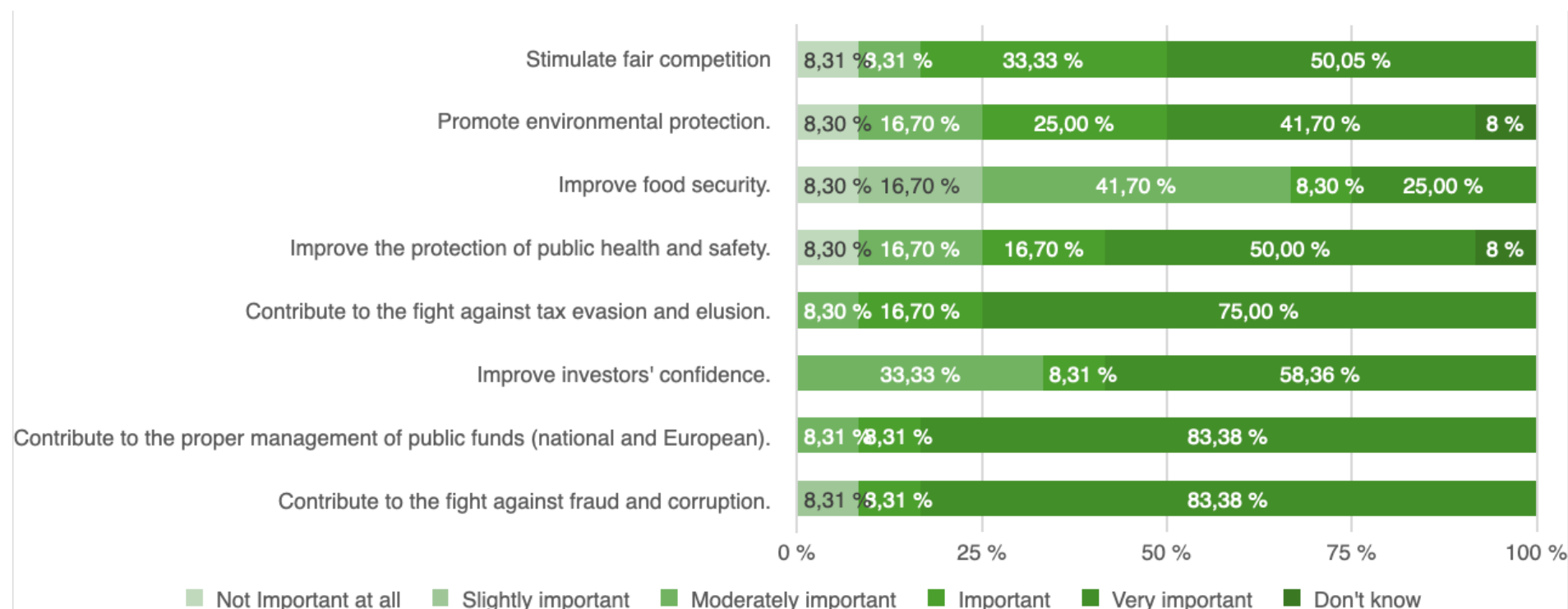
A2. In your opinion, how often do workers report threats or harm to the public interest?



A3. What are the benefits of requiring public and private sector organizations to protect whistleblowers?

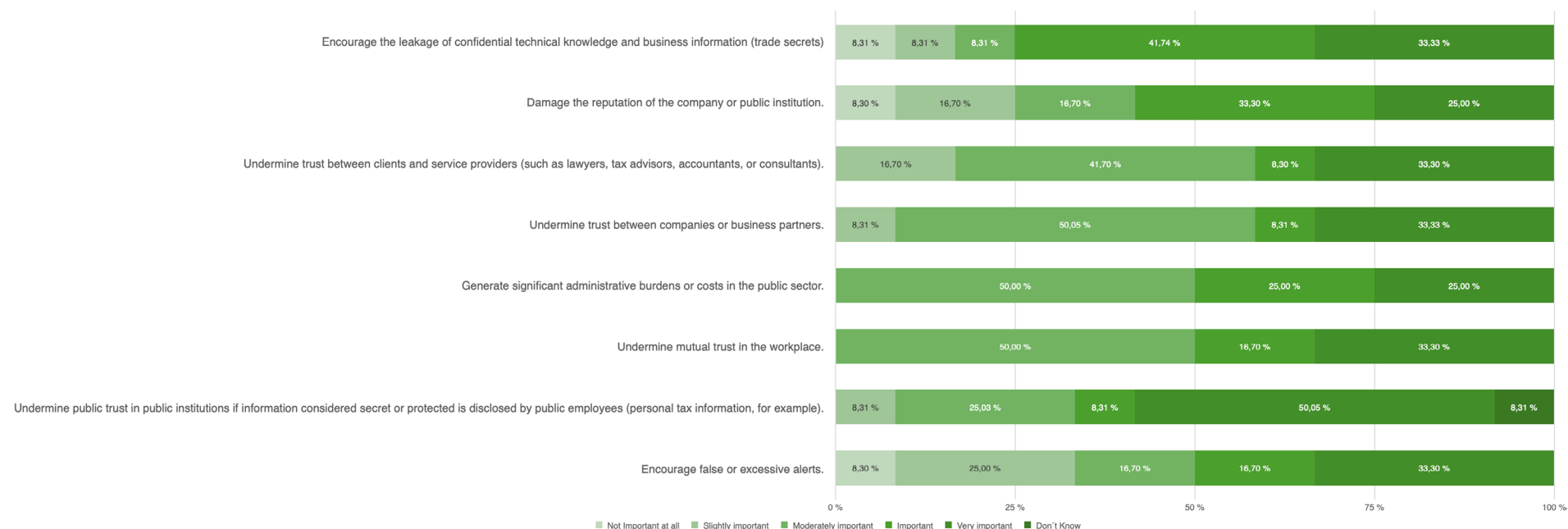


A4. In your opinion, how important are these objectives for the adoption or implementation of whistleblower protection laws?



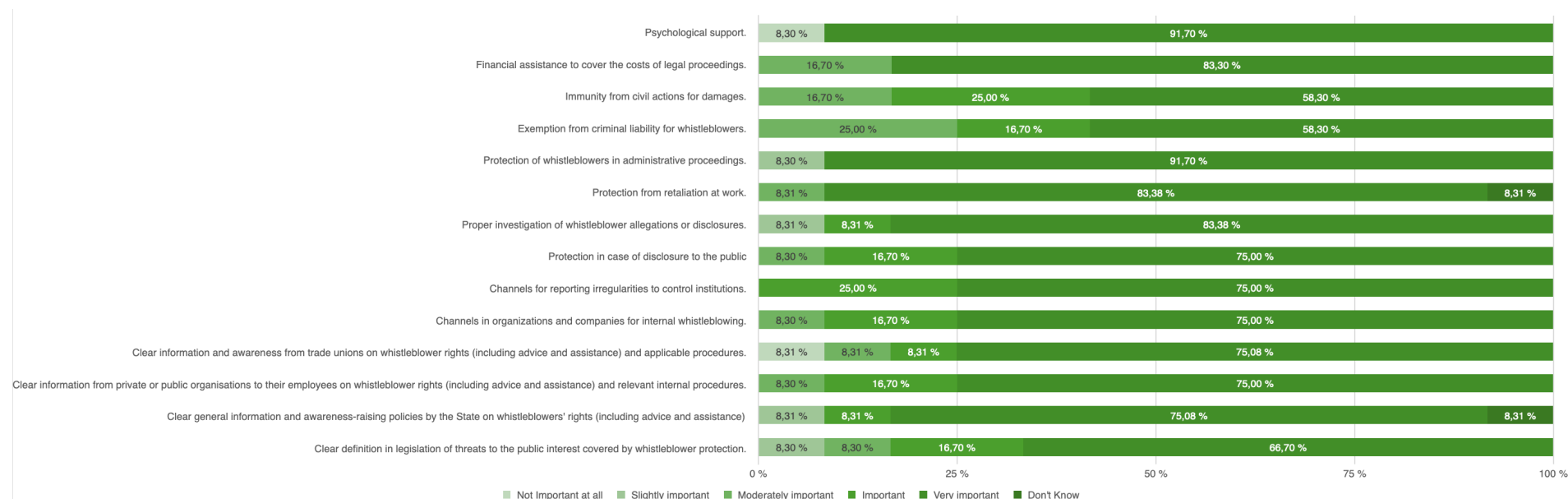
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A5. How important are the following potential negative effects of implementing whistleblower protection laws?

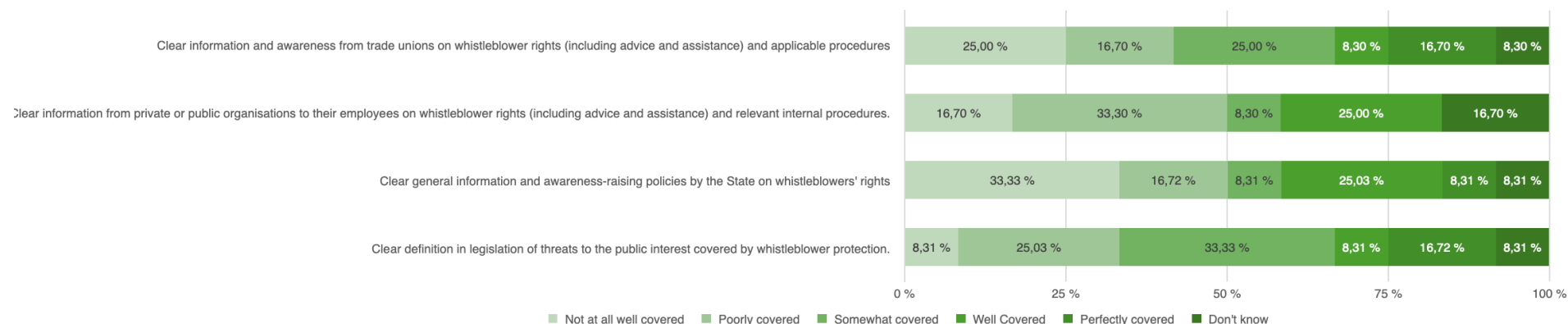


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A6. Which of the following measures are relevant for the effective protection of whistleblowers within your organization?

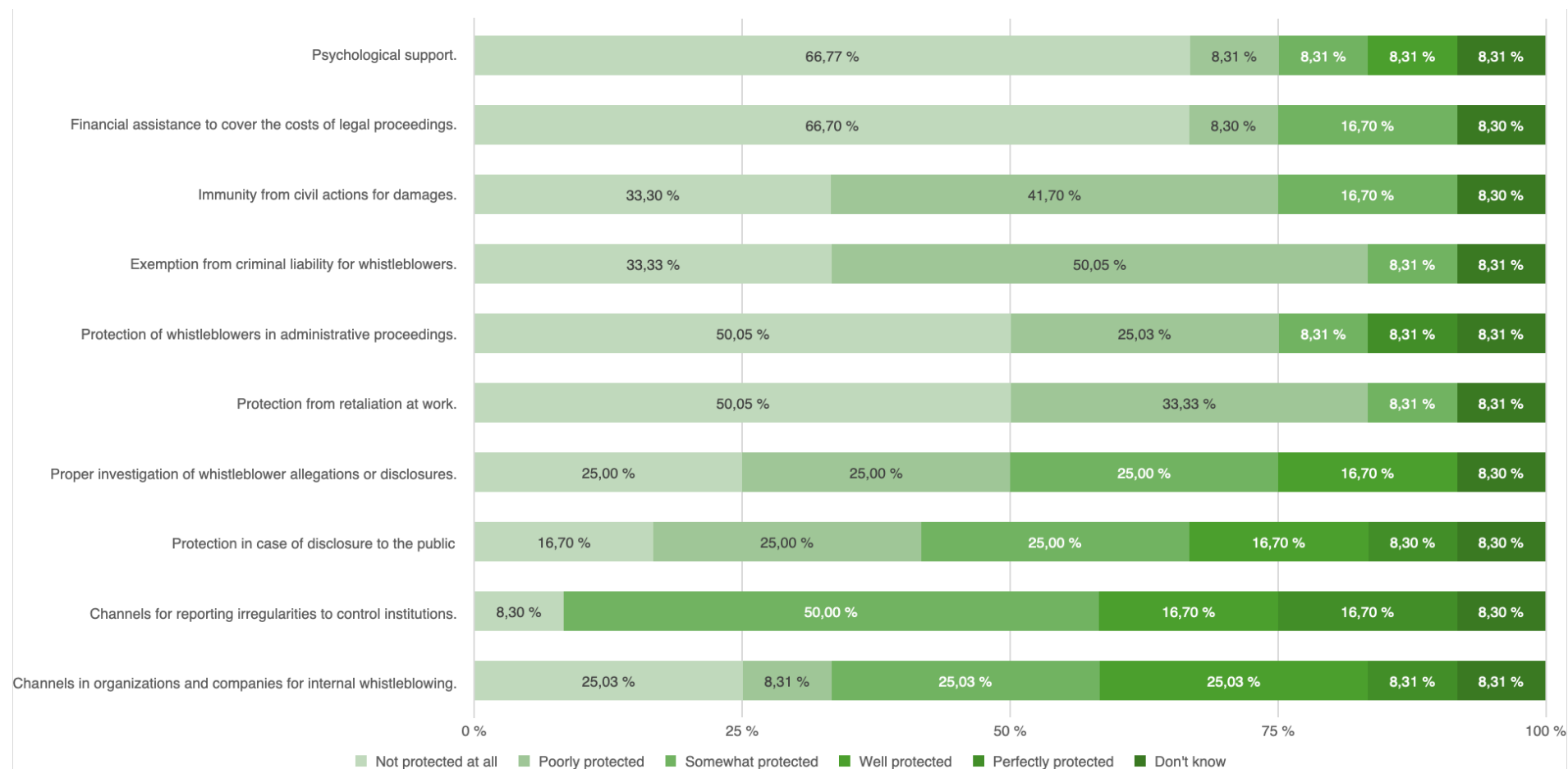


A7. To what extent do you think the Portuguese law transposing EU Directive 2019/1937 covers each of these aspects well?



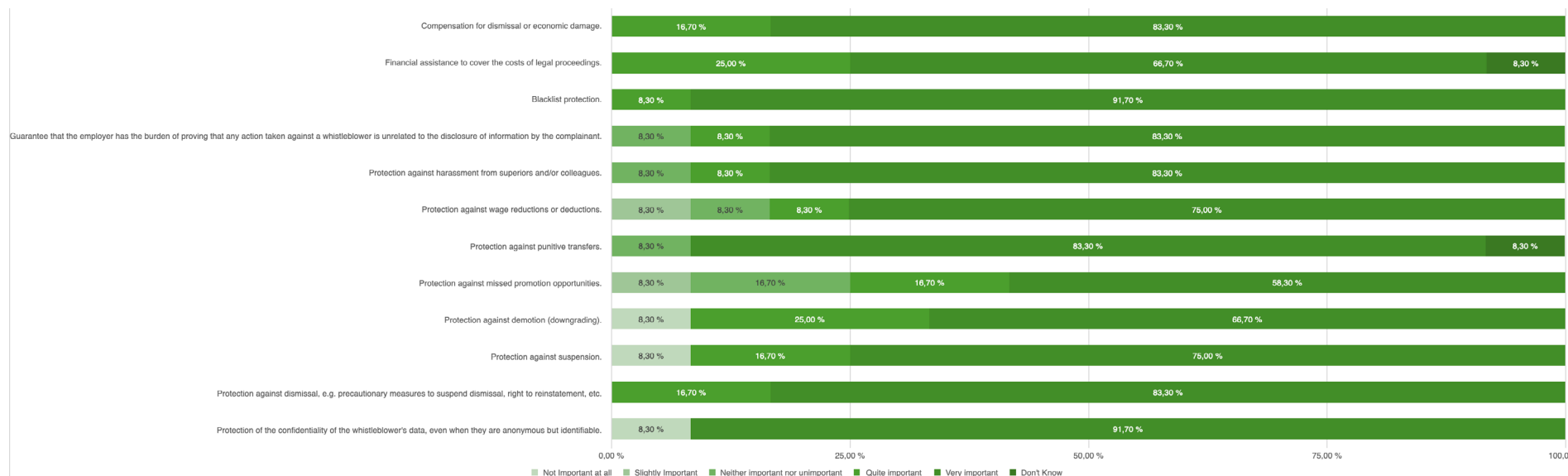
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A8. To what extent are these aspects protected under the Portuguese law?



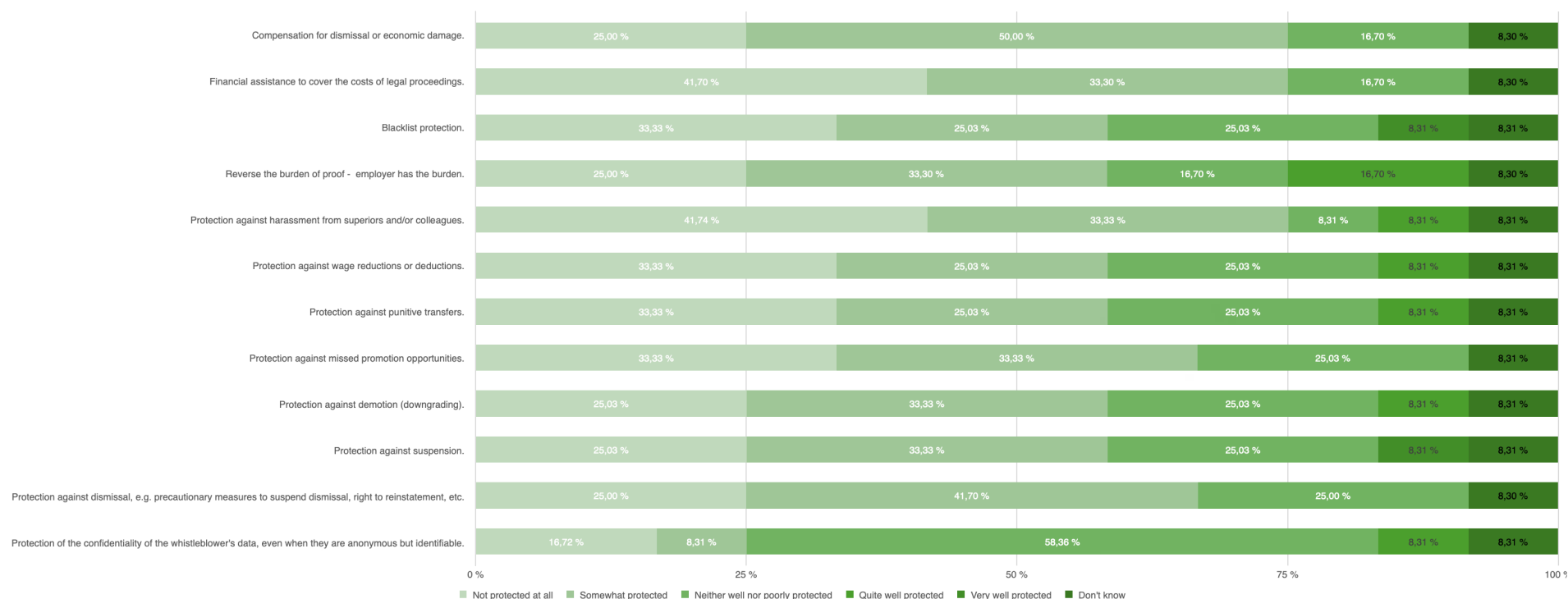
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A9. Which aspects of protection against workplace retaliation are important for effective whistleblower protection?



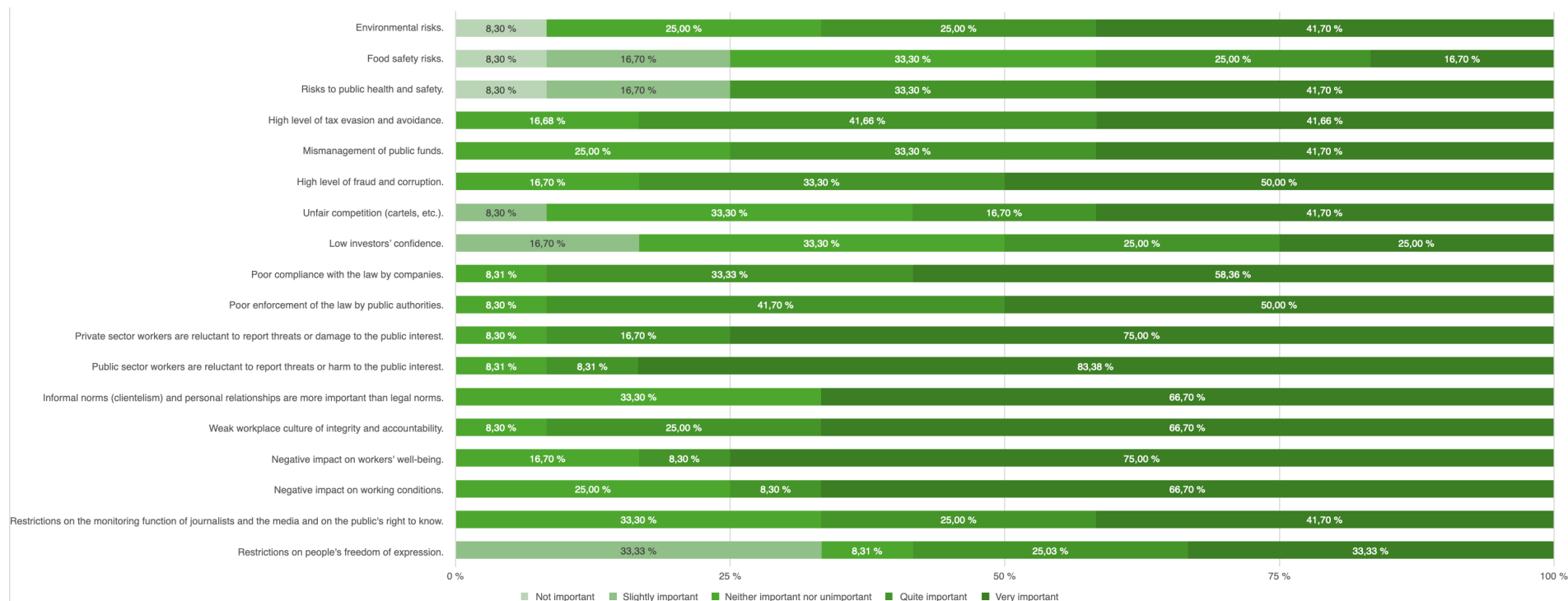
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A10. To what extent are these retaliation-protection aspects well covered by the Portuguese law?



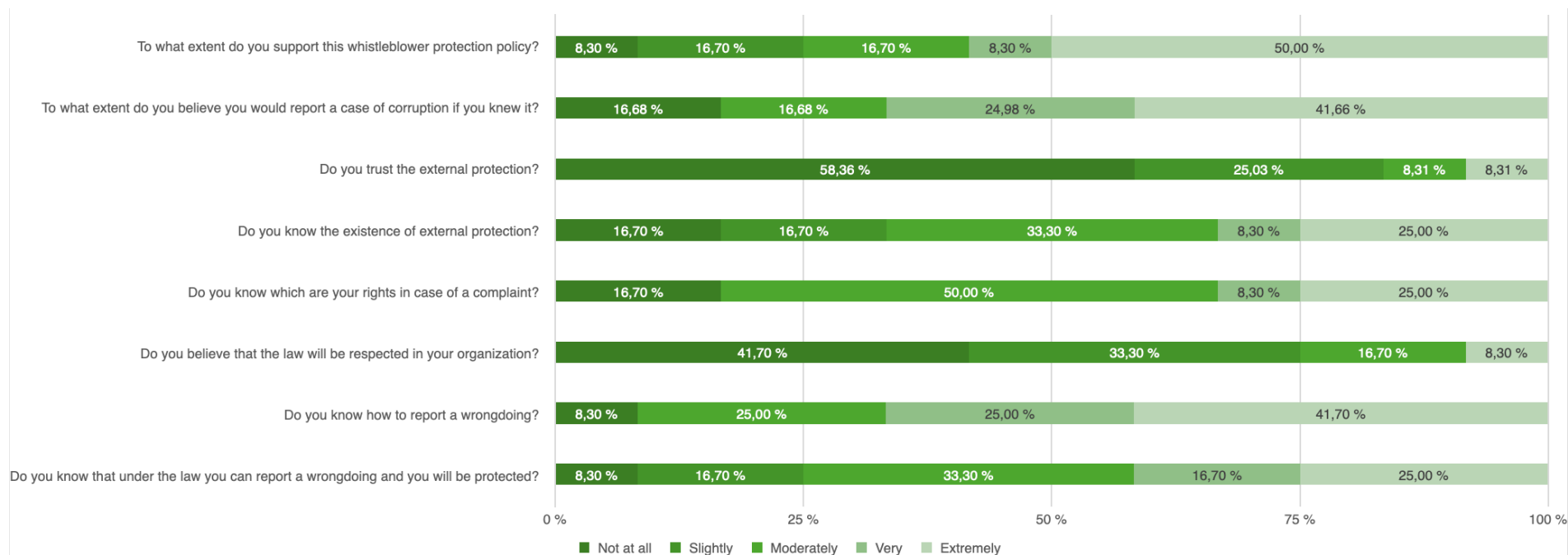
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A11. What are the main obstacles to effective whistleblower protection in your country?



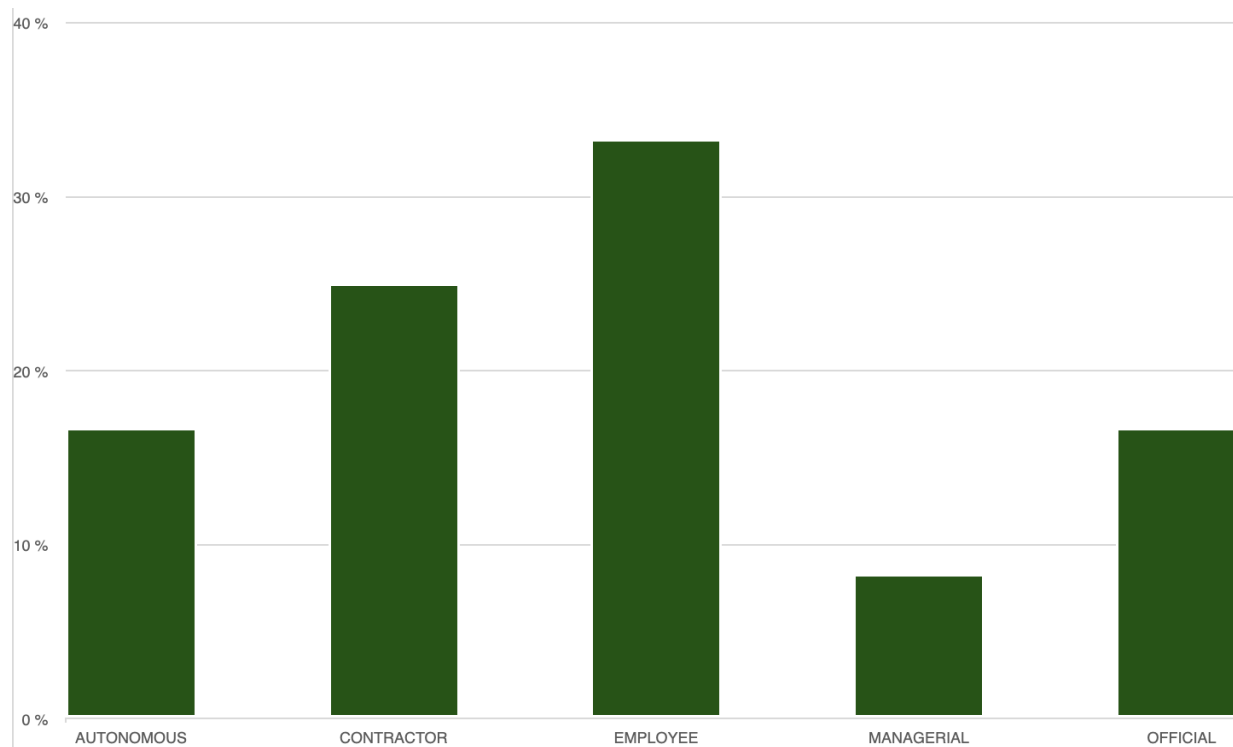
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**A12. Regarding the recent whistleblowing law in your country,
answer the following**

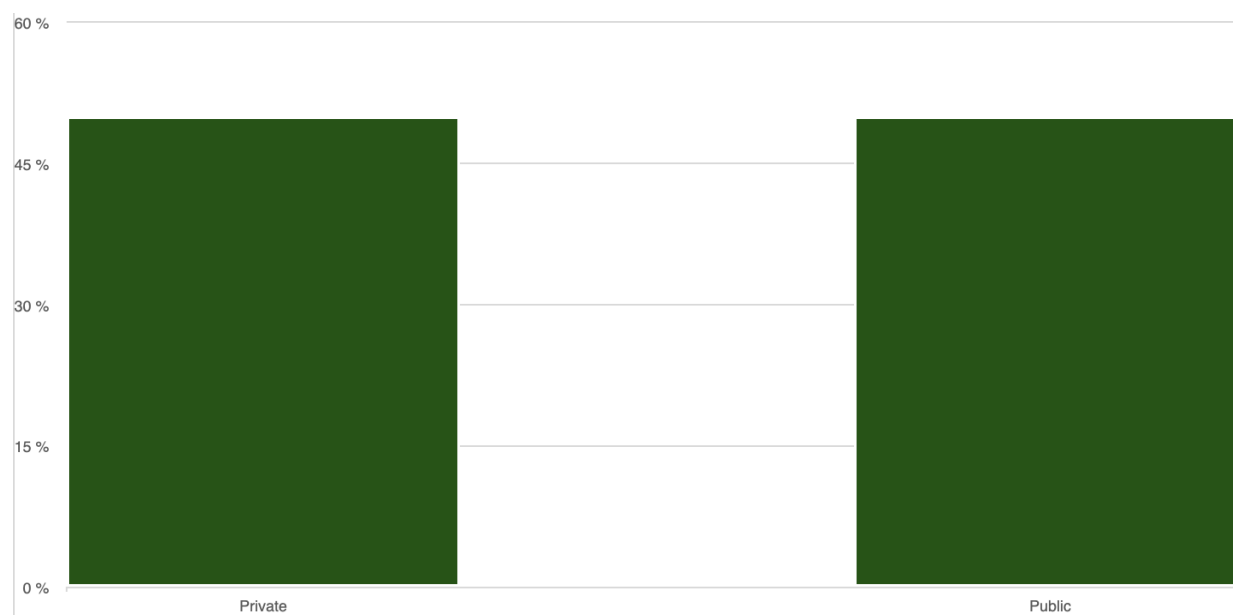


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B1. What is your current situation?

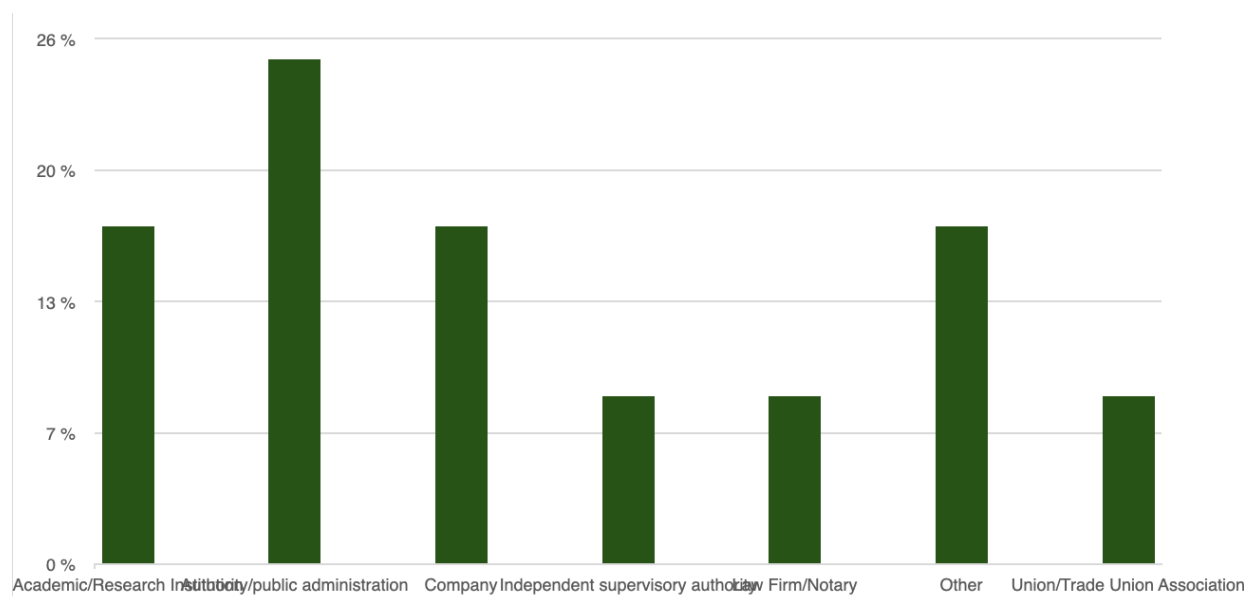


B2. And what sector are you or have you been linked to, public or private?

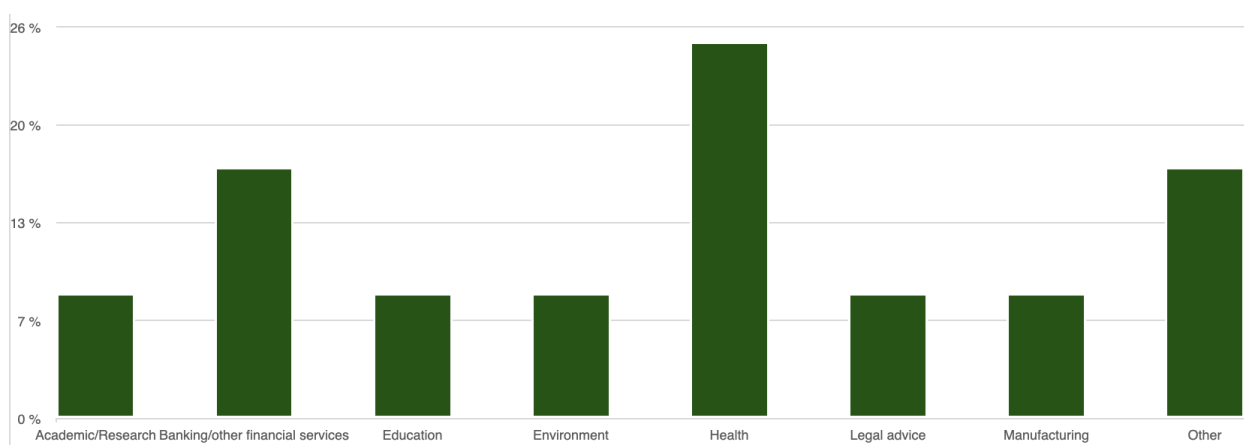


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B3. What does the organization in which you work, have you worked or had relationships do?

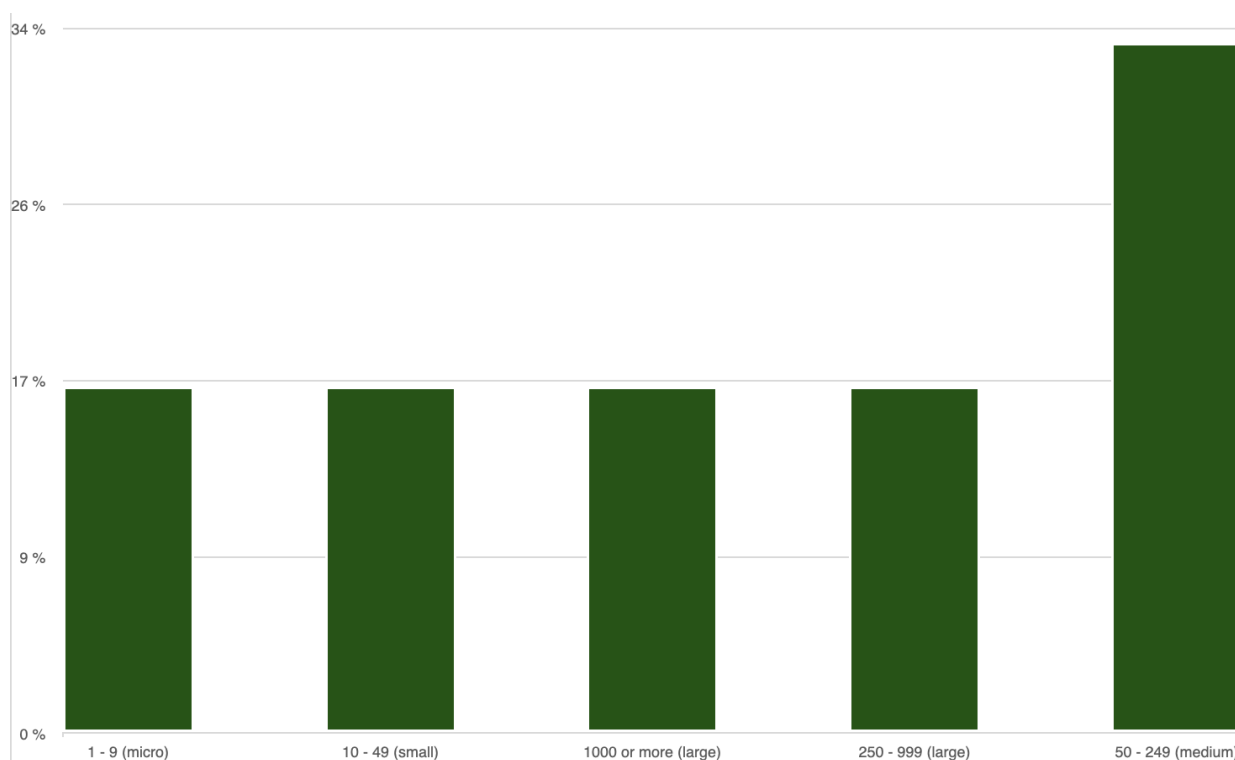


B4. In which area of activity does/did your organization work?

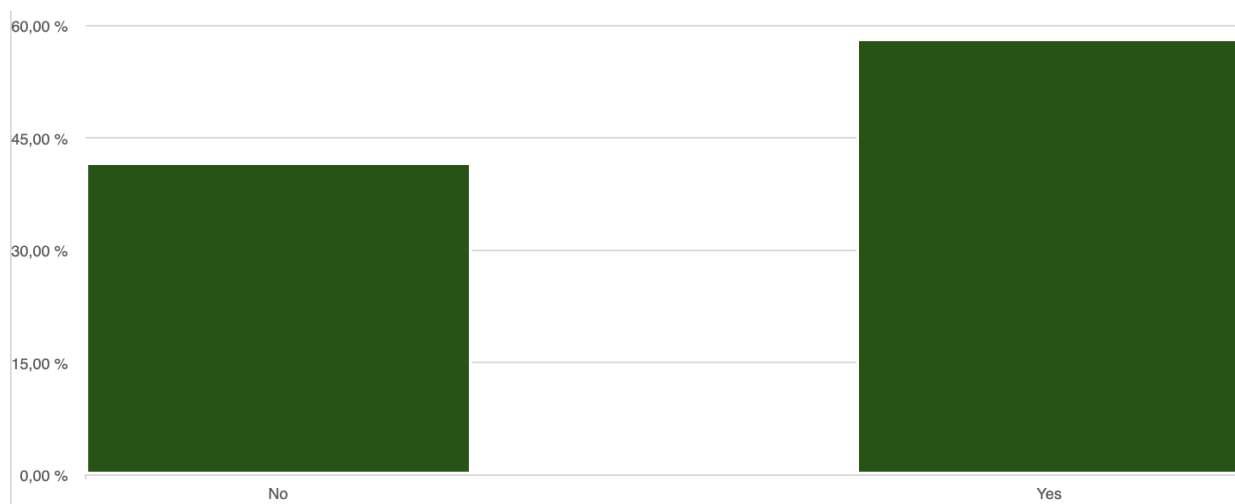


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B5. What is/was the size of your organisation?



B6. From your direct work experience, are you aware of any whistleblowing cases in your organisation in the last ten years?

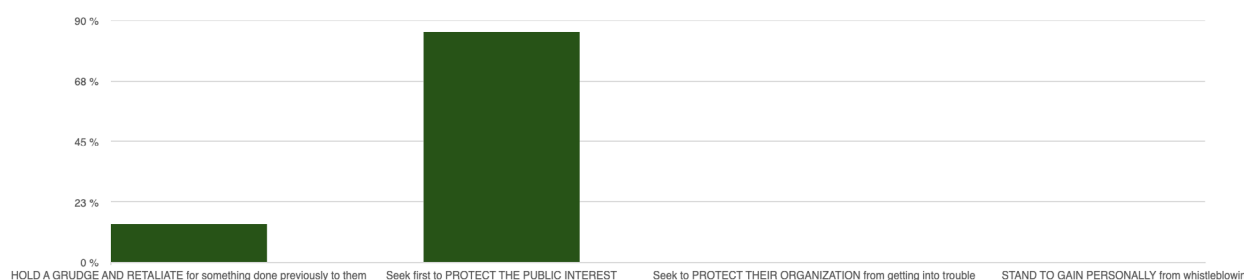


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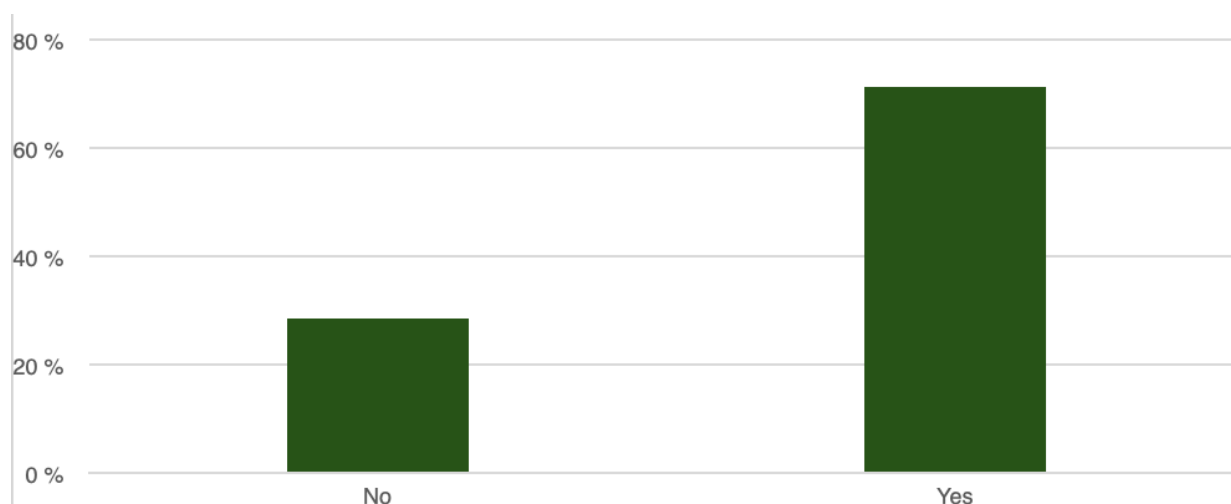
B7. How did you hear about such cases in your organisation?



B8. Research suggests there are four types of whistleblowers. All of them think the organization they work for is doing something wrong. I would like to know which type you think most whistleblowers fit in to.



B9. If so, did you suffer retaliation when reporting the case?



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A WHISTLEBLOWING HABITAT
IN SOUTHERN EUROPE