

Mid-term evaluation of the Transparency International Project Whistle-blower Protection in Europe

Executive Summary

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The Advocacy Hub

PURPOSE AND METHODOLOGY

The purpose of this evaluation is to evaluate a project designed to strengthen whistle-blower protection across ten European countries. Alongside an assessment of project achievements, strengths and weaknesses, the review looks at how the project has responded, and should respond, to the adoption of the *Directive on the Protection of Persons Reporting on Breaches of Union Law* [the EU Whistleblowing Directive] and documents lessons learned, with a focus on engagement of private and public sector organisations.

The evaluation draws on an extensive review of documentation and interviews with a wide range of internal and external stakeholders. Including those conducted during visits to Estonia, Italy and Slovakia, interviews were held with a total of 47 stakeholders as below:

TI-S / TIEU	Chapters	Allies	Companies	Local or national govt officials	Donors
8	19	9	5	3	3

FINDINGS

The project involves ten Chapters, chosen through a competitive selection process. According to capacity and national context, each Chapter directs their energies at up to two of three objectives – or Result Areas – relating to (1) adoption and (2) enforcement of laws and standards and to (3) adherence in the workplace by public and private sector organisations.

Relevance

The project is important and relevant not only in relation to wider TI programming, but, critically, in terms of the opportunity existing in Europe to advance whistleblowing policy and practice, an opportunity confirmed by, but not solely rooted in, the agreement and imminent adoption of the Whistleblowing Directive.

Achievements: Result Area 1

Chapters focused on the adoption of legislation have been able to build closer ties with key officials and foster some political support; examples include TI Bulgaria and the Stefan Batory Foundation in Poland. In some cases, however, including Poland for example, it has proved difficult to access the highest political levels. The passage of the Whistleblowing Directive alters the context quite significantly, opening the door for advocates to restate their arguments with governments now obliged to put a law in place.

Achievements: Result Areas 2 and 3

Chapters focused on enforcement and / or adherence have been able to deepen relationships with pioneering implementers, build knowledge and refine tools such that they are now well-placed to shape implementation on a wider scale. As examples, TI Netherlands has conducted useful research into corporate practice which lays the groundwork for future advocacy, TI Estonia has fostered relationships with companies by delivering training and TI Italy has secured wide take-up by public sector institutions of a reporting platform.

Other achievements: individual behaviour change

Not a direct objective of the project, but a goal at Chapter level where judged appropriate to help advance political progress, impact on perceptions of whistleblowing is hard to assess, though changes in terminology being promoted in Bulgaria and Poland, among other countries, are potentially among the most significant outcomes of the project. It would require further and closer scrutiny to gauge how deeply entrenched these changes are, and how far they are attributable to this project.

Strategic strengths and weaknesses

TI's added value lies in its expertise and its ability to influence policy from the inside. On occasion, Chapters have named-and-shamed institutions with poor practices. They also take advantage of the space opened up by high-profile cases. It is arguable, however, that communications work to promote whistleblowing and positively affect the context in which advocacy is taking place could be 'beefed up'.

Efficiency and the role of TI-S

The project included a Chapter selection process which gave TI-S control over the type of Chapter chosen. At the same time, TI-S chose not to impose a strong central vision for the project nor to pick Chapters with a view to maximising synergies among them or because of connections to EU-level advocacy, preferring instead to focus on the quality of proposals and the putative reliability of Chapters. With Chapters free to design their own strategies without tightly-imposed parameters, TI-S has employed a 'light-touch' approach to coordination. It has had a clear added value in the expert advice it has provided and will, in the project's last stages, provide important central outputs to support Chapters as they move into work on implementation of / adherence to the Whistleblowing Directive. That Chapters have not always fulfilled the responsibility granted to them to organise training and exchange visits is somewhat disappointing and suggests that some may be relying on TI-S for functions which they are themselves better placed to meet.

LOOKING AHEAD

The agreement of the Whistleblowing Directive makes it essential that TI in Europe maintains pressure on governments to adopt a strong form of legislation and to put in place effective enforcement structures. There is an important opportunity too to affect the shape that workplace implementation takes, albeit without Chapters being presumed to have a service-provider or quasi-consulting role out of line with their capacity. It is reassuring to note that several project Chapters are intent on retaining whistleblowing as a core part of their work and will continue to fund it without major new grants. In some cases, however, there are grounds for concern as to whether Chapters – and potentially also TI-S – will be able to sustain the level of engagement on whistleblowing needed to take up the opportunity presented by the Whistleblowing Directive.

Key recommendations

A, for future work on whistle-blower protection in Europe

- TI-S should lead a process of formulating an umbrella EU Directive transposition plan as a continuation strategy for Chapters (and the SBF) which have focused on Result Area 1.
- Chapters which have employed successful strategies should write up brief histories or web presentations of their work so that others can learn from how they helped to shape legislation and push for the improvement of enforcement mechanisms and workplace implementation.
- TI collectively should seek to maintain dedicated expertise (in TI-S and Chapters) on whistleblowing, and ensure it is reflected in other work areas.
- Beyond the transposition phase, Chapters' plans should identify a clear added value *vis à vis* other civil society actors, consulting firms and relevant public sector bodies set up to support whistle-blowers.
- TI-S should provide advice and pool examples in terms of effective enforcement mechanisms; off-the-shelf reporting tools and platforms; positioning and approach taken towards companies; framing whistleblowing in a positive way and communicating whistle-blowers' stories; and how the role of ALACs can optimally dovetail with whistle-blower advocacy.
- TI-S and Chapters should invest in identifying and profiling positive whistle-blower cases.

B, in wider advocacy strategies and / or future projects of this type

- TI collectively should continue to cultivate agility and responsiveness, recognising the prevailing political and economic instability in many countries.
- TI-S should encourage the practice of early evaluation and the development of sustainability (or exit) plans, which should be prepared well in advance of the conclusion of projects.
- TI-S should involve a cohort of Chapters in the development of criteria for selecting those which should participate in projects.

Contents

PURPOSE AND METHODOLOGY.....	5
Methodology	5
SUMMARY DESCRIPTION OF THE PROJECT	6
FINDINGS	9
Achievements and results.....	9
Relevance.....	9
Effectiveness: (steps towards) outcomes.....	10
Effectiveness: summary assessment of progress towards fulfilling the project purpose.....	19
Effectiveness: strategic strengths and weaknesses	19
Efficiency.....	24
Sustainability	28
Challenges.....	30
The impact of the Whistleblowing Directive	30
Other challenges.....	33
Lessons learned	33
Result Area 1: adoption of robust and comprehensive whistleblowing legislation	33
Result Area 2: effective enforcement of whistleblowing legislation by responsible authorities	34
Result Area 3: effective implementation of whistleblowing legislation in the workplace	35
Other lessons.....	37
CONCLUSIONS.....	38
RECOMMENDATIONS	40
Annex 1: best practice in private sector engagement	43
Annex 2: best practice in public sector engagement for adherence to whistleblowing standards.....	48

Mid-term evaluation of the Transparency International Project *Whistle-blower Protection in Europe*

Final report

Jeremy Smith, Martin Clark & Stephen Tibbett, 4 October 2019
[The Advocacy Hub](#)

PURPOSE AND METHODOLOGY

The purpose of this evaluation is to review the progress made to date by Transparency International (TI) in an Adessium Foundation-funded project designed to strengthen whistle-blower protection across ten European countries. On this basis, the evaluation identifies ways by which TI can maximise the effectiveness of the project during its final stages and ensure that progress is sustained and built upon after its conclusion.

Reflecting its broad scope, the evaluation does not scrutinise every activity and expenditure in each project setting. Neither does it repeat the assessment of delivery and progress against country-specific objectives made in reports submitted by TI to the donor. Reflecting too that this current project is situated within larger programmes of work on whistleblowing, it does not take too rigid a view of the project's borders, but rather focuses on key learnings that can ensure continuity and sustainability of these larger programmes.

Specifically, the evaluation:

- provides an objective assessment of the achievements and results of the project to date and its weaknesses and strengths;
- generates lessons learned and good practices for each of the project's Result Areas;
- analyses the challenges associated with the project and how they can be addressed going forward;
- provides clear, forward-looking recommendations to guide the TI Secretariat (TI-S) and Chapters in maximizing the relevance and effectiveness of this project and its performance on the ground.¹

Methodology

The evaluation draws on four main inputs:

1. A review of documentation including project reports and an external evaluation of the preceding Adessium Foundation-funded whistle-blower protection project; the grant application and associated documents; proposals received from Chapters seeking to participate in the project; the original and, in some cases, revised plans of the selected Chapters; Chapters' reports and project-wide syntheses (2 x short, half-yearly reports and 2 x lengthier annual reports to the donor).
2. An initial round of interviews held in Berlin on 16 July with the TI-S Programme Coordinator, Project Assistant, Monitoring, Evaluation and Learning (MEL) Coordinator and two Regional Advisors.

¹ *Mid-term Evaluation of the project "Whistleblower protection in Europe" Terms of Reference*, p2.

Together with the documentation review, these scoping discussions informed an inception report comprising an elaborated methodology and interview framework which was reviewed and approved by TI-S.

3. Country visits of 1-2 days duration to Estonia, Italy and Slovakia. These countries were chosen on the basis that a large volume and wide range of activities was being undertaken and that interesting, generalizable lessons were anticipated from the work being done in each case. The trio together represent a good spread across project sub-regions and Result Areas, with Result Area 1 covered in Estonia, Result Area 2 in Slovakia and Result Area 3 in all three countries.²
4. Additional interviews with a range of internal and external stakeholders across all but one project country. Including country visits, interviews were held with a total of 47 stakeholders as below:

		'Central' ³	BG	CZ	EST	FR	G	IT	NL	PL	PT	SK
Internal		8	1	3	2		2	2	1	2	1	5
External	Allies	1			1		1		1	1		5
	Companies				2		1	1				
	Local or national govt							2				1
	Donors	3										

The total number of interviews matches that agreed in the evaluation Inception Report⁴, but as the product of a greater number of interviews with TI (and Stefan Batory Foundation) staff and less with externals. In some cases, Chapters were unable to propose outside contacts to input to the review – on the grounds that their work had been delivered more or less alone and / or that others would lack a close knowledge of TI's strategy and activities – or those proposed were unavailable in the timeframe involved.

This report reflects and responds to points raised in a discussion of initial headline findings held at a project meeting in Glasgow on 10 September and feedback on a draft from key staff at TI-S and the Adessium Foundation.

SUMMARY DESCRIPTION OF THE PROJECT

The basic premise of the project is that whistleblowing is *“one of the most effective ways of preventing or detecting corruption and other wrongdoing”*, but *“few countries have comprehensive whistle-blower laws,*

2 At a finer level of detail, Estonia was chosen because it was contended that the project here has been successful politically and organisationally, with the government keen to work with TI in transposing the EU Directive into national law and whistleblowing used as the basis of relationship-building with businesses. TI Slovakia has sought to improve enforcement and implementation – in contrast to Estonia, with a focus on the public sector – and has also worked to amend the law to have a body established with specific responsibility for whistleblowing. TI Italy is active across the three Result Areas, although not all within this project, and also runs an Advocacy and Legal Advice Centre, which means that it represents an opportunity to test the project's theory of change and the extent of synergies between the Result Areas.

3 That is, stakeholders in a position to comment on the project as a whole. For 'internal', this includes TI-EU staff as well as those at TI-S in Berlin.

4 The Inception Report signalled an aim of talking with 25-30 people outside of the three countries visited.

and even where such legislation exists, it often falls behind established good practice and is not effectively enforced".⁵

Running from 1 July 2017 to 30 June 2020, the project's *Overall Objective* is to 'empower European citizens to speak up against corruption and other malpractice, ultimately reducing such misconduct' and its *Purpose* is to secure 'Improved protection of whistle-blowers against retaliation in ten European countries'.

This evaluation focuses on the next level down: the project's three objectives / Result Areas, each with concomitant primary targets⁶:

Result Area		Main advocacy target
1	Improvement in standards, policy and / or legislation for whistle-blower protection	Policy makers
2	Improvement in the enforcement of whistle-blower protection laws and policies by responsible authorities	Public authorities responsible for the implementation of whistleblowing legislation and the protection of whistle-blowers
3	Improvement in adherence to whistle-blower protection laws and policies by key public institutions, private companies and / or charities	Employers of the public and / or private sectors (companies, charities, public institutions).

For TI, the scope of whistle-blower protection should be as broad as possible, including any issue that warrants exposure by a whistle-blower. Chapters use corruption as an entry point and follow the scope of national laws relating to whistleblowing where they exist: in Italy, for example, the December 2017 Whistleblowing Law is focused on corruption and so the Chapter's work to support public and private sector bodies to implement the Act has tended to be directed at cases of corruption. Nonetheless, although the focus tends to be on aspects close to TI's anti-corruption brand, Chapters are pursuing goals whose scope goes beyond corruption.

The project involves nine Chapters and one external / non-TI partner – the Stefan Batory Foundation in Poland – which were selected through a competitive process. Chapter proposals were assessed by a panel of TI-S staff members⁷ against criteria including whether political momentum exists in the country; whether and how TI could add value to national campaigning; confidence in capacity to deliver; and 'quality criteria' relating to risk management, the clarity of the action plan, and the robustness of sustainability plans.⁸

Each Chapter receives a grant of €20-45K for up to 2.5 years, that is, October 2017 to April 2020, a time-frame that takes into account the time needed for the selection process and a final wrap-up phase. Each Chapter was free to propose to work on any Result Area – TI-S did not have an overarching criterion that

⁵ *Adessium Foundation Funding Application*, p2, p3.

⁶ Across the three Result Areas, "*National Chapters will [also] reach out to stakeholders that have influence over the main targets, such as trade unions, business associations and other CSOs*"; *Adessium Foundation Funding Application*, p4, p5.

⁷ The Programme Coordinator, Project Assistant, a Regional Advisor and another TI-S colleague from the IACC team with prior experience in calls for proposals for small grants.

⁸ *Call for Proposals*, p2.

there should be an even spread across Result Areas⁹ – although proposals could involve work on two, but not three, Result Areas. In the final selection of Chapters, six work on Result Area 1, six on Result Area 3 and three on Result Area 2:

	RA	Context and scope
BG	1	Main focus on getting legislation, with supporting objectives to win changes in perceptions of whistle-blowers and to position whistleblowing as vital to the drive against corruption.
CZ	1, 3	Initial focus on adherence to existing whistle-blower Regulation applying to public sector bodies. The agreement of the Whistleblowing Directive led TI CZ to add an objective that local legislation is prepared to align with / implement the Directive.
EST	1, 3	Initial focus on the private sector as an area of weak practice (compared with the public sector) and to cultivate champions in advocacy for legislation, which itself rose in status in the Chapter's plans after the agreement of the Whistleblowing Directive.
FR	2, 3	Plans focus on enforcement of, and adherence to, existing laws. An ultimate goal of seeking to strengthen these laws is not an explicit part of this project.
G	1	Initial intention was to use the process of transposing the Trade Secrets Directive to push for a whistle-blowing law; plans were revised to take into account the Whistleblowing Directive.
IT	3	Focused on workplace implementation of an existing law, primarily in public sector institutions.
NL	2, 3	Primary focus on workplace adherence by private sector bodies, but ongoing / reactive focus on the performance of the House of Whistle-blowers, the existing parastatal whistle-blower protection / enforcement body.
PL	1	The agreement of the Whistleblowing Directive led to a refinement of plans already focused on making the case for legislation.
PT	1	
SK	2, 3	Plans focus on adherence to local legislation by public sector bodies and on reforming the lines of responsibility for enforcement.

In line with the latitude granted to Chapters to choose to work on the Result Area(s) of most relevance in their country, Chapter strategies were expected to fall within a broad overall framework but without their precise shape being pre-empted by a steer from TI-S to operate in particular ways. The crux for TI-S was how convincing a proposal was that the proffered strategy would work in a particular context and so *“if a chapter proposes a strategy around elements such as social media, campaigning, or working with journalists (for example), rather than working with institutions to work towards the passing of legislation, we are open to this and the donor is flexible”*.¹⁰

Of the chosen Chapters, six (Czech Republic, Estonia, France, Italy, Poland and Slovakia) had been part of a previous Adessium Foundation-funded project on whistle-blower protection. Continuity with prior / existing work was a factor in selecting Chapters, but those involved in the preceding project were not automatically favoured this time round.

⁹ (Notes of) Webinar 2: Adessium – call for proposals for sub-grants, 6 September 2017, p2.

¹⁰ (Notes of) Webinar 2: Adessium – call for proposals for sub-grants, 6 September 2017, p1.

FINDINGS

Achievements and results

Relevance

Internal relevance

Whistle-blower protection occupies a prominent position within TI strategies. It is an organisational priority in the overall TI Strategy 2020¹¹ and in the associated TI-S Implementation Plan.¹² That a total of 21 Chapters applied to be part of the project – up on c.15 for the last project – can also be taken as an indication of the relevance of the issue to Chapters across Europe. Chapter staff themselves variously describe whistle-blower protection as “*one of our main priorities*” or “*a core part of our work*”. In most cases, whistleblowing is a safe priority within overall Chapter strategies even if they do not assign a large amount of resources to the issue. Where this is the case, the ending of the current grant will impact the scale of work undertaken, but not the place of whistleblowing within strategies *per se*. In two cases – Bulgaria and Portugal – work on whistleblowing is dependent on the current grant, though this is a function of these Chapters’ funding environment as well as it is of the relevance and priority of the issue.

External relevance

The absence of adequate whistle-blower protection in law and in practice is a feature of many European countries with the act of whistleblowing carrying negative connotations – of informants reporting to the secret police – in Portugal and Germany as well as in states in Central and Eastern Europe formerly under communist rule. Even in the Netherlands, where the experience of repression is less recent, negative perceptions of whistleblowing have only recently been overridden by awareness of the value of exposing corporate and government malpractice. With the exception, more or less, of France, Germany and the Netherlands, project countries are also characterised by low levels of trust in the state authorities and, if not tolerance of petty corruption, an assumption that it is the norm.

States may have a generic anti-corruption law which either leaves the issue of whistleblowing untouched or passes over it in vague terms. Whatever the state of the law, enforcement is typically weak. In the Czech Republic for example, regulations oblige public institutions to have internal whistleblowing mechanisms but local TI advocates judge that before TI took up the issue, “*no-one looked to see if [they are] working*”.

Wider political trends are challenging as populist leaders pedal simple narratives of ‘them and us’ and trade sound governance and progress in socio-economic development for amorphous values of security and stability, with the risk that whistle-blowers are cast as anti-patriotic members of the ranks of ‘them’. In turn, the public may disengage from politics and expect little from politicians. And if whistle-blowers confirm their assumptions of the corruption and self-interest of politicians, this may not spur them into political

11 In relation to ‘Creating demand for accountability, and empowering action’, TI aims to “*step up our support to those who experience corruption first hand, by enabling them to denounce or blow the whistle on corruption and to find redress*”; in relation to ‘Protecting anti-corruption activists’, it “*will stand up for whistle-blowers and journalists under threat*”; and in ‘achieving justice: ending impunity for corruption’, it has a goal that “*Laws must be enforced, loopholes closed, whistle-blowers protected and justice delivered swiftly*”; cf. *Background information for the call for proposal, Project Description*, p5.

12 Within TI-S, there is some suggestion that work on whistleblowing is a little siloed, partly as a consequence of its own success: it is ‘left alone’ because it is presumed to be functioning well and because its Coordinator is an acknowledged internal expert.

engagement, but rather validate their cynicism, without necessarily leading them to appreciate the role of whistle-blowers still seen more as 'snitches'. There is therefore no straightforward relationship by which enabling whistleblowing reduces the perception of corruption: in some countries, in the first instance, whistleblowing may increase the distance between citizens and governments. As such, the project is relevant as part of wider programming to assert that tackling corruption is both necessary and possible, and that whistleblowing is laudable and in the public interest because it helps to reduce corruption.

If this suggests a difficult external context, there is a widening window of opportunity for the project (and its predecessor) to exploit. In recent years, the issue of whistleblowing has acquired greater currency in the media and on political agenda due to the publicity garnered not only by major international cases, but also by scandals triggered by whistle-blowers in individual countries, such as Zuzana Hlávková in Slovakia. Individual project countries have adopted national laws on whistleblowing (e.g. Italy) or introduced new mechanisms for enforcement and whistle-blower protection (e.g. the Netherlands). These measures both create demand within countries for support and advice in implementation and set examples to other states considering similar steps.

The relevance of the project was confirmed – and the context in which it operates significantly altered in some project countries (e.g. Bulgaria, Germany, Poland, Portugal) – by the agreement of a European Union (EU) *Directive on the Protection of Persons Reporting on Breaches of Union Law* in March 2019 [hereafter the Whistleblowing Directive] which obliges countries to adopt minimum standards to protect whistle-blowers reporting breaches of EU law and obliges organisations with more 50 employees to develop and apply a whistleblowing policy. Without having anticipated the passage of the Whistleblowing Directive in the form that it took, the project has allowed Chapters to get in position to help EU member states meet their obligations to put in place effective standards, enforcement mechanisms and workplace policies and practices. The effects can already be seen: in Estonia, for example, Chapter staff report that *“the dynamics and sharing in the workshops were extraordinary [since] Estonian companies and people don't usually share at this level”*, something attributed to the impact of the Whistleblowing Directive in creating demand for explanations for what whistleblowing is and how the Directive should be implemented.

Effectiveness: (steps towards) outcomes¹³

Policy and institutional change, Result Area 1

	Indicators
Project purpose: Improved protection of whistle-blowers against retaliation	<ul style="list-style-type: none"> • Additional countries with adequate / improved whistleblowing legislation
Result Area objective: improvement in standards, policy and/or legislation for whistle-blower protection in 6 countries (Bulgaria, Czech Republic, Estonia, Germany, Poland, Portugal)	<ul style="list-style-type: none"> • Change in standards, policy and / or legislation for whistle-blower protection • Instances of TI policy recommendations adopted by policy-makers • More positive perception of whistle-blowers among targeted stakeholders

¹³ This section follows the TI Impact Matrix, principally its two main spokes relating to Policy & Institutional Change in government institutions, political parties and businesses and Behaviour Change in people, communities and civil society organisations.

In the project's first year, the focus of advocacy in some countries was the transposition into national law of the EU Trade Secrets Directive. How trade secrets are defined, what 'secrets' can legitimately be publicised and how those doing so should be treated has important implications for whistleblowing. In countries such as **France** and the **Netherlands**, the Trade Secrets Directive had the potential to undermine existing whistleblower legislation. Here, TI Chapters prompted political allies to 'hold the line' in debates on the domestication of this Directive and mobilised other civil society groups, journalists and trade unions to support calls for the defence of the principle of whistleblowing.¹⁴ Where states did not have existing legislation, the scope of advocacy was still defensive, but there was more of an opportunity too to promote the issue of whistleblowing. In **Germany**, TI had regular, serious dialogue with the Ministry of Justice and was vocal in a Bundestag hearing in December 2018, helping to secure important amendments in relation to the definition of a trade secret and the balance between protecting trade secrets and exposing cases of malpractice. TI Germany judges that engagement with its government around the Trade Secrets Directive fostered closer relationships and an encouraging shift in attitudes towards the need to protect whistleblowers, a trend reinforced by the passage of the Whistleblowing Directive. The impression is of a drip-by-drip process of changing attitudes in government and political parties by a steady stream of conferences, events and direct advocacy. At a Conference on the Criminal Prosecution of Corruption held in November 2018, for example, politicians from a governing party and relevant persons in key Ministries backed TI Germany's calls for better whistle-blower protection. The publication of the CumEx-Files in December 2018 shows Germany to be at a halfway house: there is greater recognition – in the media and among the public and politicians – of the value of whistleblowing all the while the state still moves against those who blow the whistle.¹⁵

As with the German case, other Chapters have been able to build closer ties with government authorities and judge themselves to have caught the attention of targets when advocating on whistleblowing. In the **Czech Republic**, workshops with investigators from public institutions are a sign that the government is looking for solutions even if the prevailing attitude is one of reluctant engagement and a fear, common to other settings, that enabling whistleblowing is somehow going to open Pandora's Box to hundreds of politically awkward cases. In **Bulgaria**, *“the commitment to cooperate with TI Bulgaria on whistleblowing issues by the Commission for Prevention of Corruption and Forfeiture of Illegal Assets [codified in a Cooperation Agreement signed in November 2018] indicates a change in the perception of public authorities [and an] acknowledgement that the whistle-blowers are important actors in the fight against corruption”*. Representatives of the Commission themselves *“expressed their satisfaction [with] the information provided on our side and admitted that they would not have considered a number of aspects if TI Bulgaria [had not brought them to its attention]”*.¹⁶ In **Poland**, the Stefan Batory Foundation's advocacy of a model Whistle-blower Protection Law led to fruitful interaction with the Public Procurement Office, the Anti-Corruption Academy and Central Anti-Corruption Bureau.

14 These Chapters had not planned to work on Result Area 1, but did so as a reaction to the threat posed by mis-transposition of the Trade Secrets Directive.

15 *Cum-ex sleuth pursued by Hamburg prosecutors*, Deutsche Welle, 12 December 2018; <https://www.dw.com/en/cum-ex-sleuth-pursued-by-hamburg-prosecutors/a-46699518>

16 *Year 2 Narrative Report, TI Bulgaria*, p6, p10.

In several of these cases, however, advocacy has hit barriers while imminent elections are causing delays. In **Poland**, it has been difficult to find channels into higher levels of decision-making, while in **Bulgaria**, progress has been undermined by institutional instability which translates into high turnover in the Anti-corruption Commission and the need to rebuild relationships with new interlocutors. In neither case is the picture wholly negative, however. In **Poland**, the government takes an instrumental view of corruption, has itself been a 'victim' of whistleblowing and is expected to move to domesticate the Whistleblowing Directive only at the last moment. Nonetheless, the doors to dialogue are open and the Foundation may come to be seen as an important interlocutor in the transposition of the Directive since its model legislation is acknowledged to be the most advanced proposal in circulation in Poland. Other legislative proposals which ran contrary to the spirit and scope of whistle-blower protection are on hold and their revival is rendered less tenable by the agreement of the Whistleblowing Directive.¹⁷ And in **Bulgaria**, the government “supported the need for flexibility in the use of internal and external mechanisms for reporting and equal access to protection measures in line with the TI’s recommendation [and] other statements by senior officials also indicate increased awareness of the concept [of whistleblowing] and the necessity of improvement of the legal framework”,¹⁸ while TI Bulgaria itself has earned a position on a Working Group that will draft legislation. It judges itself that it has succeeded in winning acknowledgement of the need for legislation and will be able to play a critical role in the drafting process, catching weak points and asserting key principles.

In **Portugal** too, there are signs of increased willingness on the part of politicians to support action in favour of whistle-blower protection – the Socialist Party adopted whistleblowing onto its political programme – but also a sense from project reporting that there were limits to the breadth of this support and to willingness to move from general statements in support of whistleblowing to concrete legislative change until the passage of the Whistleblowing Directive shifted the terms of the debate.¹⁹

In **Estonia**, the Ministry of Justice signalled its willingness to engage with TI in the process of domesticating the Directive²⁰ while the Data Privacy Agency now supports in principle the act of whistleblowing which it had previously considered to be illegal, an important shift in position which the project helped to secure.

In sum, while there has to date been only one case of legislative change – Slovakia, described below, as it straddles Result Areas 1 and 2 – the objective relating to legislation in six countries will be met by the passage of the Whistleblowing Directive, albeit after this project has finished. This project’s contribution has been to complement direct advocacy for the Directive with important foundational work of building relationships and establishing policy arguments. This has led to TI suggestions being accepted (e.g. in

17 The Transparency in Public Life Law which, according to TI [https://www.transparency.org/news/pressrelease/proposed_transparency_legislation_in_poland_must_be_rethought_and_revised] “*compromises citizens right to know, is a backdoor attack on civil society and threatens the protection of brave people who speak out about wrongdoing*” is formally still on the agenda of the Polish Parliament, but will not be tabled again before elections in October. A Bill on the Liability of Collective Entities for Prohibited Acts was sent to Parliament, but has been frozen since January; again, there is no chance that it will be adopted before the elections. Both could, in theory, be revived after the elections, but “*the EU Directive was adopted at a good moment since it has closed out space for these two Acts*”.

18 *Year 2 Narrative Report, TI Bulgaria*, p3.

19 *Year 2 Narrative Report, TI Portugal*, p3.

20 *Year 2 Narrative Report, TI Estonia*, p4.

Germany relating to the Trade Secrets Directive) and to greater openness to whistleblowing among anti-corruption authorities if not decision-makers themselves (e.g. Poland, Bulgaria).

Policy and institutional change, Result Area 2

	Indicators
Result Area objective: improvement in the enforcement of whistle-blower protection laws and policies by responsible authorities in 3 countries (France, the Netherlands, Slovakia)	<ul style="list-style-type: none"> • Instances of TI policy recommendations adopted by responsible authorities • Increased capacity of targeted authorities dedicated to whistleblowing in the Netherlands • Increased # of relevant whistle-blower requests for advice and / or protection received by responsible authorities

The **Dutch House for Whistle-blowers**, the first such body established in Europe to enforce whistle-blower legislation and provide support to whistle-blowers, has not only proven to be ineffective – underspending its budget and concluding only three investigations into reported wrong-doings – but has also become itself the subject of a whistleblowing case, a case which it has not handled well, further undermining its credibility.²¹ While a charitable interpretation would be that an institution that is pioneering in its remit is bound to be flawed without prior experience to learn from, TI Netherlands staff and an external interviewee judge that this scenario was predictable, albeit not necessarily in the raising of cases against the House itself. The Act which established the House was known to be problematic in the constitution of its Board and in the attempt to manage the functions of investigation of whistle-blowers' claims and support to whistle-blowers under one roof. TI Netherlands is at least confident that the failings of the House are being taken seriously by the relevant Minister, with the National Ombudsman drawn upon to provide advice. The crux will be how the overhaul of the House is managed and whether the changes that come to be made to its remit and ways of working are cosmetic or seriously address the design flaws of its first iteration.

TI **France** maintains regular contact with the national authority for whistle-blower protection and cooperates in monitoring implementation of the national whistleblowing legislation, including through co-publication of a gap analysis to be released in 2020.²²

Straddling Result Areas 1 and 2, in November 2018 the government of **Slovakia** adopted an amendment to whistleblowing legislation which mandates the establishment of an independent *Office for the Protection of Persons Reporting on Anti-Social Activities*, an achievement which TI Slovakia directly contributed to through active involvement in the Working Group responsible for the amendment. That no candidate to lead the Office has yet been appointed takes a little bit of the shine off this result – it is hoped that a candidate will be ratified later this year – but once properly staffed, it has the potential to improve support to whistle-blowers in Slovakia and provide an example to other countries.²³

21 “So for the last three years the House for Whistleblowers with a budget of 3 million euro per year, received hundreds of reports, started dozens of investigations and recently only completed [in May 2019] two [now three] investigations into possible retaliation”; *Year 2 Narrative Report, TI Netherlands*, p12.

22 *Project Progress Year 2 Report*, p7.

23 The amendment also dictates that all Ministries must appoint anti-corruption officers and specifies that employees responsible for whistleblowing policy and practice have an up-to-date, professional qualification, but without specifying what form this qualification should take; *Year 2 Narrative Report, TI Slovakia*, p8, p10.

In sum, there is confidence that enforcement structures will be stronger in Slovakia after the amendment to the law, a change which TI influenced, although vigilance is needed as Slovakia is judged by internal and external stakeholders alike to often be a leader in legislation, but progressive laws can get stuck in the process of enforcement and implementation. Increased capacity of whistleblowing authorities in the Netherlands has not been forthcoming and full reform of the House for Whistle-blowers is unlikely for two years.

Policy and institutional change, Result Area 3

	Indicators
Project purpose: Improved protection of whistle-blowers against retaliation	<ul style="list-style-type: none"> Additional # of workers with adequate workplace whistleblowing policies in the Czech Republic, Estonia, France, Italy, the Netherlands, Slovakia
Result Area objective: improvement in adherence to whistle-blower protection laws and policies by key public institutions and/or private companies in 6 countries (Czech Republic, Estonia, France, Italy, the Netherlands, Slovakia)	<ul style="list-style-type: none"> Instances of TI policy recommendations adopted by targeted organisations. Increased employee awareness of internal WB mechanisms in targeted organisations

A, the private sector

TI **Estonia** has run a programme of workshops with companies, in effect pre-empting demand for support in implementation of the Whistleblowing Directive. Being able to prove itself useful to companies by engaging them on a specific topic of relevance has the potential to bring important results: for TI staff, a spark has been lit which will engender change in the lives of thousands of people if the companies involved follow through.²⁴ Estonia Energy, for example, already has an independent website, phone number and email open to potential whistle-blowers and is investing more in monitoring the number of, and response to, cases. TI Estonia has played a role of intermediary between companies and legislators, convening stakeholders across the public-private divide, injecting expertise and providing solutions. This has borne organisational fruit in that work delivered through this project has deepened its profile with the corporate sector: TI Estonia's Business Integrity Forum (BIF)²⁵ predates the work on whistle-blower protection but has been enlivened by it. It may, however, need to protect itself from greater demand than it can cope with, given the apparent absence of other organisations active on the issue in Estonia.

With an eye on showing the trend over time, a TI **Netherlands** survey of corporate policy and practice run in June 2019 revealed that, although there had been improvements since 2017, *“many companies do not have effective whistleblowing frameworks in place, employers still lack guidance to comply with the law and understanding about the relevance of whistleblowing [and] potential whistle-blowers are unaware of their rights and lack knowledge on how to report safely”*.²⁶ The survey does show an increase in the proportion of

24 The ten companies with which TI Estonia engaged range in size – number of employees – from 50 to 7,300, with an average of 2,471; *Year 2 Narrative Report, TI Estonia*, p5.

25 *“Business Integrity Forums bring together a network of national, regional and global businesses who aspire to the highest anti-corruption and ethical standards in business practices... to explore emerging trends and collectively consider a best-practice response. Through external experts, peers across a range of business sectors and access to Transparency International’s research and insight, forum members gain exceptional insight into emerging trends, best practice and innovative practical solutions to take back into the workplace”*; <https://www.transparency.org.uk/our-work/business-integrity/business-integrity-forum/>

26 *Year 2 Narrative Report, TI Netherlands*, p11. With the House for Whistle-blowers Act having just been passed, the 2017 survey had the function of a current state analysis, with 30 companies provided information regarding procedures and attitudes

companies with an effective whistleblowing framework (65% in 2019 compared with 50% in 2017), with more than 90% having a whistleblowing channel available 24/7 and more than half regularly promoting whistleblowing via internal communications and training. Progress is greater in some sectors than others: subject of close scrutiny since the 2008 crash, the financial sector is more likely to have systems in place to catch malpractice than other sectors, for example, while there is, according to local Chapter staff, further to go to engender a 'speak-up' culture in the energy and mining sector. There are particular weaknesses too in companies which are only just over the 50 employee threshold. Overall, the survey data are judged to be somewhat disappointing, given that policy and practice change is obliged by an Act that is now 3.5 years old.²⁷

In **Italy**, TI has engaged the private sector at lower intensity than the public sector because the obligations of the country's 2017 Whistle-blower Act are stricter on public bodies. It has worked closely with BIF members which expressed an interest in whistleblowing, providing advice in the development of policy and procedures. In at least one case, a company had worked with TI to introduce a reporting platform prior to the adoption of the Act; that the platform scarcely needed amending after the Act came into force demonstrates that TI had anticipated the company's needs and its advice was in tune with the development of legislation. The company in question has sought to promote its whistleblowing procedures and although the level of reporting is low, a survey of staff suggests that the system is trusted.

In **France**, the picture is similar: companies with which TI has an existing relationship through its *Forum des Entreprises Engagées* are reviewing their policies with guidance from TI²⁸ or have incorporated TI France recommendations when revising them.²⁹

B, the public sector

In **Italy**, the project funds an e-learning course as a complement to a reporting platform – funded by another donor – which provides an off-the-shelf means for public institutions to fulfil the Whistleblowing Act. The e-learning course has been delayed as its content depends on the publication of Guidelines for Public Administrations by the National Anti-corruption Authority. TI had anticipated that the Guidelines would be prepared a few months following the adoption of the Act; in practice, they were published in draft form only in July 2019 and will be finalised in October or November. With those parts of the course which do not depend on the Guidelines more or less ready, the design of the course as a whole should be ready before the year end, with the five webinars delivered before the project's conclusion in April 2020. Although this delay affects what can be reported on in this current assessment, the bigger issue ultimately is the quality of the Guidelines themselves. In their current form, they are felt by TI Italy to be of poor quality and do not strongly reflect the input of TI in the drafting stage. The inference is that the Anti-corruption

towards whistleblowing. The 2019 survey uses the same basic methodology, but is broader in scope, with 100 companies from four sectors covered. It sought to provide a wider picture of progress in fulfilling the Act and to draw up variations in level of commitment and in practice among different sectors.

27 Survey scores are low by design in that they rely on publicly available material in cases where companies do not volunteer more information under a logic that this will force them to reveal more. It is anyway a reasonable premise that companies which are not transparent about their policies relating to whistleblowing do not have strong policies.

28 *Project Progress Half-Year Report (2nd half 2018)*, p3.

29 *Project Progress Year 2 Report*, p4.

Authority Board members who signed them off either do not understand whistleblowing well or are seeking to weaken the implementation of the Act on political grounds.³⁰

With 463 institutions (and rising) having already adopted TI Italy's online reporting platform, there has been greater progress made with this element of improving workplace implementation. With public bodies obliged to employ an encrypted online platform, TI solves a problem for them, its influence clear at the level of the design of systems. Where a major public administration like the Municipality of Milan adopts a bespoke platform with TI's input and appoints TI to an independent body established to review the reports submitted, this is further evidence of TI's status as an expert on whistleblowing in the country.³¹ It remains to be seen how the level of reporting changes over time and what the quality of reporting is.³² With its long history of seeking to enable safe reporting, the Municipality is likely to invest more in explaining people's rights and the systems in place than other public bodies may do. Even here though, TI Italy's expectation is that an attitude of disengagement and scepticism towards whistleblowing – for which there is no Italian word which does not have negative connotations so the English word is used instead – may dampen people's inclination to report even as the trend is slowly positive. Whether the reporting system is known and trusted is only one factor in people being willing to blow the whistle when they have cause to do so.

In **Slovakia**, the local Chapter reviewed policy and practice, including how cases have been dealt with and how procedures are promoted internally, in 28 state bodies. Publishing a biannual ranking of a total of 100 municipalities and 8 self-governing regions created attention and drove change in those coming near the bottom. It also conducted 'mystery shopping' to test whistle-blower mechanisms in institutions. With the results showing generally poor practice and confirming the view held internally that there is no public sector body with effective whistleblowing procedures in spite of a strong law, it established pilot programmes with the local authority in Bratislava and with the Ministry of Environment – the former putting itself forward because it had a low ranking in TI's analysis. Training with officials served both to capture a fuller picture of current practice and begin the process of engendering positive change. This will not happen overnight and is contingent on other factors, including the galvanising effect of the recent murder of a journalist. The overall direction of travel is positive, however, and, while TI Slovakia will need to guard against 'over-extrapolating' from developments in Bratislava which may be atypical of the rest of the country, it is suggested by internal and external interviewees alike that recent municipal elections have brought in new, more progressive, politics as a counter to the current national political picture.

In the **Czech Republic**, the focus has been on analysing and testing the provisions of the 2015 Civil Service

30 As one example, web-based reporting is obligated by the law, but the Guidelines cripple the promotion of, and whistle-blowers' access to, reporting platforms. This is judged by TI to reflect concern at the number of reports which may be received and the administrative burden resulting; any such concern would, however, run contrary to the spirit of the Act which is designed to encourage reporting. Once the Guidelines are published, TI Italy will finesse the content of its e-learning course to assert a stronger line in areas where it judges the Guidelines to be weak.

31 The Municipality first started working with TI on a reporting platform in 2014, initially employing one that TI felt to be weak in certain aspects. Over time, it refined its platform, including to enable reporting by stakeholders, such as contractors, external to the Municipality, as demanded by the 2017 Act. For the Municipality itself, making the platform open to external stakeholders begs the question as to who is responsible for informing such stakeholders of the option to report and to protect them when they do.

32 Most questions are compulsory which means that only the committed will see the process through. There is no way of knowing the reasons why some people may set out to report but then give up.

Act which obliges public institutions to have whistleblowing mechanisms in place. With the process to adopt a specific whistle-blower law on hold, the provisions of the Act are the only ones in play and their effect has not previously been scrutinised. Surveys were conducted with internal investigators and staff in ten public institutions, the results of which were used to inform follow-up discussions including a workshop with investigators, and a publicity campaign with staff in one institution – the *Pražská správa sociálního zabezpečení* (PSSZ, Prague Social Security Administration) – which reached 600 people. With an aim of testing tools and building a positive case study to use in engaging other institutions, TI Czech Republic’s approach combined promotional materials with seminars and engagement of managers as well as operational staff. Its advocates judge that cooperation was constructive with the PSSZ remaining engaged. The Chapter has accumulated knowledge and tactical experience which it can deploy in ongoing advocacy. Guidance materials are being prepared which should allow investigators – and other actors – to maintain momentum beyond the life of the project. The fact that this analysis was conducted also demonstrates to the authorities that provisions like those in the Civil Service Act will not be allowed to ‘sit on the books’ without civil society scrutiny of implementation. The real test however will come if and when ‘difficult’ cases arise, and at this point it is too early to judge the lasting impact.

In **France**, TI has employed a similar approach of engaging with a small group of pioneering institutions, specifically those which are members of its *Forum des Collectivités Engagées* (FCE, Local Authority Forum).³³ It organised a training event in March 2019 which was attended by officials and councillors from these municipalities, as well as representatives of the *Syndicat national des directeurs généraux de collectivités territoriales*, the national local government association, and the Associations of the Regions and of the *Départements* of France. It has since worked with FCE members to define or review whistleblowing policies and channels.³⁴ In addition, it participated in the drafting of a policy paper by the *Institut Français De L’audit Et Du Contrôle Internes* (IFACI, French Institute of Audits and Internal Controls), a new relationship for the Chapter, with a view to informing the shape of policy and guidelines that local authorities which it is not able to reach directly draw upon.³⁵

In sum, in Italy, TI has influenced the form that workplace implementation has taken in the public sector and, to some extent, the private sector. Workers in nearly 500 public institutions are now able to report in a safe and user-friendly way, although the e-learning course designed to encourage take-up of the Chapter’s reporting platform is still to be delivered and it is essential to monitor the use made of the platform. TI Slovakia has prompted a reaction from public bodies and is well-placed to shape the evolution of workplace practices in the next phase. Elsewhere, Chapters have developed a richer understanding of the corporate baseline in Estonia, tested approaches to engage public bodies in the Czech Republic and public and private sector bodies in France and plotted the trend in corporate employee awareness in the Netherlands, all of which lays a foundation for ongoing engagement.

(Individual) Attitudinal and behaviour change

Not a direct objective of the project, but a goal at Chapter level where judged appropriate to help advance political progress, most Chapters report small steps in the right direction in seeking to affect perceptions of

33 Forum members are drawn from seven municipalities covering a combined population of 4.6 million and with a total of 71,000 employees.

34 *Year 2 Narrative Report, TI France*, p10, p8.

35 *Year 2 Narrative Report, TI France*, p14.

whistleblowing. In **Estonia**, Chapter staff and external commentators perceive that negative stereotypes are starting to crumble and that there is more public support for whistle-blowers when cases break; even if this is not easy to verify as attributable to the project, it would suggest that the context for the Chapter's advocacy is becoming more favourable. In **Bulgaria**, TI has won increasing acceptance in media and government circles of *разобличител*, for which the closest translation is 'unmasker', as an alternative to *лица подаващи сигнали*, literally 'persons submitting complaints', a term tainted by association with the communist era.³⁶ It remains to be seen what term will be used in legislation. It is questionable too whether awareness of the shift that TI Bulgaria is trying to induce has penetrated beyond a small, politically engaged section of the population. Among wider society, TI staff acknowledge "*there is still a general fear to blow the whistle*"; its own survey of public opinion shows that most people doubt whether whistle-blowers would be treated properly.

In **Poland**, the Stefan Batory Foundation has also sought to introduce a new word that better captures the positive dimensions of whistleblowing. Its own survey shows that public opinion is less unfavourable towards whistle-blowers than in 2012. But people still consider themselves less likely to report a case of corruption than a health & safety breach and, in the analysis of the Foundation, tend to accept practices at work that they would not normally accept or which they say they do not accept. The survey also signals that not wanting to be seen to be a snitch is still a more commonly cited reason for not blowing the whistle than fear of legal or other consequences from doing so. A majority do claim, however, that they would support a colleague who reported corruption all the while they would not want to themselves.

In **Portugal** too, the impression is that there is still a fair way to go to cultivate wide acceptance of whistleblowing even if concern at levels of corruption is opening minds to the idea that whistleblowing is in the public interest.

In **Germany**, encouraging progress has been made in terms of acceptance of whistleblowing and in decoupling it from association with the country's past where under the Nazi regime and, later, in communist East Germany, whistle-blowers were seen as informants. An ally asserts that "*nobody dares to speak against whistleblowing*", a shift attributed more to the Snowden case than to the work of TI itself, but one which it benefits from.

In sum, progress in asserting alternative language for whistleblowing is of huge significance, but in all cases of efforts to affect attitudes and perceptions, it is difficult to be precise about the pace and scale of change. Public opinion surveys are useful in showing the 'big picture' trend in attitudes, but do not themselves address the matter of what is driving change. Attitudes may shift in the wake of a high-profile case but fall back to something near to previous levels once attention drifts. It is incumbent on Chapters to continue to assess the trend in public attitudes and behaviour and to connect political advocacy around legislation and implementing structures to longer-term work to shift perceptions.

³⁶ Year 2 Narrative Report, TI Bulgaria, p5.

Effectiveness: summary assessment of progress towards fulfilling the project purpose

The extent to which protection of whistle-blowers against retaliation has improved in the ten project countries is largely a function of the passage of the Whistleblowing Directive in the case of the six countries without existing legislation. TI may claim a contribution to the adoption of the Directive and the shape that it took, though this is primarily the achievement of a separate project and one not subject to close scrutiny in the current review. The contribution of Chapters in these six countries as part of this project has been to foster relationships and build evidence which can be drawn upon in the transposition stage. Not entirely by design, this project has enabled these Chapters to get into a good position to influence the legislative (and procedure design) processes to come. More amorphously, the project has helped Chapters in the slow process of changing attitudes and perceptions towards whistleblowing which makes the context for implementing and overseeing legislation more conducive.

In the other four countries, the project has enabled Chapters to increase their understanding of current practice in public and private sector organisations, to develop tools to enable effective adherence to laws and standards and / or to deepen relationships with pioneering implementers. Where institutions have adopted tools and platforms developed with TI or which meet its standards, as in Italy for example, there is a clear link to improved whistle-blower protection. In other cases, Chapters are in the process of influencing the practices of public and private sector bodies and tangible results are still to accrue.

Effectiveness: strategic strengths and weaknesses

Theory of change³⁷

The current project's theory of change is a conscious reaction to that of the previous Adessium Foundation-funded project whose objectives were to advance effective legal protection of whistle-blowers in selected European countries; provide legal advice and practical support for whistle-blowers; and contribute to a more positive perception of whistle-blowers by promoting whistleblowing to key audiences. That project's final evaluation concluded that the third objective "*was not explicitly and systematically linked to the other two and only in some cases influenced the project results at the level of national chapters (i.e. result area 1)*".³⁸ This is a charge that TI refuted³⁹, but it nonetheless drew the lesson that communications work to affect perceptions of whistleblowing should be developed by Chapters within their own plans, rather than organised centrally.⁴⁰

With the elements of communications to affect perceptions and direct support to whistle-blowers left to Chapters to include in their plans as they see fit, the current project is organised around three elements of

37 In the Terms of Reference, reference to theory of change ('To what extent is the project's theory of change coherent and relevant? Are the planned activities of the project consistent with the envisaged results?') is listed under Relevance, but straddles Relevance and Effectiveness and is arguably a better fit in this section.

38 *Final Report, Evaluation of the Transparency International project "Whistleblowing in Europe: Supporting the agents for change" funded by Adessium Foundation*, Pierre Robert & Benjamin Stachursky, March 2017, p4.

39 In its Management Response to the Project Evaluation, TI argued that "*The main message of TI-S outreach campaigns (such as the one around the Luxleaks case) and interventions in public events was always the need for better whistle-blower legislation in EU countries*" and that "*one of the very goals of these promotional activities was to inform potential whistle-blowers about the advice and support that they could find from TI in their country.*"

40 It is understood that the donor was sceptical of the ability of TI-S to deliver strategic communications at a European level, given the national specificities to the context for, and even the terminology surrounding, whistleblowing.

policy and practice – legislation, enforcement and implementation – as a reflection that, across its ten settings, it seeks to affect a wider range of policy issues, including practice as well as policy / laws.

The project's basic *modus operandi* is to win legislative and practice change through advocacy and expert engagement of policy-makers, public institutions and companies. Activities include the development of recommendations based on best practice (Result Area 1) and guidelines for better enforcement and workplace implementation (Result Area 2 and 3), outreach and advocacy. The assumption that advocacy works well if Chapters are involved from the drafting stage and so help to shape what is negotiated in political arena points to a preference to engage primarily in technical interventions. It is less clear that Chapters are as comfortable engaging the public as they are in 'quiet' advocacy⁴¹ and there is tension around whether to promote whistle-blowers as heroes or whether to emphasize the normality of whistleblowing – that, most of the time, it is low-key, not high profile. The former may contribute more to public political debate, but there is also concern that it can be counter-productive to frame whistleblowing as something exceptional and not relevant to most people's work experience. In this, it is arguable that what is correct in policy terms – that whistleblowing is normal, not heroically exceptional – may be in tension to what is effective – the expansion of the range of what is possible by the attention gathered by high-profile cases.

All told, this amounts to elements of strategy rather than a theory of change. A lot is left implicit not only about the dynamic between Result Areas, as below, but also the perspective of whistle-blowers themselves and the connections both to European advocacy and to the work of other organisations at the national or international levels.⁴² A theory of change may anyway only be appropriate at the Chapter level. This is not necessarily problematic: the project has benefited from the flexibility to adapt as it goes along, a flexibility due to the absence of tight strategic parameters. Where the project has been led by individuals in comfortable command of the subject and the way to bring influence to bear in their country, any negative impact of 'strategic looseness' is also mitigated.

The dynamic between Result Areas

This evolution in policy scope between the two Adessium Foundation projects reflects an assumption of a basic linear relationship between policy and practice: laws come first, then need applying in practice. This holds up well in Italy, for example, where the last project was focused on securing the 2017 Whistle-blower Act, while the current project centres on support for, and monitoring of, implementation. The approach employed evolves too: there was a stronger public campaigning element to the last project in Italy, while the current one involves technical engagement of public and private sector actors in developing tools and systems to apply the Act. Even here though, work to develop legal standards is not complete and activities to inform implementation are expected to build an evidence base for further refinement of laws and

41 The role of public mobilisation is generally positioned as secondary to advocacy, with the overall strategy signalling that TI "reach[es] out to the public when pressure from the public opinion benefit[s] our advocacy asks"; *Adessium Foundation Funding Application*, p5.

42 The non-linear dynamic between Result Areas and the relationships between advocacy and casework, between countries and between the EU Directive and national work (in all Result Areas and in both directions) do not seem to have been articulated in one place. Concretely, the potential contribution to dynamics around the EU Directive was not a factor when selecting Chapters to participate in this project and it seems that some of the formal and informal coalition work seen in EU advocacy has not always translated to national work.

policies. The broader point stressed by TI-S is that of the dynamic tension and mutual dependency between the Result Areas: Result Area 3, for example, both depends on Result Area 1 – employers can best take responsibility for whistleblowing practice within the context of a strong law – and informs it⁴³, while the value of progress under Result Area 1 is limited in cases where employers feel no pressure to put laws into practice and enforcement mechanisms are ineffective.

As one example of how the relations between Result Areas are multi-directional, TI Slovakia had difficult interaction with Labour Inspectorates, which held the responsibility for overseeing the country's whistleblowing law. This experience led it to support an amended law establishing a new body – effectively introducing a new element of work under Result Area 1 – and informed its strategy towards the Bratislava authority and the Ministry of the Environment under Result Area 3.

TI-S notes that few Chapters pitched to work on Result Area 2 and those that did usually include it as an adjunct to Result Area 3. This suggests that for Chapters not focused on Result Area 1, workplace implementation was seen as the first priority in enabling delivery of laws where they are in place. This may reflect that it opens up Chapters to a wide range of stakeholders and allows them to efficiently affect practice in many settings through the provision of tools and training.

Seeking to affect workplace implementation makes the private sector an explicit target of the project alongside public institutions as policy-makers, policy-enforcers and employers in their own right. But while private sector companies have been targeted under Result Area 3, they are also important as allies in pushing for legislation in several countries. In Germany, engaging companies is critical to getting any law passed. TI Portugal also judges that it is essential to engage companies as part of the effort to push for legislation, while in Poland, the Stefan Batory Foundation has drawn interest in its model legislation and public opinion poll from the private sector. As such, partners focused on Result Area 1 have engaged companies with the effect of smoothing the path into Result Area 3.

Direct support to whistle-blowers

Four project Chapters run Advocacy and Legal Advice Centres (ALACs), which provide advice and support to anyone who has witnessed or been a victim of corruption. In Italy, there is positive synergy between the local ALAC and project advocacy as the ALAC helps the Chapter understand the perspective of whistle-blowers. In the Czech Republic, the Chapter can deploy stronger arguments in advocacy because ALACs provide real data and trends.

In Portugal, where an ALAC has been in place since 2012, but unfunded since 2015, the project has prompted its revival, although the question of sustainability is live as this project heads to a conclusion.⁴⁴ Some other Chapters with an ALAC report low demand from whistle-blowers. TI Bulgaria, for example, has

⁴³ *“For proposals focusing on result area 2 or 3, chapters should consider including components falling under result area 1. Indeed, while working on enforcement or implementation of whistleblowing legislation, chapters might identify the legislation’s potential shortcomings and loopholes in practice, which could feed into policy recommendations and advocacy to revise the law”*; *Call for Proposals*, August 2017, p1.

⁴⁴ The review is not in a position to comment in detail on the value and sustainability of TI Portugal’s ALAC. It is understood that the project has given the ALAC fresh impetus, but it was noted at the Glasgow meeting that there is currently no funding to maintain it.

not had any recent calls to its anti-corruption hotline from a whistle-blower. In these cases, the capacity of ALACs and other forms of in-house support to whistle-blowers are untested all the while levels of whistleblowing remain low.

In countries without an ALAC or other capacity to handle cases, Chapters are dependent on the existence of other organisations to support whistle-blowers. In the Netherlands, support to whistle-blowers is provided by an association of former whistle-blowers and, albeit in a flawed way, the House for Whistle-blowers. In Estonia, a single staff member is often directly contacted by whistle-blowers and it takes a fair degree of her time to respond to them. In Slovakia, the Chapter did run an ALAC but has adopted more of a think-tank approach and so no longer does. It is still approached by individuals raising complaints, not all of whom would fit the definition of a whistle-blower. It is potentially in a difficult position: people come to it because of its name and reputation without it being able to provide much more than basic advice or to capitalise on the mobilising effect of real-life, emotive cases. Any pressure on the Chapter would ease, however, if a network of companies catalysed by a former whistle-blower (and former TI Slovakia employee) fulfils its aim of supporting whistle-blowers with offers of work and training.⁴⁵

From the perspective of (parts of) TI-S, too little is made of the cases being presented to ALACs in broader advocacy. This is not simply a question of the dynamic between ALACs and whistle-blower protection work, but a failure to capitalise upon individual cases and stories and use them systematically in advocacy, campaigns and communications in wider practice at the Chapter and TI-S level.

National relevance versus collective coherence

Any multi-country project of this type faces the challenge of striking a balance between maintaining overall coherence at the project level and allowing the right amount of latitude to adapt to local capacities and context. With every country at a different stage in the development and application of policy and standards, it is natural that the project's starting point is to allow Chapters the freedom to develop plans without tight central control over strategy. This is generally appreciated by Chapters on the grounds that, as one Chapter staff member puts it, *"we are able to realise the ideas we had without limits"*, albeit within an overarching framework provided by TI-S. The issue is less that this has caused problems – although reference is made to TI Germany going a little 'off message' in the goals it was seeking from its government⁴⁶ – and more that the benefits of being part of an international project are quite muted. There are some areas of potential synergy, notably that Chapters focused on Result Area 1 can learn from those at other stages of enforcement and implementation and there has been useful sharing among Chapters, all of which can draw upon common materials produced for other projects and to be produced in the final stages of this project. Equally though, Chapter respondents recognise that the work in each country is, in essence, held together by the topic of whistleblowing only, with few substantive synergies and few dependencies. For one, *"it is hard to see it as a joint project of Chapters – it is a project of TI-S which allows Chapters to work on whistleblowing"*, an instrumental view of the project which, it should be stressed, is not meant as a criticism. Others concur that privileging national adaptation over project-wide coherence is the correct

45 The 'Backing the Bold Ones' initiative is supported by c.700 companies employing c.200K people. Supporters of the initiative commit to high ethical standards and to helping whistle-blowers who lose their job or who prefer to seek another job.

46 On the issue of whether whistle-blowers should be obliged to report internally first.

approach since pushing all Chapters to work to a common strategy would bring greater costs without clear benefits.

Given that Chapters do articulate a demand for greater sharing, the challenge is to foster links among Chapters alongside constructing a coherent story out of their diverse strategies, connecting the dots to add colour to the basic picture of ten Chapters working across three Result Areas.

Added value and positioning

TI is recognised for its specialist expertise and the depth of its analysis. In many countries, it is invited onto Working Groups involved in drafting policy and is generally judged to be highly credible by public bodies, companies and NGOs. TI Italy has established itself as a reference point on whistleblowing, for example, and the Stefen Batory Foundation judges itself to be a focus of whistleblowing expertise and research in Poland. TI Estonia draws praise from external stakeholders for the quality of speakers that it brings to events; the size and type of company which attends is itself testament to the quality of the outputs it is providing. Here and in most cases, Chapters have access to high levels of government and have good contacts with media.

TI-S staff and allies highlight some weaknesses in advocacy capacity at the Chapter level. An ally refers to exceptional cooperation with TI-S and the TI-EU but more patchy engagement of Chapters. Some TI-S staff feel that some Chapters lack certain key skills and are not always inclined to seek out training or other forms of support to address capacity gaps.⁴⁷

Some NGO respondents are concerned that TI is too cautious and too 'soft' on companies in particular.⁴⁸ At the same time, there is feedback from some company representatives that TI is antagonistic. It is important not to draw too much from the input of a small pool of stakeholders and it is important too to acknowledge that companies' default may be to want NGOs to be conciliatory and that NGOs' default may be to 'go after' companies, but this mix of responses suggests that TI may be striking the right note: better this than NGO feedback that TI was too soft *and* company feedback that there was purely constructive interaction with TI. The crux is whether TI is able to operate effectively with others taking a different positioning.

Joint working

TI values its engagement with experts and its access to policy-makers and appears used to, and comfortable with, operating more or less as a solo player. Allies acknowledge too that there is a prevailing 'silo mentality' in the sector as a whole. In Slovakia, for example, an external commentator judges that there are good reasons why local NGOs, including TI, take different approaches and do not cooperate much; in effect, this respondent considers that NGOs' approaches are complementary because they are not cooperating directly, but occupy their own distinct spaces. The implication is to act in ways complementary to others, whatever that means in terms of formal or informal cooperation.

⁴⁷ The evaluation team is not able to confirm or refute these assessments as it has not made a detailed analysis of any individual Chapter to reach such a conclusion. In that, as noted in the following section, some Chapters regret lacking time to organise training, this is an admission of capacity gaps on their part.

⁴⁸ That TI may draw criticism for its positioning from other NGOs is a broader issue than its what they think of its work on whistleblowing.

There has been effective collaboration in France, where the TI France-initiated NGO coalition now has 38 members, up from 18 in 2016⁴⁹ and the House for Whistle-blowers launched in November 2018 is both cause and effect of greater interest among the public and civil society in whistleblowing, something strongly attributed to TI.⁵⁰

Elsewhere, engagement of trade unions has been a priority. TI Germany, for example, plans events with trade unions in Berlin and Munich in November with an aim of “*establishing our own position and go out and try and connect back to our old partners in the trade unions*”. In Poland, the relationship forged with Solidarność '80 is a result of this project. This has not been without its challenges – Solidarność '80 is close to the ruling party, which is ambivalent about whistleblowing, and used to argue that new ways of protecting whistle-blowers were a covert assault on unions, which, in its eyes, should have the primary responsibility for defending their members, but now no longer criticises regulation of whistleblowing, even if it is not yet a positive advocate for the sort of change that TI and the Stefan Batory Foundation seek. In the Czech Republic, this picture of unions as blockers also holds, without there yet being signs of movement by unions towards a more progressive stance.

The overall picture is that TI is aware that it needs to work more with other organisations, including those that are more 'radical', to win change. The campaign for the adoption of the Whistleblowing Directive has led it to cooperate more closely with the Whistleblowing International Network. The relationship between the two has generally worked well but there has been some isolated – but ultimately resolved – local tensions in Germany over the technical policy position taken on the Whistleblowing Directive. The impression is of TI edging its way to more serious and sustained forms of joint working with other groups, overcoming any tendency to be sceptical of working with those less expert than it is.⁵¹

Efficiency

Selection process

Since the process of securing funding and then selecting partners was employed in the previous whistleblower protection project, it was new neither for TI nor for the Adessium Foundation. The time taken for the selection process was factored into the project timetable and Chapters consider that it was fair and efficient.⁵²

Without commenting on the selection of individual Chapters, some respondents feel that the selection process could have prioritised a capacity development criterion, that is, to deliberately target Chapters for whom the project could have developmental benefits, whether in terms of work on whistleblowing specifically or in more general terms.⁵³

49 *Project Progress Half-Year Report (2nd half 2018)*, p2.

50 In contrast to the Dutch House for Whistle-blowers, which is a parastatal agency mandated by law, the French House is a civil society initiative.

51 One Chapter draws a distinction between other civil organisations which “*ask for too much*” and its own relationships with “*experts and connected people who have a different [meaning: fuller, better] picture*”.

52 It might be supposed that this is a case of those who were successful in the selection process judging it to have been designed and delivered fairly, but it should be noted that among those acknowledging its fairness are some who lost out last time.

53 It is understood that the funder is also keen to see the grant used to support the strengthening of the TI network.

While noting that project funding has been crucial to the development of their Chapter, one respondent also argues for surety of delivery and sustainability as key criteria. These factors are not exclusive – and Chapter dependence on project funding may offer leverage over their future plans, including to ensure commitment to following up a project. It is questionable though how full a picture of Chapters' capacities and context TI-S has – how likely they are to be able to sustain work on the topic, how many other calls on resources they face – and how much 'control' it can have over their strategic choices.

Ultimately, how such a selection process is employed a signal of the project's theory of change. TI-S could have taken a more controlling approach to the project and to the selection of Chapters, giving more weight to how progress in country X could affect progress in country Y and / or which countries had the greatest need or chance to impact most people; also taking into account the dynamics at the EU level around the Whistleblowing Directive and other possible synergies. Instead, its lighter approach to coordination and its intent to let strategies be driven by Chapters' analysis of context led it to prioritise more 'basic' criteria of reliability and quality. The effect is that TI-S both controls the allocation of funding by selecting Chapters while controlling neither the shape that the project takes in individual countries nor its overall coherence. It is right to have a rigorous selection process, but this would ideally have more of a strategic foundation. If TI-S is unwilling or unable to impose its own strategic vision, it should seek ways to involve Chapters in setting the strategic tone for a project, albeit without creating conflicts of interest when Chapters themselves seek to be involved in a project.

Delivery and coordination

Chapter respondents are very positive about the knowledge and expertise of the Programme Coordinator, the utility of regular bilateral calls, and the responsiveness of the TI-S team as a whole.⁵⁴ Several describe particular instances where advice and support was helpful – TI Italy refers to technical input in the design of its e-learning course, for example – while others refer to TI-S's ability to connect them up to particular expertise and solutions or to others grappling with similar challenges. There are some concerns, however, at an apparent tendency on the part of TI-S to focus on too fine a level of detail, rather than limiting itself to a helicopter view of delivery and results. Given that the Coordinator is relied on for detailed technical advice as well as strategic oversight, this is perhaps unavoidable.

It seems that TI has a generic problem of overlap between Regional Advisors and Programme Coordinators which this project has attempted to manage by including Regional Advisors in the regular calls held with Chapters. This seems to be working, though at least one Chapter still refers to "*some confusion*" in the division of roles among TI-S Coordinators.

There is no common view regarding the utility of the internal whistleblowing internet pages. Some refer to this space positively as a useful repository of resources, but one Chapter respondent judges it to be rarely

⁵⁴ Chapters noticed the difference in coordination support when the Programme Coordinator was on maternity leave: not so much that there was anything problematic about the support provided by the staff member covering her absence than that there was something of a fall-off from the very high standard that she had set.

updated and emblematic of a tendency to create a platform as a substitute, rather than a tool, for effective coordination.

There have been no major central outputs produced under this project; The Best Practice Guide for Whistleblowing Legislation published in March 2018 is mainly funded through another project, although it has been of use to this.

Several Chapters have benefited from the chance to go on exchange visits, often travelling with others to visit a Chapter at the same time in the interests of efficiency and to expand the scope of mutual learning; TI Estonia, Czech Republic and Slovakia visited TI Italy together, for example. These visits are appreciated by those involved – TI Estonia refers to learning about ALACs and BIFs, as well as the history of whistleblowing advocacy in Italy – though others did not take up the opportunity as they felt that they were able to access information from their peers and from TI-S without the need for a visit.

There is positive feedback regarding interaction around particular events – a representative of TI Slovakia speaking at an April 2018 event run by the Stefan Batory Foundation, for example – and participation in webinars run by other Chapters, suggesting that the key is to allow Chapters to choose whichever means suit them best in terms of tapping the knowledge of others. It may be though that there is scope to share the value that Chapters have derived from visits so that Chapters can decide whether to take up this sort of opportunity based on a fuller picture of the benefits. This would help meet the concern of TI-S that exchange visits are something that Chapters asked for, but have to be pushed to engage in. Given that Chapters articulate a desire for more sharing and exchange, the broader point too is for Chapters to themselves take responsibility for suggesting how to do so in cases where they feel that an exchange visit is not the appropriate means.

This last point raises an issue of understanding among Chapters of the limits to the role and responsibilities of TI-S – how far it is the responsibility of TI-S to ensure take-up by Chapters of tools and outputs produced centrally or by other Chapters. Chapters themselves have the responsibility both to shape the design of tools and outputs produced centrally and to 'domesticate' them – adapting and applying them to their own needs and engaging directly with other Chapters to access other resources and expertise to fill gaps in what it is possible to produce centrally.⁵⁵

Training

In the previous Adessium Foundation-funded project, training was provided centrally at the initial kick-off meeting, but this was judged to be too much 'one-size-fits-all' and of limited utility to some Chapters. The opportunity to allow Chapters to design training programmes to meet their needs and to do so in their own language with the participation of more staff than can be funded to attend a central project meeting was therefore preferred for this project.⁵⁶

⁵⁵ The broader point is that clusters of Chapters generated for funding purposes tend to have fewer unmediated connections among participants – and hence are more dependent on central facilitation of exchange – than is the case when there is stronger organic demand to cooperate.

⁵⁶ *"To improve the effectiveness [of training, TI] should consider tailoring such trainings to the specific needs/contexts – e.g. by offering two or three-day trainings involving all project members (management, communication, lobbying etc.) at chapter level,*

In practice, few Chapters have responded to this way of organising training. TI Estonia ran a training-for-trainers event led by *Protect*, to which it invited other Chapters. In the eyes of TI-S, however, it is more common that *“training was included in proposals because it had to be, but [funding for training] was not then used and was diverted to other purposes”*. While some Chapters argue that they have no particular training needs, others acknowledge that they would ideally have been able to take up the opportunity to deliver tailored training, with one arguing that *“we never get the time to think about training [and] it takes too long to organise... It's better to have the flexibility but it's not used and so the value is wasted”*. The alternative is unlikely to be to reimpose central training, though an option may be to do so without it being compulsory. The key rather may be to identify clusters of Chapters with common needs and focus on addressing them, with the involvement of Chapters themselves in design and delivery, a halfway house between fully devolving training responsibilities and providing it centrally.

MEL

Monitoring and evaluation of the project is challenging because of its scope and the approach employed. TI has experience and confidence in measuring, advocacy to secure legislative change, but measuring workplace implementation is challenging as TI sometimes relies on companies' own data of the trend in whistle-blower reporting, which they may be unwilling to publish.⁵⁷

Central monitoring and evaluation are also difficult because activities and objectives are country-specific,⁵⁸ while it has sometimes been difficult for TI-S to extract information to the right level of detail from Chapters. There is a range of views among Chapters themselves as to how useful the reporting process is, and how burdensome. Some describe it as *“kept to a manageable level”* and involving of less effort than reports to other donors. Others, however, judge that, for the sums that they are getting, reporting is too extensive.

Resourcing

The sums available through this project are not enormous, but neither are the levels of resourcing typically applied to work on whistle-blower protection. The project brings funding which expands the scale of activities and which Chapters absorb within programmes which draw on multiple funding sources and which they have learned to adapt to the ebb and flow of particular grants. One effect is, however, that it can be difficult or artificial to isolate achievements and claim them for particular funding streams.

The project underspent in year one as the sum of the diversion of the Programme Coordinator's time to

allowing for a thorough analysis and strategic thinking on the national context”; *Final Report, Evaluation of the Transparency International project “Whistleblowing in Europe: Supporting the agents for change” funded by Adessium Foundation, Pierre Robert & Benjamin Stachursky, March 2017, p7.*

57 Public sector bodies tend to be obliged to publish the number of reports. However, interpreting a low number – whether it reflects little wrongdoing in the organisation or that people do not know/trust reporting channels – is difficult.

58 *“While TI-S was designing the project monitoring, evaluation and learning (MEL) framework in collaboration with project partners, we realised that it is very difficult to put together a comprehensive overarching MEL framework for the project [b]ecause of the diverse nature of national level results and activities. Indeed, the project includes ten different interventions in ten countries and while they are all contributing to the same overall objective and seek to improve whistle-blower protection in their countries, the approaches chosen are quite different”*; *Project Progress Year 2 Report, p8-9.*

develop the Best Practice output counted under the OSF-funded EU Directive project, savings from a period when there was no Project Assistant in place, lower costs in attending advocacy events, and lack of early take-up of funding for advocacy activities and exchange visits. With year two spending more or less matching the original budget, the year one underspend has, in effect, been carried over to the final year.

BUDGET	Year 1	Year 2	Year 3
Plan	€207.5K	€241.7K	€227.9K
As of Year 1 report	€142.7K	€267.4K	€267.4K
As of Year 2 report		€243.9K	€291K

At the level of individual partners, data for expenditure as of the end of year two is available for only half of project partners. In these cases, the amount spent is more or less proportional to the project period passed, taking into account too that even if expenditure is a little bit behind, it is likely to ‘catch up’ in the project’s final months. In Slovakia, where the scale of underspending is greater, an important part of the outstanding budget was directed at a public event held in September 2019 in co-operation with the Bratislava Self-Governing Region. There may be grounds for some concern in the case of TI Netherlands as changes in staffing and a general *“lack of capacity of TI-NL to develop and implement effective advocacy initiatives”*⁵⁹ pose a threat to capacity to deliver on time, but this is a known and seemingly manageable problem.

Chapter	Project start date	Project end date	Total budget	Total spent as of end Year 2 (30/6/19)	% project period	% budget spent
Bulgaria	1/11/17	30/04/20	€34,898	?	67%	?
Czech R	1/12/17	31/10/19	€29,800	€23,652	83%	79%
Estonia	1/12/17	30/11/19	€29,000	€19,561	79%	67%
France	1/11/17	30/04/20	€45,000	?	67%	?
Germany	1/12/17	31/03/20	€30,000	€21,267	69%	71%
Italy	1/01/18	29/02/20	€30,000	?	69%	?
Netherlands	1/11/17	30/04/20	€44,500	€27,879	67%	63%
Poland	1/11/17	31/10/19	€20,000	?	83%	?
Portugal	1/10/17	30/11/19	€35,000	?	81%	?
Slovakia	1/01/18	29/02/20	€40,000	€19,314	67%	48%

Sustainability

The project is coming to an end as countries enter a phase of transposing the Whistleblowing Directive into national law. The topic of whistle-blower protection has ever greater cachet: that the media are interested, and governments and companies alike have an impending obligation to establish or improve policy and practice constitute an important political opportunity. As one commentator from an allied organisation asserts, *“it is more important than ever to keep going – now is the moment to push on as the public will be interested in the topic and government[s] will be forced to implement it”*.

⁵⁹ Year 2 Narrative Report, TI Netherlands, p11.

TI is in a good position to push on: in TI-S and across the TI network in Europe – not limited to those participating in this project – there is wide and deep expertise on whistle-blower protection. This is an organisational strength in itself and provides a resource that Chapters which are developing their programmes on these issues can continue to tap.

Chapters are committed to deploying knowledge, tools and materials from this project to ensure a good outcome both in terms of legislative domestication and the establishment of mechanisms for enforcement and implementation. TI Netherlands highlights that the guidelines that it has produced for employers and employees will have a long shelf life, while TI Czech Republic is confident that the resources it has made available and the seeds that it has planted through its training programme will bear fruit in ongoing demand for its expertise. The Stefan Batory Foundation likewise contends that the results and products to which it has contributed will continue to be drawn upon in advocacy both by itself and by its allies.

The imperative to engage with the process of incorporating the Whistleblowing Directive into national law should mean that a necessary minimum level of ongoing work on whistle-blower protection does not depend on significant new funding: respondents from different Chapters variously refer to being able to “*keep going on whistle-blower protection at a low level of input*” or to “*up- and down-scale work according to future funding*”. Describing herself as “*quite confident [about sustainability of the project overall]*”, one notes that “*we won't have money to continue the project, but we will continue to work on the issue [as] we don't need to build strategies and projects from scratch*”.⁶⁰ It is not that these Chapters have necessarily planned out to any great detail their future work on whistleblowing, but that they are confident in its status within wider programming over the medium-term, based on a clear strategic view of how the issue is likely to pan out in their country now that the Whistleblowing Directive has been agreed. In these cases, the value of / need for future funding is important in terms of the scale of activities that Chapters can deliver – the extent and pace of outreach to public and private sector bodies in supporting implementation of the Whistleblowing Directive, for example – rather than for decisions whether or not to work on whistleblowing *per se*.

However, in some cases, Chapters do not yet seem to have passed a tipping point by which whistleblowing is enshrined in country strategies and / or there is a risk of dependence on a few individuals for whistle-blower protection work, a risk which would seem to be enhanced in cases where it is acknowledged that TI pays relatively low salaries and so may struggle to compete in financial terms with other potential employers.⁶¹

There is not a large number of funders focused on whistleblowing, though the passage of the Whistleblowing Directive could increase the attention that the issue has and the funding available to it.

60 Several Chapter and TI-S respondents see work on whistle-blower protection as an example of how TI should 'de-projectise' – reduce the effect of depending on a succession of projects and having to switch erratically between topics. The test would be whether TI can de-projectise in cases where there is not such an obvious external driver for ongoing work as exists in this case.

61 Dependence on a small number of individuals is an issue at two levels: within individual Chapters and across TI in Europe as a whole. Outside commentators notice that TI's ability to advance whistle-blower policy and practice in Europe depends on a few people providing expertise, setting an example and pulling others along with them. That said, the trend is positive: there are more Chapters developing programmes and knowledge and a sense of momentum that whistle-blower protection is becoming established as an issue of region-wide priority.

Most, though not all, Chapters are confident that there will continue to be funding streams to draw upon if not single large grants that solve the problem of funding whistle-blower protection work at a stroke. There is a responsibility on Chapters to find ways to sustain the work at low input – as many seem to consider is reasonable and feasible – and to ensure both that capacities are not too stretched, and that knowledge is institutionalised to safeguard against the impact of any key experts leaving. For TI as a whole, it will be important to be able to react to gaps in capacity in key countries – and opportunities potentially missed to secure stronger transposition and implementation of the Directive – where the base level of resourcing that Chapters can apply to work on whistleblowing without new project grants proves insufficient.

Challenges

The impact of the Whistleblowing Directive⁶²

Adopted by the European Parliament in April, and likely to be signed off by the Council in September or October, the Whistleblowing Directive will need to be transposed into national law within two years. It jump-starts the process of legislative change in cases of states which were dragging their feet in terms of this first step. It is no exaggeration to say that *“overall, the project [at least in relation to Result Area 1] is doing well because the Directive was passed”*.⁶³ In Estonia, the Directive makes easier a *“very intense project of advocacy that was not straightforward”*, while in Bulgaria, *“the fact that the Directive exists helps our work a lot – if it was not on the table, our job would have been close to impossible”*. In Poland, the Directive has effectively empowered the Stefan Batory Foundation to stand up to the politicisation of whistle-blower – and broader anti-corruption – law-making and to refocus political debate on an EU law rather than on domestic attempts to clamp down on political activism under the guise of increasing transparency and ‘civic responsibility’. And in Germany, the passage of the Directive has completely changed the Chapter's interaction with political interlocutors: without it, *“it was almost impossible to get something through [but now] the government wants to talk to us”*.

62 It is arguable that the adoption of the Directive does not constitute a challenge so much as an opportunity, but it is described in these terms because that is the steer given by the original Terms of Reference. It is not part of the scope of this review to evaluate advocacy around the negotiation of the Whistleblowing Directive, which was led by five Chapters (France, Ireland, Italy, Netherlands, Slovakia, plus TI EU and TI-S), with Chapters in other EU member states also participating. It can be noted in passing that this is widely considered to have been very effective, with TI's bottom line asks – that there should not be an obligation to report internally first, that the need to protect confidentiality should be reinforced and that a dubious clause relating to malicious reporting should be removed – all accepted.

63 *“The approval of the EU Directive on Whistleblower protection is a major milestone towards the achievement of this project's purpose”*; *Project Progress Year 2 Report*, p9. This is of course not a direct achievement of this project, as it was another project funded by a different donor which contributed to this outcome. Even if it is true then that this project does better because of the result of the other project, it is not to the detriment of this project that its focus is on other ‘pieces of the puzzle’. It is the case that TI was not confident that the Directive would be passed or that it would be as strong as it turned out to be. This was certainly no simple task as the quality of the drafts and the balance of forces in favour or against a strong text ebbed and flowed. There does seem to have been an issue of EU Directive advocacy and this project operating somewhat in siloes, with the ways in which the EU work presented challenges and opportunities to national work and vice-versa not fully reflected in planning. Given that it is noted that cooperation on the Directive is said to have worked well on the basis of a pragmatic division of roles between TI-S in Berlin and the EU office with the former maintaining administrative responsibility and coordinating the agreement of policy lines, allowing the EU office itself to focus on its direct advocacy function, this suggests that cooperation on the Directive happened in parallel to the Adessium Foundation project, although at national level in Chapters engaged in both and here the work was more seamless.

There is less impact of the Directive where countries already had whistle-blower protection laws. In Slovakia, there are said to be only minor differences between the Directive and existing domestic law. In the Netherlands, the Directive constitutes an improvement in that it gives whistle-blowers the right to report externally straight away, though most other elements of the Directive are part of the House for Whistle-blowers Act.

Even in these cases though, there is a process of transposing the Directive into national law which Chapters will need to engage in to ensure a highest common denominator principle is adhered to. The situation in the Netherlands is particularly complicated as transposing the Directive interacts with the process of evaluating the House for Whistle-blowers. An evaluation of the Whistle-blowers Act is demanded by 2021, a similar time-frame to the process of domesticating the Directive; although that means that all will be resolved in that period, the House for Whistle-blowers may remain effectively stalled in the meantime.

Elsewhere, transposing the Directive into domestic law is unlikely to be without challenges even if governments may be inclined to engage with TI and draw upon its expertise. In Estonia, many stakeholders were resistant to the Directive in the negotiation stage and will not become adherents of it overnight. The country does have a track record of disciplined domestication of EU Directives, however. In Germany, Chapter analysis has identified some problems of compatibility with trade secret and data protection laws which will need intense, expert debate in the coming months.

In some cases, domestic legislative processes were frozen (the Czech Republic) or political debates were stymied (Portugal) by the need to await the adoption of the Directive.⁶⁴ This causes complications and a short-term delay, but both Chapter and TI-S staff judge that it is a price worth paying as the results are likely to be stronger.

Responding to the adoption of the Directive

Five project Chapters (Czech Republic, Estonia, Germany, Poland, Portugal) were obliged to revise their plans to take into account the passage of the Directive. The work of TI Germany, for example, originally ran from October 2017 to April 2019, but it sought an extension to April 2020, as *“the German government is finally obliged [by the passage of the EU Directive] to implement comprehensive whistleblowing legislation – a step it has long refused to take on its own, regardless of our and other stakeholders’ appeals. This is our moment to make sure that the implementation does not fail in terms of a reasonable and robust whistleblowing legislation”*.⁶⁵

The fact that these Chapters had to revise their plans has not affected the project substantially. There is no suggestion that the process of updating plans consumed a lot of time or fundamentally upset the activities that Chapters were delivering. The Citizens Draft Law developed by the Stefan Batory Foundation is

⁶⁴ TI Portugal is particularly frustrated that the Directive *“had the perverse effect of allowing the discussion at the legislative/parliamentary level to be postponed for the next 2 years. It is now very unlikely to find political parties and MP available to present proposals for changes in the legislation”*; TI Portugal Revised Plan Post-Directive, 17 April 2019, p5.

⁶⁵ TI Germany Application for Project Extension, May 2019, p1.

effectively superseded by the Directive, but the process of developing it allowed the Foundation to 'get its policy ducks in line' and provided a vehicle for asserting itself as a key player on the issues at stake.

TI-S has developed a regional advocacy and communication plan to support the transposition process. Relating to Result Area 3, a paper on Principles for Internal Reporting Mechanisms is intended to help Chapters respond to the increasing importance of this area of work once the Directive has been adopted.

Opportunities and risks

The Directive sets a standard for the protection of whistle-blowers, but, in part because its scope is limited to breaches of EU law, it is incumbent upon Chapters to treat it as a baseline and to push for the strongest possible interpretation, whether in the adoption of new legislation or in improving upon existing legislation, as ought to be the case in France, for example, where the law needs to be amended to allow direct external reporting. In this, Chapters can benefit from the closer relationships built with officials and Parliamentarians during this project and that directly focused on the Directive. Several Chapters consider themselves and / or are considered by others to be the 'go-to' organisation on whistleblowing in their country and so are well-placed to respond to emerging interest in the issue.

At the same time, an ally questions whether all Chapters will be able to sustain the level of technical engagement in the transposition process that will be required. This respondent emphasises the importance of close cooperation among Chapters as the best means to support those with less experience and / or in-house expertise.

There is a further element to the question of capacity as the Directive demands that Chapters engage on the other aspects of enforcement and implementation, alongside attempting to shape the process of transposition. Of greatest novelty to Chapters which have predominantly engaged with public sector actors, the Directive opens the question of whether and how to engage more with the private sector. In this, there may be a particular responsibility to engage with SMEs only just over the 50 employee threshold as these companies may suffer the greatest gaps in capacity and understanding, also reflecting that large, international companies have more resources to invest in policy development of their own and / or may be able to 'drop in' policies already in place in other settings.⁶⁶

One Chapter respondent draws a contrast between private sector entities which may be quick to get processes in place on paper, but present weaknesses in applying / enforcing these processes, while public bodies may be less strong or less quick to react on paper, but better in practice. It would be interesting to gauge whether this holds true in other countries as well.

Within this project, several Chapters have built or deepened relations with companies which provide a foundation for that mix of advocacy and the provision of analysis, tools and capacity support that will

⁶⁶ This runs contrary to the strategy in some Chapters, such as Italy, of prioritising engagement with large companies which can act as sectoral champions and which have powerful influence along wide supply chains.

enable companies to implement the Directive properly. TI Estonia is an exemplary case in that its work has pre-empted corporate demand and left it in a good place to respond to and 'exploit' this demand.

If this and other Chapters have been 'ahead of the curve' in engaging companies on whistle-blower policy and practice, the adoption of the Directive may trigger the emergence of consulting firms seeking to corner the market in helping companies to navigate the implementation process. It is a key strategic question for TI as to whether these firms are *de facto* rivals of TI or whether their role in advising companies allows TI to focus on maintaining an overview of progress and intervening at a broader level.

Other challenges

Coping with a difficult or unpredictable political context

In the Czech Republic, TI has taken up a case against the Prime Minister for conflicts of interest, raising the question as to whether this affects its influence on other issues. Even if TI is somewhat protected by its size, reputation and international network, internal and external respondents perceive that government officials have become more hesitant to cooperate in the development and testing of whistleblowing procedures because of the outstanding case. That the Whistleblowing Directive obliges legislative change may mean that the door is kept open to reluctant cooperation on the part of the government all the while the case against the Prime Minister remains live.

In Poland, the political climate is difficult and the Stefan Batory Foundation lacks access to the highest echelons of government.⁶⁷ The Foundation is engaging with political parties in advance of October Parliamentary elections and will develop detailed plans once the new political dispensation is clear.

Other Chapters have suffered from the vagaries of political processes. An almost total change in personnel at the Anti-corruption Commission in July / August 2019 meant that TI Bulgaria has had to start the process of relationship-building afresh. TI Italy underestimated the time needed for public sector Guidelines to be adopted, but staff judge that this will have little long-term impact, assuming the quality of the Guidelines improves. Noting that the Whistleblowing Directive and the Italian Whistleblowing Act were passed almost at the last minute, TI Italy staff make the broader point that a lot is contingent on circumstances beyond TI's control and that there are limits to what it can plan for, with the emphasis as much on responsiveness to jolts in the external context as on the rigour of planning.

Lessons learned

Result Area 1: adoption of robust and comprehensive whistleblowing legislation

TI was ahead of the curve in making whistleblowing a topic of concern and asserting the need for legislation on whistle-blower protection. It has made itself of interest to political parties and (local and national) government officials, understanding well that the prospect or actuality of new laws makes public and

⁶⁷ The project "has helped to produce valuable, updated knowledge, ideas and concrete recommendations which would not exist without SBF activity [but] we still need a political ally who would help us to push our demands at decision-making level"; Project Progress Year 2 Report, Stefan Batory Foundation, p10.

private bodies seek TI out as a provider of solutions and, in best case scenarios, leads to jumps forward in practice, especially among public bodies.

From the experience of Chapters which were advancing the case for legislation before the Whistleblowing Directive was passed and from the shaping of the Directive itself, there is validation of TI's expert role in crafting norms and standards. In Bulgaria, this translates into an advocacy strategy of "*small steps on a regular basis*"⁶⁸, while others put an emphasis on the galvanising effect of events. There is not necessarily a single lesson at this fine level of strategic detail, although there is value in partners sharing examples of activities which they feel have been effective in drawing out support for politicians.

In different settings, there is evidence of the importance of building a broad base in favour of change and taking the issue beyond an expert sphere. For the Stefan Batory Foundation, "*the most important lesson is that all kind[s] of partnerships with companies or institutions are worth establishing. Such collaboration helps us to finance our activities, address our message to broad audiences and reach completely new guests who would not attend our event[s] if they were not invited by our partners*".⁶⁹ Not without some friction in some cases, TI Chapters have sought to foster closer ties with trade unions in particular, recognising this as key to effective implementation.

At both the national level, as in Slovakia, and in the case of past Directives, such as that relating to money laundering, the passage of new laws does not seamlessly translate into improved practice. It is incumbent on TI to maintain pressure for optimal transposition of the Directive into national law in every project country (and indeed, in every EU member state where it has a Chapter) and to commit to following up how these laws are implemented and enforced.

Result Area 2: effective enforcement of whistleblowing legislation by responsible authorities

Although its work has been focused on corporate engagement in workplace implementation, TI Netherlands was obliged to respond to the collapse in the House for Whistle-blowers. While the failure of the House is not a failure of TI Netherlands, which was always aware of, and vocal about, the flaws of the House for Whistle-blowers Act, it has ended up in the position of having to criticise what it wished to have been a pioneering institution. It now awaits a review of the Act as a prerequisite for meaningful reform, with a negative impact on the support and protection accorded to whistle-blowers in the meantime. Although the Chapter is applying pressure on officials and Ministers to good effect, it may struggle to define a clear solution while its call for an immediate evaluation of the House for Whistle-blowers Act is unmet. If this is frustrating in the short-term, there is an opportunity in being able to restate the Act's flaws and advocate for an improved process and structure from a position of the moral high ground.

68 *Project Progress Year 2 Report, TI Bulgaria*, p11.

69 *Project Progress Year 2 Report, Stefan Batory Foundation*, p11.

In Slovakia, the failure of Labour Inspectorates to adequately fulfil their responsibilities for whistleblowing was highlighted by the Chapter through its work in the previous project. This in turn informed the approach taken to support a new body as established in the revised law which the Chapter supported.

Result Area 3: effective implementation of whistleblowing legislation in the workplace

In each country, the strategic case for prioritising public or private sector actors for cooperation in improving workplace implementation will vary. That national laws and / or the Whistleblowing Directive create higher obligations on public institutions makes them the preferred target of Chapters in Italy, the Czech Republic and Slovakia, for example.⁷⁰ TI as a whole can benefit from different Chapters advancing practice further with the public and private sectors; ultimately, this provides material for sharing and avoiding the reinventing of wheels when Chapters switch focus to the other sector.

Where Chapters have engaged with companies to date, key lessons include:

- the importance of understanding companies' motives⁷¹, appealing to their self-interest and their need to reduce risk, and making 'the business case' for whistle-blower protection – the benefits of doing it well and the costs of ignoring it – without losing sight of TI's goals and principles;
- positioning whistleblowing as a tool or instrument of utility to a company rather than (only as) a law or regulation that they are obliged to fulfil;
- the need to provide solutions, showing both the benefits of whistle-blower protection and of allowing anonymous reports, for example, and the means by which companies can enable whistleblowing;⁷²
- helping with solutions while making it clear that solutions are not straightforward and that a whistleblowing box cannot be ticked by a simple action such as creating a hotline, but rather depends on building trust among managers and employees such that they understand that whistleblowing is in a company's interests and should be encouraged and accepted as such;
- engaging Compliance Officers and Internal Auditors as an entry point into companies while building a path towards senior management to get them on board and being ready to confront management fears that whistleblowing mechanisms will be open to abuse;
- ensuring that those leading and speaking in workshops have a high level of expertise and credibility and are able to 'speak in companies' language';
- being willing to 'hold companies' hands' in the process of applying new policies and procedures and not limiting TI's role to the provision of a toolkit or one-off training event.

⁷⁰ In Slovakia, the sense that large multinational companies have their own mechanisms in place also justifies a focus on the public sector. TI Italy is anyway more comfortable engaging with the public sector, with which it has longer experience. It is also determined not to be drawn into a consulting role and manages this risk by directing companies to join its BIF, a higher-level entry point which weeds out those keen only on TI providing a service.

⁷¹ That whistleblowing may be perceived as a means to stop fraud that damages the company more than to stop corruption by the company, for example.

⁷² In the experience of TI Estonia, for example, which has engaged with the private sector more than most, “*you need to meet companies at their level, you cannot impose requirements. You need to understand them and their motivations and appeal to them*”, showing that whistleblowing procedures “*make sense from a risk management point of view*”.

Ultimately too, whistleblowing practice cannot be addressed in isolation from wider organisational culture: whether practice improves both depends on companies' overall management culture and acts as an entry point for, and an indicator of, maturation of culture. The relationships which TI Estonia has formed through this project are allowing it to have these sorts of deeper conversations; so too are other Chapters with BIF members. The same is true of relationships with public institutions which show commitment to change not only on the specific issue of whistleblowing, but also on broader aspects of working practice and culture, as is presumably the case with the municipalities which participate in the FCE organised by TI France.

In striving to reach this point, there is a lesson from the Czech Republic (and elsewhere) that “*public institutions cooperate only [when] there is a strong figure that is willing to go beyond their daily duties [so] it is important to also concentrate on the human factor in relation to whistleblowing*”.⁷³ The experience of TI Estonia with companies and TI Italy and Slovakia with the municipality of Milan and the Self-Governing Region of Bratislava and the Slovak Ministry of the Environment points to a lesson in the importance of pioneers / champions and a challenge in how to scale up from these pioneers. To date, the approach has been to try to build a 'coalition of the willing' and to create momentum from fostering awareness of the benefits and low costs of putting effective procedures in place. The crux will be whether TI's leading role in whistle-blower protection means that it will be able to shape workplace practices even when not engaging companies and public institutions directly itself, that is, whether it can set a metric for, or otherwise influence, the advice given by other service providers.

While there are major companies and public bodies which have been willing to engage with TI, in broad terms, SMEs and smaller public organisations are more likely to depend on TI for support, expertise and off-the-shelf tools – this is apparent in the adoption of TI Italy's reporting platform, for example. It is important to find efficient ways of engaging SMEs – through business and local government associations for example – to avoid being drawn into an overwhelming number of capacity development relationships.

In different settings, both private sector (Netherlands) and public sector (Slovakia) entities have been susceptible to ranking exercises which have stimulated laggards to act.⁷⁴ By contrast, TI Estonia has not engaged in naming-and-shaming, but has kept to a more positive strategy. It is aware of the approach of ranking companies employed by other Chapters, but judges that it would need more resources to be confident in doing so itself. It has not called out companies but 'taken advantage' of scandals to engage with them, moving in to offer solutions under an argument of indemnifying them from future risk. The lesson is not then that ranking or naming-and-shaming should be a default strategy but that Chapters should apply what they think will work best in their own context, all the while being open to other tactics, willing to try new things and able to learn from their peers.

There is a risk of assuming that now the Whistleblowing Directive is in place, public-facing communications work is no longer needed. This would leave unaddressed the cultural blockages to wider acceptance of

⁷³ *Project Progress Year 2 Report, TI Czech Republic*, p12.

⁷⁴ In the Netherlands, the rate of response to its survey of companies held up because of intensive chasing up by phone and because TI staff would explain to companies that if they did not provide information, it would be assumed that they had no relevant policies or procedures in place and would score low, with greater potential public embarrassment value.

whistleblowing and potentially limit the depth and slow the pace of change in companies and public institutions. In the Czech Republic, for example, the public is divided on the importance of whistleblowing, but *“without public interest, local legislation would not address the issue with low number of reports of misconduct. In other words, engagement of public is important as well as of experts”*.⁷⁵ In Italy too, *“whether people are confident to report is ultimately a matter of culture”*. Laws and systems help advance cultural change but cannot substitute for it, while cultural change may be a pre-requisite of support for policies and implementation in practice. Outreach needs to focus on the 'why' as well as the 'how' to blow the whistle. At this level too, culture change is about more than a culture of tolerance of whistleblowing, but also a greater understanding of the nature of rights and democracy and the relationship between citizens and governments and between employees and employers.

There is not going to be a neat transition from policy change to practice change to behavioural change but more likely the three will remain in dynamic interaction as part of a long-term process of affecting attitudes. TI may have focused on law and practice because it is 'the easier nut to crack' and because it is a sphere in which it operates comfortably. If the missing piece is the elevation of positive cases of whistleblowing where individuals are praised / rewarded for acting in the public interest, that is, cases distinct from those more commonly used to date in which the suffering of whistle-blowers is highlighted to encourage sympathy, the challenge for TI is to be equally adept in operating in the sphere of public attitudinal change, as needs be. In this, there are good examples from this project to draw on – the use of opinion polling in Slovakia which generates data which is easy to digest and interesting to media and politicians – and good ideas which it can consider, such as trying to persuade a soap opera to include a positive story about a whistle-blower in its script.

Other lessons

The CSO field is not all that crowded and other actors such as trade unions may be either apathetic or hostile, so there is space for TI to position itself as the 'market leader'. In several countries, an argument can be made that TI has been a pioneer and carved out a position as a reference point on whistleblowing. This did not happen overnight or by accident, but is the product of Chapters allowing themselves space to dig into the issue and build expertise.⁷⁶ The lesson is not simply that TI should seek out other emerging issues to prioritise, more that it should scan the environment, anticipate new issues and gaps in CSO coverage and invest in them if it is strategic to do so in each case – and have the organisational foresight and discipline to build a niche without getting diverted to work on too many other issues and getting spread too thinly.

There may be limits to the utility of the 'MEL story' of this project (and others which make a time-limited contribution to an ongoing programme of work). The key value of MEL may lie more in telling the history of work on whistleblowing in a country over a longer period.

⁷⁵ *Project Progress Year 2 Report, TI Czech Republic, p12.*

⁷⁶ This has worked well in Italy, where the Chapter allowed itself a long preparatory stage of research and building knowledge, also drawing on wider TI expertise. Key legal developments – the 2012 Anti-corruption law and the 2017 whistle-blowers act – vindicated its strategy by elevating the status of the issue and creating obligations on public institutions and companies. The process of building a niche has not been without bumps in the road – key interlocutors such as the municipality of Milan did not immediately understand what TI sought from it, and initially employed a reporting platform of lesser quality – but a relationship of mutual trust meant that over time, TI was able to have its messages and proposals adopted.

CONCLUSIONS

The project is important and relevant not only in relation to wider TI programming, but, critically, in terms of the opportunity existing in Europe to advance whistleblowing policy and practice, an opportunity confirmed by, but not solely rooted in, the agreement of the Whistleblowing Directive.

Chapters had the freedom to apply their energies across Result Areas and public or private sector targets according to their own analysis of opportunity and capacity. Together, this has made for an interesting range of advocacy experiences, with considerable potential for sharing and exchange in the coming period as all Chapters engage in the transposition of the Whistleblowing Directive and strive for optimal implementation and enforcement.

In countries without adequate existing legislation, Chapters (and the Stefan Batory Foundation) have been able to build closer ties with key officials and foster some political support. Advocacy has not been easy, however, and there were obstacles to accessing the highest political levels in some cases, including Poland. The passage of the Whistleblowing Directive alters the context quite significantly, opening the door for advocates to reiterate their arguments with governments now obliged to put a law in place.

In countries with existing legislation, Chapters were able to deepen relationships with pioneering implementers, build knowledge and refine tools such that they are now well-placed to shape implementation on a wider scale. In Slovakia, TI supported an amendment to the law which should improve enforcement, but in the Netherlands, it must pursue the evaluation and reform of the House for Whistleblowers to raise the quality of investigation of cases.

It is not possible in a review of this scale of a project involving ten countries to make a precise assessment of impact on individual attitudes and behaviour, which anyway accrue over a longer time period than the policy and practice changes which have been the primary focus of this project. What can be said is that changes in terminology being asserted in Bulgaria and Poland, among other countries, are potentially among the most significant outcomes of the project. How deeply entrenched these changes are, and how far they are attributable to this project, would, however, need further scrutiny.

TI-S and some Chapters have recognised expertise and are trusted players whose opinions are sought out by public and private sector bodies. There are examples of Chapters publicising weak practice in implementation and capitalising on cases of whistleblowing, but also a sense that more could be made of the galvanising effect of individual cases and some scope to strengthen the communications side as a complement to 'insider' advocacy. There has not always been close cooperation with others – the challenges of getting external interviewees to input to this assessment is itself evidence of that – but this reflects wider TI and sectoral approaches rather than being a specific feature of this project. Importantly, close ties are being formed with the Whistleblowing International Network while individual Chapters are also making progress in outreach to trade unions, a key stakeholder in terms of workplace implementation.

The role and added value of TI-S has been in its expert advice and in ensuring formal fulfilment of the grant and accountability to the donor. It will provide important central outputs in the final stage of the project to support Chapters moving into work on implementation. It has devolved responsibility to Chapters for training and exchange visits; that Chapters have not always taken up these opportunities is a little disappointing. With the project operating to a demand-driven model of coordination, it is incumbent on Chapters to articulate demands of TI-S and not assume a level of central coordination that would be out of sync with the responsibilities that they have been given in planning and delivery.

In many cases, Chapters have made whistleblowing a core part of their work and will continue to fund it without major new grants. These Chapters are adept at juggling multiple funding sources and adapting to the ebb and flow of individual grants. This is significant because the transposition process demands that Chapters remain engaged not only to get the best form of legislation, but also to shape enforcement and implementation. It is of some concern though that some Chapters are unsure about their capacity to sustain much work on whistleblowing beyond basic engagement in advocacy around the transposition process.

Summary assessment

Criteria	Opinion	Explanation/Comments
Relevance	Highly Successful	The project fits well within wider TI strategies and is very timely in terms of external opportunities and the profile of whistleblowing as an issue.
Effectiveness	Successful	Chapters have built or reinforced their reputation and profile with public and private sector actors even if major policy and practice outcomes are few (which is not unexpected in a project of this scale and duration).
Efficiency	Highly Successful	Project Chapters have been both well-supported by TI-S and free to develop activities to suit their own capacity and context.
Sustainability	Successful	It is essential to follow through on the transposition of the Whistleblowing Directive and to share experiences in workplace implementation. Most Chapters are committed to ongoing work on whistleblowing; in some cases, however, the topic is not fully entrenched in wider programming.

RECOMMENDATIONS

Core recommendation	Sub-recommendations and clarifications	Rationale	Intervention level	Lead	Indicative Timescale
In future work on whistle-blower protection in Europe					
Formulate an umbrella EU Directive transposition plan as a continuation strategy for Chapters (and the SBF) which have focused on Result Area 1.	The plan should detail the role of TI-EU and TI-S, including the activities that each will deliver and the outputs and support they will provide; lay out how TI can use its cross-Europe presence to facilitate the sharing of good practice across public and private institutions; and signal whether there is scope to release funding on a flexible basis to assist in cases where the transposition process gets blocked.	To continue the momentum of the project and wider whistleblowing work.	Strategic	TI-S with TI-EU	Three to six months
Chapters which have employed successful strategies should be encouraged, with the support of TI-S, to write brief histories or web presentations of their work, so others can learn from how they helped to shape legislation and to press for improvement of enforcement mechanisms and work-place implementation.	TI Italy and Slovakia stand out as Chapters which could perform this role. In a similar vein, the history of the Dutch House for Whistle-blowers could be written up so that others can learn why the establishing Act was flawed, what false steps were taken in constituting it and how TI Netherlands has adapted to the establishment and demise of the House.	To inform the strategy-setting of others and avoid the need to reinvent the wheel.	Strategic	NCs with TI-S	Six months
Seek to both maintain dedicated expertise (in TI-S and Chapters) on whistleblowing, <i>and</i> ensure it is reflected in other work areas.		To ensure whistle-blowing work is effective and has a high organisational impact and profile.	Strategic	TI-S	Long Term
Beyond the transposition phase, Chapters' plans should identify their added value <i>vis à vis</i> other civil society actors (and consulting firms and relevant public sector bodies set up to support whistle-blowers) in pushing for proper enforcement and workplace implementation.	Given the risk that TI is pulled into an unmanageable service-provider role, the default role of civil society (and therefore TI) should be to advocate for public bodies to provide the services NGOs might otherwise have to. In regard of the private sector, Chapters should consider making a priority of SMEs just over the 50 employee threshold.	This positioning exercise will help chapters to avoid getting stretched across all aspects of implementation and enforcement.	Operational	NCs	Six months

Drawing on the good practices and lessons learned described in this assessment, TI-S should provide advice and pool examples in terms of... <ul style="list-style-type: none"> • effective enforcement mechanisms; • off-the-shelf reporting tools and platforms; • positioning and approach taken towards companies; • framing whistleblowing in a positive way and communicating whistle-blowers' stories; • how the role of ALACs can optimally dovetail with whistle-blower advocacy 		To support the ongoing work of Chapters and share good practice.	Operational	TI-S	Six to nine months
Invest in identifying and profiling positive whistle-blower cases.	Whistle-blowers themselves should be encouraged and enabled to tell their own story and be involved in advocacy and campaigning based on their individual cases.	To confront negative perceptions of whistleblowing alongside advocacy.	Operational	TI-S & NCs	Six months
Build the internal website pages into a library of resources, including case studies, videos and images.	Explore and use other means of interaction and exchange.	To ensure exchange and interaction among Chapters.	Operational	TI-S	Three to six months
Chapters which have benefited from exchange visits should annotate brief accounts of the value accruing. All should be encouraged to suggest other means by which sharing and exchange among Chapters can be cultivated.		To stimulate others to take up this sort of opportunity in the future.	Operational	NCs	Six months
In wider advocacy strategies / in future projects of this type					
Highlight work on whistleblowing as an example of the value of working with others and consciously plot the variegated strategies of other CSOs in developing a clear view of TI's own contribution.		To build recognition that there are more ways to work with others than a leading or convening role.	Strategic	TI-S & NCs	Long term
Assign responsibility for strategy to those closest to project targets, with TI-S in a supporting / facilitating role where appropriate.	Given the value of allowing Chapters to design national strategies according to local context and capacity, TI-S is best placed to guide, advise, oversee and join the dots between Chapter strategies to ensure overall coherence and maximise synergies and sharing.	To achieve the optimal balance between project coherence and national freedom-to-adapt.	Strategic	TI-S & NCs	Long term
Continue to cultivate agility and responsiveness, recognising the prevailing political and economic instability in many countries.	'Quick and dirty' reviews of strategy could be conducted at the time of key events or in response to shifts in political realities (e.g. after elections or a new, high-profile whistleblowing case).	To minimise the impact of changes in the external context.	Strategic	TI-S	Long term
Encourage the practice of early evaluation and the development of sustainability (or exit) plans, which should be prepared well in advance of the conclusion of projects.		To ensure continuity and manage the impact of	Strategic	TI-S	Long term

		ebbs and flows in levels of resourcing.			
Involve Chapters in the development of criteria for selecting those which should participate in projects and position this function as one of signalling a project's overarching theory of change and the role of the centre (i.e. TI-S).		To give a stronger strategic foundation to projects and achieve a better balance between quality and coherence.	Strategic	TI-S with NCs	Long term
Map skills gaps and seek to connect up Chapters with specific expertise and those with matching needs.	Future projects should focus on addressing the training needs of clusters of Chapters with common needs and which have the least alternative resources.	To support the needs of Chapters.	Operational	TI-S with NCs	Six months

Annex 1: best practice in private sector engagement

What follows is not a comprehensive guide to corporate engagement. Drawing on material gathered in interviews, it offers principles and describes approaches used by Chapters to good effect. It is intended to give Chapters some pointers to help in developing strategies to engage companies in implementing a high standard of whistleblowing practice.

1. Understand business motivations and constraints

As with all private sector engagement, the key is to understand the starting position of companies, their motivations and drivers, their constraints and 'red lines'. To be able to appeal to companies and win them over to policy and practice changes that are aligned with TI's goals, Chapters need to get a handle on the way companies interpret whistleblowing in relation to risk, reputation and impact on their core business. The Whistleblowing Directive, for example, constitutes a hard (in the sense of unavoidable) 'motivation' for companies to reform their ways of working.

Not all companies are the same. Smaller and larger businesses will have different interpretations of the degree to which whistleblowing poses a threat to their business and how much of a risk not having adequate apparatus for enabling whistleblowing and supporting whistle-blowers itself poses. As one example, TI Estonia held sessions where companies shared experience under 'Chatham House rules' as a way of building mutual confidence as well as identifying current practice and levels of understanding. It invested considerable time and effort in building close ties with companies, with a preference to avoid 'calling out' companies and shaping its offer around reducing risks and presenting the issue as part of an international set of standards to which Estonian companies should aspire to adhere to. This has worked to the extent that there is large, common ground in terms of values which provides a foundation for cooperation on specific issues like whistleblowing.

2. Talk to companies in language they understand

The type of language that Chapters use to talk and engage with business is critically important. While TI is generally considered, or at least considers itself, to be 'business-friendly', the language used varies greatly in practice.

If company representatives cannot understand or feel threatened by the language TI is using or if TI only talks in terms of failures and problems and not solutions, they are likely to steer clear of engaging closely with it. A Business Integrity Forum (BIF) is one place to start developing this kind of language. One private sector commentator said: *"the BIF is important for us because we*

have [shared] values which include honesty and so to be members of that Forum is important. It shows our status and how we are reflected regarding fraud and corruption.”

The first contact that Chapters have with companies – the context and how whistleblowing is presented – is crucial. Companies may be more susceptible to engagement on whistleblowing when they have just experienced a scandal, for example. Whistleblowing should be framed in terms of means to protect companies from scandals rather than regulations that they are obliged to apply; as one TI advocate argues, *“it’s very important to show the business case: what they gain and, if not implemented, what are the risks. They are market driven. The risk part is the most important. Businesses understand money and business. Show them that whistleblowing is an instrument, like a tool. They get nervous about law and regulations.”* In the same vein, it may be effective to pitch whistleblowing as a means to catch fraud or malpractice against a company as much as a means to catch corruption by the company itself.

In the design and delivery of training, courses or seminars for corporate entities, companies need assurance that the team running the workshop or similar is talking the right language and has the right skills. One interviewee said: *“it’s very important when preparing these kinds of workshop that the pre-workshop team is very wise when faced with these issues. Experts are needed, including legal experts”*. When using consultants or coaching staff, it is important that they understand the corporate environment, culture and language. Such consultants may also have helpful contacts in the business community.

3. Foster corporate allies

There are two key sets of people within company structures that constitute potential allies (or possible blockages). Each group is likely to require a separate strategy for engagement.

The first group is, at least in theory, more naturally predisposed to lead on whistleblowing and / or the setting up of the mechanics of whistleblowing support infrastructure: internal auditors and compliance officers (and their immediate bosses). These stakeholders often see the value of whistleblowing and understand what it means in practice. They are both targets and allies for TI and its partners.

The second group that deals with corporate risk are the senior leadership: this group includes the COO, CEO and Board members, as well as other senior staff. It may include more enlightened managers and leaders who see the value of whistleblowing, want their company to reflect international standards and norms, and understand the risks associated with not having structures in place. But it may also include those who may consider whistle-blowers to be a threat. There may need to be different strategies for cultivating those who might be more

sceptical alongside those more likely to support whistleblowing. In reflecting on how to reach senior management, one TI advocate contended that *“I think that you have to be a good salesman to sell this idea to the top-level management. Without that, it doesn’t work. Internal auditors will get it, but you need to get the top guys to understand it.”*

In some cases, there may also be third party private sector allies (and agnostics and opponents) that could be targeted. This includes those who influence the corporate culture: standard-setting organisations, business leadership groups, industry associations and business journalists, all of whom can support the idea that whistleblowing is useful, normal and good practice.

4. Provide compelling evidence

Chapters can fuel interest among companies by providing information and evidence of several types: the meaning and status of new laws, the current state of public opinion towards whistleblowing and the costs of not enabling whistleblowing and the benefits from doing so.

In Poland, a survey of attitudes towards corruption and whether and how people would react to it caught the eye of businesses and opened doors to new contacts with the Stefan Batory Foundation. Foundation staff were invited to the Polish Institute of Compliance to discuss the research, there is increasing attendance from representatives of business at its events and companies are said to be using the Foundation's materials in their own workshops and webinars.

As part of the strategy of strengthening the argument *vis-à-vis* the ‘risk balance sheet’ of companies, and in particular to pacify senior leaders and managers who may be fearful that fostering whistleblowing would lead to a massive increase in cases which would either imperil or overwhelm systems and staff, it is important to showcase evidence that putting procedures in place does not lead to thousands of cases and need not be open to abuse.

Even better if evidence can be brought forward, as in Italy for example, that shows that the potential benefits are greater than any such costs and that whistleblowing systems will provide companies with a range of benefits including a happier, more secure (and likely more productive) staff, lower risks of corporate fraud, a lower likelihood of adverse media coverage and damaging law suits, and a superior reputation in the eyes of investors.

5. Appeal to companies’ vanity

It is natural for companies – especially larger ones – to want to (be seen to) perform well against international standards of governance, compliance and risk management. Appealing to this – either directly to businesses or via third parties or the media – is a strategy that has paid

dividends in some countries, including Estonia. Here one corporate respondent noted that: *“Estonia is more open to outside ideas rather than ones that are internally generated and [businesses want to follow] best practice in ‘top countries’”*.

More broadly, companies are sensitive to reputational damage and are attuned to how they measure up against their peers. TI has a long history of ranking performance of targets and has done so with companies in the Netherlands in relation to whistleblowing policy and practice. It does not do so in an adversarial way – the shaming element of TI naming-and-shaming is softer than when other NGOs use a similar tactic – and in some cases, such as Estonia, Chapters have been wary of being too confrontational on the grounds that they do not have the resources to cope if a situation escalates. But this should still be a strategic option, especially in cases where the corporate sector seems disengaged. There is experience across Europe that Chapters can draw on in developing this sort of strategy and mitigating the risks involved.

6. Make clear that there are no short cuts to good practice

There were some comments from interviewees that dealing with whistleblowing in a company is sometimes conceived of in simplistic terms and that, practically speaking, it may be reduced to the setting up of a whistleblowing hotline. While this may be part of the package of measures put in place, some businesses need to be disabused of the belief that this is a simple exercise that can be lightly undertaken. TI Estonia repeatedly stresses to its corporate interlocutors that whistleblowing procedures done well are not straightforward, with the key being to build trust among middle managers who may be most fearful of being caught between whistle-blowers and senior managers looking for scapegoats and quick solutions.

7. Engage companies by providing solutions

It is not viable for TI to be a consultant to each and every company, and so off-the-shelf tools, courses and platforms are an efficient and effective way of shaping practice and opening up conversations with senior management. Until such a time that other consultancies and organisations offer tools and courses to help companies, it may be up to a small number of organisations including TI to take the lead.

TI Italy has been able to position itself as a ‘market leader’ on whistleblowing practice and has worked closely with pioneering companies in developing bespoke tools. In Estonia, TI successfully caught the attention of companies by offering workshops which provided a means to deal with an emerging issue, drew companies into its orbit and provided the basis for deeper relationships. On the side of companies, a spark has been lit, and there is greater awareness of

the need to put measures in place to enable safe whistleblowing. TI Estonia itself has started to shape a reputation for being a provider of good practice tools to key businesses.

Engagement strategies should be adapted to the type of company concerned. Large companies may have existing CSR / integrity / anti-corruption training and induction courses suggesting that the best role for TI may be one of advice or quality control (where it has built relationships to get into the position of being invited to take such a role).

For SMEs in particular – that is, companies just over the 50 employee threshold and which do not have staff dedicated to compliance to key standards – the benefits of off-the-shelf tools are likely to be proportionally greater. With SMEs though, the challenge is whether tools and platforms are adopted in an essentially unthinking way, that is, without sufficient thought to how cases can be responded to adequately. TI may need to plan for monitoring (a sample of) SMEs to ensure that signing up to whistleblowing tools is a true signal of change in practice and working culture.

8. Have clear strategies for scaling up

In a small country like Estonia, working with a pioneering group of companies and then rolling out a series of webinars or other tools and workshops can be transformative, as it is possible to reach a tipping point after which companies organically share good practice. However, in larger countries, other strategies – such as working in broader alliances with business groups, trade unions and others – may be necessary to engender corporate engagement and for the commensurate change in corporate culture to be meaningfully widespread.

Resources

- [The Business Case For 'Speaking Up': How Internal Reporting Mechanisms Strengthen Private-Sector Organisations](#)

Annex 2: best practice in public sector engagement for adherence to whistleblowing standards

What follows is not a comprehensive guide to engaging public sector bodies in adhering to whistle-blower protection standards. Drawing on material gathered in interviews, it offers principles and describes approaches that Chapters have found effective. It is intended to give Chapters some pointers as they develop strategies to engage public institutions in implementing a high standard of whistleblowing practice.

1. Shape the tools and procedures public sector bodies use to adhere to laws and standards

TI can position itself as an actor which can contribute to solving public bodies' 'implementation problem' by providing tools and guidelines for converting new laws into practice. Without becoming a consultant to each and every public body, off-the-shelf tools and platforms are an efficient and effective way of shaping practice.

This has been done to good effect in countries with existing legislation. TI Italy, for example, has developed an encrypted reporting platform for public institutions which walks whistle-blowers through the reporting process, through questions and prompts to define the nature and scope of corruption, the steps taken (or not) to address it and the individuals and institutions involved. Free to those employing the off-the-shelf format, bespoke versions can be provided to institutions willing to pay. The reporting platform is complemented by an e-learning course which unpacks the country's Whistleblowing Act and the role of the relevant authorities and describes the benefits and process of reporting. Close engagement with pioneering public bodies such as the Municipality of Milan, an early adopter of a tailored reporting platform, allows TI to keep abreast of the trend in the number, quality and scope of reporting to allow for refinements to be made to the tool.

2. Provide compelling evidence

In the Czech Republic, TI based its engagement of officials on an analysis of existing requirements in legislation – whistleblowing in public institutions is covered in the Civil Service Act – which served to lay out the weaknesses in adherence and help it make the case that the lack of reports is more likely to be due to flaws in the system than a lack of things to be reported.

Likewise in Slovakia, the local Chapter conducted in-depth analysis of 28 public sector bodies which provided the foundation for advocacy not only in the sense of underwriting policy demands, but also because of how the research was communicated. A strategy of ranking public authorities and the use of a 'mystery shopper tactic' proved to be a potent way to convey

shortcomings in implementation. The Self-Governing Region of Bratislava ranked low in the Chapter's analysis and was prompted to put itself forward to act as a pilot institution in the testing of solutions and the application of tools and procedures to implement whistleblowing standards. That hard evidence of lack of implementation is embarrassing and galvanising suggests that similar ranking exercises could be performed to good effect in countries which experience 'teething problems' in ensuring due adherence to the Whistleblowing Directive once transposed into national law.

In workshops or other interaction with public institutions, experience in Slovakia also shows the value of putting whistleblowing into a broader ethical context. Making the conversation about how to cut corruption first, and then bringing in the role of whistleblowing within anti-corruption strategies and public procurement standards helps to detach whistleblowing from negative connotations. In Slovakia, surveys and workshops with staff in public institutions included the question 'which department of yours do you think is most at risk of corruption?', effectively focusing minds on how their institution needs to change, rather than on the history and merits of whistleblowing.

3. Cultivate 'internal champions' while plotting a path to the top

Effective workplace implementation needs the engagement of those with direct responsibility for compliance to standards *and* the buy-in of senior management. In many settings, Chapter advocates have been able to build good relations with those who may be classed as their direct counterparts in Ministries and other public institutions, that is, internal auditors and Compliance Officers. In the Czech Republic, for example, there is a high level of interest among investigators that is attributed to the relationships built through interaction with the local Chapter whose achievement was in involving them and allowing them to understand that they have support. There is experience of fostering peer support networks of those responsible in different institutions and a suggestion that TI could also play a role in establishing similar international links.

At the same time, it can be hard to reach higher into management structures. And it is important not to take a positive dynamic with direct interlocutors as a sign of deeper political support. Internal champions are a good source of information and intelligence and can be allies in plotting a path into the higher echelons of institutions, but it is likely that change at this level requires other, parallel strategies which may rely more on public exposure of weak adherence to engender action as a response to negative publicity.

4. Operate on a policy and practice track and a culture track

In many countries, the term ‘whistle-blower’ is tainted or has no adequate domestic equivalent. The existence and implementation of a law both contributes to, but also depends on, changes in perceptions of whistleblowing. New standards are more likely to be properly applied if whistleblowing loses its negative connotations. Those with a controlling influence over how standards are applied in the workplace are both part of public opinion and sensitive to the direction that they see it taking: public sector managers will be more likely to ensure proper adherence to standards if they perceive that public opinion looks more favourably upon the act of whistleblowing.

To engender a positive dynamic between implementation of standards and culture change, the crux is to consciously plot points of intersection and opportunities to advance alternative frames for whistleblowing and the need to protect whistle-blowers and see them as agents of the public good. High-profile cases and scandals are a key moment as the narrative can be shaped around the wrong-doing of others, and the costs of their corrupt acts, with whistle-blowers positioned as people who have saved the public purse or exposed the hypocrisy and venality of those in authority. Engagement of public sector bodies in the development and implementation of whistleblowing tools can be animated by real-life examples of the value of whistleblowing and the importance of protecting and emboldening whistle-blowers.

As an example of the sort of mixed approach that is needed, TI Czech Republic deployed a range of techniques to engage the *Pražská správa sociálního zabezpečení* (PSSZ, Prague Social Security Administration), including seminars with staff, the promotion of a handbook and softer ‘awareness-raising’ activities and materials within the main office of the PSSZ. Cooperation was constructive and may lead to further engagement on other topics. As the Chapter looks to reach out to other institutions, it will be able to point to the PSSZ as an example. TI Czech Republic draws the lesson that public institutions are more likely to cooperate where there is a strong individual who is willing to go beyond their daily duties to ‘enforce’ proper adherence within an organisation. As such, in engaging public institutions – the point arguably also applies to private sector bodies – it is important to concentrate on the human factor.

5. Foster support for implementation from trade unions

Trade unions are an important (potential) blocker of effective adherence to whistleblowing standards. They may see whistle-blower protection as their responsibility and new laws and structures as a threat and so it is hugely significant if they can be won over to act as agents of effective implementation of laws and standards. Overlapping both private sector and public sector strategies, Chapters may need a specific strategy to engage trade unions to ensure proper

workplace implementation. Chapters' individual strategies should connect up, feeding into coordinated advocacy of European trade union federations. Trade unions which have supported whistle-blowers and championed strong procedures and practices should be mobilised to engage more sceptical unions in other countries.

6. Return to the legislative sphere if enforcement and / or adherence are weak

It is a basic principle of advocacy that laws are never finished but can always be improved upon. Where legislation is poorly implemented or enforced, Chapters need to show the flexibility to return to the legislative route to fix flaws or close loopholes, as in the case of TI Slovakia which won an amendment to the law to improve enforcement mechanisms after the approach first taken by the Slovak government of giving responsibility to Labour Inspectorates proved ineffective.

Resources

- [A Best Practice Guide for Whistleblowing Legislation](#)
- [International Principles for Whistle-blower Protection](#)