TALLINN UNIVERSITY OF TECHNOLOGY
School of Business and Governance
Department of Law

Sara Elissa Härkönen

THE NEED FOR COHERENT WHISTLEBLOWING LEGISLATION IN THE EUROPEAN UNION IN THE COMBAT AGAINST CORRUPTION

Bachelor's thesis
Programme HAJB08/14, specialisation European Union and International Law

Supervisor: Kari Käsper, M.A.

Tallinn 2018

I declare that I have compiled the paper independently
and all works, important standpoints and data by other authors
have been properly referenced and the same paper
has not been previously presented for grading.
The document length is 7146 words from the introduction to the end of conclusion.

Sara Elissa Härkönen ……
(signature, date)
Student code: 145800HAJB
Student e-mail address: sara.harkonen@hotmail.com

Supervisor: Kari Käsper, M.A:
The paper conforms to requirements in force

……
(signature, date)

Chairman of the Defence Committee:
Permitted to the defence
……
(name, signature, date)

TABLE OF CONTENTS

ABSTRACT

The aim of this graduation thesis is representing the need for the European Union-wide legislation which protects individuals who report on breaches of law, also known as whistleblowers. The research is based on qualitative analysis of peer-reviewed academic articles and topical materials that European Union institutions and international organisations have published. Need for EU-wide legislation is supported with an examination of already existing international conventions and legislation while pointing out their deficiencies in this subject-matter. A closer look is taken to the Finnish and British legislation to highlight the differences in their legislative approaches and the different issues they cause. This research shows the main problems which lack of dedicated whistleblower protection causes to the monetary interest of the European Union but also for the public interest and on the individual level for the workers. Case law demonstrates the connection between human rights, public interest and the duty of loyalty. The most recent event in the whistleblower protection field happened at the end of April 2018 when the European Commission published a directive proposal which protects persons reporting on breaches of Union law. This proposal is introduced in the same chapter as other European Institution materials and previous suggestions regarding the future legislation. As a conclusion, there exists a clear need for the EU-wide legislation on the whistleblowing matters as the EU Member States have not been able to solve the problems alone this far despite the several recommendations and guidelines.

Keywords: whistleblowing, corruption, European Union, legislation

INTRODUCTION

According to the estimations, corruption costs around 120 billion euros every year to the European economy[1] and additionally endangers human rights, democracy and people's belief in rule of law[2]. One way to fight against it is whistleblowing which is defined as reporting misconduct internally or externally in the company or organisation.[3] Whistleblowing is a topical issue in the European Union area and in this decade there has been plenty of research done on the institutional level of the European Union but also in the Council of Europe. European Court of Human Rights has clarified the whistleblowing issues which have related to the interpretation of European Convention on Human Rights particularly regarding the Freedom of Expression. The European Commission organised the Public consultation on whistleblower protection during spring 2017 to collect opinions from different stakeholders and at the end of April 2018 The Commission published a brand new directive proposal which protects persons who report on the Union law breaches which highlight the relevance and topicality of the subject-matter. Currently, the level of protection in the different European Union countries varies so remarkably that it can be seen as a hindrance for using whistleblowing as an effective tool against corruption especially in the cross-border situations.[4]

The hypothesis of this research is the following: Fragmented national whistleblowing legislation in the European Union countries leaves whistleblowers without adequate protection. This creates obstacles as it discourages citizens to blow the whistle and report about illegalities and misconduct. European Union-wide legislation would provide legal certainty, particularly in the cross-border issues, support the Union's monetary interest and also public interest while still respecting subsidiarity and proportionality principles.

[1] European Commission, (2014a), EU Anti-Corruption report, Brussels, p 3.
[2] Council of Europe (2014), Recommendation CM/Rec(2014)7, Protection of whistleblowers, p 18.
[3] Lewis D. (2001) Whistleblowing at Work: On What Principles Should Legislation Be Based? - *Industrial Law Journal*, Vol. 44, No. 1, p 179
[4] European Commission, (2017a) Inception impact assessment - Horizontal or further sectorial EU action on whistleblower protection, p 2.

In this research, the aim is to highlight the biggest issues with the current legislation at the national and international level and additionally proof the need for European Union level legislation, while taking into account subsidiarity and proportionality principles.

The structure of this research is the following:

The first chapter deals with background and the definitions of whistleblowing and corruption. It tackles particularly with the definition problems of whistleblowing and reasons behind not reporting corruption or other illegal misconduct.

The second chapter opens current international and the European Union legislation and institutional publications regarding the corruption and the protection of whistleblowers. It introduces relevant ECtHR case law in the field of whistleblowing. The main focus is on the six principles which were established in the case *Guja v. Moldova.* The second case emphasizes the changes in a duty of loyalty if the employer fails to react to notion about unlawful conduct and the third case highlights the national security aspect. Case law part puts emphasize on the fact that whistleblowing is not only about struggling with work-related contractual obligations but human right to speak out while confronting wrongdoing. The latter part of this chapter examines the publications from the European Union institutions with the primary focus on the newly released directive proposal from the Commission. Besides that, it takes a closer look at Finnish and British legislation in whistleblower protection. Those countries have been chosen as they cope well with the fight against corruption but represent entirely different legislative approaches what comes to whistleblower protection. The United Kingdom has had whistleblower legislation from the year 1998 while Finland still does not have national legislation in whistleblowing matters but relies on general constitutional and employment legislation principles.

The fourth chapter offers more detailed analysis of subsidiarity and proportionality principles in the Union legislation. It opens the Commission's justifications for the new Union level legislative act.

The conclusion binds together main findings of this graduation thesis and contains the future research possibility suggestions.

This research is based on qualitative analysis of peer-reviewed academic articles and topical materials that European Union institutions and international organisations have published on whistleblowing and corruption field. The analysis is supported by the examination of relevant international conventions, case law, and selected national legislation. As the new directive proposal was released at the very end of this research process, the analysis of it is based on the material facts of the proposal and more critical analysis is left for future research projects.

1.

1.1. Corruption

The global civil society organisation Transparency International defines corruption as "the abuse of entrusted power for private gain".[5] Corruption is a widely spread problem which exists in both highly industrialized countries and in the developing ones, including all others between those two.[6] Reasons behind it can be related to greedy human nature and inefficient governance which suffers from lack of transparency.[7] Corruption is a more common problem in poor developing countries, where income per capita is lower[8] but meanwhile corruption itself can contribute to poverty.[9]

Economies worldwide were hit hard by the financial crisis and European debt crisis ten years back and during following the several years and challenged governments, as citizens' belief to national and EU fund management was under stricter observation.[10] Mismanagement of national and EU funds with public procurement have shown the particular vulnerability of this field[11], and created a need for more transparent use of public funds as the report shows within the many Member States[12]. Nevertheless, yearly corruption causes 120 billion losses to the European economy[13] but still, citizens are reluctant to disclose wrongdoings. To put the aforementioned sum into perspective, it encompasses almost same amount as the annual budget of the Union[14] or one

[5] Transparency International, "How do you define corruption?" https://www.transparency.org/what-is-corruption#define accessed 20.3.2018
[6] Schultz, D., Harutyunyan K. (2015). Combating corruption: The development of whistleblowing laws in the United States, Europe, and Armenia. - *International Comparative Jurisprudence*, Vol. 1, No. 2, p 87.
[7] *Ibid.,* p 87.
[8] Bosco, B. (2016). Old and new factors affecting corruption in Europe: Evidence from panel data – *Economic Analysis and Policy,* Vol. 51, p 67
[9] Fasterling B., Lewis D. (2014). Leaks, Legislation and Freedom of Speech: How Can the Law Effectively Promote Public-Interest Whistleblowing, *International Labour Review*, Vol. 153, No. 1, p 71
[10] European Commission (2014a), *supra nota* 1, p 3.
[11] Popescu, A-I. (2014). Corruption in Europe: Recent Developments – *CES Working Papers,* Vol. 6, No. 2A, 152
[12] European Commission (2014a), *supra nota* 1, p 3.
[13] *Ibid.,* p 3.
[14] *Ibid.,* p 3.

percent of EU gross domestic product (GDP)[15]. The EU Member States have most of the needed legal instruments against corruption and knowledge how to fight against it, but still the level of effectiveness and willingness to enforce them is not always on required level.[16] In 2014 the European Commission conducted a Special Eurobarometer survey about corruption and according to it 74 percent of respondents have not reported about corruption they have witnessed or experienced.[17] As all European Union countries are steady democracies which respect rule of law, the above-mentioned percentage is alarmingly high, not to mention about the possible situation in the developing countries.[18] There are also vast national differences in the willingness to report misconduct. According to another research, in the United Kingdom 86 percent of senior executives who worked in the multinational companies felt free to report about wrongdoing, including corruption and fraud. Same time only 54 percent felt willing to do it in Continental Europe.[19]

According to the EU Anti-Corruption Report, 76% of respondents considered corruption as a widespread problem in their home country. Difference between countries was remarkably varying between 99% (Greece) and 25% (Denmark).[20] Respondents from those twelve countries which joined the EU during the 2004 and 2007 enlargements were more likely to say that they have faced corruption in their everyday life and also that they have not reported about it. In those countries, respondents were more often supposed to pay bribes.[21] Interestingly respondents from those countries who have joined the EU before 2004 and 2007 enlargements were more likely to say that corruption is more common within the private companies, banks and financial institutions and among politicians.[22]

1.2. Whistleblowing

There is no established definition for whistleblowing, but Transparency International defines whistleblowing as “the disclosure or reporting of wrongdoing, which includes corruption, criminal

[15] European Parliament (2017), P8_TA-PROV(2017)0402, Legitimate measures to protect whistle-blowers acting in the public interest, 24.10.2017, p 4.
[16] European Commission (2014a), *supra nota* 1, p 2.
[17] European Commission (2014b), European Commission's Special Eurobarometer 397 Corruption Report, p 100.
[18] Schultz, Harutyunyan, *supra nota* 6, p 92.
[19] Stephenson, P., Levi, M. (2012) A study on the feasibility of a legal instrument on the protection of employees who make disclosures in the public interest, Strasbourg, p 20.
[20] European Commission (2014a), *supra nota* 1, p 6.
[21] European Commission (2014b), *supra nota* 17, p 9.
[22] *Ibid.,* p. 10.

offences, breaches of legal obligation, miscarriages of justice, specific dangers to public health, safety or the environment, abuse of authority, unauthorised use of public funds or property, gross waste or mismanagement, conflict of interest, and acts to cover up any of the aforementioned".[23] Already 1994 in Australia, The Senate of Committee pointed out an important aspect in the whistleblower protection that "In the final analysis what is important is not the definition of the term, but the definition of the circumstances and conditions under which employees who disclose wrongdoing should be entitled to protection from retaliation".[24]

There are several problems with translations of the word 'whistleblower' as it is not a formal legal term. As the English word 'whistleblower' can be seen neutral, meanwhile in many other languages translation has been for example 'informant' or 'snitch' which might contain more negative nuances.[25] It is important in the democratic societies to get rid off those negative tones and connect whistleblowing to desirable behaviour.[26] While there are not official translation or definition, the European Parliament emphasized the role of media, politicians, and employers in connecting positive tones to whistleblowing and to whistleblowers.[27]

Whistleblowing can be divided into two subcategories: internal and external.[28] External whistleblowing refers to a situation where someone inside the company or organisation reveals previously unknown information to media, public officials or authorities. Internal whistleblowing means reporting inside the organisation or company to someone in a higher position. Same time it gives the possibility to react at the early stage before issues escalate or spread.[29] In the USA, internal procedures which give employees a possibility to tell about concerns related to the auditing or accounting matters, are compulsory for companies which are publicly traded in the USA and for their EU subsidiaries after enactment of Sarbanes-Oxley Act.[30] It is though argued among some academics that internal whistleblowing cannot be regarded as a whistleblowing at all, because reporting about wrongdoings inside the company can be regarded as a normal ethics and one form

[23] Worth, M., (2013) WHISTLEBLOWING IN EUROPE: LEGAL PROTECTIONS FOR WHISTLEBLOWERS IN THE EU, Transparency International, p 6.
[24] The Parliament of the Commonwealth of Australia "In the public interest" Report of the Senate Select Committee on Public interest whistleblowing (1994), August 1994 p 12 point 2.12
[25] Worth, M., *supra nota* 23, p 19.
[26] Stephenson, Levi, *supra nota* 19, p 5.
[27] European Parliament, *supra nota* 15, p 10.
[28] Lewis D. (2001), *supra nota* 3, p 179.
[29] *Ibid.* p 170.
[30] Johnsen, T. (2011) Whistleblowing systems in Denmark - *International Data Privacy Law*, Volume 1, Issue 3, p 199.

of duty of loyalty.[31] On other studies, it is found that internal and external whistleblowing procedures support each other and lead to the best final results.[32] According to another research, most whistleblowers report about the wrongdoing first internally.[33] This is the starting point of many court cases for example in the European Court of Human Rights as the internal disclosure should be the first option and most convenient one for both the employer and for the employee.[34]

It is important to make difference between leaking and whistleblowing. The content of information which is leaked can vary from public concern matters to pure attempts to manipulate media with political or private life matters.[35] Whistleblowing instead concerns conduct which has public interest dimension.[36] Leaking is usually regarded as illegal conduct and is done in bad faith, while most of the whistleblowing legislation requires that disclosure is done in good faith to gain the protection. [37]

[31] Lewis D. (2001), *supra nota* 3, p 179
[32] Vandekerckhove, W., Lewis, D. (2011). The Content of Whistleblowing Procedures: A Critical Review of Recent Official Guidelines - *Journal of Business Ethics*, Vol. 108, No. 2, p 255.
[33] Stephenson, Levi, *supra nota* 19, p 5.
[34] Guja v. Moldova, no. 14277/04, ECHR 2008, point 80
[35] Fasterling, Lewis, *supra nota* 9, p 73.
[36] *Ibid.,* p 73
[37] *Ibid.,* p 73.

2. LEGAL INSTRUMENTS

Legal instruments which would regulate only whistleblowing are rather unusual and more frequently those matters are regulated as a part of employment and anti-corruption legislation or in the court cases as an infringement of freedom of expression. What comes to national whistleblowing legislation in the European Union Member States, the level varies from almost non-existent to remarkably comprehensive.[38] Some EU Member states also rely more on collective bargaining and trade unions, others on personal legal rights provided by general legislation.[39] Finland represents a country which does not have any specific whistleblowing legislation, but same time it is listed as one of the world's least corrupted countries.[40] The Group of States against Corruption (GRECO) has also specially mentioned the contribution of Finland in the transparency of political party and election candidate funding.[41] According to them the Act on Political Parties from the year 2010 could serve as an inspiration for the other countries also.[42] From the EU Member States, the United Kingdom has the most comprehensive whistleblowing legislation. Public Interest Disclosure Act is from the year 1998 and it protects most of the public and private employees.[43]

2.1 International context and standards

International Labour Organisation Termination of Employment Convention, 1982 (No. 158) article 5c states: "the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities"[44] is not a valid reason to terminate work contract. ILO's contract has been criticised

[38] Worth, *supra nota* 23, p 8.
[39] Lewis D., Trygstad S. (2009). Protecting whistleblowers in Norway and the UK: a case of mix and match? - *International Journal of Law and Management*, Vol. 51, No. 6, p 383.
[40] Transparency International, Corruption Perception Index 2017 https://www.transparency.org/news/feature/corruption_perceptions_index_2017 accessed 20.3.2018
[41] European Commission (2014a), *supra nota* 1, p 10.
[42] *Ibid.,* p. 10.
[43] Public Interest Disclosure Act 02.07.1998
[44] Termination of Employment Convention, 1982 (No. 158), International Labour Organization, Geneva, 68th ILC session (22 Jun 1982*)*

from a too narrow perspective as it applies only to traditional employment contracts and does not take into account other negative effects that whistleblower might face.[45]

United Nations Convention against Corruption (hereinafter UNCAC) article 33 states "Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any individual who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention".[46] This article protects people generally from unjustified treatment when they report about illegal acts to the authorities. Criticism against this convention is related to the vagueness of its wordings and non-obligatory nature.[47] State Parties are always able to claim that they have considered appropriate measures but have not seen necessary to create a specific legal act.[48] The article does not mention either possibility to disclose information to the press.[49]

European Convention on Human Rights does not set specific whistleblower protection legislation but article 10 covers freedom of expression, which includes right to "hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers".[50] ECtHR has interpreted this article in the whistleblowing cases and more detailed case analysis can be found from the chapter 2.1.1 of this research.

Council of Europe Recommendation CM/Rec(2014)7 is not legally binding but it sets basic principles which the Member States can implement their national legal system. One of the most important principles highlights that wrongdoing cannot be hidden behind confidentiality principles.[51] The main goal of this recommendation is pushing the Member States to create national instruments which would protect whistleblowers.[52] These national instruments need to take into account already existing legislation, including criminal and employment law, trade union

---

[45] Fasterling, Lewis, *supra nota* 9, p 76.
[46] UNCAC 2003, Vienna
[47] Fasterling, Lewis, *supra nota* 9, p 76.
[48] Carr, I., Lewis, D. (2010). Combating Corruption through Employment Law and Whistleblower Protection, *Industrial Law Journal*, Vol. 39, No. 1, p 57.
[49] Schultz, Harutyunyan, *supra nota* 6, p 94.
[50] European Convention on Human Rights, Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4.11.1950
[51] Council of Europe, *supra nota* 2, p 18.
[52] *Ibid.*, p 19.

agreements and intra company policies.[53] The recommendation also sets a list of illegal acts which revealing should entitle the whistleblower for protection.[54] This list includes gross waste and mismanagement of public funds and bodies, risks to safety, environment and to public health.[55]

Parliamentary Assembly of the Council of Europe (PACE) Resolution 1729 (2010) suggests comprehensive whistleblowing protection but the same time lacks the definition for the whistleblowing itself.[56] Lewis also mentions that the requirement of good faith should not be necessary but protection should be afforded to everyone.[57] Parliamentary Assembly Resolution 2060 (2015)[58] puts focus on wider protection which should cover both private and public sector workers. In the light of the recent mass surveillance disclosures, emphasises that national intelligence or security agency workers should be covered by whistleblower protection legislation.[59]

The Organisation for Economic Co-operation and Development (hereinafter OECD) report Committing to Effective Whistleblower Protection noted that more often whistleblowers are protected on public sector than on private.[60] They suggested the OECD Member States organise awareness-raising campaigns as many countries have protecting legislation (even though fragmented in various cases) but people are not aware of them.[61] The current legislation in those countries which do not have a single legal instrument for whistleblower protection, tend to offer less comprehensive protection. Countries with more specific whistleblower legislation offered more certainty and reporting process generally was smoother.[62]

US False Claims Act gives a possibility to reveal fraud against the government in the form of *qui tam* action[63]. *Qui tam* comes from Latin sentence "*qui tam pro domino rege quam pro se ipso in hac parte sequitur"* which means "he who, as well as for the king as for himself, sues in this

[53] *Ibid.,* p 22.
[54] *Ibid.*, p 24.
[55] *Ibid.*, p 24.
[56] Lewis, D. (2010). The Council of Europe Resolution and Recommendation on the Protection of Whistleblowers - *Industrial Law Journal*, Vol. 39, No. 4, p 433.
[57] *Ibid.,* p 433.
[58] Parliamentary Assembly of Council of Europe (2015), Resolution 2060, Improving the protection of whistle-blowers, point 1.
[59] *Ibid.,* point 7.
[60] OECD (2016), *Committing to Effective Whistleblower Protection,* OECD Publishing, Paris, p 11
[61] *Ibid.,* p 12.
[62] *Ibid.,* p 21.
[63] The False Claim Act 31 U.S.C. §§ 3729 – 3733 1863

matter''.[64] It has been proved rather successful in the fight against corruption and it entitles whistleblower to a certain percentage of recovered damage and usually, this amount varies between 15 and 25 percentage (FCA §3730D). This kind of system needs strong safeguards to exclude fake claims which are intended primarily to distort other's reputation. [65] In 1986 reward percentage was increased to support more individuals to blow the whistle.[66] Public Concern at Work Whistleblowing charity investigated in their review this possibility in the UK, but they came to conclusion not to recommend monetary rewards from whistleblowing.[67]

2.1.1 ECHR Case Law

As all European Union Member States are also the Member States of Council of Europe and have signed the European Convention on Human Rights (ECHR), they have a right to bring cases to the European Court of Human Rights. This right applies to both individuals and the states. In the whistleblowing cases, there are usually alleged violations of the Article 10 (Freedom of Expression). The court rulings are based on the analysis of the second part of this Article which sets the limitations to the absolute freedom of expression:

"The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary".[68]

The following three cases can be seen remarkable in the light of possible future legislation regarding the whistleblowing. In all these cases ECtHR found that the Article 10 of European Convention on Human Rights was violated.

---

[64] Carson, T.L. *et al.* (2008). Whistle-Blowing for Profit: An Ethical Analysis of the Federal False Claims Act – *Journal of Business Ethics*, Vol. 77, No. 3, p 362.
[65] Carr, I., (2007). Corruption, legal solutions and limits of law - *International Journal of Law in Context*, Vol. 3, No. 3, p 242.
[66] Depoorter, B., De Mot, J. (2006). Whistle Blowing: An Economic Analysis of the false Claims Act - *Supreme Court Economic Review,* Vol. 14, p 140.
[67] Public Concern at Work: The Whistleblowing Commission. Report on the effectiveness of existing arrangements for workplace whistleblowing in the UK, November 2013, p 14.
[68] European Convention on Human Rights Article 10 (2)

Guja v. Moldova[69] was the first bigger whistleblowing case which ECtHR resolved. This case was about revealing letters from Deputy Speaker of Parliament and a Deputy Minister in the Ministry of the Interior to the media by a Head of the Press Department of the Prosecutor General's Office. The ECtHR established six principles which have been used again in the later court rulings in whistleblowing matters:

1) Whether the applicant had alternative channels for the disclosure
2) The public interest in the disclosed information
3) The authenticity of the disclosed information
4) The detriment to the employer
5) Whether the applicant acted in good faith
6) The severity of the sanction

The first principle reflects the prevailing legislative approach[70] that disclosing information to media or public should not be the first option but used if no alternative channels are available or they have been proved ineffective. In this particular case the employer has been aware of alleged misconduct but has not reacted nor national law provided guidance how to report about misconduct. The authenticity of the disclosed information was not questioned in *Guja v. Moldova* but in later court rulings[71] it has been stated that protection for whistleblower does not cease to exist if the facts turn out to be in incorrect, as long as disclosure was done by *bona fide* whistleblower.

The second important whistleblowing case which ECtHR resolved was *Heinisch v. Germany.*[72] An important aspect, in this case, was that if the employer fails to react to employee's notion of unlawful action, then employee does not need to follow the duty of confidentiality anymore. The applicant of this case had informed her employer repeatedly about problems that shortage of staff caused and about criminal complaint before filing it. As the employer did not react to these warnings anyhow, the ECtHR decided that the applicant was not obliged to follow the duty of loyalty anymore. Regarding the fifth principle about good faith principle, it was clarified in this

[69] *Guja v. Moldova*, no. 14277/04, ECHR 2008
[70] See for example UK Public Interest Disclosure Act 1998
[71] See for example *Heinisch v. Germany* and *Bucur and Toma v. Romania*
[72] *Heinisch v. Germany*, no. 28274/08, ECHR 2011

court ruling that additional willingness to improve one's own working condition does not mean that the applicant is not acting in good faith. Same way as in *Guja v. Moldova*, the sanction was the most severe one as the applicant lost her job. Besides the personal effect to the applicant, the sanction has a strong chilling effect to other employees on the same field as it discourages to report about deficiencies.

In the case *Bucur and Toma v. Romania*[73] there were repeated all six principled established in *Guja v. Moldova.* The applicant held a press conference where he revealed audio cassettes and claimed that Romanian intelligence service tapped illegally and extensively certain people and there were missing details in their registers. It was noted again by the ECtHR that Romanian national legislation did not provide guidance regarding the whistleblowing nor the Romanian Intelligence Service had internal guidelines about this subject matter. There was strong public interest in the disclosed information as secret surveillance systems are supposed to protect national security but same time abuse of them can destroy basic principles of democratic society and rule of law. *Bucur and Toma v. Romania* clarified the national security aspect as most of the current legislative acts remain silent or leave out intelligence service agency employees.[74]

As a conclusion regarding the case law, whistleblowing is closely connected to freedom of expression. In all whistleblowing cases, it is necessary to balance the right to confidentiality inside the company but same time wrongdoings cannot be hidden behind confidentiality when there is public interest to that information.[75]

2.2. The situation in the EU Member States and on the EU Institution level

In 2016 in the Communication from the Commission to the European Parliament and the Council, the European Commission highlighted whistleblowing as an important tool against tax evasion, guaranteeing working EU Single Market.[76] Whistleblowers were seen in the communication important actors in fraud revelations. It was pointed out that effective whistleblowing protection

[73] *Bucur and Toma v. Romania*, no. 40238/02, ECHR 2013
[74] Kagiaros, D. (2015). Protecting 'national security' whistleblowers in the Council of Europe: an evaluation of three approaches on how to balance national security with freedom of expression - *The International Journal of Human Rights*, Vol. 19, No. 4, p 409.
[75] Council of Europe, *supra nota* 2, p 15.
[76] European Commission (2016), COM(2016) 451 final, Communication on further measures to enhance transparency and the fight against tax evasion and avoidance, p 9.

motivates companies to carry their responsibilities and this way attracts more investments and new businesses to the Single Market.[77] The Commission also assessed the need for EU level legislation.

Inception impact assessment carried out by the European Commission in 2017 notes that the Member States might not be able to handle all European Union interests by acting alone.[78] Same time assessment between sectoral and horizontal action is necessary to take. The Union-wide legal action would provide equal protection around the EU and make cross-border cases more clear cut.[79] Adequate whistleblower legislation would have positive effects for the Internal Market and the Member States might not be able to achieve all aims which have EU dimension by acting solely alone so Union wide legal act would be justified under article 5(3) TEU. In the same Inception Impact Assessment, they specified that legal basis for EU level legislative action could be found from article 153, 114, 115, 50, and 325 TFEU.[80]

During spring of 2017, the European Commission conducted an open public consultation and collected opinions related to whistleblowing from individuals and organisations.[81] They got altogether 5707 answers to their questionnaire mostly from private individuals and some (191 replies) from those who represented organisation.[82] Results of this open public consultation cannot be seen reflecting the whole population of EU but a more giving overview of prevalent opinions and gather experiences and information regarding this topical matter from different stakeholders. Responses supported academic studies and previous surveys what comes to reasons not to blow the whistle. Fear of legal or financial consequences were main reasons, but lack of knowledge how to blow the whistle or assumption that no action will be taken to investigate alleges wrongdoing were also mentioned.[83] Same time positive outcomes supported previous studies. Compliance with the law would be improved, competition would be fairer and freedom of expression would be strengthened.[84] Respondents found whistleblowing to be an effective tool against fraud, corruption, taxation issues and mismanagement of public funds.[85] They mentioned the need for a

[77] *Ibid.,* p 10
[78] European Commission (2017a), *supra nota* 4*,* p 3.
[79] *Ibid.,* p 2.
[80] European Commission (2017a), *supra nota* 4
[81] European Commission (2017b), Study on the need for horizontal or further sectorial action at EU level to strengthen the protection of whistleblowers: Summary results of the public consultation on whistleblower protection
[82] *Ibid.,* p 3.
[83] European Commission (2017b), *supra nota* 81, p 6.
[84] *Ibid.,* p 7.
[85] *Ibid.,* p 8.

precise definition for "whistleblowing" and guidelines which regulate internal and external disclosure channels.[86] The respondents favored the combination of EU and national legislation over EU horizontal legal provisions or a combination of EU horizontal and sectorial provisions for whistleblower protection.[87]

From the beginning of the year 2014, EU institutions have had mandatory internal procedures to protect their employees who blow the whistle in the course of their work.[88] According to articles 22a-c of the Staff Regulations, the EU institution official who reports about misconduct or illegal activities shall be protected from all harmful effects and retaliation actions as long as the disclosure is done with reasonable belief and honestly.[89]

The European Parliament made a comprehensive resolution in October 2017 regarding the whistleblowing protection.[90] They noted the seriousness of corruption and how it affects to EU economy.[91] It was emphasized that legislation which protects whistleblowers is not enforced sufficiently and citizens suffer from legal insecurity because of fragmented legislation.[92] Worth of mentioning is the fact that according to their resolution, 86% of companies have channels to report deficiencies and misconduct but a substantial part of those companies lacked written guidelines how to protect whistleblowers from retaliation.[93] According to the resolution, whistleblowing should be represented in the positive light and the media, politicians, and employers can play an important part in public understanding and perception.[94] The essential role of whistleblowers as acting before issues escalate was highlighted again. They made broad suggestions regarding the future legislation on EU level and encouraged the Member States to introduce comprehensive national legislation.[95] The Commission was also called to introduce before the end of the year a new legislative proposal regarding the whistleblower protection.[96]

[86] *Ibid.,* p 13.
[87] *Ibid.,* p 26.
[88] European Parliament, *supra nota* 15, point AC.
[89] Regulation No 31, Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, OJ 45, 14.6.1962, p. 1385
[90] European Parliament, *supra nota* 15
[91] *Ibid.,* point F.
[92] *Ibid.,* point 7.
[93] *Ibid.,* point W.
[94] *Ibid.,* point 25.
[95] *Ibid.,* point 1.
[96] *Ibid.,* point 1.

The Commission answered to the European Parliament's call in April 2018 with "Proposal for a Directive of the European Parliament and of the Council on the protection of persons reporting on breaches of Union law".[97] In the explanatory memorandum, the Commission mentioned same issues as other stakeholders, namely that as long as legal uncertainty exists whistleblowers are not ready to step forward in the numerous cases which harm the public interest.[98] According to the subsidiarity analysis of the proposal, the Member States will not be able to solve alone the problems that fragmented legislation is causing and without the Union-wide act, issues are supposed to remain and continue affecting to other Member States same time.[99] The Union-wide protection is needed to cover traditional employee-employer relationships and nowadays more common precarious relationships which include a wider scale of workers according to the proposal.[100]

According to the explanatory memorandum of the directive proposal, new directive would support fundamental human rights including most importantly; freedom of expression and right to information (Charter of Fundamental Rights of the European Union, Article 11), the right to fair and just working conditions (Articles 30 and 31) and the right to respect for private life, protection of personal data, healthcare, environmental protection, consumer protection (Articles 7, 8, 35, 37 and 38) and the principle of good administration (Article 41).[101] Article 11 of the Charter uses the same wording as ECHR article 10(1) but is generally supposed to make provisions more clear, while covering the same scope and meaning.[102] New directive relies on ECtHR case law on whistleblowing matters and follows the guidelines introduced in 2014 by Council of Europe in their Recommendation[103]. Same time Article 16 of proposal protects the fundamental rights of concerned persons, including the right to an effective remedy and to a fair trial (Article 47 of the Charter) and the presumption of innocence and right of defence (Article 48).

New proposed directive divides whistleblowing reporting into three stages: internal reporting, reporting to the competent authorities and reporting to the public or to the media. Similarly as in

[97] European Commission (2018a), COM(2018) 218 final, Proposal for a Directive of the European Parliament and of the Council on the protection of persons reporting on breaches of Union law
[98] *Ibid.,* p 1.
[99] European Commission (2018a), *supra* nota 97, Explanatory Memorandum, p 5.
[100] *Ibid.,* p 4.
[101] *Ibid.,* p 9.
[102] https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights/why-do-we-need-charter_fi#conventiononhumanrights accessed 3.5.2018
[103] Council of Europe, Recommendation CM/Rec(2014)7, Protection of whistleblowers, 30 April 2014

PIDA[104] the whistleblower is normally required to use reporting channels in the above-mentioned order.[105] However suggested Article 13 grants exceptions to the general rule and flexibility provides more protection in the cases where internal reporting have been ineffective, would be ineffective or is not possible taking into account the circumstances of the subject matter.[106]

Unlike in their Inception Impact Assessment in 2017, the Commission found this time Article 153 TFEU unsuitable as it would have limited protection only ordinary employees but have left out contractors, self-employed persons, consultants, volunteers etc. [107] From the other parts the newer impact assessment is in line with the previous one but at the same time widens the legal basis to include also Articles 16, 33, 43, 53(1), 62, 91, 100, 103, 109, 168, 169, 192, 207 of TFEU.[108]

2.2.1 United Kingdom

Whistleblowing is regulated in the United Kingdom with Public Interest Disclosure Act 1998 (PIDA).[109] The UK PIDA was the first comprehensive legal act which protects whistleblowers in EU and it protects most of the public and private sector workers, including trainees and contractors. During the last 20 years, other Member States have improved their whistleblowing legislation but PIDA still is regarded as a model and inspiration for many other countries.[110] The starting point of PIDA is based on the idea that the employee should report the concerns in the first place to someone inside the company or the organisation.[111] If this option can be seen ineffective or it is possible that the employer would destroy the evidence of wrongdoing, then external reporting is also protected.[112] Academics have reminded that PIDA is meant to protect those who have done the disclosure, not necessarily to invite people to blow the whistle.[113]

[104] Public Interest Disclosure Act 02.07.1998, Article 43B-G
[105] European Commission, (2018a), *supra nota* 99, Explanatory Memorandum, p 12.
[106] *Ibid.,* Article 13.
[107] *Ibid.*, p 5.
[108] *Ibid.,* p 5.
[109] Public Interest Disclosure Act 02.07.1998
[110] Worth, *supra nota* 23, p 10
[111] Ashton, J. (2015). 15 Years of Whistleblowing Protection under the Public Interest Disclosure Act 1998: Are We Still Shooting the Messenger? - *Industrial Law Journal*, Vol. 44, No. 1, p 30
[112] Public Interest Disclosure Act, *supra nota* 42, article 43G 2b
[113] Lewis, D. (2010). Ten Years of Public Interest Disclosure Act 1998 Claims: What Can We Learn from the Statistics and Recent Research? – *Industrial Law Journal*, Vol. 39, No. 3, p 328

There has been also criticism against PIDA. Criticism is mainly related to good faith and reasonable belief principles, but also to the fact that people are not aware of the protection that PIDA provides. PIDA is from year the 1998 and still significant part of adults who would be entitled protection under it, are not aware of it.[114] According to another survey conducted by Public Concern at Work whistleblowing charity, 77 percent of adults in the United Kingdom were unaware of legislation which protects whistleblowers. [115] According to the one article, it is not enough that people know that whistleblowing legislation exists, but they need to also rely on it.[116] Criticism against the requirement of reasonable belief is based on the idea that it creates obstacles when an employee has only partial information or it comes via secondhand.[117] There has been also criticism against good faith requirement since it takes attention away from the message and places it to the messenger.[118] Fear of investigations behind the motive of disclosure might also prevent some disclosures.[119] If the UK wants to support whistleblowing more widely than currently, changes in the legislation would be necessary.[120]

The European Commission cited in their UK country chapter of Anti-Corruption report an independent review conducted by PCaW in 2013 which highlights the improvement suggestions of PIDA. [121] According to the PCaW PIDA is too complex to understand and they recommended simplification.[122] They also suggest The Code of Practice which the Secretary of State could approve. This Code would provide practical guidance for both employers and employees and clarify court proceedings as Courts are able to take into account employer's commitment to the Code. As effective whistleblowing procedures are not mandatory, employees still felt that they are ignored when they raise concerns or they are required to do it multiple times before actions are taken.

2.2.2 Finland

[114] Yeoh P. (2014). Whistleblowing: motivations, corporate self-regulation, and the law - *International Journal of Law and Management,* Vol. 56, No. 6, p 461
[115] Stephenson, Levi, *supra nota* 19, p 21
[116] *Ibid.,* p 21
[117] *Ibid.*, p 21
[118] Lewis (2010), *supra nota* 56, p 328
[119] Lewis D. (2008). Ten Years of Public Interest Disclosure Legislation in the UK: Are Whistleblowers Adequately Protected? - *Journal of Business Ethics,* Vol. 82, No. 2, p 500
[120] Lewis (2010), *supra nota* 56, p 328
[121] European Commission, (2014c) 38 final, Annex to the EU Anti-Corruption Report: United Kingdom
[122] Public Concern at Work: The Whistleblowing Commission. Report on the effectiveness of existing arrangements for workplace whistleblowing in the UK, November 2013, p 17

Finland represents a Member State without specific whistleblowing legislation. Laws which protect whistleblowers are fragmented and include for example the Constitution, Criminal law, and several Employment acts. The Constitution of Finland states in section 18 of its second chapter that no one shall be dismissed from employment without a lawful reason.[123] The Employment Contract Act is a general law which regulates the responsibilities and rights of the employee and employer. [124] Termination of the employment contract is regulated in the chapters 6-9. Chapter 12 section 2 regulates compensation amounts in the case of unlawful employment contract termination. ILO's Termination of Employment Convention has also been signed by Finland and the accordance with it, it is illegal to terminate the employment contract in the case of reporting employer's alleged unlawful act to public officials. [125] This matter is possible to find from the Employment Contracts Act chapter 7, section 2:4.[126] In addition, there are more field-specific acts which can be applicable in the corruption and whistleblowing case, for example, Act on Credit Institutions. It sets a requirement of internal reporting mechanisms for credit institution in regard suspected breaches of financial market legislation.[127]

According to the EU Anti-Corruption report, Finnish respondents were least likely to say that they have witnessed or experienced corruption during the last twelve months. Same time Finnish respondents were not so convinced about the transparency and supervision of political party funding (56 percent of respondents kept supervision inadequate, which is still the fourth best result in the EU Member States, after Denmark, United Kingdom, and Sweden) as GRECO were in their report.[128]

In 2015 Ministry of Justice established a working group which investigated whistleblower protection in corruption matter in Finland.[129] The working group was formed from specialists from both public and private sector, trade union representatives, and NGO representatives. They evaluated the current situation in Finland regarding the legislation and protection principles, identified problems and suggested solutions. They presented their report to Ministry of Justice 17.6.2016. Despite mutual understanding, according to their research, corruption still exist at all

[123] Suomen perustuslaki 11.6.1999/731
[124] Työsopimuslaki 26.1.2001/55
[125] ILO, *supra nota* 42, Article 5c
[126] Työsopimuslaki, *supra nota* 105
[127] Laki luottolaitostoiminnasta 8.8.2014/610, chapter 7 section 6
[128] European Commission (2014a), *supra nota* 1
[129] Oikeusministeriö (2016). Korruptioepäilyistä ilmoittavien henkilöiden suojelu, Mietintöjä ja lausuntoja 25/2016, Helsinki

levels of society in Finland. Typical features are formal compliance with the law but meanwhile, activities are unethical [130] or "old boys' networks" are used for the exchange of favours[131]. As a conclusion, the working group suggested external electronic reporting channel which would provide the possibility to inform about all kind of corrupted conduct. It would be also important to raise awareness of different reporting channels among the public. Whistleblower protection guidelines could be added to already existing training courses for employers besides general information about corruption.[132]

According to the UNCAC Implementation Review Group, mutual understanding in Finland is that corruption is uncommon. Still, they would recommend researching possibilities for comprehensive whistleblower protection and also for stronger witness identity protection.[133] In 2017, the OECD Working Group on Bribery evaluated again implementation and enforcement of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions[134] in Finland. According to their report, Finland has actively enforced foreign bribery laws, but same time acquittal rates were alarmingly high. The biggest concerns were related to the interpretation of the above-mentioned convention in the courts as some of them seemed to lack the necessary special skills and required experience from this field.[135] The same report criticizes Finland from the lack of whistleblowing protection as whistleblowers can play important role in the hidden crimes including the foreign bribery.[136] The OECD Working Group on Bribery pointed out also the deficiencies in the report which was made for Ministry of Justice on the previous year by Finnish working group.[137] According to their opinion, this report makes good recommendations regarding the new reporting channel, but same time does not take into consideration major problems with the fragmented legislation. Finnish working group suggested additionally internal measures for the private sector but these recommendations can be seen insufficient as they rely on a voluntary basis and can not be seen as a substitute for effective and comprehensive legislation.[138]

[130] *Ibid.,* p 11
[131] Unites Nations, United Nations Convention against Corruption: Country Report Finland 27 May 2011, p 1
[132] Oikeusministeriö (2016), *supra nota* 110, p 5.
[133] United Nations, *supra nota* 131
[134] OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 21 November 1997
[135] OECD (2017) Working Group on Bribery, Implementing the OECD Anti-Bribery Convention, Phase 4 Report: Finland (2016), p 5
[136] *Ibid.,* p 13
[137] *Ibid.,* p 14
[138] *Ibid.,* p 14

3. Principles of Subsidiarity and Proportionality

As the previous chapters have shown and the Commission has concluded in their directive proposal, there exists a clear need for new legislation. Still, the European Union has no power to legislate everything, only those matters where competence is conferred by Treaties. Article 5(1-2) TEU sets principle of conferral and reminds that competences which are not conferred according to those articles shall remain with the Member States. In accordance with article 2 TFEU, EU competence can be divided into three main categories: exclusive competence, shared competence or competence to take supporting, coordinating or supplementary action.[139] Whistleblower protection related matters fall under article 2(2) TFEU which regulates shared competence. Areas which fall under the shared competence of EU and the Member States are listed more detailed in article 4 TFEU. Whistleblowing matters can relate to several areas mentioned in article 4, including internal market, economic, social and territorial cohesion, environment, consumer protection and area of freedom, security, and justice.

The principle of subsidiarity means sharing legislative power between the European Union and the Member States in the matters of non-exclusive competence. The main idea is that decisions should be made as close to the citizen as possible. In other words, matters which can be solved more effectively on a national or local level should not be regulated on EU level. The principle is applicable to all European Union institutions. [140] The Maastricht Treaty introduced subsidiarity principle and the main goal was to limit and define EU competence.[141] It offered a baseline but meanwhile did not manage to define the limits to the competence of EU explicitly.[142] The principle of proportionality is one of the general principles of EU law and in accordance with it EU legislation should not go further than is necessary to complete the objectives of the Treaties.[143] After Lisbon Treaty subsidiarity and proportionality principles were embodied in Article 5(3)-5(4) TEU. This article regulates legislation of matters which do not fall under the exclusive competence

[139] Craig, P., de Búrga, G. (2015). EU Law, Text, Cases and Materials, 6th edition, Oxford University press, p 73
[140] Fact Sheets on the European Union, The principle of subsidiarity
http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_1.2.2.html 20.3.2018
[141] Craig, P., de Búrga, G., *supra nota* 139, p 95.
[142] Syrpis, P. (2004). In Defence of Subsidiarity – *Oxford Journal of Legal Studies,* Vol. 24, No. 2, p 324
[143] Craig, P., de Búrga, G., *supra nota* 139, p 551

of the EU and applicability of Protocol (no 2) On the Application of the Principles of Subsidiarity and Proportionality. This Protocol attaches National Parliaments more closely to legislation process on the EU level and strengthens their role. All Parliaments have the possibility to challenge draft legislative acts originating from EU institutions during the eight weeks after the date of transmission and express their opinions why draft does not comply with the principle of subsidiarity.[144]

The final version of the impact assessment justified the EU-level legislative act as only Union-wide act would provide equal protection in all Member States and guarantee properly functioning internal market.[145] Stronger law enforcement is needed and the Member States have not been able to cover all aspects which are in the Union interest. Besides the Union interest, many areas where stronger law enforcement is needed can cause severe harm to the public interest.[146] They listed, for example, the following areas where reinforcement is particularly needed: 1) public procurement, 2) financial services, prevention of money laundering and terrorist financing, 3) product, transport, and nuclear safety; 4) protection of the environment, consumers, and privacy, and personal data.[147] Free movement of services, capital, persons, and goods means that failure to protect whistleblowers in one country can cause severe impact in the other Member States as well.[148] In accordance with the subsidiarity principle, only EU-level legal act would provide sufficient certainty in the cross-border situations.[149] Without the Union-wide act, the current problems with fragmented national legislation are expected to continue existing.[150]

In accordance with proportionality principle, the proposed directive does not go further than what is necessary to achieve the object of the Treaties.[151] The proposal sets reasonable minimum standards and Member States are entitled to develop provisions which are more favorable, or retain existing legislation if it goes further with the protection than the proposal. Additionally the costs of implementing the provisions of the proposal are not extensive but meanwhile, the benefits for

[144] Protocol (No 2) on the application of the principles of subsidiarity and proportionality, OJ C 115, 9.5.2008, p. 206–209, article 6
[145] European Commission, COM(2018) 218 final, Proposal for a Directive of the European Parliament and of the Council on the protection of persons reporting on breaches of Union law: Executive summary of the impact assessment, Brussels 23.4.2018, p 1
[146] *Ibid.,* p. 1
[147] *Ibid.,* p. 1
[148] *Ibid.,* p. 1
[149] *Ibid.,* p. 1
[150] European Commission, (2018a), *supra nota* 99, Explanatory Memorandum, p 5.
[151] *Ibid.,* p. 6

example for the fair competition are significant.[152] In the light of the previously mentioned circumstances, the Commission concluded that the Directive with minimum harmonisation would be the most applicable legal tool to protect whistleblowers and enforce EU law this way more effectively.[153]

[152] *Ibid.,* p 6
[153] *Ibid.,* p 6

CONCLUSION

The aim of this research paper is highlighting the biggest issues with current fragmented national whistleblower protection legislation and investigate how those issues affect to fighting against corruption in the European Union area. It also examines the sufficiency of the legal basis for EU-wide action and principles of subsidiarity and proportionality in this subject matter.

In accordance of thesis hypothesis this research has shown that current whistleblowing legislation in the European Union Member States is fragmented and even in those countries where legislation is more coherent, it does not fulfill its goals as often people are not aware what kind of protection they are entitled to or how to report about alleged wrongdoings. Despite several guidelines and recommendations published by EU institutions and international organisations like Council of Europe, the Member States have not been able to provide comprehensive protection for whistleblowers. Countries are well aware of the important role of whistleblowers in disclosing hidden crimes like corruption but practical actions drag behind. Besides the lack of comprehensive national legislation, international conventions suffer same time from several deficiencies as too vague wording or non-mandatory nature. As this research has proven, a dedicated legislative act is missing on both international and the European Union level and handling the subject-matter as a part of anti-corruption or employment legislation do not provide sufficient protection.

In conclusion to the case law, ECtHR rulings have proven that wrongdoing cannot be hidden behind confidentiality agreements and Freedom of Expression applies also to workers who decide to speak out when they face or witness illegalities. The six principles created in *Guja v. Moldova* case has clarified later court rulings and in accordance with them it is necessary to take into account the following aspects: whether the applicant had alternative channels for the disclosure, the public interest in the disclosed information, the authenticity of the disclosed information, the detriment to the employer, whether the applicant acted in good faith and the severity of the sanction. As a final conclusion, in the court cases, there is always a need to find the balance between the duty of confidentiality and public interest to certain information.

Most important change in the whistleblower protection field in the EU happened at the end of April 2018 when the European Commission published finally a directive proposal which would protect whistleblowers who report on breaches of the European Union law. The proposed directive takes into account for example Council of Europe Recommendation on Protection of Whistleblowers, the case law of European Court of Human Rights especially regarding the protection of Freedom of Expression and the European Parliament Resolution of Legitimate measures to protect whistleblowers acting in the public interest. The new proposal is supposed to encourage people to react to corruption which they confront or witness and provide legal certainty which lacks particularly in the cross-border situations. Besides individual legal protection, the directive is alleged to support EU's monetary interest as it should affect positively to the EU Single Market as more transparent legal environment tempts both customers and new investors and this way boosts economic growth. As public procurement would be more transparent, fair competition would make the European Union, as a business environment, more attractive and generally exposing corruption would be easier. The legal basis for the new directive support also public interest as safety concerns and protection of the environment, consumers, and privacy would be again more equally enforced in the EU.

The proposed directive fulfills the subsidiarity and proportionality principles as it does not go further than what is necessary to achieve the Union's aims and notes that the Member States have not been able to solve the existing problems by acting alone regardless the previous guidelines and research materials published by the EU institutions and international organisations. Meanwhile, the proposed legislation would supplement already existing legal instruments in the anti-corruption field and more sector-specific Union acts.

Whistleblowing has been topical subject among academics during the last few years and the new proposed directive will provide certainly possibilities for further research. New directive does not mention the possibility for rewards even though the False Claims Act in the USA has been proved rather successful which might offer also further research possibilities

Media, employers, and politicians have an important role in highlighting the importance of whistleblowers. It is necessary to get rid of the negative connotations and create a positive association which encourages to react to illegal misconduct. It will take time before the new proposed directive is approved and harmonised in all Member States and meanwhile the Member States need to raise awareness of already existing protective legislative measures which possible whistleblowers are able to use.

LIST OF REFERENCES

Books:

1. Craig, P., de Búrga, G. (2015) EU Law, Text, Cases and Materials, 6th edition, Oxford University press.

Articles:

2. Ashton, J. (2015). 15 Years of Whistleblowing Protection under the Public Interest Disclosure Act 1998: Are We Still Shooting the Messenger? – Industrial Law Journal, Vol. 44, No. 1, 29-52.

3. Bosco, B. (2016). Old and new factors affecting corruption in Europe: Evidence from panel data – Economic Analysis and Policy, Vol. 51, 66-85.

4. Carson, T.L., Verdu, M.E., Wokutch, R.E. (2008). Whistle-Blowing for Profit: An Ethical Analysis of the Federal False Claims Act – Journal of Business Ethics, Vol. 77, No. 3, 361-376.

5. Fasterling B., Lewis D. (2014). Leaks, Legislation and Freedom of Speech: How Can the Law Effectively Promote Public-Interest Whistleblowing – International Labour Review, Vol. 153, No. 1, 71- 92.

6. Carr, I. (2007). Corruption, legal solutions and limits of law – International Journal of Law in Context, Vol. 3, No. 3, 227-255.

7. Carr, I., Lewis, D. (2010). Combating Corruption through Employment Law and Whistleblower Protection – Industrial Law Journal, Vol. 39, No. 1, 52-81.

8. Depoorter, B., De Mot, J. (2006). Whistle Blowing: An Economic Analysis of the false Claims Act – Supreme Court Economic Review, Vol. 14 , 135-162.

9. Johnsen, T. (2011). Whistleblowing systems in Denmark – International Data Privacy Law, Vol. 1, No. 3, 199–205.

10. Kagiaros, D. (2015). Protecting 'national security' whistleblowers in the Council of Europe: an evaluation of three approaches on how to balance national security with freedom of expression – The International Journal of Human Rights, Vol. 19, No. 4, 408-428.

11. Lewis, D. (2001). Whistleblowing at Work: On What Principles Should Legislation Be Based? – Industrial Law Journal, Vol. 30, No. 2, 169-193.

12. Lewis D. (2008). Ten Years of Public Interest Disclosure Legislation in the UK: Are Whistleblowers Adequately Protected? – Journal of Business Ethics, Vol. 82, No. 2, 497-507.

13. Lewis D., Trygstad S. (2009). Protecting whistleblowers in Norway and the UK: a case of mix and match? – International Journal of Law and Management, Vol. 51, No. 6, 374-388.

14. Lewis, D. (2010). Ten Years of Public Interest Disclosure Act 1998 Claims: What Can We Learn from the Statistics and Recent Research? – Industrial Law Journal, Vol. 39, No. 3, 325-328.

15. Lewis, D. (2010). The Council of Europe Resolution and Recommendation on the Protection of Whistleblowers – Industrial Law Journal, Vol. 39, No. 4, 432-435.

16. Popescu, A-I. (2014). Corruption in Europe: Recent Developments – CES Working Papers, Vol. 6, No. 2A, 150-160.

17. Schultz, D., Harutyunyan K. (2015). Combating corruption: The development of whistleblowing laws in the United States, Europe, and Armenia – International Comparative Jurisprudence, Vol 1, No. 2, 87-97.

18. Syrpis, P. (2004). In Defence of Subsidiarity – Oxford Journal of Legal Studies, Vol. 24, No. 2, 323-334.

19. Vandekerckhove, W., Lewis, D. (2011). The Content of Whistleblowing Procedures: A Critical Review of Recent Official Guidelines – Journal of Business Ethics, Vol. 108, No. 2, 253–264.

20. Yeoh P. (2014). Whistleblowing: motivations, corporate self-regulation, and the law – International Journal of Law and Management, Vol. 56, No. 6, 459-474.

EU and international legislation

21. European Convention on Human Rights, Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4.11.1950

22. Charter of Fundamental Rights of the European Union

23. United Nations Convention against Corruption

24. Termination of Employment Convention, 1982 (No. 158), International Labour Organization, Geneva, 68th ILC session (22 June 1982*)*

25. Consolidated Version of the Treaty on the Functioning of the European Union

26. Consolidated Version of the Treaty on European Union

27. OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 21 November 1997

28. Protocol (No 2) on the application of the principles of subsidiarity and proportionality, OJEU C 115, 9.5.2008, p 206–209.

29. Regulation No 31, Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, OJ 45, 14.6.1962, p. 1385

Other countries' legislation

30. Laki luottolaitostoiminnasta 8.8.2014/610

31. Public Interest Disclosure Act 02.07.1998

32. Suomen perustuslaki 11.6.1999/731

33. The False Claims Act 31 U.S.C. §§ 3729 – 3733 1863

34. Työsopimuslaki 26.1.2001/55

Other court decisions

35. Guja v. Moldova, no. 14277/04, ECHR 2008

36. Heinisch v. Germany, no. 28274/08, ECHR 2011

37. Bucur and Toma v. Romania, no. 40238/02, ECHR 2013

Other sources

38. Council of Europe (2014), Recommendation CM/Rec(2014)7, Protection of whistleblowers, 30 April 2014

39. European Commission, (2014a), EU Anti-Corruption report, Brussels

40. European Commission (2014b), European Commission's Special Eurobarometer 397: Corruption Report

41. European Commission, (2014c) 38 final, Annex to the EU Anti-Corruption Report: United Kingdom

42. European Commission (2016), COM(2016) 451 final, Communication on further measures to enhance transparency and the fight against tax evasion and avoidance

43. European Commission, (2017a) Inception impact assessment - Horizontal or further sectorial EU action on whistleblower protection

44. European Commission (2017b), Study on the need for horizontal or further sectorial action at EU level to strengthen the protection of whistleblowers: Summary results of the public consultation on whistleblower protection

45. European Commission, (2018a) 218 final, Proposal for a Directive of the European Parliament and of the Council on the protection of persons reporting on breaches of Union law, Explanatory Memorandum, Brussels 23.4.2018

46. European Commission, (2018b) 218 final, Proposal for a Directive of the European Parliament and of the Council on the protection of persons reporting on breaches of Union law: Executive summary of the impact assessment, Brussels 23.4.2018

47. European Parliament, P8_TA-PROV(2017)0402, Legitimate measures to protect whistle-blowers acting in the public interest, 24.10.2017

48. Fact Sheets on the European Union, The principle of subsidiarity http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_1.2.2.html

49. OECD (2016), *Committing to Effective Whistleblower Protection*, OECD Publishing, Paris

50. OECD (2017), Convention Implementing the OECD Anti-Bribery, Phase 4 Report: Finland 2016

51. Public Concern at Work: The Whistleblowing Commission. Report on the effectiveness of existing arrangements for workplace whistleblowing in the UK, November 2013

52. Stephenson, P., Levi, M. (2012) A study on the feasibility of a legal instrument on the protection of employees who make disclosures in the public interest, Strasbourg

53. The Parliament of the Commonwealth of Australia "In the public interest" Report of the Senate Select Committee on Public interest whistleblowing (1994), August 1994 p 12 point 2.12

54. Transparency International, Corruption perception index 2017 https://www.transparency.org/news/feature/corruption_perceptions_index_2017 accessed 10.4.2018

55. Transparency International, "How do you define corruption?" https://www.transparency.org/what-is-corruption#define 20.3.2018

56. United Nations, United Nations Convention against Corruption: Country Report Finland 27 May 2011

57. Why do we need the Charter? https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights/why-do-we-need-charter_fi#conventiononhumanrights accessed 3.5.2018

58. Worth, M. (2013) Whistleblowing in Europe: Legal Protection for Whistleblowers in The EU, Transparency International