Instruments for Promotion and Assurance of Public Integrity

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Chapter 1

Instruments concerning the public function

1. The civil servant's career

Career management consists of career planning and management succession. Career planning shapes the progression of individuals within an organisation in accordance with assessments of organisational need and the performance, potential and preferences of individual members of the organisation. Management succession takes place to ensure that, so far as possible, the organisation has the managers it requires to meet its future business needs (National Agency of Civil Servants, 2008).

The career management represents the process of design and implementation of the goals, strategies and plans that could allow public institutions to meet the needs of human resources, and individuals to fulfil their career goals. The career management is planning and shaping the progress of individuals in a public institution in accordance with the organisational needs evaluation, and also with the performances, the potential and individual preferences of its members (National Agency of Civil Servants, 2008).

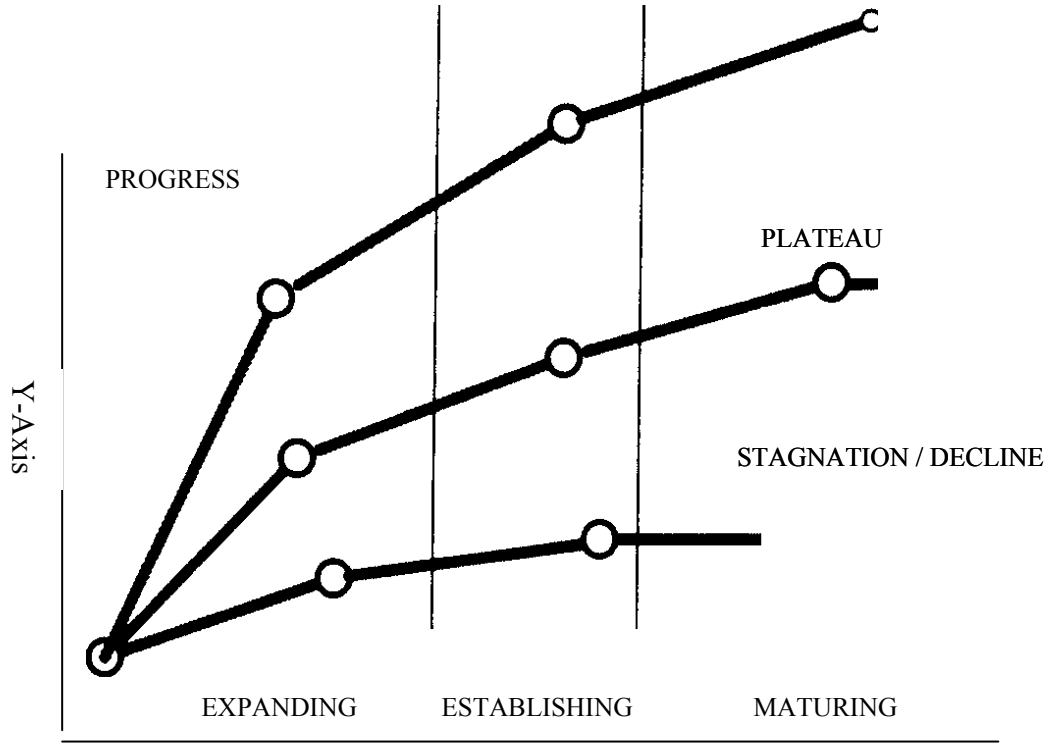
Career development has three overall aims.

- To ensure that the organisation's need for management and other staff succession are met.
- To provide men and women with a potential sequence of training and experience that will equip them for whatever responsibility they have the capacity to reach.
- To give individuals with potential the guidance and encouragement they need to fulfil their potential and achieve a successful career with the organisation in line with their talents and aspirations.

Career dynamics

The following figure illustrates the ways in which career progression proceeds through stages.

- Expanding - new skills are acquired, knowledge is growing rapidly, and competencies are developing quickly.
- Establishing - skills and knowledge gained in the expanding phase are applied tested, modified and consolidated with experience.
- Maturing - individuals are well-established on their career paths. They proceed in accordance with their abilities, motivation and opportunities.



CAREER PROGRESSION CURVES

Source: National Agency of Civil Service, 2008

In the context of this chapter, the name "the public officer career" shall mean: vertically promoting, salary progress and horizontal and geographical mobility.

Internal promoting

Regarding internal promotion, member states may be divided into two groups, depending on how they practise the career system or the different structural characteristics system. Member States which are part of the first group put in place well-defined systems of promotion in which the official is promoted on the basis of the conditions settled and on the periodic increase in wages. In this system, the professional development is treated extensively (Bossaert et al, 2001).

In Finland, The Netherlands and Sweden, which are countries that have a system with different structural characteristics, promoting during the career is not organised according to a system fixed in advance. **In Austria**, there are nine groups of remuneration involving seven groups each (Verwendungsgruppen).

In the system of the categories of employment (Dienstklassen system) there is a possibility of promotion within the categories from a level (Dienstklasse) at an immediately

higher level, after finishing a waiting period and depending on the benefits provided. With the advancement system (Vrückungssystem) which is applied in parallel, advancing from one grade to another takes place only once every two years.

In Belgium, there are five levels of employment involving 13 ranks. Promotion is carried out by either rising from one rank to another, the immediately higher rank at the same level and either from one level to another, immediately superior. A career development through promotion to a higher level is not possible other than through examination of access. Advancement in rank is subject to examination success. **In France**, a promotion is regulated by the general statute and by the special statute of the body of officials. The promoting choice takes into account the age and also the agent's merits. The officials seeking promotion must participate in a contest or in an internal selection procedure. Among other things, advancing from one level or higher rank may be based on the results obtained, the length of service or the services provided (Bossaert et al, 2001).

In Germany, the items for promotion are usually announced at an internal level. Promotion is granted on the basis of professional performance and on the budget items available. The officer is always promoted to an immediately higher degree of career, which includes a degree of access, a promotion degree and a superior degree. In general, the officer remains in one of the four categories Einfacher, Mittlerer, gehobener or Höherer Dienst - but, equally, there is the possibility of access to a career of superior categories. For this, officials must follow a course or a complementary specific training and participate in a regulated advancement procedure.

In Greece, advancing to a higher degree depends on the benefits provided, on the seniority and evaluation of the officer. The decision is taken by a ministerial committee (five members, of which three belong to the category A). This committee selects lower personnel and heads direction. A special ministerial committee chooses the heads of general directorates, among university applicants who already have experience as a chief of division.

In Ireland there is no regulated system of promotion, but seniority is part of the criteria considered. In terms of advancement in the ministries, we can say that the internal promotion varies from one ministry to another and that a procedure can have as an objective the direct assessment of the eligible staff in the ministries or of a formal competition that allows reuniting qualified candidates groups. This interministerial contest is held to ensure the promotion of a number of posts, to the principal. Almost all vacancies at the upper management level are announced throughout the entire public function and are awarded internally (Bossaert et al, 2001).

In Luxembourg, promotion is possible at all levels of career: the lower, average and

higher career - after 3, 6 and 10 years of service, but success is linked to a specific examination for advancement. **In Portugal**, promotion follows the principle of seniority. A promotion in a rank directly superior may be granted only if the officer has obtained a "good" qualification in the past three years. For the two higher technical categories: technical and technical-professional, promotion is subject to a "good" qualification for the past five years or "very good" for the past three years. **In Spain**, promotion is possible only through participation in an opposition or a contest-opposition and a group of top administration or from one class to another. A promotion to a higher rank always involves participation in an open competition. **In the UK**, the issue of advancement has been delegated to ministries and agencies, which must establish their own rules in compliance with the civil service's code of management. The basic principles are the evaluation and selection of all candidates according to an order of merit determined on the basis of the benefits provided. Selection is made by the General Committees of promotion which are based on an annual assessment of certain aspects of behaviour and on the general ability of the candidate who holds an office of higher rank. The current tendency is to suppress the general committees for promotion in favour of a system of individual promoting to specific posts.

Mobility

The general context of modernisation

As we speak of the general evolution of the European civil service, we observe a trend towards a greater decentralisation, on the one hand, and an increased importance of the European dimension, on the other. The process of decentralisation involves the transfer of powers from central to regional administration. This involves the transfer of officials from central administration to regional entities (Belgium, Ireland, Spain, and Italy) (Bossaert et al, 2001). The increased influence of the European dimension represents another key element. This influence is seen particularly in the European exchange programmes for officials from the Member States. However, it should be noted that in two of the new Member States, Austria and Finland, the mobility is very rare, compared to other EU Member States and other European institutions. Moreover, the EU adherence imposes high demands on public administration and the other public services play an increasingly decisive role in choosing the economic operators when deciding the localisation of their activity.

The legal principles and objectives of mobility

All major forms of mobility (geographical, professional and/or functional) can be seen in various public functions. But often the distinction is made between voluntary and compulsory mobility. In general, mobility is encouraged for the following reasons:

- In terms of administration, mobility represents a means to increase the ministry's, office's or agency's flexibility of operation;
- From the official's point of view, mobility allows familiarity with other fields of work, developing new skills, expanding horizons, and professional progress.

Regarding the various legal foundation of mobility, we can distinguish between temporary mobility and permanent transfer:

- In the case of temporary change, **France** and **Germany** have set up a series of instruments aimed at promoting flexibility in the management of human resources (ex. French tools making available and deployment and German tools of Abordnung and Zuweisung);
- In the **UK** the number of temporary departments (voluntary) is high, and the instruments used for this purpose, classified as mobility, stem largely from the various ministries and authorities.

Among others, in **The Netherlands,** there were various instruments designed and implemented to promote temporary mobility. As an example, we include:

- Project teams, groups of officials who are affected for a short time to special projects. Then, these officials return to their posts (Belgium has resorted to this technique);
- Structural co-operation with interim work agencies;
- Co-operation agreements between ministries in the exchange of specially trained or redundant personnel.

Regarding the permanent move, **Ireland** has used an interesting tool. For appointing to a higher degree, the candidates are selected on a competitive basis. Grades are identical in all ministries, which allows inter-mobility.

Italy has developed a solution worthy of interest to the reassignment of personnel as a result of restructuring. Italian officials have the opportunity to present at their pleasure, candidature for vacancies in the civil service which are published on a list. These officials move on the basis of a list prepared by the host administration. If officials are declared redundant and did not request a return, they are reclassified by the office on the basis of a list of items remaining, despite voluntary mobility.

In The Netherlands they created centres of mobility to help surplus staff' to find jobs elsewhere. **In Belgium, Finland, France, Luxembourg and Spain**, transfer opportunities are generally limited, and often an exchange is possible only for a short period. [Danielle Bossaert, Christoph Demmke, Koen Nomden; Robert Polet, 2001]

In Finland they introduced a system of staff rotation which allows officials to hold

different positions for 6 or 12 months without changing their employer. Recently, **Austria and Germany** began to promote the mobility of officials in the networks involved in careers between different departments.

In France, the various forms of mobility of public servants are considered as a tool that allows the administration to adopt its new career systems. However, transfers take place, in particular, on demand, in the interest of the official. Geographic mobility can be made through the movement; this form of mobility concerns about 3% of officials every year. On the functional mobility plan, there are various possibilities:

- Through provision, in which the officer can work in a state administration for three years i.e. in a public institution, an institution or a body providing services of general interest, or in addition to an international organisation, continuing to collect compensation corresponding to the previous job;
- Deployment, throughout which officials can work in central government agencies, in public institutions and public enterprises, in addition to a local or regional community, in international organisations, enterprises, private institutions or associations that provide general services. These legal persons pay their officials, but they preserve their rights for advancement and promotion in the administration of origin.

Spain authorises transfers if the request of an official is related to an assessment or a specific contest, or if it is linked with the nomination of the most senior officials. There is an officio transfer, if the old post of the officer was abolished following a restructuring. The officio transfers to an international organisation or specific tasks carried out temporarily, while the permanent transfer to another department is the official's decision.

In Austria, the law concerning the public function stipulates various ways to ensure mobility, but it provides promoting geographic and occupational mobility in a career. **In Germany**, a change of career is public in the interest of a service without the official's approval being necessary. Among others, the official may be charged with tasks (possibly of a lower rank) which do not correspond to his office, for a maximum period of 2 years.

In Denmark, Ireland, Italy, The Netherlands and Portugal, Sweden and Britain, geographical or professional mobility, with or without a change of employer is common and easily achievable. In this group of countries, mobility options are numerous. Transfer from one department to another is common. **In Denmark**, the liberal or multilateral trade system was introduced among the different ministries, institutions, etc. and, in some cases, between the public and private sectors. **In Ireland,** officials may be forced, in terms of service regulations, to occupy their functions anywhere in the country, but in practice, active staff, for

general levels of service (which mean, common service levels in all departments) are not forced to change their position. For average staff, mobility may take any form. In the recruitment of Trainees University, officials who have an administrative officer degree must pass each year to another minister, for a period of three years after being hired in the civil service (Bossaert et al, 2001).

In Italy, all forms of mobility are possible, either at the request of the officials or ex officio by Dipartimento della funzione pubblica.

In the structural reform of the civil service, **The Netherlands** has begun promoting the mobility of officials. For high-level posts, a change of posts and spheres of responsibility is a condition for advancement.

In Portugal, officials can be transferred ex officio, but there are many ways to consider their interests and desires in terms of mobility.

In Sweden, there was no stipulated decision relating to mobility, but generally, it is widely practised in accordance with directives set by departments, responsible agencies; professional mobility being supported and encouraged by the remuneration system of the Swedish civil service, in which wages are determined from case to case. Here, mobility between different segments of the labour market is desired, which explains the fact that the same value is given both to the professional experience gained in the private sector, and with the civil service.

In the UK, some officials, in general officers holding a superior post to that of clerical officer, and who exercise their functions with full norm, can change positions in the national territory and, in some cases, also overseas. A permanent change of a post accessible from home or a temporary move may be required by all officials. In principle, professional mobility is encouraged especially for senior posts. The change of the employee is not only possible in various ministries and/or agencies, but also between the public and private sectors.

Mobility flows

In Ireland and Spain, the state decentralisation led to a large geographical mobility. **In Germany** we have a strong temporary increase in geographic mobility due to the transfer of the Federal Government from Bonn to Berlin.

In Belgium, the posts of the higher degrees were open to candidates from all federal ministries and bodies or agencies to increase functional mobility. Spanish experience demonstrates the danger of excessive mobility.

In Spain, excessive occupational mobility is regarded as ineffective because it was found that the need to constantly change position entailed a decrease in professionalism.

The obstacles against mobility

In many countries with a career system, we will find obstacles from the number and complexity of regulations and procedures. Equally, we should mention other types of obstacles:

- Emotional or psychological obstacles: fear of losing work, resistance to change;
- Obstacles related to exercising the functions that require professional skills and techniques.

Several states now simplify mobility conditions, in order to remove psychological barriers; some countries began to actively use mobility as a tool for personal development (Denmark, Finland, and The Netherlands).

In Ireland, progress has been made to remove the barriers between the general administration and the technical services. Whatever the profile or specialisation are, all officials from the sectors concerned may apply for vacancies on the two echelons of the public function (Bossaert et al, 2001).

Other efforts have been undertaken to remove barriers against mobility:

- **France** implemented an inter-departmental competition to create access to vacancies;
- **Spain** has also introduced inter-ministerial contests, but only to affect redundant staff;
- **The UK** has multiplied the number of measures referring to vacancies;

Measures in favour of mobility

In most countries, there is no formal link between mobility and evaluation procedures for officials. However, it has often been found that mobility is regarded as being one of the many factors of the evaluation procedures. Most countries associate mobility as a possibility for obtaining additional training, especially for preparing redundant staff for new employment opportunities, but also to allow, after the move, the transmission of knowledge necessary for the implementation of new functions. Among others, it reports the fact that mobility was taken into consideration in career progress. From this point of view, Britain stresses the danger of confusion between job rotation with career development.

2. Meritocracy

Represents a term widely discussed in the six-seven decades in philosophical language, sociology and journalism, and it covers the situation where social positions and the rewards

associated with them (income, power, prestige, privileges, etc.) are not inherited, but acquired by individuals on the basis of their qualities and personal merits.

Discussions about meritocracy fall in the wider issues of social inequality, regarded as unequal opportunities for social advancement and as the perpetuation, in one form or another, of the influence of social origin (uneven) of individuals over the social statuses acquired during their lifetime.

Meritocracy is considered a symptom of democratisation, permeability and equalisation of opportunities for social advancement. At one point, the continuing growth of indices of social mobility, the apparent weakening of the mechanisms for prescribing in favour of those of social status acquisition and the more pronounced conditioning of this level by the level of education, have created the illusion that the advanced industrial societies were in an "era of meritocracy" (M. Young, 1961).

To sociologists, meritocracy describes a social system (ideal) that would have the property in which the influence of the social origin over the status to be fully conveyed through education (and not the other way round: inheritance, privilege, etc.). G. Carlsson has called this type of social system "society without any delayed effects" (1958) and R. Boudon "a meritocratic society" (1973). Such an approach allows the application of a statistical treatment based on a formalised definition: a social system with three characteristics - the origin, the school level, the status - is meritocratic, if and only if the probability that an individual who is at a school level Sj could achieve a status Ck, is independent from the position of origin Cj. On the other hand, there are measurable comparisons between the actual and the ideal situations. Such comparisons have shown that developed societies cannot be assimilated to the meritocratic model, because they are placed at larger or smaller distances from this model. C. A.

In sociological literature, the meritocratic distribution is defined, by default or implicitly, by the principle: if a person has a higher level of education, the higher his/her social status should be. The distribution of people in line with this principle is possible in a closed system only under the very restrictive condition in which, at appropriate levels of education and status, the number of people is equal to the number of positions[1].

One of the French proverbial sayings, promoted in their characteristic pre-eminence for the fight for social affirmation, is: "Traiter chaqu'un selon son merit." In the United States

[1] Boudon writes "X can be called a meritocratic society: if a high social position is available, it is most likely that will be occupied by an individual who has a high level of education". Similarly, in this empirical analysis of the occupational careers, Tachibanaki uses the probabilistic frame in debating meritocracy. However, this approach seems to complicate the definition of a concept inherent deterministic according to whom the meritocracy results in precise fulfillment of certain rules of distribution.

the term "merit system" is consecrated both in socio-political literature, and in the practice and the organisation laws of public administration. The "*U.S. Civil Service*" - traditional American institution, adopted this merit system by affirming it in terms of "hiring and promotions based on merit confirmed by examination".

"Merit" means, in general, intelligence plus effort, (disposition) having the obligation to identify early on (for each person), the capacity of both these qualities to be formed selectively by promoting an educational system designed to encourage and impose those merits as soon as possible, so as to configure them as an elite prepared to assume governance. In addition, all functions and hierarchical positions (social or political) should be obtained (with this conception) only on merit and on the virtue of the idea that, anywhere you get (on the social level), at the top of the pyramid or at its base, that is where you have to be (and you can achieve it or exceed it throughout merits). Meritocracy was characterised as a promoter of certain rules (of social ascent) by social status and not by social class, which are distinct from the rest through systematic unequal privileges. This requires a society providing equal opportunities and a great mobility to change the person's social position, achieved by a continuous selection (based on the rise by merit). Many people see meritocracy as a distinctive feature of modern governance and, accordingly (as the views of each), some are eulogising it seeking to impose, others are combating and others are ignoring it.

3. The motivation of civil servants

Before we begin exploring ways to tackle motivational problems, let us first discuss some of the telling signs of an unmotivated staff:

Telling Signs

It is clear that unmotivated staff is more than just lazy staff. They are not proactive and are afraid to make decisions [National Agency of Civil Service, 2007]. The following are some remarks that typically reflect these symptoms:

"The more you work, the more mistakes you make. So don't do anything unless you have to. And even then, you do as little as possible."

"We just do our job, play it safe. We are not paid to make our own judgements. It is perfectly alright to seek and follow the boss's instructions every time."

"Why bother making suggestions? Let's check how the job was done last time and follow."

Are these symptoms commonplace in the civil service? If so, how can we turn them around? Let us reflect on the following questions:

- What prevents us from becoming motivated?
- What motivates staff?

- What are the characteristics of motivated staff?

What Prevents Civil Service Employees from becoming Motivated Employees?

The common responses are the following:

- Office politics
- Repetitive, simple tasks all the time
- Unclear instructions
- Organisational vision, mission and values not clearly communicated
- Vague and contradicting instructions
- Unnecessary rules
- Unproductive meetings
- Unfairness
- Lack of information
- Discouraging responses
- Tolerance of poor performance
- Over-control
- No recognition of achievements by the community

What Motivates Staff?

Money is not the magic solution to motivation. There are many other effective tools to motivate staff. [National Agency of Civil Service, 2007] When junior and middle managers attending management training programmes are asked about their civil service career, they remember vividly the times when:

- they are assigned a challenging job which gives them a sense of achievement, responsibility, growth, enjoyment and a promising promotion prospect;
- their efforts are recognised and appreciated by the management and the public;
- they receive the trust and full support of their supervisors;
- they can complete a job by themselves; and
- they are placed in a harmonious working environment.

Characteristics of a Motivated Staff

- Reflected through their actions are some of the following behaviours:
- Energetic and full of initiative
- Committed to serving the community
- Practise the mission of the organisation
- Want to think for themselves
- Appreciate recognition and challenges
- Seek opportunities to improve their capabilities
- Take proactive and positive actions to solve problems

- Believe that they could contribute to make a difference
- Set their own challenging and achievable work targets

Worthwhile Work

People are motivated because they know that their work is worthwhile or when they see their work as meaningful. There are, in fact, many ways to let our staff experience the meaningfulness of their job:

- Delegate tasks that challenge and stretch the skills and abilities of staff.
- Instead of assigning part of a task, let staff be responsible for the whole task from beginning to end to produce a visible outcome.
- Let staff understand why they are needed.
- Let staff understand how the result of their work has a significant impact on the well-being of other people.
- Explain to staff the vision, mission and values of the department, and how their work aligns with them.
- Promote ownership of problem solving.
- Empower team member.
- Involve staff in making management decisions.

The Power of Acknowledgement

Motivation comes also from an act of recognition, a word of encouragement, or a sense of respect. It is the power of acknowledgement that brings enthusiasm to worthwhile work. In addition, the good news is that every manager has an unlimited supply of such power (National Agency of Civil Service, 2007). Use this power constructively:

- Encourage the worst staff and praise them when they do something right.
- Give TRUE congratulations – Timely, Responsive, Unconditional, Enthusiastic.
- Celebrate what you want to see more often.
- Cheer any progress, not just the result.
- Tell people what a great job they have done or present them with an award, and make their achievements known to the community.
- Catch people doing things right, not just doing things wrong.
- Give positive feedback when you spot performance improvement.
- Recognise quality performance of individual team members and thank them personally.
- Give credit to team members for their assistance to your achievement.
- Appreciate the value of risk-taking and mistakes.

Your Personal Credibility

Supervisors must provide a stimulating and open environment in which their employees feel comfortable to make suggestions. They should work with their employees to refine a rough

idea or even draft a totally new suggestion for improvement. When this pervades, loyalty and commitment from employees will be achieved (National Agency of Civil Service, 2007). Therefore, as a leader, in order to motivate your people, you personally have to:

- abide by civil service core values:
  - commitment to the rule of law;
  - honesty and integrity above private interests;
  - accountability and openness in decision-making and in its action;
  - political neutrality in conducting official duties;
  - impartiality in the execution of public functions;
  - dedication and diligence in serving the community;
- be a role model for team members.
- be motivated manager yourself.
- be brave enough to admit when you are wrong.
- be able to speak positively all the time.
- be organised yourself.
- be open-minded to suggestions and opinions.
- be attentive to team members' emotional needs, be a human leader.
- be accountable, so team members feel secure enough to take risks.

Working Through People

The basic principle underpinning motivation is that if staff are managed effectively, they will seek to give of their best voluntarily without the need for control through rules and sanctions - they will eventually be self-managing.

Managers sometimes slip into the habit of:

- Always give orders and instructions, allowing no disagreement.
- Always expect staff to give twelve hours of output for eight hours' time and pay.
- Thinking training is unnecessary.
- Staff are workers - their job is only to follow orders.
- Staff are not supposed to know the details; they are classified and need not know more than their boss's orders.
- The essence of staff management is control - the supervisors' only responsibility is to catch wrong behaviour and to avoid repetition by punishment and discipline.

Do you want our staff to work in a demotivating environment? If not, what can we do? How can we achieve results through people? The following are some suggestions (National Agency of Civil Service, 2007):

- Value individuals as persons.
- Address your staff as "team members" instead of subordinates.
- Be result-oriented; disseminate the purpose and objectives of tasks.

- Give people work that demands their best and allow them to learn and move ahead into uncharted territory.
- Keep team members informed of new developments.
- Encourage problem solving instead of faultfinding.
- Never say, "You're wrong" when you disagree with them.
- Deal with errors constructively; be helpful at all times.
- Be ready to coach team members.
- Recommend inspiring training courses for team members.
- Go to team members' places instead of asking them to come to your office all the time.
- Encourage team members' involvement in management decisions.

4. Definition of Whistleblowing

A good definition can help work out strategies for coping better with the reality. Therefore a definition has to be seen as a function and with an intention to function in a particular way. Richard Calland and Guy Dehn, who also quote dictionaries and other official sources for the same purpose, start their more comprehensive coverage of the topic with a usefully broad definition as "the options available to an employee to raise concerns about workplace wrongdoings: Of course, it is further specified by the authors, but not in the sense of a closed definition (European Parliament, 2006).

A definition that only includes prescribed paths of communication would not help in this environment. The previous sections of this chapter showed, by way of approximation that Whistleblowing grows out of internal risk communication i.e. where there is a perceived necessity to report a risk, be it for legal, ethical or practical reasons. The risk management cycle is by definition open to any type of relevant information at virtually any time and from any source.

Whistleblowing shall then be described as:

- insider disclosure of what is perceived to be evidence;
- illegal conduct or other serious risks;
- out of or in relation to an organisation's activities including the work related activities of its staff.

Note should be taken that this definition does not contain any motives or elements of individual ethics. In a broader sense, there are two access points through which the individual side may enter:

- the "perception" of something as evidencing certain (risky) circumstances and
- the inherent "reason to believe" (also a "perception") that using prescribed paths would not make the necessary difference.

It does not preclude other explanations but functions mostly to alleviate the whistleblower of otherwise existing burdens of proof, thus guaranteeing that the information will reach a place where it will be processed. The absence of subjective elements additionally distinguishes Whistleblowing from complaints and grievances (European Parliament, 2006).

For similar reasons, the prerogative of a duty to disclose or even a responsibility to make such a disclosure is not included in the definition, as it would raise the burden and would hinder an adequate flow of information. This can be differentiated in the rules on Whistleblowing - but should not be excluded from the basic definition. Whether or when Whistleblowing requires special protection, e.g. where it happens outside the prescribed internal paths of reporting, cannot be part of the definition but instead of the (legal) consequences. Whether at a later stage certain types of Whistleblowing should be promoted and/or others prohibited, is a point for discussion when setting up rules.

The focus on risk communication and its functions means that it particularly requires such protection where it is addressed, not to the supervisor or other immediately responsible person, but to another person or institution that is capable of stopping or remedying the illegality or managing the risk.

This would be the case where there is reason to believe that prescribed paths would not lead to someone willing or able to address the perceived risk constructively. In these cases, the risk information carries two important additional messages: the risk management system needs to be checked for efficiency and there may be a personal risk for the whistleblower that needs to be taken care of (European Parliament, 2006).

Whistleblowing is an area of conflicting duties, loyalties, interests, perceptions, cultures and interests. This area of conflict shall be called the risk communication dilemma. There are mainly three parties (actors or subjects) involved in this dilemma:

- the whistleblower,
- his organisation, including its management,
- other stakeholders (the "public").

Their relationship is not linear but could best be depicted by three partly overlapping spheres. Similarly there are three objects to which the subjects relate each in a specific manner, depending on their role and the approach chosen. These objects can be defined as:

- the information,
- the disclosure,
- the consequences.

No matter which of the subjects or objects an approach chooses as the pivot, each of the others will be affected. When we look at the conceivable approaches, we therefore

simultaneously have to look at the parties and their activities as potentially appropriate points of intervention (European Parliament, 2006).

The basic forms of Whistleblowing

a) Internal/External

Clearly, from an organisational point of view, it does make a difference if accusations and dissent can be kept internal. Any debate obviously changes its character depending on the participants - and, once a disclosure has been made to the public, there will be new participants with different interests. It does make sense therefore to differentiate between internal and external whistleblowing, without even mentioning questions of privacy and confidentiality.

b)Un-/Authorised

Rather closely related to this first possible distinction is the question of whether the disclosure was specifically authorised or if it was according to the rules. As we have seen previously, there is a general obligation to make certain internal disclosures and there may even be an explicit one, as is the case in the EU Commission. However, in many situations, there will be rules gagging a disclosure. For the whistleblower, this differentiation makes sense, if he can expect to be rewarded - or at least not to suffer from reprisals - for dutiful behaviour.

c) Public/Private Interest

It is important to know whether a disclosure is made in "the Public Interest" or if it is for private reasons and whether it harms other private interests. If, in either case, rights and values will be damaged, the protection of the public interest will have to be balanced against damages to private interests.

Serious irregularities and criminal acts always work against the public interest, since the established rules, including Criminal Law, express the public interest and what is seen as good order. In the case of the EU, it may be open to argument whether the interest of "the Communities", as in Article 11 Staff Regulation, can differ from the public interest in the observance of the laws and the physical integrity of all citizens. Were this interest of the Communities to be understood as the (self) interest of the administration, this would designate a typical example of private interest.

In some regulations, a largely equivalent distinction is made as to whether the whistleblower made his disclosure "only with public interest in mind" or whether perhaps also for other motives (European Parliament, 2006).

d) Personal Involvement/Detachment

Sometimes there may be a whistleblower who was, or is, personally involved in what he wants to disclose. Reporting from the workplace and from his own observations, he may have

become involved quite innocently; it may be a question of proximity, or for reasons of inter-relatedness of tasks, or knowing, without fully understanding the implications, or fully understanding but later regretting them, suddenly becoming aware of unforeseen and entirely unwanted consequences.

There may still be a chance to prevent further damage. Even at a very late stage of the investigations, it may be important to obtain the information from such a source to help analyse the structural problems and prevent a re-occurrence. Involvement or detachment does not predetermine the value of the information – or of the disclosing person.

e) Crime/risk as an object of a disclosure

Defined narrowly, only "organisational wrongdoing", which might even exclude private acts committed at the workplace, would be admitted as an object of disclosure. An even narrower definition would include only "serious" or otherwise specified crimes or other degrees of misconduct committed by employees, while a much wider one takes in any sort of risk arising from, or relating to, the activities of the organisation and its staff. The advantage of the risk focus is the avoidance of blaming and shaming and the orientation on future potential, including learning from previous errors. The risk approach, with a connotation of uncertainty and not of damage, suits today's environment, where one strategy is perceived as fitting today but as a failure under tomorrow's circumstances (European Parliament, 2006).

f) With/Without retaliation

There have been attempts to provide a certain amount of protection after disclosures, but only to persons who previously have been harassed as a consequence of the disclosure. In one particular organisation, part of their definition of a "whistleblower" included prior harassment, officially acknowledged by the organisation. Protection, only after the damage is done, seems particularly ineffective. Since organisations do not tend to link harassment with an act of whistleblowing, such a definition will tend to turn into a circular argument: no protection, unless you have been harassed; but if you have been harassed, that was probably not because you are a whistleblower - and again: no protection.

g) *Whistleblower from inside/outside*

The position of the whistleblower in relation to the organisation and other staff might also be a basis for discernment: All known definitions seem to regard the whistleblower as someone close enough to the organisation to potentially suffer retaliation. This clearly includes every employee, with the possible exception of top management. Top management will usually be excluded, because they are seen to be in a position to affect the necessary changes themselves. However, this is not necessarily the case, and reprisals are certainly conceivable from different sides. Retired and contract personnel are potential whistleblowers. So are job applicants, although they may have less contact with any evidence and have more

difficulties in proving harassment caused by their Whistleblowing (European Parliament, 2006).

Persons periodically working inside an organisation, which is not their employer (modern type of outsourcing), may have typical whistleblower knowledge and deserve protection. Since external contractors are usually not included in the definition of whistleblowing, these workers need protection through special agreements between their employer (the contractor) and the beneficiary (e.g. the EU Commission), providing for a right to disclosure to the beneficiary and protection against harassment both from the side of the beneficiary as well as from the employer. In this type of situation, it will also be appropriate to protect the external contractor from harassment (e.g. loss of contract etc.). Obviously there needs to be a lot of thought put into an adaptive solution, when setting up any corporate rules on this.

h) Who is by-passed?

Similar to the argument regarding top executives, there is usually no situation, where a middle manager would be perceived as "blowing the whistle" on one of his subordinates. He ought to have the capabilities and the responsibility personally to take care of any perceived work-related problem in which they may be involved. While "mobbing" against a superior is not exceptional, this type of "disclosure" is generally excluded by definition.

i) Others

There have also been differentiations along the lines of "Unbending Resistors, Implicated Protestors and Reluctant Collaborators". The substantial content of such descriptions seems to be included in the above points. The language of such descriptions sounds more judgemental than is useful in finding a common understanding in this context. If they add anything new, it might be situative in the sense that they refer to different phases of dissent at the workplace, out of which the whistleblower would make his disclosure; or in that they refer to the degree of emotional involvement. While it may be true that high degrees of personal or emotional involvement co-relate with the likelihood of harassment and can also become an impediment to communication, there seems to be no apparent reason to value the information from a highly involved whistleblower less than from one with little involvement. Equally, there is no justification for harassment and all good reason to protect such persons. As will be discussed in the further course of this study, early disclosures should be encouraged.

Protection of the Whistleblower

The worldwide legal situation can be fully described by three levels of whistleblower protection:

- Common Law countries with some specific, statutory whistleblower protection,
- Roman Law countries with unspecific but not insignificant statutory protection,
- Other countries, with or without statutory protection, but without structures to warrant minimum standards of protection.

In comparative law it is not sufficient to compare individual sections and articles of law. The functions in the entire system have to be assessed, although little more can be done than to line up models against each other, because anything else would be the famous comparison of apples and pears (European Parliament, 2006).

Roman Law Tradition Approaches

In all European countries, there are systems that permit or even demand disclosures, and grant from time to time a certain level of protection. The downside to this is the fact that all of these systems are limited to certain parts of the workforce, certain types of disclosures, or do not explicitly provide for protection against reprisal.

To take just one example, there has been a lively debate in France over the appropriateness and legality of the Sarbanes-Oxley type of rules on Whistleblowing in companies operating in France, candidly refused e.g. in the National Anti-Corruption Agency (SCPC) 2004 Annual report,40, whose director, Mathon, has seen the issue basically as that of avoiding inadvertently introducing systems based on US American values, thus neglecting ones own culture.41 Reporting is, however, not entirely foreign to the French business culture. There are even obligations for companies to report, for example, in the plea-bargaining procedures set up by the Conseil de la Concurrence (Fair Competition Authority) with leniency and settlement procedures as well as in the legal obligation to report suspicions to the TRACFIN, authority on money laundering. Members of specific professions (Court of Auditors, Banks) may also be obliged to report irregularities or suspicions to TRACFIN or the judiciary.

Civil Servants have to report corruption under Article 40 of the Code of Civil Procedure to the public prosecutor (European Parliament, 2006).

France even has statutes explicitly demanding "external" disclosures. Examples concern such disparate topics as money laundering and child molestation. Internal reporting of serious risks is the rule. This is not surprising, since no system can survive without such self-regulating information. This is not so much a matter of culture than of necessity. Of course, French organisations are not interested in tolerating collusive behaviour against the interests of the

organisation. The problem starts when risk information by-passes superiors. Clearly, this sort of information is highly sensitive, and to be in a position of having to disclose such information is not desirable anywhere in the world. There may be cultures which regard "saving face" so highly that an employee might kill himself rather than disclose anything about his patron - with the patron ending up having to kill himself, when eventually the disaster becomes public. This seems to have been the case in Far-Eastern societies. Even there, rules addressing external disclosure and protecting whistleblowers have been introduced now. France - as well as Central and Eastern European countries and even Spain, Italy and Germany for that matter - are countries that have strong, historically founded fears about defamation. That notwithstanding, they have always had and still do have a duty to report.

Resistance movements, supposedly intrinsic to a national anti-whistleblower culture, could not have existed if everyone had always adhered to internal lines of reporting. Even then, responsibility meant having to and also being able to, “answer for”.

It is paradigmatic and helpful to understand fully the stance of the French Commission on Information (European Parliament, 2006).

Technology and Liberty (Data protection agency, CNIL) on Sarbanes Oxley type of technical Whistleblowing systems. The CNIL:

- stresses the due process rights of incriminated employees
- recommends not to encourage anonymous reporting and
- advises against a (general) duty to report, which might be illegal,
- warns against relying on whistleblowing instead of reasonable internal auditing.

Otherwise, the CNIL announces its support for measures that conform to Sarbanes Oxley and acknowledges the necessity for whistleblowing, as such, as well as support and protection for whistleblowers. The Dutch Data Protection Authority had a hearing on the related subject of cross-border exchange of personal data in 2004. In its session of 31 Jan - 1 Feb, 2006, the careful stance of the CNIL has been adopted by the so-called Article 29 Data Protection Working Party of the EU in a yet unpublished document: "Opinion 1/2006 on the application of EU data protection rules to internal whistleblowing schemes in the fields of accounting, internal accounting controls, auditing matters, fight against bribery, banking and financial crime”. The requirements of the EU Data Protection Directive 95/46/EC in whistleblower hotlines were summed up by the Working Party as follows:

- The scope of application and the persons against whom a report can be filed must be limited according to the purposes (risk management, crime prevention).
- Those making a disclosure should be assured that their identity will be kept confidential. Anonymous reports should not be encouraged under ordinary circumstances.
- Only data necessary for further investigation of the report may be processed.

- Within two months after closing the investigation, the data should be deleted.
- Only in cases which require further legal steps, may the data be saved for a longer period.
- The indicted person must be informed of the report (disclosure) as soon as there is no ore risk of loss of evidence. The name of the disclosing person should normally be given to the accused, only when the disclosure was maliciously wrong.

Germany has seen a 2003 Federal Labour Court decision, which detailed under which conditions an employee could disclose to investigators evidence of criminal acts committed by his superior.

Ever since a Federal Constitutional Court Decision of 2001, it has been accepted that an employee has the right to such disclosures to the prosecutors. The Labour Court upholds this right in so far as the employee shows he was not motivated to injure the employer with the disclosure. This was immediately criticised and is not likely to stay, since it effectively voids the Constitutional Court decision. In effect, it would make whistleblowing impossible: no one will ever be able to prove non-existing motives. This means that although the German constitution provides a fairly wide and protected right to disclosure, in practice its extension is unclear. As anywhere else, people in Germany have an explicit right, and occasionally a duty, to report under certain administrative laws, which extend even further for members of the public service. The general principle of protection from unreasonably discriminatory or harassing measures is spelled out in § 612a BGB (Civil Code). Additional regulations to protect the whistleblower are in the process of discussion, with more and more large corporations adopting private whistleblower policies, occasionally employing an interesting electronic system to facilitate a dialogue with anonymous whistleblowers (European Parliament, 2006).

It is not surprising that the new EU Member States all seem to have a duty for public officials to disclose fraud, which, if breached, is occasionally even a criminal offence. They had to comply with international conventions and treaties before accession. Hungary is one of the few countries with a criminal law provision (Article 257 of the code) protecting whistleblowers against "taking a disadvantageous measure against the announcer because of an announcement of public concern", and punishable with imprisonment of up to two years. In all candidate countries it seems to be difficult in practice to disclose, collect and manage risk information effectively, whereas everywhere, dismissal from work for whistleblowing is illegal. The study by Nuutila deplores that, in practice, there is no protection against dismissal. Any reason can be made up and will usually be sufficient - and it assumes that the disclosure processes are even less satisfactory in the old member States with the following exception.

Common Law models

The UK Public Interest Disclosure Act 1998 (PIDA) covers all "workers" in a broader sense and provides for disclosure to a number of prescribed bodies in circumstances set out in the Act. As in business and charitable organisations, any public administration is required to have a whistleblowing procedure in place. Detailed guidance on raising matters under this Act and the Civil Service Code is set out in the Directory of Civil Service Guidance. The groundwork was laid by the Parliamentary Commission on Standards in Public Life (CSPL), whose "Seven Principles of Public Life" form a basis for all public officials, upon which the various departments have developed specific codes, training plans etc.

The latest remarks of the CSPL on whistleblowing are documented completely in Annex IV of this study. It emphasises that the PIDA "is a helpful driver, but must be recognised as a 'backstop' which can provide redress when things go wrong, not as a substitute for cultures that actively encourage the challenge of inappropriate behaviour". As a backstop, PIDA delimits the minimum of what should be expected in proper risk communication from the organisation and managers, as well as from staff, and outlines a minimum of whistleblower protection. This is complemented by various other rules, particularly in the Labour Law, some of which are statutory, e.g. the Civil Service Code for the public sector.

A disclosure (not a whistleblower!) is "protected" under the PIDA, if it relates to specific subject matter (breaches of law, environmental, health and safety issues or a cover-up of such matters) (European Parliament, 2006).

The PIDA then contains something like a reasoned escalation manual directing staff:

- first to seek confidential advice, then to
- blow the whistle within the internal hierarchy, or
- with another responsible person (Level I: internal disclosure).
- Depending on the degree of evidence supporting the disclosure, it also protects:

Whistleblowing to designated authorities (Level II: regulatory disclosure) or even wider disclosures (Level III) where evidence and/or circumstances justify it.

On the third level, there must also be a reasonable expectation of a cover up or harassment of the whistleblower, or a failure to react to the concern. Extraordinary seriousness of the matter is also sufficient, as long as it is reasonable to make the disclosure at a chosen point, and the whistleblower has acted in good faith, believing the facts to be substantially true. The escalation procedure takes into account a weighted measure, whereby it must be reasonable to address the particular recipient of the disclosure, according to its

seriousness, or particular concerns of confidentiality on the one hand, and for example, past experiences with the employer's risk management culture, to transfer more and more of the burden of proof to the whistleblower in exchange for a wider right of disclosure.

The PIDA motivates employers to set up improvements in the risk communication culture without making any particular demands on them. It does not even grant whistleblowers any extraordinary protection, however it does permit them to choose how far they want to go in making external disclosures, depending on how strong the evidence is and how inadequately internal risk communication is managed. The Act sends out the message: if you really don't think you can make your important disclosure internally, it will be better to make it to some relevant external institution rather than not at all (European Parliament, 2006).

The employer can expect to experience the undesirable consequences of external whistleblowing if he has not been able to show that a serious and reasonably well-supported concern will be acted upon responsibly in the enterprise. It is therefore not primarily the exercise of free individual expression that eventually motivates organisations under the PIDA to make the necessary adjustments.

It is in their own self-interest to listen to what may be well supported information on serious risks. The management is then free to choose solutions for the communicative process that suit its situation, as long as it addresses the risk and does not persecute the messenger. The employee is free to choose where he wants to make the disclosure as long as the requirements of the respective level are met.

The PIDA system automatically enforces an internal reporting system as a prerogative, because the disadvantages for the employer who cannot demonstrate the installation and efficacy of such a system are considerable (protected external disclosures and further consequences). While there are no statutory punishments as protection against reprisals, the remedies and rewards awarded under the PIDA seem, on average, are considerable enough to thwart obvious harassment.

What distinguishes the PIDA from other legislation?

- It covers virtually any employee. In the public service, the security related services had been promised an equivalent solution. Since this seems not to have happened, there is now a movement to also include these groups under PIDA.
- An honest and reasonable suspicion will mean the whistleblower is protected, as long as he carries the suspicion only to his manager or his employer. "Honest and reasonable" means that the disclosure cannot be malicious and against better knowledge.

- If the whistleblower additionally believes that the information is true, he may go to an outside body - but only to certain prescribed bodies - usually the respective regulator.
- If, additionally, the risk is exceptionally serious or the whistleblower has reason to believe he would have to face reprisal, or if there is really no one else to turn to, the whistleblower can make his disclosure to virtually any recipient, as long as this seems reasonable.

It will seem reasonable if that recipient is so selected as to be able to effectively address the risk, and reasonable interests of confidentiality are considered.

- Protection means "full compensation" in case there has been a reprisal - i.e. normally reinstatement or monetary compensation to the extent that the whistleblower is materially in the same position as if no reprisal had happened. It is important to note that an interim injunction may be granted to continue on the job for the time of any judicial proceedings.
- Inasmuch as the above conditions are met, contractual agreements on confidentiality (gagging clauses) or other agreements prejudicing these rights are void. The Official Secrets Act prevails over the PIDA.

The CSPL has explicitly adopted recommendations to assure that:

- employees know about and trust the disclosure mechanism;
- employees have realistic advice on the implications of disclosure;
- the practice is continuously monitored for the efficiency of the rules; and
- employees are routinely informed of the disclosure channels available to them.

The Australian situation has some parallels with the situation in the U.S.A. (next section below), which is to be discussed next, in that it is dissected into diverse regimes in the different states, in addition to one at the national level. Furthermore, it was found to be generally not working well by a National Integrity Assessment, some of the reasons being:

- a vague description of the covered subject matter,
- a limited personal coverage,
- a limited protection from reprisal,
- no independent body as a point of disclosure.

New Zealand's Protected Disclosures Act of 2000 offers a more consolidated picture than that in the different regions of Australia. The rules in New Zealand can be summed up this way: any employee in the widest sense has a right to make a disclosure to the Ombudsmen who would also take up investigations as necessary. This generally includes officers in the security services, to whom some additional special rules apply. Usually, someone should first try internal disclosures, but disclosures direct to the Ombudsmen are

also permissible immediately. However, a complaint to the Ombudsmen over improper internal handling of a disclosure in the private sector (appeal) seems to be impossible. That means there is an incentive in the private sector to go to the Ombudsmen directly. The threshold for disclosures in the private sector is that of a serious risk, whereas where public funds are involved, any irregularity will suffice. Reasonable belief that the information is true or even likely to be true is sufficient. As a way of protection, Sec. 18 of the PDA offers immunity from civil and criminal proceedings for the whistleblower. Possible reprisals are illegal but would have to be dealt with under regular labour law jurisdiction. The identity of the whistleblower and his actions are to be kept confidential, unless exceptionally, the investigation or a number of other reasons (natural law, procedural fairness) dictate otherwise. The rules and pathways seem generally simple and clear. Amendments are sought from practical experience to provide for a guidance and assistance function to whistleblowers in the Ombudsmen's Office. The low level of usage was attributed to inconsistencies in the application and lack of trust in the protection of the identity of the whistleblower.

South Africa has a Protected Disclosure Act modelled after the PIDA but with some serious drawbacks in comparison with PIDA, which have been highlighted by a Government Commission discussion paper (European Parliament, 2006).

Canada adopted a new regime late in 2005 after years of careful evaluations and monitoring of the 2001 policy on Internal Disclosures of Wrongdoing in the public sector. It seems that the recommendations of another Government Commission will lead to further improvements, increasing the scope of personal and subject matter coverage, timeliness of response and of access to information in the foreseeable future. The Recommendations dwell on fortifying a statute on whistleblowing with a separate value statement (Code of Conduct).

The United States of America

This leads to the picture revealed in the forerunner country of whistleblowing legislation - the USA. The situation there is graphically described by one of the founder activists and legal scholars, Tom Devine, stating that Whistleblower Laws had continuously undermined protection against retaliation.

Since 1983, a maze of whistleblower protection legislation has spread from the federal to the state level and back. The common denominator is a First Amendment (Freedom of Speech) based protection for the individual. The first obstacle is the patchwork of different provisions, all of them with their specific outline of protected individuals, procedures to be followed, statutes of limitation etc.

The statutes typically focus not so much on the disclosure, but on the person of the whistleblower and the act of retaliation, having their reasoning in the Freedom of Speech Amendment to the Constitution (European Parliament, 2006).

Being focussed on retaliation, they typically require that the employer knew of the protected activity (otherwise no interconnection), and that the retaliation was indeed at least partly motivated by the protected activity. The typical defence then is that other behaviour had also justified the employer's reaction. The relative quality of the respective law is then determined by how the burden of proof is balanced between the parties.

A peculiarity of the federal whistleblower protection regime in the US originated in the 19 century civil war and experience with fraudulent military supplies: the False Claims Act. It is one of the oldest laws on whistleblowing worldwide. After the scrapping of the most important clauses in 1943, it was revamped in 1986 with renewed provisions granting whistleblowers acting as proxy prosecutors ("qui tam ... ") to collect a 15-30% fraction of the collected damages. This has returned far more than a billion US Dollars to the Federal budget.

The broadest and earliest act in the USA covers (only) federal civil servants (Whistleblower Protection Act of 1978, WPA). WPA protects “speech” defined as the act of lawfully disclosing information that an employee or applicant reasonably believes evidences illegality, gross waste, gross mismanagement, abuses of authority, or a substantial and specific danger to public health or safety.

A practical obstacle in the US system has been, for some time, the Office of Special Council (OSC), an agency established in 1979 to support whistleblowers and chaperone them through the procedures of the WPA, but found in fact to be acting as a gatekeeper and bottleneck, which in the early years seemed to make it often impossible to even enter the system. Once the OSC has investigated a case of reprisal, it makes a recommendation to the employer and if that is futile, takes the case to the Merit System Protection Board, a panel of administrative judges for labour complaints.

In recent years, the OSC has established better relationships with whistleblower protection groups. OSC has also embarked upon a policy of publishing its actions on behalf of whistleblowers, and undertaking initiatives (such as the Special Counsel's "Public Service Award") to publicly recognise the contributions of whistleblowers to the public interest (European Parliament, 2006).

The scope of the act with the stiffest sanctions against harassment, the Sarbanes Oxley Act of 2002 (SOX), is not yet fully tested, while some practitioners believe it to cover virtually any employment situation. It makes an impact in the sense that it obliges covered corporations to set up a system for the intake of generally internal disclosures (sec. 301) and

the protection of their confidentiality - but in sec. 307, also an obligation of company counsel (attorneys!) practising at the Security and Exchange Commission (SEC) to disclose any relevant information there. This is an innovative concept, since it reverses traditionally total confidentiality in favour of the client. It also seriously influences corporate risk management, since a system could be faulty, potentially leading to delisting with the SEC, if even one disclosure was not documented and given plausible follow-up.

This addresses the primary concern of whistleblowers that they might be ignored. Under SOX, ignoring risk information seems harder on management than giving proper follow-up. In any case, failure to set up and manage the system in this prescribed way can be sanctioned by imprisonment, as well as heavy fines on individuals and companies and delisting. Discrimination against a whistleblower can be penalised by a prison sentence of up to 10 years and/or a fine of up to 5 million USD.

Probably all of the European companies listed under the SEC, and the majority of their affiliates, have installed formal procedures aiming to conform to SOX whistleblower regulations. Obviously that also has an enormous influence on non-U.S. legal culture, as the French discussion reflects (European Parliament, 2006).

Finally, another important feature of the US system is the Corporate Sentencing Guidelines, their modernisation invoked by SOX. They provide for incentives to corporations to prove that they have functioning systems in place to react adequately to risk communication. Corporations otherwise run the risk of being delisted by the SEC and fined up to 5 Mio. USD and liable for further compensation. 2.3.4. The UN General Secretariat.

On 1 January, 2006, a Policy on Whistleblowing for the United Nations Organisation came into effect. An original draft version had been prepared by the UN Office of Internal Oversight, supported by the author of this study. The Government Accountability Project had helped in drafting a final version after several rounds of input from the entire UN staff.

The UN Policy contains a considerable number of elements typically highlighted in U.S. whistleblower legislation. The statement of purpose is focussed on the whistleblower and his protection, more than on how reporting can help the organisation reach its goals and values. However, everyone who could possibly make an internal report is covered and even persons from the outside, reporting on wrongdoing inside the organisation, are officially protected against retaliation.

In a general section, it defines the reporting of any breach of the organisation's rules as a staff duty. Illegal behaviour of staff constitutes such a breach, so that all sorts of illegal behaviour inside the organisation, plus certain types of irregularities, give a right to

protection. A refusal to participate in such breaches, and co-operation in audits and investigations are equally protected (European Parliament, 2006).

The Policy lists four types of internal recipients of reports, without any hierarchy or preference. Other internal addressees are not prohibited. Clearly, external reporting will be very limited under the policy. External reporting is also protected, but only in the following cases:

- if the use of (all) internal mechanisms is not possible,
- for reasonable fear of retaliation;
- for fear that evidence would be concealed or destroyed
- or that the organisation has not reacted on a previous report within six months; and
- that the individual does not accept benefits for such an external disclosure.

The substance of these categories may be relatively easy to fulfil. The burden of proof, however, is with the whistleblower. There is an additional third condition, which will be particularly difficult to prove, unless the UN administrative justice system can define reasonable ways: external reporting needs to be "necessary" to avoid violations of national or international law or other imminent substantial risks (European Parliament, 2006).

The UN General Secretariat has established an Ethics Office, reporting only to the Secretary General and the General Assembly, which is responsible for receiving complaints and protective measures including preliminary injunctions. It may bypass the internal investigation and oversight mechanisms if there might be a conflict of interest. The Ethics Office will complete a preliminary review of a report or complaint within 45 days. If the Office of Internal Oversight Services (, functional equivalent of OLAF but a fraction its size) is then asked for further investigations, the OIOS will report within 120 days and seek to complete its investigations by that date.

The Ethics Office has an extensive counselling function and may advise the staff of the other relevant services of the organization, such as the Office of the Ombudsman, or refer a situation to the Management Performance Board (European Parliament, 2006).

Retaliation against a person engaging in protected behaviour. explicitly defined as misconduct and possibly leading to a demotion, is investigated by the OIOS.

The following **10 statements concerning whistleblowing** are meant to encourage those who may become committed and proactive whistleblowers in the future, and also to provide arguments for the urgent, necessary, protection of whistleblowers. [Holger-Michael Arndt, Hans-Joachim Rieger, Thomas Wurm].

Society benefits from whistleblowing

Whistleblowers' revelations of abuses are in the public interest and in the interest of business enterprises. Whistleblowers provide important information for the early identification of risks for individuals and society - information that helps to combat abuses and supports criminal prosecution. Whistleblowers are an important foundation for the creation of a well-functioning civil society. However, in principle, whistleblowers must nonetheless have the right to decide for themselves whether, when and how they want to exercise their right to whistleblowing. This also means that the options for acting which have been represented can be exercised openly, confidentially or anonymously, and that the potential recipients of tips (e.g. supervisors, monitoring bodies or the criminal prosecution authorities) must provide appropriate channels and feedback channels for whistleblowers (H. M Arndt, H. J. Rieger, T. Wurm, 2008).

Whistleblowers need protection

Whistleblower protection does not primarily serve potential whistleblowers, because, as a rule, in places where there is no effective whistleblower protection, whistleblowing simply does not exist. But this also means that when information about abuses is not passed along, we are all deprived of the benefits and the possibility of making use of whistleblowing. Employees must have the legal right to make complaints within their workplace so that they can take their requests, complaints and tips to their employer or to independent institutions of their employer's choice, either inside or outside the company, without having to be personally affected in a legal sense. At the same time, the employer to whom the complaints are addressed must be obligated to deal with these complaints within an appropriate timeframe, to inform the whistleblower about the progress of the investigation, and to respond appropriately to the complaint. The proper processing of the complaint must be a legal obligation that is owed to the whistleblower, and information about this processing must be available for judicial review, including a possible court decision to sentence the employer to pay damages.

Whistleblowers are not informers

Whistleblowers wish to have a clearing up of their complaints, and this clarification must be carried out in an independent manner. They want to combat the abuses they have reported within organisational structures in which clarification is otherwise prevented by the existing internal power structures. By contrast, informers build their case on rumours, do not want to have a clarification process, and come to terms with the power structure so that they can receive rewards, personal advantages and a questionable type of recognition. Nonetheless, the deliberate dissemination of false information, slander, false suspicions or insults by unscrupulous tipsters is possible. These types of behaviour must be prosecuted and punished, because they are not the same as whistleblowing. By contrast, a whistleblower who is acting with the best of intentions must be protected by the state and the society. For this reason, legal

regulations are necessary to guarantee whistleblowers the right to make their whistleblowing public. In particular, this must happen if, from the whistleblower's viewpoint, he or she is acting to preserve important rights that are particularly protected by the country's constitution and its system of laws. This may be the case if the situation is urgent (e.g. to prevent direct dangers to life, health or the environment) or if other methods have proved to be insufficient or inappropriate (H. M Arndt, H. J. Rieger, T. Wurm, 2008).

In general, public whistleblowing is also permissible if the whistleblower's claims can be proved to be true and thus are a reliable expression of opinion that does not affect any interests of third parties that are particularly deserving of protection (e.g. a justified interest in keeping something confidential), or if the third persons in question have forfeited their rights that are normally deserving of protection (e.g. through manipulation or delay of previous investigations). In all of this, it must be kept in mind that an interest in concealing violations of the law, and the advantages resulting from this concealment, do not constitute a justified interest in confidentiality.

The right to whistleblowing must be guaranteed

Whistleblowing is based on the right of free expression of opinion. This indivisible human right, which is an important component of every legal system in the free world, must also be granted to a whistleblower. Limitations of this basic principle are, however, possible if they are urgently necessary for the preservation of other highly ranked rights. In Poland, as in all the other member states of the European Council, the immediate validity of freedom of expression (protection of the freedom of expression in accordance with Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms) must be expressly anchored in the existing legal system for all relationships involving work and employment. This right must apply to all expressions of opinion that are not deliberate lies and are not made with a careless disregard for the truth, and that affect the public interest (in this case, criminal prosecution in particular) (H. M Arndt, H. J. Rieger, T. Wurm, 2008).

Whistleblowing as a management task

Those who bear responsibility in a professional or private capacity must allow themselves to be called to account for their actions. Whistleblowing serves to make this possible, even in situations where otherwise there is not (yet) sufficient transparency, or where the existing conditions are purposefully kept obscure. Dealing openly with criticism and with one's own mistakes and those of others must be promoted and socially recognised. Public discourse between the individual citizens of a society must be promoted on a long-term basis. The uncritical trust in authority that often exists, as well as generally existing prejudices, must be replaced by clear information.

Whistleblowing means combating corruption, but it achieves much more

Whistleblowing helps to reveal abuses at all levels of society and to combat crime. But whistleblowing achieves a lot more than that. It is also a question of implementing a culture of responsible behaviour with regard to the public interest and of ensuring that a state, an organisation or a society reacts appropriately to the communication of critical information. In the world of business, whistleblowers help the company's management, owners and shareholders to find out what is really happening within the company. This means that promoting whistleblowing is a practical way to detect risks at an early stage of their development.

Whistleblower protection must be promoted and supported

Ensuring anonymity is only one of several ways to protect whistleblowers, but it may be the most important one. However, this is often not possible in practice, because tips are believed only if the whistleblower reveals his or her identity. Some times he or she is treated as a suspect himself or herself in the course of the investigations. Anonymous whistleblowing must therefore be regarded as a fundamental right that deserves special protection. Nonetheless, a cultural change, and recognition of whistleblowing in the perception of the general public is particularly promoted by public whistleblowing. However, protection of whistleblowers is not only in the interest of the whistleblowers affected but also in the properly understood interests of business, society and the state. The legal regulations for the protection of whistleblowers, which have so far only existed in the form of initial attempts, are still completely insufficient. Comprehensive and effective protection is necessary for the people who want to report what they have seen, experienced or found out. The assertion of these rights in an actual court case must be supported by regulations that relieve the burden of proof. In addition, attempts must be made to eliminate the still existing possibilities for circumventing the laws. Within the framework of promoting democracy and the rule of law, the state has the function of providing this 'safety net' for whistleblowers, if this protection is not provided by business and the society. The state must create transparent frameworks and effective protective mechanisms in the form of legal regulations, and it must give a higher priority to the protection of freedom of expression and important common goods than to the protection of individual interests and interests that require confidentiality. Independent investigators must have the means and the opportunities to help the truth come to light even in cases where those in positions of power want to prevent this (H. M Arndt, H. J. Rieger, T. Wurm, 2008).

It must be clearly established that whistleblowing, in so far as it is permitted or the whistleblower may assume that it is permitted, is justified and cannot result in criminal prosecution (in particular in cases of violations involving expressions of opinion and violations of confidentiality). By contrast, the punishment of slander remains untouched, as does the punishment of a deliberately planted false suspicion or slander. However, in order to

protect whistleblowers, there must be punishment of the deliberate or grossly negligent illegal prevention of, or attempt to influence, whistleblowing and the resulting investigations, and of sanctions against whistleblowers and their helpers. Polish criminal laws to this effect must also be passed by the legislature, if necessary.

Attention must be paid to the effective enforcement of the rights of those affected

Even though whistleblowing is primarily addressed to the elimination of abuses and the limitation of risks, it may also involve accusations against third parties. Such accusations may even be made deliberately. In view of the assumption of innocence, which is an essential part of the rule of law, the rights of third parties must always be especially protected. Insofar as, and as soon as, there is no danger to the investigation of the situation, third parties must be informed about the accusations and investigations, but there is no compelling reason to inform them about the identity of the whistleblower. Data protection regulations regarding the right of deletion must be guaranteed. Comprehensive compensation must be paid for any negative consequences endured by third persons, in particular, consequences due to any mistakes made during private and state investigations.

Measures to promote whistleblowing are important

In addition to the regulations to permit whistleblowing and to protect whistleblowers, further state measures are necessary to promote ethical behaviour, everyday courage on the part of citizens, whistleblowing, and the stronger anchoring of these measures and their general acceptance in society (through educational projects), in sports and in the world of business. It is also necessary to support advice centres for (potential) whistleblowers and to create the legal groundwork for these centres, and to set up a foundation to support whistleblowers who are in need, or to pay compensation to the victims. These foundations could, for example, intervene in situations where someone acted in the public interest and this action had negative consequences for himself or herself (e.g. the loss of a job after the bankruptcy of an employer engaged in criminal activities). The comprehensive investigation of whistleblowing (motives, situations, consequences) should also be promoted, as should (advanced) training with regard to the ethical issues involved. These activities must be supplemented by improvements in the legal standing of whistleblowers, and the general conditions for similar situations must also be correspondingly improved. This applies, for example, to the issue of refusing to perform a certain action for ethical reasons or reasons of conscience, and it also applies to necessary improvements in the protection of journalists' sources. The promotion of alternative mechanisms for conflict resolution (mediation) and participative communication mechanisms must be increased and grounded in legal regulations. Mobbing must also be effectively combated with regard to cases of whistleblowing and also in other contexts (H. M Arndt, H. J. Rieger, T. Wurm, 2008).

Whistleblowing needs recognition

Whistleblowing is important. People who become proactive in spite of all the risks that have been described, and who show everyday courage in a struggle to bring about a better society, must not be left on their own. In addition to the personal recognition between individuals that each one of us can provide, we need symbols that testify to the social significance of whistleblowing. The Whistleblower Award presented by the Association of German Scientists (VDW), the German sector of the International Association of Lawyers Against Nuclear Arms (IALANA) and the ethical protection initiative of the International Network for Engineers and Scientists for Social Responsibility (INESPE) was founded about ten years ago and first awarded in 1999. This award honours outstanding individuals who have drawn public attention to serious abuses in their workplaces or fields of influence, abuses that have posed considerable risks for individuals, society, the environment or peace. These are true whistleblowers!

5. Rotation of employees

The rotation of employees in sensitive areas is meant to prevent the danger of corruption from arising. For these areas, a personnel concept should be developed, insofar as it is professionally and financially acceptable, in which set periods of utilisation are established, at the end of which periods the employees in question receive new positions. In smaller bureaux this will of course be difficult to put into practice. There is also the danger that professional experience gained in the course of many years will go to waste (Bundeskriminalamt, 2004).

6.4 - Eyes principles

This is a form of mutual supervision for certain work processes which are at risk of being influenced by third parties. The basic principle of the separation of functions and tasks prescribes that no employee should carry out a process of this kind from beginning to end alone.

Against the background of the employees' partnership and mutual co-operation and their mutual responsibility, the partner principle provides "monitoring" for one's own protection and for the protection of the co-worker. This monitoring includes, for example, counter-signatures in financial transactions (separation of the person authorised to make financial transactions from the one who ascertains factual and arithmetic correctness).

Input of key project data should be reviewed, supervised and approved by a second person (4-eyes principle) to ensure the adequacy and correctness of data in project lists (Bundeskriminalamt, 2004).

Chapter 2
Instruments Concerning Institutional Organisations

1. Structural evaluation

The constant monitoring and, when necessary, alteration of organisational structures and procedures is indispensable as a measure to prevent corruption. In particular, all areas that are at risk of corruption must be investigated to find their weak points.

Specifically, the following measures should be carried out regularly:

a) intensive exercise of official and technical supervision,
b) optimising the way procedures are monitored,
c) incorporation of further monitoring mechanisms,
d) preventing individual employees, groups of employees or departments from closing themselves off from scrutiny or operating independently,
e) "horizontal" monitoring (self-monitoring by co-workers who are at the same level in the hierarchy, in accordance with the partner principle),
f) splitting up tasks,
g) repeated changes in the responsibilities of individual officials in charge,
h) rotation of personnel: for positions that are especially at risk of corruption, a personnel concept will be developed that will be officially in effect for ca. 3-4 years,
i) a special procedure for appointing personnel in risk areas,
j) external monitoring according to the partner principle (e.g. during outside appointments, monitoring etc.),
k) increased vigilance in cases where signs of corruption have occurred repeatedly,
l) refraining from side activities if there is the danger of a conflict of interest between one's activities as a civil servant and one's side activities; this must be determined by the responsible bureau,
m) making it difficult to grant contracts that have not resulted from a public invitation of tenders.

Supervision is exercised through increased monitoring of the areas that are at risk of corruption. Specifically, it is implemented through:

a) intensified monitoring by supervisors in the context of official and technical supervision,
b) intensified monitoring by the auditing department,
c) unannounced inspections by external monitors (state auditing bureau, independent assessors),
d) registration by a central corruption office of cases of corruption or suspected corruption,
e) use of allocation offices for all public contracts,
f) principle of carrying out procedures in pairs (mutual monitoring),
g) intensified use of information-processing systems with built-in monitoring mechanisms.

2. Areas at risk of corruption

Anti-corruption measures are basically appropriate for every area of an administrative bureau (Bundeskriminalamt, 2004). Any level of the hierarchy could be affected. Nonetheless, certain areas in which the risk is higher must be emphasised.

There are special risks in areas which:

- have the responsibility for making decisions that have a high material or immaterial value for those who are affected,
- prepare invitations of tenders, allocate contracts and sign contracts,
- make acquisitions,
- have access to confidential information,
- make decisions concerning applications,
- make decisions concerning discretionary matters,
- grant permits and permissions of every kind (e.g. building permits, restaurant permits, concessions) and
- punish violations (e.g. of the building regulations).

Increased vigilance must be exercised in these areas in order to prevent corruption from setting in.

3. Qualitative institutional education

Information, training and further-education programmes are valuable preventive measures for stopping corruption. The information deficit of employees and political representatives can be filled only by increasing the number and quality of further-education programmes on offer.

For this reason, education programmes for the following groups should be offered:

a) elected representatives and politicians,
b) heads of departments and directors of administrative bureaux,
c) employees in supervisory positions,
d) officials in charge of specific areas.

In areas at risk of corruption, these programmes are carried out regularly and the employees are obliged to attend them (Bundeskriminalamt, 2004). The topic of corruption is dealt with to an appropriate extent within the framework of the internal training programmes for new employees.

The programmes include the following main emphases:

a) information using case studies and clarification of the fact that corruption is not a trivial offence,
b) information about already existing anti-corruption measures and their effectiveness,

c) vivid presentation of examples of processes where the danger of corruption exists,
d) encouraging employees' acceptance of anti-corruption measures (e.g. monitoring, limitation of discretionary areas, limitation of periods of use),
e) requiring all management personnel to commit themselves to preventing corruption,
f) internalising the relevant regulations, e.g. those concerning the gaining of advantage and corruptibility.

4. Indicators and transparency

There are many different causes of corruption. They can be categorised in terms of signs specific to individuals and signs specific to systems. In many cases it is not possible to make clear distinctions between particular causes. Often several causes are operating. Thus the following list can only be a model and does not claim to be complete (Bundeskriminalamt, 2004). Of course every individual case must be carefully scrutinised.

Signs specific to individuals:

- personal problems (addiction, excessive debts, frustration etc.),
- need for admiration,
- "it's just a job" attitude, lack of identification with one's work,
- deliberate by-passing of monitoring mechanisms, closing off individual task areas from scrutiny,
- utilisation of the applicant's/bidder's workplace, recreational areas, vacation homes or events sponsored by him/her,
- unexplainably high standard of living.

Signs specific to the system:

- undue concentration of tasks in the hands of a single person,
- inadequate monitoring, insufficiently developed official and technical supervision,
- unduly broad unmonitored discretionary areas,
- regulations that are hard to understand,
- mismanagement,
- a lack of transparency in the work processes.

Passive indicators:

- lack of complaints from citizens, even though a letter of protest would have been understandable,
- lack of official actions or reactions.

Concerning transparency, the problem of dissemination of information about public affairs and the management of public issues is one of the most frequently cited anti-corruption

measures. Populations which are made and kept aware of governance issues which affect them, develop expectations about standards and are in a position to put pressure on officials to meet those standards.

Access to Information laws usually incorporates some or all of the following elements (United Nation 2004):

- Every government agency is required to publish basic information about what it does and how, in order to provide a basic level of information both for the purposes of general information and transparency and in order to provide a basis for rational requests for more specific information. Requirements commonly include the publication of such things as legislative and other mandates, budgets, annual or other regular reports summarising activities, and information about complaints or other oversight bodies, including how they can be contacted and reports on their work or the locations where such reports can be found.

- A legally enforceable right of access to documented information held by the Government is recognised, subject only to such exceptions as are reasonably necessary to protect public interests or personal privacy. The subjects generally excluded from scrutiny include cabinet discussions, judicial functions, law enforcement and public safety, inter-governmental relations and internal working documents. Access is provided by giving applicants a reasonable opportunity to inspect the document or by supplying them with a copy.

- An independent review mechanism for determining whether information sought is subject to or exempt from access is established and maintained.
  Usually, for the sake of efficiency, the process involves a presumption that information is accessible, placing the burden of establishing that it should not be disclosed on the government agency involved. There is a review of information by the agency which holds it to identify documents or other elements which, in its view, should not be disclosed. There follows a review by an independent authority, and if his or her decision is not to disclose any of the material, this can be appealed to a court or other independent tribunal. The independent review is usually needed because the information must be reviewed by someone who is not biased in favour of the government agency, but who at the same time, can be relied upon not to disclose sensitive information if the decision to withhold it is maintained. This function is critical - information in dispute is often extremely sensitive, and it is essential that both sides respect the discretion, integrity and neutrality of the review process without either being in a position to fully review its work.

- Time limits and time frames are often established to allow sufficient time for government agencies to search for, gather and review the information sought, and if it proposes not to disclose any of it, for the independent review process to proceed, while at the same time not permitting excessive or indefinite delay.

- Information about private individuals is usually protected from general access, but may be requested by the private individuals themselves. Often rights of individual access are accompanied by rights to dispute information on the basis that it is incomplete or inaccurate and if this is established, to have it amended. Some systems also allow the individual to place challenges or countervailing information on the record if a decision is made not to change the challenged information. [United Nation, 2004]

5. Blacklisting

'Blacklisting' or 'debarment' in the realm of public contracting is a process whereby, on the basis of pre-established grounds, a company or individual is prevented from engaging in further contracts for a specified period of time. Debarment may be preceded by a warning of future exclusion should the conduct persist, be repeated, or occur under aggravated circumstances. An investigation that could lead to debarment may be promoted by an existing judicial decision, or when there is strong evidence of unethical or unlawful professional or business behaviour. Many debarment systems today allow the latter form, as judicial decisions are often slow to obtain.

The key function of debarment in public contracting is prevention and deterrence. For companies, debarment means a damaged reputation, lost business prospects and even bankruptcy. It therefore increases the opportunity cost of engaging in corrupt practices. Debarment systems have been around for some time, both at the national and the international level [J. Olayal, 2006).

The US debarment system is among the oldest, and its grounds for debarment include anti-trust violations, tax evasion and false statements, in addition to bribery in procurement-related activities. The World Bank has taken the lead internationally: its debarment system was made publicly available in 1998. Since 2003, the European Commission's financial regulations have included a debarment system that is currently being developed. Almost all development banks now have debarment systems of some kind and, at the national level, many countries have, or are seriously considering, blacklisting systems (Olayal, 2006).

Many of the current debarment systems have been criticised for being closed, poorly publicised or unfair, and for failing to include big companies with proven involvement in corrupt deals.

The decision to debar Acres also helps dispel the fear that debarment agencies might face reprisals, such as allegations of slander or misjudgement. The two main problems Transparency International has encountered with blacklisting are: an unwillingness to debar on the basis of 'strong evidence' (without a court order); and resistance to giving the public access to blacklists. In order to be effective and to stand up to scrutiny and possible legal challenges, certain steps need to be taken when designing and implementing a debarment system.

Effective debarment systems must be fair and accountable, transparent, well publicised, timely and unbiased (Olayal, 2006).

1. Fairness and accountability. Clear rules and procedures need to be established and made known to all the parties involved in a contracting process, ahead of time. The process needs to give firms and individuals an adequate opportunity to defend themselves.

2. Transparency. Sanctions and the rules regarding the process must be made public in order to minimise the risk of the debarment system being subjected to manipulation or pressure. The outcomes must also be publicised. Contracting authorities and export credit agencies need to be given access to detailed information from the debarment list so that they can carry out due diligence on potential contractors (for overseas tenders this might mean accessing the debarment system in the home country). This process is especially complicated because owners of debarred companies may simply start up a new company operating under a new name. Up-to-date public debarment lists can help procurement officers and due diligence analysts keep track of such cases. Publicity also has an important impact on the legitimacy, credibility and accountability of debarment agencies, and facilitates monitoring by independent parties. The information made public in debarment lists needs to include the company or individual's name, the grounds for investigation, the name of the project, the country of origin of sanctioned firms or individuals, as well as the rules governing the process.

3. Functionality. Publicly available debarment lists facilitate electronic matching and other information-sharing features that organisations such as the World Bank's International Finance Corporation already have in place. Systems could be interconnected internationally, for example, among development banks, or between countries. Such networking may even reduce operating costs, and make systems more effective.

4. Timeliness. Debarment systems should be timely.

5. Proportionality. For some companies, being barred from a particular market might mean bankruptcy, so in certain cases a debarment of five years could be too much. The system

should allow for a sliding scale of penalties, and should provide entry and exit rules. If a company has shown that, after the offence, it implemented substantial changes, for example, by enforcing codes of conduct, or changing policies and practices, it should be possible to lift the debarment (Olayal, 2006).

Chapter 3
Audit Instruments

The fundamental purpose of auditing is the verification of records, processes or functions by an entity that is sufficiently independent of the subject under audit as not to be biased or unduly influenced in its dealings.

Strengthening transparency and accountability in public finances is a defining challenge for emerging economies seeking to foster fiscal responsibility and curb corruption (C. Santiso, 2007). There is renewed interest in those oversight agencies tasked with scrutinising public spending and enforcing horizontal accountability within the state. However, little is known as to what explains the effectiveness of autonomous audit agencies (AAAs).

Institutional arrangements for government auditing

The core functions of AAAs, traditionally referred to as supreme audit institutions, are to oversee government financial management, ensure the integrity of government finances and verify the truthfulness of government financial information. AAAs contribute to anchoring the rule of law in public finances, including through the imposition of administrative sanctions (Santiso, 2007).

In some countries, they also perform key anti-corruption functions, such as overseeing asset declarations, public procurement or privatisation processes.

There exist different institutional arrangements for organising the external audit function, which can be regrouped in the following three broad ideal types:

i. the **court model** of collegiate courts of auditors or tribunals of accounts with quasi-judicial powers in administrative matters, often acting as an administrative tribunal, such as in France, Italy, Spain, Portugal, Brazil or E1 Salvador;

ii. the **board model** of a collegiate decision-making agency but without jurisdictional authority, such as in Germany, Netherlands, Sweden, Argentina or Nicaragua; and

iii. the **monocratic model** of a uninominal audit agency headed by a single auditor general and often acting as an auxiliary institution to the legislature, such as the US, the UK, Canada, Chile, Colombia, Mexico and Peru.

In practice, however, AAAs are unique hybrids that combine several elements of the different models. Key variations between agencies include the timing of control (ex-ante or ex-post), its nature (compliance or performance auditing), its effects (follow-up of audit recommendations), as well as its status (legal standing of audit rulings). The most important issue, however, concerns the agencies' approaches to fiscal control, which vary across countries and have evolved over time.

Fiscal control can be preventive, corrective or punitive. Compliance control is concerned with the formal adherence to budget rules and financial regulations, including through the imposition of administrative sanctions. Performance control is concerned with the manner in which public resources are deployed, emphasising the economy, efficiency and effectiveness of public spending. The trend is towards greater emphasis on the preventive and corrective functions of government auditing through ex-post performance auditing (Santiso, 2007).

Audits work primarily through transparency. While some auditors have powers to:

- act on their own findings, their responsibilities are usually confined to investigation, reporting on matters of fact and, sometimes, to making recommendations or referring findings to other bodies for action. While auditors may report to inside bodies such as Governments or boards of directors, their real power resides in the fact that audit reports are made public (United Nations, 2004).

Once carried out, audits serve the following specific purposes:

- **They independently verify information and analysis**, thus establishing an accurate picture of the institution or function being audited.

- **They identify evidentiary weaknesses**, administrative flaws, malfeasance or other problems that insiders may be unable or unwilling to identify;

- **They identify strengths and weaknesses in administrative structures**, assisting decisions about which elements should be retained and which reformed;

- **They provide a baseline against which reforms can later be assessed** and, unlike insiders they can, in some cases, propose or impose substantive goals or time limits for reforms;

- In public systems, **they place credible information before the public**, generating political pressure to act in response to problems identified; and,

- Where malfeasance is identified, **they present a mechanism through which problems can be referred to law enforcement or disciplinary authorities** independently of the institution under audit (United Nations, 2004).

Instruments that may be required before an audit institution can be successfully established include:

- Instruments, usually in the form of legislation, establishing the mandate, powers and independence of the institution;
- Policy and legislative provisions governing the relationship between the audit institution and other related institutions, especially law enforcement, prosecution and specialised anti-corruption agencies;
- Instruments establishing legal or ethical standards for public servants or other employees, such as codes of conduct, both for general classes of workers and for those employed within the audit institution itself;
- Ways of raising public awareness and expectations regarding the role of the audit institution and its independence of other elements of Government; and
- The establishment of a parent body, such as a strong and committed legislative committee, to receive and follow up on reports (United Nations, 2004).

Relationship between audit institutions and other public bodies

Relationship with the legislature and political elements of Government

Legislatures are political bodies whose members will not always welcome the independent oversight of auditors and other watchdog agencies. National audit institutions must, therefore, enjoy a significant degree of functional independence and separation both from the legislature and from the political elements of executive Government. One way is by constitutionally entrenching the existence and status of the institution, thereby making interference impossible without constitutional amendment. Where this is impracticable, the institution can be established by an enacted statute. The statute would set out basic functions and independence in terms that make it clear that any amendment not enjoying broad multipartisan support would be seen as interference and generate political consequences for the faction sponsoring it.

The mandate of an audit institution should also deal with the difficult question of whether the institution should have the power and responsibility to audit the legislature and its members. If an auditor has strong powers, there may be interference with the legitimate

functions of the legislature and the immunities of its members. If, on the other hand, the legislature is not subject to audit, a valuable safeguard may be lost. One factor to be considered in making such a decision is the extent to which transparency and political accountability function as controls on legislative members. Another is the extent to which internal monitoring and disciplinary bodies of the legislature itself act as effective controls. A third is the degree of immunity members enjoy. If immunity is limited and members are subject to criminal investigation and prosecution for misconduct, then there may be less need for auditing. Where immunity is strong, on the other hand, exposing members to strict audit requirements may compensate for this. A mechanism could be tailored, for example, to ensure political and even legal accountability without compromising legislative functions (United Nations, 2004).

The third aspect of the relationship between the legislature and an audit institution lies in the process for dealing with the reports or recommendations of auditors. Auditors established by the legislature are generally required to report to it at regular intervals. As an additional safeguard, reporting to either the entire legislature or any other body on which all political factions are represented ensures multipartisan review of the report. Moreover, constitutional, legislative or conventional requirements that proceedings and documents of the legislature be made public ensure transparency, a process further assisted by the close attention paid to most national legislatures by the media. In some circumstances, auditors may also be empowered to make specific reports, recommendations or referrals to other bodies or officials. For instance, some cases of apparent malfeasance may be referred directly to law enforcement agencies or public prosecutors.

Relationship to Government and the administration

The relationship between auditors and non-political elements of Government and public administration must balance the need for independent and objective safeguards with the efficient functioning of Government. Auditors should be free to establish facts, draw conclusions and make recommendations, but not to interfere in the actual operations of Government. Such interference would compromise the political accountability of the Government, effectively replacing the political decision-making function with that of a professional, but non-elected auditor. Over time, such interference would also compromise the basic independence of the office of the auditor, which would ultimately find itself auditing the consequences of its own previous decisions. That is the main reason why most auditors are not given powers to implement their own recommendations [United Nations, 2004].

Regarding reporting, the primary reporting obligation of auditors is to the legislature and the public. Specific elements or recommendations of a report may be referred directly to the agency or department most affected, but that should be done in addition to the public

reporting and not as an alternative, subject to the possible exceptions set out under "non-public audits", above.

Audit methods, audit staff

Audit staff

Audit staff should have the professional qualifications and moral integrity required to carry out their tasks to the fullest extent to maintain public credibility in the audit institution.

Professional qualifications and on-the-job development should include traditional areas, such as legal, economic and accounting knowledge, along with expertise, such as business management, electronic data processing, forensic science and criminal investigative skills. As with other crucial public servants, the status and compensation of auditors must be adequate to reduce their need for additional income and to ensure that they have a great deal to lose if they themselves become corrupted. As far as ordinary public servants are concerned, even if involvement in corruption is not cause for dismissal, it should result in the exclusion of that individual from any audit agency or function.

Audit methods and procedures

The standardisation of audit procedures, where possible, provides an additional safeguard against some functions of the department or agency under audit being overlooked. Where possible, procedures should be established before the nature and direction of enquiries become apparent to those under audit, to avoid any question of interference later. One exception, and a fundamental principle of procedure, is that auditors should be authorized and required to direct additional attention to any area in which initial enquiries fail to completely explain and account for processes and outcomes (United Nation, 2004).

Essentially, the audit process will consist of initial enquiries to gain a basic understanding of what the department or agency does and how it is organized; more detailed enquiries to generate and validate basic information for the report; and even more detailed enquiries to examine areas identified as potential problems. Audits can rarely be all-inclusive, which will generally necessitate either a random sampling approach or the targeting of specific areas identified by other sources as problematic.

Audit of public authorities and other institutions abroad, and joint audits

National auditors should be given powers to audit every aspect of the public sector, including transnational elements or those outside the country. Where the affairs of other countries are involved, joint audits carried out by officials of both countries could prove useful. In such cases, however, there must be a clear working arrangement governing the nature and extent of co-operation between auditors, and the extent to which mutual agreement is required regarding fact finding, drawing conclusions and making recommendations. While co-

operation may prove useful, the national auditors of each country should preserve their independence and the right to draw any conclusions that they see fit.

Tax audits

In many countries, domestic revenue or tax authorities have established internal agencies to audit individual and corporate taxpayers. One of the functions of national audit institutions is to audit those auditors as part of a more general examination of the taxation system and its administration. Such audits are vital, given that tax systems can be a "hot bed" of economic and other corruption. When such an audit occurs, national audit agencies must have the power to re-audit the files of individual taxpayers. The purpose is to verify the work of the auditors, not to reinvestigate the taxpayers involved. Where malfeasance or errors are discovered, the interests of the taxpayer who has been previously audited and whose account has been settled should not be prejudiced.

National auditors should also have the powers to audit individual taxpayers under some circumstances, for example where there is no specialised tax audit function, where tax auditors are unwilling or unable to audit a particular taxpayer, and where an audit of the tax administration suggests collusion between a taxpayer and an auditor (United Nations, 2004).

Public contracts and public works

The considerable funds expended by public authorities on contracts and public works justify a particularly exhaustive audit of such areas. The public sector elements will usually already be subject to audit and required to assist and cooperate by law. The private sector elements, however, may not be. In such cases, they should be required, as a term of their basic contracts, to submit to a request for audit and to fully assist and cooperate with auditors. Audits of public works should cover not only the regularity of payments but also the efficiency and quality of the goods or services delivered.

Audit of electronic data-processing facilities

The increasing use of electronic data storage and processing facilities also calls for appropriate auditing. Such audits should cover the entire system, encompassing planning for future requirements; efficient use of data processing equipment; use of appropriately qualified staff, preferably drawn from within the administration of the audited organisation; privacy protection and security of information; prevention of misuse of data; and the capacity of the system to store and retrieve information on demand.

Audit of subsidized institutions

Auditors should be empowered to examine enterprises or institutions that are subsidised by public funds. At a minimum, that would entail the review of specific publicly funded or

subsidised projects or programmes and, in many cases, a complete audit of the institution. As with contractors, the requirement to submit to auditing and fully assist and co-operate with auditors should be made a condition of the funding or enshrined in any contract.

Audit of international and supranational organisations

International and supranational organisations whose expenditures are covered by contributions from member countries should also be subject to auditing. That may, however, be problematic, if the institution receives funds from many countries and each insists on a national audit. In the case of major agencies, it may be preferable to establish an internal agency to conduct a single, unified audit, with participating States providing sufficient oversight to ensure validity and satisfaction with the results (United Nations, 2004).

Preconditions and risks

Inadequate enforcement or implementation of findings or recommendations

As noted, auditors generally have the power only to report, not to implement or follow up on reports. Their recommendations usually go to the legislature or, occasionally, other bodies, such as the public prosecutor, whose own functions necessarily entail discretionary powers about whether or not to take action. The reluctance to implement recommendations can be addressed only by bringing political pressures to bear through the transparent reporting by the media of the recommendations. Additional attention may be focused by supplementary reports direct to the agencies that have been audited. Auditors can also report on whether past recommendations have been implemented and, if not, why not, through follow-up reports or by dedicating part of their current report to that question.

Inadequate reporting and investigations

In the course of an audit, it is common for personnel to be diverted from their usual functions. A lack of qualified professional staff and resources therefore makes it difficult for those being audited to render the necessary co-operation and for auditors to successfully complete rigorous audits.

Unrealistic aims and expectations

The belief that corruption can be eradicated, and in a short time, inevitably leads to false expectations, resulting in disappointment, distrust and cynicism. The mistaken impression may also be given that audit institutions have powers to implement may also be given that audit institutions have powers to implement or enforce their recommendations.

Competition and relationships with other agencies

Audit institutions often operate in an environment in which anti-corruption agencies, law

enforcement agencies and, in some cases, other auditors are also active. Roles should be clearly defined and confidential communications established to avoid conflict of audit and law enforcement investigations. The leading role in this regard may lie with the auditors, whose investigations are generally public, as opposed to law enforcement, whose efforts are generally kept secret until charges are laid.

Lack of political commitment and/or political interference

Political will is essential to the impact of an audit institution. As with other anticorruption initiatives, there should be as broad a range of political support as possible; oversight should be of a multipartisan nature; and mandates and operational matters should be put beyond the easy reach of Governments. The transparency and the competence of auditors will also help to ensure popular support for their efforts, and as a result, ongoing political commitment (United Nations, 2004).

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