



Protecting whistleblowers and organizations in internal investigations – legal developments and practical considerations

AIBL Luncheon – September 26, 2025

Geneva

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Chatham House Rule



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Why do we need whistleblowers ?

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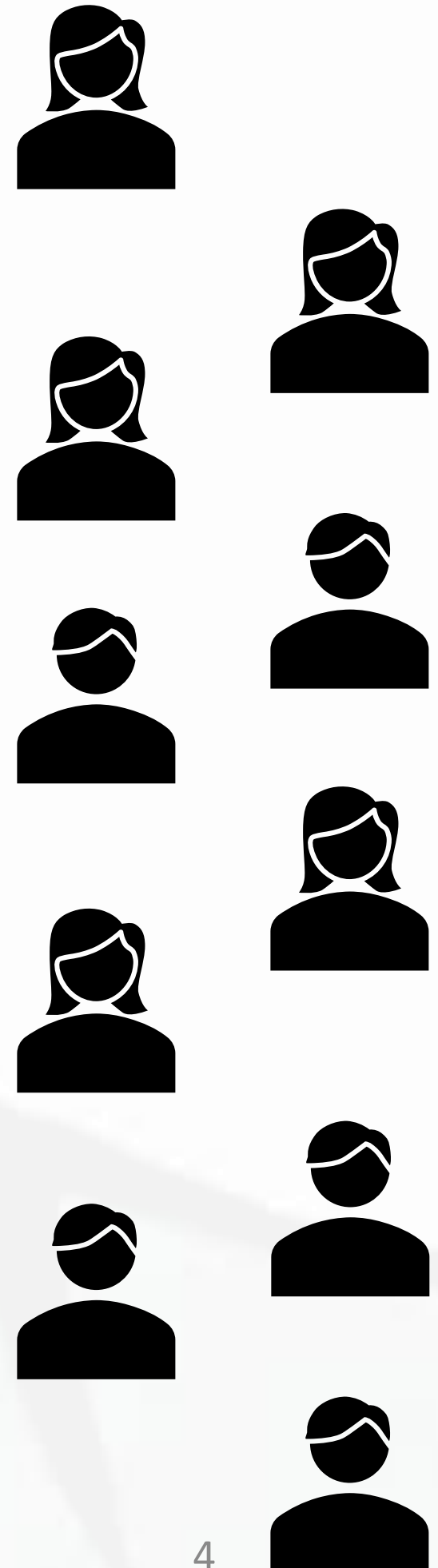
WHAT IS CORRUPTION?

We define corruption as the abuse of entrusted power for private gain.

Corruption erodes trust, weakens democracy, hampers economic development and further exacerbates inequality, poverty, social division and the environmental crisis.

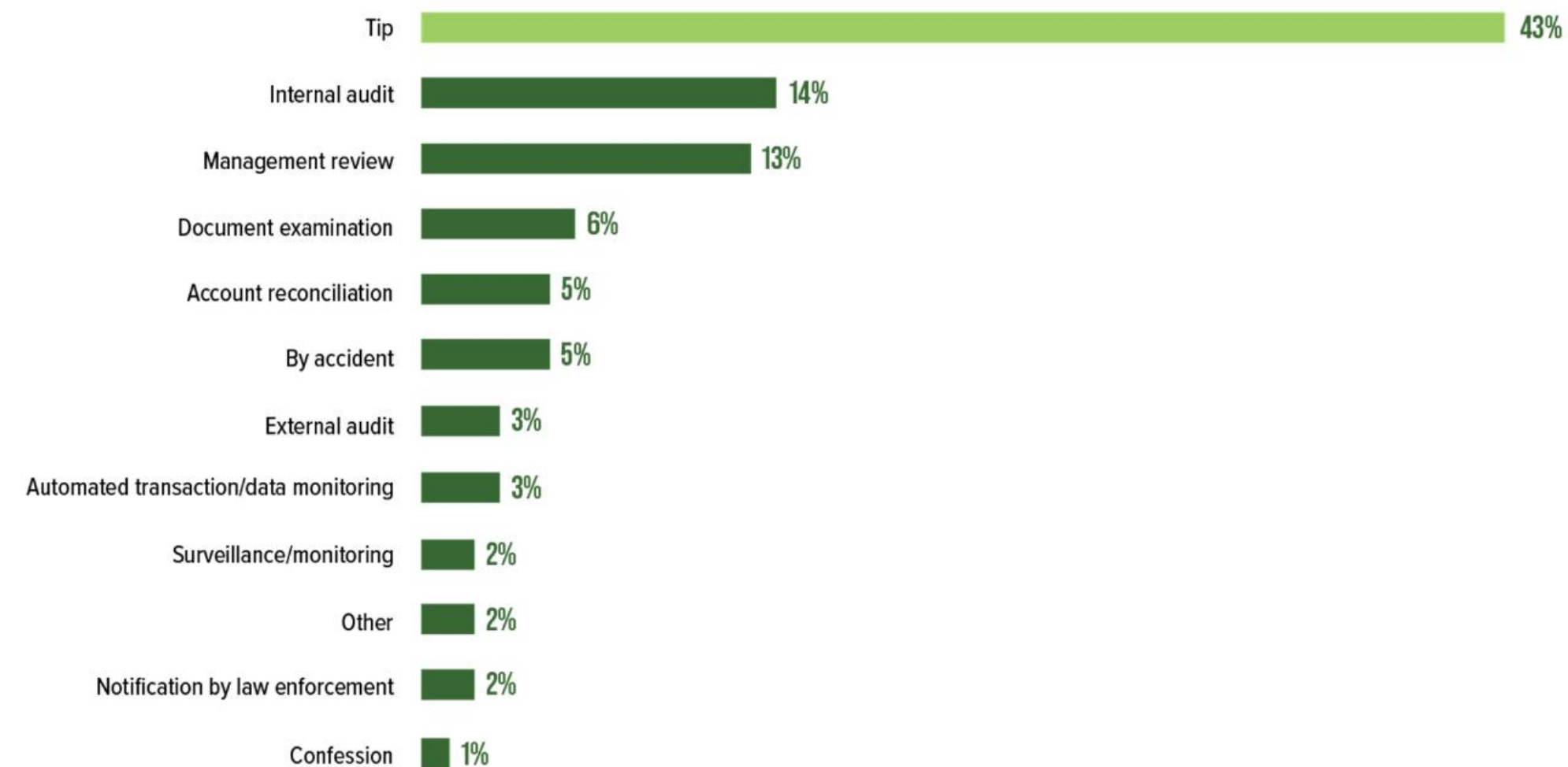
Exposing corruption and holding the corrupt to account can only happen if we understand the way corruption works and the systems that enable it.

Why do we need whistleblowers ?

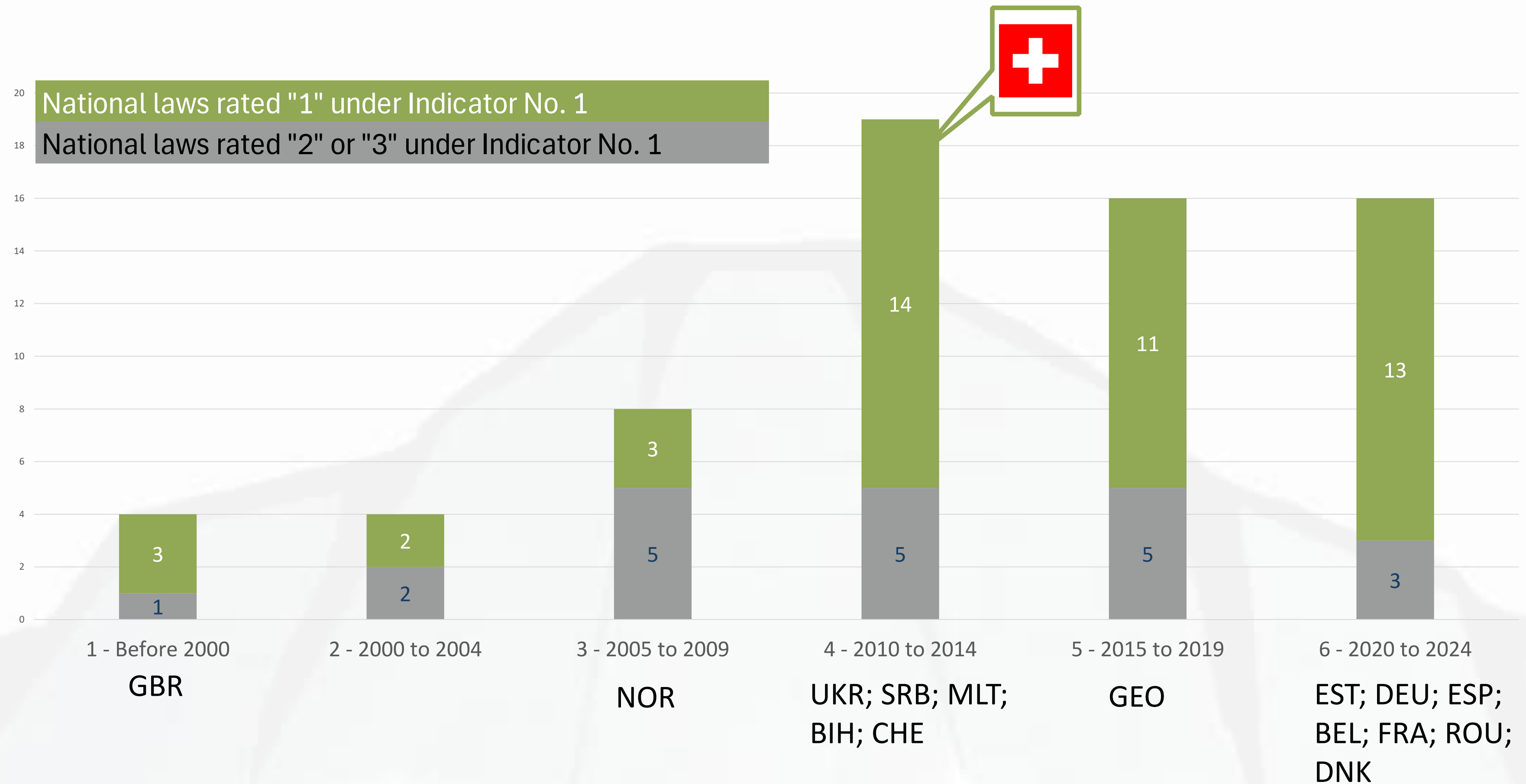


Why do we need whistleblowers ?

FIG. 13 HOW IS OCCUPATIONAL FRAUD INITIALLY DETECTED?

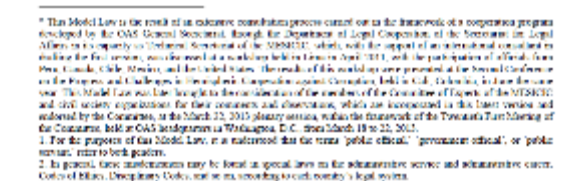
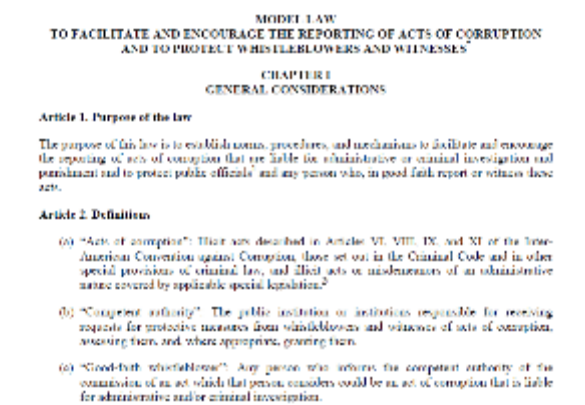
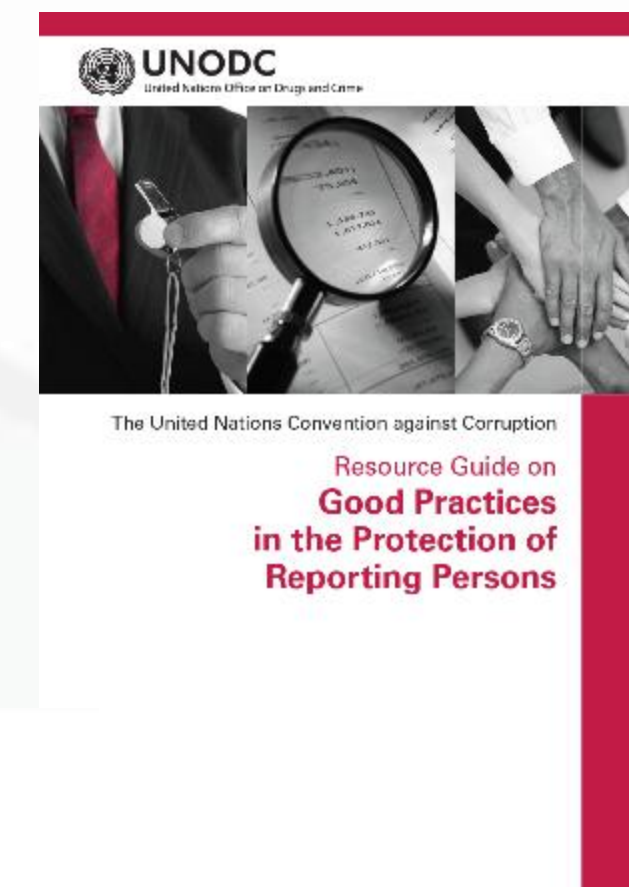


A recent phenomenon



What good law should look like

- Review against guidance and recommendations issued by civil society and inter-governmental organizations:



Not easy to enact...



COURT OF JUSTICE
OF THE EUROPEAN UNION

PRESS RELEASE No 29/25

Luxembourg, 6 March 2025

Judgments of the Court in Cases C-149/23 | Commission v Germany, C-150/23 | Commission v Luxembourg, C-152/23 | Commission v Czech Republic, C-154/23 | Commission v Estonia and C-155/23 | Commission v Hungary (Whistleblowers directive)

Failure to fulfil obligations: Five Member States are ordered to pay financial penalties for failing to transpose the Whistleblowers directive

They must pay a lump sum to the Commission; Estonia, if it has still not transposed the directive, must also pay a daily penalty payment

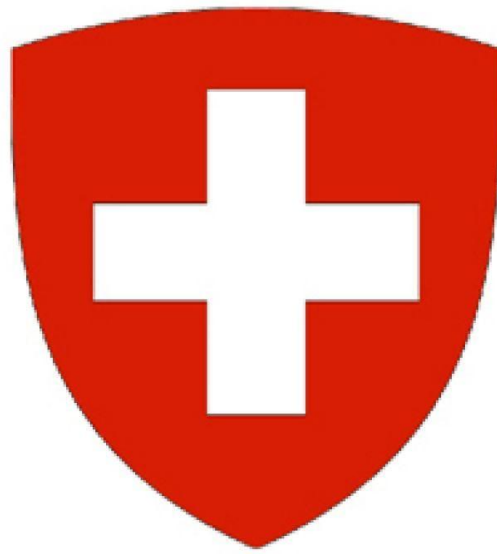
In several separate actions, ¹ the Commission has requested the Court of Justice to declare that, by failing to adopt the provisions necessary to comply with the Whistleblowers directive ² and, in any event, by failing to communicate those provisions to the Commission, Germany, Luxembourg, the Czech Republic, Estonia and Hungary have failed to fulfil their obligations ³ under that directive. It has also called for financial penalties to be imposed on all those Member States in the form of lump sums. As regards Estonia, if its failure to fulfil obligations, which persisted on the date on which the action against that Member State was brought before the Court, were still to continue at the time of delivery of the judgment, the Commission has requested the Court to impose a penalty payment on it.

Emphasising the importance of the transposition of that directive in view of the high level of protection it affords to whistleblowers who report a breach of EU law, the Court upholds the Commission's actions, rejecting the arguments put forward by the Member States concerned, and **imposes** on them the financial penalties set out in the table below.

Member State	Penalty defined by the Court
Germany	€ 34 000 000 (lump sum)
Luxembourg	€ 375 000 (lump sum)
Czech Republic	€ 2 300 000 (lump sum)
Estonia	€ 500 000 (lump sum) and a daily penalty payment in the amount of € 1 500 ⁴
Hungary	€ 1 750 000 (lump sum)

In Switzerland

Protection of public sector workers



POST TENEBRAS LUX

- **Art. 22a⁶³** Obligation de dénoncer, droit de dénoncer et protection

Source : FexLex - LPERS

¹ Les employés sont tenus de dénoncer aux autorités de poursuite pénale, à leurs supérieurs ou au Contrôle fédéral des finances tous les crimes et délits poursuivis d'office dont ils ont eu connaissance ou qui leur ont été signalés dans l'exercice de leur fonction.

² Les obligations de dénoncer prévues par d'autres lois fédérales sont réservées.

³ Les personnes qui ont le droit de refuser de déposer ou de témoigner selon les art. 113, al. 1, 168 et 169 du code de procédure pénale du 5 octobre 2007⁶⁴ ne sont pas soumises à l'obligation de dénoncer.

⁴ Les employés ont le droit de signaler au Contrôle fédéral des finances les autres irrégularités dont ils ont eu connaissance ou qui leur ont été signalées dans l'exercice de leur fonction. Le Contrôle fédéral des finances établit les faits et prend les mesures nécessaires.

⁵ Nul ne doit subir un désavantage sur le plan professionnel pour avoir, de bonne foi, dénoncé une infraction ou annoncé une irrégularité ou pour avoir déposé comme témoin.

⁶³ Introduit par l'annexe ch. II 4 de la L du 19 mars 2010 sur l'organisation des autorités pénales, en vigueur depuis le 1^{er} janv. 2011 (RO 2010 3267; FF 2008 7371).

⁶⁴ RS 312.0

**Loi sur la protection des lanceurs
d'alerte au sein de l'Etat
(LPLA)**

du 29 janvier 2021

(Entrée en vigueur : 26 mars 2022)

**Texte en vigueur
Nouvelle loi**

B 5 07

In Switzerland

Protection of private sector workers

- Defined by court decisions mostly based on art. 321a al.1 CO and the court's interpretation of the worker's duty of care:
“The employee must carry out the work assigned to him with due care and loyally safeguard the employer's legitimate interests.”
- Organizations may mitigate their risk of criminal liability with an effective whistleblowing framework :

-  **Title Seven: Corporate Criminal Liability**

-  **Liability under the criminal law**

-  **Art. 102**

¹ If a felony or misdemeanour is committed in an undertaking in the exercise of commercial activities in accordance with the objects of the undertaking and if it is not possible to attribute this act to any specific natural person due to the inadequate organisation of the undertaking, then the felony or misdemeanour is attributed to the undertaking. In such cases, the undertaking shall be liable to a fine not exceeding 5 million francs.

² If the offence committed falls under Articles 260^{ter}, 260^{quinquies}, 305^{bis}, 322^{ter}, 322^{quinquies}, 322^{septies} paragraph 1 or 322^{octies}, the undertaking is penalised irrespective of the criminal liability of any natural persons, provided the undertaking has failed to take all the reasonable organisational measures that are required in order to prevent such an offence.¹⁴⁷

In Switzerland

Protection against mobbing and sexual harassment

- Designation of an *Ombudsperson* (“*personne de confiance*”), available, sufficiently independent and adequately trained
 - Based on decisions by the Federal Tribunal and guidance by the SECO
 - Derived from the employer’s obligation of protection under art. 328 CO, art. 6 LTr and art. 4 LEg.

ACCUEIL > CARRIÈRES ET FORMATION

Le Tribunal fédéral impose un médiateur dans l'entreprise

La chronique de Gabriel Aubert, avocat et professeur à la Faculté de droit, Université de Genève

*

Publié le 18 octobre 2012 à 18:26. / Modifié le 05 novembre 2015 à 00:11.

[PARTAGER](#) [LIRE PLUS TARD](#)

Sources:

- ATF 2C_462/2011
- SECO guidance: « Mobbing et autres formes de harcèlement - Protection de l'intégrité personnelle au travail »

How does whistleblower protection protect organizations ?

- Protection against compliance violations: Multinationals tend to define a policy that allow them to comply with all applicable national frameworks.
 - Reasoning not applicable for Swiss SMEs operating locally and in unregulated sectors ?
- Protecting whistleblowers will give top management and the Board, access to information:
 - Good news travels fast up the chain, bad news tend to be blocked or distorted on their way up.
 - Just having a whistleblower framework in place will facilitate communication, even if it not used.

In practice: how is this achieved ?

- Just having a policy and/or platform is not enough: it needs to address the core reasons why employees don't speak up:
 - Misunderstanding of expectations;
 - Fear of retaliation;
 - Lack of belief that it will make any difference.
 - A well functioning whistleblowing framework requires trust in the system:
 - Protect all reporters, even those not raising issues that are not relevant.
 - Define and follow a clear and detailed process for the review and investigation of whistleblower reports. The process should be transparent and fair to both the reporter and the subject of the allegations.
 - Don't condition protection to the intentions of the reporter.
 - Allow anonymous reporting and set up platform that allow you to communicate with anonymous reporters.
 - Protect whistleblowers from retaliation and openly sanction retaliators.
- Trust works both ways : show that you trust whistleblowers and they will trust you with their report.

Thank you !



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Study used for this presentation



International
Labour
Organization

► ILO Working Paper 135

February / 2025

► Protecting whistle-blowers in the public service

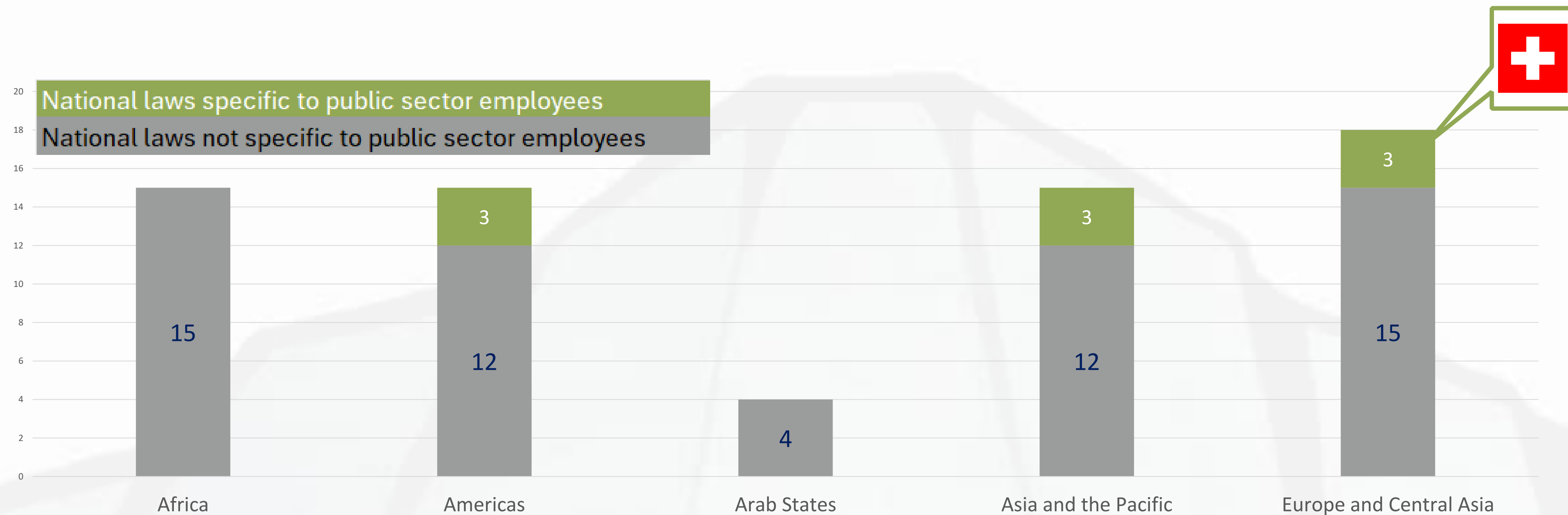
A global survey of whistle-blowing laws applicable to the public service sector

- Commissioned by the International Labour Office (ILO), in support of the work of their Governing Body
 - Written in the summer of 2024, published in February 2025
- Can be accessed at : <https://tinyurl.com/wb-ilo-survey>

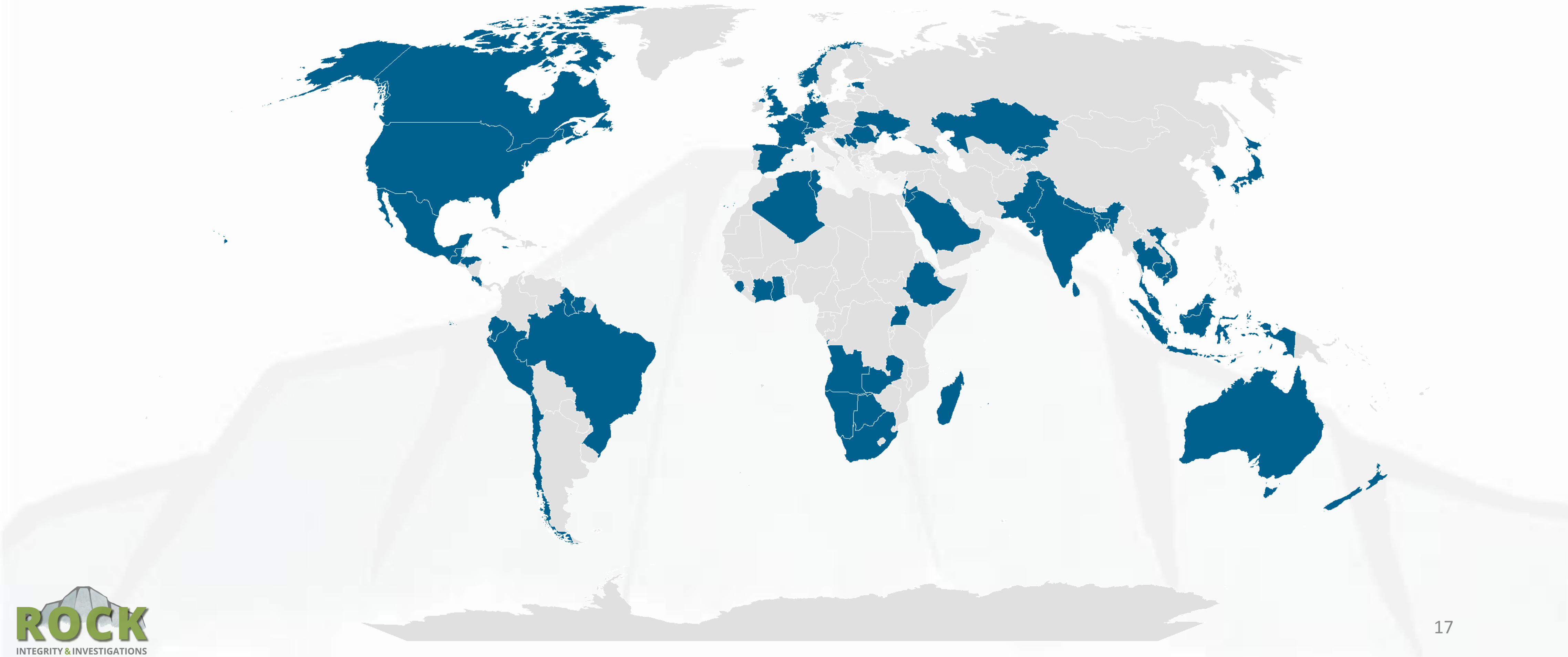


Scope

- 67 countries across 5 ILO regions



Scope



Methodology for the study

- Scoping: selection of countries with identified national laws covering whistleblower protection
 - Definition of indicators:
 - 14 indicators selected to expand ILO's previously mentioned 2019 and 2022 analysis.
- | | |
|--|---|
| 1. Specific Legislation for the Protection of Whistleblowers | 9. Protection against retaliation |
| 2. Coverage of organizations (within the public sector) | 10. Remedies against retaliation |
| 3. Definition of reportable irregularities | 11. Sanctions against retaliators |
| 4. Definition of whistleblowers | 12. Control authority |
| 5. Threshold of protection | 13. Transparent use of legislation |
| 6. Diversity of reporting channels | 14. Right of information for whistleblowers |
| 7. Provisions and protections for anonymous reports | |
| 8. Confidentiality of reports | |
- For each indicator, definition of 3 levels of implementation: “**Comprehensive**”, “**Partial**” and “**Absent or Limited**” to qualify the extent to which each national law embeds internationally recognized guidance.

Summary of findings

Diversity in scope protection:

- Who is eligible for protection (indicator #4)
- Which reportable irregularities allow for statutory protection (indicator #3)
- Requirements for protection (indicator #5)

Summary of findings

Reporting channels:

1 – Comprehensive: The law explicitly allows for at least 3 reporting channels:

internal: within the employee's organization

official: to one or several dedicated public bodies/agencies

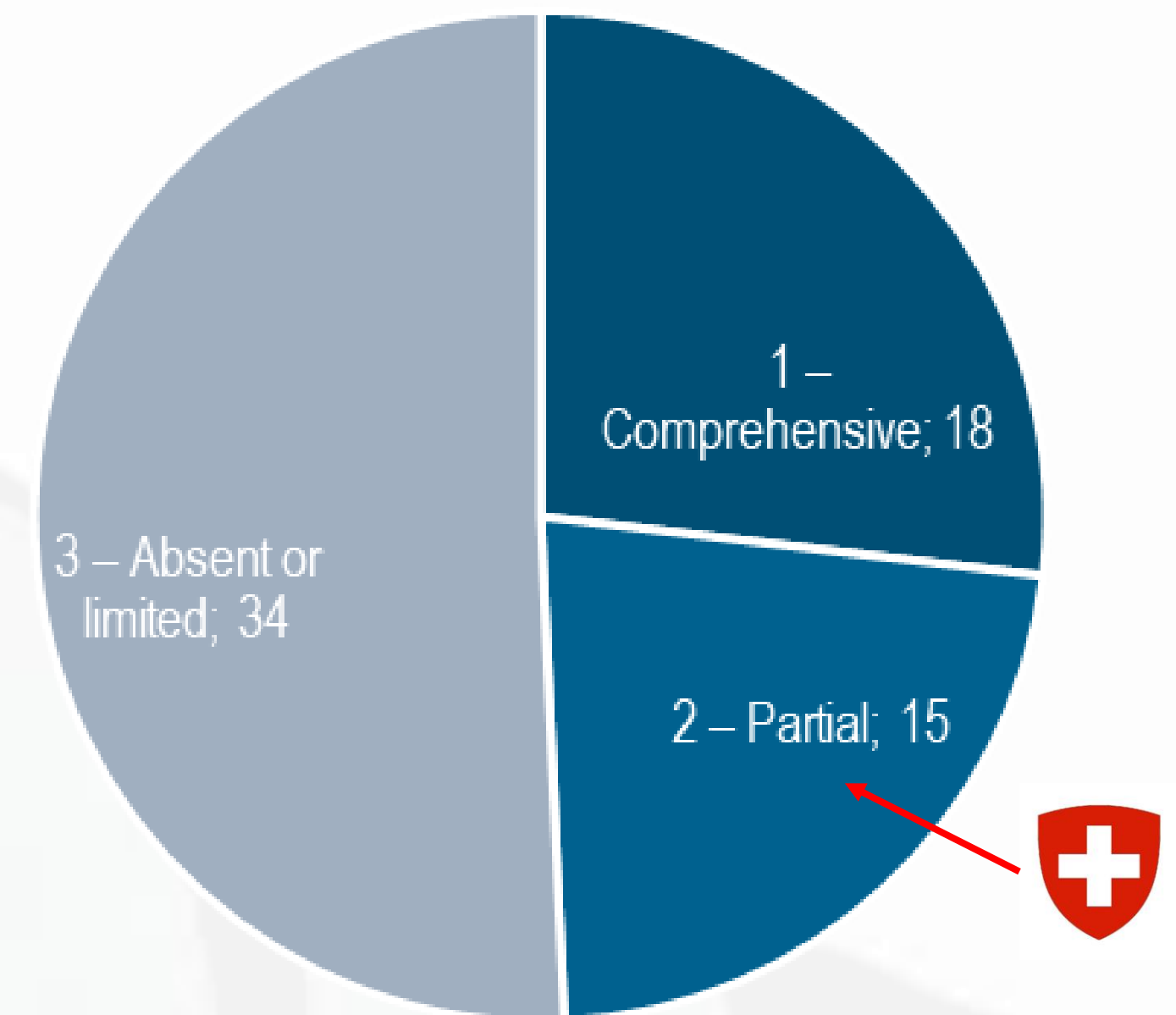
external: to civil society, the press, the public, unions

2 – Partial: The law only allows for reporting through 2 reporting channels:

internal and official, or

official and external

3 – Absent or limited: The law only protects reporting made through the official channel, excluding or being silent on other channels.

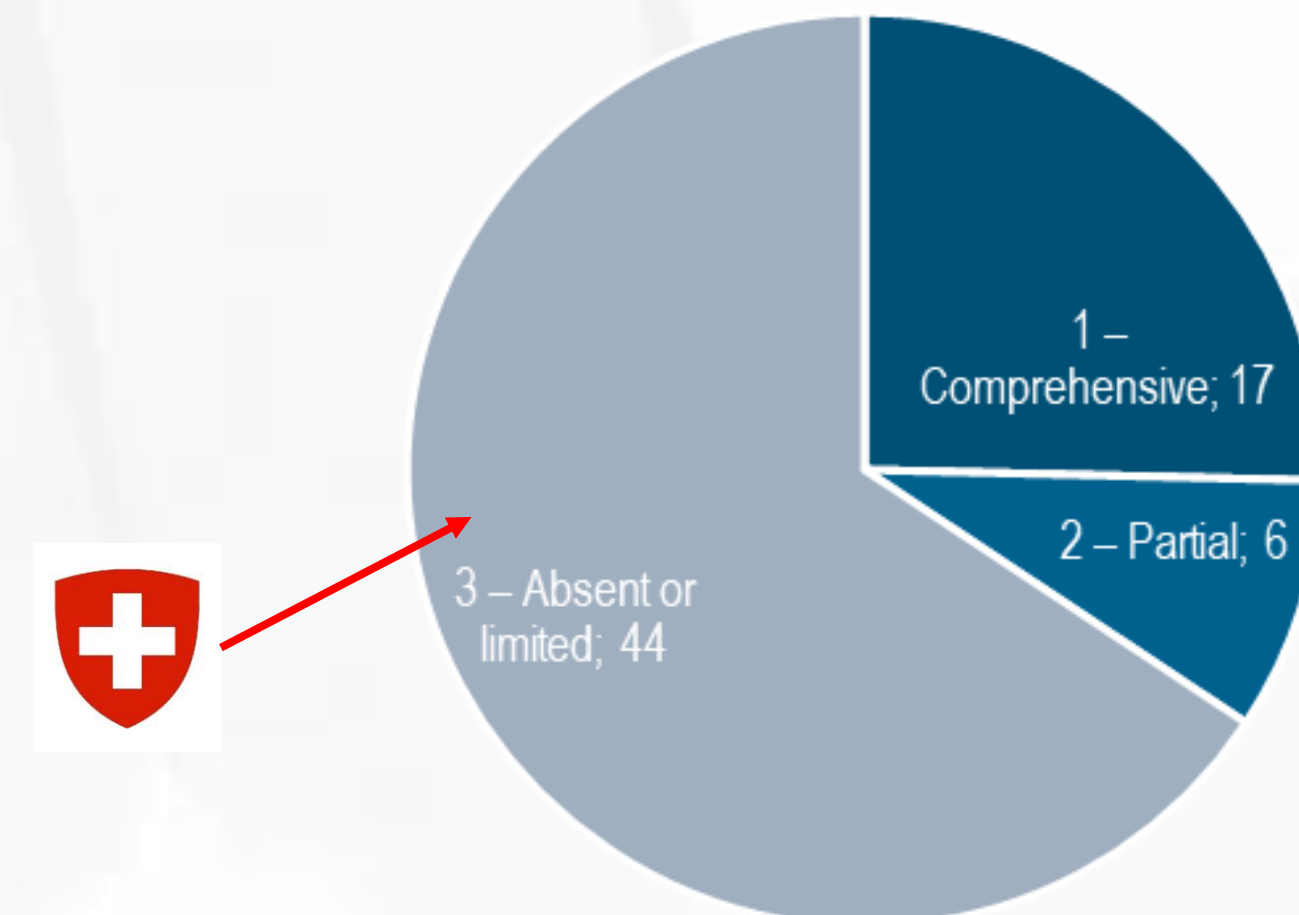
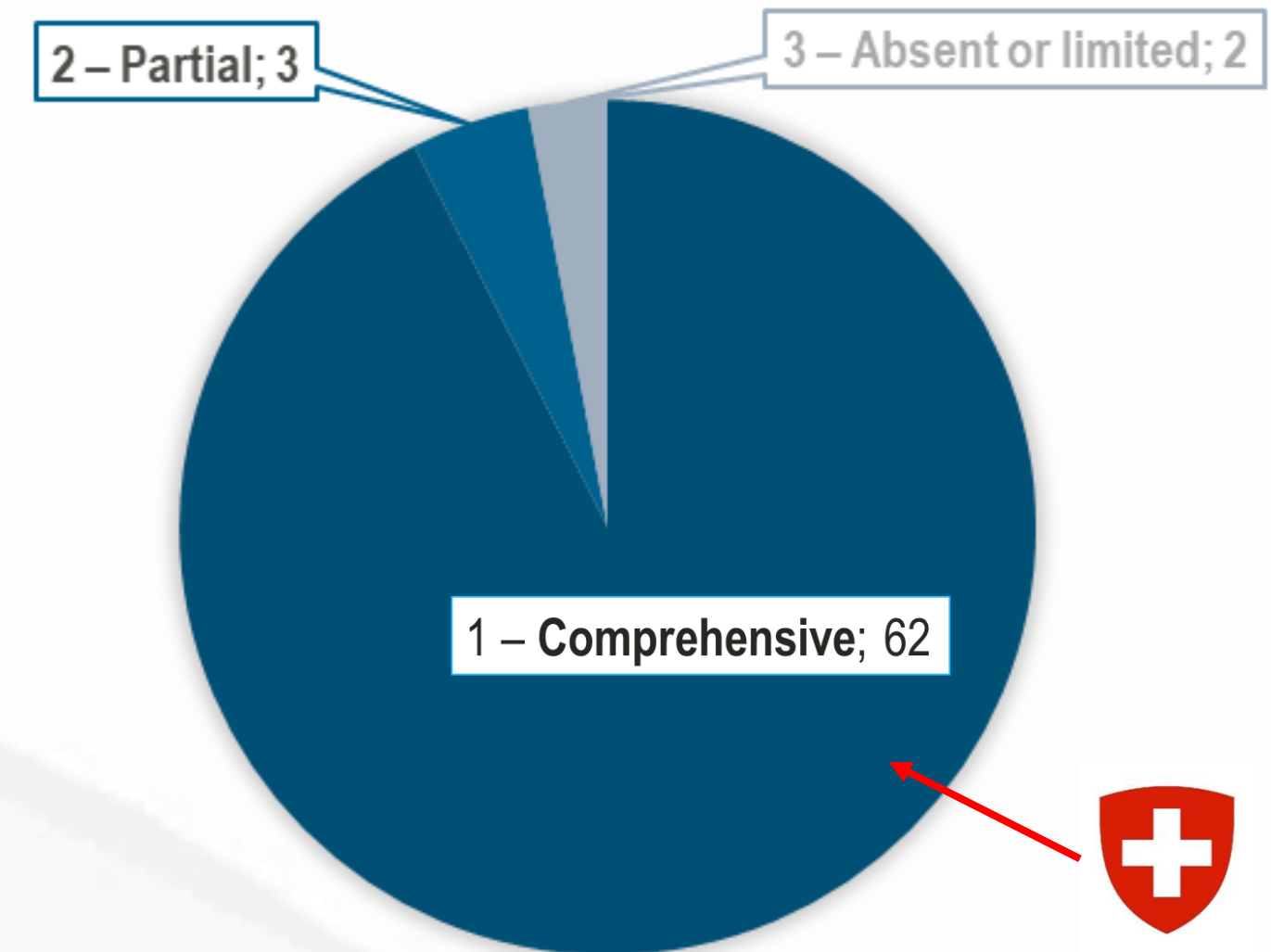


Summary of findings

Confidentiality and anonymity:

- almost all national laws studied explicitly protect the identity of whistleblowers as confidential information (Indicator no. 8).

- by contrast, provisions allowing for and protecting anonymous reports are much less common, with a large majority of national laws studied either ignoring or explicitly excluding anonymous whistleblowers from their protection (Indicator no. 7).



Summary of findings

Anti-retaliation provisions:

as a matter of principle, a very large proportion of national laws in the study explicitly protect whistleblowers against retaliation (Indicator no. 9).

However, approaches differ again when it comes to defining specific remedies against retaliation (Indicator no. 10)...

... and enacting sanctions against retaliators (Indicator no. 11).

