

# Analysis of the Icelandic Act on the protection of whistleblowers

# Summary

Iceland's Act on the Protection of Whistleblowers 2020, which formally entered into force on 1 January 2021, mirrors the provisions of the European Union's 2019 Whistleblower Directive in the scope of its coverage. However, it is significantly weaker than the Directive in terms of the support provided to whistleblowers and much of the detail of how reporting channels are to work is left undefined.

The scope for external (public) reporting is very limited, comparing poorly to a previous draft law considered by Iceland's Althingi in 2013-15. The presence of a good faith threshold for protection - which is tied to eligibility for legal aid and could lead to significant financial costs for any whistleblower whose legal action is not successful - means that, ultimately, the law does not comply with the Directive requirements according to Blueprint's Whistleblower Protection Compliance Tool (<https://tool.blueprintforfreespeech.net/>).

## Material and personal scope

Iceland's whistleblower law does not appear to place restrictions on the permissible subject matter of reports, at least when made through internal and law enforcement channels. Reporting is not restricted to illegal acts, but includes conduct that is contrary to the public interest.

The law applies to both the public and private sectors. Rather like the EU Directive, Iceland's law stops short of granting whistleblower protections to any member of the public who makes a report. A whistleblower is expected to have acquired information "in the context of their role" - this includes shareholders, volunteers and trainees as well as employees and contractors. In this respect, again, the Icelandic law tracks closely to the provisions of the Directive.

There are, however, some omissions. There is no provision for protecting colleagues or relatives who assist a whistleblower - something that was covered in the draft law considered in 2013-15 - nor is there any mention of facilitators, for instance journalists or civil society actors.

Another problematic area is the presence of a good faith requirement, which goes over and above the reasonable belief that the content of a report is true stipulated in the Directive. Article 1 of the Icelandic law defines good faith as having good reason that the information is true, but also that it is in the public interest to disclose it and that there is no other way of preventing the conduct at issue.

# Reporting channels

Internal disclosure covers reports within the organisation or to external bodies. There is no set procedure for internal reporting, which could be to the person's immediate superior. As such, many of the EU Directive's requirements are simply not provided for (though according to Article 5, more detailed guidelines will be laid down for this). Someone in receipt of a report is obliged to respond to it and let the reporting person know if action should be taken. There is also a duty of confidentiality to the reporting person, which can only be overcome with the reporting person's explicit consent. (Article 2)

The requirements for public disclosures to be protected are notably more restrictive than the Directive (which has itself been criticised for its treatment of public disclosures). Public disclosure is only allowed in cases where the whistleblower has tried to report internally and "has good reason to believe" that the conduct in question would merit a prison sentence or in the "very exceptional cases" where internal reporting could not be expected to work. The law is, however, clear that where state security or the economic interests of the state might be at issue, the presumption will be that disclosure is not in the public interest.

The law contains no provision for anonymous reporting.

Taken as a whole, the provisions on external reporting are significantly less permissive than the 2013 draft law, which protected public disclosure in circumstances where internal reporting had failed, or could be reasonably foreseen to fail.

## Support and legal protections

According to the Icelandic law, where reporting channels have been used properly, the reporting person is not in breach of a duty of confidentiality, has no criminal or civil liability and is immune from sanction in their place of work. In the case of workplace sanctions, it is for the employer to prove that this action was not related to an act of whistleblowing.

Where a whistleblower has been subjected to "unfair treatment", they are entitled to compensation for financial loss as well as damages. Where a whistleblower has made a report to an official body, including Iceland's Auditor General or the Occupational Safety and Health Administration, their unfair treatment is an offence that can be punished with a fine or up to two years' imprisonment.

The law makes no provision for interim relief, unlike the 2013 draft law, which included the right for public sector whistleblowers to be reassigned to a similar position within the organisation.

Whistleblowers have the right of recourse to the National and Supreme Courts in cases where they have been treated unfairly and are entitled to legal aid. However, this right is withdrawn in cases where it is shown in court that the reporting person was not acting in good faith. Given the definition of “good faith” in Article 1 of the law, this is a significant weakness in the Icelandic Act, which opens the door to potentially significant financial costs to whistleblowers who do not prevail in court.

## Review and evaluation

Provisions for record-keeping, review and evaluation are absent from the Icelandic law.

