

Impact case study (REF3)

Institution: University of Greenwich		
Unit of Assessment: 17 - Business and Management Studies		
Title of case study: Three-tiered whistle-blower protection: Enhancing policy and strengthening legislation across Europe for protection of whistle-blowers and tackling corruption		
Period when the underpinning research was undertaken: January 2010 - October 2018		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s):	Role(s) (e.g. job title):	Period(s) employed by submitting HEI:
Wim Vandekerckhove	Professor of Business Ethics	01/01/2010 - present
Period when the claimed impact occurred: August 2013 – July 2020		
Is this case study continued from a case study submitted in 2014? N		
1. Summary of the impact		
<p>Fraud and corruption are a persistent global threat to development and democracy. Whilst whistleblowing is the most effective means of detection, retaliation that many whistleblowers suffer, has an inhibitory effect on others. Therefore better whistleblower protection is likely to offer more effective detection and prevention of such crimes. Dr Vandekerckhove's conceptualisation and empirical validation of the three-tiered whistleblower model (internal to an organisation, to a regulator, in the public sphere), a more protracted process than previously considered, has meant that protection policy and legislation now cover the full extent of whistleblower behaviours most often needed to expose fraud and corruption.</p> <p>The research, and three-tiered model, has transformed whistleblower protections for the following: (1) The 47 member states of the Council of Europe, through improving coverage of protections to all three tiers in the Council of Europe Recommendation on Whistleblower Protection (CM/Rec(2014)7), 2014; (2) The 27 member states of the EU, through improving coverage of whistleblower protections to all three tiers in EU Directive (EU2019/1937), 2019; (3) The Netherlands and Kosovo, through improving institutional and legislative reforms for whistleblower protection, 2018.</p>		
2. Underpinning research		
<p>Whistleblowing is one of the most important means to detect wrongdoing. Across regions, the average percentage of fraud uncovered by whistleblowers, across countries and across sectors is 41% (Kroll, 2016, Global Fraud Report, New York: Kroll). This makes whistleblowing more effective than standard audit processes for uncovering wrongdoing (31%). In the US, 48% of cases where fraud was uncovered were facilitated by employees making whistleblower disclosures. In the Gulf region that was only 20%. The authors of the Kroll report attribute this difference in anti-fraud effectiveness to <i>a lack of internal whistleblowing systems and a lack of federal laws providing adequate protection</i> in the Gulf region, in stark contrast to the US. <i>Thus, legislation that 1) obliges organisations to have internal whistleblowing arrangements, and 2) that protects whistleblowers when they escalate concerns to a regulator, or 3) the media, improves the ability at all levels of society to detect and deter fraud and corruption</i>. Dr Vandekerckhove's three-tiered model has made this possible.</p> <p>Popular notions of whistleblowing assume this is a one-off decision. However, the research led by Vandekerckhove shows that whistleblowing is more likely to be a protracted process during which people make successive attempts to raise a concern about workplace wrongdoing. His research has shaped whistleblower protection legislation. He is the sole researcher proposing the three-tiered model, a model that has been adopted in EU level policy that requires all EU member states to change national legislation. Based on conceptual work as part of his PhD in 2006, but further developed whilst working as senior lecturer at the university from January 2010, Vandekerckhove developed a prescriptive model for whistleblowing at three tiers (internal to an organisational recipient, to a regulator, and to the wider public). He used this model to empirically make comparative evaluative studies of national whistleblowing frameworks [3.1]. The research found that 1) <i>in none of the EU countries did legislation oblige private sector organisations to have internal whistleblowing arrangements</i>; 2) <i>protection at second tier (to a regulator) was also very limited (Belgium for public sector, France for corruption, Ireland for both</i></p>		

public and private sector); 3) except for the UK and Romania, none of the EU countries provided protection at the third tier (whistleblowing to the media).

In 2013 **Vandekerckhove** led a collaborative project between the university and Public Concern at Work (one of the leading civil society organisations providing advice to whistleblowers, renamed Protect in Sep 2018). This research consisted of an empirical study of 1,000 whistleblowing helpline case studies in the UK. Through this research, **Vandekerckhove** provided evidence of the **protracted nature of actual whistleblowing, i.e. that whistleblowing starts internally and may remain so, but if unsuccessful, it leads to further escalation to a regulatory agency, and possibly further to the media**. The research also provides insight into *what determines the choice of internal channel to raise a concern, as well as how organisations tend to respond to internal and external whistleblowing*. An initial output from this research was published in 2013 in the form of an open access lay report [3.2], followed by a later academic article published in a leading peer reviewed journal, using the same data and covering the same ground [3.3].

Vandekerckhove's further research using this three-tiered model relates to *how transparency can be enhanced through the publishing of aggregated data from whistleblowing channels* [3.4]. This research supports the recommendation that *organisations should develop and implement policies and systems for internal whistleblowing*. **Vandekerckhove** (Co-PI with Loyens, Utrecht University) has also undertaken commissioned research on institutional arrangements for the Dutch Whistleblower Authority in the Netherlands [3.5, 3.6].

Hence, **Vandekerckhove's** body of research consists of **both conceptual and empirical work that supports policies and protection for whistleblowing at three tiers: internal (whistleblowing within the organization), external (whistleblowing to a regulator), and public (whistleblowing to the media)**. **Vandekerckhove** is the sole researcher with an explicit articulation of this three-tiered model for whistleblowing.

3. References to the research

1. **Vandekerckhove, W.** (2010) European whistleblower protection: tiers or tears? In D Lewis (ed) A Global Approach to Public Interest Disclosure. Cheltenham/Northampton, Edward Elgar, 15-35. DOI 10.4337/9781849806978.00010 [Full version available on request]
2. PCAW (**Vandekerckhove, W**; James, C; West, F) (2013) Whistleblowing: The Inside Story. London: Public Concern at Work / University of Greenwich.
[https://gala.gre.ac.uk/id/eprint/10296/1/Whistleblowing - the inside story FINAL.pdf](https://gala.gre.ac.uk/id/eprint/10296/1/Whistleblowing_-_the_inside_story_FINAL.pdf)
Indicator of research quality: report cited in UK Parliamentary debates (Hansard 11 March 2015 Vol760 nr 116, by Baroness Neville-Rolfe (then Parliamentary Under Secretary of State at Department for Business, Innovation and Skills and Minister for Intellectual Property) on p702; also Report by the Comptroller and Auditor General (HC1033 Session 2014-15) of 27 Feb 2015: National Audit Office (2015) Role of prescribed persons - Reference p2, footnote2 <https://www.nao.org.uk/wp-content/uploads/2015/02/The-role-of-prescribed-persons.pdf>
3. **Vandekerckhove, W.** & Phillips, A. (2017) Whistleblowing as a protracted process: A study of UK whistleblower journeys, *Journal of Business Ethics* DOI 10.1007/s10551-017-3727-8 **[REF2 Submission – Identifier 17969]**
Indicator of research quality: *JBE is a leading peer reviewed business ethics scholarly journal, and is one of the 50 journals the Financial Times relies on to rank educational institutions*
4. **Vandekerckhove, W.** (2018). Whistleblowing and information ethics: facilitation, entropy, and ecopoiesis. *Journal of Business Ethics*, 152(1), 15-25. DOI 10.1007/s10551-016-3294-4 [Full version available on request] **[REF2 Submission – Identifier 15677]**
Indicator of research quality: see indicator for Output 3.3
5. Loyens, K. & **Vandekerckhove, W.** (2018). The Dutch Whistleblowers Authority in an international perspective: a comparative study. Report commissioned by the Dutch Whistleblowers Authority.
<https://www.huisvoorklokkenluiders.nl/Publicaties/publicaties/2018/10/19/usbo-report-the-dutch-whistleblowers-authority-in-a-international-perspective>

6. Loyens, K., & Vandekerckhove, W. (2018). Whistleblowing from an international perspective: A comparative analysis of institutional arrangements. *Administrative Sciences*, 8(3), 30. Open source: <https://doi.org/10.3390/admsci8030030>
Indicator of research quality: cited in research led by Prof AJ Brown (Griffith University), one of the leading scholars on whistleblowing, in research on new regulatory roles: http://www.whistlingwhiletheywork.edu.au/wp-content/uploads/2019/08/Clean-as-a-whistle_A-five-step-guide-to-better-whistleblowing-policy_Key-findings-and-actions-WWTW2-August-2019.pdf cited p41, applies in context of three-tiered system, for which [3.1] cited p6

4. Details of the impact

Fraud and corruption are a persistent global threat to development and democracy. Global fraud surveys show *whistleblowing is the most effective way to detect fraud*, more effective than any standard audit process for uncovering wrongdoing. The retaliation many whistleblowers suffer, however, has an inhibitory effect on others who could report wrongdoing but remain silent out of fear. Recognition that *strengthening whistleblower protection* could lead to more effective deterrence and detection of crime is demonstrated in the impacts below. Dr **Vandekerckhove's** research, specifically the three-tiered model, has resulted in these impacts on whistleblower policy and legislation, and thereby to the **efforts in Europe to counter fraud and corruption**.

1. The three-tiered model: enhancing whistleblower protection in the Council of Europe Recommendation on Whistleblower Protection to the 47 member states

The *Council of Europe (COE)* has 47 member states, including EU27, Turkey, Ukraine, Russia, and even the UK post-Brexit (not be confused with the EU Council). The COE is an international organisation whose stated aim is to uphold human rights, democracy and rule of law in Europe. COE Recommendations are not legally binding on its member states but provide international benchmark guidance for national policy. In May 2013, **Vandekerckhove** was part of an expert panel invited by COE to discuss a draft of what would become the *COE Recommendation on Whistleblower Protection*. It was here that his research on whistleblowing as a protracted process and his articulation of the three-tiered approach started its route to impact [5.1].

In September 2014 the COE Committee of Ministers approved and published its Recommendation on Whistleblower Protection - CM/Rec(2014)7. The Recommendation adopts the three-tiered model as one of its principles (i.e. Principle 14) [5.1] and further explicitly references Vandekerckhove's research in the explanatory memorandum to underpin the claim that whistleblowing is a protracted process and therefore requires a three-tiered approach [5.2]. By doing so, the recommendation acknowledges the need for whistle-blowers to be protected at each stage of the protracted process they often go through in exposing corruption.

2. The three-tiered model: Incorporation into EU Law via EU Directive to the 27 member states, thereby strengthening whistleblower protection and attendant protection against corruption and fraud

In November 2016 **Vandekerckhove** chaired the panel on whistleblowing at the DG Justice Annual Symposium on Fundamental Human Rights [5.3], where the *European Commission (EC)* first committed to investigate an EU Directive on whistleblower protection. June 2017 he was invited by *DG Justice* as an expert to feedback on a draft of the impact study the EC was preparing for such a directive. The next month, the *EC's Directorate General for Internal Market, Industry, Entrepreneurship and SMEs (DG GROW)* published a 'Study on Quantifying the Economic Benefits of Whistleblower Protection in Public Procurement' making the economic case for legislation to define and protect the rights of whistleblowers in the EU. **The cost-benefit study used a scenario applying the three-tiered model as specified in the COE Recommendation, thus explicitly using Vandekerckhove's model [5.4].** In DG GROW's estimate the benefits of effective whistleblower protection for the EU are EUR 5.8 to 9.6 billion each year in the area of public procurement alone [5.4]. Benefits of other models that would not offer protection at all three

tiers are lower. The study therefore directly links the less tangible benefits of protecting the human rights and wellbeing of whistleblowers themselves, to the associated economic benefit.

In April 2018 the **EC** published the **justification study for an EU Directive proposal on whistleblower protection** (COM(2018)218final; 2018/0106(COD)). **The study makes explicit reference to Vandekerckhove's research [5.5] and acknowledged the role of an EU Directive on whistleblower protection as a means to reduce corruption and fraud, whilst improving worker protection at all three whistleblower tiers. The number of EU workers that would benefit from improved protection is estimated at 85,022,000 workers [5.5].** The need for protection across all three tiers was emphasised by the fact that since **Vandekerckhove's** 2010 study [3.1], and prior to the EU Directive, only Netherlands and France had made it mandatory for organisations to have an internal whistleblowing policy; only 10 countries of the 27 had comprehensive whistleblowing legislation at 2nd tier (to a regulator covering both public and private sector); only 4 countries had provided protection for whistleblowing to the media (France, Ireland, Italy and Romania).

At this point, the **EC** also launched an **EU Directive proposal, which maps itself explicitly [5.6] onto the COE Recommendation, thus using Vandekerckhove's research to phrase and conceptualise the three-tiered approach in their proposal.** On 15 April 2019, after many committee steps and trilogues between the European Parliament, the EC and the European Council, a final version of the **EU Directive on Protection of Persons Reporting Breaches of Union Law** (2018/0106(COD) – P8_TA(2019)0366) was voted-in by overwhelming majority in the **European Parliament.** During these debates, **Vandekerckhove's research continued to be relied on, specifically in the discussions on whether the three tiers constitute a mandatory sequence or whether an employee can choose at which tier a concern is raised [5.7, 5.8].**

The Directive - (EU) 2019/1937 of the European Parliament and of the Council of 23 Oct 2019 on the protection of persons who report breaches of Union law - was adopted on this date, published in the Official Journal of the European Union 26 November, and **entered into force on 16 December 2019. Member States have until 17 December 2021 to transpose it into their national laws,** which involves as a **minimum standard: mandatory internal policies in organisation of more than 50 employees, extending mandates of regulators to receive and handle whistleblowing reports, and providing protection for whistleblowers at three tiers (internal, regulator, public) [5.9]. Thus, Vandekerckhove's three-tiered model has become fully incorporated into EU Law in acknowledgement of the greater protection it offers to whistleblowers themselves, and thereby, the enhanced protection it provides against corruption and fraud in the EU.** The progress across EU countries to transpose the EU Directive into their own law can be viewed here: <https://www.polimeter.org/en/euwhistleblowing>. As can be seen, currently 21 of the 27 EU member states are in progress to complete transposition of the directive by the Dec 2021 due date. **At this point, all 27 countries within the EU will have protections for whistleblowers that incorporate Vandekerckhove's three-tiered model built into their own law.**

3. The three-tiered model at country level: strengthening whistleblowing protection in the Netherlands and Kosovo via shaping institutional and legislative change

The Netherlands: In preparation for meeting EU Directive requirements the **Dutch Whistleblower Authority** was established as a government agency in 2016. In 2018 it commissioned **Vandekerckhove** and Loyens (Utrecht University) to research institutional implementation of whistleblowing legislation [3.5, 3.6]. They used this research, and advice, from **Vandekerckhove [5.10] to review their strategy, position and mandate to align with the EU Directive.** Key applications of the three-tiered model in its **new strategy** are that the **Dutch Whistleblower Authority now perform a watchdog function on internal whistleblowing arrangements, whistleblowing handling processes of regulators, and generally as a centre of expertise that can help whistleblowers to navigate the three tiers and their institutions [5.10].**

Kosovo: In 2016 **Vandekerckhove** carried out a project commissioned by the **Council of Europe** under Phase II of PECK II (Project against economic crime in Kosovo). He used his body of

research work [3.1-3.4] to write a technical paper reviewing the extant whistleblowing legislation in Kosovo and made recommendations (ECCD-PECKII-TP-03/2016) [5.11a]. **In 2018, the Kosovo legislation was amended in line with Vandekerckhove's recommendations** made in the technical reports [5.11b, 5.11c, 5.11d]. **The law was enacted and published in the Official Gazette of the Republic of Kosovo on 18 December 2018** [5.11e]. **The legislation applies to all workers in the private and public sectors of Kosovo meaning improved worker protection at all three levels of whistleblowing (internal, to regulator, public) for 357,095 workers** [5.11f]

5. Sources to corroborate the impact

1. Testimonial: Anna Myers (COE Recommendation drafting panel lead) – CONFIDENTIAL
2. COE Recommendation on Whistleblower Protection: <https://rm.coe.int/16807096c7> Three-tiered approach (Principle 14) p8, reference to **Vandekerckhove's** research [3.2] footnote 26.
3. DG Justice Annual Colloquium 2016 https://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=31198 **Vandekerckhove** is listed as the moderator of this panel - click on programme, scroll to 18 Nov Session IIb: Whistle-blowers and investigative journalism.
4. DG GROW (2017). Estimating the economic benefits of whistleblower protection in public procurement: <https://publications.europa.eu/en/publication-detail/-/publication/8d5955bd-9378-11e7-b92d-01aa75ed71a1/language-en/format-PDF/source-38082319> . Mention of COE Recommendation as starting point of momentum toward EU Directive p12, p17, p25; Explicit reference to use of three-tiered model in report for cost calculation p44 fn64, p53; Bibliographical reference to **Vandekerckhove** (2010) [3.1] p95.
5. European Commission DG JUST justification study for horizontal: https://ec.europa.eu/info/sites/info/files/14_annex_-_icfs_study_whistleblower_report_-_vol_i_-_principal_report.pdf [3.1] referenced on p13, [3.2] on p 13,14,18,20,37.
6. Impact Study for an EU Directive Proposal on Whistleblower Protection Annex 12: https://ec.europa.eu/info/sites/info/files/annex_12.pdf
7. Testimonial, Feb 2020: President of EUROCADRES.
8. Open letter used by civil society organisations for lobbying during the trilogues (final debates between EU Parliament, EU Commission, and Council of the EU).
9. EU Directive (Official Journal of the European Union 26 November 2019): <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1937&from=EN> The three-tiered model is in Art. 7-8 (internal); Art. 11 (regulator); and Art. 15 (public)
10. **Netherlands**: New strategic vision of the Dutch Whistleblowers Authority ('Huis Voor Klokkenluiders'), 24 February 2020. [English version not available]: <https://www.huisvoorklokkenluiders.nl/actueel/nieuws/2020/02/24/huis-voor-klokkenluiders-presenteert-nieuwe-toekomstvisie-van-een-huis-voor-klokkenluiders-naar-een-autoriteit-voor-integriteit-en-klokkenluiden> Three-tiered model mentioned p7; reference to commissioned research [3.5] on role of whistleblowing agencies in helping whistleblowers to navigate three tiers and their institutions p13 fn19; **Vandekerckhove** in list of consulted persons p24. 3.5 is the only academic research mentioned. Other references are to auditors, evaluators.
11. **Kosovo** (a) Technical Paper: *Review of the whistleblowing legislation in Kosovo*. Council of Europe, PECKII-4561-201016-TP-03-2016 – CONFIDENTIAL. (b) Testimonial email from Ms Vlora Marmullakaj, Senior Project Officer PECK II, Council of Europe office in Pristina – CONFIDENTIAL. (c) Testimonial email Flutura Kusari, European Centre for Press & Media Freedom, legal editor working with Kosovar journalists. – CONFIDENTIAL. (d) Newsroom PECKII: <https://www.coe.int/en/web/corruption/-/legislation-on-protection-of-whistleblowers-enters-into-force-in-kosovo> The COE PECKII programme announces 02/01/19 that the legislation based on **Vandekerckhove's** paper [5.11a] has entered into force. (e) Whistleblowing legislation in the Republic of Kosovo, English translation: <https://md.rks-gov.net/desk/inc/media/701773B8-903F-476F-9D1E-2F7CC2C86A84.pdf> The three-tiered approach is in: Art 13; Art16-17 (internal); Art 18-19 (regulator); Art 20 (public). (f) Labour Force Survey 2017, Kosovo Agency of Statistics: <http://ask.rks-gov.net/media/3989/labour-force-survey-2017.pdf>