

Providing an Alternative to Silence:

**Towards Greater Protection and Support for
Whistleblowers in the EU**

COUNTRY REPORT: SPAIN

This report belongs to a series of 27 national reports that assess the adequacy of whistleblower protection laws of all member states of the European Union. *Whistleblowing in Europe: Legal Protection for Whistleblowers in the EU*, published by Transparency International in November 2013, compiles the findings from these national reports. It can be accessed at www.transparency.org.

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**Research methodology for cataloguing and assessing
whistleblower legislation in the EU-27**

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Country report Spain

1. Introduction

Spain does not have any legislation protecting whistleblowers in the private and public sector. There is a legal regime on reporting criminal conduct to the competent authorities. The duty of all citizens to report crimes is supported by the establishment of hotlines. However, a serious difficulty is the need for persons to afterwards confirm the report formally. International conventions such as the United Nations Convention against Corruption and the OECD Anti-Bribery Convention promote the implementation of whistleblower protection laws. Reviews of the implementation in Spain clearly state the urging need for the country to adopt such legislation. The Spanish authorities have announced reforms of the criminal code but have not clearly expressed the intention to address the protection of whistleblowers.

Due to the lack of national legislation, the private sector is not legally obliged to implement whistleblower mechanisms. However, extra-territorial legislation such as the US Foreign Corrupt Practice Act and the UK Anti-Bribery Act have moved Spanish companies to implement compliance programmes, policies and procedures. Information on measures taken to fight corruption in the private sector are increasingly made public. This is an encouraging development, however critics argue that the business decisions taken by the sector often do not reflect the objectives of the compliance programmes. On top of that, dialogue between the government, private sector and civil society on the fight against corruption remains limited causing for serious concerns on implementation of anti-corruption legislation such as foreign bribery.

Key institutions in Spain, essential for the fight against corruption, enjoy low levels of popular trust. Corruption is a crucial factor in the perceived decline of quality of the Spanish democracy. The country is characterised by a historical tendency to mistrust political institutions and politicians. The memories of the civil war and the following dictatorship could explain the disaffection with the institutions. Spoils of this are characterised by opacity, clientelism and lack of political and economic control. These factors limit citizens' participation. To improve the participation, the Spanish authorities should promote transparency, accountability and impartiality. In other words, in order to promote whistleblowing and other forms of citizen participation, trust in institutions needs to be restored and mechanisms need to be provided in order for citizens to proactively take part in the democracy.

2. A compilation, description and assessment of WB protection laws

Whistleblower protection legislation

In Spain there is no specific labour or administrative legislation in place protecting whistleblowers. A certain protection is granted through the Witness Protection Law¹

¹ Ley Orgánica 19/1994, de 23 de diciembre, de Protección a Testigos y Peritos en Causas Criminales. Available [here](#).

(Organic Law 19/1994, of 23 December) to witnesses and to people who report their participation in a corrupt activity. The Criminal Code² (Organic Law 5/2010, of 22 June 2010) contains for bribery a disclaimer clause which states that this is eligible in case the corrupter reports within two months since they have committed the act (art. 426 CP). This is in fact only applicable to the payer and not to the recipient.

Section XIX of the Criminal Code has a very detailed and up-to-date list of offences against the public administration, including: bribery (articles 419-427), corruption (articles 404-406), influence peddling (articles 428-431), misappropriation (articles 432-435), fraud (articles 436-438) and activities that are forbidden to civil servants (articles 439-444). Anyone who knows of offences of this type is obliged to report them (art. 262 Code of Criminal Procedure³). Along with these offences there is a whole range of disciplinary proceedings for misconduct.

The UNCAC implementation review group⁴ looks at criminalization and recommends Spain to ensure that cases in which a bribe is promised are also covered. This could for example fall under the concept of 'offer', currently legislated under article 424 of the Criminal Code. Should the Judiciary not interpret the law accordingly, legislative clarification may be considered. Besides, the report recommends 'amending relevant legislation to provide clarity with regard to a specific regulation of active bribery by public officials'. On law enforcement, the report recommends Spain 'to adopt statistical information tools to monitor the witness protection policy, and, if appropriate, establish a witness protection programme'. Also, the report presses Spain to 'ensure specific rules for the protection of whistleblowers in labour and administrative law'. There is a legal regime on reporting criminal conduct to the competent authorities. The duty of all citizens to report crimes is supported by the establishment of hotlines. However, a serious flaw is the need for persons to afterwards confirm the report formally. The fact that reporters need to come forward might function as a deterrent given that afterwards no formal whistleblower protection is offered.

The third OECD evaluation report⁵ published in January 2013 on the implementation of the Anti-Bribery Convention also refers to the need for Spain to take steps in protecting whistleblowers from retaliatory action. The Spanish authorities responded to the evaluation by noting that the Prosecutor General's Office had modified the website in order to clarify the effects of art. 262 CCP but that nothing had been done to protect whistleblowers. They also cite the individual rights of public servants set out in art. 14 of the Basic Statute for Public Employees (Law 7/2007) however none of the rights of this provision relate to protecting employees from retaliatory action when reporting crimes in good faith. In light of the observations of the OECD evaluators, the Spanish authorities note that a 'recently appointed expert commission is working on the revision of the Criminal Procedure Code with a view to adoption of the amendments by the current government.'

² Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal. Available [here](#).

³ Ley de Enjuiciamiento Criminal. Available [here](#).

⁴ Implementation Review Group, data on Spain. Available [here](#).

⁵ Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Spain. Available [here](#).

However, the authorities could not provide any additional information on the nature of these proposed amendments. Based on the findings of the evaluation, the OECD commented in the report that despite the general obligations to report suspected offences, there is a clear lack of reporting of possible foreign bribery cases in the private and public sector. Partly this is due to the inexistence of a reporting channel and therefore the OECD recommends Spain to 'create and publicise a clear means by which such reports can be made to law enforcement authorities'. Another reason for the low reporting of cases might be, according to the OECD, the lack of whistleblower protection.

Despite the fact that the crime of 'not reporting corruption' is described by law, Spain knows few cases of whistleblowing. The country has a deep-rooted culture of silence and avoiding reporting of corruption. The cause most likely can be found in the dictatorial past, which might have generated a negative connotation to the notion of whistleblowers but more importantly deepens the social distrust towards government institutions. Besides, there are no incentives for identifying corruption. On the contrary, there are disincentives for blowing the whistle, such as long procedures, social rejection and fear of retaliation. It is very infrequent to have civil servants sanctioned for not reporting corruption.

Whistleblower mechanisms in the public sector

Despite the clear lack in legislation on whistleblower protection, there are mechanisms in place that allow citizens to report corruption. In fact, the Spanish Public Prosecutor Office has a hotline. This mechanism, however, is seriously flawed due to the need for whistleblowers to later confirm personally the report. The public administration in Spain has a full range of instruments, processes and structures to ensure accountability. These are designed to control abuse of power, illegalities, discrimination, corruption and fraud.

External control mechanisms are in place. Royal Decree 208/1996, of 9 February, regulated the Administrative Information and Citizen Advice Service.⁶ This piece of legislation envisaged a registry of complaints and suggestions for the entire Spanish national public administration. This registry should gather and process any questions and remarks by citizens about the operation, availability and quality of the public services. Citizens would be able to denounce unfair treatment or any irregularities they have encountered in the administrative authorities. Royal Decree 951/2005, of 29 July, established the general framework for improving the quality of the public administration.⁷ A number of basic programmes were set up to continuously improve services, including the programme on complaints and suggestions. In aiming to unify the processing criteria for complaints and suggestions, the Ministry of Public Administration in 2006 published a Guide for Processing Complaints and Suggestions which lays out the steps to be followed by both the public and the civil servants involved. As a result, in each administrative body, a unit was set up to deal with

⁶ Real Decreto 208/1996, de 9 de febrero, por el que se regulan los Servicios de Información Administrativa y Atención al Ciudadano. Available [here](#).

⁷ Real Decreto 951/2005, de 29 de julio, por el que se establece el marco general para la mejora de la calidad en la Administración General del Estado. Available [here](#).

complaints and suggestions and obligated to deal with files within 20 working days. Complaints and suggestions can be presented in person, by post or electronically. The follow-up is the responsibility of the Inspector General of Services in each department.

A mechanism for internal control of the public administration is the obligation of every supervisor to control the professional conduct of the civil servants. The accounting and financial control is permanently exerted by the Court of Audit and inspections are carried out by departmental services. The legal aspects are looked at by the State's Legal Council as well as the Observatory of Quality in Public Services. External control mechanisms are operated by the Court of Audit, the Ombudsman and in criminal cases the Public Prosecutor's Office and the Judiciary.

Despite adequate internal and external control mechanisms in the public administration, in practice there is lack of incentives for the mechanisms' development and implementation. In fact, informal rules causing opacity could be seen as disincentives to the effectiveness of the internal control mechanisms. Disciplinary procedures are lengthy and expensive due to the protected legal status of civil servants. Despite that this is a disincentive for the effectiveness of the control mechanisms, it could function as an incentive to blow the whistle on irregularities as basic protection of civil servants is guaranteed through labour statutes. Nevertheless, there is no centralised point of information on currently open disciplinary procedures on top of the fact that regulation lacks to protect those who report fraud, corruption abuse and squandering. As for the external control mechanisms, such as the suggestion and complaints portals, surveys⁸ show that few citizens use these means. The main reason is given that citizens perceive these mechanisms as being useless given that they do not believe the complaint or suggestion has any impact or follow-up.

Whistleblower mechanisms in the private sector

Given that Spain lacks adequate whistle-blower protection, the private sector is not legally incentivised to establish internal procedures and policies to promote reporting and protect whistleblowers. Nevertheless, extra-territorial legislation, such as the UK Bribery Act and the US Foreign Corrupt Practices Act, do affect the corporate governance of Spanish companies. The OECD recommends the Spanish authorities to 'raise awareness among companies of all sizes and sectors of the implementations of art. 31bis Criminal Code⁹ and the risk of corporate liability for bribery of foreign public officials, along with the corresponding need to put in place an effective anti-bribery compliance programme'. Also, according to the OECD, the Spanish authorities should actively promote the implementation of the Annex II Good Practice Guidance¹⁰ in the private sector.

⁸ La percepción social de los Servicios Públicos en España (1985-2008). Available [here](#).

⁹ Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal. Available [here](#).

¹⁰ Good Practice Guidance on Internal Controls, Ethics, and Compliance. Available [here](#).

Studies conducted by the Fundación Ecología y Desarrollo¹¹ show a clear change in the implementation of anti-corruption policies among the companies listed on the IBEX-35¹² stock market index.¹³ According to the studies, in 2005 roughly 43% did not have any anti-corruption policy. This improved in 2009 to only 6%. Also in 2005, 43% of the companies had an advanced policy in place, compared to 74% in 2009. However, the information provided to the public is often scarce providing few details on the implementation of whistleblowing mechanisms and training of employees in integrity. Nevertheless, in 2005, 14% of the IBEX-35 companies implemented integrity training programmes which increased to 48,5% in 2009. In 2005, 31% of the companies implemented whistleblower mechanisms that guaranteed confidentiality and clear escalation paths to the responsible persons within the company. In 2009 this increased to 63%. This increase is most likely the result from the obligations of the Sarbanes-Oxley Act¹⁴ of 2002, monitored by the Securities Exchange Commission¹⁵ (SEC).

The Spanish agency in charge of supervising and inspecting the Spanish stock markets (Comisión Nacional del Mercado de Valores¹⁶, CNMV) monitors compliance with the laws that affect the companies on the IBEX-35. The agency states that the most common breaches of their ethical code are those concerning transparency and organization (especially remuneration) of company boards. Nevertheless, most stock exchange companies have information available online regarding corporate social responsibility programmes and sustainability initiatives. Regarding the implementation of these initiatives and programmes, there are mixed messages. For example, the organization Observatorio de Responsabilidad Social Corporativa¹⁷ states in its research that there is an inconsistency between the public commitment regarding sustainability and actual business decisions. Despite that the country has a number of rules and regulations in place to cover aspects related to transparency of business activities, loopholes are identified that could cause for irregularities. Spain's main weakness for possible irregularities in the private sector is, according to the Observatorio de la Responsabilidad Social Corporativa, the extensive use of tax havens by the IBEX-35 companies. Around 28 listed companies use subsidiaries or affiliated companies registered in tax havens, increasing the risk of tax evasion and fraud.

Article 116 of the Stock Market Law (Ley del Mercado de Valores¹⁸) makes it compulsory for listed companies to state in their annual corporate governance reports the degree of compliance with corporate governance recommendations. The principle of 'comply or explain' is used to move companies to publicly explain why certain recommendations are not complied with. The 2006 Unified Code of Good

¹¹ Fundación Ecología y Desarrollo. Available [here](#).

¹² Bolsa de Madrid. Available [here](#).

¹³ Negocios limpios, desarrollo global: El rol de las empresas en la lucha internacional contra la corrupción. Available [here](#).

¹⁴ Sarbanes-Oxley Act. Available [here](#).

¹⁵ Securities Exchange Commission. Available [here](#).

¹⁶ Comisión Nacional del Mercado de Valores. Available [here](#).

¹⁷ Observatorio de Responsabilidad Social Corporativa. Available [here](#).

¹⁸ Ley 24/1988, de 28 de julio, del Mercado de Valores. Available [here](#).

Corporate Governance (Código Unificado de Buen Gobierno Corporativo¹⁹) lays out the recommendations that listed companies should consider. The Spanish Data Protection Agency (Agencia Española de Protección de Datos, AEPD²⁰) published an opinion based on a question on a whistleblowing procedure of a pharmaceutical company. The opinion gives a good insight of the agency's view on the compliance of such procedures, especially with regards to the Organic Law 15/1999, on personal data protection (Ley Organica de Protección de Datos de Carácter Personal²¹). The agency accepts the use of whistleblowing mechanisms as long as strict data protection obligations are met. Public companies do not have a legal obligation to implement the mechanism, according to the AEPD. This statement is, however, debatable.

Many Spanish companies have subscribed to the UN Global Compact²², however in general the question of combatting corruption is absent in dialogue between the government and the private sector. In fact, the OECD evaluators on the implementation of the Anti-Bribery Convention note in their 2013 report that during their visits they met with representatives of the Spanish public and private sector, and civil society. Unfortunately during the panel discussion with the private sector and civil society, the Spanish government was not present. One of the reasons for the absence of dialogue on corruption between the authorities and the business sector could be the strict accounting and auditing requirements demanded by the Spanish legal system. However, a serious concern is the lack of implementation by the government of legislation dealing for example with anti-bribery. The OECD comments that within the last 13 years of the Anti-Bribery Convention no individual or company has ever been prosecuted or sanctioned for foreign bribery. In fact, SEPBLAC²³, the agency fighting money laundering, states that the communication of suspicious transaction in Spain is among the lowest among developed countries. The lack of adequate protection of whistleblowers could be the reason for this. But it also indicates that money laundering a serious problem in Spain. Public-private partnership to solve these problems is therefor desired.

The failure of implementing anti-bribery legislation, with a lack of reporting of irregularities has resulted in only 7 foreign bribery cases in the last 13 years. All cases were closed with only two of them passing beyond the initial prosecutorial investigation. Reasons for closing the cases vary. A recurring problem in four of the cases was the statutes of limitation and in three of the cases lack of sufficient evidence. But this only concerns foreign bribery cases and does not reflect the effectiveness of the fight against corruption in Spain. Unfortunately it is very difficult to estimate the activity and success of the law enforcement in fighting corruption given that the number of cases brought to court or denounced to the police, prosecutor's office or the courts are not clearly identifiable. It seems that the few

¹⁹ Código Unificado de Buen Gobierno Corporativo. Available [here](#).

²⁰ Agencia Española de Protección de Datos. Available [here](#).

²¹ Ley Orgánica 15/1999, de 13 de diciembre, de Protección de Datos de Carácter Personal. Available [here](#).

²² UN Global Compact. Available [here](#).

²³ Comisión de Prevención de Blanqueo de Capitales e Infracciones Monetarias. Available [here](#).

foreign bribery cases is not reflective of the size of the problem. In Spain there is little information available on corruption in the private sector and therefore existing data mainly focuses on the public sector. This is because up until 2010, the Criminal Code did not cover corruption in the private sector. Framework Decision 2003/568/JAI²⁴ altered the new Criminal Code²⁵ and criminalised corruption in the private sector. Nevertheless, further research is required to gather robust information on this phenomenon.

Some indication of the size of the problem is available. A news article in El Público²⁶ on 25 July 2010 states that in 2008 and 2009 companies have dealt with more than 500 corrupt employees. This indicates that irregularities do occur frequently and that the (somewhat passive) government approach is complemented by an increasingly active approach of the private sector. As the IBEX-35 companies are investing more in compliance programmes, one could expect an increase of corruption cases surfacing. The news article in El Público speaks of a 17% of the Ibex-35 companies in 2009 reporting corruption cases (Santander, Telefónica, Iberdrola, Repsol, Endesa and Enagás) against an 8,5% in 2008 (Telefónica, Endesa and Iberdrola). However, it has to be noted that also more companies reported such kind of information and that little information is available on the kind of irregularities occurring within the companies. Nevertheless, one could identify good practices of the Spanish private sector regarding measures such as whistleblowing systems.

Abengoa created in 2007, in accordance with the Sarbanes-Oxley Act and the US Foreign Corrupt Practices Act, a whistleblower or communication mechanism together with the company's independent audit committee.²⁷ The mechanisms contains an internal and external channel to blow the whistle. The internal mechanism is available for all employees to communicate through an electronic key or ordinary message any irregularity concerning accounting or auditing matter as well as incompliance with the company's code of conduct. The external channel allows third parties to denounce irregularities through the website.²⁸ Each complaint can be transmitted with either a confidentiality clause for the complainant or completely anonymous. The company's External Whistleblower Channel Policy²⁹ states that Abengoa will not tolerate any retaliation against third parties for complaints submitted in good faith. It also mentions that 'any allegations that prove to have been made maliciously or knowingly false may be subject to such legal actions as Abengoa considers necessary'. Complaints will be received by the Director of Corporate Internal Audit and the General Secretary of the company. Abengoa's objective is to allow access to the company's management and governing bodies in case of possible irregularities and unethical behaviour.

²⁴ Framework Decision 2003/568/JAI. Available [here](#).

²⁵ Ley Orgánica 5/2010, de 22 de junio, por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal. Available [here](#).

²⁶ Personal communications, July 2010.

²⁷ Abengoa Annual Report 2011. Available [here](#).

²⁸ Abengoa External Whistleblower Channel. Available [here](#).

²⁹ Abengoa External Whistleblower Channel Policy. Available [here](#).

A second example of good practice in Spain is the company Endesa. The company has prominently published online their so-called Ethic Channel³⁰. Here one finds the company's Code of Ethics, General Principles for Criminal Risk Prevention and the Zero Tolerance Plan Against Corruption. Endesa created an ethics box³¹ allowing stakeholders to put forward any complaints and concerns over accounting, internal accounting controls and auditing matters, etc. The ethics box is managed by an external company³² which will direct all reports to the responsible persons within the company. The external company will ensure that complete anonymity is guaranteed. Endesa does state that the 'highest degree of responsibility must be employed when carrying out this procedure and any false or rash claims could lead to penal or civil punishment as set out by law'.

BBVA has a Regulatory Compliance unit in place to analyse possible breaches in the code of conduct³³ and propose corrective or disciplinary measures.³⁴ Communications through the whistleblowing channels will be passed on to any of the units designated for this purpose. These units are obliged to preserve the anonymity of the whistleblower. BBVA's Corporate Integrity Clause does not only entail personal accountability for individual actions but also commits the employee to report situations questionable from an ethical perspective which may not be connected to their actions or area of responsibility. The code of conduct states that such reports need to be submitted to the person responsible according to the judgement of the whistleblower. This could be the immediate supervisor, managers of the Legal Affairs or Human Resources departments, corresponding Internal Audit or Compliance departments or the Corporate Compliance Office. All these actors are requested to maintain the anonymity of the person that filed the complaint. According to BBVA, retaliation against the employee for communicating situations in good faith is prohibited.

3. Perceptions and political will

Decline in institutional and social trust

Research shows that the quality of the Spanish democracy is declining, mainly due to corruption.³⁵ Despite the popular discontent with corruption, the lack of willingness to come forward should be analysed against a background of a country with historical tendency to mistrust political institutions and politicians.³⁶ Spain's memories of the civil war and the succeeding dictatorship, the early socialization in institutional mistrust, combined with the relatively young democratic governance, could explain why Spaniards have a thick culture³⁷ of institutional disaffection and therefor fail to communicate irregularities in the private and public sector.

³⁰ Endesa Ethic Channel. Available [here](#).

³¹ Endesa Ethics Box. Available [here](#).

³² EthicsPoint. Available [here](#).

³³ BBVA Code of Conduct. Available [here](#).

³⁴ BBVA Annual Report 2011. Available [here](#).

³⁵ Estefanía, J. (2010). Informe sobre la democracia en España 2010. Fundación Alternativas, Madrid.

³⁶ Torcal, M. y Magalhaes, P.C. (2010): "Cultura política en el sur de Europa: un estudio comparado en busca de su excepcionalismo", in Torcal, M. (ed.) La ciudadanía europea en el siglo XXI, CIS, Madrid.

³⁷ Mishler, W and Pollack, D. (2003). On Culture Thick and Thin: Toward a Neo-Cultural Synthesis, in D.

Statistics show in Spain a very strong drop in institutional trust (Standard Eurobarometer, Nos 69-73 and Special Eurobarometer, No. 71,1). The high net trust level in the Congress of Deputies in spring 2008 (before the Lehman bankruptcy) was 20% which dropped in 2010 to -50%.³⁸ Social trust has also dropped between 2004 and 2009 from 39% (European Social Survey) to 34% (CIS Study 2826). Villoria, Van Ryzin and Lavena provide empirical support for the idea that citizens can detect corruption and that their perceptions of corruption are associated with lower levels of satisfaction with democracy and government, diminished levels of institutional and interpersonal trust, and a greater acceptance of rule breaking behaviour.³⁹ In other words, corruption does weaken the legitimacy of governments and harms the social fabric of democratic society. This provides all the more reason for governments to implement effective measures to fight corruption, measures such as whistleblower protection and systems.

The Centre of Sociological Research (CIS) has conducted a survey on Ethics and Corruption (survey nº 2.826⁴⁰, in 2010).⁴¹ The study shows distrust towards crucial actors in the fight against corruption. For example, on the statement whether the judiciary punishes the guilty without prejudice, 45,7% of the respondents disagrees and 21,1% strongly disagrees. Such institutional integrity distrust will most certainly reflect on the willingness of citizens to blow the whistle. Citizens might have the perception that their report will not result in action. After all, such a perception has been confirmed by the surveys⁴² conducted on the attitudes towards complaints and suggestion mechanisms.

Further, the study gives an overview of the perception of the respondents on the extensiveness of corruption (in percentage) among various key societal actors:

	very extensive	quite extensive	somewhat extensive	little extensive	not extensive	there is no corruption
Law enforcement authorities	12.1	29.9	12.2	26.6	5.1	1
Judiciary	12.2	32.3	13	24.8	4	0.6
Politicians	38.6	40.6	8.8	5.8	0.7	0

Pollack and J.Jacobs (eds) Political Culture in Post-Communist Europe, London: Ashgate.

³⁸ Net trust measures are done by subtracting the percentage of citizens who trust with the percentage of citizens who mistrust (CEPS Working Document 343, June 2010).

³⁹ Villoria, Manuel, Gregg Van Ryzin and Cecilia Lavena, "Consequences of corruption: A study of political attitudes in Spain". Paper presented at the 7th Transatlantic Dialogue, Newark, NJ, 22-25 June, 2011.

⁴⁰ CIS Survey 2826. Available [here](#).

⁴¹ The study consisted of a stratified proportionate sample of 2500 residents of the 17 regions (autonomous communities) of Spain who were 18 years of age or more. The strata were formed based on region and size of the population of the municipalities. A total of 237 municipalities (out of 8,116) and 48 provinces (out of 50) are represented in the survey. The completion rate was approximately 99% with 2478 completed surveys.

⁴² La Percepción Social de los Servicios Públicos en España (1985-2008). Available [here](#).

Public procurement authorities	33.2	39.4	8.4	8.2	1.1	0.2
Inspectors (health, urban, etc.)	21.2	32.8	11.3	16.9	2.8	0.4
Permit-issuing authorities	35.6	40.3	7.5	7	1	0.1
Civil servants	10.7	24.8	13.2	28.7	805	1.2
Businessmen	16.4	38.1	14.8	16.9	2.1	0.2
Unions	14.6	28.9	12.6	21.6	4.4	0.6
Banks	22.6	33.3	12	14.6	2.5	0.3
NGOs	6.2	18.4	13.5	26.7	13.7	2
Media	11.3	30.3	17.2	20.8	5.1	0.9

The lack of trust in the integrity of the institutions is devastating for the Spanish society. The CIS study on Ethics and Corruption does also show that the Spaniards do not necessarily have deviant perceptions on what is constituted as corrupt behaviour. This means that the low reporting of corrupt behaviour is not necessarily caused by misunderstanding of 'what is permitted' and 'what is not'. Therefor one could argue that the problem lies more in the lack of societal trust as well as weak formal and informal institutional organisation. In other words, in order to promote whistleblowing, trust in institutions needs to be restored and mechanisms need to be provided in order for citizens to participate. Key factors in this matter that promote integrity and quality of government and that prevent corruption and abuse of power are, for example, transparency, accountability, citizens' participation and impartiality.

4. Strengths, weaknesses and recommendations

Research shows that corruption in Spain jeopardises the democratic quality of the country and therefor threatens the public interest. For that reason the disclosure to the authorities of information by stakeholders relating corruption, illegal, fraudulent or harmful activities in the public and private sector, needs to be facilitated in order to allow for effective preventive and reactive measures in the fight against corruption. In order to do so, Spain should prioritize the following:

1. to establish a legislative framework protecting whistleblowers coming from the public and private sector from any form of retaliation
2. to ensure accessible and reliable mechanisms to allow for reporting on irregularities
3. to promote the use of whistleblower mechanisms and raise awareness in both the public and private sector

The legislative framework to protect whistleblowers could be complementary to the already existing legal basis to oblige citizens to report crimes and the right to witness protection. However, it is recommendable to establish a broad definition of whistleblowing as well as of the whistleblower. This ensures that information can be

disclosed or reported of any irregularity (including but not limited to corruption, fraud, money laundering, waste and mismanagement, etc.) and by any person coming from the public and private sector. Also the legislation should protect from all forms of retaliation.

To ensure accessible and reliable mechanisms, the Spanish authorities should warrant the preservation of confidentiality unless the whistleblower agrees to disclose personal data. The reporting channels should be clearly communicated to the citizens and civil servants through the use of the websites (or intranets) of the governmental institutions. Preferably there should be one portal that is accessible 24/7 and directs the report to the relevant authorities, i.e. the courts, prosecutors or law enforcement agencies etc. The government should use the portal to publish all policies and procedures in an accessible manner and provide citizens with a contact point to ask for clarification in case of doubts. Besides the importance of confidentiality, rules on administrative procedures for whistleblowing portals should be established. These procedures should guide the authorities in how to handle reports and how to communicate with the reporter. Active communication with the reporter on the progress made will ensure increased satisfaction and could improve trust in the institutions.

The Spanish authorities need to raise awareness and promote the use of whistleblowing mechanisms. For this, there is need to enter into constructive and regular dialogue with the private sector as well as civil society. The Spanish government can play an active role in supporting compliance programmes in the private sector. Entering into regular dialogue with civil society can help improve social trust in governmental institutions. The government should promote citizens' participation and improve access to information. Also, it should ensure that requests of citizens are always attended to in order to improve customer satisfaction.

Internally, the Spanish authorities should provide integrity training and clearly communicate to civil servants the importance of fighting corruption. Also, internal integrity systems could be established, for example by automatizing procedures that are sensitive to corruption, such as public procurement, subsidies, granting of licences etc. Such integrity systems could help civil servants to solve doubts in case they are exposed to a situation that could be incompliant with the code of ethics. Also, the escalation paths can be clearly defined through such systems. This will solve communication problems, as for example⁴³ happened in a foreign bribery case in which the State Prosecution Service without informing the Special Public Prosecutor against Corruption and Organised Crime decided not to act on a report coming from a Spanish embassy. Also the prosecution service could have a stronger role in leading law enforcement investigations which might be an effective way for the prosecution to make a case. In other words, communication between the different institutional actors fighting corruption could be improved.

⁴³ Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Spain. Available [here](#).