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## Corruption prevention in the midst of crisis?

### Whistleblowing, a Panacea for Crisis Prevention? German experiences for a pay-off in the public sector

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#### Abstract:

From a German perspective, after a brief slack around 2008, compliance efforts have clearly doubled in the course of the so called Financial Crisis. Whistleblowing has become an accepted and even respected element in corruption prevention. However, it may not be entirely clear, whether or not “Whistleblowing” itself might be in crisis – or indeed what may contribute to prevent future crises.

Whistleblowing has become interconnected with crisis situations because; inevitably there will be persons whose advice might have contributed to mitigating the crisis, if their advice had been heard early on. There may also be persons who may be perceived as deepening the crisis for some, because they point at present problems. Whistleblowing is not “the” remedy for crisis situations, but it can support a diagnosis and prevent recidivism.

Whistleblowing can be an instrument for the early detection of risks. More often than not it is received far too late, even though the whistleblowers themselves feel they tried to make themselves heard much earlier.

Maybe, the most important changes have been seen in the public sector: it gets more and more risk sensitive – and consequentially to some extent more appreciative of Whistleblowing.

Since 2008, the German Association of Chambers of Commerce (DIHK) advises every German enterprise to have a Whistleblowing System in place - preferably including an external ombudsman with attorney privileges. This recommendation is explicitly extended to enterprises of any size or sector – even the smallest ones. All these small companies are members of the Chambers of Commerce.

The paradigms leading the governance debate in the public sector are arguably communication and transparency. This debate is obviously related to “the crisis” because the credibility of the public sector has suffered due to its obvious lack of control or even influence in preventing the crisis. Communication and transparency – that is what whistleblowing is about. Indeed whistleblowing is anything but alien to the public sector.

Whistleblowing is as old as human organisation and management. It is certainly as old as any “public sector.” The “public,” the ancient “polis” is what constitutes whistleblowing – as can be seen in the title of the UK “Public Interest Disclosure Act.” There are essentially two different view points on Whistleblowing. According to one view, about one third of all public employees become Whistleblowers (as in Australian statistics). According to the other, there is less than a handful every year – and none of them are honest. This has been voiced occasionally in Europe.

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This author affirms the truth in both view points – and that they are obviously facing each other across a very large spectrum of other realistic view points.

Further, it should be reiterated that whistleblowing is likely to be successful (and almost invisible) in close to 99% of all cases. The point of whistleblowing is the transfer of valuable information about risks, identifying them, or helping to re-evaluate them.

There is hope for the remaining 1%, too. The German experience may be leading the way. Part of this experience is a farewell to “hotlines” as an answer. Another may be the less prominent treatment of whistleblower protection. Instead the emphasis is on bringing owners and beneficiaries of risk information, or more generally the stakeholders, successfully together through risk communication.

Whistleblowing Systems should be seen as consisting of potential sources, objects and subjects of risk communication. If we measure the success of such systems, we have to look how successfully they address potential bottlenecks in risk communication. For all existing channels there absolutely needs to be by-passes – and arguably by-passes for the by-passes, too. The actual usage of the channels and by-passes should be measured, because unused, they fall dry – and shouldn't be relied upon. There may be a difference between the tone at the top and the tone from the top. What is written between the lines is what really counts. Eventually trust and past experiences have to be taken into account for a tendency.

Whistleblowing is often misjudged as an ill motivated *complaint*. Thus, the crucial message will be overseen. Whistleblowers should not be blamed for using an “exception cycle” in their communication – that is part of their message. Meanwhile, it is not new to refrain from rules that demand internal risk communication – and promise protection for compliance. Such rules send all the wrong signals.

Why don't you explicitly ask what people need before they call if you don't seem to receive (enough) messages in your whistleblowing system? Is even your open door policy silencing your associates? Consider that you may not have addressed the real impasse, yet. Try to find out *where* the risk information really flows (if it ever does). Risk Communication largely works in your organisation, too. Try to find out exactly why, and use more of the same ...

Risk Information is so new in the public sector, if you agree that risk management has *always* been a strong focus of public administration. To some extent it may be new, if bottom-up and networked communication is included. However, it is indispensable, if the complexity of modern governance is fully understood, and it may help restore credibility and democratic legitimacy. Risk Communication capacity could become a new benchmark for the Public Sector.

The external Ombudsman adds some German flavour to international compliance requirements and the specifics of whistleblowing systems. This external Ombudsman acts at the interface between the inner and the outer world. He or she would typically be an attorney – i.e. equipped with attorney privileges – and as far outside the organisation you could go without leaving it entirely. The external Ombudsman carries credible independence, and should have excellent mediation, coaching, and management skills. In his function as translator between perspectives and cultures, the external Ombudsman depends on an easy access to the top executives. This access needs to be quite visible. The external Ombudsman can now be considered a German Standard. It is filling a number of gaps ideally, if indeed the function and the person are accepted

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by the executives *as well as by* staff members, if he/she is continuously engaged in formal and informal communication, and if he/she is allowed to deliver visible results.

Potential benchmarking elements for an effective whistleblowing system in the public sector could be defined as follows:

- Clearly defined communication channels;
- Strong incentives for executives to make use of new information;
- Clear rules on what will happen with information;
- Clear and immediate feedback to whistleblower;
- In case of doubt, the whistleblower may choose the reporting channel using his own responsibility;
- Access to informal advice from (external) ombudsman is liberally offered;
- Option for employees to use the ombudsman at will;
- Option to use other external channels under realistic (extreme) circumstances;
- Overall Transparency.