THE UNPROTECTED REPORTER: THE PROBLEM OF PROTECTION WHEN CHALLENGING UNFAIR REQUIREMENTS IN PUBLIC PROCUREMENT

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Executive Summary

Public procurement remains one of the sectors most vulnerable to corruption. One widespread form of misconduct is tender documentation tailored to favour a predetermined bidder while preserving the appearance of a lawful procedure. Such irregularities are typically detected by external market participants. Yet these same participants are neither covered by whistleblower protection regimes nor protected by procurement review systems in their capacity as reporters. This study introduces the concept of the external reporter to describe this category of actors. It shows that external reporters systematically fall outside the scope of both legal regimes. Whistleblower protection has been built around insiders; in public procurement, the reporting function is in practice performed by outsiders.

The origins of this gap can be traced to international law itself. The United Nations Convention against Corruption provides both for effective mechanisms of procurement review (Article 9) and for the protection of persons who report corruption (Article 33), yet these provisions stand apart from one another and say nothing about the position of a person who uses the review procedure as a means of reporting misconduct. Moreover, the first obligation is framed in mandatory terms, whereas the second goes no further than inviting States to consider establishing such a regime. The asymmetry is built into the international standard itself and is reproduced by national systems.

Methodology. The study is a comparative legal analysis supplemented by empirical evidence drawn from secondary sources. The position of the external reporter is examined through a single analytical matrix (accessibility of the channel, object of protection, costs and risks, reliability of outcome, actual use) across three groups of jurisdictions selected for maximum institutional contrast: the European Union, Latin America, and the post-Soviet states. The United States is introduced separately as a counterpoint.

Principal findings. The gap reproduces itself under opposite institutional conditions, which points to a structural rather than a developmental cause. In the European Union it persists despite the maturity of both legal regimes: the review channel is open to the external reporter but does not protect their position, while the whistleblower protection regime is built around the employment relationship and does not reach the external reporter at all. In Latin America the same configuration persists alongside broad formal access to review, extending as far as the right granted by Brazilian law to any person to challenge tender documentation. In the post-Soviet states it persists despite intensive use of the channel, and in the absence of a protection regime the rules evolve towards narrowing the circle of eligible complainants.

The same figure is driven out of the channel by different mechanisms. Argentina operates a barrier of entry cost: a monetary bond forfeited upon the mere rejection of a complaint. Russia operates a barrier of entry status: the 2024 reform restricted the range of admissible complainants. Brazil leaves entry as wide as possible, but offers the external reporter no protection to accompany it. The American example demonstrates that the observed pattern of signals is determined by the structure of incentives: where the law creates a protected and motivated insider, insider reports become commonplace, and where such incentives are absent, the principal bearer of the signal remains the unprotected external reporter.

Legal assessment. The external reporter functionally performs the role of a person reporting misconduct, yet is not covered by the corresponding protective regime. The study does not propose to widen the notion of the reporting person arbitrarily; it records a mismatch between functional role and legal classification. The silence of the vulnerable reporter, who abandons the complaint once its attendant costs are weighed, conceals the very existence of the gap: an absence of recorded signals may reflect not an absence of misconduct, but the absence of any safe mechanism for reporting it.

Recommendations. Three directions of possible change follow from the analysis, differing in the depth of intervention required: systematic monitoring of the position of complainants after they file, using open contract data; revision of entry barriers against a criterion of practical affordability for the small supplier, including abandonment of bonds pegged to contract value and forfeiture only where bad faith has been established; and, in the longer term, examination of whether the external reporter might take an active part in recovering public loss, by analogy with the qui tam mechanism. Targeted steps for international organisations and national authorities are set out in the recommendations.

Intended Readership

This study has been prepared as a basis for further discussion of possible directions in the development of legal regulation, and is addressed to several groups of interested actors.

At the international level, its conclusions may be of interest to the United Nations Commission on International Trade Law (UNCITRAL) in connection with the regulation of procurement review procedures in the 2011 Model Law on Public Procurement, and to the Working Group on the Prevention of Corruption of the Conference of the States Parties to the United Nations Convention against Corruption, since the study addresses the relationship between Article 9 of the Convention (public procurement) and Article 33 (protection of reporting persons).

At the national level, the study may be of use to the authorities responsible for the regulation of public procurement and for anti-corruption policy. Particular attention is given to Argentine regulation, which provides a basis for further substantive discussion of possible directions for its improvement.

The study may also be of interest to international financial organisations that use public procurement mechanisms in implementing their projects, and to organisations working on the integrity of public procurement and the protection of those who report misconduct.

The comparative material and the annexes are designed to be used independently by researchers, national regulators and civil society organisations working in the field of anti-corruption.

Aim of the Study

The study seeks to identify and analyse the legal position of the external reporter within the public procurement system, and to assess whether the international and national regimes currently protecting those who report corruption afford effective protection to this category of persons.

For the purposes of this study, an external reporter is understood to be a person who stands in no employment, official or other relationship of subordination to the alleged wrongdoer and who reports misconduct in the field of public procurement through the mechanisms of application, review or notification of the competent authorities provided for by law. The term is analytical in character and is used as a generalising category, since in different legal systems the corresponding group of persons is designated by various terms or is not distinguished as a separate category at all.

To this end, the study pursues three interrelated tasks:

1. To identify, conceptualise and define the content of the category of the external reporter through a comparative analysis of the legal position of those who report misconduct in public procurement across different jurisdictions, notwithstanding the differences in terminology and legal construction employed.

2. To conduct a comparative legal analysis of the position of the external reporter in three groups of jurisdictions (the European Union, Latin America and the post-Soviet states), with reference to the experience of the United States, and to determine whether existing regulatory models afford effective protection to this category of persons, as well as to identify the causes of the emergence and persistence of the legal gap.

3. To formulate proposals for improving the legal protection of the external reporter in public procurement, to identify the essential elements of the required legal mechanism, and to assess the possibility of integrating it into existing regimes for the protection of those who report corruption.

Contents

1. Introduction

Public and municipal procurement accounts for a substantial share of the economy of modern states and remains, at the same time, one of the areas of public administration most vulnerable to corruption [OECD 2019; World Bank 2020; U4]. One of the most widespread forms of corruption is the tailoring of tender documentation to favour a predetermined bidder, whereby technical specifications and qualification requirements are drafted so as to fix the outcome in advance while the procedure retains its formal legality [Rabuzin & Modrušan 2019; OCP 2024]. The distinctive feature of such irregularities is that they become apparent above all to external market participants, who encounter competition that has been artificially restricted.

Despite the considerable body of research devoted to the protection of those who report misconduct and to procurement review procedures, the legal position of a person who exposes corrupt practices through the mechanisms of procurement review has not to date received independent and comprehensive analysis. This study designates that category by the term external reporter: a person who stands in no employment or official relationship with the alleged wrongdoer and who reports misconduct through the procedures of application or review provided for by law.

The origins of the problem can be traced to international law. The United Nations Convention against Corruption provides both for the establishment of effective mechanisms of procurement review (Article 9) and for the protection of persons who report corruption (Article 33). These provisions, however, exist independently of one another and do not determine the legal position of a person who uses the procurement review procedure as a means of reporting corrupt conduct.

The same separation persists in the scholarly literature. Research on the protection of reporting persons has traditionally centred on the figure of the insider, whereas research on public procurement examines the procedural position of a participant in the procedure. Each strand thus analyses a different category of subject, and the point at which they intersect has scarcely been studied.

This study proceeds from the premise that public procurement gives rise to a distinct functional category of persons who report misconduct, namely external reporters. Notwithstanding differences in national terminology, it is they who are the typical users of formal procurement review procedures. Existing regimes for the protection of reporting persons are nevertheless oriented predominantly towards insiders, while review procedures are directed at safeguarding the legality of the procurement rather than the position of the reporter. The external reporter is consequently left outside the scope of both legal regimes.

The study pursues three aims. First, to conceptualise the category of the external reporter and to establish its place within the system for protecting those who report corruption. Second, to conduct a comparative legal analysis of the position of the external reporter in the legal orders of the European Union, Latin America and the post-Soviet states, with reference to the experience of the United States. Third, to identify directions for improving legal regulation that would close the gap between the regime protecting reporting persons and the regime of procurement review.

2. Conceptual Framework: The Figure of the External Reporter

2.1. Two Subjects, Two Regimes

Legal thinking about reports of misconduct took shape historically around the figure of the insider. The classic definition, which goes back to the work of Near and Miceli [Near & Miceli 1985], describes the reporting person as a member of an organisation who discloses unlawful or improper practices under that organisation's control. Subsequent normative development, including the Council of Europe recommendation [CM/Rec(2014)7] and EU Directive 2019/1937, preserved this generic feature: the protected person acquires knowledge of the wrongdoing in connection with their work. The circle of protected persons expanded along the axis of employment type (the self-employed, trainees, volunteers, applicants, former employees), but never crossed the boundary of the organisation itself: a connection with the wrongdoer through work remains the constitutive feature of the protected subject.

The institution of procurement review developed in parallel and independently. Its subject is defined differently: an interested party, an actual or potential participant in the procurement procedure whose economic interests are affected by the alleged breach [GAO Bid Protest Regulations; Directive 89/665/EEC]. This subject is by definition external: it does not belong to the contracting authority, is not bound to it by an employment relationship, and observes the breach from the position of a market participant.

By the whistleblower protection regime this study understands the established legal mechanism founded on Article 33 of the United Nations Convention against Corruption and on national models for protecting those who report misconduct, whose subject is a person who learned of the wrongdoing in connection with employment or official duties. The study does not propose to widen this notion arbitrarily. Its hypothesis is a different one: **the external reporter functionally performs the role of a reporting person but is not covered by the corresponding protective regime**. It is precisely this mismatch between functional role and legal classification that forms the object of analysis, and not the extension of the category of the reporting person as such.

The two legal regimes, each of which deals with the reporting of misconduct, constitute their subjects by mutually exclusive criteria: the first requires a connection with the wrongdoer's organisation, the second requires its absence. This would create no difficulty in itself if each regime discharged both functions fully, receiving the signal and protecting the person who carries it. The functions, however, are distributed asymmetrically. The whistleblower protection regime is built around protecting the bearer of the signal, but in procurement that bearer signals rarely and through other channels. The review regime is built around receiving the signal and restoring the legality of the procedure, but affords the complainant no guarantees beyond the particular dispute. The bearer of the signal and the object of protection have come apart into different regimes.

2.2. Defining the External Reporter

An external reporter is defined as a person who, standing in no employment or other subordinate relationship to the organisation responsible for the alleged breach in a procurement procedure, reports that breach to a competent authority through a channel formally available to them. At the core of the category are participants in the procedure: suppliers who submitted a tender but were excluded or did not obtain the contract. At its periphery are potential participants who refrained from tendering because of the very conditions at issue, together with trade associations, civil society organisations and other persons granted a right of review in particular jurisdictions; the systematic unobservability of those who refrain is addressed in the section on limitations.

Three clarifications mark out the boundaries of the concept. First, the external reporter differs from an anonymous source, since they act openly and in their own name, and it is precisely this openness that makes them vulnerable. Second, they differ from a claimant in an ordinary commercial dispute, since the subject of their report is a breach of the public order of procurement and its addressee is a public supervisory body acting in the general interest. Third, they differ from the insider in the source of their knowledge, which arises not from access inside the organisation but from a position in the market, and which therefore concerns predominantly those breaches visible from outside, above all restrictive conditions in the documentation.

2.3. A Reply to the Terminological Objection

An objection may be raised: is it proper to call an external market participant a reporter of misconduct if what moves them is a commercial interest rather than the protection of a public good alone?

Three answers may be given. First, motive is not in itself a ground for excluding a person from the category of reporting persons. Directive 2019/1937 states expressly that the motives of the reporting person should have no bearing on the grant of protection; what is decisive is the existence of reasonable grounds to believe that the information reported is true. If possible personal interest does not exclude protection for the insider, it cannot automatically exclude protection for the external reporter acting out of a commercial interest.

Second, private interest and public function may coincide in procurement. A complaint against discriminatory conditions simultaneously protects a particular participant's ability to compete and restores the competitive environment, which serves the interests of other suppliers and of the public purse. The use of private interest as a mechanism of public control is a common construction in law.

Third, the category of the reporting person is not itself wholly predetermined. The practice of different legal systems employs a multitude of related but non-coincident figures: denunciante, alertador, informante, testigo, colaborador eficaz, querellante and others [UNCAC Coalition 2024]. They differ in procedural role and in the scope of the guarantees attached. Among these constructions, the external reporter in public procurement has not yet been distinguished as an independent subject of protection. This study proceeds from the premise that the boundaries of the category of the reporting person are the product of legislative choice rather than a natural legal given.

2.4. Why the Gap Remains Invisible

It remains to explain why the legal gap described above has not previously been the object of systematic analysis. A distinction must be drawn here between detecting a breach and formally reporting it. Not everyone who detects a breach becomes a procedural complainant: some of those who see restrictive conditions never enter the review channel at all, given the costs they expect and the absence of guarantees. Were the exposure of the external reporter to generate open conflict, it would long since have been noticed. The rational response of an external market participant who has detected a potential breach may, however, be not to approach the supervisory authority but to withdraw from further participation, or to abandon the complaint once its attendant costs are weighed. The deterrent effect of making procedures more expensive has been acknowledged in relation to procurement review by the United States Government Accountability Office [GAO-25-108652]; the Argentine Treasury Attorney General's Office reached a similar assessment of the deterrent effect of financial barriers. Silence, however, leaves no trace: a procurement that has not been challenged is indistinguishable in the registers from one that gave rise to no objection. A vicious circle of observability arises: the more strongly exposure suppresses the signal, the less evidence of exposure there is, and the more warranted the conclusion appears that no problem exists. This study seeks to break that circle by combining three types of evidence: analysis of legal texts (whom the law protects), empirical data on the consequences of complaints (what happens to those who report), and data on the structural barriers to review (who cannot report, and why).

3. Methodology

3.1. General Design

The study is conducted in the genre of comparative legal analysis, supplemented by empirical evidence from secondary sources. It is not a systematic literature review in the strict sense. Its subject lies at the intersection of two research traditions, the protection of reporting persons and procurement review, which employ different conceptual frameworks. A structured comparison based on a single analytical matrix is therefore applied, which secures reproducibility: any researcher applying the same matrix to the same jurisdictions will arrive at comparable results.

3.2. The Channel-and-Dimension Analytical Matrix

The unit of analysis is the signal channel: an institutionally established route by which a person who has detected a possible breach in a procurement procedure may bring it before a competent authority.

An external reporter is understood as a person outside the structure of the contracting authority who possesses information about a possible breach or is in a position to detect one in connection with actual or potential participation in the procurement. Those who have in fact filed a complaint constitute the observable part of this category.

For each jurisdiction, all channels formally available to the external reporter are examined. Each channel is assessed against five parameters: accessibility, object of protection, costs and risks, reliability of outcome, and actual use. The first four characterise the normative construction of the channel; the last describes how it functions in practice, including the composition of its users where such data are available.

Table 1. Channels and dimensions of the analytical matrix

Channels (rows)	Dimensions (columns)
Complaint to a supervisory or competition authority	accessibility
Specialised procurement review body	object of protection
Judicial challenge	costs and risks

Channels (rows)	Dimensions (columns)
Anti-corruption platform or ombudsman	reliability of outcome
Trade association	actual use

The matrix is applied to three groups of jurisdictions. The principal analysis proceeds against uniform parameters, and the results of each regional section are summarised in a table setting the procurement review channel against the whistleblower protection regime. The complete matrices are placed in the annex.

The list of channels is open-ended: additional mechanisms found in a particular jurisdiction are brought into the analysis.

The matrix serves two functions. First, it secures comparability of analysis across jurisdictions. Second, it tests the study's principal thesis: if no channel combines accessibility for the external reporter with protection of the reporter, this confirms the existence of a structural gap; the discovery of such a channel would, conversely, require the thesis to be revised.

3.3. Selection of Jurisdictions

The comparison covers three groups of jurisdictions, selected on the principle of maximum divergence in institutional trajectory alongside commonality in the function under study.

The European Union represents the model of supranational legal harmonisation: Directive 2019/1937 sets a single minimum standard for the protection of reporting persons, while Directives 89/665/EEC and 92/13/EEC set a single standard for procurement review procedures. This case is of interest for the maximum development of both lines and allows a test of whether legal maturity itself closes the gap. Within the Union, Italy is examined in detail as a jurisdiction with a developed review system and accessible empirical data.

Latin America represents the model of fragmented development: protection for reporting persons is taking shape through isolated national statutes in the absence of regional harmonisation, and the reporting person assumes a variety of legal roles. Brazil, Mexico and Argentina are selected for closer examination.

The post-Soviet states represent a third configuration: strong supervisory authorities sustain a developed and intensively used review channel while legislation on the protection of reporting persons is virtually absent. Russia and Kazakhstan are selected for closer examination; the constraints on access to current data for the region are noted below.

The United States is not included in the principal comparison and is introduced separately as a counterpoint: a jurisdiction in which the legislature has created a direct pecuniary incentive for insider reporting of wrongdoing in government contracts.

3.4. Sources

The analysis draws on four types of source: normative texts in their current versions; the decisions and statistics of supervisory authorities so far as publicly available; secondary academic literature from both bodies of scholarship; and reports of international and specialised non-governmental organisations. For assertions about the actual use of channels and the consequences for reporters, priority is given to peer-reviewed empirical work; where none exists, official departmental data are used with a caveat as to their nature. The authors' own observations, unsupported by independent sources, are not used as evidence and are mentioned only as grounds for hypotheses for further research.

3.5. Limitations of the Methodology

The study records four principal limitations. First, the comparison rests on the law and data as they stood at the time of writing, and legislation on the protection of reporting persons is in a phase of active development, so that the conclusions carry a date. Second, the empirical evidence on the consequences of complaints comes predominantly from a single jurisdiction with the most developed review statistics, and its transposition to other contexts is an assumption, flagged at each point of use. Third, potential reporters who abandoned their complaint because of anticipated consequences or barriers remain an unobservable group, so that complaint statistics reflect only the actual use of channels and not the full extent of the breaches detected. Fourth, the measurement of reliability of outcome is confined to the institutional characteristics of review bodies and does not include any substantive assessment of the correctness of their decisions.

4. The European Union: A Gap Between Legal Regimes Despite Their Maturity

The European Union presents the hardest case for the present thesis. If the gap in the protection of the external reporter were explained by the immaturity of the law, it ought to disappear where both lines of regulation have reached their fullest development. The European Union has in force at once the oldest supranational system of procurement review (Directives 89/665/EEC and 92/13/EEC) and the most developed supranational regime for the protection of reporting persons (Directive 2019/1937). As shown below, the coexistence of two mature regimes has not eliminated the gap but has entrenched it institutionally.

4.1. The Review Channel: Accessibility Without Protection of the Reporter

The Remedies Directives require Member States to ensure that any person having or having had an interest in obtaining a contract, and who has been or risks being harmed by an alleged infringement, has access to rapid and effective review procedures. The subject of the channel is thereby defined broadly and unambiguously in external terms: an actual or potential market participant. By its very construction the channel is open to the external reporter, including the possibility of challenging the terms of the documentation before tenders are submitted.

The object of protection, however, is fundamentally different. The remedies that States are obliged to provide are exhausted by the restoration of the legality of the procedure: interim measures, the setting aside of unlawful decisions, the removal of discriminatory conditions, and damages. All of these are directed at restoring the legality of the procedure and protecting the reporter's pecuniary interest in the particular dispute. They contain no guarantees as to the reporter's position beyond the proceedings. The notion of retaliation, central to the regime protecting reporting persons, is absent here.

On the question of costs, national implementations diverge substantially. Member States retain the freedom to set the level of court fees and other financial requirements. In Orizzonte Salute the Court of Justice held compatible with Union law a system in which the fee was determined by the value of the contract and could reach two per cent of its price, and in which separate charges could be levied for additional grounds of complaint [C-61/14]. The Court thereby confirmed that the review regime assesses the accessibility of the procedure largely in the abstract, without regard to differences in the resources of individual complainants.

4.2. The Protection Regime: Procurement Within the Material Scope, the External Reporter Outside the Personal Scope

Directive 2019/1937 includes public procurement among the areas it covers, and procurement is named first in the list in Article 2: the European legislature expressly recognised procurement as a field in which reports of breaches are socially valuable. The personal scope is all the more telling. Article 4 defines protected persons by reference to the work-related context: workers, the self-employed, shareholders and members of management bodies, volunteers and trainees, persons working under the supervision of contractors and suppliers, and persons whose employment relationship has yet to begin or has already ended. Protection extends also to facilitators and to third parties connected with the reporting person, but here too the connection is defined through the possibility of retaliation at the place of work.

A tenderer or other external actor who discovers restrictive requirements in the tender documentation falls under none of these categories. A participant observing a restrictive requirement in the documentation acquires knowledge of the alleged breach not in connection with work within the meaning of the Directive, but in connection with the commercial activity of their own firm. This distinction entails a complete fall outside the regime: the external reporter enjoys neither the prohibition of retaliation, nor the reversal of the burden of proof, nor the exemption from liability, nor the support measures.

It is particularly significant that this exclusion is not a legislative oversight. The choice of the employment connection as the constitutive criterion was deliberate: the Directive was conceived as an instrument for protecting the economically dependent person against the power of the employer. The market participant does not fit that model of dependence, since its independence is presumed. The presumption holds for the large supplier, but proves inadequate for small and medium-sized enterprises, whose dependence on a regional contracting authority is no less than that of an employee on an employer.

4.3. The Two Channels Compared in the European Union

The difference between the two regimes with respect to the external reporter is summarised in Table 2.

Table 2. The European Union: the two regimes from the standpoint of the external reporter

Dimension	Procurement review channel	Whistleblower protection regime
Basis of standing	participation in the procurement; an interest in obtaining the contract	an employment or other connection with the organisation
Accessibility for the external reporter	high, including challenge to the documentation before tenders are submitted	none (the subject is defined through the work-related context)
Object of protection	the legality of the procurement procedure and the interest in obtaining the contract	the position of the reporting person and protection against retaliation
Protection beyond the particular procedure	none	exists, but only for persons in a work-related context

Dimension	Procurement review channel	Whistleblower protection regime
Typical subject	market participant	employee (insider)
Principal risk to the reporter	procedural and economic costs (fees of up to 2% of contract value)	retaliation in connection with the report
Conclusion as to the external reporter	Access to the channel exists, but the protective regime does not extend to the external reporter	

The comparison reveals that each regime supplies only part of what is needed: the review channel is open to the external reporter but does not protect their position; the protection regime protects the position of the reporting person but is not open to the external reporter. The European example demonstrates that the gap identified is not a consequence of the law's insufficient development. It is rather the outcome of the independent evolution of two mature legal regimes, each consistently built around its own regulatory subject. That is why the external reporter falls outside the scope of both regimes not through legislative error, but through their structural misalignment.

5. Latin America: Broad Access, No Distinct Figure, and a Financial Barrier

The Latin American case is arranged in the opposite way to the European one: the regime protecting reporting persons is still emerging, while review channels in a number of jurisdictions are open more widely than in Europe. The region allows a test of the second sceptical explanation: whether the gap closes where access to review is at its broadest. As shown below, breadth of access is unaccompanied by protection for the person who uses it, and in certain jurisdictions access is encumbered by a financial barrier that national doctrine has expressly recognised as deterrent.

5.1. The Regional Framework: An Emerging Figure of the Reporting Person

A survey of eleven countries in the region reveals the fragmentary character of the regimes protecting those who report corruption: the existing mechanisms differ in personal scope, in the extent of the guarantees offered, and in the degree of institutional support [Vance Center 2024]. Regional law displays a multiplicity of figures of the reporting person, differing in procedural position and in the scope of guarantees [UNCAC Coalition 2024]. Significantly, among this multiplicity of roles the figure of the external reporter in procurement has not been distinguished as an independent subject of protection in any of the jurisdictions examined: the existing roles are tied to criminal proceedings, to the employment relationship, or to the wrongdoer's own cooperation with the investigation.

Article 33 of the Convention, which invites States to consider protecting those who report corruption against unjustified treatment, is framed as a recommendation, and regional implementation practice makes ample use of that latitude. Against this background the movement of individual jurisdictions merits attention. The most developed example is the Costa Rican Law of 2024, which established a reversal of the burden of proof onto the employer in cases of dismissal or other adverse treatment of an employee who has reported corruption [Ley 10.437, art. 11; OECD 2025]. Even this model, however, remains confined to the employment context: it protects the employee against the employer, but not the external supplier against the contracting authority.

5.2. Argentina: The Challenge Bond as an Institutionalised Barrier

Argentine procurement law contains an institution in which the deterrence of the external reporter has taken the form of an express legal construction: the challenge bond (garantía de impugnación), a monetary security whose lodgement is a condition of the admissibility of a participant's complaint against acts of the procurement procedure.

The parameters of the institution vary across levels of regulation. At national level the security is returned only where the complaint is upheld [Decree 1030/16, arts. 73 and 78; Disposición ONC No. 63/16, arts. 31-32; PTN 2023; OBCP]. The regime of the City of Buenos Aires sets a range from one half to two per cent of the official procurement budget, with forfeiture of the security where the complaint is rejected, and in multi-stage procedures the security is lodged separately for each challenge [OBCP]. Administrative practice at national level records a case in which the cumulative security required to challenge the findings of an evaluation committee reached, on the firm's own calculation, twenty-one per cent of the value of its tender; the firm characterised the requirement as confiscatory and as a breach of the right of defence, yet its complaint, filed without lodging the security in full, was rejected without consideration on the merits, and that decision was subsequently held lawful [PTN, Copacabana SA, EX-2018-49011530-APN-DCYC#MSYDS, opinion of 07.04.2022; Decreto 470/2022].

The construction of the institution warrants precise classification. It is not a fee, since the sum is pegged not to the cost of adjudication but to the price of the contract; it is not a good-faith deposit, since forfeiture follows not from abuse but from the mere rejection of the complaint; and it is not a freezing of funds, since return is conditional. What is involved is a conditionally refundable bond, combining the freezing of a substantial sum with the risk of losing it entirely, where the materialisation of that risk is made to depend on the decision of a body belonging to the same administrative system as the contracting authority. The institution operates simultaneously along two dimensions of the matrix: it converts the formal accessibility of the channel into a conditional accessibility, and it adds to the price of complaining the risk of direct pecuniary loss.

What lends the Argentine case particular evidential value is the position of national doctrine and of the executive's own advisory body. In an opinion of 2006 the Treasury Attorney General's Office, revising its own earlier position, held it impermissible to make the admissibility of a complaint conditional on lodging a monetary security: the regime then in force made no provision for such an institution, and the requirement itself touched upon the gratuitousness of administrative procedure and the right to effective administrative protection [Dictamen No. 117 of 03.05.2006, Dictámenes 257:151]. Doctrinal commentary on that position states expressly that such securities exert a deterrent effect on potential complainants and create a false appearance of regularity in the procedure without enhancing its actual legality [OBCP, La persistencia]. The executive body and the accompanying doctrine thus independently described the mechanism designated in the conceptual framework above as the vicious circle of observability. The subsequent trajectory is all the more telling: the practice of including challenge bonds in tender conditions survived the doctrinal criticism, and in 2023 the Attorney General's Office once again revised its position, holding such bonds admissible on the ground that the regulations now in force expressly provide for the institution [PTN 2023; OBCP, La persistencia]. The dispute was resolved not by removing the deterrent mechanism but by legalising it.

From this follows a conclusion about the position of the small supplier. The security is calculated as a percentage of the contract price and is forfeited on failure, while the prospects of success for firms with fewer resources are systematically lower; for the small supplier, therefore, the expected benefit of filing a complaint may fall below its attendant costs even where the legal position is well founded. The barrier at entry is multiplied by inequality of outcome, and the rational course for the vulnerable reporter becomes silence, which leaves no trace in the statistics.

5.3. Brazil: The Widest Access Without Protection of the External Reporter

The Brazilian case matters as a test of robustness, since on the criterion of accessibility it looks like a potential refutation of the study's principal thesis. Article 164 of the Procurement Law provides that any person may challenge the tender documentation on grounds of breach of the law or request clarification of its terms [Lei 14.133/2021, art. 164]. The law admits an application from any natural or legal person irrespective of their status as a potential participant in the procurement. The circle of potential external reporters is thus formally unrestricted by any connection to the procedure, which represents one of the broadest models of access to review among the jurisdictions examined.

The remaining dimensions, however, restore the picture of a gap. The object of protection in the channel is exhausted by correction of the documentation; the law contains no guarantees as to the position of the person who has challenged it. Three procedural features refine the picture. The challenge must be filed within a short period, no later than three working days before the procedure opens, which requires a rapid legal assessment of the documentation. Filing a challenge does not suspend the procedure: the tender continues on its course, and the price to the contracting authority of ignoring the arguments is low. The authority's reply is published in the official source within three days. The widest possible standing is thus combined with a procedural construction that causes the contracting authority no serious inconvenience from the fact of a challenge.

The regime protecting reporting persons developed in Brazil along a different trajectory: the law on corporate liability encourages cooperation by offending organisations with investigations [Lei 12.846/2013], and the law of 2018 established channels for receiving reports and permitted rewards for useful information [Lei 13.608/2018]. None of these instruments, however, contains the three elements that make up the core of protection for a reporting person: a prohibition of retaliation, a procedure for restoring the reporter's position where retaliation occurs, and sanctions for persecution. The absence of these elements was noted in an integrity review recommending that Brazil adopt, in particular, a reversal of the burden of proof on the European and Costa Rican model [OECD 2025]. Both strands of Brazilian law, the incentivising and the protective, are addressed to figures of the criminal and employment contexts; the person who has exercised the right to challenge the documentation is addressed by neither.

The Brazilian case allows the general thesis to be refined: accessibility of the channel and protection of the reporter are independent variables. A jurisdiction may maximise the first without creating the second at all, and broad access then remains access only for those able to bear its consequences.

5.4. Mexico: A Digital Channel for the Insider, a Procedural Channel for the Participant

The Mexican configuration illustrates a third arrangement. The procedural channel is represented by the institution of inconformidad: a participant's complaint to the federal administrative control authority, historically the Ministry of the Public Function, subsequently reorganised as the Ministry for Anti-Corruption and Good Governance [LAASSP, arts. 65-66; LOPSRM, arts. 83-84]. The subject of the channel is defined on the familiar pattern: a participant in the procedure whose interests are affected. In parallel, within the national anti-corruption system, there operates the digital platform for receiving reports of corruption, Ciudadanos Alertadores, conceived as a protected channel for citizens and officials with guarantees of anonymity and confidentiality [SABG]. The division of roles is telling: the platform, which bears the marks of a whistleblower protection regime, is addressed to the figure of the alertador, that is, predominantly to the insider and the citizen-witness, whereas the procedural channel, addressed to the market participant, contains no guarantees for the complainant. Mexico reproduces the European division of labour between the regimes: protection is concentrated where there is no external reporter, and the external reporter acts where there is no protection.

5.5. Conclusions for the Region

The accessibility of review channels in the region is no lower than in Europe and in places formally higher, extending as far as the right conferred by Brazilian law on any person to challenge tender documentation. The object of protection in these channels is everywhere confined to the procedure. In the Argentine case an institutionalised financial barrier is added, one that national doctrine has classified as deterrent. The figure of the external reporter is not distinguished as an independent subject of legal guarantees in any of the protection regimes examined. The regional conclusion reinforces the European one: the legal gap reproduces itself under opposite initial conditions, which points to a structural rather than a developmental cause.

Table 3. Latin America: the two regimes from the standpoint of the external reporter

Dimension	Procurement review channel	Whistleblower protection regime
Basis of standing	participation in the procurement; in Brazil, a right of challenge vested in any person	the employment context, or the status of citizen or witness
Accessibility for the external reporter	from broad (Brazil) to conditional, encumbered by a bond (Argentina)	emerging; the external reporter is not distinguished
Object of protection	the legality of the procurement procedure	the position of the reporting person (in certain channels)
Protection beyond the particular procedure	none	emerging, but outside the procurement context
Typical subject	market participant	insider, citizen, witness
Principal risk to the reporter	forfeiture of the bond where the complaint is rejected; economic costs	retaliation in connection with the report
Conclusion as to the external reporter	Broad formal access is unaccompanied by protection for the person who uses it	

6. The Post-Soviet States: Intensity of Review Without the Emergence of Protection

The third group of jurisdictions displays the configuration that embodies the gap under study most starkly: the asymmetry between the development of the signal channel and the protection of its bearer appears here in its sharpest form. An inherited model of the strong supervisory authority has given these jurisdictions a fast, cheap and intensively used administrative review channel. At the same time, legislation on the protection of reporting persons in the region is either absent or confined to the official duty of a civil servant. The enforcement practice of the region allows an answer to the last sceptical question: whether the absence of formal protection for the reporter is compensated by the simplicity and effectiveness of the review channel itself.

6.1. Russia: The Scale of the Channel and the Composition of Complainants

The Russian system of procurement review under the contract system law [Law 44-FZ] is one of the most intensively used administrative channels of procurement review in the world. In 2023 the competition authority received 53,955 complaints, of which roughly 46,000 were considered on the merits; 19,503 complaints, or 42 per cent of those considered, were upheld in whole or in part, and 10,725 orders were issued [FAS, report to the 2024 collegium]. In 2024, following the reform discussed below, 39,200 complaints were received and 31,769 considered on the merits, 31 per cent fewer than in the previous year; the share upheld was 39.8 per cent (12,659 complaints), and 11,251 orders were issued [FAS; Interfax, 24.01.2025].

Two features of the channel are material to the analysis. First, a low price of entry. Complaints are filed electronically, attract no fee, Russian law knows no security of the Argentine kind, and the period for consideration is short. In accessibility and cost the Russian channel appears among the most open in the comparison. The second feature affords a rare opportunity to observe directly who actually uses the channel: the composition of complainants is openly observable through the register of complaints in the unified information system, where the complainant, the contracting authority, the subject matter and the outcome are visible for each complaint [EIS]. The available register data suggest that the principal users of the channel are business entities, that is, external parties within the definition adopted here; a share of upheld complaints of around forty per cent indicates that the channel carries a significant volume of genuine breaches. A systematic classification of complainants from the register constitutes a separate empirical task, identified in the programme of further work. Russian law also knows the figure of public oversight: associations and unions of legal persons are likewise vested with a right of review. It is all the more telling that this entire broad circle is devoid of any protection beyond the particular dispute.

6.2. The Missing Second Regime: The History of a Law That Was Never Passed

Russian regulation of the protection of those who report corruption is exhausted by two elements, neither of which concerns the external reporter. The first: for state and municipal servants, reporting facts of corruption is an official duty [Law 273-FZ, art. 9], and subordinate regulation provides the reporting servant with limited guarantees within the framework of the service relationship, placing on personnel departments the task of securing observance of their lawful rights and interests [Presidential Decree No. 364 of 15.07.2015]. This is an insider construction in its narrowest form: protection is conditional on public service status. The second element consists of the general institutions for protecting participants in criminal proceedings, which can apply only once the report has moved into the criminal procedural sphere and which do not constitute a special regime for protecting a person who has reported corruption.

The history of the attempt to create a full regime is instructive. A government bill on the protection of persons who report corruption offences, prepared by the Russian Ministry of Labour, passed its first reading but was rejected in June 2019 on the recommendation of the relevant committee, which cited the government's introduction of a different, comprehensive package of anti-corruption bills [Vedomosti, 17.06.2019]. Doctrine records the outcome: Russian legislation contains no special protective measures for those who report corruption extending beyond the circle of state servants [Karpova 2022; Balog 2018]. The external reporter in procurement is not merely undistinguished as a subject of protection: the very generic institution from which such protection might be derived is absent.

Setting the two subsections side by side yields the formula of the Russian configuration: a maximal channel with zero protection. The European case showed that the maturity of both regimes does not close the gap; the Russian case establishes that intensity of use does not generate protection for the channel's users, even after decades of practice and tens of thousands of complaints a year. Demand for the channel does not create a supply of protection.

6.3. The 2024 Reform: Filtering Entry Instead of Protecting the Reporter

In 2024 the Russian review mechanism was amended so as to restrict the range of persons with access to the procedure. The occasion was the practice of so-called professional complainants, that is, persons who file complaints systematically with no intention of participating in the procurement. According to guidance from the Russian competition authority, in considering a complaint the authority may verify the complainant's compliance with the requirements of the tender documentation, and an application from a person lacking the qualifications necessary to participate in the procedure may be left without consideration [FAS letter No. MSh/112518/23 of 29.12.2023]. In the first months of the new approach the share of complaints refused consideration rose [FAS, 2024].

For the present study the significance of the reform lies not in an assessment of its expediency but in the direction of the solution chosen. The problem of the quality of applications was answered by restricting access to the channel rather than by building a regime of accountability and protection for the reporter. The reform thus reproduces the general logic of the configuration under examination: in the absence of any independent status for the external reporter, regulation is directed at managing the number of signals rather than at protecting those who carry them.

6.4. Kazakhstan: The Same Asymmetry Along an Independent Trajectory

Kazakhstan reproduces the post-Soviet configuration along its own regulatory trajectory. Review proceeds through a single digital public procurement portal, and under the 2024 law complaints about procurement outcomes are considered in the first instance by the procurement organiser itself, with the complainant turning to an administrative court only in the event of disagreement [Law of the Republic of Kazakhstan on Public Procurement, ch. 9; Akorda 2024]. Where the Russian reform of the same year narrowed the range of admissible complainants, the Kazakh reform transferred first-instance consideration to the party whose acts are being challenged; both decisions were taken in the absence of any category of protection for the reporter, and both weaken that reporter's position.

The significance of the Kazakh case for this study lies not in the details of its reform but in its function as a control: the reproduction of the same asymmetry in a second jurisdiction of the region, following an independent trajectory, indicates that it is not a peculiarity of one country. The summary matrix for Kazakhstan is included in the annex.

6.5. Conclusions for the Region

The post-Soviet case completes the argument from the contrary. The European Union showed that the gap is not closed by the maturity of both regimes. Latin America showed that it is not closed by breadth of formal access. The post-Soviet states show that it is not closed by intensity of actual use either, and that in the absence of any category of protection for the reporter the channel's evolution is drawn naturally towards filtering entry. In all three configurations, under opposite institutional premises, one and the same result recurs: the subject who carries the signal is not the subject whom the law protects.

Table 4. The post-Soviet states: the two regimes from the standpoint of the external reporter

Dimension	Procurement review channel	Whistleblower protection regime
Basis of standing	participation in the procurement; an interest in obtaining the contract	an employment, service or other connection established by law
Accessibility for the external reporter	high (free of charge, electronic, no security required); narrowed in Russia from 2024 by a status qualification	none
Object of protection	the legality of the procedure and the interest in obtaining the contract	the position of the reporting person and protection against retaliation
Protection beyond the particular procedure	none	none (no special regime has been created)
Typical subject	market participant, business entity	public official (by virtue of official duty)
Principal risk to the reporter	procedural and economic costs	retaliation in connection with the report
Conclusion as to the external reporter	Intensive use of the review channel does not give rise to protection for those who use it; in the absence of a second regime, the channel evolves towards filtering entry	

7. Counterpoint: The Experience of the United States

7.1. Qui Tam: When the Law Creates the Insider

What has been said so far may create the impression that the predominance of the external reporter in procurement wrongdoing is a natural property of the field: a breach of the terms of the procedure is observed by a market participant, and so it is the market participant who reports it. The experience of the United States demonstrates that this is not so.

American law contains an institution absent from the jurisdictions examined above: the qui tam action under the False Claims Act [31 U.S.C. §§ 3729-3733]. It allows a private person, known as a relator, to act on behalf of the government against a supplier who has presented a false claim for payment out of public funds. Where the action succeeds, the relator receives a share of the sum recovered and enjoys special protection against retaliation [31 U.S.C. § 3730(d)].

The economic construction of the institution is fundamental: reporting wrongdoing ceases to be solely an act of civic responsibility and becomes rational conduct, underpinned by both a financial incentive and legal guarantees. The result is a steady flow of insider reports precisely in the sphere of government contracts: 1,297 qui tam actions were filed in fiscal year 2025 [DOJ 2026].

Qui tam is not, however, a universal mechanism of procurement control. Its typical object is supplier fraud after the contract has been awarded: fictitious work, inflated costs, substitution of quality. Restrictive conditions in tender documentation lie largely outside its reach, since they require proof of a different type of wrongdoing, namely restriction of competition on the part of the contracting authority. The narrow doctrines that allow the corrupt procurement of a contract to be linked with subsequent payments require proof of collusion and do not amount to a full instrument for the external reporter.

The significance of the American experience for this study lies not in the possibility of transplanting qui tam directly, but elsewhere: the pattern of observed signals is determined by the structure of incentives. Where the law creates a protected and motivated insider, insider reports become a mass phenomenon. Where such incentives are absent, external reporters predominate, acting only within the limits of their own interest and at their own risk. From this follows a conclusion material to the whole study: the absence of insider signals in the jurisdictions examined is not evidence that no breaches are visible from within, and the predominance of the unprotected external reporter does not mean that protection is unnecessary.

7.2. Instruments of Private Participation and a Consistent Asymmetry

The institutional landscape may conveniently be summarised in a table classifying instruments of private participation in procurement control by two criteria: who acts, and in whose favour recovery is made.

Table 5. Instruments of private participation in procurement control

Who acts	Recovery in one's own favour	Recovery in favour of the public purse
Insider	action for protection against retaliation (reinstatement, compensation)	qui tam: relator against the supplier, a share of the sum recovered
External reporter	challenge to the procedure; recovery of one's own costs and losses	not found in the jurisdictions examined

The table reveals a structural gap: the insider and the external reporter occupy different positions within the system for protecting the public interest. The insider may obtain protection against retaliation and, through the qui tam mechanism, take part in recovering loss in favour of the state. The external reporter may challenge the procedure, but their powers are confined to their own pecuniary interest. The fourth cell of the table remains unoccupied: in the jurisdictions examined, no instrument was found by which a market participant might recover from a bad-faith contracting authority, on behalf of the state, the public loss caused by the restriction of competition, and receive a share of the sum recovered. The public loss caused by restrictive conditions, that is, the overpayment borne by the public purse as a result of suppressed competition, remains unrecovered: the reporter is not permitted to recover it on behalf of the treasury, and the treasury itself, in the person of the supervisory authorities, does not systematically bring such claims against contracting authorities, confining itself to orders and to administrative fines on officials that bear no comparison with the scale of the overpayments.

The reason for this void is apparent from the architecture of qui tam. Active participation by the insider is technically possible because the defendant, the supplier, stands outside the machinery of the state: a private person sues a private person over public money. In the missing construction the defendant would be a public authority or its officials, and a private person would have to act on behalf of the state against the state. Such a construction is conceivable, and administrative justice is familiar with claims against public bodies, but it requires the legislature deliberately to arm market participants against its own machinery. No jurisdiction examined here has taken that step. The external reporter therefore acts against the decision of the contracting authority, yet the existing mechanisms afford no instrument for protecting the public interest comparable to qui tam.

8. Comparative Analysis: Favourable and Unfavourable Factors

Applying a single analytical matrix to three groups of jurisdictions makes it possible to reduce the results to a comparable form and to identify, for each legal order, the factors working in favour of the external reporter as the bearer of a signal of wrongdoing and those working against them. The point of reference is the position of the external reporter: a factor is treated as favourable if it eases the sending of the signal and shields the sender, and as unfavourable if it suppresses the signal or turns against the reporter. Table 6 summarises the comparison; the detailed reasoning is contained in the sections devoted to each group of jurisdictions, and the complete matrices are placed in the annex (Tables A1, A2, A3).

Table 6. Favourable and unfavourable factors for the external reporter

Jurisdiction	Favourable factors	Unfavourable factors
European Union (Italy)	Broad access to review, including challenge to the terms of the documentation before tenders are submitted; independent administrative justice	No protection for the reporter beyond the dispute; the external reporter falls outside the personal scope of Directive 2019/1937; fees pegged to contract value (up to two per cent) are levied cumulatively
Argentina	The barrier was expressly diagnosed as deterrent by an advisory body and by doctrine (2006)	The diagnosis did not prevail: the challenge bond was legalised (2023); the security is forfeited upon the mere rejection of a complaint; no protection for the reporter
Brazil	The widest standing: a right to challenge the documentation vested in any person without proof of interest	A challenge does not suspend the procedure; no protection for the person who uses it
Mexico	A digital platform for receiving reports, with guarantees of confidentiality, is in operation	The guarantees are concentrated in the insider channel; the participant's channel (inconformidad, a participant's complaint to the administrative control authority) contains none
Russia	A free and intensively used channel; the composition of complainants is openly observable through the unified information system	The second regime is wholly absent; the 2024 reform narrowed the circle of complainants by a status criterion
Kazakhstan	A single digital review channel	First-instance consideration of complaints has been transferred to the procurement organiser, that is, to the party whose acts are challenged
United States (counterpoint)	A direct pecuniary incentive and developed protection for the insider who reports wrongdoing	Restrictive conditions in documentation lie largely outside the reach of the mechanism; the external reporter is not covered

The comparison reveals a first regularity: the strengths of these legal orders lie in different planes, whereas their weaknesses are of one type. Some jurisdictions have developed the review procedure, others have widened access, others again have created an incentive for the insider, but in none is the bearer of an external signal protected beyond the particular dispute. The asymmetry of the table, in which the unfavourable factors outweigh the favourable, is not a defect of the comparison but its result: the balance of every one of these regimes is tilted against the external reporter.

8.1. The Transferability of Favourable Factors

The comparative table allows a move from comparison to the question of transferability. Can the strength of one jurisdiction cure the weakness of another? The answer shows which solutions are fit for borrowing and which problems persist whatever model is chosen. On this criterion three degrees of transferability may be distinguished.

The first degree is full transfer, where the experience of one jurisdiction directly resolves the problem of another. Argentina's financial barrier, the security forfeited when a complaint is rejected, is cured by a favourable factor of Russia: complaints are filed free of charge, without security, and this does not overwhelm the channel, which remains among the most heavily used in the comparison. The principal objection to abolishing the security, that it would open the way to a flood of unfounded complaints, is thereby refuted empirically: an intensively used free channel exists and works. Brazilian standing without financial conditions confirms transferability from the other side. In the same way, the dependence of first-instance review in Kazakhstan, where a complaint is first considered by the party whose acts are challenged, is cured by a favourable factor of the European Union and Russia, namely an independent review body distinct from the contracting authority. In both cases the solution exists ready-made and calls not for invention but for transfer.

The second degree is partial transfer, where foreign experience mitigates the problem but requires adaptation or entails costs. The absence of suspensive effect in Brazil, which lowers the price to the contracting authority of ignoring the arguments, might be mitigated by the interim measures provided for in European review procedures. Direct transfer is impossible here, however: suspending every challenged procedure would paralyse procurement and itself become an instrument of abuse, generating the very problem of bad-faith complaints to which Russia responded by narrowing the circle of complainants. Transfer is possible only in conjunction with a bad-faith filter, that is, with a restraint that the donor system itself lacks. The Mexican case is of a different character. Protection there already exists but is concentrated in the channel for insiders, while the participant in a procurement remains without it. Closing the gap is therefore possible first of all within the Mexican model itself, by extending the existing guarantees to users of the inconformidad procedure. The European prohibition of retaliation may serve as a reference point but not as a ready solution, since in European law it is addressed to the employee and not to the market participant.

The third degree is non-transferability, where the requisite favourable factor is present in none of the jurisdictions examined. The central unfavourable factor, common to almost all these legal orders, is the absence of protection for the reporter beyond the particular dispute. A survey of the favourable factors across all seven jurisdictions confirms that none of them contains such protection. The only developed model of protection for a reporting person, the American one, is addressed to the contractor's insider and does not extend to the external reporter. The comparative analysis therefore identifies no jurisdiction whose experience might be used directly to close the central legal gap. The same applies to the recovery of public loss from the restriction of competition. The American institution of qui tam allows a private person to recover loss suffered by the treasury, but it operates against the supplier rather than the contracting authority and does not ordinarily reach restrictive conditions in documentation. An instrument allowing a market participant to act on behalf of the state against a bad-faith contracting authority exists in none of the legal systems examined.

The analysis of transferability yields two conclusions. First, many of the shortcomings identified can be remedied by borrowing solutions that already exist. The corresponding problems are therefore not inevitable but institutionally surmountable. Second, the central legal gap cannot be closed by simple borrowing, since none of the jurisdictions examined has created a protective regime for the external reporter or vested that reporter with a right to participate in recovering public loss. In this respect the comparative study offers no ready answer, and thereby marks out a direction for the further development of the law.

9. Recommendations

The analysis above has shown that the legal gap in the protection of the external reporter reproduces itself under opposite institutional premises and is closed neither by the maturity of legal regimes, nor by breadth of access to review, nor by intensity of use of the channels. It follows that the gap cannot be closed by the efforts of a single jurisdiction or a single institution: coordinated movement at both supranational and national levels is required. This section sets out recommendations at two levels. They are deliberately outlined in broad terms: the study is conceived as a starting point for dialogue, and detailed elaboration of each solution presupposes joint work with the addressee, to which the organisation expresses its readiness.

9.1. Recommendations to International Organisations

This study is a first stage in the examination of the problem and provides a basis for its further scholarly and expert discussion. The recommendations below are accordingly preliminary in character and are directed at posing questions which, in the author's view, merit further consideration.

For the United Nations Commission on International Trade Law (UNCITRAL), the findings make it possible to raise the question of supplementing Chapter VIII of the 2011 UNCITRAL Model Law on Public Procurement with provisions addressing the position of a person who has made use of the challenge procedure. The current model regulates the conduct of procurement review in detail but scarcely touches upon the consequences that filing a complaint may have for the complainant beyond the particular procedure. Reflecting this problem in future editions of the Guide to Enactment of the Model Law may be considered as one possible direction for further discussion.

For the Working Group on the Prevention of Corruption of the Conference of the States Parties to the United Nations Convention against Corruption, the findings make it possible to raise the question of considering the figure of the external reporter in procurement at the junction of two existing lines of work: the prevention of corruption in public procurement, and the protection of persons who report corruption offences. The study shows that it is precisely at this intersection that a category of persons arises which is at present covered by virtually none of the existing protection regimes.

The analysis may also be of interest to international financial institutions that implement projects through public procurement procedures, and to the Organisation for Economic Co-operation and Development in the context of its work on the development of public procurement systems, the prevention of corruption, and the protection of those who report misconduct.

9.2. The Contours of Protection for the External Reporter

The analysis makes it possible to identify four elements that might form the basis of a possible protective regime for the external reporter. Each of them rests on legal solutions already existing in individual jurisdictions.

The first element is recognition. This would mean establishing in law the figure of the external reporter as a subject whose report of a breach in a procurement performs a public function irrespective of commercial motive. The basis for such recognition is already contained in the preamble to EU Directive 2019/1937, which establishes the irrelevance of the reporting person's motive, and in the open wording of Article 33 of the United Nations Convention against Corruption.

The second element is the observability of consequences. This would mean systematic monitoring of the contract trajectories of firms after they have filed complaints, by comparison with the trajectories of similar firms that have not. The method has been tested in the empirical literature, and the data required to apply it are already open in a number of jurisdictions. Monitoring moves the question of retaliation from the plane of unprovable individual allegations to that of a verifiable statistical regularity.

The third element is affordability of entry. This would mean revising the financial and status barriers to review against a criterion of practical affordability for the good-faith small supplier, rather than of abstract excessiveness for an average participant. Benchmarks already exist in the practice of the jurisdictions examined: free filing of complaints, fixed upper limits on securities, and linking forfeiture to established bad faith.

The fourth element is a proportionate response to abuse. The problem of bad-faith complaints is real, but the analysis has shown that regimes with no category of protection for the reporter respond to it by narrowing the circle of complainants, which cuts off the good-faith alongside the abusive. The alternative is targeted sanctions for established bad faith in a particular complaint, while broad access is preserved.

9.3. Recommendations by Jurisdiction

The comparative character of the study makes it possible to set the strengths and weaknesses of each jurisdiction examined against one another and to indicate which experience of other legal orders merits study. The considerations below outline directions for possible improvement rather than ready solutions; assessing the applicability of foreign experience requires account to be taken of national context and belongs to the subject matter of a dialogue with the governments concerned, for which the organisation stands ready.

For Argentina, whose case is examined in this study with particular attention, the analysis provides grounds for reconsidering the construction of the challenge bond. The strength of the Argentine legal order lies in a developed doctrinal tradition that has independently articulated the deterrent character of this institution: the 2006 position of the Treasury Attorney General's Office remains the most searching national legal assessment of such barriers known to us. Its weakness lies in the fact that subsequent evolution followed the path of legalising the institution rather than removing the defect that doctrine had identified. The experience of jurisdictions in which complaints attract neither fee nor security, while the channel remains intensively used, merits study: the Russian review system demonstrates that free entry is compatible with a workable review body, and Article 164 of the Brazilian procurement law shows that broad standing is possible without financial conditions of admissibility. The fate of the security upon rejection of a complaint deserves separate attention: linking forfeiture to established bad faith rather than to the mere failure of a challenge would remove the most criticised element of the construction while preserving a safeguard against abuse.

For Brazil, which has the broadest standing in the comparison to challenge tender documentation, the analysis points to a gap between breadth of access and the procedural force of the channel: a challenge does not suspend the procedure, and the price to the contracting authority of ignoring the arguments is low. The experience of jurisdictions in which a timely complaint entails suspension merits study, as do the 2025 recommendations of the Organisation for Economic Co-operation and Development on completing the regime of protection for reporting persons, including a reversal of the burden of proof on the Costa Rican model.

For Mexico, which has created a modern digital platform for receiving reports of corruption, the analysis points to a division of labour between two channels in which the guarantees are concentrated in the channel addressed to the insider and the citizen, while the market participant's channel contains none. A direction for improvement might be to extend certain of the platform's guarantees, above all protection against adverse consequences of reporting, to participants using the inconformidad channel.

For Russia, whose review system is among the most developed in the comparison in accessibility and intensity of use, the analysis points to the absence of a second regime: neither procurement nor anti-corruption legislation contains guarantees as to the reporter's position beyond the particular dispute, and the 2024 reform narrowed the circle of complainants instead of responding in a targeted way to bad-faith complaints. The strength of the Russian configuration, the open observability of the composition of complainants through the unified information system, provides a ready basis for the first element of protection: monitoring the contract trajectories of firms after they file complaints is feasible on data that are already published.

For Kazakhstan, which has deepened the digitalisation of its procurement framework, the analysis points to the risk created by transferring first-instance consideration of complaints to the procurement organiser: combining in one person the party whose acts are challenged and the body of first-instance review weakens the independence of the channel. The experience of jurisdictions with independent first-instance review merits study.

For the Member States of the European Union, in the forthcoming assessment of the application of Directive 2019/1937 announced by the European Commission, the analysis suggests considering the position of persons who report breaches in procurement outside the work-related context. The experience of applying the Directive, which placed procurement first in its material scope while excluding the principal bearer of the procurement signal from its personal scope, supplies empirical material for such consideration.

10. Conclusion

10.1. The Argument in Summary

The study began from a question: who is in fact the bearer of a signal of wrongdoing in public procurement, and does the law protect them? The answer consists of three interconnected conclusions.

First. In the formal channels of procurement review the principal bearer of the signal is the external reporter, above all a participant in the procedure. This follows from the construction of the channels, in which the right to apply is tied to a market interest, and is confirmed by data on the composition of complainants where such data are available.

Second. In all the jurisdictions examined, whistleblower protection regimes define their subject through an employment, service or other internal context and do not reach the external reporter in procurement. This is not a transitional stage in the development of the law but a stable construction: it recurs both in the mature supranational regulation of the European Union and in emerging national systems.

Third. Protection for the external reporter is necessary. Filing a complaint may have consequences beyond the particular dispute; the channels themselves contain barriers that bear more heavily on participants with fewer resources. The deterrent effect of such barriers is acknowledged both in international research and in national legal positions. The conception of the commercial participant as a wholly independent actor proves inadequate for the small and medium-sized supplier, whose dependence on a public contracting authority may materially limit their willingness to report wrongdoing.

Taken together, these conclusions constitute a legal gap: the person who carries the signal of a possible breach is not the person whom the law protects. Comparison of three groups of jurisdictions demonstrates that this gap persists under widely differing institutional conditions. In the European Union, despite the maturity of both regimes. In Latin America, despite broad formal access to review. In the post-Soviet states, despite intensive use of the channels.

The absence of protection manifests itself, moreover, through different mechanisms of restricting participation. Argentina operates a barrier of entry cost: a conditionally refundable bond turns an application into an economically risky act. Russia operates a barrier of entry status: the 2024 reform narrowed the range of admissible complainants by reference to their potential capacity to participate in the procurement. In Brazil formal access is as wide as it could be, yet even there it is unaccompanied by protection for the person who has reported wrongdoing. Different mechanisms lead to a single result: the external reporter is left without legal protection beyond the procedure itself.

The American counterpoint indicates that the pattern of observed signals is determined not by the nature of procurement but by the system of incentives. Where the law creates a protected and motivated insider, insider reports become a mass phenomenon. Where such incentives are absent, the principal bearer of the signal remains the external reporter, acting without special protection. At the same time, none of the jurisdictions examined has created for that reporter any analogue of the qui tam mechanism: the capacity to recover public loss in favour of the treasury.

It is for this reason that the silence of the vulnerable reporter conceals the very existence of the gap: an absence of recorded signals may reflect not an absence of wrongdoing, but the absence of any safe mechanism for reporting it.

10.2. Directions of Possible Change

Three directions of possible change follow from the analysis, differing in the depth of intervention in existing regulation. They map out a space of solutions; specific targeted steps for international organisations and national authorities are set out in the recommendations.

The first and least far-reaching direction is the monitoring of reporters' positions after complaints are filed. The deterioration in the position of firms after they file is effected through discretionary decisions of contracting authorities and is difficult to prove in any individual case [Management Science]. A possible measure consists in systematic observation of the contract trajectories of firms after they file complaints, using the same comparative method by which the effect was identified, that is, by comparison with the trajectories of similar firms that have not filed, with subsequent publication of aggregate results by the supervisory authority. Such observation is feasible on open data concerning contracts and complaints.

The second direction is the revision of entry barriers against a criterion of practical affordability. At present the permissibility of fees and securities is tested in the abstract, for excessiveness in relation to an average participant. A different test may be proposed: whether a good-faith small supplier, for whom a contract of this kind is typical, can in fact afford a complaint at this price of entry. Implementation is possible through several instruments: pegging securities to fixed amounts subject to an upper limit rather than to a percentage of contract value; reduced rates or exemptions for small enterprises, on the model of the procurement preferences that operate today at entry to tendering but not at entry to review; and forfeiture of the security only where bad faith in the complaint has been established, rather than upon its mere rejection, which addresses the Argentine construction directly.

The third and most far-reaching direction is to vest the external reporter with a right of active participation in the recovery of public loss, by analogy with the qui tam mechanism. A reporter whose complaint against restrictive conditions has been upheld might receive a share of the administrative recovery or of the demonstrated saving to the public purse. The costs of such a solution are substantial: the risk of a practice of bad-faith litigation, familiar from the American debates and from Russian experience with professional complainants, together with the fundamental difficulty of a construction in which a private person acts on behalf of the state against a public authority. A full elaboration of this construction lies beyond the scope of the present study and is identified as a direction for further work.

10.3. Limitations

The limitations of the methodology are set out in the corresponding section; three substantive ones are repeated here. The empirical data on the consequences of complaints come from a single jurisdiction with the most developed statistics, and their transposition to other contexts is an assumption. Since only those who have filed a complaint are open to observation, while those who abandoned it are not reflected in the data, the real extent of deterrence exceeds any estimate obtainable from observable data. The study rests on the law and data as they stood at the time of writing, in a field undergoing active development.

10.4. Programme of Further Work

The present study is a first stage and formulates directions for further empirical testing.

First: a systematic classification of complainants in open complaint registers across several jurisdictions, in order to establish the actual composition of users of review channels: participants in procedures, other business entities, associations, citizens and other categories.

Second: testing the hypothesis that legal representatives are insufficiently willing to conduct disputes against public contracting authorities. This supposition rests on preliminary observation and requires verification through interviews with suppliers and practising lawyers.

Third: study of the figure of the professional complainant as a distinct type of external reporter. The phenomenon does not reduce to abuse of right: such applications may serve to expose genuine breaches, and excluding this category from the control channel may result in the loss of part of the publicly significant information.

Fourth: analysis of the reliability of review bodies' decisions as a basis for building training data and applying computational methods to the detection of restrictive procurement conditions.

Fifth: comparative study of the reasons why private participation in procurement control is largely confined to the protection of one's own pecuniary interest and does not extend to participation in recovering public loss in favour of the treasury, notwithstanding the existence of such mechanisms for insider reports of fraud.

Sixth: study of strategies of retaliation against the external reporter through subsequent procurement control procedures. Separate examination is required of the scenario in which a market participant who has overcome restrictive procurement conditions and obtained the contract then faces the initiation by the contracting authority of proceedings for inclusion in the register of unreliable suppliers on grounds of improper performance. The potential risk is particularly significant where the technical specification was framed from the outset around a particular model of performance or a particular supplier, and the winner, failing to match the contracting authority's informal expectations, finds itself under continuous scrutiny and at risk of sanction. Such a scenario suggests that the vulnerability of the external reporter may manifest itself not only after a complaint has been filed, but also after the procedure has been successfully completed, through the use of subsequent mechanisms of procurement control.

Annex. Consolidated Channel-and-Dimension Matrices

Table A1. European Union (in depth: Italy)

Channel	Accessibility	Object of protection	Costs and risks	Reliability of outcome	Actual use
Procurement review body (Dirs. 89/665, 92/13)	high: any interested person, including challenge to the documentation before tenders	restoration of the procedure, annulment of decisions, damages to the complainant; no guarantees beyond the dispute	fees vary; in Italy up to 2% of contract value, cumulatively (C-61/14)	independent bodies, adversarial process, publicity	participants in procedures
Channels under Dir. 2019/1937	nil for the external reporter: the subject is defined through the work-related context (art. 4)	the full set: prohibition of retaliation, reversal of the burden of proof, support	minimised for protected persons	designated national authorities	insiders; procurement not distinguished as a subject
Judicial challenge	derived from the status of interested party	legality of acts; damages	fees, representation, duration	judicial independence	major disputes
Anti-corruption authority (ANAC)	open to reports from any person	supervisory response; no protection provided outside the work-related context	low direct costs; outcome not guaranteed	independent body, open data	share of participants not distinguished

Table A2. Latin America (Argentina, Brazil, Mexico)

Channel	Accessibility	Object of protection	Costs and risks	Reliability of outcome	Actual use
Argentina: impugnación with a bond (Decreto 1030/16; CABA)	open to participants; conditional on lodging security	correction of the act; no guarantees for the complainant	security of 0.5-2% of the budget, at each stage; forfeited on rejection	within the contracting authority's own administrative system; PTN reversed its position in 2006 and 2023	suppressed by the barrier; value to SMEs is negative
Brazil: challenge to the documentation (Lei 14.133, art. 164)	maximal: any person, without proof of interest	correction of the documentation; no guarantees	3 days before opening; no suspensive effect	the reply is given by the contracting authority, published within 3 days	no statistics by type available

Channel	Accessibility	Object of protection	Costs and risks	Reliability of outcome	Actual use
Brazil: reporting channels (Lei 13.608; 12.846)	open to citizens; rewards available	lacks the three core elements of protection (OECD 2025)	low direct costs; no protection	departmental channels	figures of the criminal and employment contexts
Mexico: inconformidad (LAASSP, LOPSRM)	participants; short time limits (6 working days)	review of the act; no guarantees	moderate direct costs; consequences not addressed	federal authority; CompraNet	participants in procedures
Mexico: Ciudadanos Alertadores platform	citizens and officials; anonymity	confidentiality of the alertador; gross acts of corruption	low; protection of position is limited	centralised platform	insiders, witnesses; the participant is not distinguished

Table A3. Post-Soviet States (Russia, Kazakhstan)

Channel	Accessibility	Object of protection	Costs and risks	Reliability of outcome	Actual use
Russia: complaint to FAS (Law 44-FZ, ch. 6)	high: electronic filing, no fees; status qualification from 2024	order, annulment; no guarantees beyond the dispute	low direct costs; short time limits; consequences not addressed	independent body; register public (EIS)	2023: 53,955, 42% upheld; 2024: 39,200, 39.8%; business entities
Russia: judicial challenge (Arbitrazh Procedure Code)	participants and interested persons	legality of acts; damages	fees, duration	commercial (arbitrazh) courts	continuation of disputes after FAS
Russia: public oversight (associations)	associations are vested with a right of review	as in the principal channel; no protection for those exercising oversight	low direct costs; risks not addressed	the same authority	narrowed by the 2024 reform
Russia: report under official duty (Law 273-FZ, art. 9)	state and municipal servants only (a duty)	limited guarantees within the service relationship (Decree No. 364)	risks within the service relationship	internal departmental circuit	insider; the external reporter is excluded
Kazakhstan: review through the web portal (ch. 9)	participants; digital entry	review of the outcome; no guarantees	low direct costs	first-instance consideration by the organiser, thereafter the administrative court	no open statistics by type available

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