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Enablers of Corporate Wrongdoing in Europe

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By: Theo Nyreröd and Giancarlo Spagnolo

Abstract: In the last two decades prolonged instances of corporate wrongdoing in Europe have been uncovered: from Siemens' systemic bribery to HSBC and other major bank's money laundering issues, Dieselgate, LIBOR price-rigging, and the recent Wirecard debacle. What has driven European firms to engage in such systematic wrongdoing? In this article, we first use data on US investigations to identify the European countries hosting most corporate wrongdoers. We then consider these countries' legal, institutional, and political contexts in search for explanations of the main enablers of this behavior, ending with some policy recommendations.

JEL Codes: (K42), (K2).

Keywords: corporate wrongdoing, financial fraud, money laundering, corruption, whistleblowers.

Contents

1. Introduction

The Wirecard case has occupied the front page of many newspapers recently. It has struck most observers as an exceptional case of European corporate wrongdoing, not only due to the extent and duration of the phenomenon but also the apparent ineffectiveness of the supervisor. However, Wirecard is just the latest example of many revelations of corporate wrongdoing, and against this background, the Wirecard story appears more of a continuation of a trend than a stand-alone example.

Corporate wrongdoing appears indeed a ubiquitous phenomenon, and likely understated by the previous literature that mostly has relied on publicly available data on settlements and actions. Soltes (2019), for example, shows that public enforcement statistics significantly underestimate the amount of serious malfeasance that arises within firms. Moreover, according to some estimates, corruption, fraud of various types, and related forms of economic crime are widespread and on the rise almost everywhere in the world (e.g. Dyck et al. 2013, pwc 2016).

In this paper we will focus on corporate wrongdoing in Europe, pooling together various types of corporate infringement, and try to identify legal, regulatory, and political aspects that have enabled it. We will then discuss possible solutions available to counter corporate wrongdoing (provided that there is the political will to counter it, something we are very doubtful of after we review how institutions in the UK and Germany reacted to episodes of extensive corporate wrongdoing).

From the 'classic' extensive Siemens bribery case to the 'classic' extensive money laundering cases of HSBC on behalf of the bloody Sinaloa drug cartel, and from the enormous 'low tech' British Petroleum oil spill, to the more innovative Dieselgate and Wirecard cases, and repeat offenses by firms like Deutsche Bank and Thyssenkrupp, some striking commonalities are:

i) their extensive size and prolonged duration, which must have made a lot of employees aware of them;
ii) the lack of whistleblowers reporting them;
iii) the extent of recidivism, i.e. of convicted and sanctioned firms continuing to misbehave.[1]

The extensive duration and breadth of wrongdoing and the high rate of recidivism are worrying signs of ineffective enforcement and that what has been uncovered in recent years may only be the tip of a large iceberg. The lack of whistleblowing and high regulatory forbearance, if not complicity, are further worrying signs of poor corporate and institutional governance, and of a deeply compromised cultural environment.

We first exploit US data on enforcement actions to identify the European countries with more firms involved in corporate wrongdoing in the US or where US agencies and prosecutors have jurisdiction. This exercise leads us to identify and then focus on two

[1] On recidivism, to mention a couple of examples, Thyssenkrupp (discussed in depth in Section 3.1), was already considered a repeat offender in 2007 and received a 603 million dollar fine, yet has the last decade been fined again on several occasions for similar behavior. This does not appear limited to antitrust offenses. Large banks such as Deutsche bank and HSBC, who received many fines in the past, are continually in the news for new instances of the same kind of wrongdoing that they have previously been fined over.

countries that firmly stand out in terms of an exceptional involvement in corporate wrongdoing, whether in per capita or per economy size: The United Kingdom in primis, followed by Germany.

We then consider examples of corporate wrongdoing from these two countries and consider the legal, regulatory, and political aspects that may explain their overrepresentation in our data. Finally, we conclude with a discussion of possible solutions available to counter corporate wrongdoing, pointing in particular at the introduction of effective protections and rewards schemes for whistleblowers. Interestingly, we find that the legal and political institutions of precisely these two countries have been particularly aggressive in opposing and/or trying to discredit whistleblower protection and rewards schemes, in the face of the exceptionally successful performance these enforcement tools have had according to independent research in the US.

The remainder of the paper is structured as follows. In Section 2, we outline data from US enforcement agencies on corporate sanctions against firms with headquarters in European countries and motivate our subsequent focus on the UK and Germany. In Sections 3, we consider instances of corporate wrongdoing and the drivers behind it in Germany, the runner-up silver medalist. In Section 4 we do the same for UK, the gold medalist. In Section 5 we conclude with some research-based enforcement methods that may aid in detecting and deterring corporate crime in a timelier fashion.

2. Corporate Wrongdoing in Europe

The last two decades have uncovered a concerning range of corporate wrongdoing by large European firms in a wide variety of industries. For decades Siemens were systematically paying bribes all over the world. The Dieselgate scandal unveiled widespread and decade-long strategic non-compliance with diesel emissions regulation. UK-based and other Northern European banks have continually been handed supposedly large fines for a range of offenses (e.g., money laundering and aiding tax evasion), and yet do not appear to be deterred as they continue to engage in the same problematic behavior.

Supervisory agencies also seem to have been almost entirely ineffective. Volkswagen managed to produce 11 million cars in which a device was installed that cheated emissions tests. This practice may have gone as far back as 2006, yet was only discovered in 2015, and not by any German supervisor but by an inquisitive group of mechanical engineering students. In the Wirecard case, the German financial supervisor was effectively handed evidence of fraud but instead seemingly acted in the firms' defense.

In recent money laundering cases involving Danske Bank, Swedbank, HSBC, and Deutsche Bank, supervisors have been aware of anti-money laundering deficiencies yet were unable to get banks to comply for several years, sometimes green stamping branches who then only years later turn out to have cleared hundreds of billions of dollars in suspicious transactions, as in the Danske bank scandal. The longevity, severity, and extent of the wrongdoing uncovered in many cases of these last two decades, warrant a broader debate on corporate crime and how to effectively combat it.[2]

One way to gain some insight into the determinants and enablers of corporate wrongdoing is to explore the institutional environment of those countries whose firms are most overrepresented with respect to corporate wrongdoing and consider local factors as to why this

[2] Beyond the direct damages caused by these instances of misconduct, such as damages to health and the environment or the draining of public resources, corporate wrongdoing has a range of anticompetitive effects. Profitable wrongdoing makes firms look better than competitors, which attracts investors who then loses substantial amounts when the wrongdoing is uncovered. Profitable wrongdoing can also stifle innovation, increase market entry thresholds, and force compliant firms out of the market. These effects are more pronounced the longer and more severe the wrongdoing is.

may be. However, internal legal enforcement is likely to be influenced by the prevalence and importance corporate wrongdoing plays in the country and hence we cannot use internal country data on corporate misconduct to identify which European country is more prone to it.

To overcome this hurdle, we use enforcement records from a common and arguably independent (non-European) third party. We use US enforcement action data between the years 2000 and 2020 to identify the tip of the iceberg of European corporate wrongdoing. Violationtracker.org is a database that is increasingly being used by researchers that study corporate wrongdoing. It covers a range of regulatory areas and cases resolved by federal regulatory agencies - all parts of the Justice Department, state Attorney Generals, and selected regulatory agencies. As of January 2021, the database contained over 444 000 civil and criminal cases from more than 250 agencies, with total penalties of over $650 billion.

Table 1 reports all the fines paid in the US by firms with headquarters in their respective countries, and Table 2 shows the corresponding figure relative to population size.[3]

Table 1: Total Fines[4]

UK (1811):	$69 298 977 830
Germany (2332):	$50 309 697 861
France (1119):	$19 931 690 635
Netherlands (1433):	$5 811 672 653
Italy (243):	$2 100 188 326
Sweden (293):	$2 034 164 118
Ireland (343):	$1 965 208 813
Spain (138):	$825 832 270
Finland (108):	$410 581 256
Belgium (512):	$263 152 304
Luxembourg (531):	$228 032 226
Denmark (50):	$206 548 663
Portugal (23):	$11 434 711
Cyprus (3):	$11 150 000
Greece (46):	$14 663 562
Austria (34):	$584 919

Table 2: Total Fines/Population[5]

United Kingdom:	$1039,74
Germany:	$598,99
Ireland:	$396,19
Luxembourg:	$362,07
Netherlands:	$339,02
France:	$305,24
Sweden:	$201,11
Finland:	$74,063
Denmark:	$35,638
Italy:	$34,738
Belgium:	$22,669
Spain:	$17,649
Cyprus:	$9,3621
Greece:	$1,4078
Portugal:	$1,1221
Austria:	$0,0647

This comparison may raise some concerns. The size of the economies may differ and with a large economy comes increased exposure to US jurisdictions, so we control for GDP in Table 3. Further, Germany is a significant exporter to the US, which causes more exposure to US jurisdictions, which in turn leads to more occasions for infringements and regulatory actions. We control for export to the US in Table 4.

[3] We exclude Switzerland because it is an outlier, specialized in corporate and financial wrongdoing of various types (with eight and a half million inhabitants, it paid $33.9 billion between 2000 and 2020, $26 billion of which were for financial offenses). Here our focus is on European Union countries.

[4] Number of fines in parenthesis, source: violationtracker.org

[5] https://www.worldometers.info/world-population/population-by-country

Table 3: Total Fines/GDP in Billions (USD) expressed as a percentage of total[6]

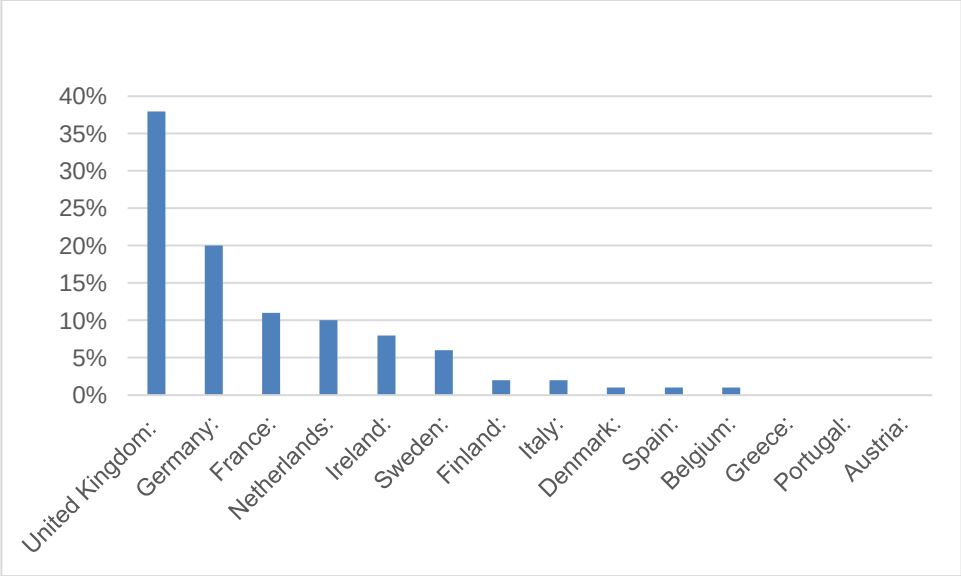
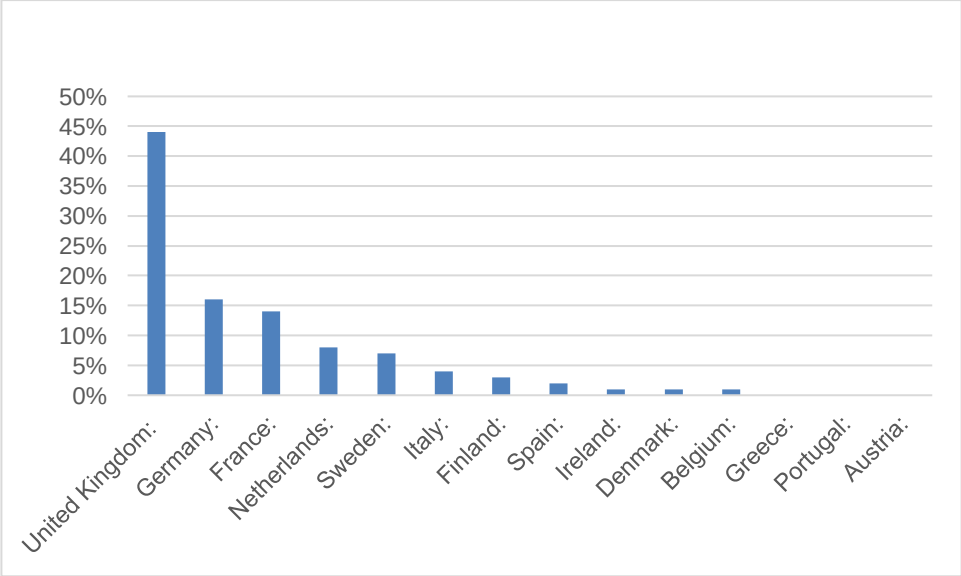


Table 4: Total Fines/Export to the US in Billions (USD) expressed as a percentage of total[7]



Clearly, the UK stands out as the uncontested champion of corporate wrongdoing, at least with regard to infringements under US jurisdiction, more or less closely followed by Germany depending on normalizations. A more distant group of competitors, mostly from Northern Europe, follow the leaders at some distance.

We have no reason to believe that the US might have been unfairly biased against UK and Germany in its enforcement actions. On the contrary, the US might have been more lenient towards the UK and Germany than say, France, considering that these two countries are arguably their closest allies in Europe.

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[6] World Bank 2019

[7] https://tradingeconomics.com/united-states/imports-by-country

Of course, it could be the case that British and German firms are particularly bad in hiding corporate misdeeds, so that the real source of their leadership is the dumbness of their management rather than the extent of misbehavior. However, we don't know about studies pointing in this direction, and applying Laplace's principle of insufficient reason we will assume that managerial dumbness is equally distributed across countries, and interpret the higher amount of enforcement actions against these countries as a sign of more prevalent misbehavior in firms from these countries in US jurisdictions.

Our focus in this article is therefore on the gold and silver medalists: the UK and Germany, although much of the problems we identify apply to various degree to most other EU countries. In the subsequent sections, we conduct a qualitative review of instances of corporate wrongdoing, government/supervisory inaction, and local factors driving and enabling corporate wrongdoing. Because of the recent headlines made by the Wirecard case we start with the runner-up, Germany.

3. Germany

3.1 A Long List of Corporate Wrongdoing

In June 2020, Wirecard AG's stock price fell from €104 to below €2 in the span of nine days after the firm admitted it could not locate $2 billion missing from its accounts. The firm has been then accused of wide range of infringement, including money laundering, corruption, and fraudulent inflation of profits and sales, with some allegations going back over a decade.

McCrum and Palma (2019), among others, pointed out in their FT article on Wirecard cooking its books to expand its Asian operations that "Accusations of suspect accounting were leveled in 2008, 2015 and 2016. Each time Wirecard has alleged market manipulation, sparking investigations by the German market regulator, BaFin." And each time, the German financial regulator went after those who reported suspect accounting practices for "market manipulation".

There was therefore a prolonged period during which the German financial regulator chose not to investigate the firm, and in fact appear to have acted in the defense of Wirecard. In 2019, BaFin issued a ban on short selling of Wirecard shares, which provided investors a false sense of security and according to a state secretary at the German Ministry of Finance "enlarged the damage that was inflicted on investors and creditors" (Storbeck, 2021). At the same time, several employees at BaFin owned and traded Wirecard stock and derivatives, with increased activity before the stock´s crash, sparking questions about whether they traded with insider information (O'Donnell and Seidenstuecker 2020). The story subsequently became as much about BaFin and German financial supervision as about the firm itself.

Two recent reports have been highly critical of BaFin and Germany's financial regulatory structure (Langenbucher et al, 2020, ESMA, 2020). BaFin has an obligation by law to notify the public prosecutor if an examination procedure gives rise to suspicion of criminal activity relating to an entity's financial reporting (ESMA 2020: 9). The ESMA report also notes that BaFin perceives the bar to notify the public prosecutor to be high. Yet the Financial Times published 12 articles on Wirecard in their blog and main paper containing concrete information, and some based on leaked internal documents. On the 10th of April 2019, BaFin filed a criminal complaint with the Public Prosecutor's Office in Munich against two journalists on suspicion of market manipulation in relation to reports on Wirecard (ESMA 2020: 39). Given that the bar to report to the public prosecutor is high, it is only natural to suppose that BaFin had read and assessed the allegations in the reporting by the Financial Times and the story has therefore left many wondering how a supervisor can effectively be handed the evidence, assess it, and yet not manage to initiate the proper actions to remedy the situation.

Indeed, this recent scandal is not the only one that has left several people with the impression that Germany and its political and regulatory institutions have an extremely mild stance towards corporate wrongdoing (see e.g. Cassin 2020, Lark 2020), and a clear inability or lack of political will to detect and fine it. Many large and internationally known German firms are frequently involved in extensive corporate wrongdoing and are moreover recidivists.

The legal and institutional environment also appears to have had a supporting role. With respect to corruption, for example, bribe payments could be deducted from tax in Germany up until 1999 if paid to foreign officials, and up until 2002 if paid to recipients in the business world (Berghoff, 2017). In October of 2003, the United Nations adopted the Convention Against Corruption. On average, European countries had ratified this treaty halfway through 2007, but Germany was one of the last to ratify the treaty, it did it only in 2014 – despite (or because of?) being a significant exporter (UNODC, 2020).

And perhaps to no surprise, one of the largest corruption scandals in history involves a German firm, Siemens. According to the Department of Justice (DoJ), beginning in the mid-1990s, Siemens engaged in systemic efforts to falsify its corporate books and records. Siemens subsidiaries in Argentina, Bangladesh, Venezuela, France, Turkey, were all charged under the US's Foreign Corrupt Practices Act. The Securities and Exchange Commission (SEC) concluded that Siemens made at least 4283 payments, totaling $1.4 billion, to government officials in at least ten countries.

These transactions went to paying bribes to build metro transit lines in Venezuela, power plants in Israel, metro trains and high voltage transmission lines in China, telephone networks in Bangladesh, telecommunications projects in Nigeria, traffic control systems in Russia, national identity cards in Argentina, refineries in Mexico, communications networks in Vietnam, and also sales of power stations and equipment to Iraq. According to the DoJ investigation, bribery at Siemens was "standard operating procedure" for decades, and the SEC concluded that "the company's tone at the top […] created a corporate culture in which bribery was tolerated and even rewarded at the highest levels of the company" (SEC, 2008).

In December of 2008, Siemens was fined $1.6 billion and promised a radical change in governance. Since then, the firm seems to have improved. After the DoJ fine, the new Siemens CEO replaced half of the top 100 managers and hired more than 500 full-time compliance staff (Garrett 2014: 173), and went on to great financial success, showing that firms can succeed and be competitive without relying on bribes (Garrett 2014: 194). Yet, in January 2013, new allegations of a kickback scheme were alleged by a healthcare compliance officer and whistleblower, who also claims he was fired for blowing the whistle internally to his bosses (see Liu Meng-Lin v. Siemens AG).

More recently, consider Volkswagen's role in Dieselgate, the scandal where it was discovered that several car manufacturers had been installing software in diesel cars to cheat emissions tests. The software of these cars was programmed to recognize when the car was in testing conditions, and then made the car emit significantly less, while in real-world scenarios some cars emitted up to 40 times more than emission standards allowed. Volkswagen admitted that nearly 600,000 diesel cars sold in the US, and 11 million worldwide, were equipped with these "defeat devices". Although the scandal broke in 2015, Der Spiegel (2015a) reports that "the decision to install the manipulated software had already been made in 2005 and 2006, in the engine development department at VW headquarters". It took close to a decade for this wrongdoing to be uncovered by a group of college students in the US, even though the intention to cheat emissions tests was known to a quite large number of engineers and managers at VW since 2006. Not a single employee succeeded in bringing this wrongdoing to the public's or the supervisor's attention and the consequences of excess diesel emissions are significant: beyond the environmental damage, excess diesel emissions were associated with 38 000 premature deaths in 2015 (Anenberg *et al*, 2017).

Another repeat offender who appears to believe that corporate wrongdoing and fines when it is detected are "a part of doing business" is Deutsche Bank, Germany's largest lender. When it comes to European banks paying fines for various types of wrongdoing in the US between 2000-2020, Deutsche bank leads by far with $18 billion in fines. The bank also has a history of repeated offenses. Consider the actions against Deutsche Bank in the US the last three years alone. In 2017, the New York State Department of Financial Services and the UK's Financial Conduct Authority issued fines totaling approximately $660 million to Deutsche Bank for anti-money laundering violations (DFS, 2017). That same year, Deutsche Bank also reached a settlement for $7.2 billion with the Department of Justice for misleading investors about mortgage-backed securities between 2006 and 2007 (DoJ, 2017). In 2018, two Deutsche subsidiaries settled for $75 million with the SEC for improper handling of "pre-released" American Depository Receipts (SEC, 2018). In 2019, the bank settled for $16 million with the SEC for violating the Foreign Corrupt Practices Act (SEC, 2019a). In 2020, Deutsche bank was fined $150 million for, among other things, know your customer failures in relation to transaction clearances for Jeffery Epstein. In 2021, Deutsche bank entered a deferred prosecution agreement with the DoJ, paying over $130 million for concealing corrupt payments and bribes as well as commodities fraud (DoJ, 2021). Deutsche Bank was also handed cease and desist orders by the SEC for a range of different problematic behavior in 2015, twice in 2016, and once in 2019 (SEC 2015, 2016a, 2016b, 2019b).

Finally, consider Thyssenkrupp, a German conglomerate with focus on steel production and industrial engineering. In 2007, the European Commission fined Thyssenkrupp €479 million for bid-rigging in the elevator market – the highest EU fine for bid-rigging ever at the time. This cartel was also a prolonged one: The Commission had evidence that cartel members met regularly from at least 1995 to 2004 (New York Times, 2007). The Commission decided to increase the fine by 50% because, in 2007, Thyssenkrupp was already a repeat offender. The EU's general court later reduced the fine by a third (Sinner, 2011).

In 2013, Germany's Cartel Office imposed an €88 million fine for price rigging of rail tracks and equipment (DW, 2013). In 2017, Thyssenkrupp's Atlas Elektronik GmbH was ordered by German prosecutors to pay the state €48 million in forfeitures that it had earned from contracts in Greece and Peru (Reuters, 2017). In 2019, Thyssenkrupp was one of three steel manufacturers who were jointly fined $719 million by the German competition authority over price-rigging between 2002 – 2016 (Bundeskartellamt, 2019). More recently, Thyssenkrupp has been involved in a heavily publicized scandal involving corruption allegations against top Israeli politicians. In 2019, Israeli prosecutors charged Benjamin Netanyahu's former lawyer, his ex-chief of staff, and a past head of the navy with corruption in the €2 billion purchase of submarines from Germany, and prosecutors allege that Thyssenkrupp's agent paid millions of dollars in bribes to get the deal approved (Srivastava, 2019).[8]

An important common thread in all these episodes of extensive and prolonged corporate wrongdoing is the conspicuous absence of employees reporting it to authorities. Was there not a single honest employee among the many ones informed about the extensive wrongdoing taking place for decades at Volkswagen, Wirecard, Deutsche Bank, Siemens, or Thyssenkrupp? Are all German employees so careless or dishonest? We do not believe so. We

[8] ThyssenKrupp has also been investigated on other occasions. In 2012, the public prosecutor's office in Essen, where Thyssenkrupp is based, launched a probe against 14 people regarding alleged bribery and fraud (Reuters, 2012). In 2016, prosecutors in the German city of Bremen launched an investigation into possible corruption, involving millions of euros paid to dubious consultants until 2014, supposed to be bribes used to pay Turkish officials (Handelsblatt, 2016).

believe that some employees of these companies would likely have come forward if it were not for the lack of legal recourse for whistleblowers in Germany.

3.2 Germany's War on Whistleblowers

Whistleblowing about all sorts of corporate wrongdoing has been actively deterred by firms and courts in Germany for a long time, and the governments of this country has done nothing to protect whistleblowers.

As Worth (2020) points out, Germany has a long history of mistreating whistleblowers and ranks behind countries like Chile, Kosovo, Zambia, and Tunisia in terms of protecting them. Worth also points out that "German officials and institutions have not just failed to come to the defense of whistleblowers. In several cases they have gone on the offensive against their own citizens by deploying police, prosecutors, judges and other authorities". German legal experts have called the current state of German law a "wasteland for whistleblowers" (Momsen and Benedict, 2020: 240). Other reports also highlight the lack of stand-alone and effective whistleblower protections in Germany (see e.g. Transparency International 2013, Wolfe et al 2014).

On June 14th of 2012, a debate on a new whistleblower law was held in the German parliament, the "Bundestag". The then governing coalition, consisting of the Christian Democratic Union, the Christian Social Union, and the Free Democratic Party, stated that the legal status quo in dealing with whistleblowing is sufficient. Germany had earlier committed to effective legal protection for whistleblowers in the corruption context when signing on to the G20´s 2013-2014 Anti-Corruption Action Plan (G20, 2013). In 2013, the two ruling parties at the time rejected three proposals to clarify and improve whistleblower protections (Wolfe et al, 2014: 35). The lack of political action is peculiar, as beside the instances of prolonged corporate wrongdoing and international reports on the poor status of whistleblower protections in Germany, there are also cases of prolonged and severe retaliation against whistleblowers in the country.

A well-known example of whistleblower mistreatment is the case of Heinisch v. Germany, where a nurse was fired for internally reporting under-staffing and improper working conditions at an elderly care home in 2005 and lost her case for reinstatement at all levels of German labor courts, even though the regulator verified that her claims were correct. She had to turn to the European Court of Human Rights to be vindicated, though after six years of legal hassle Heinrich only received €10000 damage compensation and an additional €5000 for costs and expenses.

Or consider the case of Brigitte Fuzellier, who revealed evidence of financial irregularities within Kolping international, a charity organization with strong connections with the ruling Christian Democratic Union. Fuzellier alleged that Kolping misspent German and EU public funds that were earmarked for education and training projects. An official investigation confirmed Fuzellier's reports, and the story became a public scandal in Germany. Fuzellier then experienced a decade long retaliation campaign, with Kolping and associates of the charity filing lawsuits and criminal charges, convincing judges to impose travel bans, leading to her personal and professional bankruptcy (Worth, 2020).

There are several other concerning stories involving whistleblowers' mistreatment in German firms and lack of protection by German institutions (see e.g. Strack 2017, Worth 2020). Yet, research shows that adequately protecting and incentivizing whistleblowers is essential to uncover corporate wrongdoing. The Association of Certified Fraud Examiners (2020) reports that 43% of occupational frauds are initially detected through a tip, and 50% of those who report occupational fraud are employees. This dwarf the other means of detection. Next on the list is internal audit (13%), management review (12%), "other" (6%), and by accident (5%). How these tips are processed, whether there are protections and

incentives in place for those who submit tips, is therefore incredibly consequential to whether corporate wrongdoing is discovered, and information reaches those in the best position to remedy the problem.

Germany will be obligated to transpose the new EU Directive on whistleblower protections (Directive 2019/1937), which should offer protection to those who blow the whistle on violations of EU law. How the directive is transposed will be central to its effectiveness. An adequate transposition of the directive in accordance with best practices, outlined e.g. in Kohn (2020a), is likely to go some way toward remedying the problem, though rewards are absent and are what really matters according to available evidence (see Nyreröd and Spagnolo 2021, *forthcoming*, for overviews). The Directive, however, has already met considerable resistance by German industry.

The German employer representative "Die Arbeitgeber" (BDA) claims, in contrast to all independent experts, that there is sufficient protection for whistleblowers in Germany and that no European directive is needed (BDA, 2017). Siemens also publicly objected to an EU wide initiative on whistleblower protections. According to the firm that systemically bribed public officials in at least ten subsidiaries for up to a decade without employees coming forward: "there is no need for further legislation because the existing regulations and guidelines are protecting whistleblowers adequately" (Siemens 2015: 1). The Federation of German Industries (BDI) had even stronger critique of the new directive: "The BDI sees the new regulations - particularly through the introduction of the two-stage reporting system - as a clear signal of mistrust towards companies." (BDI, 2019, translated by authors). But has not the history of German firms' extensive and systematic misbehaving warranted mistrust?

We think so, particularly due to their public assurances of high ethical standards. Volkswagen's 2011 code of conduct reads "we consider compliance with international conventions, laws, and internal rules to be the basis for sustainable and successful economic activities". (Volkswagen 2011: 4). Similarly, the earliest code of conduct we found from Thyssenkrupp is from 2014, which also speaks about the importance of compliance and high standards (Thyssenkrupp, 2014). Siemens also had similar statements to shareholders and employees about compliance and, stating that "our actions are aligned with clearly defined ethical principles", and that Siemens "is committed to being an active and responsible member of every community where we do business worldwide" at and during the time of their misconduct (Verschoor, 2007: 11). Deutsche Bank is no exception (Deutsche Bank, 2015).

Some organizations have been particularly concerned about the extent of influence of industry groups in Germany. Before the upcoming German Presidency of the EU, Corporate Europe Observatory and Lobby Control published a report outlining the unusually unbalanced power of corporations in Germany, containing analyses of how the German government allegedly protects its car industry from adapting to climate change, how it allows the financial industry to have its way, how German firms fight against tax transparency, and a range of other areas where industry has very significant influence (LC & CEO, 2020).

Inadequate laws against corporate crime have also been an issue in Germany. In 2020, the German federal government adopted a new, stronger law against corporate crime, the "Law to strengthen integrity in business" (BMJV, 2020). Previously, the maximum fine for corporate crime was limited to a maximum of €10 million. Under the new law, fines will be up to 10% of annual group-wide revenues if the firms' average revenues exceed €100 million, on top of disgorgement of profits from crime. The new law now also requires enforcement authorities to prosecute every criminal offense committed by a corporation if they find out about it. This law, together with a robust transposition of the whistleblower directive outlined, might be the beginning of a novel era in terms of the attitude of government and regulators towards corporate wrongdoing in Germany. Let us wait and see how the whistleblower protection

directive will be transposed, though decades of experience have shown that even the best protection laws are oftentimes incapable of shielding honest whistleblowers from many subtle or delayed forms of retaliation that make their life miserable in the absence of substantial monetary rewards.

4. The United Kingdom

4.1 Another Long List of Corporate Wrongdoing.

There is a large outlier in the data reported in Table 1: British Petroleum (BP) paid fines of more than $26 billion in relation to the Deep Horizon oil spill of 2010. This spill was one of the most damaging environmental disasters in US history, releasing about 5 million barrels of crude oil into the ocean and causing substantial damage to a wide range of organisms. BP's actions have been subject to a lot of criticism throughout the years, and especially in relation to this scandal.

During the spill BP engaged in potentially dangerous and misleading denials. The firm made public statements indicating that the flow rate estimated around 5,000 barrels of oil per day. However, BP's internal data indicated that the potential flow rates could be as high as 146,000 barrels per day. In public BP executives made numerous statements in which they stood behind the 5,000 barrels number, and even criticized other estimates by third parties as scaremongering. Months later, a government task force estimated that the flow was at around 52,700 to 62,200 barrels per day (SEC, 2012).

Internal investigations at BP during the decade preceding this spill had warned senior BP managers that the company repeatedly disregarded safety and environmental rules and risked a serious accident if it did not change its ways, and a 2004 inquiry found a pattern of intimidating workers who raised safety or environmental concerns (Lustgarten and Knutson, 2010). The company allegedly flouted safety standards by neglecting aging equipment, delayed inspections to cut production costs, and falsified inspection records. Even prior to the 2010 spill, officials at the US Environmental Protection Agency had considered debarring BP from receiving government contracts (Lustgarten, 2012). Since 2000, BP has been fined 158 times for environment-related offenses in the US, and over 60 times since 2010, the year of the oil spill.

Another scandal involving UK banks that cost regular people billions was the misselling of "payment protection insurance", a form of insurance intended to cover those who were unable to pay their debts on products such as mortgages and credit card balances due to illness, unemployment, or disability. This insurance was aggressively sold and marketed, and was highly profitable for the banks, with an approximate profitability of 90% (Laris, 2020). The problem was that several barriers were erected to inhibit people from claiming the insurance, such as contract exclusions or administrative barriers, and many people sold these insurances either did not need them or were unsuitable. As of January 2011, British banks and financial institutions had paid out £37.5 billion in compensation to customers who were wrongly sold the insurance, in what some has called "the U.K.´s biggest financial scandal by far" (Coppola, 2019).

Politicians in the UK have also come to the rescue of banks engaging in egregious misconduct. In 2010, it was discovered that HSBC had systematically laundered money for some of the bloodiest drug cartels in history through its Mexican branch. Despite numerous internal warnings, complaints from regulators, and internal flags, HSBC Mexico continued laundering money for organizations as the Sinaloa cartel, who not only flood the US with illegal drugs but is considered responsible for the gruesome killings of tens of thousands of people, often innocent civilian casualties at home.

A 2016 report prepared by congressional republicans (House of Representatives, 2016) contains details on the involvement of senior UK politicians in the investigation of HSBC. The 2016 report states that on the 10th of September 2012 UK Chancellor George Osborne (the UK's finance minister) wrote a letter to Federal Reserve Chairman Ben Bernanke (with a copy transmitted to then-Treasury Secretary Timothy Geithner), insinuating that the US was unfairly targeting UK banks by seeking settlements that were higher than comparable settlements with US banks and suggesting that HSBC should not be subject of a criminal investigation because criminal sanctions against HSBC would put at risk financial stability (criminal charges could lead to a revoked license, making the bank unable to do business in the US. HSBC ended up in a deferred prosecution agreement and paid $1.9 billion in fines.) HSBC was indeed spared from criminal prosecution, also with the help of the UK´s then Financial Services Authority who were in frequent contact with US prosecutors.

Was this fine a sufficient deterrent of future misconduct? According to the deferred prosecution agreement, HSBC was required to have a monitor overseeing their compliance measures for a five-year period. The Consortium of Investigative Journalists used interviews with whistleblowers and people involved in the HSBC monitoring process, as well as secret government documents, and concluded that the bank has continued to facilitate and profit from transactions it suspected were dirty (see e.g. Cormier et al, 2020). In the bank's 2017 annual report, the HSBC appointed monitor concluded that the bank still had deficiencies in financial crime compliance controls and was not "adequately managing financial risk" (HSBC, 2017: 78). HSBC has entered into a new deferred prosecution agreement with the DoJ in 2018 and agreed to pay more than $100 million to resolve fraud charges, and in 2019 they agreed to pay $192 million for helping US taxpayers evade taxes.

More generally, banks in the UK appear to stand out when it comes to corporate wrongdoing. KPMG (2016: 6) reports that remediation costs (all legal, investigative, remedial and corrective costs incurred with any remediation) accounted for 72% of the profits of the five largest UK banks (Barclays, HSBC, Lloyds, Royal Bank of Scotland and Standard Chartered) between 2011 and 2015. In another report, CASS (2020: 6) shows how the misconduct costs of UK banks have far exceeded that of the US and the Euro area when compared to GDP since 2011. In 2017, conduct costs for UK banks represented 0.88% of the UK's annual GDP, while conduct costs for US and Euro area banks represented around 0.10% or less. In 2018, the conduct costs for UK banks shrank and constituted around 0.55% of the UK's annual GDP.

Or consider a more historical example, the notorious Bank of Credit and Commerce International (BCCI), which was registered in Luxembourg with headquarters in Karachi and London. BCCI's whole business effectively consisted of a Ponzi scheme, and they engaged in every kind of financial crime imaginable and then some. When BCCI was shut down in July of 1991, depositors lost millions of pounds of their savings, and some have noted a lack of action against corporate wrongdoing in this case. Sikka (2015: 6) notes that:

> "Unlike the previous banking collapses, no government inspectors have, so far, been appointed to investigate the BCCI frauds. A US Senate investigation into the frauds at BCCI concluded that British regulators and bank auditors had become "partners, not in crime, but in cover up" (US Senate Committee on Foreign Relations, 1992: 276). To manage public anxieties, the government appointed Lord Justice Bingham to examine the failure of the Bank of England to effectively supervise BCCI operations, but his report (Bingham, 1992) has not been published in full as successive governments have sought to protect the identity of key financial elites"

And Gordon Brown had himself been critical of the lack of action by the Bank of England in this instance:

> "Is it not the case that BCCI, approved and authorised by the Bank of England, was involved not just for months but for years in fraud, the laundering of money, bribery connected with terrorism, arms trafficking and income tax evasion? Is it not the case that the Bank of England knew in 1988 of the charge of laundering billions of pounds of drugs money; knew in March 1990 that terrorists held bank accounts in the United Kingdom at BCCI; knew from Price Waterhouse in April 1990 that statements and transactions by the bank were "either false or deceitful"; knew in October 1990 of detailed inappropriate transactions, including hundreds of millions of pounds of insider loans, and prima facie evidence of fraudulent documentation; and knew also that the minimum criteria for authorisation were being breached under schedule 3 to the Banking Act 1987? Yet the bank continued to be allowed to trade right up until July 1991." (Brown, 1992)

Incorporation structures used to hide economic crime has also been enabled for a long time in the UK, and its Limited Partnerships (LPs), Limited Liability Partnerships (LLPs) and Scottish Liability Partnerships (SLPs). These structures have enabled beneficial owners to not disclose their identity, and hence has become a popular form of incorporation for those seeking to launder money.[9] This quite extensive practice is not accounted for in our data. Of all the SLPs registered in 2016 the overwhelming majority had no UK partner, and 71% of them were controlled by companies in secrecy jurisdictions (such as the British Virgin Islands (BVI)), hiding who is really behind the partnership (Transparency International 2017: 9).

And some of the UK's overseas territories have also made concealments of financial crime a crucial part of their public financing. In May of 2018, the Premier of the BVI wrote a letter in response to UK legislation that required overseas territories to install public beneficial ownership records. The letter stated that the BVI government "is committed to pursuing all available legal channels to ensure that publicly available beneficial ownership registers are introduced in the BVI only if and when they become a global standard, which would establish a level playing field for all" (BVI, 2018). In 2018, 62% of the money collected by the BVI government came from the financial services sector (Klein, 2019).

As with Germany, some of those who have reported concerns about corporate conduct have had their livelihood put at risk. Consider the whistleblower case from Halifax Bank of Scotland (HBOS) in 2004. Paul Moore, then Head of Group Regulatory Risk at HBOS, raised concerns about the bank's risk-taking, just three years before the big financial crisis. He was subsequently fired by the chief executive James Crosby with the reasoning that "he did not fit in", and replaced by a person with no risk management experience at all. Crosby, while being chief executive of HBOS, simultaneously served as a non-Executive Director of the Financial Services Authority (FSA) between 2004 and 2006, the main financial regulator, now split into the Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA). Between November 2007 and 2009, Crosby served as the Deputy Chair of the FSA. HBOS then collapsed during the financial crisis of 2008 and merged with Lloyds Bank, and many took this to substantiate Moore's claim that the bank had been taking excessive risks. During the then Prime

[9] Significant criticism by the Danske bank whistleblower, who helped bring to light the fact that Danske Bank had transferred over $200 billion of suspicious money, was aimed at the UK, stating that: "The role of the United Kingdom is an absolute disgrace. Limited liability partnerships and Scottish liability partnerships have been abused for absolutely years" (Gronholt-Pedersen, 2018).

Minister Gordon Brown's question time in the House of Commons, David Cameron commented on Brown´s decision to appoint Crosby to the FSA:

> "Sir James Crosby, the man who ran HBOS and whom the Prime Minister singled out to regulate our banks and to advise our Government, has resigned over allegations that he sacked the whistleblower who knew that his bank was taking unacceptable risks." (cited in Dewing and Russell 2016, p.165).

The whistleblower is fired, and the person who fires the whistleblower and takes unacceptable risks (which may look good in the short term) is elevated to the position of regulator.[10] In a more recent case in 2018, the CEO of Barclays' bank instructed his security team to unveil the identity of a whistleblower that anonymously authored a letter containing concerns about a longtime associate of the bank – despite being warned by compliance staff against taking retaliatory action. He received a fine of £642 000 – a sanction many believed to be too lenient. Indeed, months later, the New York Department of Financial Services stepped in to do the UK's enforcement job and fined Barclays $15 million for the same offense, as well as for inefficient governance and controls with respect to its whistleblower program (DFS, 2018).

4.2 Drivers of Corporate Wrongdoing

4.2.1 Lack of Effective Corporate Sanctions

One obstacle to holding corporations accountable in the UK is its lack of effective corporate criminal liability laws. Under UK law, a criminal and directing intent is required for successful prosecution of a corporation. The "identification principle" or "identification doctrine" requires the identification of a directing mind and will of the company (typically a director), and then proving criminal liability through this person's conduct and state of mind. In practice, for a firm to be held liable for most forms of economic crime, the prosecution must prove that a director of the company instructed employees to engage in wrongdoing.

The identification principle has been singled out by several experts as making it "impossibly difficulty" for prosecutors to find companies guilty of serious crimes, especially crimes in large companies with devolved business structures (The Law Commission, 2015: 15). Several consultations, the UK's Serious Fraud Office and the Crown Prosecution Service, have all pointed to the identification principle as a central hurdle to their ability to bring corporate prosecutions (Corruption Watch, 2019). In January 2017, the UK's Ministry of Justice opened a public consultation "Corporate liability for economic crime: call for evidence", that was closed in March of 2017. Three years later, in November of 2020, the ministry published its 28-page result, concluding that the evidence submitted "was considered inconclusive by Government, as it had produced no new significant examples that clearly illustrated the extent of the reported problems with economic crime law and the identification doctrine" (Ministry of Justice 2020: 20). The Government was also not persuaded that a "sufficient evidence base had been provided on which to make immediate legislative change to the criminal law in relation to economic crime" but recommended further analysis of the identification principle.

The identification principle may go some way toward explaining the UK´s overrepresentation in our data. In the US, corporations can be prosecuted if employees engage in wrongdoing in the interest of the corporation, and no directing mind is necessary for prosecution. When UK firms enter this jurisdiction, corporate structures that some firms have been incentivized to develop in the UK context are exposed to increased liability. One way to

[10] Between 2000 and 2009 a total of 36 people served on the board of the FSA, and Miller & Dinan (2009: 29) notes that 26 of these had connections at board or senior level with the banking and finance industry either before or after their term in office, and nine of them continued to hold appointments in financial corporations while they were at the FSA.

get at this issue is to expand on the so-called "failure to prevent" model. Under this model, incorporated into the UK´s Bribery Act of 2010, corporations can be held accountable for failing to prevent employees within the organization from paying bribes – which requires no directing mind, and is more in line with the US model for corporate liability. This model, it has been argued, could be extended to other economic crimes (Campbell, 2018), which may help to close the "enforcement gap" between the UK and US.[11]

4.2.2 Primacy of Business Interests, Lobbying, and Fear of Whistleblowers

While the identification principle is an obstacle to prosecuting corporations, there appears to be more fundamental political and economic reasons as to why corporate wrongdoing has flourished. This is evidenced not only by inertia with respect to strengthening corporate liability laws, but also in a range of other areas.

Consider LLPs and SLPs discussed above. The use of these entities for illicit purposes have been known and documented for more than two decades (OECD, 2001). Yet, close to nothing has been done to curtail their illicit use by the parliament in the UK, which has unlimited power to legislate for the offshore territories, such as the British Virgin Islands, and the crown dependencies, as a matter of constitutional law (Hatchard, 2018). Some action was taken in 2016, requiring SLPs to reveal their owners, and as a result registration of SLPs dropped by 71%, yet the rules were not extended to similar firms in England and Northern Ireland, which instead saw an increase of 142% and 22%, leading some to suggest that the problem was merely reallocated (The Herald, 2018). While recent years have put more international pressure on the UK to curb the illicit use of these incorporation structures, some argue that they have historically been endorsed by the political establishment.

> "For decades [the United Kingdom] has covertly supported and, in some cases actively encouraged its OTs and CDs to become secrecy jurisdictions. After the collapse of the formal empire in 1956, and facing chronic trade deficits and long-term underinvestment in productive capacity, successive UK governments, especially after Margaret Thatcher took power, pursued a development strategy of giving primacy to London's offshore financial centre" (Christensen, 2016)

And it is difficult to not note the historical interwovenness of high political office in the UK with the financial and offshore sector.

> "Huge effort and corporate resource goes into lobbying politicians on tax, and swathes of the British political class are deeply embedded in offshore secrecy, either personally or through party political funding from City and offshore sources. For all of David Cameron's moralising about the harm caused to poorer countries by tax havens (which no one could dispute), it is worth recalling that he is part of an offshore dynasty: his father chaired an offshore investment firm based in Jersey and co-founded an investment company registered in Panama. Many of his fellow Cabinet members and coalition colleagues share similar connections." (Christensen, 2016)

David Cameron was also recently involved in a controversy: unsuccessfully lobbying to secure emergency funding for his employer Greensill Capital by pressuring Treasury officials.

[11] According to one Secretary of State for Justice's reply to a question in 2015, the option of extending the failure to prevent model was considered but ministers chose not to go forward due to a lack of prosecutions under the Bribery Act and, surprisingly, because "there is little evidence of corporate economic wrongdoing going unpunished" (Selous, 2015), which appears contrary to our data and other assessments.

Cameron began working for Greensil in 2018 and stood to make around $70 million in share options, before the firm collapsed in 2021 (Landler, 2021). The founder of Greensil worked as an unpaid advisor to Cameron in 2012 while he was prime minister, and developed a policy designed to ensure small firms got their bills paid faster, which also benefited his own firm Greensil Capital.

Other persons in Cameron's orbit also appears to have helped the financial sector. In 2014 George Osborne, who aided HSBC when they got caught laundering money for drug cartels in 2010, forced out the chief executive of the Financial Conduct Authority who had handed out substantial fines to banks, a month after Osborne had declared that the era of "ever-larger" fines for bank misconduct was over (Ring, 2015). In 2021 Osborne started working as an investment banker.[12]

Lobbying is also a common phenomenon in the UK, and firms that pay substantial fines in the US are also actively lobbying in the UK. One example of this is the Multinational Chairmen's Group, a secretive group that under Tony Blair's time as prime minister (1997-2007) had formal and informal meeting with the prime minister several times a year. Miller and Dinan (2008) explains that (number of fines and fine amounts 2000-2020 in brackets):

> "The Group – of less than ten - includes the heads of some of the biggest firms in the UK including BP [N: 283, 29196 million USD], Diageo [N: 17, 22 million USD], Unilever [N: 8, 8 million USD] , HSBC [N: 59, 6510 million USD], Shell [N: 387, 1274 million USD], Vodafone [N: 0], GlaxoSmithKline [N: 34, 7822 million USD], Rio Tinto [N: 100, 25 million USD] and British American Tobacco [N: 23, 310 million USD]. Its tactics include threatening 'exit' from the UK if the government does not do what it wants."

The firms in the secretive group have paid a total of $45 billion in fines in the US since 2000. More recent information on lobbying in the UK also show that these same firms have secured a substantial number of meetings with the top political representatives. The Department for International Trade (DIT) was established following the UK's vote to leave the EU and is responsible for striking and extending trade agreements, but also for encouraging foreign investment and trade export. Corporate Europe Observatory (2017) looked at meetings held by DIT the between October 2016 and March 2017. Those who had the most meetings were HSBC with 8 meetings, BP with 7 meetings, GlaxoSmithKlein with 5 meetings. Other firms included Caterpillar with 5 meetings (N: 108, 47 million USD), Barclays with 6 meetings (N: 34, 5959 million USD), and KPMG with 6 meetings (N:17, 558 million USD).

The lack of effective whistleblowers within UK banking has also been recognized for some time. A UK Parliament Report from 2013 entitled "Changing Banking for Good", motivated by the poor track record of UK banks with respect to risk-taking prior to the financial crisis, the LIBOR scandal, and misselling products to customers, observed the limited role played by whistleblowers in recent banking scandals:

> "One of the most striking features of the series of banking conduct failures has been the absence of whistle-blowing. Ian Taplin noted the extraordinary fact that 'there is no public record of any banking employee raising concerns or whistle-

[12] More recently there has been allegations of cronyism with respect to contracts handed out for Personal Protected Equipment (PPE) used to combat Covid-19. The government created a "high-priority" for suppliers of PPE that were recommended by politicians and officials, and these high-priority suppliers were ten times more likely to win contracts compared to other suppliers (National Audit Office 2020: 9). The New York Times analyzed a large segment of roughly 1200 government contracts worth nearly $22 billion and found that "about $11 billion went to companies either run by friends and associates of politicians in the Conservative Party, or with no prior experience or a history of controversy" (Bradley et al, 2020).

> blowing' with regards to PPI [Payment Protection Insurance]. The attempted manipulation of LIBOR at Barclays, UBS and RBS was found by the FSA to have continued for a combined total of nearly 20 years, with the direct involvement of 78 individuals in nearly 1,300 documented internal requests and well over 1,000 external requests for alternations to submissions. Much of this manipulation was 'deliberate, reckless and frequently blatant'. However, no one blew the whistle." (Changing Banking for Good, 2013: 137).

After recognizing the need to protect and incentivize whistleblowers within UK banking, the Parliamentary Commission on Banking Standards called on the regulator to undertake research into the impact of providing whistleblowers financial incentives to expose wrongdoing and promote integrity and transparency in financial markets (Changing Banking for Good 2013: 376).

After one year of 'study' and visits to the US, in 2014 the Bank of England´s Prudential Regulation Authority (BoE-PRA) and Financial Conduct Authority (FCA) issued a 7-page note on whether financial incentives for whistleblowers would make sense in the UK. The note contained no data, no references to the results achieved by the agencies using these schemes in the US, showing their high cost-efficiency and effectiveness, but full - to be modest - factual misrepresentations and inaccuracies with no data backing them; and even of blatantly false statement, such that "*There is as yet no empirical evidence of incentives leading to an increase in the number or quality of disclosures received by regulators*" (BoE-PRA and FCA 2014, p.2, italics in original). Instead, several independent academic researcher papers were available, some published in top academic peer-reviewed journals years before the note, and some circulating before the note in the form of academic working papers, said precisely the opposite (see Nyreröd and Spagnolo (2021, *forthcoming*) for a list and summary of these already existing studies). US agencies using such programs saw an intense increase in cases reported and mentioned this in their public yearly reports. In the SEC's annual 2014 report on its whistleblower program, the most relevant US program to study for the BoE-PRA and the FCA, one reads that: "*For each year that the whistleblower program has been in operation, the Commission has received an increasing number of tips*" (SEC 2014: 20). The 2014 note by the BoE-PRA and FCA received substantial criticism for several other factual misrepresentations (see National Whistleblower Center 2018, and Nyreröd and Spagnolo (2021, *forthcoming*)). This highly misleading and counterfactual note, which is hardly distinguishable to what recent debates have termed 'fake news', has been on the homepage of the BoE and FCA since 2014, even though we alerted both institutions several times about the factual mistakes it contained, it remains available on their websites.[13]

The BoE and FCA set a dangerous precedent for evidence-based public policy, as there is substantial evidence that these reward programs are very effective at both detecting and deterring corporate wrongdoing, and they can be designed to be entirely self-financing (see Section 5). The final response by the FCA to the Changing Banking for Good report was to introduce some new rules on whistleblowing (FCA, 2015), but these new rules amount more to tinkering than conceptualizing whistleblowers as monitors of corporate wrongdoing. Regulators response to the whistleblower scandal involving Barclays bank, especially compared to the US sanctions in the same case, is also a sign that UK regulators still has not

[13] FCA: https://www.fca.org.uk/publication/financial-incentives-for-whistleblowers.pdf
BoE: https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/financial-incentives-for-whistleblowers

come close to understand the importance of whistleblowers in uncovering corporate wrongdoing.

With respect to whistleblowers more generally, the current UK stand-alone whistleblower protection law, the Public Interest Disclosure Act of 1998, is widely considered to be outdated and ineffective (see e.g. Lewis 2008, Thomas Reuter Foundation and Blueprint for Free Speech 2016, All Parliamentary Committee 2020). Improvements in whistleblower protection, beyond reforms of corporate sanctions laws, is also likely to go some way toward detecting and deterring corporate wrongdoing in the UK.

5. Conclusions

Corporate wrongdoing uncovered in the last decades has been prolonged, severe, and oftentimes committed by recidivist firms. Using data from the US, we identified the UK and Germany as the European 'champions' of corporate wrongdoing. Regardless of how the fines are weighted (population size, amount of export to the US, GDP), the UK leads significantly with Germany at a second place. We identified some factors that may help to explain why these two countries stand out with respect to US enforcement actions.

With respect to the UK, a lack of effective corporate sanctions laws, the primacy of business interests, effective lobbying, and a lack of whistleblowers, appears to have been enabling corporate wrongdoing. With respect to Germany, there has been an absence of whistleblowers, a lack of effective whistleblower laws, and politicians have been reluctant to remedy the situation.

But the obstacles identified in this article that help explain the UK's and Germany's overrepresentation in our data has been widely written about and documented for several years and oftentimes decades. The more fundamental problem to improved detection and deterrence of corporate misconduct in these countries, we must conclude, is a lack of political will. This lack of political will appear to stem from industry influence and captured regulators/politicians.

Whistleblowers - honest employees reporting corporate misdeeds - have been effectively absent, while we know from the US that they tend to be the primary source of information for regulators and prosecutors. One reason for this absence is likely that - primarily in Germany, but also in the UK - the extremely rare honest employees that did blow the whistle against corporate misbehavior have been harassed, fired, and blacklisted in their industry, and neither rewarded nor protected by regulators and law enforcers for bringing corporate crime to light. Why should we then be surprised by yet another scandal like Wirecard considering that the institutional environment in which it emerged appears purposely designed to let profitable corporate crime flourish and blossom without the risk of being reported by those who have information on it, employees?

The EU published a whistleblower protection directive in 2019, and countries like Germany (but not the UK) that have energetically opposed any such initiative, will be forced to implement it, in one way or the other. Unfortunately, we know from the US experience that even if countries implemented the whistleblower protection directive with the best intentions of protecting honest employees that unveil corporate crime, whistleblower protection alone is unlikely to be an adequate response to the prolonged and severe forms of corporate wrongdoing we continue to observe. Many have pointed out a range of problems with previous whistleblower protection laws (see e.g. Earle and Madek 2007, Moberly 2007), that are highly likely to become problems with the new EU directive as well. There are the very many indirect or delayed forms of retaliation that courts cannot verify and protect from (e.g. career slow down, transfers to absurd localities, and then delayed firing motivated by alleged poor performance, followed by non-hiring by other firms in the industry), that will discourage whistleblowers from coming forward. Excessively prohibitive non-disclosure may also discourage reporting unless

proactively sanctioned. In fact, the evidence that whistleblower protections are a significant enhancer of enforcement is not yet in, and some recent studies show rather disappointing results on their use (see GAP and IBA, 2021).

If there is a shift in regulatory and political intention toward curb economic crime, then there is a prominent tool from the US that could be utilized more widely. The EU is centuries behind the US when it comes to utilizing whistleblowers as continuous monitors of corporate wrongdoing. The US is not just protecting whistleblowers much better than EU countries, it is also offering them substantial monetary rewards in several regulatory areas to compensate for the inevitably partial protection against the very costly future indirect retaliation that many whistleblowers face. For serious infringements, these programs offer whistleblowers rewards of 10-30% of the fine paid by the wrongdoing corporation.

The expansion of whistleblower reward programs in the US builds upon the success of the whistleblower provision of the False Claims Act, which covers fraud in government contracting, originally introduced by President Lincoln to curb corruption in military supplies during the civil war. Similar reward programs have now been adopted in a range of regulatory areas in the US such as securities fraud, tax evasion, ocean pollution, public procurement, and anti-money laundering.

There is substantial, independent, peer-reviewed research evidence that providing meaningful monetary incentives is a cheap and extremely effective way of detecting and even deterring various kinds of corporate wrongdoings (Leder-Luis 2020, Raleigh 2020, Amir et al 2018, Wiedman & Zhu 2018, Dyck et al 2010) see also (Johannesen and Stolper 2017, Wilde 2017; see Nyreröd and Spagnolo 2021, *forthcoming* for an overview). The US enforcement agencies themselves have also been lavishing these programs with praise (see Kohn 2020b, 2020c), including several Trump-appointed Commissioners at the SEC.

A viable way forward is therefore to offer substantial monetary incentives to whistleblowers who report major corporate misconduct, on top of protecting them. Not a single European country has adopted a whistleblower reward program modeled along the lines of the successful US programs. That might change, however, as the embarrassing inability to curb anti-money laundering violations within European banks using standard enforcement and supervision methods may provide an opening for exploring alternative methods in the EU. There are viable tools and laws that have shown to be effective at tackling corporate and economic crime, what is currently lacking is the political will to implement them.

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