



FUNDACJA
IM. STEFANA
BATOREGO

Warsaw, July 2016

The Act on Whistleblower Protection - the need for and the prospects of its introduction in Poland

Based on opinion survey led among representatives of trade unions and employer organisations

Grzegorz Makowski, Marcin Waszak

The present paper was prepared based on the report "Whistleblowers in Poland as seen by employers and trade unions" summarising the results of the research led under the Stefan Batory Foundation project "The Polish act of law on whistleblower protection. In search for support from trade unions and employer organisations", conducted in cooperation with the Transparency International Secretariat. The project has been a continuation of the activities led for many years by the Stefan Batory Foundation, focused on strengthening the legal protection of employees reporting irregularities detrimental to public interest, the so-called whistleblowers.

The fact that the protection remains insufficient is confirmed by experiences gathered by the Foundation that used to implement a legal support program for employees victimised as a result of exposing abuses. The existing Polish solutions in this field were also evaluated as ineffective by the Council of Europe, the Organisation for Economic Co-operation and Development and the United Nations Organisation.

In spite of the fact that relevant acts of law on reporting in the public interest information on abuses are in force in many other European countries, in Poland so far efforts to initiate work on legal amendments to strengthen the position of whistleblowers have met considerable resistance, as illustrated by the fact that the proposal was removed from the *Government Programme to Counteract Corruption for 2014–2019*. It was argued that there was no need for additional regulation of whistleblowing because the relevant labour law antidiscrimination provisions are in force and employees can rely on the support from trade unions.

1. Opinions of trade unions and employers on protection of whistleblowers

The aim of the project under which the present paper was prepared was to learn opinions from labour and employer groups on the situation of whistleblowers in their workplaces and on the prospects for strengthening their protection. The project aimed at identifying anxieties of the main social actors related to introduction of the legal protection for whistleblowers, and at trying to overcome them in a public debate. We also wanted to encourage decision-makers to see whistleblowing as one of the priorities in combating abuses and corruption.

The project was based on data gathered by the Stefan Batory Foundation, and also included 33 deepened interviews with the representatives of trade unions and employer organisations, businessmen and experts in the fields of compliance and labour relations.

The interviews were preceded by analysis of foreign experiences related to origins, implementation and functioning of acts of law giving legal protection for whistleblowers in other countries. The analysis covered four selected and culturally close European countries: Great Britain, Netherlands, Slovakia and Hungary, whose history of introducing whistleblowing regulations can form an important lesson in connection with preparing a similar Polish act of law in the future. The analysis proved that when the process of developing the new law included trade unions and employer organisations, the regulations were implemented in more effective and thoughtful manner. What's characteristic, the initiatives had usually met with a broad political and social support, also from employer and employee organisations. Good practices from other countries show that before adopting the relevant act of law, a diagnosis should be prepared, based on empirical data, on the problems of employees victimised by employers in retaliation for exposing abuses. In none of the analysed countries, the introduction of the relevant act of law in itself was the end of working out an optimal system for whistleblower protection, as the introduced regulations and their implementation were monitored by government control agencies and non-governmental organisations. The introduction of relevant regulations was also accompanied by opinions and recommendations addressed to private businesses, presenting the best models for internal reporting on abuses.

The participants of the interviews conducted under the project included representatives of all main trade union organisations and employer organisations in Poland, as well as members of trade union movement on national and local levels, employers from big, medium and small organisations, and experts dealing with labour relations and professional ethics. The respondents came from both private and public institutions, from different regions of Poland and from different industries that were deemed to be especially important for the protection of the public interest. The respondents were asked about issues concerning their personal knowledge and experiences related to whistleblowers, the need to strengthen protection of whistleblowers, internal policies for reporting abuses as tools for risk management in their workplaces, their attitude to separate act of law on whistleblowers, the role of their organisations in the system of protecting employees reporting abuses.

2. How familiar with the problem are trade union activists and employers

The respondents not always could tell who whistleblowers were - when hearing the name, some of them had associations with particular jobs (in the railways or in mines) or with the function of social labour inspectors who are required to react to cases of employment rights violation. However, the respondents conceded that in the Polish society, the role of whistleblower has negative connotations related to being an informer, but at the same time they protested that their own opinion on such persons is different.

In the opinion of our respondents, in particular trade union activists, the problem of whistleblowing is complicated, first of all in view of huge material and psychological costs borne by such persons, when they are victimised by their employers and colleagues in retaliation for exposing irregularities. According to

some of the respondents, some persons unjustifiably want to be seen as whistleblowers, e.g. when they exceed the scope of their duties and criticise wrong decisions that remain in the sole discretion of their employers ("quarter-whistleblowers") or when they pretend to represent public interest, while in fact they mean some personal gains ("pseudo-whistleblowers"). In addition, employees highlight cases of discrimination and mobbing in their workplaces much more often than cases of public interest violation (or corruption).

3. Protection of whistleblowers as a tool for managing organisations

Some employers saw the policies for reporting irregularities introduced within companies as effective tools for risk management, enabling them to identify weaknesses of organisations, and to optimise some managerial processes or implement innovations. Managers see the solution as an useful communication channel between employees and employers, being the source for the latter of necessary knowledge on the actual situation in the company and on critical opinions from the worker team.

From the point of view of trade unions, if internal policies of whistleblowing and verifying reported problems are developed with participation of labour representatives, the mechanisms are more effective, also in the managerial perspective. Not all employers agree with that - they think that such ethical infrastructure elements should be independent and not dominated by trade unions that can use them instrumentally to put pressure on company managers.

4. Opinions on strengthening whistleblower legal protection

Not all respondents agreed that the legal protection for whistleblowers should be strengthened. Some employers feared that in this way still another group of employees would be created who, like social labour inspectors, would use their special privileges only to stick to their permanent employment status.

The respondents generally agreed that any new legal solutions should not promote "pseudo-whistleblowers", e.g. persons who report abuses only in their own interest or from unethical motives, such as desire to take revenge on their superiors or to gain some privileges.

On the other hand, in the opinion of trade unions, the role of employees trying to protect public interest should be strengthened mainly within the existing institutions and procedures, by giving more powers to trade unions and social labour inspectors, and by more effective enforcement of the labour law provisions by the relevant control agencies.

Representatives of employees and employers were very cautious when talking about the need to adopt a separate regulation to protect whistleblowers. Employers opted for self-regulation by business organisations that would lead to unification of internal reporting system standards, especially in view of the fact that matters remaining within the competencies of employers should be resolved in the workplace. According to employers, there is a risk that any externally enforced mechanisms of reacting to abuses would hamper their freedom of economic activity and generate additional costs, and that externally enforced solutions would not take into account specificity of particular organisations. In the opinion of employers, sometimes the state even forces them to violate unclear regulations, as in the case of tax payments or soliciting public tenders.

Psychological barriers that are difficult to overcome and the negative perception of employees reacting to irregularities who are seen as informants were also cited as arguments against separate regulation in this field. However, some respondents were of different opinion, saying that only a separate legal regulation can reassure employers and trade union activists as to the need to protect employees reporting on threats to public interest, and make them change their attitude towards whistleblowers. Thus, they highlighted the

educational role of a separate act of law. Smaller employers were in particular aware that that was the only way to motivate all employers to introduce some minimum standards relating to violations of legal and ethical norms in workplaces. The new act of law would help to improve the image of whistleblowers among general public and to overcome their fear of stigmatisation.

In reaction to the idea of a separate act of law, trade unions rather opted for strengthening of the existing institutionalised forms of employment rights protection, including the leaders representing groups of employees and social labour inspectors. They argued that the persons have mandate from groups of employees to defend their interests and to counteract violations of their rights. In the opinion of the respondents, trade unions being organisations strong enough to defy employers, form natural points of support for individual whistleblowers who are afraid of retaliation for their actions. Trade unions take the role, as it were, of collective whistleblowers, gathering from employees complaints that are ignored by their superiors, and then protecting the employees from possible retaliation from employers. In this sense, they also defend public interest in a way that, according to the respondents, is more effective than in the case of individual whistleblowers.

But on the other hand, during the interviews both employers and trade union activists conceded that the existing legal and institutional infrastructure intended to protect employees from retaliation from employers is far from being satisfactory and undoubtedly requires improvement.

First of all, it was indicated that the existing regulations against discrimination and mobbing contained in the labour code are not properly enforced. Especially harmful for whistleblowers are lengthy court procedures and lack of understanding for such employees, e.g. when they are reinstated to their original posts. In the opinion of the respondents, the National Labour Inspectorate as a control agency is too formal in its activities, and lacks competencies to deal with cases of whistleblowing, as well as any real means to discipline employers. On the other hand, law enforcement agencies are reluctant to take up cases of whistleblowing in view of their complex and ambiguous nature. It can even happen, in particular in the public sector, that perpetrators of abuses exposed by employees have more means to protect themselves than whistleblowers, and avoid any punishment using their political influences and informal connections. As reported by trade union representatives, in such cases any complaints directed to the supervising agencies remain without answer, and the accused employer is not held responsible, enjoying political protection from his or her superiors.

To sum up, it can be said that the respondents have ambivalent attitude towards the idea of a separate act of law on the protection of whistleblowers.

5. Main conclusions and recommendations

5.1. First, the act of law

Based on our survey, in spite of the fact that the idea met with ambivalent reaction from the respondents, **we uphold our proposal to introduce a special act of law that would form basic legal framework for protection of whistleblowers.** In addition, we believe that only when work on such regulation starts, the ambivalent attitudes can be overcome, assuming that it will be accompanied by exchange of information, presentation of different approaches, and dialogue. But we will discuss the issue later in this paper.

The solution is justified by reasons of both material and ethical nature. **First of all, Poland is bound to adopt such act of law by at least two international law regulations: the United Nations Convention against Corruption (Art. 33) and the Council of Europe Civil Law Convention on Corruption (Art. 9)**¹. In addition, the need for a new regulation is corroborated by the fact that – as shown by the surveys conducted and many years of activities led by the Stefan Batory Foundation **in the field of legal assistance for whistleblowers – the existing legal provisions related to the problem, included mainly in the Labour Code, are ineffective and protect from retaliation employees who decide to report irregularities in their workplaces only to very limited extent. And experts and practitioners are of the opinion that the protection should have a comprehensive character**, as indicated, for example, by the Council of Europe resolution of 2010, stressing that, among other things, legal criteria to evaluate the "good will" motivating whistleblowers should be established in the context of terminating employment, the burden of proof should be shifted to employers in court cases where whistleblowers are parties, if the employer retaliates against the person reporting abuses, the right to compensation should be guaranteed in situations where whistleblowers become victims of retaliation, such retaliation should be seen as discrimination, and the possibility of temporary reinstatement of employees should be introduced². **But most importantly, the Polish legal system lacks the legal notion of whistleblower, as a result of which such persons find themselves in a very difficult situation before courts of law.** They can try to defend themselves using mainly labour law provisions on discrimination and mobbing or the National Labour Inspectorate, or scattered provisions of the Penal Code and the Civil Code.

As a result of the lack of framework regulations defining what persons are whistleblowers, what is whistleblowing and in what circumstances such persons should be protected, they find themselves in a very difficult position both when they encounter irregularities, and when they decide to act and face consequences of their actions (e.g. during court procedures). It should be stressed that the labour law provisions can be used in such situations only to a very limited extent. Unfortunately, those who oppose more rights for whistleblowers still cite the false argument that labour law provisions are sufficient to protect whistleblowers. The protection based on the labour law (already imperfect) is available only to employees with permanent employment contracts³, while many professionally active persons in Poland are employed based on civil law contracts and to a great extent lack even the existing imperfect protection when they decide to report irregularities in their workplaces.

We should also bear in mind that there are more and more legal solutions that to some extent already regulate or will soon regulate the status of whistleblowers. In this connection, different legal provisions can be cited, such as Bank Law of 2015⁴ together with its implementing rules (which when this paper was prepared were only developed), guidelines from the Ministry of Development on reporting irregularities in connection with implementing projects financed from EU funds, or the new public tender law that – as announced by the ministry of development – will include provisions concerning whistleblowers. **The different legal solutions are introduced in spite of the lack of comprehensive legal framework in this field, which can lead to legislative chaos and unwanted differentiation of protection for whistleblowers from different industries (e.g. they will be protected in the banking sector, while lacking protection in other sectors).**

¹ O.J. of 2007, no. 84, item 563 (the text of the Convention – see http://www.antykorrupcja.gov.pl/portal/ak/44/1671/Konwencja_Narodow_Zjednoczonych_Przeciwko_Korrupcji.html [access: July 1, 2016]); O.J. of 2004, no. 244, item 2443 (the text of the Convention – see http://www.antykorrupcja.gov.pl/portal/ak/445/1774/Rada_Europy.html [access: July 1, 2016]).

² See A. Wojciechowska-Nowak, *Ochrona sygnalistów w Polsce. Stan obecny i rekomendacje zmian*, Instytut Spraw Publicznych, Warszawa 2012.

³ The official reactions to highlighting the need to regulate the status of whistleblowers still resonate with the arguments presented in a letter of 2009 from the Minister of labour and social policy to the Commissioner for Human Rights, where in response to the proposal to discuss the possibility to improve protection for whistleblowers the minister answered that protection from discrimination based on the labour law is sufficient.

⁴ O.J. of 2015, item 128.

Thus, the first recommendation presented in this report is to adopt a special act of law. The act should in particular⁵:

1. **Set clear aims, i.e. protection of public, employer and whistleblower interests.**
2. **Have preventive role**, both on the individual level (individual employers and employees who decide to report abuses) – the act should encourage employers to introduce in their organisations procedures to protect whistleblowers, giving employees real guarantees of protection, and thus encourage them to actively counteract abuses in their workplaces – and **on the meso level (the act of law would form an important part of the comprehensive set of anti-corruption instruments, together with other preventive regulations and in addition to much more complex repressive regulations to counteract corruption that already exist).**
3. **Define the notion of whistleblower (in a way including employees regardless of their employment status or form of cooperation, to cover also volunteers and contractors) and define activities that can be seen as whistleblowing.** Thus the act should, for example, determine whether the notion of "good will reporting" should be used as the main condition for granting protection, making it perhaps more precise, or it should be abandoned and other whistleblowing criteria should be adopted. **It could also be considered to present in the act of law a catalogue of violations (offences) in cases of which (i.e. their actual or possible occurrence) whistleblowers would get protection.**
4. **Set a framework for protection of whistleblowers that would allow them to remain anonymous**, which would require harmonisation with the regulations on personal data protection and the regulations on access to public information⁶.
5. **Set basic frameworks for whistleblowing systems that should be implemented in different organisations** (private businesses, public institutions, non-governmental organisations) depending on their character and size (for example, the number of employees).
6. **Describe in more detail the rights of whistleblowers in their workplaces** (e.g. protection from sudden termination of employment, conditions for reinstatement to work), during court cases (e.g. shifting the burden of proof on the employer if he or she retaliates by terminating employment of the whistleblower) or their rights to compensation in cases where they are victimised.
7. **Synchronise the provisions of the Penal Code, the Civil Code and other regulations that can help to protect whistleblowers.**

As for conclusions that can be translated into recommendations concerning the possible act of law – based directly on the results of the survey "The Polish act of law on whistleblower protection. In search for support from trade unions and employer organisations" – the following issues should be noted:

1. **It should be considered to adopt such regulations that would encourage employer organisations to actively promote whistleblower protection systems** as management tools in workplaces and to develop models of particular solutions. **Thus, the prospective act of law should leave enough space for self-regulation and creating frameworks for whistleblower protection by employers themselves.**

⁵ A. Wojciechowska-Nowak, *Założenia do ustawy o ochronie osób sygnalizujących nieprawidłowości w środowisku zawodowym. Jak polski ustawodawca może czerpać z doświadczeń państw obcych?*, Stefan Batory Foundation, Warszawa 2012.

⁶ See: *Odpowiedź Generalnego Inspektora Danych Osobowych z dn. 20 maja 2014 r., nr DOLiS-035-3170/13/M, na zapytanie Fundacji im. Stefana Batorego odnośnie ochrony danych osób zgłaszających nadużycia w ramach zakładowych systemów sygnalizowania*; A. Wojciechowska-Nowak, *Skuteczna ochrona prawna sygnalistów. Perspektywa pracodawców, związków zawodowych oraz przedstawicieli środowisk prawniczych*, Stefan Batory Foundation, Warszawa 2014, pp. 4, 10, 15.

2. **Provisions of the prospective act of law should encourage trade union organisations to participate in the process of developing whistleblower protection procedures** on the level of particular workplaces and to be more active as first contact centres for whistleblowers. **At the same time, the act of law should respect the differences in corporate culture and should not force employers and trade unions to jointly develop such policies or leave the task only to trade unions.**
3. The act of law should also provide whistleblowers with **a description of procedure, indicating how they should act if their workplaces lack any internal regulations in this field.**
4. **The prospective act of law should introduce a system of permanent public monitoring of whistleblower protection standards** (e.g. under the National Labour Inspectorate or the regulations on internal auditing in the public sector). **It should also be considered to institute a special regulator who would supervise implementation of the provisions of the act of law and coordinate direct assistance for whistleblowers.** It could be a new specialised institution (as is the case in the new Dutch regulations) or the task and appropriate resources could be given to an existing institution (e.g. the Human Rights Commissioner in view of comprehensive scope of tasks performed by the office).
5. **It should also be considered to indicate in the new act of law that trade unions are one of the institutions monitoring implementation of whistleblower protection standards in workplaces** (e.g. under the social labour inspectorate which, however, itself would require a deep reform). Trade unions could also play the role of collective whistleblowers. In theory, they can already do it, but only in individual cases or in cases directly related to labour relations that remain directly within competencies of trade union organisations. As indicated by trade union activists, presently they have no tools to protect public interest in general. **The act on whistleblower protection could provide trade unions with such tools.**
6. **The prospective regulation should also define special duties for the enforcement agencies in the field of reacting to whistleblower reports.** It should be considered to introduce in the act a special status of whistleblower witness in order to minimise the risk that such persons would face retaliation (for example, by guaranteeing that their identity would not be disclosed⁷).
7. **The prospective act of law should provide for and give easy access to free legal help system for whistleblowers** (it should be noted that such system has been developed since 2015 with participation of local governments, lawyer associations and law firms, as well as non-governmental organisations).
8. **The prospective act of law should institute basic framework for whistleblower protection, and encourage organisations to introduce comprehensive procedures for ethical management.**
9. **The prospective act of law on whistleblower protection should be harmonised with other regulations defining duties of organisations in the field of corporate governance.** In view of the planned amendments to or even preparation of a new act of law on liability of collective entities for prohibited acts under the threat of punishment, it should be considered to introduce – like in Great Britain – a solution according to which organisations that have in their internal policies instruments for ethical management, including protection of whistleblowers, can avoid punishment or the punishment can be mitigated, when they are convicted for abuses.

⁷ See: *Whistleblower Protection and the UN Convention Against Corruption*, Transparency International, Berlin 2013, p. 8; P. Latime, A.J. Brown, *Whistleblower Laws: International Best Practice*, „UNSW Journal” 2008, no. 3.

10. **The regulations contained in the prospective act of law on whistleblower protection, when defining duties or requirements for businesses in the field of whistleblower protection should take into account the size of businesses**, and in particular they should not create additional burdens for small and medium enterprises.

5.2. Second, good preparation

Before work on the prospective act of law on whistleblower protection can start, a draft of assumptions for the draft act of law should be prepared and comprehensive evaluation of the effects of the act of law should be conducted. It would allow mainly to identify all the provisions in the Polish legal system that should be synchronised under the new act of law. Evaluation of the effects of the regulation could also help to gather and analyse the existing experiences of non-governmental organisations and legal firms in the field of developing whistleblower protection systems and helping whistleblowers, in order to present in the act of law at least some good practices in this area.

Initiating work on the regulation and its prospective adoption should also be closely connected with well-profiled informational and educational campaign addressed to different groups of employers and employees (from different industries, with different types of employment status). The process of prospective implementation of the act of law should in turn be supported by a system of trainings for employees and employers which could be financed e.g. from the EU funds from the present financial perspective for the years 2014–2020 (for example under programs of the European Social Fund, the Operational Programme Knowledge Education Development or under technical assistance).

Surveys led under presently discussed project also showed that to adopt solutions protecting whistleblowers, a dialogue between at least three groups is needed. **The main participant of the dialogue is the government because in different governmental agencies diverse approaches to the issue of regulating the protection of whistleblowers have been voiced in recent years – from denying the need for such solutions, through partial solutions (e.g. only under the Labour Code) to comprehensive solutions.**

5.3. Third, dialogue

Both during preparation of this report and before, different government agencies have apparently failed to properly communicate between themselves on the matter, and as a result e.g. the issue of whistleblower protection, that was supposed to be mentioned in the *Government Programme to Counteract Corruption for 2014–2019*, was not finally included in the programme, exactly because of the lack of communication between different government institutions⁸. Such documents may not play a decisive role, but it should be noted that they create some framework for public policies, and the fact that the issue of whistleblower protection failed to be included in the government programme not only hampered launching a debate on the problem, but also led to a situation where particular, detailed legal solutions that anyway are step by step adopted (as already mentioned above) are incoherent and are not coordinated within government institutions themselves.

⁸ G. Makowski, C. Nowak, A. Wojciechowska-Nowak, *Realizacja wybranych postanowień Konwencji Narodów Zjednoczonych przeciwko korupcji w Polsce*, Stefan Batory Foundation, Warszawa 2015, pp. 35–41.

The second group that should participate in the dialogue are non-governmental and expert organisations. More and more organisations (e.g. the ones offering legal help) encounter the problem of whistleblowers and they can share a valuable practical expertise on the methods to regulate their status. More and more legal and consulting firms also deal with the issues of compliance, including protection of whistleblowers within organisations. There are already quite a number of experts who develop whistleblower protection systems for private sector, or offer advisory services, and they are deeply interested in adopting the relevant act of law.

Last but not least, the third group are traditional social partners, i.e. employee and employer organisations. Though, as also shown by the present report, in some countries where regulations protecting whistleblowers are already in force, the role of trade unions and employer organisations was not decisive in the processes of adopting such acts of law, in several of countries (e.g. the Netherlands) it was crucial. It is also important to note that in cases analysed by us, even when employer organisations and trade unions did not actively participate in law-making processes, they usually supported the adopted solutions.

When Poland is concerned, both surveys led under the presently discussed project, and the existing experiences of the Stefan Batory Foundation in the field of advocacy activities for adopting such regulation unfortunately lead to the conclusion that the idea to adopt the act of law on whistleblower protection is, to say the least, controversial both for employer organisations and for trade unions. The issue quite often meets with open resistance. At the same time, in the Polish realities where all issues related to regulation of the status of employees or duties of employers are very sensitive, the problems of protection of whistleblowers, though cannot be reduced to the field of employment relations, quite naturally overlap with this area, and raise immediate interest and often resistance of both employers and employees.

Based on the surveys led, we can say that a great part of reservations related to adoption of the prospective act of law have emotional rather than real grounds and can be overcome only by dialogue. Controversies and fears originate to a great extent from stereotypes, from negative attitude towards whistleblowers (who are often described as "informants" in media, in public debate, and even in expert discussions), from poor understanding of the phenomenon of whistleblowing and of the reasons why whistleblowers should be protected, as well as of the gains for employers and employees - both those within and without trade union movement - from such protection. We believe that active participation of employer organisations and trade unions in the law-making processes related to the prospective act of law could help to make it better and to avoid the mistakes made by regulators in other countries.

To sum up, we recommend that the government should start a debate on the need to protect whistleblowers where the main point of reference (option) for the discussion should be a separate act of law. The debate - in view of comprehensive nature of the problem - should include different ministries (and in particular the ministries and the institutions responsible for labour law and relations, economy, internal affairs and the cooperation with non-governmental organisations). In addition, an interministerial team should, as soon as possible in the process, start collaboration with employer organisations and trade unions, as well as with non-governmental and expert groups (in particular those specialising in the problems of labour law and compliance).

5.4. Fourth, leader of the process

Finally, the question should be answered: under whose auspices the works could be conducted? When the present report was prepared, it was assumed that the best coordinating centre - in view of the division of

tasks between ministries and their relative importance – would be the Ministry of Development, and for several reasons. The Ministry of Development deals with many areas where the protection for whistleblowers is especially important (e.g. regulating economic relations, spending EU funds, public tenders). The Ministry of Development has already gathered some own experiences in implementing systems of whistleblower protection (for example some tools were developed in the area of spending EU funds). Thus, the ministry staff includes persons who dealt with the issue not only in theory, but also in practice. The Minister of development is also the deputy prime minister which would add gravity to the works and improve the chances that the debate would in fact result in specific solutions, even if in the future the division of tasks between ministries and their heads change. Thus, in the present circumstances the ministry is the proper institution that should become a leader and coordinator of work on enhancement of the situation of whistleblowers (and in the future, if the division of tasks between ministries change – a ministry having similar multifunctional competencies).

As an alternative, the platform where the work on the regulation on whistleblower protection could be conducted should be the Social Dialogue Council. In this case, the main reason would be that though – as already mentioned – the issue of whistleblower protection has broader aspects than the labour law, nevertheless it is to a great extent focused on this field. The need for the Social Dialogue Council to take action in order to improve the situation of employees reporting on abuses was also indicated by the Ministry of Family, Labour and Social Policy⁹. Thus, if the regulation is developed on the forum of the Council (however, with participation of broader group of actors than the traditional social partners – in particular, non-governmental organisations dealing with the matter), it will be broadly legitimised. In addition, the Council has quite extensive mandate. Art. 1 of the Act on the Social Dialogue Council and other social dialogue institutions indicates that the Council deals, among other things, with the problems of "social and economic development and enhancing the competitiveness of the Polish economy and the social cohesion" or "improving the quality of developing and implementing social and economic policies and strategies"¹⁰. The issue of developing regulations to protect whistleblowers perfectly fits in the provisions of the article – both under anti-corruption policy, social and economic relations, and enhancing the competitiveness of the economy. It is also worth noting that the Social Dialogue Council has a kind of legislative initiative. According to Art. 7 pt. 1 of the act, "the employee party and the employer party within the Council have the right to develop jointly agreed draft assumptions for draft acts of law and draft legal regulations". Thus, if the partners jointly develop within the Social Dialogue Council a draft act on whistleblower protection, the government will have to take it into account and discuss it. In that case, employers and trade union activists would be the leaders of the process. Unfortunately, in view of the conclusions of our survey, the possibility seems unlikely, because at least one employer organisation strongly opposes the act on whistleblower protection which blocks the prospects for a joint draft because it must be accepted unanimously. So we should hope that prospective discussion on the draft within the Social Dialogue Council will perhaps prompt the opponents to change their mind.

⁹ *List Ministerstwa Rodziny, Pracy i Polityki Społecznej do Rzecznika Praw Obywatelskich z 23.06.2016*, reference no. DPR.II.4102.14.2016.MP.

¹⁰ O.J. of 2015, item 1240.

The publication was prepared under the Public Integrity Programme of Stefan Batory Foundation project "The Polish act of law on whistleblower protection. In search for support from trade unions and employer organisations" in cooperation with Transparency International.

Fundacja im. Stefana Batorego

Sapieżyńska 10a
00-215 Warszawa
tel. (48-22) 536 02 00
fax (48-22) 536 02 20
batory@batory.org.pl
www.batory.org.pl

Teksty udostępnione na licencji
Creative Commons. Uznanie
autorstwa na tych samych warunkach
3.0 Polska (CC BY SA 3.0 PL)



ISBN 978-83-62338-75-7