



Network Poland



# COUNTERING CORRUPTION AND FRAUD

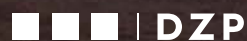
## SYSTEM-BASED PROTECTION OF WHISTLEBLOWERS

Discussion Paper | 09-2017

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# COUNTERING **CORRUPTION AND FRAUD** SYSTEM-BASED PROTECTION OF WHISTLEBLOWERS

# CORRUPTION IS ALIVE AND WELL

*Despite universal condemnation, corruption is alive and well.*

While obviously necessary, the existing controls fall short of ensuring ethical business practices. So far, neither harsher laws and regulations nor expanding compliance programs have made a breakthrough. Fight against corruption calls for greater adaptability and innovation.

Corruption adds up to 10% to the cost of doing business and up to 25% to the cost of procurement contracts in developing countries. What is more, corruption scandals, including bribery, financial fraud, rate and test rigging, can prove catastrophic to companies.

## REPORTED LOSSES FROM LARGE COMPANY CORRUPTION SCANDALS

COMPANY	ESTIMATED LOSSES US\$	DATE	SCANDAL	IMPACT	COMPANY	ESTIMATED LOSSES US\$	DATE	SCANDAL	IMPACT
<b>WORLDCOM</b>	107 billion	2002	Accounting fraud	The biggest bankruptcy in US corporate history; 20,000 workers lost their jobs.	<b>INTERNATIONAL BANKS (10)</b>	9 billion (in fines)	2012	Rigging of the LIBOR interest rate benchmark	Fines and prosecution charges, public loss of confidence in the financial sector may drive down the sector's profits for years.
<b>VOLKSWAGEN</b>	87 billion	2015	11 million cars worldwide fitted with a so-called „defeat device“ that ran the car below normal power and performance when an emission test was occurring	Impact of corruption scandal still unfolding significant damage to Volkswagen's brand and the wider German manufacturing sector and the automotive industry.	<b>AIG</b>	3.6 billion	2005	Accounting fraud	Largest quarterly loss in 2008, bailed out by US taxpayer.
<b>ENRON</b>	74 billion	2001	Accounting fraud	Second largest corporate bankruptcy in US history; 5,000 workers lost both their jobs and the majority of their pensions which were invested in Enron stock.	<b>SIEMENS</b>	3 billion	2008	Payment of bribes for contracts	Significant loss of customer and business partner confidence, loss of reputation.
<b>PETROBRAS</b>	21 billion	2015	Alleged diversion of billions of dollars from company accounts for their executives' use to pay off officials	Financial impact of the scandal is still unfolding in addition to obvious damage to brand image. Deterioration of Brazil's image as a destination for doing business has downgraded companies' credit rating.	<b>OLYMPUS</b>	1.7 billion	2011	Accounting fraud	The scandal significantly aggravated what was already poor financial performance, which translated into a loss of 2,700 jobs and closure of 40% of its manufacturing plants globally.

**COMPANIES EMBROILED IN CORRUPTION SCANDALS CONSEQUENTLY SUFFER A SERIES OF COMBINED ADVERSE EFFECTS:**

- Deterioration of brand value, market reputation and share price;
- Loss of potential business opportunities, markets, partners, customers;
- The burden of hefty fines;
- Diversion of significant senior management time away from running the business to legal actions and crisis handling.

Through the 10th Principle of the United Nations Global Compact, businesses around the world have committed themselves to “work against corruption in all its forms, including extortion and bribery.

Within the United Nations system, the Sustainable Development Goals are expected to recognize explicitly the fundamental role of an enabling environment for markets to grow. The response is SDG Goal which aspires ‘to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels’.

**WORKING TOWARDS REDUCING CORRUPTION, FRAUD AND UNETHICAL BEHAVIOR RELATED TO WORK STANDARDS IS AT THE CORE EFFORTS TOWARD IMPLEMENTATION OF SUSTAINABLE DEVELOPMENT GOALS 16 AND 8:**

**16.5** Substantially reduce corruption and bribery in all their forms

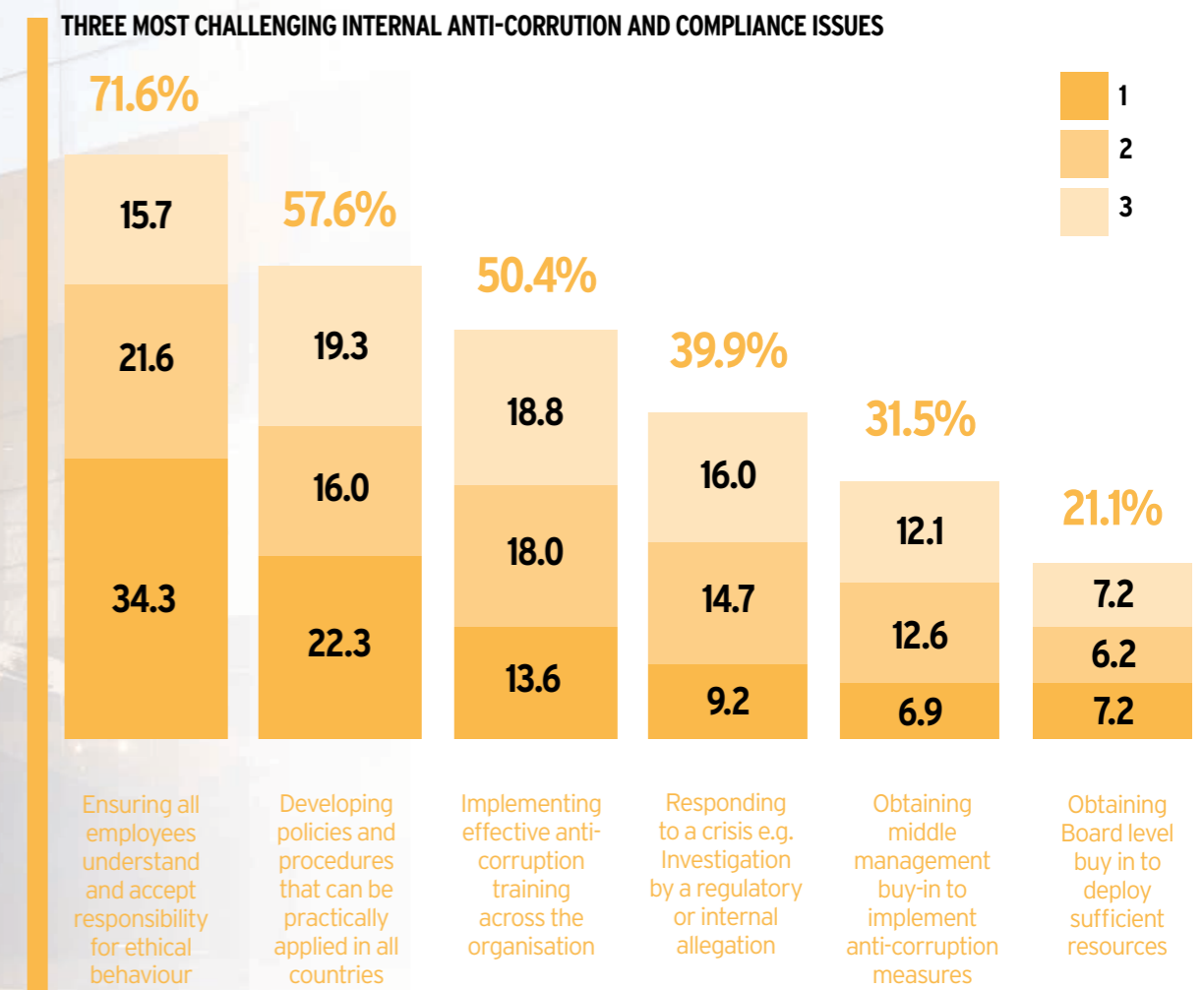
**16.5.2** Proportion of businesses that had at least one contact with a public official and that paid a bribe to a public official, or were asked for a bribe by those public officials during the previous 12 months

Source: [sustainabledevelopment.un.org](http://sustainabledevelopment.un.org)

**8.8** Protect labor rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment

**8.8.2** Increase in national compliance of labor rights (freedom of association and collective bargaining) based on International Labor Organization (ILO) textual sources and national legislation, by sex and migrant status

Effective implementation of anti-corruption standards and practices is not only a risk preventative or remedial measure, but can also benefit businesses by increasing the influence on the market, customers and partners.



Source: A 2014/2015 CONTROL RISKS survey of over 600 companies, [sustainabledevelopment.un.org](http://sustainabledevelopment.un.org)

In addition to stringent national legislation, reducing the appeal of corrupt practices requires greater transparency of financial transactions as well as standardized internal and external control procedures. This applies both to the ‘demand-side’ (primarily involving – though not exclusively – public officials) and the ‘supply-side’ (representatives of corporate interests).

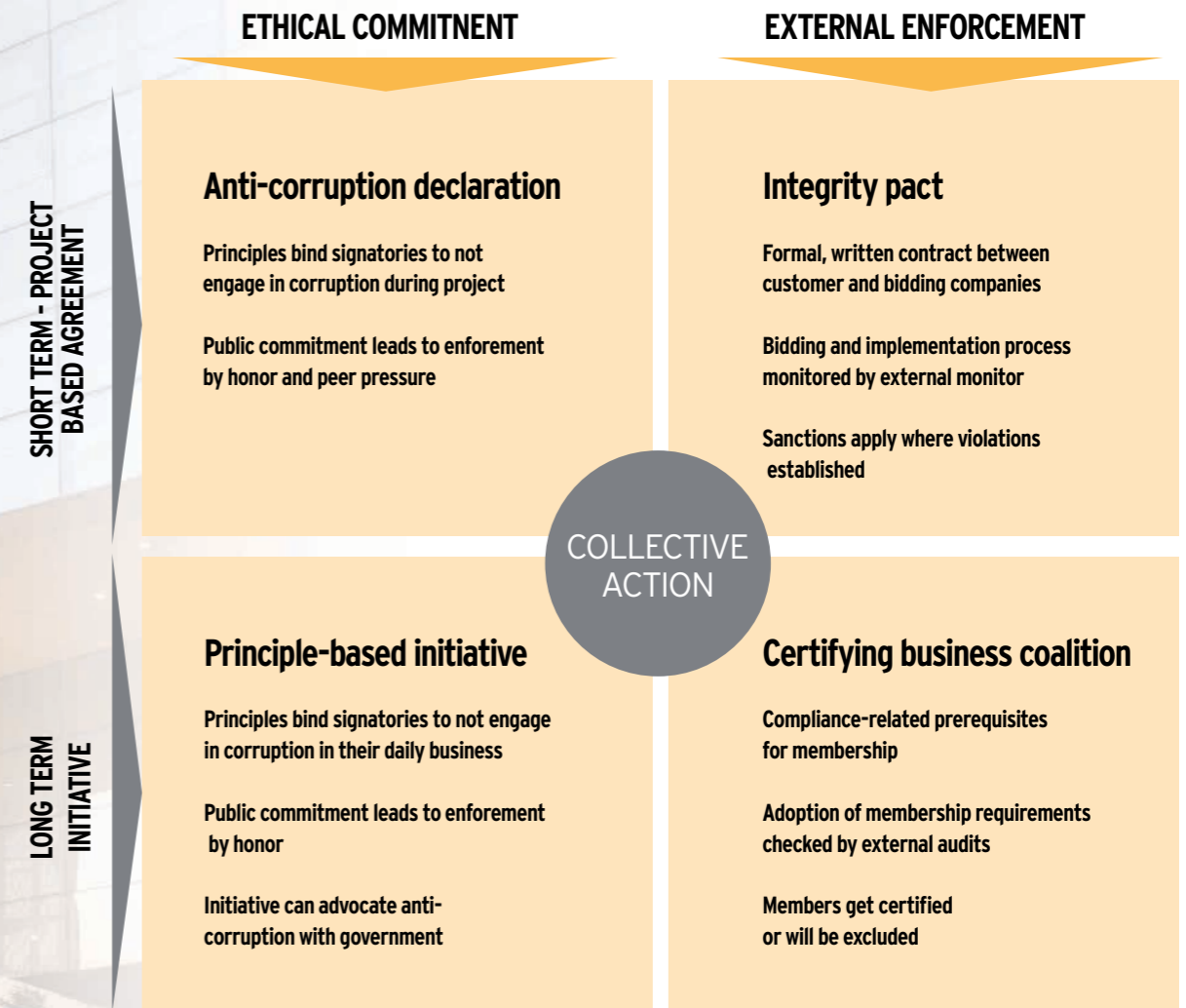
**DEMAND-SIDE ANTI-CORRUPTION TOOLS:**

- Better wages for civil servants,
- Better education,
- Higher personnel turnover,
- Greater process transparency,
- Enhanced regulatory enforcement.

**SUPPLY-SIDE ANTI-CORRUPTION TOOLS:**

- Necessary changes to organizational culture,
- Improved quality of performance evaluation,
- Incentive systems (that take into account long-term factors designed to curtail the myopic pursuit of spoils by any means and at any cost).

A growing number of companies, governments and non-governmental organizations have been exploring ways to further advance the effectiveness of anti-corruption programs within businesses themselves. This means a greater significance and appreciation of the role of joint efforts. The idea is relatively straightforward: companies start working with competitors and other stakeholders to create the necessary conditions to ensure fair competition in the market or in specific processes or area. Fair competition ensures that transactions are decided on commonly agreed factors such as quality and price, rather than being skewed by bribing and cheating. This process helps to *create safe environments for good business practices*. It minimizes opportunities to operate outside the rule of law and levels the playing field for players irrespective of their size or location in the value chain.



Source: A Practical Guide for Collective Action Against Corruption, UNGC2016

Industry self-regulation can also substitute lacking or faulty legislation or weak state institutions. Industry-wide self-regulation can also curtail the 'fare dodging' practice of those process participants who seek to take advantage of other participants' efforts towards greater transparency and clear rules of conduct without bearing the costs involved or changing their own conduct.

**Public sector agencies may participate in the process as promoters or as parties to such joint anti-corruption arrangements. The role of third-party institutions, such as UN Global Compact, can be the role of a process facilitator.**

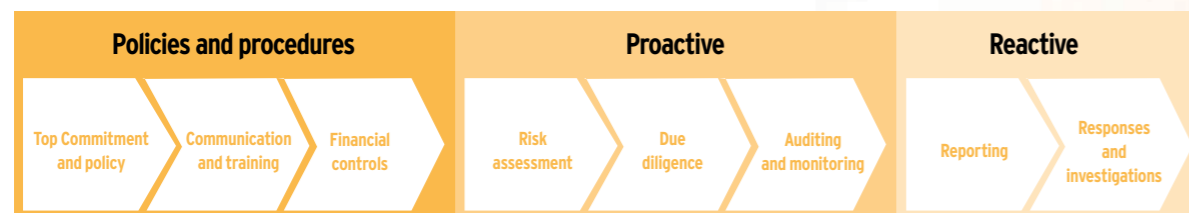
Multinational enterprises (MNEs) have a special role to play in this regard. They operate in highly diversified environments, while being morally obliged to improve the quality and correctness of business practices due e.g. to practices prevailing in their home countries, organizational culture, global image, but are also better placed to run such programs driven by their market power. MNEs tend to enjoy greater financial, and often political, backing to persevere through performance problems stemming from lost projects, unreasonable red tape, etc., that could be resolved by bribes.

### Proactive approach

Taking a proactive approach requires a company to allocate some resources to monitor a range of ambitious anti-corruption initiatives that may be used to start dialogue with partners or stakeholders. Problems can be anticipated and opportunities can be seized by engaging with stakeholders on anti-fraud and corruption issues. This builds mutual understanding between managers and investors, and lends credibility to board activities.

**TO DO THIS, COMPANIES CAN USE AN ARRAY OF COMMUNICATION TOOLS AND SOLUTIONS:**

- website articles, press releases, publications for investors disseminated widely to reach all stakeholders;
- an official letter from the board presenting its related strategy and its role in corporate governance processes;
- roadshows and 'investor days' to broadly communicate strategies, with a focus on present and future investors;
- daily communication in response to queries, concerns or even allegations from investors or other stakeholders;



Source: LINKING HUMAN RIGHTS AND ANTI-CORRUPTION COMPLIANCE. A Good Practice Note Endorsed By The United Nations Global Compact Human Rights And Labor Working Group, December 2016

Taking a proactive approach requires a company to allocate some resources to monitor a range of ambitious anti-corruption initiatives that may be used to start dialogue with partners or stakeholders.

**Addressing challenges in such essential core areas necessitates the effective management by companies misconduct detection procedures, and performing due diligence on business partners and subcontractors. However, it is a necessary way to mitigate risks or even losses arising from unethical or criminal activities of individuals or companies. Pursued in a thought-out manner, it can also have a beneficial effect on the quality of cooperation and attainability of business performance indicators also in the long run. Respect for human rights declared by a vast majority of companies is a pretext and prerequisite for taking measures of strategic significance to a business, such as introducing ethical issues to corporate strategy or ethical standards into daily business practices.**

Source: Engaging on anti-bribery and corruption: a guide for investors and companies - UNPRI & UNGC 2016 Report

Dissemination and implementation of ethical standards and countering corruption within the business community and beyond is one of the biggest tasks for Global Compact in Poland. The effective implementation of the 10th Principle of UN Global Compact is part of the concepts forming two programs currently underway, "Countering the Shadow Economy in Poland" and "Standard of Ethics in Poland". Each focuses on curbing negative or outright criminal phenomena in the functioning of business and institutions, by analyzing and developing tools detecting and preventing corporate fraud, bribery, corruption, position abuses, tax evasion, etc. The overriding goal is to develop universal practices, compliance and due diligence procedures, ethical standards and organizational culture, which will effectively prevent all the negative phenomena mentioned above in business practice and human rights, or forming barriers to sustainable development.

That is why in 2016 the Minimum Standard of the Ethical Program was developed, an outcome of a long effort of the Coalition of Ethics Advocates and individual Working Groups. It is mainly a tool that supports self-assessment of companies and institutions as well as internal development of necessary conditions for the functioning of core components of the ethical system. In 2017, we started work on more detailed issues, elaborating on the Minimum Standard, concerning anti-corruption measures and supporting whistleblower protection.

This year, intensive measures will be taken to further supranational cooperation with countries in our region. Through joint debates, publications and analyses, we want to present effective policies and share experiences of their implementation.

Based on publications by UNGC and partners: Fighting Corruption in the supply chain: a guide for customers and suppliers, UNGC 2016; Engaging on anti-bribery and corruption. A guide for investors and companies, UNGC & PRI 2016; Linking Human Rights and Anti-Corruption Compliance, UNGC Human Rights and Labor Working Group, 2016; A Practical Guide for Collective Action Against Corruption, UNGC 2016

■ Łukasz Kolano  
Global Compact Network Poland

### Corruption and human rights

There is a growing awareness of the intrinsic relationship between corruption and violation of human rights. In both, significant risk zones emerge and the danger of the company's financial and reputational exposure.

Corruption can be linked to human rights violations both directly, for instance when bribery of a judicial officer results in the loss of the right to a fair trial, or indirectly, such as when a public official is bribed to allow the importation and storage of toxic waste that might pose risks to the life and health of residents. In certain cases corruption is even regarded as a human rights violation in itself.

# ON CERTAIN CHALLENGES CONCERNING CORRUPTION AND WHISTLEBLOWERS

*The challenge facing both emerging and developed countries is corruption. It is true that the past two decades saw progress in fighting this phenomenon. This is manifested, for example, by the country's improving Corruption Perceptions Index. However, there is still much work to do if Poland wants to belong to the least corrupt countries.*

In Poland, there is an extensive regulatory framework supporting the prevention and countering of corruption, including laws and regulations in line with international standards. However, there is still no comprehensive legislative arrangement in place regulating the status of people who report corruption and other abuses in the workplace, which would also provide effective legal protection for such persons. The task facing the legislature is not simple, for reasons such as the problems that

the practical implementation of such law may be riddled with. Therefore, it is worth noting a few challenges facing the addressees of *the Whistleblowers Act*. The point of reference is the set of assumptions to the Whistleblowers Bill prepared by an expert group.

The first noteworthy challenge is to overcome difficulties that can arise between the scope of the Act *ratione personae* and one of the prerequisites for the provision of protection to

whistleblowers. The bill assumptions suggest that the personal scope should be as broad as possible. To be precise, workers should be covered, irrespective of the basis employment, in both the public and private sectors. Specific prerequisites are also proposed to be adopted for the provision of protection, i.e. the conditions that have to be fulfilled jointly for a disclosure to be classified as protected whistleblowing. One of the prerequisites provides that whistleblowers are eligible for protection if there is a relationship between the disclosure of corruption or other abuse and the public interest.

Currently there is no statutory definition of public interest in Polish national law. To put it as concisely as possible, *the public interest is a generalized objective of aspirations and activities* which take into account the objectified needs of the general public. It is an ambiguous term which needs individual definitions for specific cases. Sometimes it may be difficult to arrive at such a definition.

***Thus the question arises how many potential whistleblowers are able to find out on their own whether the act of corruption disclosed by them is related to the public interest? While for whistleblowers employed in the public sector this relationship seems quite easy to identify, it becomes much more complicated in the private sector. Take the example of a whistleblower employed with a private bank, who reports that one of the managers has received a bribe in exchange for a positive credit decision and subsequent facilitating of the repayment of loans granted by the bank to a private business operator. In this case, is there a relationship between corruption disclosure and the public interest? If yes, then there are grounds for protection. If not, then protection cannot be granted despite the act of corruption disclosed by the whistleblower.***

The above example brings to mind a number of questions. *For instance, what consequences may arise for the whistleblower who has reported corruption, but the condition of a relationship existing between the disclosure and the public interest has not been fulfilled, and*

*therefore they cannot be afforded protection?* How to make potential whistleblowers aware of the legal risks associated with what is commonly called “blowing the whistle”? How to prepare for reporting them? How is a whistleblower to collect evidence of a disclosed act of corruption? Whose advice can or should a whistleblower seek? How to ensure confidentiality of advice and whistleblowing report? What is the role of compliance officers, ethics advocates, etc.?

There are more doubts about the prerequisite which provides that whistleblowers are eligible for protection if there is a relationship between the disclosure of corruption or other abuse and the public interest. The introduction of this prerequisite may significantly limit the scope of potential whistleblowing reports in the private sector by excluding reports unrelated to the public interest. Answers should be sought to further questions.

***Is the adoption of such a solution desirable if the proposed objective of the Act is to provide a comprehensive and consistent regulatory framework for the disclosure of abuse in public and private sector environments? Are whistleblowers employed in the private sector who report on corruption unrelated to the public interest intentionally deprived of the right to seek protection? Will an alternative solution be proposed for this whistleblower group?***

Let us refer again to the example of private bank employee. Let us assume, hypothetically, that no protection can be provided in the situation described despite the act of corruption disclosed by the whistleblower. In practice, this means that many years may pass before the court decides that the relationship does not exist. For certain, during that time, all the parties protecting their interests, i.e. public authorities, employers and whistleblowers, will bear financial, moral, image-related, professional, and other costs. In the end, it may turn out that the ratio legis of the Act has not been achieved. Perhaps it is worth considering the adoption of different procedures for whistleblowing representing

a relationship between corruption and the public interest, and for whistleblowing where no such relationship exists.

As can be seen, this issue alone can pose many practical problems for whistleblowers, but also for public authorities and employers, especially private ones. Unfortunately, more challenges may yet emerge, related to the entry into force of the Whistleblowers Act. Prima facie, it seems that the main addressees of the Act are whistleblowers, as it is them who are to be afforded protection in exchange for whistleblowing.

***However, the role that public authorities and employers have to play is no less important, and perhaps even more crucial. It is largely up to the former how efficiently information will be verified and whistleblowers will be afforded protection. For their part, employers have their own challenge which is to develop an algorithm that would, on the one hand, protect employers' interests and, on the other hand, prevent employers from retaliating or covering up a case.***

To sum up, the adoption of the Whistleblower Act is unquestionably necessary. *The whistleblower institution is an instrument for the pursuit of integrity in public and private life by eliminating unlawful activities.* The introduction of the whistleblowing system is not easy but not impossible. Hopefully, it will be possible to reconcile the interests of all the addressees of the Act so that the system of whistleblowing on corruption

and other abuse is effective and efficient. What seems to be key to the achievement of this objective is that the addressees of the future Act should be simply aware of its provisions and prepared to apply them, before anyone blows the whistle.

■ Robert Lizak, PhD  
Central Anti-Corruption Bureau



# THE PHENOMENON OF CORRUPTION AND PROTECTION OF WHISTLEBLOWERS

## - A NATIONAL AND INTERNATIONAL PERSPECTIVE.

*Despite many years' fight and efforts of many international organizations such as the UN, OECD, European Commission, GRECO, World Bank, International Monetary Fund, and numerous civic society organizations, corruption continues to present a serious problem the world over. As reported by Transparency International, about 68% of states around the world have serious problems with this phenomenon.*

The adverse impact of corruption on social and economic development has already become obvious and does not have to be proved, while until the early 1990s the term had not been used as one referring to a major problem by many institutions, including the World Bank.

In mid-1980s, this approach changed, largely on the initiative of the then President of the World Bank, James Wolfensohn, and pressure from civic society organizations. This is also when corruption phenomena started to be studied in a systematic way.

One of the definitions of corruption describes it as the abuse of authority, usually for private purposes, or for the benefit of the social group with which the corrupt person is connected. Corruption can be motivated by greed, desire to

maintain or consolidate power even if driven by high ideals.

In its 1999 report "Corruption in Poland", the World Bank *defines corruption as the abuse of public office for private gain*. While this definition does not include wholly private sector corruption, it does include the interface between private and public sectors without which much private sector corruption could not occur. Also strictly connected with corruption are shadow economy phenomena which AT Kearny estimates at about 2 trillion Euros in Europe alone.

Another significant area of corruption which is often omitted in research is state capture. The term was defined by the World Bank in its 2000 report "Anticorruption in Transition".

"State capture" refers to the actions of individuals, groups, or firms in both the public and private sectors, to influence the formation of laws, regulations, decrees, and other government policies to their own advantage by means of the illicit and non-transparent provision of private benefits to public officials. There are many different forms of state capture. Distinctions can be drawn between the types of institutions that are captured (the legislature, the executive, the judiciary, or regulatory agencies). Further distinctions can be made on the basis of who does the capturing (private firms, political leaders, or narrow interest groups). All forms of state capture are directed toward extracting rents from the state for a narrow range of individuals, firms, or sectors through distorting the basic legal and regulatory framework, with potentially enormous losses for the society at large. These practices thrive where economic power is highly concentrated, countervailing social interests are weak, and the formal channels of political influence and interest intermediation are underdeveloped.

The World Bank also notes the corruptive phenomenon of "regulatory capture" where a regulatory body is captured by groups of interest. This phenomenon is described in depth by Łukasz Afeltowicz in his 2010 article "State capture, social networks and sociological imagination: a critical analysis of the state capture concept"

Specific examples of state capture are given in the above-mentioned 1999 World Bank Report on Poland:

### PROMOTING OR BLOCKING NEW ACTS OR AMENDMENTS TO EXISTING ACTS

- *Malpractice in public procurement (government contracts)*

- *Manipulation of privatization*

- *Interference in the award of concessions, licenses and tax exemptions*

- *Conflict of interest in appointments to boards of State-owned enterprises and consequent links with contracts issued by these enterprises*

- *Improper pressure on Customs enforcement*

- *A typical example would be the creation by a Ministry of an agency that would extend contracts to companies that would in turn funnel money back to the relevant Minister, officials, or political party*

- *Unconstrained lobbying*

- *Nepotism in public sector appointments, and trading favors generally throughout the arena of public decision making. This tendency is exacerbated by the practice of making political appointments down to medium levels in the administration.*

- *Conflict of interest and political party financing*

**CORRUPTION INVOLVES HEAVY COSTS. THE WORLD BANK NOTES COSTS SUCH AS:**

**Macro-fiscal:** lost revenues (from tax, customs duty and privatization) and excessively high expenditure in public procurement

**Reduction in productive investment and growth:** e.g. through abuse of regulatory powers, misprocurements and other costs imposed by corruption

**Costs to the public and to the poor in particular:** via higher taxes than necessary, bribe-extraction in delivery of services, and poor quality of and access to services

**Loss of confidence in public institutions:** corruption can undermine the rule of law, tax compliance, respect for contracts, civil order and safety, and ultimately the legitimacy of the state itself

**In its studies, the World Bank estimates economic costs of corruption at approx. 5% of the global gross national income. The 2016 RAND Europe report commissioned by the European Parliament estimates losses due to corruption at approx. 990 billion Euros annually, i.e. more than twice the national income of Poland. Corruption risk in public procurement alone in Europe is estimated at about 5 billion Euros annually.**

The extent and specificities of corruption are changing, and the curbing of corruption in the world is related to anti-corruption and anti-shadow economy strategies, activities of international organizations and civic society organizations, legislative changes, or increasingly effective activities of national institutions specialized in the detection and fighting of corruption.

Good examples of improvement in anti-corruption include *Estonia, Georgia or Poland* whose position in the Transparency International ranking has been improving significantly over the last years. Ranked 70th with a score of 3.4 in 2005, Poland climbed to the 26th position in 2016 with a score of 6.2.

Apart from the above activities which contribute to curbing corruption, two other significant areas should also be mentioned: the activities of *whistleblowers and activities* in the field of business ethics. Those two areas are supported internationally by UN agencies and fall within the scope of interest of the initiative of the UN Secretary General, the Global Compact Network.

*Whistleblowers*, persons who inform the public about embezzlements, acts of corruption, infringements of laws and regulations, and other irregularities, play a very important role in combating corruption, and should therefore enjoy legal protection. According to a 2012 Global Fraud Study, more than 43% of reports on irregularities in companies came from employers (50.9%), customers (22.1%) or were anonymous (12.4%). Only 14% of irregularities were disclosed in the course of internal audits.

*Whistleblowing* is an important, albeit often underestimated tool aimed to detect and curb crime, both in private firms and in business and other organizations, and consequently to improve the performance of those organizations, which is why whistleblowers should be protected. In the international arena, whistleblowers are protected under the Civil Law Convention on Corruption of the Council of Europe, and by the United Nations Convention against Corruption. Few states around the world provide comprehensive protection to whistleblowers. They are: the United Kingdom (Public Interest Disclosure Act), Australia, New Zealand, South Africa, South Korea, India, Romania, Hungary and Slovenia. In Germany, there is no legislation protecting whistleblowers, and in France, for instance, legislation protects from sanctions employees who report in good faith on suspicious activities of employers.

**As the majority of European countries, Poland has no comprehensive regulatory framework in this area, and most of the provisions that protect whistleblowers are contained in the Labor Code. Let us add that in Australia no sentence had been issued until 2003 under whistleblower protection legislation. In the 1990s, 70% of whistleblowers suffered official consequences of reporting irregularities, and 94% were punished unofficially.**

Therefore, legislative measures are necessary that will facilitate disclosure in the public interest, ensure the appropriate treatment of information, assessment and, if necessary, investigations, and provide whistleblowers with protection from repression.

The other area already mentioned in connection with anti-corruption measures is *business ethics*. In Poland, one of the leaders

in promoting business ethics is Global Compact Network Poland, under which the Coalition of Ethics Advocates has been established. The coalition, composed of 130 members, prepared and published the Minimum Standard of the Ethical Program which has already been adopted by about 20 companies.

The Coalition has managed to bring together groups of leaders who have developed standards for companies and organizations embarking on the ethics management path and, build a sustainable platform for knowledge sharing on the best standards of ethics management based on Polish and international solutions by creating a "library of solutions". The Coalition also aims to gather good practices and practical solutions (including organizational solutions) for persons involved in ethics management in companies and organizations, and to develop tools for Ethics Advocates in companies and organizations.

Activities in the field of ethics seem to be particularly important in fostering anti-corruption attitudes. In particular, according to an EY report, every fourth Pole would behave unethically to help their career, and every tenth law student would pay a bribe on behalf of a client. And while, compared to the situation a decade or two ago, such attitudes are increasingly less common, there is still plenty of room for activities in the field of broad-based business ethics, especially in implementing ethics system management programs.

■ Jacek Wojciechowicz,  
Global Compact Network Poland

# REGULATION OF THE LEGAL STATUS AND PROTECTION OF WHISTLEBLOWERS IN POLAND – CURRENT SITUATION AND DESIRED DIRECTIONS OF CHANGE

## Protection of whistleblowers: Current state of the Polish regulatory framework

The issue of reporting irregularities at work through whistleblowing is not comprehensively regulated by the Polish legal system. The provisions currently in force are fragmented and fragmentary. They are scattered among various legal acts, and do not provide effective protection to whistleblowers. Consequently, while whistleblowing is a favorable phenomenon from the point of view of the public interest and employers' interests, the disclosure of irregularities is a high-risk activity in Poland. According to a 2016 survey into the situation of persons who report on irregularities in institutions and enterprises in Poland, whistleblowers often face "negative or even hostile reactions of their community" and experience various forms of retaliation from employers, including "attempts to get rid of [them] from the organization, marginalize [their] professional position by not giving them responsible tasks to perform (and, additionally, blocking their access to information), various forms of mobbing and psychological pressure". At the same time, "the majority of whistleblowers feel alone in their efforts, and some suffer a lack of knowledge and understanding of how they should behave, what institutions they should turn to and whom they should ask for support". A lack of a comprehensive regulation on whistleblowing translates into a low level of public

awareness, which can lead to high tolerance for irregularities at work and a passive attitude of their witnesses. This phenomenon has a significant corruption potential, which adversely affects the competitiveness of the Polish economy.

*In the current legal situation, the obligation to blow the whistle*, i.e. to report irregularities found, is stipulated by Article 304 § 1 of the Code of Criminal Procedure (the obligation of the public to report a suspicion of an offense) and in Article 100 § 2 (4) of the Labor Code (the obligation to blow the whistle on irregularities in the workplace). However, these obligations are currently not accompanied by any special form of legal protection of whistleblowers. Under rules of general application, in principle, only persons in an employment relationship, and the level of guarantees they are entitled varies depending on the basis of employment (higher for indefinite-term contracts of employment, lower for fixed-term contracts, employment by appointment and nomination). Protection is not available to persons who perform work under civil-law contracts and those in service relationship. Legal protection of employees is of a follow-up nature and it takes effect only in proceedings before the labor court in case of notice of termination of the employment contract, termination of the employment contract

<sup>1</sup> A. Kobylińska, M. Folta, Sygnaliści – ludzie, którzy nie potrafią milczeć. Doświadczenia osób ujawniających nieprawidłowości w instytucjach i firmach w Polsce [Whistleblowers – people who can't keep quiet. Experience of those who disclose irregularities in institutions and companies in Poland], Institute of Public Affairs, Warsaw 2015.

<sup>2</sup> An employee can also invoke the provisions of the Labor Code that prohibit mobbing (Article 943) or the provisions on equal treatment in employment (Article 183). However, studies of the case law of labor courts show that the provisions usually fail to provide proper protection to the whistleblowing employee (A. Wojciechowska-Nowak, Założenia do ustawy o ochronie osób sygnalizujących nieprawidłowości w środowisku zawodowym. Jak polski ustawodawca może czerpać z doświadczeń państw obcych? [Assumptions to the Act on the Protection of Whistleblowers in a Professional Environment. How can the Polish law-maker draw on the experience of foreign states?], Warsaw 2012).

<sup>3</sup> Cf. M. Raczkowski, Ekspertyza w sprawie ochrony osób sygnalizujących nieprawidłowości przed nadużyciami ze strony podmiotu zatrudniającego [Expert opinion on the protection of whistleblowers against abuse by the employer], Kielce 2009.

without notice or the employer's notice amending the terms of the employment contract in connection with the worker's whistleblowing activity. As a result, it is the employee's responsibility to prove that the reason for terminating the employment contract given in the notice is apparent (generally, the employer does not mention whistleblowing as the reason for dismissal, and instead refers to other circumstances attributable to the employee)<sup>2</sup>. To this end, the employee is required to provide evidence of the irregularities reported, which is particularly difficult in the absence of substantive evidence or documentary evidence<sup>3</sup>.

## APART FROM THE LABOR CODE, FRAGMENTARY PROVISIONS ON THE ISSUE OF WHISTLEBLOWING AND PROTECTION OF WHISTLEBLOWERS ARE CONTAINED IN THE FOLLOWING SOURCES:

### STATE LABOR INSPECTION ACT

- Employees of the State Labor Inspection performing audit activities are obliged not to disclose information that an audit is carried out in response to a complaint unless the party filing the complaint has given written consent thereto (Article 44(3)),
- labor inspector shall be solely authorized to decide whether or not to keep confidential circumstances that allow the identity of the employee disclosing information on irregularities to be established, including their personal details (Article 23 (2))

### BANKING LAW

- The requirement to establish, within the bank's governance system, procedures for the anonymous reporting to a designated management board member or, in specific cases, to the supervisory board of the bank, any breaches of the law as well as procedures and standards of ethics in force at the bank (Article 9 (2a)),
- The requirement to ensure that employees who report infringements are granted at least protection against repressive measures, discrimination or any kind of unfair treatment (Article 9 (2b))

### IMMUNITY WITNESS ACT

- Governs the status of a suspect who has been allowed to testify as a witness in cases involving a criminal offence or criminal fiscal offence committed in an organized group or association

### CODE OF CRIMINAL PROCEDURE

- Article 184 governing the anonymous witness status, prerequisites and method of anonymization and the questioning process

## ON THE OTHER HAND, DUE TO THE ABSENCE OF A SPECIAL LEGAL PROTECTION REGIME FOR WHISTLEBLOWERS, THE MAIN (BUT NOT ONLY) SOURCES OF LEGAL RISK ASSOCIATED WITH WHISTLEBLOWING ARE AS FOLLOWS:

- Provisions of the Civil Code governing liability for infringement of personal rights (Article 24),
- Provisions of the Civil Code governing:
  - Criminal liability for slander (Article 212),
  - Criminal liability for the disclosure of secrets protected by law (Article 265-267),
  - Liability for malicious or persistent violation of employee rights (Article 218).

## Why new regulatory framework?

*In this situation, it is advisable to create a comprehensive regulatory framework defining the legal status of whistleblowers and to establish a guarantee system that will provide effective protection for those who disclose irregularities in the professional environment.* The regulatory framework currently in place is insufficient from the point of view of adequate safeguarding of their interests, as confirmed by the questionnaire survey conducted in 2012, which concludes that „the introduction of stronger whistleblower protection could result in increased whistleblowing on irregularities.”<sup>4</sup> The phenomenon of whistleblowing itself is highly beneficial both for the public interest and for the interests of employers, as whistleblowing is an effective „*tool for improving control mechanisms and combating mismanagement and corruption in both the public and private sectors.*”<sup>5</sup> Anonymous informants and internal disclosure systems are among of the most effective fraud detection tools, in addition to the system of reporting suspicious transactions, and internal audit<sup>6</sup>.

The need to adopt the proposed solutions arises also from Poland's international commitments, including Article 9 of the Civil Law Convention on Corruption of 4 November 1999, according to which the parties to the Convention undertake to provide in their internal law for appropriate protection against any unjustified sanction for employees who have reasonable grounds to suspect corruption and who report in good faith their suspicion to responsible persons or authorities.

## THE ARRANGEMENTS IN FORCE IN POLAND ARE CONSIDERED TO BE INSUFFICIENT FROM THE POINT OF VIEW OF INTERNATIONAL STANDARDS OF WHISTLEBLOWER PROTECTION ARISING FROM SOURCES SUCH AS:

COUNCIL OF EUROPE PARLIAMENTARY ASSEMBLY RESOLUTION 1729 (2010)  
- Protection of “whistle-blowers”

COUNCIL OF EUROPE PARLIAMENTARY ASSEMBLY RECOMMENDATION 1916  
(2010) - Protection of “whistle-blowers”

RECOMMENDATION CM/REC (2014) OF THE COMMITTEE OF MINISTERS  
ON THE PROTECTION OF WHISTLEBLOWERS

REPORT OF THE UN SPECIAL RAPPORTEUR ON THE PROMOTION AND  
PROTECTION OF THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION ON  
THE PROTECTION OF SOURCES AND WHISTLEBLOWERS (document A/70/361)

REPORT OF THE COUNCIL OF EUROPE PARLIAMENTARY ASSEMBLY  
COMMITTEE ON LEGAL AFFAIRS AND HUMAN RIGHTS “THE PROTECTION OF  
WHISTLE-BLOWERS”

CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

<sup>4</sup> Public Opinion Research Center (CBOS) survey commissioned by Stefan Batory Foundation: Heroes or informants? What Poles think about whistleblowers at the workplace? Quantitative survey report, Warsaw 2012.

<sup>5</sup> D. Głowacka, A. Płoszka, M. Sczaniecki, *Wiem i powiem. Ochrona sygnalistów i dziennikarskich źródeł informacji [I know and I'll tell. Protection of whistleblowers and the journalist's information sources]*, Warsaw 2016, p. 11.

<sup>6</sup> Economic Crime Survey. Poland 2011. Cybercrime as a Growing Threat to Business, PwC 2011.

It is therefore necessary to ensure comprehensive, coherent regulation of the issue of disclosure of irregularities in the professional environment, which will not only implement systematic solutions in Poland to ensure effective protection of whistleblowers, but will also bring the applicable regulations in line with international standards.

Such regulation could, and should, serve to protect both the interests of those who blow the whistle on irregularities, as well as the public interest and the interests of employers. These interests are closely interrelated. *Establishing a coherent legal framework for whistleblowing* will contribute to a significant reduction of corruption factors and increase of the competitiveness of the Polish economy. From employers' point of view, it is also important to be able to detect and correct any reported irregularities at an early stage within internal procedures, which significantly reduces the associated financial and reputational risks. Indirect influence is equally important – promoting civic responsibility, improving the public perception of whistleblowers, and changing the social paradigm of whistleblowing, often seen as a morally questionable activity (snitching).

## The desired direction of change

*The implementation of the functions in question requires the adoption of appropriate assumptions, including the outlining of the substantive and personal scope adequate to the specificities of whistleblowing. From the point of view of the aforementioned objectives – above all, in order to ensure a balanced and rational protection of all crisscrossing interests – it seems appropriate to adopt the following solutions:*

### DEFINITION OF WHISTLEBLOWER

The personal scope of the future regulation should be determined by a definition of “whistleblower”, that is, a person who has disclosed irregularities in the professional environment or who has assisted in disclosing irregularities by another person by providing information about irregularities or by actively participating in the disclosure process.

In order to ensure the completeness of regulation and effectiveness of proposed solutions, it is advisable to adopt the broadest possible personal scope. This scope should cover all workers, regardless of the basis of employment. Therefore, not only a person in an employment relationship in the strict sense can be a whistleblower, but also a person employed under a civil-law contract or providing services to a given entity – both in the private and in the public sector.

### NATURE AND OBJECT OF WHISTLEBLOWING

Disclosure of irregularities (whistleblowing) means any transmission of information about an infringement or information justifying its suspicion made by a whistleblower within an organization (internal whistleblowing), or, in the absence of an appropriate internal reporting procedure or in the absence of response from the organization, to the competent external authorities or entities (external whistleblowing).

Only the activities leading to the disclosure of irregularities in the professional environment, which are made in good faith and in the public interest, should be regarded as whistleblowing. No protection should be available to activities motivated by desire for revenge or seeking to achieve private or financial gain. At the same time, whistleblowing should be based at least on justified suspicion of irregularities, i.e., suspicion based on information in the whistleblower's possession, which objectively substantiates the irregularities reported. The requirement of good faith should be considered fulfilled if the whistleblower is sincerely convinced that the information is true.

### IT SEEMS THAT MAINLY THE FOLLOWING CATEGORIES OF INFRINGEMENTS CAN BE THE OBJECT OF WHISTLEBLOWING:

- Violations of human rights that pose or can pose risks to life, health or personal freedom
- Violations of labor rights, including mobbing and discrimination, and all forms of abuse of dependency in employee or service relationships
- Violations that pose or could pose a threat to public safety or the environment
- Corruptive activities, including active or passive bribery, fraud, counterfeiting, deception, or false statements, etc.
- Violations of public law obligations, including taxation
- Activity aimed at concealing any of the above- violations

### SPECIFIC PREREQUISITES FOR THE PROVISION OF PROTECTION

The future Act should clearly specify the prerequisites for the provision of protection to whistleblowers, i.e. the conditions that have to be fulfilled jointly for a disclosure to be classified as protected whistleblowing. These prerequisites should be in line with the standards developed in the case-law of the European Court of Human Rights and should be proportionate to the objectives of the Act, guaranteeing the effective implementation of its basic assumptions.

#### THESE PREREQUISITES INCLUDE:

- **The existence of a link between the disclosure of irregularities and the public interest** - the whistleblower acts in the public interest and the disclosure is not for the individual's private gain;
- **Acting in good faith and authenticity of the information disclosed** - the whistleblower acts in the legitimate (sincere) belief that the information disclosed by him, indicating the existence of an irregularity, is true; the presumption of good faith is nullified by acting for a purpose contrary to the law or principles of social coexistence;
- **Subsidiarity of external disclosure** - Prior to external disclosure, the whistleblower used internal whistleblowing mechanisms available to him (he was acting within an internal compliance procedure, and in the absence of such a procedure, he notified the supervisor or other competent authority or entity), unless the use of such mechanisms would be impossible, or obviously impractical<sup>7</sup>;
- **Proportionality of possible damage resulting from the disclosure of irregularities to benefits arising from the whistleblower's activity** - to safeguard the interests of employers, the benefits of disclosure of irregularities should outweigh its costs; the whistleblower should act on the basis of a reasonable belief that there is an appropriate proportion in the account of such gains and losses as a basis for assuming the potential damage and benefits that his action may bring to the public interest.

<sup>7</sup> Such a solution is recommended by the Council of Europe Parliamentary Assembly Resolution on the Protection of whistle-blowers, according to which external whistleblowing can be resorted to where internal channels either do not exist, have not functioned properly or could reasonably be expected not to function properly given the nature of the problem raised by the whistleblower.

### SCOPE OF PROTECTION PROVIDED TO WHISTLEBLOWERS

From the point of view of the scope of protection provided to whistleblowers under this special regime, it is important to define *precisely the areas of risk associated with their activities*, in particular the statutory attempt to capture the phenomenon of retaliation, the protection of whistleblowers' anonymity and the burden of proof, and with regard to procedural risk - the establishment of a specific *lex specialis* in relation to the general rules of criminal and civil liability of whistleblowers.

#### • Retaliation

##### RETALIATION MEANS ANY ACTIVITIES THAT:

- Have been taken in connection with the employee's whistleblowing, i.e. there is a link between adverse consequences for the whistleblower and the fact that he has disclosed irregularities or assisted with their disclosure, and
- Lead to the deterioration of his situation, cause damage or harm to him.

This does not mean that any decision with negative consequences for a worker is retaliation. Both of the above-mentioned conditions should be met jointly, and therefore it is also necessary to establish the causal link between these decisions or actions with the whistleblowing. *Future regulation should explicitly prohibit such retaliatory actions*. These actions should be considered a criminal offense, and any disciplinary decisions taken in retaliation should be deemed void by law.

#### • Guarantees of anonymity

One of the elements of the special protection regime for whistleblowers should be the statutory guarantees of anonymity. In order to prevent the abuse of the mechanisms provided for in the Act, however, it is necessary to stipulate that the party receiving a whistleblower's report is not obliged to consider an anonymous report unless it provides evidence of that lends credibility to the existence of an irregularity<sup>8</sup>.

##### IN PRINCIPLE, THE WHISTLEBLOWER'S PERSONAL DATA SHOULD BE CONFIDENTIAL AND ANY DEPARTURE FROM THIS PRINCIPLE IS ACCEPTABLE ONLY:

- On the basis of the express consent of the party concerned
- With the court's consent
- When it is necessary to protect an important public interest or the rights of others

Disclosure of information in circumstances other than those specified should constitute a criminal offense. Acceptance of a whistleblower's report cannot be subject to prior approval of the disclosure by the person reporting the irregularity.

<sup>8</sup> An identical solution has been adopted in the Hungarian Act- Article 5(7)

### BURDEN OF PROOF

What should also be an important component of the special legal status of whistleblowers are relevant legal presumptions and the burden of proof. *In the case of legal action, it should be the employer's responsibility to demonstrate that measures taken against the whistleblower (e.g. termination of employment or cooperation, transfer to another position, change in remuneration, staffing decisions and disciplinary penalties) were not related to the disclosure of irregularities (whistleblowing).* It is also necessary to establish a legal presumption that whistleblowing was done in good faith. To refute this presumption, evidence would have to be provided of the whistleblower acting in bad faith (e.g. act motivated by personal interest, contrary with the law or with principles of coexistence).

### PROTECTION FROM CRIMINAL AND CIVIL LIABILITY

The Act should guarantee that a person who, acting in good faith and in the public interest, has disclosed irregularities in the workplace, is afforded protection against criminal and civil liability in this respect (i.e. slander, damage to reputation, disclosure of classified information or statutory secret). For this purpose, the Act should precisely define any exclusions from the application of the relevant provisions of the Civil Code and the Criminal Code to persons whose activity constitutes whistleblowing.

### INTERNAL AND EXTERNAL WHISTLEBLOWING

The Act should establish a preference for the use of an internal procedure for whistleblowing if such a procedure has been implemented in the whistleblower's workplace. The purpose of a mechanism incorporated in the Act that would give priority to such a procedure is to safeguard the interests of employers and, in some cases, the public interest (for example, if whistleblowing concerns irregularities of strategic importance to the state, irregularities posing a threat to national security or public order, phenomena having an adverse impact on the investment attractiveness of the domestic market, its competitiveness, etc.). The preference referred to above should be reflected in the limited protection afforded to these whistleblowers who, disclosing irregularities, did not first avail themselves of the measures guaranteed under the company's compliance system.

#### THE WHISTLEBLOWER SHOULD BE OBLIGED TO USE THE INTERNAL WHISTLEBLOWING MECHANISMS IF ALL OF THE FOLLOWING CONDITIONS ARE SATISFIED:

- The company has a compliance system or special procedures in place for the detection of irregularities and whistleblowing,

- The company's procedures or compliance system meet the minimum standard, i.e.:

- They are safe (e.g. anonymous), easily accessible and guarantee a fair review of the information submitted and appropriate measures to be taken in the event infringements are confirmed

- They allow the results of whistleblowing to be monitored

- They are subject to periodic review for correctness and effectiveness of their operation

- The circumstances of the case concerned or the nature of the irregularity reported do not prevent the use of internal procedures.

### A SYSTEM OF INCENTIVES FOR ENTERPRISES - IMPLEMENTING COMPLIANCE AND INTERNAL WHISTLEBLOWING PROCEDURES

In our opinion, implementation by the employer of their own effective compliance *system or internal whistleblowing procedure is the most effective instrument for achieving the objectives of the Act.* Therefore, it seems reasonable to create incentives for entrepreneurs to establish such arrangements within the framework of the future regulation. These procedures should indicate who in the workplace is responsible for collecting information about irregularities, and also specify the manner of whistleblowing and set forth rules for processing any doubts raised. What seems to be an optimum solution is the introduction of the rule whereby the decision on whether a given piece of information or report are whistleblowing within the meaning of the Act, is taken by the person appointed by the employer (dedicated employee, e.g. compliance officer). Further steps under the internal whistleblowing procedure will then be made on the basis of that person's initial assessment of the report, which should improve the efficiency and effectiveness of the system. This is a desirable situation not only from the employer's, but also from the employee's point of view - through clear rules of internal whistleblowing, they can act in confidence that their report will be handled in a timely and impartial manner by the designated person.

#### THOSE INCENTIVES CAN BE DESIGNED IN A VARIETY OF WAYS. THEY MAY, AMONG OTHER THINGS, INVOLVE THE ASSUMPTION THAT:

- if a compliance system or appropriate whistleblowing procedure has been introduced at the enterprise, the recognition of a particular disclosure case as whistleblowing is conditional upon prior use of internal mechanisms for the resolution of possible irregularities; otherwise, such activity is not subject to special protection provided to whistleblowers within the meaning of the Act,

- If the company has a compliance system or an appropriate whistleblowing procedure in place, the business operator may expect a reduction of the penalty imposed on them in the event the irregularities reported are confirmed.

■ Dr Anna Partyka-Opiela,  
Anna Hlebicka-Józefowicz,  
Domański, Zakrzewski, Palinka Law Firm

In the event of failure to fulfil the above obligation, no special legal protection provided for by law will be available to the whistleblower - such actions will be subject to protection under rules of general application.

PROTECTION OF WHISTLEBLOWERS IN SELECTED EUROPEAN COUNTRIES

	SUBSTANTIVE SCOPE	PERSONAL SCOPE	DEFINITION OF WHISTLEBLOWER	PROTECTION PREREQUISITES		SUBSTANTIVE SCOPE	PERSONAL SCOPE	DEFINITION OF WHISTLEBLOWER	PROTECTION PREREQUISITES
<b>GEORGIA</b>	reporting the violation by a public official of Georgian law or general ethical rules and rules of conduct which compromises or may compromise the public interest or reputation of the public institution concerned	everyone	the person reporting the violation by a public official of Georgian law or general ethical rules and rules of conduct which compromises or may compromise the public interest or reputation of the public institution concerned	reporting (also anonymous) in good faith to prevent, discover or eliminate an infringement	<b>SLOVAKIA</b>	providing information that can help to combat serious antisocial behavior;  Antisocial behavior includes:  • offenses committed by public officials,  • corruption,  • offense against the financial interests of the EU,  • offense of fraudulent practices in connection with public tenders and auctions, offense punishable by imprisonment for at least 3 years and administrative offense punished by a fine of at least EUR 50 000	employee	a person who, in connection with the performance of their work, has been informed of facts which may significantly assist in the fighting serious antisocial behavior and have been disclosed in good faith to the competent authorities	disclosure of facts in good faith and to relevant authorities
<b>MOLDOVA</b>	reporting acts of corruption and related corruptive behavior, breach of regulations on property declarations and breach of legal obligations concerning conflicts of interest;	a civil servant, including a special status worker, public official, and other public service provider	a civil servant, including a special status worker, public official, and other public service provider reporting voluntarily, in good faith and in the public interest, on acts of corruption and related to corruption, instances of corruptive behavior, breach of the rules on property declarations and breach of legal obligations concerning conflicts of interest	voluntary reporting in good faith	<b>FRANCE</b>	serious and obvious violations of international commitments ratified/ approved by France, unilateral acts issued by an international organization on the basis of such commitments, laws, regulations or major threats or detriment to the public interest	everyone	a person who discloses, in a disinterested manner and in good faith an offence or misdemeanor, serious and obvious violation of an international commitment ratified/approved by France, a unilateral act issued by an international organization on the basis of such a commitment, law, regulation or major threat or detriment to the public interest, of which the person has personal knowledge	a report should be made in good faith, furthermore, a person who discloses a secret protected by law is not held liable, provided that such disclosure is necessary and proportionate to the protection of the interests in question, and the person intervenes in accordance with legally defined procedures and meets the criteria of the whistleblower definition. The intervention is made to preserve transparency, fight corruption and modernize economic life, however, the law does not cover facts, information or documents constituting national defense secrets, medical secrets or secrets in the lawyer-client relationship.
<b>NETHERLAND</b>	information about abusive practices in the workplace or other institution, which affect the public interest	in the private sector: current and former employees, as well as non-employees (e.g. present and former clients, trainees, etc.)  in the public sector: civil servants	in the private sector - a person suspected of abuse at their workplace or other company that affects the public interest (e.g. violation of law, risk to health, safety or the environment);  in the public sector: civil servants	suspicious should be based on reasonable grounds and be reported in good faith					

SKANSKA | Justyna Olszewska

T-MOBILE | Piotr Chmiel

*Whistleblowing, or bona fide disclosure of irregularities within an organization, is a very important process, as it is the main source of information about irregularities that threaten corporate values while being relevant to the public interest.*

**W**histleblowing gives the company an opportunity to correct mistakes before they escalate and threaten the company by causing image and financial losses and even civil or criminal liability. **Thus it is in the interest of the company to allow those who act in good faith to disclose irregularities found in the immediate professional environment.**

**Skanska** attaches great importance to information provided by whistleblowers, enabling them to report abuse. This issue is governed by Skanska's Code of Conduct, which reflects the business position and culture of the company, which has been established over 130 years, in which every employee, including a part-time employee or a worker under a civil-law contract, temporary employee and subcontractor or supplier, feels empowered to report disturbing situations. This can be done in several ways, also anonymously, by reporting a case to the supervisor, HR team member, lawyer, by email to the Ethics Committee or by phone over a dedicated Hotline managed by a third-party operator. Employees are informed about this during team meetings and mandatory training in the Code of Conduct, held every other year. We make sure that awareness of the possibility to report on infringements reaches our subcontractors and suppliers. In addition, it is the responsibility of every manager to ensure that any reported misconduct is duly considered. It is an element of ethical leadership that we are consistently building up with the superiors. The Skanska Ethics Committee examines each report and, depending on the outcome of the investigation, corrective or disciplinary actions are taken, which may lead, among other things, to termination of the contract.

**Skanska does not tolerate retaliation against an employee** who has reported suspected misconduct in good faith. This is defined by the No Retaliation Policy incorporated in the Code. For us, "good faith" means that to the best of the employees' knowledge and belief, everything they report is true and that they report everything they know. Every employee is required to report suspected retaliation they experience. Any employee who engages in retaliation will be subject to disciplinary action.

We strive to educate our employees on how to recognize of business-related risks. Skanska's Code of Conduct is supplemented by 12 policies specifically addressing areas defined by it, such as the Anti-Corruption Policy, the Conflict of Interest Policy, and the Corporate Hospitality and Gift Policy. Each employee is subject to mandatory training in their content.

**Skanska** conducts the risk assessment process every other year. Based on the process, employees working in high risk areas must to undergo training in the types of risk to which they are particularly exposed. They are therefore sensitive to any undesirable actions which they are required to report.

**For Skanska, a whistleblower** is person who supports the company's efforts to prevent corruption and abuse. The company is serious about every report and recognizes the need to regulate the position of people which disclose irregularities at the national level in Poland.

*Counteracting (preventing and detecting) abuses and corruption requires the use of many different arrangements, usually closely interrelated.*

**W**ithout aware of the existence of problems, they cannot be prevented, and therefore through their **Compliance Management Systems (CMS)** organizations, including companies, place emphasis on the introduction of points of contact for whistleblowers, i.e. witnesses or participants of undesirable situations. Confidentiality and anonymity are particularly important requirements for people willing to share their knowledge.

**T-Mobile Polska uses several channels** to collect such reports - direct ones, which, by their nature, do not ensure anonymity (personal contact, internal phone number) and indirect ones, with built-in mechanisms of confidentiality (email address, available also from outside the company), and anonymity (dedicated web portal, accessible to everyone). Although part of the communication channels may not provide anonymity to the person reporting an irregularity, the person's identification data is kept confidential for as long as possible owing to investigation in progress.

However, the preparation and launch of contact points is not sufficient and does not provide the appropriate effect within the organization. It is imperative to convince users of these tools that the risk they take (related to stereotypical reception of whistleblowing) will be balanced through actions taken to address potential irregularities. Therefore, when implementing **the CMS at T-Mobile Polska**, we simultaneously conducted communication and educational activities aimed at overcoming existing stereotypes.

As part of our information campaign, we conducted employee training courses for employees that included information on technical arrangements for reporting

irregularities, including the explanation of ways to help ensure different levels of confidentiality and anonymity for whistleblowers. Another element of the training was the presentation of the specific actions and rules that Compliance staff use when they receive a report from a whistleblower - the key rule is to treat each report with the same commitment and treat the whistleblower with respect. Also because our solution provides the opportunity of feedback even for anonymous whistleblowers, we are able to engage with the persons who report irregularities and explain the decisions taken in the proceedings.

Therefore, the whistleblowing solution is not just a matter of technology (although it is very important, especially if we want to ensure the anonymity of the whistleblower), but also the appropriate processes for dealing with incoming reports. In other words, it is not enough to just run the contact points. It is also necessary to constantly work on how to resolve issues reported.



**ERGO HESTIA** | Anna Szukalska, Piotr Bachurzewski, Marek Siemko, Mario Zamarripa

*In its 2015 report, the Polish Chamber of Insurance (PIU) notes that the value of insurance offenses disclosed in the insurance sector in Poland amounted to approx. PLN 180 million, of which over 80% were traffic abuses, which represents 1.16% of all claims paid (about 15.5 bn) in the non-life insurance market in 2015.*

In addition, account should be taken of the fraudulent losses caused through misconduct of associates and intermediaries of insurance companies.

**Employees of ERGO Hestia Group know what attitudes are not acceptable in the organization** and what behavior represents a violation of its values and ethical principles. To ensure that each employee to have the same level of expertise in this area, we have introduced the ERGO Hestia Fraud Prevention Rules. It is a clear procedure that seeks to prevent misconduct of employees and associates of ERGO Hestia Group, irrespective of their position. The rules of the procedure apply to both the prevention and detection of fraud. They also include ways to take appropriate measures to minimize losses and consequential damage. We have also established the position of Anti-Fraud Officer and Fraud Prevention Team to improve the management of anti-fraud measures and ensure a fast flow of information and responses to detected fraud cases.

**ERGO Hestia has a range of process and organizational arrangements** in place that provide employees with the opportunity to inform the Company about abusive practices that they witness or know about from other sources. These arrangements allow suspicions to be reported in person to the Anti-Fraud Officer or anonymously through a dedicated hotline voice mail. We also enable employees to report by email to a special address, managed by the Anti-Fraud Officer.

**The practical experience of ERGO Hestia is identical**

**to a large extent with the experience of other insurance companies operating in the market.** Fraud problems involve fairly numerous cases of internal misconduct of a small scale. They usually refer to the insurance intermediaries (who cooperate with ERGO Hestia) exceeding the limits of authority set by the organization, e.g.:

- signing an insurance contract without a power of attorney;
- providing for coverage in the insurance contract other than that covered by the GTC without notifying the insurer;
- insurance contract based on false data of the insured or data of deceased persons.

**In line with the arrangements adopted by ERGO Hestia, we respond to all signals** that reach us and consistently clarify the reported concerns, applying the same yardstick to all. At the same time, we protect whistleblowers who are the source of information. We do not tolerate any form of retaliation against anyone reporting suspected fraud.

Focusing on the area of claim reporting to insurance companies, it should be emphasized that the problem of claim fraud is experienced by all insurers. It is estimated that fraud or fraud attempt occurs in every tenth claim, and the value of unduly paid sums in this respect translates into the gross claims paid.

**The problem of dishonest customers** affects all kinds of losses and claims paid. The highest number of fraud cases is reported by ERGO Hestia in motor claims for vehicle damage and personal injury. The most common ones include:

- reporting damage or injuries that did not result from the circumstances declared;
- forgery of vehicle repair invoices;
- exaggerating the extent of damage;
- fictitious theft.

**At ERGO Hestia, the process of identifying the fraud begins at the stage of the conversation** with the client reporting a loss. This is possible thanks to specialized software that processes data describing each claim and the corresponding algorithms hidden in the system are able to identify the claims where fraud potential exists. In countering insurance crime, ERGO Hestia does not resort to advanced technology alone. Also adjusters who handle claims identify fraud risks. They report all concerns to a dedicated mailbox which is accessed by anti-fraud experts.

In the business model adopted by ERGO Hestia, additional tasks required to determine the circumstances of claims are also commissioned to third-party partners operating throughout Poland and, for some activities, also abroad.

An important change that could improve the effectiveness of combating insurance crime is the cooperation of

all insurance companies; cooperation with the Police is also important.

**What is no less important is the public at large should be made aware that the problem of claim fraud usually affects the car users themselves**, that is, all of us, and unduly paid claims translate into an increase in insurance premiums.

### UNITED NATIONS GLOBAL COMPACT

It was founded in July 2000 on the initiative of United Nations Secretary-General Kofi Annan. **The UN Global Compact** calls on the private sector worldwide to align their business strategies with universally accepted principles in the areas of human rights, labor, environment and anti-corruption, and to take action in support of UN goals. As a result, business can become a catalyst for positive market changes that have a favorable impact on people's lives and the environment. The United Nations Global Compact is the world's largest business initiative with over 13,500 members in 170 countries. **The UN Global Compact** coordinates activities within the UN Business Action Hub, where the United Nations works with business to implement the Sustainable Development Goals.

### GLOBAL COMPACT NETWORK POLAND

A national network operating under the official authorization of **the United Nations Global Compact**. The Polish network was launched in July 2001 together with the United Nations Development Program, and since 2013 is has been run and managed with the support of **the Global Compact Poland Foundation**. It is the secretariat of the UN Global Compact members, the UN Global Compact's project office, its local contact and information point. Its mission is to promote and implement global initiatives of the UN Global Compact in Poland and to respond to the unique challenges facing the private sector on the way towards sustainable development. All initiatives of the Global Compact Poland are conducted in partnership with the world of business.

### KNOW-HOW HUB

A think-tank and scientific foundation. Created by UNDP in Poland in 2011, it groups together experts who create and implement development projects. Currently, KHH also acts as **the Scientific Council to the Global Compact Network Poland**.



# STUDY EXPERTS AND MEMBERS OF THE STEERING COMMITTEE



**PIOTR CHMIEL** - One of the first people to build the Compliance Management System at T-Mobile Polska S.A. Previously worked as an auditor at PricewaterhouseCoopers, dealing with the analysis and design of control mechanisms in business processes and IT processes. His experience and skills are confirmed by the Certified Fraud Examiner (CFE), CIA (Certified Internal Auditor) and CISA (Certified Information Systems Auditor) certificates. He is President of the Polish ACFE Chapter (ACFE Chapter #183).



**MARIUSZ GACA** - Vice-President of the Management Board for Consumer Market since January 2017. He is also Chairman of the Ethics Committee of Orange Poland. Since 2011 he has served as Vice-President of Employers of Poland and Chairman of the Polish Section of the OECD's BIAC.



**DR MARCIN KILANOWSKI** - Vice President of Kujawsko-Pomorskie Employers' Organization Lewiatan and Vice-President of the Kujawsko-Pomorskie Voivodship Economic Assembly. Since 2013, Representative of the Polish Confederation Lewiatan for Human Rights and Business in the Corporate Social Responsibility Group of the Prime Minister of the Republic of Poland and the Ministry of Economy, and, since 2016, in the Sustainable Development and Corporate Social Responsibility Group.



**BEATA KOPYT** - Journalist, coordinator of special projects at Kulczyk Foundation. She deals with a key aspect of CSR - the relationship between man, his goals and needs, and business. Creates projects focused on building internal relationships, emphasizing the role and capabilities of the employee and inspiring business towards social change in its immediate and further environment.



**DR ROBERT LIZAK** - Doctor of Laws. Expert of the Central Anti-Corruption Bureau. Expert of the project NCN OPUS 11 „Compliance as a tool to counter corruption” implemented at the Institute of Legal Studies of the Polish Academy of Sciences. Former expert of the European Commission for the avoidance of conflicts of interest (2014-2016). Former Deputy Director of the Department of Financial Information of the Ministry of Finance (2016-2017). He specializes in ethics, comparative criminal law, compliance, white-collar crime and widely understood repressive law.



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## UNITED NATIONS GLOBAL COMPACT

*Business contributes to the SDGs by acting responsibly*



### PROGRAM ACTIVITIES SUPPORTING IMPLEMENTATION OF SDG TARGETS:

#### **16.5**

Substantially reduce corruption and bribery in all their forms

##### **16.5.2**

Proportion of businesses that had at least one contact with a public official and that paid a bribe to a public official, or were asked for a bribe by those public officials during the previous 12 months

#### **8.8**

Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment

##### **8.8.2**

Increase in national compliance of labour rights (freedom of association and collective bargaining) based on International Labour Organization (ILO) textual sources and national legislation, by sex and migrant status

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