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https://doi.org/10.26881/gsp.2026.1.14

The Benefits and Risks of Granting Legal Protection to Whistleblowers in the Process of Detecting Irregularities in the Financial Market

1. Introduction

There is no doubt that virtually all spheres of social life are subject to certain principles that have arisen in the course of social development.[1] With the most important of these, such principles are formalized and take legal form.[2] Directive 2019/1937 of the European Parliament and of the Council (EU) of 23 October 2019 on the protection of persons reporting breaches of Union law (OJ L 305, 26.11.2019, p. 17)[3] (hereafter: the Directive) addresses the obligation to comply with Union law. It explicitly refers to the legally protected interest of the legal order (a breach of which may result in damage to the public interest), understood as compliance with EU law, and provides EU law with indirect protection through the protection of persons reporting breaches (whistleblowers). It, therefore, is necessary to consider whether the Directive's objective, that is, preventing damage to the public interest by increasing whistleblower protection, is legally and factually justified. In particular, it is necessary to consider whether the effectiveness of EU law can be guaranteed through legal means (whether society can be compelled by law or statute to comply with the law or other statutes). However, this aside, from the perspective of business practice, it is crucial to identify the means of achieving this goal, the implementation of which entails costs for employers and the state.

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[1] P.L. Berger, T. Luckmann, *Społeczne tworzenie rzeczywistości*, transl. J. Niżnik, Warszawa 2010, pp. 31–32.

[2] M. Borucka-Arctowa, *O społecznym działaniu prawa*, Warszawa 1967, p. 11.

[3] The text of the Directive: https://eur-lex.europa.eu/legal-content/PL/TXT/PDF/?uri=CELEX:32019L1937 [accessed: 19.11.2024].

2. The Concept of a Whistleblower: The Personal and Material Scope of the Directive

The Directive's scope covers individuals working for a public or private organization or maintaining contact with such an organization in the context of their professional activities (paragraph 1 of the preamble to the Directive) who report breaches of EU law in the manner specified in the Directive. It applies equally to employees within the meaning of paragraph 1 TFEU, as well as to persons in non-standard employment relationships (paragraph 38 of the preamble to the Directive), and to natural persons who are not employees but who may play a key role in revealing infringements of EU law (paragraph 39 of the preamble to the Directive). It also applies to persons who, although not economically dependent on their professional activity, may experience retaliation for reporting infringements, such as volunteers or trainees (paragraph 40 of the preamble to the Directive). It further applies to employees, candidates for employment, and former employees (paragraph 39 of the preamble to the Directive). The legislator goes even further and the scope of the Directive also covers persons closely related to the persons indicated above and other entities professionally linked to the employer, such as clients, recipients of services, contractors, or representatives (paragraph 41 of the preamble to the Directive *in fine*). However, the protection provided for in the Directive does not apply to persons recognized as informants or registered as informants in databases managed by bodies existing at a national level (paragraph 30 of the preamble). As can be seen, the scope of protection guaranteed by the Directive is very broad. The validity of this solution can undoubtedly be justified by the employee's weaker economic position *sensu largo*. However, this does not seem possible with regard to contractors of the entity concerned in the report of infringement.

The subject matter of the Directive covers reports of infringements of EU law. Such a report must concern infringements of the areas of law that are mandatorily covered by the Directive, that is: public procurement; services, products, and financial markets; prevention of money laundering and terrorist financing; product safety and compliance; transport safety; environmental protection; radiological protection and nuclear safety; food and feed safety; animal health and welfare; public health; consumer protection; protection of privacy and personal data; security of networks and information systems; the financial interests of the European Union; the European Union's internal market, including competition and state aid rules and corporate taxation (paragraphs 6–20 of the preamble to the Directive). The subject matter may be extended by the employer to other areas, with the exception of: national security; protection of classified secrets; professional confidentiality; and confidentiality of judicial deliberations; and rules of criminal procedure (Article 3(2) and (3) of the Directive).

Next, it is necessary to specify what the legislator defines as an infringement of EU law. Article 5(1) of the Directive specifies that "infringements" means unlawful acts or omissions that concern EU acts and areas covered by the material scope of the

Directive, or are contrary to the subject matter or purpose of the provisions contained in EU acts and areas covered by the material scope of the Directive. It should be added that the temporal scope of infringements covers both those that have already occurred and future infringements that are very likely to occur, as well as attempts to conceal infringements. However, protection is not granted to someone reporting information that is already fully publicly available (paragraph 43 of the preamble to the Directive). Furthermore, in paragraph 43 of the preamble to the Directive, the legislator interprets the concept of infringements in favour of a subjective concept, thus assuming that infringements are acts or omissions that the reporting person has reasonable grounds to believe constitute infringements. However, unsubstantiated gossip and rumours do not constitute infringements (paragraph 43 of the preamble to the Directive *in fine*).

Once it is clear who can report and what a report should concern, it is necessary to indicate how a report may be made. First, a report can be made with disclosure of the reporting party's personal details or anonymously (Article 6(2) and (3) of the Directive). The Directive specifies three types of reporting of breaches of EU law: internal, external, and public disclosure.

Internal reporting is done via an employer's internal entity, via an external entity authorized by the employer to receive and verify reports according to procedures established by the employer, or via an external entity authorized by the employer. The creation of an internal reporting procedure or the conclusion of an agreement with an external entity in this respect is obligatory for employers employing more than fifty employees, as well as for legal entities in the public sector. (According to Article 8(9) of the Directive, Member States may exempt from the obligation referred to in paragraph 1 municipalities with fewer than 10,000 inhabitants or employing fewer than fifty employees, or other entities referred to in the first subparagraph of this paragraph employing fewer than fifty employees.) However, internal reporting procedure is obligatory for employers in the field of financial services, products, and markets, and in the fields of prevention of money laundering and terrorist financing, transport safety, and environmental protection. These fields fall within the scope of application of EU legal acts listed in Parts I.B and II of the Annex to Directive 2019/1937 of the European Parliament and of the Council (EU) of 23 October 2019 on the protection of persons reporting breaches of Union law.

The institution of internal reporting must be negatively assessed. First, the obligation to establish internal reporting channels is mandatory for the entities indicated above, but their use by whistleblowers is optional. The legislator is aware of the questionable effectiveness of reporting EU violations through internal channels, writing: "It may be that internal channels do not exist or that they were used but did not function properly, for example, when a report was not handled with due diligence or within a reasonable time, or appropriate action was not taken to address the violation despite confirmation of the violation in the relevant internal investigation" (paragraph 61 of the preamble to the Directive). There are also cases where the use of internal channels could not reasonably be expected to function properly. These include, in particular, situations in which persons reporting have reasonable grounds to believe that they will

experience retaliation for reporting, including as a result of a breach of confidentiality, or that the competent authorities would be better equipped to take effective action to address the violation. Competent external authorities would be a better choice if, for example, a person ultimately responsible in a work-related context is involved in an infringement, or if there is a risk of concealing the infringement or concealing or destroying evidence; more generally, if the effectiveness of the investigations conducted by the competent authorities could be jeopardized, for example in the case of reported cartel agreements or other infringements of competition rules; or if the infringement requires urgent action, for example to protect the health and safety of persons or the environment (paragraphs 61–62 of the preamble to the Directive). Therefore, one must recognize that internal reporting will be a façade institution and *de facto* not used in practice. Second, internal reporting represents a transfer of the costs of achieving the objective of the Directive to private entities, that is, to employers. The institution of internal reporting and the bodies established for its implementation are intended to relieve the burden on public administration bodies. This solution creates a fictional reality in which legal entities impose sanctions on themselves for violating EU law. Given the above, it should be concluded that internal reporting will not occur in practice, and therefore it will be a dead letter, generating only unnecessary costs for employers.

External reporting is made via a relevant authority. In Poland, the draft Act on the Protection of Persons Reporting Violations of the Law of 14 October 2021 (hereafter: the Draft Act) implementing the EU Directive, designates the Commissioner for Human Rights (*Rzecznik Praw Obywatelskich*) as the central authority, while the public authority receiving reports regarding competition and consumer protection rules is the President of the Office of Competition and Consumer Protection (*Prezes Urzędu Ochrony Konkurencji i Konsumentów*), as well as other authorities receiving external reports regarding violations in the areas falling within the scope of these authorities' competences.[4]

The procedure for reporting infringements of EU law is identical for both internal and external channels. The relevant authority receiving the report acknowledges receipt within seven days of receiving it and follows up the report. This is defined as the action taken by the recipient or competent authority to assess the veracity of the allegations contained in the report and, where appropriate, to address the reported infringement, including through internal investigations, clarification steps, prosecutions, recovery measures, or closure of the procedure (Article 5(12) of the Directive). Follow-up should be undertaken within a reasonable period, but no longer than three months for internal channels (paragraph 58 of the Directive's preamble) and, in duly justified cases, within six months (Article 11(1)(d) of the Directive).

The final type of reporting is public disclosure. This involves making information about an infringement publicly available, for example, via social media. However,

[4] The draft Act on the Protection of Persons Reporting Violations of the Law of 14 October 2021, https://www.legislacja.gov.pl/projekt/12352401/katalog/12822857 [accessed: 19.11.2024].

communicating information about a possible infringement directly to the press does not constitute public disclosure (Article 15(3) of the Directive). The grounds for protection for a whistleblower reporting through public disclosure cover two situations. The first involves having made an internal or external report, but in response to this no appropriate action was taken within a reasonable time. The second possibility involves making a public disclosure without exhausting internal or external reporting procedures if the whistleblower has reasonable grounds to believe that the infringement may pose an immediate or manifest threat to the public interest, for example, in the event of an emergency or a risk of irreparable harm. Another possibility is when, in the event that an external report is made, the whistleblower will be at risk of retaliation, or there is little likelihood of the infringement being effectively addressed because of the specific circumstances of the case, such as the possibility of evidence being concealed or destroyed, or the possibility of collusion between the relevant authority and the perpetrator of the infringement, or, indeed, the authority's involvement in the infringement (Article 15(1) of the Directive). Reporting through public disclosure must be assessed positively. On the one hand, it encourages authorities to process reports in a timely manner, while on the other, it imposes on whistleblowers the obligation to demonstrate reasonable grounds for their allegations, as specified in Article 15(1) of the Directive. However, the safeguards provided for this institution are surely excessive.

3. Legal Protection for the Whistleblower

The conditions for granting a whistleblower protection are that there has been a report of an infringement of EU law that is within the scope of the Directive's of subject matter, as described in the Directive (internal reporting, external reporting, or public disclosure) by an entity covered by the personal scope of the Directive. Regarding the personal scope of the Directive, it should be noted that at the time of reporting, the whistleblower must have reasonable grounds to believe that the reported conduct constitutes a violation of EU law and that it is true (Article 6(1) of the Directive).

The whistleblower protection measures include:

1) a prohibition of any retaliatory action against the whistleblower, understood as any direct or indirect action or omission resulting from the report or public disclosure, which violates or may violate the rights of the reporting party or causes or may cause harm to the reporting party, including in connection with obtaining the reported information;
2) the possibility of seeking compensation in the event of retaliatory action taken against a whistleblower, with the presumption that the harm caused to the whistleblower by the employer or entity concerned in the report arose as a result of retaliatory action (reversal of the burden of proof); paragraphs 93–94 of the preamble to the Directive;

3) the granting of interim protection measures during legal proceedings;
4) the prohibition of contractual waiver of the right to report in accordance with the procedures described in the Directive (Article 24 of the Directive);
5) the exclusion of liability for defamation (extra-Codal justification) if the subjective and objective conditions for reporting are met in accordance with the provisions of the Directive (paragraph 97 of the preamble to the Directive);
6) immunity from liability for breach of trade secrets, copyright, or personal data protection (paragraphs 97–98 of the Directive's preamble).

These protection measures are not available to a whistleblower if:

1) the report is unfounded because the actions so reported do not constitute a violation of EU law and there is no basis to consider such allegations as substantiated;
2) the information reported is false and there is no basis to consider it to be true;
3) the information reported is already publicly known;
4) the information reported constitutes unsubstantiated gossip or hearsay;
5) the form of reporting by public disclosure constitutes an insult.

The Directive requires national legislators to introduce effective, proportionate, and dissuasive sanctions against natural or legal persons who: obstruct or attempt to obstruct reporting; retaliate against whistleblowers; initiate burdensome proceedings against whistleblowers; or violate the obligation to maintain the confidentiality of the identity of a reporting persons. In the Polish Draft Act, the legislator proposes sanctions for the above conduct at the level of a fine, restriction of liberty, or imprisonment for up to three years. The same penalty applies to an entity that has not followed the mandatory internal reporting procedure (Articles 56–58 and 60 of the Draft Act).

4. Types of Financial Market Irregularities

Financial irregularities are the intentional misrepresentation or omission of information related to financial transactions.[5] They include, *inter alia*, embezzlement, fraud, misappropriation of assets, and data falsification.[6] Such practices contribute to the emergence of various types of social tensions, material losses, devaluation of the financial system, and consequently, disruptions in its development[7] and can result in criminal liability.[8]

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[5] I. Stolarczyk, *Oszustwo klasyczne i tzw. oszustwo gospodarcze w polskim prawie karnym*, PhD Thesis, Uniwersytet Śląski, Katowice 2018.

[6] L. Drabik, A. Kubiak-Sokół, E. Sobol, *Słownik języka polskiego PWN*, Warszawa 2019.

[7] R.K. Merton, *Sociological theory and social structure*, transl. E. Morawska, J. Wertenstein-Żuławski, Warszawa 2002.

[8] *Reporting Financial Irregularities Policy*, 2008, https://compliance.gwu.edu/reporting-financial-irregularities-policy [accessed: 12.12.2024].

Irregularities that can be observed in the financial market include[9]:

1) stock market manipulation (transactional);
2) dissemination of distorted information about a company (information manipulation);
3) illegal activities affecting the price of financial instruments;
4) false or misleading transactions;
5) price fixing and sham transactions: placing orders or concluding transactions that are or may be misleading as to the actual demand, supply, or price of a financial instrument; or placing orders or concluding transactions that cause an unnatural or even artificial setting of the price of financial instruments.

Activities that bear features of the manipulation of financial instruments can be observed in market trading. A financial instrument is understood as a contract that creates financial assets for one party to a transaction involving a given financial instrument, and financial liabilities or equity instruments for the other.[10] In addition to the dissemination of false or unreliable information, irregularities also include placing orders or concluding transactions that are misleading or likely to be misleading as to the actual demand, supply, or price of a financial instrument, and that cause artificial price formation of one or several financial instruments.

Irregularities in the financial market also include the disclosure, dissemination, transfer, and use of confidential information by an unauthorized person.[11] Another violation that can be observed, particularly in investment or brokerage activities, is conducting activities in the area of trading in financial instruments without the required authorization. It is prohibited to invest funds in securities, money market instruments, or other property rights without prior authorization. Conducting activities in this area is reserved exclusively for investment funds.[12]

In the banking sector, irregularities also include conducting unauthorized activities involving the collection of funds from other natural persons, legal entities, or organizational units without legal personality, for the purpose of granting loans, borrowing money, or otherwise exposing these funds to risk. In Polish, the terms "*bank*" or "*kasa*" may only be used in the designated name of a bank, to describe the activities of a bank, or to advertise a bank.[13] Manipulative actions that exploit the excessive trust of a potential client, that are apparent in the unlawful use of the designation "*bank*" or "*kasa*," are a crime.

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[9] S. Huczek, "Manipulacja instrumentami finansowymi," *eBiuletyn NewConnect*, 2013, https://www.ncbiuletyn.pl/czytaj/1645-manipulacja-instrumentami-finansowym-2-2.html [accessed: 20.08.2025].

[10] W. Stankiewicz, *Ekonomika instytucjonalna. Narodziny i rozwój*, Warszawa 2012, p. 82.

[11] Art. 180 of the Act of 29 July 2005 on Trading in Financial Instruments, consolidated text: *Journal of Laws* of 2024, item 722.

[12] Art. 287 of the Act of 27 May 2004 on Investment Funds and Management of Alternative Investment Funds, consolidated text: *Journal of Laws* of 2026, item 60.

[13] Art. 3 of the Act of 29 August 1997 – Banking Law, consolidated text: *Journal of Laws* of 2026, item 38.

Among dishonest market practices used by banks and financial intermediaries, which are common and harmful to consumers, are misleading practices regarding the scope of their business, in the manner of advertising the products and services offered, and regarding the fees for financial services provided.[14] These types of irregularities include sales practices that exert pressure on consumers. These practices can manifest themselves by assuring the customer that the product offered will be available only for a short time or only to a specific group of customers, in order to persuade them to make a quick decision. Such practices create a false sense among customers of belonging to an elite group of clients and limit the customers' ability to make rational choices.[15]

The occurrence of specific irregularities depends, *inter alia*, on the type of financial market entity, as irregularities related to unauthorized transactions in customer accounts and credit card use are unique to banks. However, manipulation and falsification of financial statements and internal abuses can also be associated with leasing companies, among other entities. Lending institutions, in turn, are primarily exposed to problems related to credit and loan fraud. It should be noted, however, that not only intermediaries but also clients of financial institutions engage in unfair practices. Credit and loan fraud is becoming increasingly common among clients of financial institutions: compared to 2018, the number of such frauds increased by approximately 50% in relation to leasing companies and by approximately 60% in relation to banks.[16] Public companies, on the other hand, may manipulate data at the levels of both individual and consolidated reporting or deliberately delay the publication of their financial reports.

5. Potential Benefits of Introducing Legal Whistleblower Protection

The appropriate structure of market infrastructure, subject to legal regulations, determines the development and functioning of the financial market and, consequently, the entire economy. Whistleblowers are generally guided by the public interest and a moral imperative to raise awareness of instances of non-compliance with legal provisions and ethical principles by other entities. The institution of whistleblowers, or individuals reporting irregularities, has gained increasing attention in the context of legal protection and ethics.[17] James Dunganetal, Adam Waytz, and Liane Young interpret whistleblowers' actions as acts of protest against a lack of respect for ethics.[18]

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[14] *Nieuczciwe praktyki rynkowe. Przewodnik*, Warszawa 2018.

[15] P. Zielonka, *Giełda i psychologia. Behawioralne aspekty inwestowania na rynku papierów wartościowych*, Warszawa 2011, p. 47.

[16] *Nadużycia na rynku finansowym. Raport z badania*, 2019, https://www.zpf.pl/pliki/raporty/raport_naduzycia_2019.pdf?utm_source=chatgpt.co [accessed: 12.12.2024].

[17] M. Klinowski, "Sygnaliści a przestępstwo zniesławienia," *Przegląd Prawa Publicznego* 2022, vol. 183, no. 6, pp. 7–27.

[18] J. Dunganetal, A. Waytz, L. Young, "The Psychology of Whistleblowing," *Current Opinion in Psychology* 2015, vol. 6, pp. 129–133.

Introducing legal protection for whistleblowers, or individuals reporting irregularities in the workplace, can be beneficial. Introducing protection for whistleblowers can contribute to increased accountability within the prevailing organizational culture of a given company, as it will be forced to respond to reports of abuse.[19] Whistleblower protection can increase a sense of security and encourage reporting irregularities, thus improving organizational culture. Entities that have an effective whistleblower protection mechanism in place can strengthen their reputation as socially responsible organizations that refrain from activities that lead to infringements and violate the rights of other market participants.

It should be noted that the introduction of whistleblower protection provisions is of a preventative nature, as new regulations can support reporting decisions and counteract unfair practices, as well as reduce the risk of abuse.[20] Elżbieta Ostrowska,[21] citing the results of her research on ethics in the financial market, emphasizes the importance of preventive measures in ensuring financial market security. Reporting irregularities at an early stage makes faster remedial action possible, which, from an economic perspective, can also contribute to minimizing the financial and reputational costs incurred from detecting irregularities.[22] Hervé. Stolowy, Yves Gendron, Jodie Moll, and Luc Paugam, in a discussion of whistleblower activities in terms of ethics, point out that in the long term, limiting the activities of dishonest entities will benefit everyone: investors, organizers, and the market supervisors.[23]

The case law of the European Court of Human Rights confirms the need to monitor the maintenance of standards for the protection of freedom of speech and the right to freedom of expression, as well as the need to protect individuals who report irregularities.[24] Ensuring the proper functioning of the financial market obliges the legislator to introduce effective tools to counteract irregularities in the institution of whistleblower protection. On the one hand, the legislature should ensure the safety of those who report irregularities, and on the other, minimize the risk of abuse of power by a whistleblower. Therefore, it would be good practice to organize specialized training, in the first place, for individuals responsible for handling findings related

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[19] A. Wojciechowska-Nowak, "Skuteczna ochrona prawna sygnalistów. Perspektywa pracodawców, związków zawodowych oraz przedstawicieli środowisk prawniczych," *Przegląd Antykorupcyjny* 2016, vol. 7, no. 2, pp. 17–35.

[20] H. Szewczyk, *Whistleblowing: Zgłaszanie nieprawidłowości w stosunkach zatrudnienia*, Warszawa 2020, p. 21.

[21] E. Ostrowska, *Etyka na rynku finansowym, homo oeconomicus i homo neuropsychologicus*, Gdańsk 2022, p. 178.

[22] A. Kantor-Kilian, "Organizacja modelu kanałów sygnalizowania nieprawidłowości w świetle dyrektywy 2019/1937" [in:] *Ochrona sygnalistów. Regulacje dotyczące osób zgłaszających nieprawidłowości*, eds. B. Baran, M. Ożóg, Warszawa 2021, p. 35.

[23] H. Stolowy, Y Gendron, J. Moll, L. Paugam, "Building the legitimacy of whistleblowers: amulti-case discourse analysis," *Contemporary Accounting Research* 2019, vol. 36, no. 1, pp. 7–49.

[24] J. Besz, K. Sałdan, "Europejski Trybunał Praw Człowieka: 6 kryteriów ochrony sygnalisty," *DZP*, April 2021, https://www.dzp.pl/blog/compliance/europejski-trybunal-praw-czlowieka-6-kryteriow-ochrony-sygnalisty [accessed: 19.11.2024]; judgment of the European Court of Human Rights of 21 October 2014, Application No. 73571/10, *Matúz v. Hungary*, HUDOC.

to reported irregularities, and in the second place, for individuals who may become potential whistleblowers or take retaliatory actions.[25]

Good market practices determine the proper functioning and credibility of the financial market. From the perspective of the proper functioning of the financial market, special attention should be paid to professions that facilitate establishing relationships with investors, namely investment advisors, securities brokers, financial advisors, auditors, and financial analysts. *Inter alia*, the following are of key importance in Poland: the Rules of Professional Ethics for Brokers and Advisors (*Zasady etyki zawodowej maklerów i doradców*), the Code of Ethics and the Rules of Professional Ethics for Statutory Auditors (*Kodeks etyczny, zasady etyki zawodowej biegłych rewidentów*), and the Standards of Professional Conduct (*Standardy profesjonalnego postępowania*).[26]

6. Threats Arising from the Legal Protection of Whistleblowers

The effectiveness of legal norms depends on many non-legal factors.[27] The Directive attempts to enforce the application of existing law by creating a new law. This is a response to the non-application of EU law or its insufficient application to achieve its objectives. It should be recognized that the Directive sets the primary goal of compliance with legal norms, while simultaneously annihilating social values such as loyalty, mutual trust, and respect. The question therefore arises whether the value of respect for the law is higher than the moral values that build social bonds and are the foundation of the proper functioning of society. In other words, whether the primary goal of EU law, which is to ensure well-being, should be achieved through legal or extra-legal means.

One element of the effectiveness of law is its specificity. The absence of this characteristic of a legal norm, and, in particular, the introduction of general clauses, undermines such specificity, creating opportunities for its interpretation, thus undermining the principle of legal certainty and trust in the law, which results in its non-application, or rather its avoidance, that is, the creation of factual situations that do not meet the conditions for the application of a given law. The internationalization of a legal norm and its subject should not be achieved through legal channels. If the law is respected to a lesser degree than is necessary to achieve its objectives, the introduction of another legal norm whose application contradicts fundamental, universal moral norms will not increase the effectiveness of that law. However, it

[25] E. Milczarek, "Warunki skuteczności ochrony sygnalistów – uwagi na tle dyrektywy 2019/1937," *Ruch Prawniczy, Ekonomiczny i Socjologiczny* 2022, vol. 84, issue 2, pp. 113–114.

[26] CFA Society Poland, *Regulacje i kwestie etyczne rynku finansowego*, https://cfapoland.org/p/uczelnie-i-edukacja/akademie [accessed: 24.12.2024].

[27] W. Dziedziczak, "Wpływ sankcji prawnych i moralnych na skuteczność prawa," *Studia Iuridica Lublinensia* 2015, vol. 24, no. 1, p. 86.

may contribute to the breakdown of social bonds and excessive formalization of the employment relationship (*sensu largo*). Granting employees the right (but not the obligation) to report irregularities related to an employer's operations, introduces reciprocal scrutiny into society, which surely does not foster the establishment of social bonds.

Law will never be a perfect tool for eliminating irregularities in the functioning of society. It is impossible to encompass all possible situations within the scope of legal norms. In many factual situations that *de jure* constitute a violation of the law, other norms (general clauses) will apply, giving moral values primacy over legal norms. Therefore, the Directive's entitlement of employees (*sensu largo*) to report a violation of EU law by, in principle, their employer is a valid solution, but one that is overly formalized and does not require the introduction of a separate normative act dedicated to this issue. Under Polish law, Article 213 § 2 item 2 of the Penal Code provides for the exclusion of criminal liability for accusing another person of conduct or characteristics that may degrade them in public opinion or expose them to the loss of trust necessary for a given position, profession, or type of activity, if the perpetrator publicly raises a true allegation intended to defend a socially justified interest. In the employment relationship, employee protection against discrimination (including on the grounds of reporting an employer's violation of the law to the appropriate authority) is regulated in Chapter IIIa of the Labour Code. The EU regulation introduced, therefore, is unnecessary in that it introduces a new act that largely duplicating existing legal norms.

As mentioned above, the institution of internal reporting must be criticized. Its application in business practice is questionable, particularly given its optional nature on the part of the whistleblower. If an employee (*sensu largo*) has doubts (justified and considered to be true) about an employer's conduct, they may also have the same doubts about compliance with the position on the part of a person employed by that employer or on the part of persons in another institution employed to receive and process reports of infringements of EU law.

The legislator has, in fact, anticipated the threat to employers resulting from granting whistleblowers enhanced legal protection, by imposing sanctions identical to those for individuals violating whistleblower rights granted under the Directive (paragraph 100 of the preamble to the Directive). In Article 59 of the Draft Law, the Polish legislator stipulates that anyone who reports or publicly discloses false information is subject to a fine, restriction of liberty, or imprisonment for up to three years. It is worth noting that in such a case, protection from criminal liability for defamation will also be excluded (Article 213, Section 2 of the Penal Code).

7. Conclusions

Different groups of entities operate in the financial market, including issuers, financial intermediaries, and investors. Compliance with legal regulations and ethical principles is a fundamental factor in stimulating the proper functioning of the financial market. When they occur, irregularities pose a serious threat not only to the market itself, but also to the economy and society. Regulatory actions should take into account the fact that the scope of protection affects market discipline and the attitude of financial market entities towards responsibility and accountability for their choices. Whistleblowers, thanks to their access to inside information, can play a key role in exposing irregularities and in increasing transparency in the financial market. Strengthening the role of whistleblowers can contribute to increased market transparency and a reduction in illegal activities. At the same time, the institution of internal reporting must be criticized. Its application in business practice seems questionable, especially given its optional nature on the part of the whistleblower. If an employee (*sensu largo*) has subjectively justified doubts about an employer's conduct, they may also have the same doubts about compliance with the position of a person employed by the employer or on the part of persons in another institution employed to receive and process reports of infringements of EU law.

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Summary

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Benefits and Risks Resulting from Granting Legal Protection to Whistleblowers in the Process of Detecting Irregularities in the Financial Market

On 23 October 2019, the European Parliament and the Council (EU) adopted Directive 2019/1937 on the protection of persons reporting breaches of EU law. Its aim is to improve the enforcement of EU law and policies by increasing the ability to effectively detect infringements of the law. The means to achieve this goal is to guarantee protection to individuals who, by virtue of to their work (*sensu largo*), have information indicating a violation of EU law and therefore something harmful to the public interest, and report these violations or disclose them publicly (whistleblowers). This article is an attempt to answer the question whether regulating the issue of whistleblower protection is legally and factually justified in business transactions, and whether this protection can contribute to more effective detection of irregularities on the financial market. The analyzed issue of whistleblower protection belongs to economic and legal studies. Our research was carried out using the formal-dogmatic method. As a result of our analysis, we conclude that strengthening the role of whistleblowers may contribute to increasing market transparency and to limiting illegal activities. At the same time, the institution of internal reporting

must be criticized. Its application in the practice of business transactions is doubtful, especially since it is optional on the part of the whistleblower to report any irregularity.

Keywords: security, irregularities, financial market, whistleblower.

Streszczenie

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Korzyści i zagrożenia wynikające z przyznania prawnej ochrony sygnaliście w procesie wykrywania nieprawidłowości na rynku finansowym

Parlament Europejski i Rada (UE) w dniu 23 października 2019 r. przyjęły dyrektywę 2019/1937 w sprawie ochrony osób zgłaszających naruszenie prawa Unii Europejskiej. Jej zasadniczym celem jest wzmocnienie egzekwowania prawa i polityk UE poprzez zwiększenie skuteczności wykrywania naruszeń prawa. Instrumentem służącym do realizacji tego celu jest zagwarantowanie ochrony jednostkom, które w związku z wykonywaną pracą (*sensu largo*) uzyskały szkodliwe dla interesu publicznego informacje o naruszeniu prawa unijnego i zgłaszają te naruszenia lub ujawniają je publicznie (sygnaliści). Artykuł stanowi próbę odpowiedzi na pytanie, czy uregulowanie kwestii ochrony sygnalistów znajduje uzasadnienie prawne i faktyczne w obrocie gospodarczym, a także czy ochrona ta może się przyczynić do skuteczniejszego wykrywania nieprawidłowości na rynku finansowym. Poddane analizie zagadnienie ochrony sygnalistów należy do obszaru nauk ekonomicznych oraz prawnych. Badania przeprowadzono przy użyciu metody formalno-dogmatycznej. W rezultacie sformułowano wniosek, że wzmocnienie roli sygnalistów może się przyczynić do zwiększenia przejrzystości rynku i ograniczenia działań niezgodnych z prawem. Jednocześnie należy krytycznie odnieść się do instytucji zgłoszenia wewnętrznego. Jej stosowanie w praktyce obrotu gospodarczego wydaje się wątpliwe, w szczególności, że jej wybór przez sygnalistę ma charakter fakultatywny.

Słowa kluczowe: bezpieczeństwo, nieprawidłowości, rynek finansowy, sygnalista.