



Legal alert

Whistleblowers officially in the name of the Act – what other changes are in the bill?

On 6 March, the latest bill regarding whistleblowers was published on the website of the Government Legislation Centre. The term “person reporting violations of law” (Polish: osoba zgłaszająca naruszenia prawa) has been officially replaced by “whistleblower” (Polish: sygnalista). As stated in the explanatory memorandum, this change is dictated by the presence of the term “whistleblower” in the social perception of the issue of reporting violations of law.

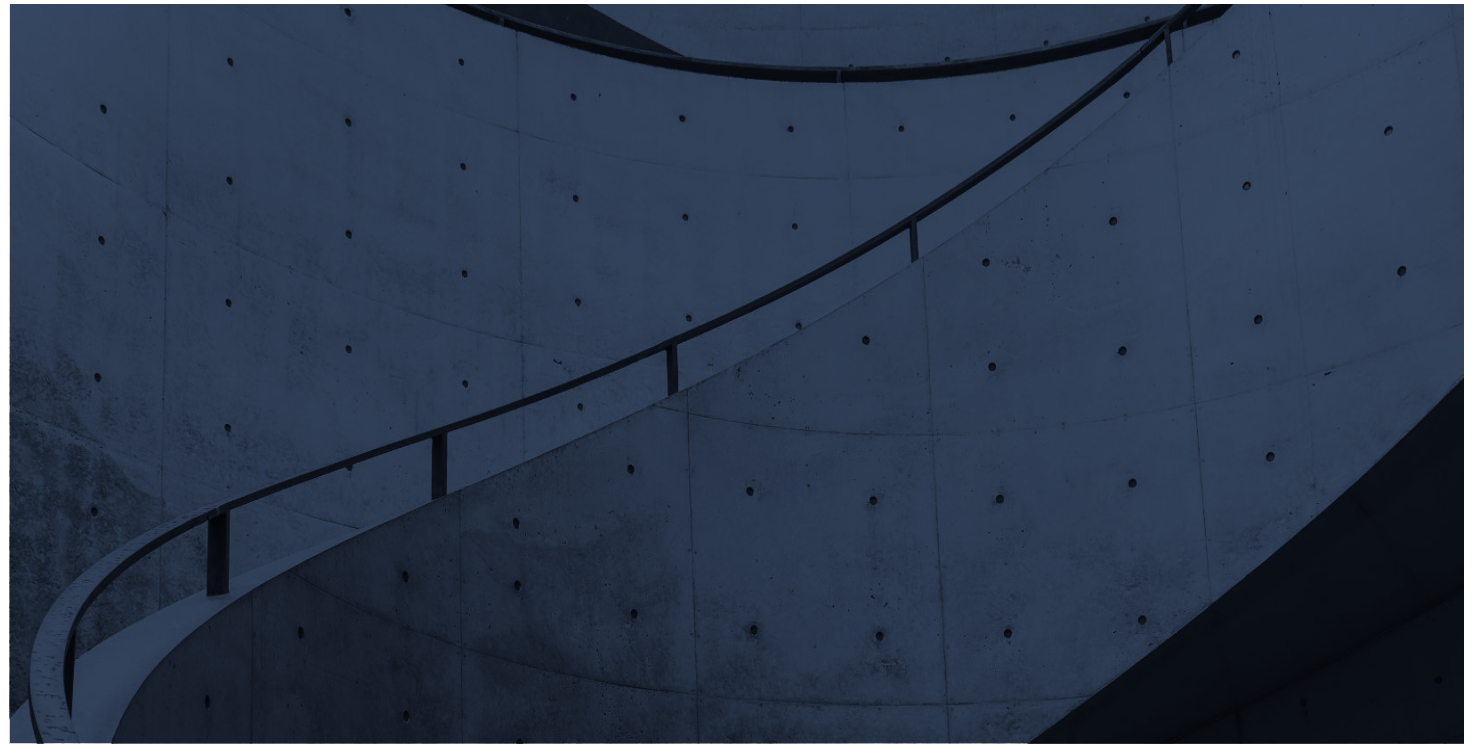
What other changes, apart from the name itself, does the published bill contain?

New areas of reporting violations

Article 3 of the bill sets out four new areas of violations covered by the scope of the Act: **human and civil liberties and rights, corruption, human trafficking and... labour law**. This is a big change from the previous solutions, whereby either the possibility of reporting in the individual interest of the employed person was completely excluded, or it was left to the entity establishing the procedure. This means that persons reporting incidents such as bullying or discrimination will be subject to all of the protective mechanisms set out in the Act.

New exemptions to the application of the Act

Article 5(2) of the draft bill contains additional areas to which the Act will not apply. In addition to defence and security contracts, **offset agreements** or measures taken to protect essential or essential interests of state security under Article 346 of the TFEU are to be exempted.



Greater clarity on the issue of anonymous reporting

Previous draft bills somewhat sidestepped the issue of anonymous reporting, limiting the provision to stating that only anonymous whistleblowers whose identity has been disclosed and have experienced retaliation are afforded protection. **The draft bill of 26 February directly indicates that legal entities, the Commissioner for Human Rights (Polish: Rzecznik Praw Obywatelskich, RPO) and public authorities may accept reports made anonymously (they do not have to).** If they allow such reports, the provisions of the Act apply to them, if not, the application of the Act is excluded.

Importantly, in Article 7(3) of the Act, the legislator has additionally indicated that **in the case of accepting anonymous reporting, some of the provisions relating to external reporting do not apply** (e.g. the Commissioner for Human Rights is not required to inform the whistleblower that the notification has been forwarded or it was not forwarded to another public authority; the public authority does not provide feedback to the whistleblower; the Commissioner for Human Rights / public authority does not acknowledge the receipt of the report to the whistleblower or inform the whistleblower that the report has been left unprocessed).

In turn, in the private sector, each entity will be required to **determine the procedure for dealing with information on violations of law reported anonymously through an internal notification procedure.** Therefore, it seems that it will be acceptable to establish analogous rules for internal reporting at the corporate procedure level, as the legislator has provided for external reporting in the Act.

Clarification of damages

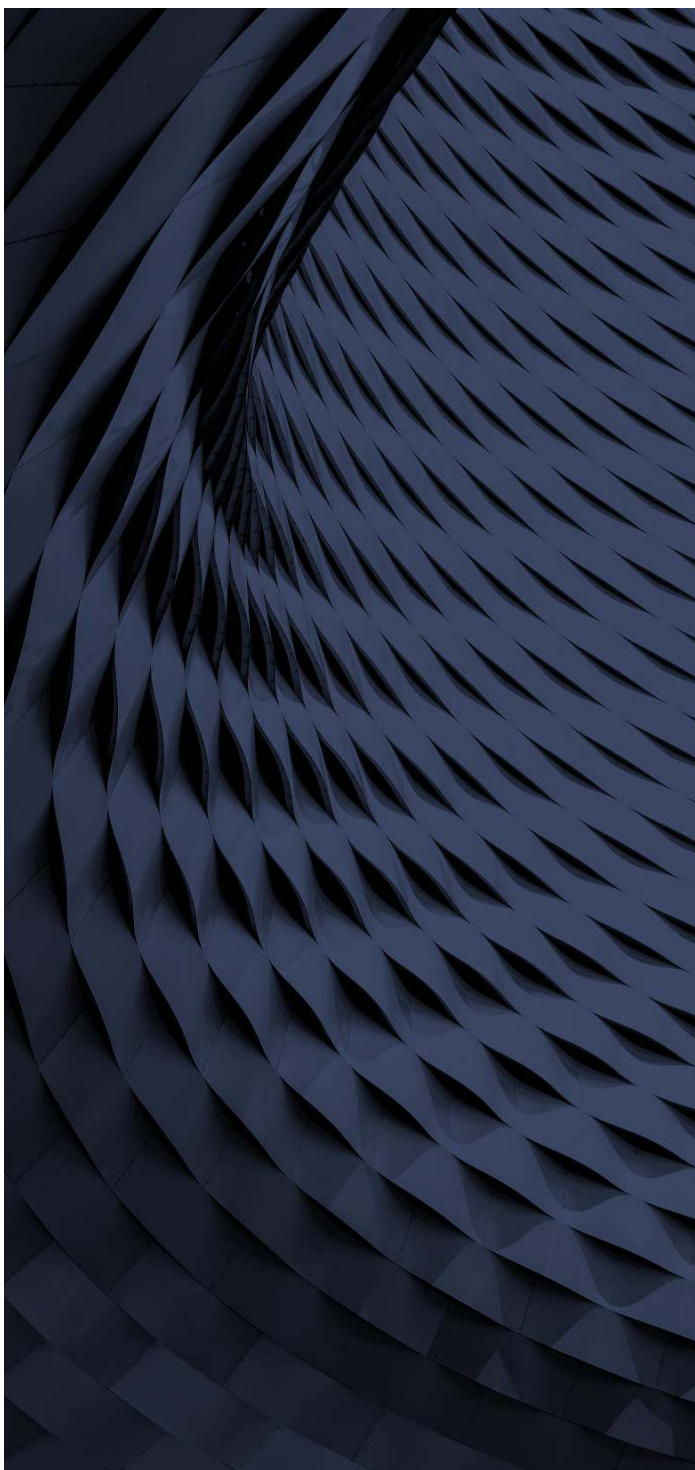
Retaliatory actions against whistleblowers under the draft bill will not only entail criminal liability, but also financial consequences. The current draft bill explicitly grants whistleblowers the right to **both damages in an amount not lower than 12 times (!) the average monthly salary for the previous year and compensation for any non-financial loss (pain and suffering).** In 2023, such average monthly salary amounted to PLN 7,155.48, which means that **in 2024, the least amount of compensation a whistleblower would receive would be as much as PLN 85,865.76.**

Headcount threshold

In Article 23 of the Act, the legislator clarified the calculation of the headcount threshold the exceeding of which necessitates the application of the Act. According to this Article, **the provisions on internal notifications apply to a legal entity which, as at 1 January or 1 July of a given year, gainfully employs at least 50 persons.** The bill makes it clear that this number includes full-time employees or persons performing paid work on a basis other than employment if they do not employ other persons for such work, regardless of the basis of employment.

Amendments to the Act on the Commissioner for Human Rights and to the Act on free legal aid

The new draft bill provides for two changes to the existing legislation. Firstly, the Commissioner for Human Rights is to be required to **submit a report on the implementation of the Act to the Parliament and the Senate once every two years.** Secondly, **a person wishing to report a violation of the law will be entitled to free legal aid and free citizen advice.**



Longer vacatio legis

In the last alert, we reported that the legislator reduced the time for the preparation for the implementation of whistleblower protection obligations. The new draft bill stipulates that the Act (and the obligations that it provides for) will enter into force **three months** after the date of publication. The longer transition period only applies to **external reporting** – in this respect, the legislator has provided six months to adapt to the change in the law. **The private sector, on the other hand, must be ready within three months of the promulgation of the Act.**

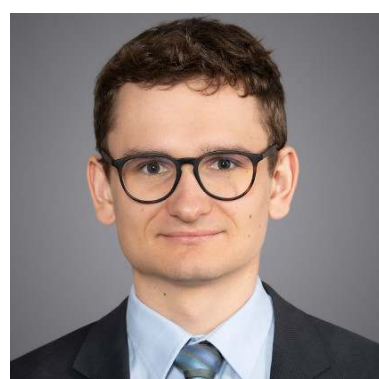
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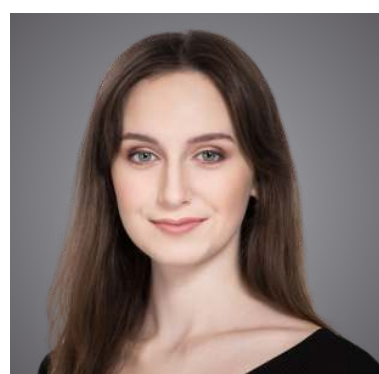
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