

European Union model of whistleblowing

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Abstract: In October 2019, the European Union adopted the Directive on protecting persons reporting breaches of European Union law, commonly known as the „Whistleblower Protection Directive” (EU Directive). The protection of national policies is beyond the scope of the Directive, as its sole purpose is to encourage people to report „breaches of EU law”, i.e., to strengthen „enforcement of the Union law and policies in specific areas”. The Directive is not concerned with the protection of workers or employees. The Directive treats whistleblowers as an instrument for reporting irregularities. Another proof of the instrumental approach adopted in the Directive is the lack of any financial incentives for whistleblowers. This article’s basic thesis is that despite dynamic and multifaceted changes in the economy of individual countries, the accepted model of whistleblowing in the European Union will depend on repeated multidimensional analysis of the principle of the lawyer’s loyalty to the organization. The research presented below aims to prove the validity of the adopted thesis.

1. Introduction

On November 26, 2019, Directive (EU) 2019/1937 on the protection of persons reporting on breaches of Union law, commonly known as the Whistleblower Protection Directive, was published in the Official Journal of the European Union. Starting from December 17, 2019¹, Member States have two

¹ See Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, <https://eur-lex.europa.eu/eli/dir/2019/1937/oj>

years to implement in their national legal systems regulations providing, inter alia, new whistleblower protection provisions, which are primarily designed to make available legal protection to whistleblowers. Whistleblowing in a „EU-vision of reporting irregularities” is intended to be an EU law enforcement tool and a key element in ensuring the effective enforcement of EU law. The Directive was created after pressure from the European Parliament to protect whistleblowers at the EU level. Moreover, scandals such as Luxleaks and the Panama Papers have influenced the European Parliament’s legislative work, which has become an advocate of whistleblower protection². The Directive’s current text complies with international standards in this field, and its final version was influenced by the preceding Communications and Resolutions, which will be the subject of a narrow analysis in this article. The Commission has repeatedly indicated that whistleblowing will be European law enforcement tool that will ensure financial markets’ stability, EU economies’ balance, and fair competition. Moreover, it indicated the need to introduce comprehensive protection for public and private sector employees who have access to up to date information concerning their workplaces’ practices and are usually the first to recognize irregularities³. Nevertheless, one element has been omitted by the Directive, i.e. a complete redefinition of the concept of loyalty between the employee and the employer. It should be pointed out that the reason for not reporting irregularities is the obligation of loyalty that employees owe to their organization and

eur-lex.europa.eu/legal-content/PL/TXT/?uri=CELEX:32019L1937; See the articles published on 26 September 2018 by the Nordic Correspondent of the Financial Times Richard Milne, Danske Bank whistleblower was British executive in Estonian branch’, available at <https://www.ft.com/content/32d47fd8-c18b-11e8-8d55-54197280d3f7>, and by Reuters for The Guardian, Whistleblower at Danske Bank was firm’s Baltics trading head, accessed August 12, 2021, <https://www.theguardian.com/world/2018/sep/26/danske-bank-whistleblower-was-ex-baltics-trading-head-howard-wilkinson>

² European Parliament Resolution of 24 October 2017 on legitimate measures to protect whistleblowers acting in the public interest when disclosing the confidential information of companies and public bodies (2016/2224(INI)), accessed August 12, 2021, <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P8-TA-2017-0402>.

³ See Communication from the Commission to the European Parliament the Council and the European Economic and Social Committee Strengthening whistleblower protection at EU level, accessed August 12, 2021, available at <https://g8fip1kplyr33r3krz5b97d1-wpengine.netdna-ssl.com/wp-content/uploads/2018/04/WhistleCommunication.pdf>.

colleagues. Loyalty in informing about irregularities is a controversial topic that has, in a way, been overlooked by the EU legislator. Loyalty may result from gratitude for employment, or from the obligation to fully identify with the company. Based on this paper, the question that should be asked concerns the role of loyalty in the Directive, which is a necessary element of proper employer-employee relations and business relations. The Directive requires renouncing loyalty to the company when crucial interests of the European Union are at stake. The remark of Sissela Bok is, therefore accurate that „loyalty to colleagues and clients becomes an opponent of loyalty to the public interest, towards those who may be hurt if no disclosure is made”⁴.

2. Theories of Whistleblowing

This article will present the definitions of whistleblowing proposed by foreign literature. The reason for such an operation is that Poland does not have a whistleblowing tradition, and therefore it is justified to use foreign doctrinal achievements. According to J. P. Near and M. P. Miceli, reporting irregularities is a form of social control (and not only) of an organization. Whistleblowing is a complex process by which members of an organization (former or present) disclose information about irregularities or illegal practices (of which the employer is aware) to persons or organizations that may take action in this regard⁵. R. Johnson gives an elaborate definition of whistleblowing, believing that whistleblowing is a form of objection that has three features: 1. It is about making information public individually; 2. this information is disclosed outside of the organization which makes it public; 3. information disclosed relates to a severe irregularity found in the structures of this organization. After all, the person reporting the irregularity is, in principle, a member of the organization. The perspective presented by R. Johnson is narrow and does not cover all elements of the basic definitions of whistleblowing⁶.

⁴ Sissela Bok, “Whistleblowing and professional responsibilities. In Ethics Teaching in Higher Education,” ed. Daniel Callahan and Sissela Bok (Plenum Press: New York, 1980), 281.

⁵ Janet Near and Marcia Miceli, “Organizational Dissidence: The Case of Whistle-Blowing,” *Journal of Business Ethics*, no. 4 (1985): 1–16.

⁶ Roberta Johnson, *Whistle-blowing: when it works – and why* (Lynne Rienner Publishers: Boulder, 2003), 3.

D. Schultz and K. Harutyunyan⁷, in response to the definition presented by R. Johnson, indicate that there are two other possible characteristics of a whistleblower. Firstly, it is the motivation for revealing irregularities, which, as a rule, must assume good faith (author's note) in the disclosure process. The authors exclude whistleblowers whose disclosure intends to gain financial gain or harm a person or organization. However, it is not appropriate to exclude any financial advantage from reporting irregularities. Compensation or financial rewards are a characteristic element of the reporting process in, e.g., the United States. Such rewards either compensate for ostracization or loss of employment⁸. Secondly, the reporting person does so as a last resort. It is worth noting here that the D. Schultz and K. Harutyunyan indicate that the so-called „proper” reporting would refer to the disclosure of information outside the organization (so-called external reporting)⁹. Their thesis is that organizations or institutions should develop a sound internal self-control system that should be shared. This allows organizations to undergo internal controls under normal circumstances to detect and correct illegal and improper behavior, as allowed by organizations' reporting mechanisms. Whistleblowing intends to serve as an alternative - another channel for reporting misconduct when the internal structure prevents or obstructs the possibility of otherwise reporting misconduct.

All the definitions, as mentioned earlier in international literature, deserve a few remarks. First, if an employee comments or complains to his

⁷ Dilara Huseynova and Katerina Piperigos, „Justice for justice: Protecting whistleblowers in the EU; Protection of whistleblowers - the why and the how,” accessed August 12, 2021, http://transparency.eu/wp-content/uploads/2018/04/WB_Transparency-Group-CoE-17-18.pdf.

⁸ Lucja Kobroń-Gąsiorowska, „Dyrektywa Parlamentu Europejskiego i Rady w sprawie ochrony osób zgłaszających przypadki naruszenia prawa Unii (whistleblowing) — jej wpływ na polskie prawo pracy — wybrane uwagi,” in *Różnorodność w jedności. Księga pamiątkowa dedykowana Profesorowi Wojciechowi Muszalskiemu*, ed. B. Godlewska-Bujok and K. Walczak (Wolters Kluwer, Warszawa 2019), 75-86, L. Paige Whitaker, „The Whistleblower Protection Act: An Overview 2007,” accessed August 12, 2021, <https://sgp.fas.org/crs/natsec/RL33918.pdf>.

⁹ The subject of considerations in international literature is the so-called external reporting, i.e., by passing internal reporting channels; Heungsik Park, Brita Bjørkelo, and John Blenkinsopp, „External Whistleblowers' Experiences of Workplace Bullying by Superiors and Colleagues,” *Journal of Business Ethics* 161, no. 3 (2020): 591-601.

employer about some irregularities in the workplace, the employee is not a whistleblower. These definitions take the view that an individual becomes a whistleblower when he or she approaches a potentially influential third party (e.g., a trade union, newspaper, government agency) with a comment or complaint about an unfavorable workplace situation¹⁰. The whistleblower's intention is to force the employer to act under pressure from a third party. The whistleblower is - the accuser. The employer is the accused. So why should the accused in any situation cooperate with the accuser? The defense (defendant) does not cooperate with the prosecutor as a rule.

Finally, it is worth pointing to one more issue here. If the whistleblower's reported irregularities prove to be false, the employer might not cooperate with the whistleblower from the very beginning of the report. There is some doubt that an employer would be interested in potential cooperation with an employee who approaches him with a complaint about some unfavorable situation in the workplace. It would be reasonable for the employer to cooperate with the employee in such a situation, even if this cooperation is for a different reason than responding to reported irregularities. There are, however, many reasons (possibly many good reasons) why an employer may not be willing to address all of the complaining employee's allegations. Thus, it would be unlawful to say that the employer is not cooperating. Perhaps, the employer is not seeing what the employee does, or it may not be economical or rational to make changes. The bottom line is that the whistleblower's allegations must be relevant in order for the employer to do something to remedy the situation.

For this article, It should be assumed that whistleblowing is the disclosure of material information or activities that are reasonably considered illegal, unethical, or otherwise inappropriate, regardless of whether the disclosure concerns the public or private sector. A person directly or indirectly related to an organization or institution with evidence of inappropriate behavior of a person or institution may become a „loyal” whistleblower. It takes the position that whistleblowers are most often employees

¹⁰ The EU Directive allows internal reporting and does allow external reporting under the circumstances.

or persons directly or indirectly related¹¹. It includes internal and external whistleblowing. The above remarks only open up a polemic in the literature, which I hope will start soon.

I believe that anyone can become a whistleblower who discloses irregularities in a workplace or public institution. My opinion is that for whistleblowing has the value of the information provided, not the whistleblower's motives¹². A worker or civil servant is the only person or part of a small category of people aware of what is happening at work and is, therefore, best placed to act in the public interest by warning the employer or the general public¹³. Considering this, whistleblowing is a crucial mechanism in fighting for fairness and the public interest. Its role as a reporting mechanism for misconduct, fraud, and other forms of illegal or unethical behavior allows the public to be aware of violations that might otherwise remain hidden. This is especially actual of democratic states, where accountability and transparency, reinforced by reporting on irregularities, are fundamental values supporting state apparatuses' functioning.¹⁴ Therefore, protecting the whistleblower from retaliation, disproportionate penalties, unfair treatment, and other forms is essential as it enables employees to use appropriate channels to speak out against abuse. Consequently, labor law primarily fulfills a protective function, protecting employees' rights. However, employees who disclose inside information are at risk of retaliation. Without protection from retaliation, many would-be whistleblowers will remain silent, thereby depriving anti-corruption investigators of the inside information they need. Therefore, protecting whistleblowers must be part of any anti-corruption strategy. However, establishing such a system is a challenge for any country, as whistleblowers' adequate protection

¹¹ Lucja Kobroń-Gąsiorowska, "Interes Publiczny jako element podstawowy funkcji ochronnej prawa pracy - w kontekście ochrony sygnalistów," *Roczniki Administracji i Prawa*, no. 2 (2019): 333–343.

¹² Kobroń-Gąsiorowska "Interes Publiczny," 333–343.

¹³ Case of Heinisch v. Germany, Application No. 28274/08.

¹⁴ Simon Wolfe, Mark Worth, Suelette Dreyfus and AJ Brown, "Whistleblower protection laws in G20 countries: Priorities for action, , accessed August 12, 2021, [https://webarchive.nla.gov.au/awa/20140908101050/http://pandora.nla.gov.au/pan/148392/20140917-0713/blueprintforfreespeech.net/wp-content/uploads/2014/09/Whistleblower-Protection-Laws-in-G20-Countries-Priorities-for-Action.pdf](https://web.archive.nla.gov.au/awa/20140908101050/http://pandora.nla.gov.au/pan/148392/20140917-0713/blueprintforfreespeech.net/wp-content/uploads/2014/09/Whistleblower-Protection-Laws-in-G20-Countries-Priorities-for-Action.pdf),

requires a well-synchronized legal framework of criminal, administrative, procedural, and management provisions. In other words, protecting whistleblowers and fighting corruption requires the harmonization of different interests and resources.

3. The EU Directive as a “litmus test” of European policy goals in the field of whistleblowing

In October 2019, the European Union adopted a Directive on protecting persons who report breaches of EU law (the EU Whistleblower Directive). The European Parliament and other international organizations have repeatedly called for the enactment of Union (EU) law to protect whistleblowers. In addition to the obstacles to the legal basis for reporting, the EU overall had a minimal political interest in respecting rules that existed to a negligible extent in the individual Member States. Nevertheless, the EU could not stand idle after a series of reports from whistleblowers in the US and in the EU, which became the „instrument” for opening the whistleblowing debates. After extensive public consultation, the Commission proposed an EU Whistleblower Directive in April 2018. The Directive contains a broad definition of a whistleblower covering a wide range of policy areas, including the public and private sectors, which is in line with international standards. All forms of retaliation against whistleblowers are prohibited, and in the event of alleged retaliation, the burden of proof rests with the employer. The whistleblower must first use the internal reporting channels, and in the event of their ineffectiveness, he may report outside the organization. The Directive „cares” about the so-called European public interest, as the preamble itself confirms: ‘at Union level, reporting and public disclosure of breaches by whistleblowers are one of the elements of the bottom-up enforcement of Union law and policies. They provide information for national and EU law enforcement systems, enabling the effective detection, investigation, and prosecution of breaches of Union law, thereby increasing transparency and accountability’.¹⁵

The Commission indicated in general that „better protection for whistleblowers will translate into an increase in the overall level of worker

¹⁵ Point 2 Preamble to the Directive of the European Parliament and of the Council (EU), 2019/1937, on the protection of persons who report breaches of EU law, 23 October 2019.

protection in line with the objectives of the European Pillar of Social Rights, in particular its principle 5 (fair working conditions) and 7 (security in the event of dismissal)”. Ensuring a consistent, high level of protection for people who obtain specific information and report it in the course of their professional duties (whatever their nature), and thus expose themselves to the risk of retaliation in the workplace, will contribute to safeguarding workers’ broadest rights. Such protection will be significant for those who work under contracts that do not guarantee job security and those who work in a cross-border context¹⁶. In return for reporting irregularities in good faith, the whistleblower who risks his position, job, reputation, and dignity obtains nothing.

4. Loyalty in the concept of whistleblowing

Loyalty to the employer (public or private) in reporting irregularities is a controversial issue that will undoubtedly be the subject of heated polemics among labor law and law practitioners. Whistleblowing is a particular type of action: report. Reports can be public - usually in a public indictment¹⁷ - or confidential - disclosed through dedicated channels. In line with the central argument in this regard, with a correct understanding of the nature of employees’ loyalty, it becomes clear that whistleblowing does not endanger employees’ loyalty to their employer. This is because signaling an employer’s irregularities and being loyal to them serves the same purpose, the employer’s moral welfare¹⁸. An employee’s loyalty to the employer can contribute to strengthening the cooperation between the employee and the employer by making the employee more trustworthy and therefore more valuable as an employee; facilitates building authentic relationships in other areas of the employee’s life; broadens the field of interest of the employee and gives him a richer identity; provides greater motivation

¹⁶ Proposal for a Directive of the European Parliament and of the Council on the protection of persons reporting on breaches of Union law, accessed August 12, 2021, https://eur-lex.europa.eu/resource.html?uri=cellar:a4e61a49-46d2-11e8-be1d-01aa75ed71a1.0013.02/DOC_1&format=PDF.

¹⁷ Peter Jubb, “Whistleblowing: A Restrictive Definition and Interpretation,” *Journal of Business Ethics* 21, (1999): 77–94.

¹⁸ See more: Jukka Varelus, “Is Whistle-blowing Compatible with Employee Loyalty?,” *Journal of Business Ethics* 85, no. 2 (2009): 263–275.

for the work of the employee; makes it possible to achieve greater unity in the life of the employee; improves the efficiency of the organization in which the employee works; contributes to the protection of valuable social institutions; while many employees share an attitude of loyalty to the organization that employs them, the organization can become a real community¹⁹. Such loyalty will contribute to reporting irregularities, using in the first place internal methods of reporting violations, e.g., in the workplace. However, I am aware that the employer may generate infringements, and then this argument is pointless.

Loyalty must be considered multidimensionally; it does not always have to be defined through the prism of caring for the welfare of the workplace/employer. It may result from high unemployment²⁰. For Duska „loyalty” will not always precede the reporting of irregularities. Duska perceives the company as something that cannot be the object of the employee’s or its member’s loyalty. So the difference in perception is essential and because those who believe that employees have a duty of loyalty to the company do not consider the appropriate moral difference between individuals and corporations. So why can’t a company be the kind of thing that you can be loyal to?²¹ It is unacceptable to make the company an unique object of loyalty or to give it a moral status that it does not deserve because it contributes to lowering the status of people who work for profit for this company. The relationship between the employer and employee is not based on sacrifice but profit expectations. This relationship allows them to the situation when expectations are not met on both sides. For Duska, the company is a mere psychic fiction because it is a group. The company has no moral status, except in the circumstances of the individual members who make it up. It is not and should not be a proper loyalty object²². Whistleblowing is not only acceptable but expected when a company harms society²³.

¹⁹ Juan M. Elegido, “Does It Make Sense to Be a Loyal Employee?,” *Journal of Business Ethics*, no. 3 (2013): 495–511.

²⁰ Daniel Santoro and Manohar Kumar, *Speaking Truth to Power – A Theory of Whistleblowing* (Springer: Cham, 2018), 36.

²¹ Ronald Duska, “Whistleblowing and Employee, Loyalty,” in *Contemporary Issues in Business Ethics*, ed. Joseph R. DesJardins and John J. McCall (Wadsworth Publishing Company: Portland, 1990), 142.

²² Duska, “Whistleblowing,” 143.

²³ Ibidem, 146.

R. Larmer²⁴ declares that there is no conflict between them: informing about irregularities and maintaining loyalty to the employer. Larmer tries to argue with Duska's views, pointing out that Duska's views on employee loyalty are insufficient because, although the company cannot be described as a person, loyalty remains to colleagues. He compares a worker's loyalty to loyalty to a friend who has a drug problem. In this sense, it is required that the issue be reported to the appropriate institution. Likewise, a loyal employee is not necessary to speak to the employer about the employer's actions as he knows that the employer will not take corrective action nevertheless. Correspondingly, the employee is loyal to the employer and takes steps to protect himself from unfair retaliation, e.g., through external reporting. Furthermore, loyalty cannot require ignoring immoral or unjust behavior within the company. Loyalty implies the feeling that the organization or employer to which the employee is loyal is not practicing unethical or illegal practices. The duty of loyalty not only allows reporting of irregularities but actually requires it. According to this view, the duty of loyalty requires an individual to "consider whether his actions contribute to the clear mission, values, and purposes of the organization to which he is loyal"²⁵.

Whistleblowing is not only an act of opposition to the dysfunction of democracy. It is primarily the objection of employees, members of the organization to unethical practices, the supervisor, the director, i.e., the employer, who are obligated to loyalty and confidentiality. R. Larmer points out that whistleblowing only appears to violate these obligations and therefore, the argument that it is an act of disloyalty and hence is morally wrong should be rejected²⁶. He also makes an interesting argument that the main purpose of the employer is economic profit, and the loyal employee is the one who reports the irregularity. The primary motive in the work process for the employer is mainly financial. The reporting model in

²⁴ Robert Larmer, "Whistleblowing and employee loyalty," *Journal of Business Ethics*, no. 2 (1992): 128.

²⁵ Wim Vandekerckhove and Ronald Commers, "Whistle blowing and rational loyalty," *Journal of Business Ethics*, no. 1–2, (2004): 225–233. See also: loyalty concept according to Jukka Varelius, "Is Whistle-blowing Compatible with Employee Loyalty?," *Journal of Business Ethics*, no. 2 (2008): 263–275.

²⁶ Larmer, "Whistleblowing," 126.

the Directive is based on the model developed by R. Duska, which assumes that the company does not deserve the status of a person, therefore there is no such thing as a duty of loyalty to the company²⁷.

Whistleblowing must be seen as an element of the state's economic development and modern relations between private and public organizations. Perceiving whistleblowing as a „denunciation” may constitute a brake on the growth of this institution, and I mean the EU Directive, which, contrary to the assurances of the European Commission, is not a „game changer”, because the European Union perceives it as a morally justified act against corporations and public institutions when their actions threaten only the interests of the European Union. Věra Jourová, Commissioner for Justice, Consumers and Gender Equality, added: „the new whistleblower protection rules will be a „game changer”. In a globalized world where the temptation to maximize profit sometimes at the expense of the law is real, we must support people who are willing to risk exposing serious breaches of EU law; we owe it to honest European citizens”²⁸.

However, the reasons behind an EU legislative initiative, i.e., the growing number of disclosures outside organizations affecting international opinion, should not be denied. For example, Snowden, Wikileaks, or Panama Papers have exposed many countries to no potential danger. Consequently, whistleblowing received wide public attention from the European Union and sparked a debate that led to the finalization of the legislative initiative. As it has already been indicated, the legislation of individual EU Member States treated the whistleblowing institution in a diametrically different way. The response of the state authorities has so far been limited to the creation of anti-terrorism or anti-fraud legislation. The EU directive assumes that starting with employees, former or current, public or private organizations, they will be able to correctly identify whether the perceived irregularity violates the broadly understood law and interests of the EU, and what is more, that these whistleblowers, through the prism of

²⁷ Duska, “Whistleblowing,” 295– 300.

²⁸ European Commission, Press Release, Whistleblower protection: Commission sets new, EU-wide rules, accessed August 12, 2021, https://ec.europa.eu/commission/presscorner/detail/en/IP_18_3441.

undefined “good faith”²⁹ will report such an irregularity for purely altruistic reasons, risking a great deal, and one can make a bold conclusion - risking everything. The EU Directive itself rejects the principle of loyalty to the employer/contractor / institution.

The concept of whistleblowing proposed by the European Commission, which deserves confirmation, is based on the best international practices in whistleblowing protection, rejects the principle of loyalty despite brief references to the so-called „good faith” of the whistleblower. It assumes that a private or public institution in which irregularities occur is an “object” (in line with R. Duska’s concept) and, most importantly, does not provide any incentives for potential whistleblowers unless we assume that such an incentive is altruistic.

5. “EU concept of whistleblowing”

The model for reporting irregularities presented in the Directive even “orders” reporting of irregularities, which in my opinion is an incorrect procedure due to the complete omission of incentives for whistleblowers in the form of rewards. On the other hand, the protective circle outlined by the Directive, i.e. the protection of EU interests, is, in my opinion, based on the concept of R. Duska. To prove it, one should examine the negation of the idea of loyalty presented by R. Duska.

R. Duska assumes that in whistleblowing, there is no obligation of loyalty to his company, so the author negates the thesis of S. Bok³⁰, which maintains the existence of a conflict of loyalty the Employee to the employer.

²⁹ See point 32 of the Directive: “In order to benefit from protection under this Directive, reporting persons should have reasonable grounds to believe, in the light of the circumstances and information at the time of reporting, that the matters they report are genuine. This requirement is an essential safeguard against reports made in bad faith, fraudulent or abusive reports, as it ensures that those who, at the time of reporting, have intentionally and knowingly provided incorrect or misleading information are not benefiting from protection. At the same time, this requirement ensures that the reporting person will not be deprived of protection where he has reported inaccurate information on breaches as a result of an unintentional error. Similarly, reporting persons should be entitled to protection under this Directive if they have reasonable grounds to believe that the information reported falls within its scope. The motives of reporting persons on their own should not play a role in deciding whether they should be granted protection”.

³⁰ Bok, “Whistleblowing,” 3.

Duska indicates that “there is no obligation of loyalty to the company, not even *prima facie* because companies are not things and therefore are not objects of loyalty”. Companies or organizations cannot be given such a moral status because they do not “deserve, but to raise their status, one lowers the status of people working for companies”³¹. For Duska, loyalty is the essential and authentic relationship between people that cannot be ignored by reducing it to another relationship. “If the relationship of the role of the employer and employee is moral, it is more than economic, where the economic relationship is defined as a balance of competitive interest between the employer and employee.” According to Duska, being loyal does not require absolute or even blind loyalty, e.g., be asked to lie in terms of product quality, price, or quantity control as part of broadly understood economic freedom and balance in labor relations, Duska points to a purely economic justification for reporting an irregularity³². A company or corporation (private sector): produces a good or service that is intended. However, generating profit is a fundamental function of the enterprise as a business because if the production of a good or service is not profitable, the company will cease to exist. In turn, employees, obligated to perform work, also seek to make a profit.” Employee disclosure will be done - for profit. Duska points out that the company (employer) does not feel obliged to be loyal. The saying mentioned above, “you cannot buy loyalty,” is true. Loyalty depends on relationships that require self-sacrifice without expecting a reward”³³. Duska emphasizes that the Employee works because the company pays him to earn money.” An employer will end an employment contract with an employee if further employment is not profitable and the employee leaves the employer if it is beneficial for any of them. Official cannot be loyal to his supervisor who holds a specific function, because he cannot be loyal to a particular position in a situation where the person having a given function commits offenses that represent the broadly understood common good. The above should not be equated

³¹ Duska, “Whistleblowing,” 156.

³² Norman Bowie, and Ronald Duska, “Business ethics,” Review by: Ken Hanly, *Journal of Business Ethics* 11, no. 9 (1992): 718-28.

³³ *Ibidem*, 16.

with conditions that must be met for whistleblowing to be lawful, although whistleblowing itself does not require justification.

The above indicated concept was adopted by the model of reporting irregularities included in the Directive, which provides for reporting irregularities that affect the functioning of EU law. Such a model is acceptable at the EU level, which does not have to ask the question after E. Boot „What conditions must be met for whistleblowing to be morally justified?”³⁴. I reject the EU’s full restraint entirely in rewarding whistleblowers for reporting breaches of EU law. However, it should be noted that financial rewards for whistleblowers in the concept of whistleblowing are obligatory, and it may be tempting to say that they are one of the basic elements of whistleblowing. The financial reward system for whistleblowers became a staple of the whistleblowing model as early as 1863, when the False Claims Act (FCA) was passed. The Sarbanes-Oxley Act supplemented the model for reporting irregularities in the US in 2002³⁵. Along with this act and after the 2008 crisis, the Dodd-Frank Act of 2010³⁶, was introduced, which defined the rules for reporting irregularities for the financial sector. The Dodd-Frank Act adopted a robust whistleblower protection regime, allowing the Securities and Exchange Commission (SEC) to offer financial rewards to whistleblowers under certain circumstances, which has proved to be a very effective way of encouraging whistleblowers to report, but at the same time provides financial security for whistleblowers that the EU does not offer in its directive. However, the Directive chose a different „model” that would not necessarily create a cooperation between the employee and the employer. The question to be asked concerns the essential aim of the Directive. The Directive has chosen to create an illusory sense of security and protection for those who report breaches of EU law. The European Union emphasizes reporting breaches of EU law in the European interest, a massive deterrent for whistleblowers without financial incentives.

³⁴ Eric Boot, *The Ethics of Whistleblowing* (Routledge: London, 2019), 35.

³⁵ Sarbanes-Oxley Act 2002, Washington D.C., U.S. G.P.O., 2002.

³⁶ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 929-Z, 124 Stat. 1376, 1871 (2010) (codified at 15 U.S.C. § 78o).

6. Conclusion

The foundation for assessing whether EU whistleblower law is a „game changer” is a question that does not concern adequate whistleblower protection, but how the European Union wants to reward whistleblowers who have been almost obligated to report without receiving anything in return. In this regard, the model of reporting irregularities adopted in US law allows whistleblowers financial rewards, enabling the whistleblower to deal with a problematic situation in the labor market.

In recent times, reporting on irregularities has become the dominant method of solving problems that affect essential matters relating to the interests of EU countries and national security. While reporting misconduct serves the public interest, too often, whistleblowers experience many forms of retaliation, so it makes sense to introduce appropriate rewards for them as a substitute for participating in the benefits of disclosure. The EU Whistleblower Directive is the first EU law to protect whistleblowers across the EU, adopting a broad definition of who can be a whistleblower, encompassing both the public and private sectors. As this paper has shown, the EU Whistleblower Directive is based on international standards on protection. During the transposition period, Member States also have to fill some legislative gaps and protection standards that are in line with the spirit of whistleblowing. To this end, it is expected that protection standards and incentives for whistleblowers will be raised³⁷.

The Directive attaches great importance to observe the whistleblower’s data requirements, which are hard to find, for example, in a trial before a labor court. Concerning the use of the reporting channels, it should be positively assessed that the whistleblower first uses internal channels. Member States are now required to encourage internal channels without preventing whistleblowers from reporting outside the organization and, under certain conditions, also to the public media. The Directive unequivocally condemns all forms of direct, indirect, or attempted retaliation, such as dismissal, reduction of wages, discrimination, and abuse. On the other hand, there are still shortcomings in the text that could undermine the Directive’s effectiveness. First of all, the fact that the scope of application of the Directive

³⁷ Kobroń-Gąsiorowska, “Dyrektywa Parlamentu,” 75-87.

is limited to areas falling within the scope of EU competence may cause ambiguities and uncertainty in the case of court proceedings. The Directive is likely to improve and strengthen the rules on whistleblower protection and contribute to promoting a culture of transparency and accountability across Europe, not only to the benefit of workers and companies. However, these conclusions are too early, especially given that the level of whistleblower protection varies widely across the European Union.

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