



WHISTLEBLOWING SYSTEM AS A TOOL INCREASING THE SECURITY OF PUBLIC FINANCE – DIAGNOSIS OF THE POLISH LOCAL GOVERNMENT SECTOR

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Abstract:

In December 2021, in Poland, as in all Member States of the European Union, the EU directive on whistleblowers will come into force. Poland will be obliged to implement the directive's guidelines into national law. The entities specified in the EU directive, including entities from the public sector, will be required to develop and implement the principles of reporting irregularities in the organization and adequate protection of whistleblowers. The research carried out among local government units at the municipal level showed that in the year preceding the implementation of the directive, almost half of the communes did not know about the EU directive on whistleblowers (they learned about it from the study). Only every fourth commune started implementing the whistleblowing system or its components. At the same time, the main premise for the implementation of the whistleblowing system is or will be in the future the legal obligation imposed on municipalities for its introduction, and not the belief that the system is an effective tool to prevent irregularities.

Keywords: public finance, whistleblowing, whistleblowing system, local government, management control

JEL Codes: H83, H79

1. Introduction

Until December 17, 2021, all member states of the European Union, including Poland, are required to implement Directive (EU) 2019/1937 of the European Parliament and of the Council of October 23, 2019 on the protection of persons reporting breaches of EU law (Official Journal of the European Union, L 305/1, the so-called whistleblower protection directive). This EU law requires EU countries to implement systemic protection of whistle-blowers, i.e. whistle-blowers. By 17 December 2021, EU law will apply to all legal entities in the public sector, unless an EU Member State

exempts municipalities with less than 10,000 inhabitants or with fewer than 50 employees from this obligation. The directive imposes on the above-mentioned entities a number of obligations which they will be obliged to comply with under the threat of sanctions. It is worth emphasizing that the Whistleblower Protection Directive may bring much more far-reaching legal and social effects than the GDPR, and there is less and less time for the effective implementation of its requirements by the obligated organizations.

Successful implementation of an effective whistleblower protection system in a given entity, as well as its maintenance and improvement, is a complex process, requiring commitment and conscious and consistent action from each organization at the planning stage. The implementation of an effective system is not only a matter of knowing the legal requirements, but also the necessary knowledge, e.g. in the field of technology, psychology and management. It should be emphasized that a properly implemented whistleblowing system can bring significant benefits to the organization, including ensure its safe functioning, stable development and a friendly work environment. On the other hand, the lack of a system or its defective implementation may create serious threats for the organization (including sanctions, loss of image).

The aim of this article is to try to answer the following research questions: (1) has the implementation of the whistleblower protection system or its elements began in the local government sector in Poland? (2) what elements of the whistleblower protection system have already been implemented in the local government sector at the municipal level in Poland? (3) what are the reasons for the failure to implement the whistleblowing system?

The study was conducted as of July 31, 2020. Conducting the survey in the period preceding the introduction of the obligations resulting from the EU directive into the legal order in Poland is a kind of diagnosis of the current situation in the field of whistleblower protection - it allows us to know the level of awareness of the management staff of the surveyed entities in the discussed scope and planned activities in this area. The data obtained in the 2020 study will also be a good starting point for future comparative analyzes on the subject of the study.

2. Whistleblowers in light of the literature

The term “whistleblowing” literally means blowing a whistle and originates with the practice of policemen who were thus calling for help, alerting or signaling dangers. This term was proposed in the 1970s by Ralph Nader, an American lawyer, to describe the actions of a person informing the

environment that their organization violates the public interest. The blowing of a whistle alerted other law enforcement officers and the general public that a crime was being committed (Dasgupta & Kesharwani, 2010). According to Anna Lewicka-Strzałecka, by reaching for the new term, Nader wanted to avoid negative associations related to the disclosure of matters considered confidential (Lewicka-Strzałecka, 2014). A standard definition of whistleblowing over the years has been adopted by various authors conducting research in this field. The most commonly accepted definition of whistleblowing is “the disclosure by organization members (former or current) of illegal, immoral and illegitimate practices under the control of their employers to persons and organizations that may be able to effect action” (Near & Miceli, 1985).

A commonly accepted definition of the concept of whistleblowing is also the one developed by Transparency International, a non-governmental organization working to counteract corruption. The phenomenon is defined there as the disclosure or transmission of information about irregularities that relate to corruption or other criminal activities, failure to fulfill obligations, unlawful decisions, situations of threat to public health and the environment, abuse of power, unauthorized use of public funds and property, gross waste public resources or mismanagement, conflicts of interest, and all activities aimed at concealing these pathologies (Worth 2013).

It has been assumed that a person referred to as a whistleblower informs the broadly understood public opinion or persons occupying key positions in the organization about illegal practices, corruption, unethical behavior of employees of a given organization.

A person who witnesses irregularities in his professional environment faces numerous dilemmas: whether to react, who to turn to, how to convey information, how to prove his assumptions. An employee who observes significant abuses in an organization must first break out of the most typical pattern of reaction to such situations - that is, from the attitude of passive consent. To become a whistleblower, you need a certain amount of independence and nonconformity, which will allow you to take the risk associated with questioning the prevailing order in the organization (Kobylińska, 2016).

For organizations and management whistleblowing a complex phenomenon. From the point of view of those who are absolutely loyal to the organizations which tend to hide exceeding, bypassing or disregarding of laws or standards, whistleblowers are betrayers. In some cultures, social norms say that it is disloyal to the organization and management to blow the whistle. From such a narrow perspective, the wrongdoer is in fact the whistleblower, not his management or other employee who commits any kind of wrongdoing. From the economic point of view, whistleblowing is an

undesirable course of action because it could confound all the marketing and PR efforts and seriously damage the image of the organization (Tavakoli et al., 2003; Bogdanović & Tyll, 2016).

From the perspective of the second group of people who fully obey and respect the law and social norms, “whistleblowers are heroes.” They are loyal to the organization since they are ready to inform and fight against any deviation in the organization. A whistleblower could be seen as an altruistic person with unselfish concerns about the well-being of others to avoid the wrongdoing which harms the interests of the organization, its consumers, co-workers and the society in general (Dasgupta & Kesharwani, 2010).

Whistleblowers may be internal or external depending upon the party to whom the complaint is made. If the complaint of wrongdoing is made by the whistleblower to persons within the organization such as the top management, the complainant is called an internal whistleblower. If, on the other hand, the complaint is made to an external body outside an organization such as the government or any law enforcement agency, the complainant is called an external whistleblower (Types of whistleblowing, 2016).

3. Whistleblowing system according to the guidelines of the EU directive

The Polish law does not explicitly express the legal concept of a whistleblower, whistleblowing activities and legal protection of whistleblowers. This has important consequences. Apart from legal protection, there is a significant number of professionally active people. The lack of a legal framework also makes it difficult to use the existing legal instruments included in the labor code, e.g. anti-discrimination provisions. In court proceedings, the essence of the dispute is pushed to the sidelines, i.e. the employee’s thesis that in response to the employee’s disclosure of irregularities detrimental to the public interest, the employer took retaliatory measures against him, is not in the court’s focus. The subject of the study are the reasons indicated in the employer’s declaration of termination or termination of the contract. In the current legal situation, employees reporting irregularities cannot benefit from the recommendation of the EU directive stipulating that in court disputes, the burden of proof rests with the employer (Wojciechowska-Nowak, 2016). The difficult legal situation of whistleblowers in Poland requires steps to be taken to change it. The directive issued by the EU and the guidelines contained therein refer to the principles on which whistleblower protection should be built.

Guidelines on the principles of building and maintaining whistleblowing systems for the Member States of the European Union are defined in

Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons reporting breaches of Union law. Pursuant to the provisions of this directive, entities obliged to implement whistleblower protection systems include: (1) legal entities in the private sector and all (2) public legal entities (ppp), including entities under their control. In the case of municipalities, Member States may exempt municipalities with less than 10,000 inhabitants or with less than 50 employees from the obligation to implement whistleblower protection systems. Possible exemption of municipalities meeting one of these conditions will be determined in the future in national legislation (Official Journal of the European Union L 305/1, Art. 8).

The provisions of the Directive apply to reporting persons working in the private or public sector who obtain information on breaches in a work-related context. Protection is intended to cover current and former employees, recruits, shareholders, volunteers and interns, those working under the supervision and direction of contractors, subcontractors and suppliers, as well as those assisting or associated with the whistleblower and at risk of retaliation (Official Journal of the European Union, L 305/1, Art. 4).

The subject of the whistleblower's application to be protected has been defined very broadly. The areas from which violations are to be reported include: (1) public procurement; (2) financial services, products and markets, and the prevention of money laundering and terrorist financing; (3) product safety; (4) transport safety; (5) environmental protection; (6) radiological protection and nuclear safety; (7) food and feed safety, animal health and welfare; (8) public health; (9) consumer protection; (10) protection of privacy and personal data, and security of network and information systems; (11) breach of competition and state aid rules; (12) tax fraud (Official Journal of the European Union, L 305/1, Art. 2).

Whistleblower protection is based primarily on the prohibition of retaliation, which includes: suspension, dismissal, demotion or suspension of promotion, forced unpaid leave, transfer of duties, reduction of remuneration, change of working hours, suspension of training, issuing a negative opinion, application of any disciplinary penalty, reprimands or other punishments, including financial ones, as well as coercion, intimidation, mobbing or exclusion, discrimination, unfair or unfair treatment, referral to psychiatric examinations, etc. The whistleblower, in accordance with the provisions of the directive, is to have access to comprehensive information and legal assistance. This person is not responsible for the disclosure of legally protected information in justified circumstances. The provisions of the EU directive also provide for compensation for the whistleblower for the damage suffered and lost profits and assume that the burden of proof will rest with

the person acting to the detriment of the whistleblower (Official Journal of the European Union, L 305/1).

The whistleblowing system must provide for various types of safety channels for reporting breaches. Internal channels are preferred. In addition, the directive lists notifications to state authorities and public notifications. Report management requirements also include: acknowledging receipt of a report, due diligence, providing feedback to the whistleblower, and the availability of reporting procedures. The overriding principle is also to ensure the confidentiality of the notifier. Reports must be registered and retained. Penalties are imposed for obstruction of reporting, retaliation or nuisance proceedings against reporting persons, and breach of the obligation to maintain the confidentiality of the identity of reporting persons (Official Journal of the European Union, L 305/1).

4. Research methods and results

To collect the data, an electronic questionnaire was used, completed by the respondents themselves, after sending them a request containing the address to access the survey (Computer Assisted Web Interview - CAWI). The full survey method was used and the questionnaire was sent to the offices of all municipalities in Poland. The study covered a total of 2,477 communes - 1,533 rural communes, 642 urban-rural communes and 302 urban communes, including 66 cities with poviats rights. The survey was carried out from 6 to 31 August 2020. Ultimately, responses were received from 1722 municipalities (the questionnaire response was 69.5%).

The article was also prepared using the method of describing economic phenomena and the analysis of legal acts and guidelines, according to the legal status as of August 31, 2020.

The first part of the research questions was in the form of metric questions. Communes from all over Poland took an active part in the study. Figure 1 shows the structure of communes that participated in the survey by voivodship.

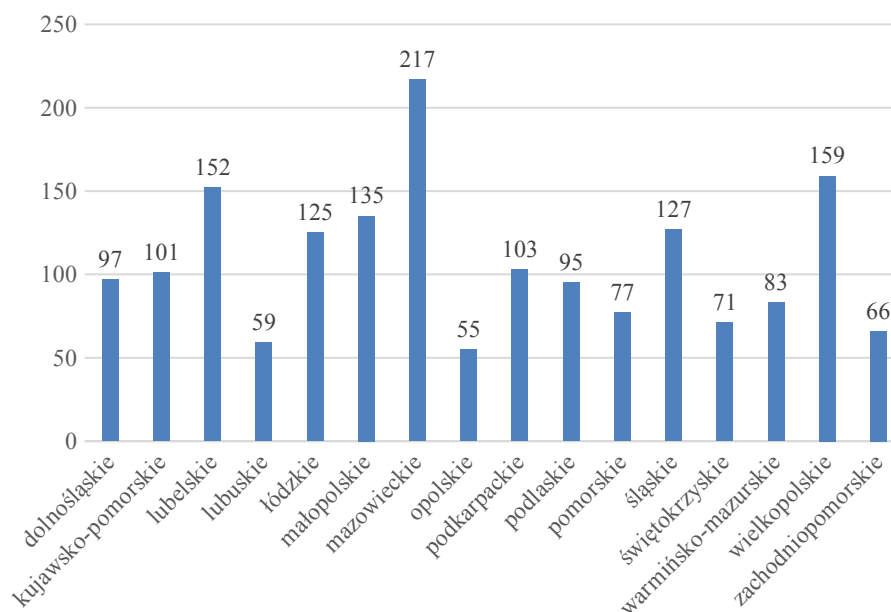


Figure 1. Municipalities covered by the study by voivodship

Source: own elaboration.

Communes from all voivodeships in Poland participated in the study. Among the communes which answered the questions asked in the questionnaire, the communes from Mazowieckie - 12.5%, Lubelskie - 9.3% and Małopolskie - 7% had the highest share.

Figure 2 shows the structure of the population covered by the study by commune type.

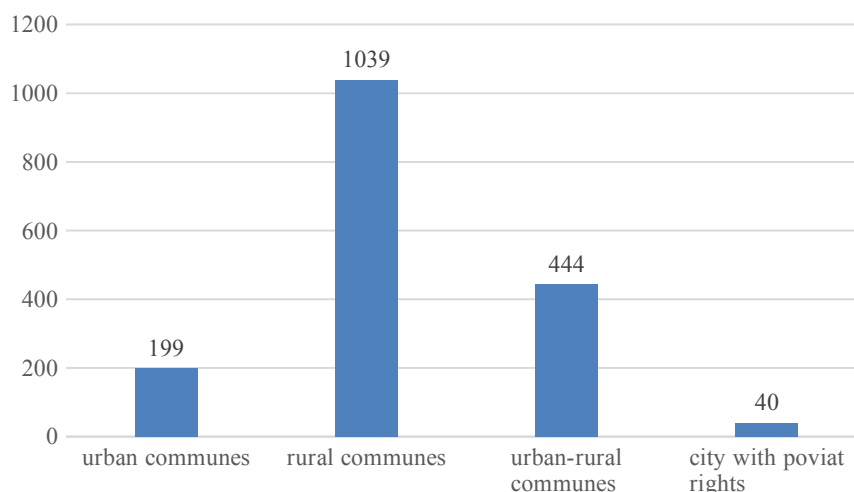


Figure 2. Communes covered by the study by commune type

Source: own elaboration.

The vast majority of communes - respondents are rural communes - 60.3% of all communes that answered the questionnaire. The second largest group were urban-rural communes, constituting 25.8% of the study participants, and the third - urban communes – 11.6% of communes that actively participated in the study. The presented structure is consistent with the structure of all local government units at the municipal level in Poland.

Figure 3 shows the structure of communes which answered the questions asked by the number of inhabitants.

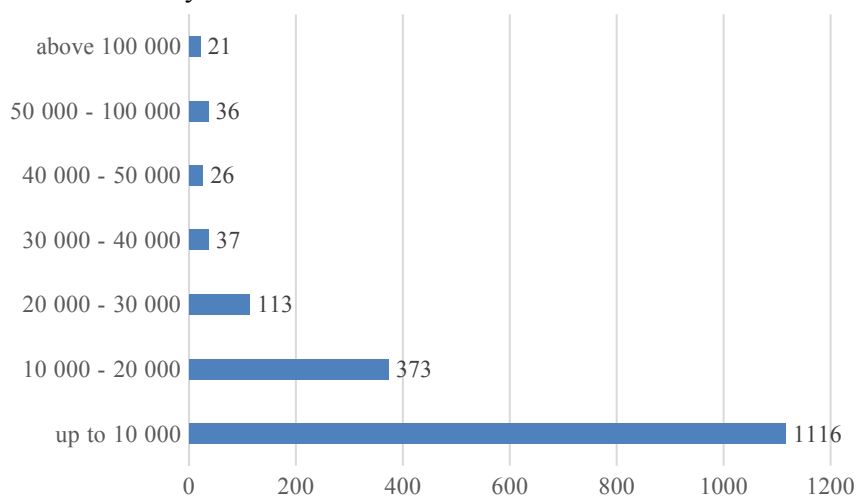


Figure 3. Structure of communes by the number of inhabitants (as of December 31, 2019)

Source: own elaboration.

Over 80% of the municipalities surveyed are municipalities with a population of less than 20,000. More than 2/3 of the municipalities are inhabited by less than 10,000 inhabitants.

Figure 4 presents data on the number of employees in municipal office that participated in the survey.

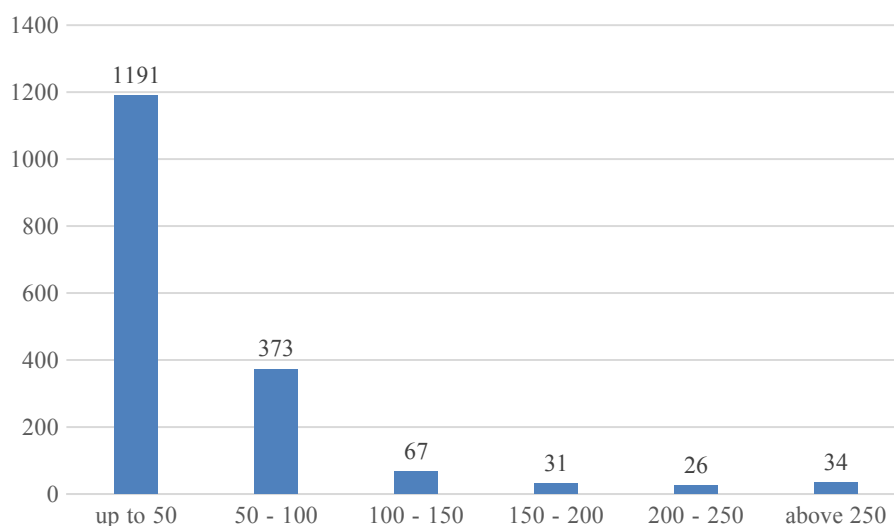


Figure 4. Structure of respondents according to the number of employees of the commune office

Source: own elaboration

Almost 70% of the communes that answered the questions sent in the questionnaire are serviced by offices employing less than 50 employees. In over every fifth office, the number of employees ranges from 50 to 100 people. The largest offices, employing over 250 people, accounted for 2% of the respondents.

Identifying the number of municipalities with less than 10,000 inhabitants and employing less than 50 employees is important from the point of view of the need to implement whistleblowing systems. Pursuant to the provisions of the Whistleblower Directive, Member States may exempt such municipalities from the obligation to implement these systems. The introduction of such an option does not mean that Poland will use it, but such an option is taken into account. The final decisions in this regard will be reflected in the national regulations implementing the EU guidelines at the level of a Member State.

In order to verify the level of municipalities' awareness of the existence of the Whistleblower Directive and the need to implement the requirements set out therein in the near future, the municipalities covered by the study were to indicate how the office learned about the requirements of the Whistleblower Directive. The results of the study in this area are shown in Figure 5.

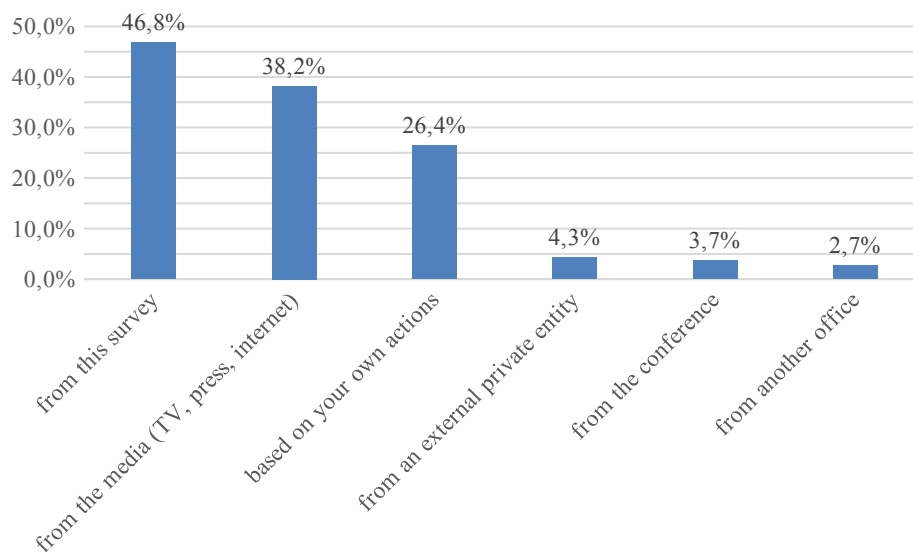


Figure 5. Sources of information on the Whistleblower Directive by survey participants (multiple answers possible)
Source: own elaboration.

Almost half of the respondents (46.8%) indicated that they learned about the requirements of the Whistleblower Directive from the survey sent as part of the study. Therefore, one may be tempted to say that the research conducted was not only cognitive, but also educational. The second most important source of information about the Whistleblower Directive and its requirements, indicated by 38.2% of respondents, was the broadly understood media - television, the Internet, and the press. The third source of information in this regard were activities undertaken independently by the office itself - its professional staff, mainly in positions or in legal departments. Such an answer was given by 26.4% of respondent communes.

The research shows that there is a high degree of ignorance among municipalities as regards the obligation to introduce the requirements of the Whistleblower Directive (Figure 6).

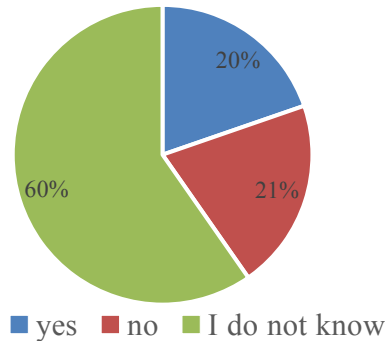


Figure 6. Indications of the respondents regarding the obligation to implement the guidelines of the Whistleblower Directive in the commune office

Source: own elaboration.

Almost 2/3 of respondents do not know whether their office will be covered by the requirements of the Whistleblower Directive. Every fifth commune declares that, according to its knowledge, the office will not be subject to the requirements of the directive, and 19.7% declared that it will be obliged to implement a whistleblowing system.

Figure 7 shows the progress of the implementation of whistleblowing systems in the municipalities covered by the study.

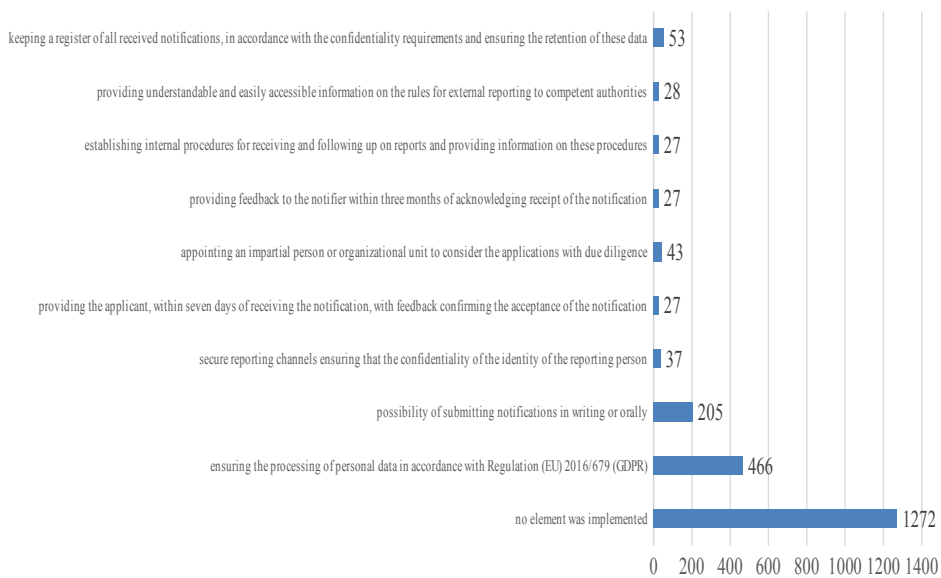


Figure 7. Elements of the whistleblowing system implemented in the commune office as of July 31, 2020

Source: own elaboration.

Almost 74% of municipal offices, as at the end of July 2020, none of the elements of the whistleblowing system, specified in the EU directive, had been implemented. Only every fourth commune indicated that the office ensures the processing of personal data in accordance with the already binding provisions on the processing of personal data, the so-called GDPR (Official Journal of the European Union, L 119/1). It is also the most frequently mentioned element of the system for whistleblowers, which has already been implemented in the office of the surveyed communes. The second most frequently existing element - implemented in 11.9% of municipal offices - is the possibility of submitting notifications in writing or orally. The other elements of the system, as defined in the Whistleblower Directive, exist in a very small number of offices. It is noteworthy that only 3.1% of communes keep registers of irregularities, and only 2.1% ensure safe - and thus ensure anonymity - channels for reporting these irregularities. A large group of surveyed communes stated in their comments to the survey that there were irregularities in the office, but no statistics in this regard are kept in the office.

The communes that have not yet implemented any element of the whistleblowing system were asked about the reasons for this state of affairs and about the date of planned activities in this regard. The results of research in this area are presented in Figures 8 and 9.

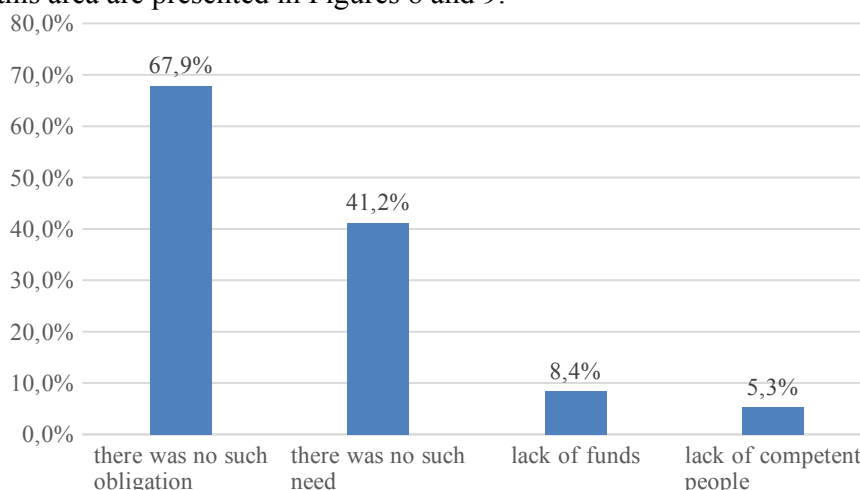


Figure 8. The reasons for the failure to implement the whistleblowing system in the surveyed municipal offices so far (multiple answers possible)

Source: own elaboration.



Figure 9. Expected date of implementation of the whistleblowing system in the surveyed municipal offices

Source: own elaboration.

Interestingly, only 8.4% indicated the lack of financial resources as the reason for the failure to implement the system for whistleblowers, and 5.3% the lack of people with appropriate qualifications. The main reason for the lack of action in the discussed scope was the lack of a legal obligation. At the same time, most communes declared they would start taking steps to implement the whistleblowing system only after the entry into force of legal provisions implementing the requirements of the whistleblower directive into national law. It is also worth noting that over 40% of respondent communes see no need to implement the whistleblowing system in the office, and every tenth commune does not intend to implement such a system if it is not obliged to do so.

Communes that already have a whistleblowing system or are in the process of implementing it have indicated the reasons for taking action in this regard. The results of the study in this area showed that most municipalities have already started implementing a whistleblowing system in line with the guidelines of the Whistleblower Directive. Many of these communes stated that they had taken these actions earlier in order to have time to work out solutions suitable for the office and implement them. Among the surveyed communes there was also a group, unfortunately small, numbering only 2.6% of the respondents, according to which the whistleblowing system is the most

effective tool for preventing irregularities in the office and therefore it is implemented in the commune.

In municipal offices where a whistleblowing system or its elements are already in place, the person responsible for the effectiveness of these solutions is most often the head of the unit (189 indications) or the commune secretary (136 indications). It is also worth noting that only in 19 municipalities where the whistleblowing system has been implemented, it undergoes periodic verification of its effectiveness.

5. Conclusions

The conducted research shows that the local government sector at the commune level is not prepared to implement systems for whistleblowers. The state of knowledge and awareness of this issue should be assessed negatively. We are less than a year and a half away from the entry into force of the provisions of the EU whistleblower directive, and almost half of the communes were not aware of the obligations that would be associated with the implementation of this system. Almost half of the municipalities found out about the EU directive in question from the conducted research. Every third commune does not know if it will be obliged to take action in this regard.

Only 2.6% of communes implement systems for whistleblowers because they are convinced that they are effective in detecting fraud, and thus treat this system as a tool for managing irregularities occurring in an individual, and this in turn will contribute to increasing the security of public funds management. Other local government units that have started implementing these systems are doing so because of the approaching implementation date of the EU directive on whistleblowers. The vast majority of municipalities that have not yet implemented any solutions in the discussed scope declare that they will take action only if they are legally obliged to do so and within the time limit resulting from legal provisions.

The low interest of municipalities in solutions that can be used in the implementation of the whistleblowing system may be related to the lack of legal regulations at the national level so far. In the public space, there is only a citizen's draft law on whistleblower protection, prepared by the Stefan Batory, the Helsinki Foundation for Human Rights, the Trade Union Forum and the Institute of Public Affairs. Experts associate the low level of interest in such solutions with, inter alia, cultural barriers. The definition of loyalty turns out to be problematic - loyalty to the employer is confused with loyalty to the superior. Poland is also dominated by a specific "culture of condemnation" - in the event of detecting irregularities, the attention of the public and the mass media focuses on finding the guilty parties, and is silent

about corrective actions and the fact that the crisis can be an occasion for systemic improvement.

Therefore, the issues discussed in the article are a little researched area. The research is the first of its kind in Poland in the local government sector. The results of the research will constitute a reference point for similar studies to be carried out in the future - after the system of whistleblower protection is introduced into the Polish legal system.

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