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# The Legal Framework of Whistleblowers' Protection in Ukraine and in the Czech Republic

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**Summary:** The Directive (EU) no. 2019/1937 of the European Parliament and of the Council of October 23rd 2019 on the Protection of Persons Who Report Breaches of Union Law (further 'the Directive') was published on November 26th 2019 and went into effect in December of 2019. Considering its importance, the presented article deals with the issue of legal regulation of whistleblowers' protection in both Ukraine and the Czech Republic. The existing Ukrainian legislation is not lacking certain deficiencies. First of all, there is the need to introduce a broad definition of the term "whistleblower" so that whistleblowers of violations of human rights, environmental standards, food safety and household items, public interests, etc. were also subject to protection. As for the Czech Republic, from an analysis of the Act on the Protection of Whistleblowers, it is clear that this Act is obviously a failed result of the Directive's transposition.

**Keywords:** the Directive, a whistleblower, a reporting person, a competent person, Law of Ukraine "On the Prevention of Corruption", Law "On Amendments to the Law of Ukraine "On the Prevention of Corruption", Act no. 171/2023 Coll., on the Protection of Whistleblowers.

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# 1. Introduction

As mentioned above, the Directive[1] was published and went into effect in 2019. Considering its importance, the membership of the Czech Republic in the European Union and Ukraine's aspirations for this membership, the presented article, created as the output of the project no. 23-PKVV-UM-6 called CODE (COoperation and DEvelopment) supported within the grant program of the Ministry of Foreign Affairs of the Czech Republic, deals particularly with the issue of legal regulation of whistleblowers' protection in both Ukraine and the Czech Republic. Before doing so, however, it is necessary to present the essential facts concerning the Directive and the essential reasons for its adoption.

The reasons for adopting the Directive, arising from its Explanatory memorandum, were as follows. For many years, the Eurobarometer survey data suggested that more than 60 % of people in the EU and companies based in the EU considered corruption to be widespread in their countries.[2] [3] The State of the Union Addresses also put the fight against corruption high on the European's Commission's agenda highlighting the need to tackle it both at the EU and at the national level. The European Parliament[4] also repeatedly called for more

[1] For more details on the Directive, see for instance TEICHMANN, F. M. J., WITTMANN, C. Whistleblowing: procedural and dogmatic problems in the implementation of directive (EU) 2019/1937. *Journal of Financial Crime*, 30(5), 2022, pp. 553–566; GERDEMANN, S., COLNERIC, N. The EU Whistleblower Directive and its Transposition: Part 1. *European Labour Law Journal*, 12(2), 2020, pp. 193–210; MENDIETA, M., V. An analysis of Directive (EU) 2019/1937 from public<c ethics and the challenges of implementation. Revista *Espanola de la Transparencia*, (12), 2021, pp. 15–24; VAN WAEYENBERGE, A., DAVIES, Z. The Whistleblower Protection Directive (2019/1937): A Satisfactory but Incomplete System. *European Journal of Risk Regulation*, 12(1), 2021, pp. 236–244; MASIERO, A. F. The regulation of whistleblowing in the light of directive 2019/1937/EU between corruption prevention and whistleblower protection. *Archivio Penale*, 72(2), 2020 [online]. Available at: https://archiviopenale.it/la-disciplina-delwhistleblowing-alla-luce-della-direttiva-2019-1937-uetraprevenzione-dei-fenomeni-corruttivi-e-tutela-deldenunciante/articoli/24906; LEWIS, D. The EU Directive on the Protection of Whistleblowers: A Missed Opportunity to Establish International Best Practices? *E-Journal of International and Comparative Labour Studies*, 9(1), 2020, pp. 1–25.

[2] The European Commission. *Citizens and businesses have spoken – corruption remains a serious problem in EU countries* [online]. Available at: https://home-affairs.ec.europa.eu/news/citizens-and-businesses-have-spoken-corruption-remains-serious-problem-eu-countries-2022-07-13_en

[3] For more details on the Eurobarometer, see for instance NISSEN, S. The Eurobarometer and the process of European integration. Methodological foundations and weaknesses of the largest European survey. *Quality & Quantity*, 48(2), Dordrecht: Springer Science + Business Media, 2014.

[4] See for instance the European Parliament. *Resolution of October 25th 2016, Fight against corruption and follow-up of the CRIM resolution* https://www.europarl.europa.eu/doceo/document/TA-8-2016-0403_EN.html

EU action to combat corruption.[5] The Council made similar calls, in particular in the context of cooperation to fight organized and serious international crime.[6] Thus, the EU legal framework on combating corruption existing before the adoption of the Directive needed to be updated to take into account the evolution of corruption threats and the legal obligations on the Union and Member States under international law, as well as the evolution of national criminal legal frameworks. It has to be also mentioned that the EU is a party to the United Nations Convention against Corruption[7] (further 'the UNCAC'), which is the most comprehensive international legal instrument in this field, combining a wide range of measures to prevent and fight corruption. For the above reasons, therefore the Directive was supposed to update the EU legislative framework, including by incorporating international standards binding on the EU, such as those in the UNCAC. The aim was to ensure that all forms of corruption would be criminalized in all Member States, and that offences would incur effective, proportionate and dissuasive penalties. In addition, the Directive includes relevant measures to prevent corruption in accordance with international standards and facilitate cross-border cooperation, as required by the UNCAC.[8] [9]

The legal bases for the Directive are Art. 83(1), 83(2) and 82(1)(d) of the Treaty on the Functioning of the European Union (further 'the TFEU'). Art. 83(1) of the TFEU identifies corruption as one of the crimes with a particular cross-border dimension. It enables the European Parliament and the Council to establish the necessary minimum rules on the definition of corruption by means of directives adopted in accordance with the ordinary legislative procedure. There is no single definition of corruption as corruption exists in different forms involving different participants. Indeed, corruption is an endemic phenomenon that

[5] For more details on the State of the Union Addresses, see for instance MOLNÁR, A., JAKUSNÉ HARNOS, E. The Postmodernity of the European Union: A Discourse Analysis of State of the Union Addresses. *The International Spectator*, 58, 2023, pp. 58–74.

[6] The General Secretariat of the Council. *Council conclusions of March 9th 2023 setting the EU's priorities for the fight against serious and organized crime for EMPACT 2022–2025* [online]. Available at: https://data.consilium.europa.eu/doc/document/ST-7101-2023-INIT/en/pdf

[7] The United Nations. *United Nations 2003, United Nations Convention Against Corruption, Treaty Series 2349 (October): 41* [online]. Available at: https://www.unodc.org/unodc/en/corruption/uncac.html

[8] *Explanatory memorandum to the Directive (EU) 2019/1937 of the European Parliament and of the Council of October 23rd 2019 on the Protection of Persons Who Report Breaches of Union Law* [online]. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX%3A52023PC0234

[9] For more details on the United Nations Convention against Corruption, see for instance LARSON, E. N. The United Nations Convention against Corruption. In: ACHATHALER, L., HOFMANN, D., PÁZMÁNDY, M. (eds.). *Korruptionsbekämpfung als globale Herausforderung.* Wiesbaden: VS Verlag für Sozialwissenschaften, 2011, pp. 11–18.

takes multiple shapes and forms across all facets of society, for example bribery, embezzlement, trading in influence, trading of information, abuse of functions and illicit enrichment. During the negotiations of UNCAC, United Nations States Parties carefully considered whether to develop a legal definition of corruption. It was concluded that any attempt at a comprehensive definition would inevitably fail to address some forms of corruption. As a consequence, the international community reached consensus on certain manifestations of corruption while leaving each State free to go beyond the minimum standards set forth in UNCAC.[10] [11] Art. 83(2) of the TFEU is the legal basis on which Directive (EU) no. 2017/1371, which is amended by the Directive, was adopted. It sets out the EU's competence to establish minimum rules with regard to the definition of criminal offences and sanctions in EU policy areas which have been subject to harmonization measures, if this is essential to ensure the effective implementation of such policy areas. And Art. 82(1)(d) of the TFEU provides the legal basis for measures to facilitate cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions, such as the adoption of common rules concerning jurisdiction in criminal matters.[12]

The Directive is based on the principle of proportionality, as set out in Art. 5(4) of the Treaty on European Union (further 'the TEU'), which means that the Directive is limited to what is necessary and proportionate to efficiently prevent and combat corruption and to implement international obligations and standards, in particular as regards the criminalization of corruption, in line with the UNCAC. The Directive defines the scope of the corruption offences with a view to covering all relevant conduct while limiting it to what is necessary and proportionate. The Directive is supposed to strengthen existing international obligations where necessary, in order to improve cross-border cooperation and to prevent criminals from exploiting the differences between national legislations to their advantage. Furthermore, it is necessary to add that, in accordance with Art. 83 and 82(1) of the TFEU, the establishment of minimum rules concerning the definition of criminal offences and sanctions in the area of serious crime with a cross-border dimension, including corruption can only be achieved by means

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10 MEENAKSHI, F., JANČOVÁ, L. *Cost of Non-Europe Report Stepping up the EU's efforts to tackle corruption*. Brussels: European Parliamentary Research Service, 2023, p. 15.

11 The United Nations Office on Drugs and Crime (UNODC). *Safeguarding against Corruption in Major Public Events Facilitator's Guide*. New York: UNODC, p. 30 [online]. Available at: https://www.unodc.org/documents/corruption/Publications/Major_Public_Events_Training_Materials/Facilitators_Guide_Safeguarding_against_Corruption_in_MPE.pdf

12 *Explanatory memorandum to the Directive (EU) 2019/1937 of the European Parliament and of the Council of October 23rd 2019 on the Protection of Persons Who Report Breaches of Union Law* [online]. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX%3A52023PC0234

of a Directive of the European Parliament and the Council adopted in accordance with the ordinary legislative procedure.[13]

In accordance with the principle of proportionality, the Directive also introduces minimum rules on the level of sanctions, having regard to the nature of the offence. Moreover, administrative sanctions imposed are to be taken into account when sentencing the person for a criminal offence set out in the Directive. The Directive also highlights that, to ensure the effective and transparent investigation and prosecution of corruption offences, Member States should establish procedures for the suspension or temporary reassignment of a public official accused of an offence as referred to in the Directive. In such cases they should bear in mind the principle of the presumption of innocence and the need to respect right to an effective remedy. The use of investigative tools, which the Directive seeks to ensure, has to respect fundamental rights, such as the right to an effective remedy and to a fair trial and the presumption of innocence and the right of defense. The use of such tools, in accordance with national law, should be targeted and take into account the principle of proportionality and the nature and seriousness of the offences under investigation and should respect the right to the protection of personal data. Moreover, when applying the Directive, Member States must respect their obligations under Union law with regard to procedural rights of suspects or accused persons in criminal proceedings.[14]

The implementation of the Directive is monitored by the Commission on the basis of the information provided by the Member States on the measures taken to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive. The Commission shall, two years after the deadline for implementation of the Directive, i.e. two years after December 17th 2021, submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures to comply with the Directive. Four years following the deadline for implementation of the Directive, the Commission shall submit a report to the European Parliament and to the Council, assessing the added value of the Directive with regard to combating corruption, including the impact on fundamental rights and freedoms. On the basis of this evaluation, the Commission shall, if necessary, decide on appropriate follow-up actions.[15]

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13 Ibid.

14 Ibid.

15 Ibid.

## 2. The basics of legal regulation in Ukraine

Currently the only provisions on whistleblowing existing in Ukrainian law can be found in the anticorruption legislation. Unfortunately, the legislative provisions in Ukraine do not provide for the protection of whistleblowers of other crimes: e.g. flagrant violations of human rights, ecological standards, safety of food and household items, public interests, etc. The issue of the legal framework of whistleblowing has not been actively researched in Ukraine. In their article, Tatarenko, H. V., Mezeria, O. A. and Tatarenko, I. V. rightly point out that the majority of the research was conducted before the latest amendments to Ukrainian law regarding corruption whistleblowers were introduced, which significantly expanded and changed the regulation of whistleblower activities. As a result of these changes, whistleblower rights have been protected, rewards for whistleblowers have been established, possible channels for reporting corruption have been regulated, the procedure for examining these reports, including those submitted anonymously, has been altered, and other changes have been made as well. Consequently, these aspects require new legal analysis and research. According to Zagyney, Z. whistleblowing provisions in Ukrainian corruption legislation were introduced to comply with Universal and European standards. The academic research which covers the legislation in force was developed by the group of experts of the Anti-Corruption Research and Education Centre (ACREC). Their Scientific and practical commentary on the legislation of Ukraine on the protection of whistleblowers is based on the explanations provided by the National Agency for the Prevention of Corruption (NAPC).[16] [17] [18]

The need for legislative regulation of the institute for the protection of whistleblowers who report corruption was first reflected at the international level in Art. 22 of the Criminal Law[19] and Art. 9 of the Civil Convention of the Council of Europe on Corruption[20]. Art. 33 of the United Nations Convention Against Corruption provides that each participating state shall examine the possibility

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[16] TATARENKO, H. V., MEZERIA, O. A., TATARENKO, I. V. Reform of the Institute of the Whistleblowers of Corruption in Ukraine: Long-Term Changes or Simulation of Progress. *Current Problems of Law: theory and practice*. 2020, vol. 1 (39), pp. 127–142 (in Ukrainian).

[17] ZAGYNEy, Z. Whistleblowers Corruption: Quid Prodest. *Scientific journal of the National Academy of the Prosecutor's Office of Ukraine*. 2016, vol. 2, pp. 125–136 (in Ukrainian).

[18] *Scientific and practical commentary on the legislation of Ukraine on the protection of whistleblowers*. NESTERENKO, O. ed. – Kyiv: TOV Red ZET, 2021. 140 p. [online]. Available at: https://acrec.org.ua/wp-content/uploads/2021/11/comments.pdf (in Ukrainian).

[19] *Criminal Law Convention on Corruption* (ETC No. 173) adopted 27.01.1999 [online]. Available at: https://rm.coe.int/168007f3f5

[20] *Civil Law Convention on Corruption* (ETC No. 174) adopted 04.11.1999 [online]. Available at: https://rm.coe.int/168007f3f6

of incorporating in its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention[21]. The Criminal and Civil Conventions of the Council of Europe on Corruption, as well as the United Nations Convention against Corruption, have been ratified by Ukraine and are part of the national legislation of Ukraine. And in 2019 the European Parliament and the Council of the European Union adopted the Directive[22]. The Directive is not part of the national legislation of Ukraine, however, due to its aspirations of candidacy for membership in the European Union, Ukraine must be guided by the provisions of this EU act.

## 3. The state of legal regulation in Ukraine

Provisions covering whistleblowing are incorporated into the Law of Ukraine "On the Prevention of Corruption"[23] (further 'the Law') adopted in 2014 (the amendments regarding whistleblowing were incorporated by the special Law "On Amendments to the Law of Ukraine "On the Prevention of Corruption"[24] in 2019 and 2021[25]). According to these amendments special Chapter VIII "Protection of Whistleblowers" was added to the text of the Law (Art. 53-53[9]). According to Art. 1(1)(20) of the Law whistleblower is a natural person who, believing that the information is reliable, reported possible facts of corruption or corruption-related offenses, other violations of the abovementioned Law, committed by another person, if such information had become known to him/her in connection with his/her work, professional, economic, social, scientific activity, the completion of service or training, or his/her participation in procedures provided for by the legislation

[21] The United Nations. *United Nations 2003, United Nations Convention Against Corruption, Treaty Series 2349 (October): 41* [online]. Available at: https://www.unodc.org/unodc/en/corruption/uncac.html

[22] *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* [online]. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1937

[23] Law of Ukraine "*On the Prevention of Corruption*" dated 14. 10. 2014 [online]. Available at: https://zakon.rada.gov.ua/laws/show/1700-18#Text (in Ukrainian).

[24] Law of Ukraine "*On Amendments to the Law of Ukraine "On the Prevention of Corruption" regarding Corruption Whistleblowers*" dated 17. 10. 2019 [online]. Available at: https://zakon.rada.gov.ua/laws/show/198-20#Text (in Ukrainian).

[25] Law of Ukraine "*On Amendments to the Law of Ukraine "On the Prevention of Corruption" regarding* regulation of some issues of whistleblower protection" dated 01.06.2021 [online]. Available at: https://zakon.rada.gov.ua/laws/show/1502-20#Text (in Ukrainian).

which are mandatory for starting such activity, completion of service or training. Due to the Art. 3(1)($16^2$) of the Criminal Procedure Code of Ukraine, a whistleblower shall mean an individual who, in the presence of the belief that the information is reliable, has filed a report or notification of a corruption criminal offence to the pre-trial investigation body[26]. Finally, Art. 272(3) of the Code of Ukraine on Administrative Offences indicates that a whistleblower is a witness in cases of administrative offenses related to corruption. The whistleblower has the right to keep information about him/her confidential while giving explanations on the case. Tatarenko, H. V., Mezeria, O. A. and Tatarenko, I. V. note that it is rather difficult to find a logical and noble reason why the legislator introduced such a difference in the procedural status of whistleblowers in cases of criminal offenses of corruption and administrative offenses related to corruption[27].

In accordance with the requirements of Art. 1(1)(20) and Art. $53^2$(2)(2) of the Law, a person is examined a whistleblower under the following conditions: the notification must be made by a natural person (citizen of Ukraine, foreigner, stateless person) who is convinced that the information is reliable; and the information provided in the notification must contain factual data confirming the possible commission of a corruption or corruption-related offense by another individual, other violations of the Law which can be verified; and the information reported by the individual became known to him/her in connection with his/her labor, professional, economic, social, scientific activity, his/her service or training or his/her participation in the procedures prescribed by law which are mandatory for starting such activity, service or training. Thus, in the absence of at least one of the above conditions, an individual cannot be examined as a whistleblower.

The provisions of the Chapter VIII "Protection of Whistleblowers" the Law of Ukraine "On the Prevention of Corruption" stipulate that the whistleblower's rights are established from the moment of reporting of information about possible facts of corruption or corruption-related offenses (Art. $53^3$). The whistleblower is entitled to certain number of rights: to be informed about their rights and obligations, stipulated by the Law; to submit evidence to support his/her claim; to receive confirmation of its acceptance and registration from the authorized body to which he/she submitted the notification; to provide explanations, testimony or refuse to give them; to free legal assistance in connection with the protection of whistleblower rights; to confidentiality; to report possible

26 *Criminal Procedure Code of Ukraine* adopted in 13.04.2012, amended 15.06.2021 [online]. Available at: https://dickinsonlaw.psu.edu/sites/default/files/large-files/Ukraine-Crim-Pro-Law-amndmnts-through-2018.pdf

27 TATARENKO, H. V., MEZERIA, O. A., TATARENKO, I. V. Reform of the Institute of the Whistleblowers of Corruption in Ukraine: Long-Term Changes or Simulation of Progress. *Current Problems of Law: theory and practice*. 2020, vol. 1 (39), pp. 127–142 (in Ukrainian).

facts of corruption or corruption-related offenses without indicating personal information (anonymously); in the event of a threat to life and health, to ensure the safety of him/herself and close relatives, property and housing or to refuse such measures; to reimbursement of expenses in connection with the protection of the rights of whistleblowers, expenses for a lawyer in connection with the protection of the rights of a person as a whistleblower, costs of court fees; to remuneration in the cases specified by law; to receive psychological support; to exemption from legal liability in cases defined by law; to receive information about the status and results of the review, to inspection and/or investigation based on the fact that he/she reported the information.

As provided by the Law the rights and guarantees of whistleblowers protection extend to individuals who are close to the whistleblower. Pursuant to the Art. 1 (1 (4)) close persons are family members of the individual specified in Art. 3 (1) of the Law, as well as husband, wife, father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, brothers and cousins, sisters and cousins, wife's brother and sister (husband), nephew, niece, uncle, aunt, grandfather, grandmother, great-grandfather, great-grandmother, grandson, granddaughter, great-grandson, great-granddaughter, son-in-law, daughter-in-law, father-in-law, mother-in-law, father-in-law, mother-in-law, father and mother of the wife (husband) of the son (daughter), adopter or adoptee, guardian or custodian, person who is under the guardianship or guardianship of the specified individual (Art. 1 (1 (4)) of the Law).

Moreover, family members, in accordance Art. 1 (1 (17–18)) of the Law, are: a) a person who is married to the individual specified in the Art. 3 (1) of this Law, and the children of the specified subject until they reach the age of majority (in Ukraine it is in general 18 years) – regardless of cohabitation with the individual; and b) any individuals residing together, connected by common life, who have mutual rights and obligations with the entity specified in the Art. 3 (1) of this Law (except for persons whose mutual rights and obligations are not of a family nature), including persons who live together but are not married.

Regarding protection of the whistleblower in the field of employment the specific provisions of the Art. 53 (4) of the Law are in force. The whistleblower and his/her close relatives cannot be refused employment, they cannot be fired or forced to resign, brought to disciplinary action or subjected to other negative influence measures by the manager or employer (transfer, certification, change of working conditions, refusal to appointment to a higher position, salary reduction, etc.) or the threat of such influence measures in connection with the notification of possible facts of corruption or corruption-related offenses. It is important to underline that negative measures also include formally legitimate decisions and actions of the manager or employer which are selective in nature, in particular, and are not applied to other employees in similar situations and/or have not been applied to the employee in similar situations before. Whistleblowers suspended from work due to no fault of their own are remunerated for the period of suspension at their average salary.

The whistleblower and his/her close relatives cannot be denied the conclusion or extension of a contract, employment contract (agreement), provision of administrative and other services in connection with the reporting of possible facts of corruption or corruption-related offenses. Neither whistleblowers nor their close relatives may be obstructed in pursuing their professional, economic, public, scientific, or other activities, nor may they be discriminated against in connection with the notification of possible facts of corruption or corruption-related offenses, nor may they be subject to any discriminatory measures. The Law guarantees whistleblowers' and their families' rights to be restored under Art. 534 (1–3).

The whistleblower, his/her relatives, dismissed from work in connection with the notification of potential facts of corruption or corruption-related offenses are immediately reinstated in their previous job (position), and the average salary for the period of forced absenteeism will be paid to them, but not for more than a year. If the application for reinstatement of the whistleblower or his/her close person at work (position) is examined for more than one year through no fault of theirs, they are paid the average salary for the entire period of forced absenteeism.

When a whistleblower is transferred to another permanent lower-paying job (position) after submitting a notification of possible facts of corruption, corruption-related offenses he/she may be immediately reinstated at the previous position. In addition, they receive the difference in earnings, but only for one year at a time. If the reinstatement request takes more than one year, the whistleblower or his/her close person at work receives the average salary for the entire period of forced absenteeism. If there are grounds for reinstatement of an employee who was dismissed due to his or close person's notification of possible facts of corruption or corruption-related offenses, the employee can be compensated for his or her reinstatement in the amount of six months' average earnings or two years' average earnings if renewal is not possible.

Information about the whistleblower, his relatives or other data that can identify the whistleblower, his relatives cannot be disclosed to third parties not involved in reviewing, verifying and/or investigating the facts reported by him, as well as to persons whose actions or inactions relate to the facts reported by him, except in cases established by law. In the event that the law allows for the disclosure of information about the whistleblower or information that can identify the whistleblower without the consent of the whistleblower, the whistleblower must be informed of it by handing him a notification of the adoption of the relevant decision with a receipt no later than 18 working days before the date of disclosure. When disclosing whistleblower information, the notification must indicate to whom it will be disclosed and the reasons for doing so. In the event that the whistleblower's information is illegally disclosed, the individual responsible will be held accountable. The whistleblower has the right to receive information about the status and results of the review, inspection and/or investigation in connection with the report made by him about possible facts of corruption or corruption-related offenses. Whistleblowers who report corruption crimes are eligible for rewards if the crime or damage to the state exceeds five thousand times the subsistence minimum for able-bodied persons at the time of the crime (in October 2023 this subsistence minimum is UAH 2 589,00 or EUR 67,00).

In the event of a criminal conviction for corruption, the reward is equal to 10 percent of the victim's monetary loss or to the state's damages caused by the crime. At the time of the crime, the reward amount could not exceed three thousand minimum wages. Reward amounts are equally divided among whistleblowers who reveal different information about the same corruption crime, including supplementary information. On October 2nd 2023, first time in history, the High Anti-Corruption Court panel of judges determined to pay the reward to the whistleblower, which will amount to 13 UAH 299 950,00 (approximately EUR 345 000,00). Yevhen Shevchenko, a whistleblower who has been working for the National Anti-Corruption Bureau of Ukraine (NABU) since 2016, reported attempts to bribe anti-corruption bodies heads for 6 million USD. An amount of 5 million USD was to be paid to Nazar Kholodnytskyi, the head of the Specialized Anti-Corruption Prosecutor's Office (SAP). In the investigation, it was discovered that individuals accused in the case were trying to "buy" the ex-minister's release from suspicion in the embezzlement case of the Real Bank stabilization loan. A further 1 million USD was allegedly intended for intermediaries.[28] [29]

The whistleblower bears no legal responsibility for reporting possible facts of corruption or corruption-related offenses, dissemination of the information specified in the report, despite the possible violation of his/her official, civil, labor or other obligations by such a report obligations or obligations. Reporting of possible facts of corruption or corruption-related offences cannot be examined as a violation of the confidentiality conditions stipulated by a civil, labor or other agreement (contract). When whistleblowers report possible corruption or corruption-related offenses, they are not liable for the property or moral damage they suffer, except when they report knowingly false information.

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28 *Corruption whistleblower to get UAH 13.3m reward first time in Ukraine* [online]. Available at: https://en.lb.ua/news/2023/10/02/22858_corruption_whistleblower_get_uah.html

29 NYRERÖD, T., SPAGNOLO, G. A fresh look at whistleblower rewards. *Journal of Governance and Regulation*, 10(4 Special issue), 2021, pp. 248–260.

There are a number of channels available to whistleblowers who wish to report corruption. In accordance with Art. $53^2$(1) of the Law, whistleblowers are free to choose internal, regular or external reporting channels. Internal channels of reporting are methods of protected and anonymous reporting of information submitted by the whistleblower to the head or authorized unit (official) of the body or legal entity in which the whistleblower works, serves or studies or on the order of which he performs the work (Art. 1(1)(21) of the Law). External channels of reporting are ways of reporting information by a whistleblower through natural or legal persons, including through mass media, journalists, public associations, trade unions, etc. (Art. 1(1)(22) of the Law). Regular channels of reporting are ways of protected and anonymous reporting of information by the whistleblower to the NAPC, other authorities, whose competence is the examination and decision-making on issues, regarding which relevant information is disclosed. Regular channels must be created by specially authorized entities in the field of anti-corruption, pre-trial investigation bodies, bodies responsible for monitoring compliance with laws in relevant areas, other state bodies, institutions, organizations (Art. 1(1)(23) of Law). According to Art. $53^1$(2) of the Law, submission of reports (including anonymous ones) through internal channels about possible facts of corruption or corruption-related offenses, other violations of this Law is carried out through the 24-hour Portal and special telephone lines.

The Unified Whistleblower Reporting Portal (further 'the Portal')[30] is an information and communication system that has a comprehensive information protection system with confirmed compliance in accordance with the Law of Ukraine "On the Protection of Information in Information and Communication Systems"[31] which provides data exchange with the whistleblower via the Internet, collection, storage, use, protection, accounting, search, summarization of whistleblower reports, as well as other information, including about the status of whistleblowers, the status and results of examination of whistleblower reports. A procedure for managing the Portal is established by the Agency that holds and administers it.[32] As of September 6th 2023, the Portal is permanently operational.[33]

30 Unified Whistleblower Reporting Portal. Available at: https://whistleblowers.nazk.gov.ua/

31 Law of Ukraine *"On Protection of Information in Information and Communication System"* dated 5. 7. 1994 [online]. Available at: https://zakon.rada.gov.ua/laws/card/80/94-%D0%B2%D1%80 (in Ukrainian).

32 Order of the National Agency on Prevention of Corruption № 1/23 dated 03.01.2023 *"On Approval of the Procedure for Maintaining the Unified Whistleblower Reporting Portal"* [online]. Available at: https://zakon.rada.gov.ua/laws/show/z0022-23#Text (in Ukrainian).

33 Order of the National Agency on Prevention of Corruption № 190/23 dated 31.08.2023 «*On the Launching of the Unified Whistleblower Reporting Portal*» [online]. Available at: https://nazk.gov.ua/uk/documents/nakaz-vid-31-08-2023-190-23-pro-pochatok-roboty-yedynogo-portalu-povidomlen-vykryvachiv/ (in Ukrainian).

As part of its operation, the Portal processes personal data, which is provided by the whistleblower, as well as personal data of users who have access to the Portal, and these data are used in order to protect whistleblowers, verify whistleblower notifications, and perform administrative duties. Specified data are processed in accordance with the law and do not require consent from the subjects. Providing whistleblowers with information on the status and results of their whistleblower reports, as well as providing information on the status and results of their whistleblower reports, the single whistleblower reporting portal ensures confidentiality and anonymity for whistleblowers. The Portal is one of the tools for implementing anti-corruption policy, and its creation is part of the State Anti-Corruption Program for 2023 – 2025.[34] The NACP therefore aims to create conditions under which whistleblowers can report corruption-related facts safely.

Access to the Portal is open for individuals who have reported corruption (in terms of making reports and receiving information about the status and results of their review) and authorized users – the Chairman and employees of the Agency in accordance with their competence defined by the Law, managers and authorized persons of the relevant subjects in terms of whistleblower reports, examination of which is assigned to their powers in accordance with the Law, other authorized persons in terms of information on the status of whistleblowers in the event of a whistleblower's appeal for free legal or psychological assistance specified by the Law. As the Portal and dedicated phone line are the only internal messaging channels that organizations need to maintain, the Portal is a cost saver for organizations. At the first stage, within 30 working days, specially authorized entities in the field of anti-corruption (NAPC, NABU, Office of the Prosecutor General, National Police) and the State Bureau of Investigation were supposed to be connected to the Portal. Within 180 days, 92 thousand Ukrainian organizations are expected to be connected to the Portal. The Portal received more than 360 reports of the crime of corruption in its first month of operation.[35]

As outlined in Art. $53^2$(3) of the Law, whistleblowers who inform an authorized person of possible facts of corruption or corruption-related offenses, whether they notify such information through external or internal channels of notification, must give preliminary examination to such information within 10 working days after entering it into the Unified Portal. If an organization is not yet

34 Regulation of the Cabinet of Minister of Ukraine № 220 dated 04.03.2023 *"On Approval of the State Anti-Corruption Program for 2023–2025"* [online]. Available at: https://zakon.rada.gov.ua/laws/show/220-2023-%D0%BF#Text (in Ukrainian).

35 *During the First Month of Operation, the NAPC received 360 Reports from whistleblowers about corruption – Renkas* [online]. Available at: http://www.nrcu.gov.ua/news.html?newsID=102410 (in Ukrainian).

connected to the Portal, it must examine reports received through any reporting channels within the time limits specified in Art. $53^2$ of the Law, from the date when the organization receives such notification. If, during the preliminary examination of the notification, it is established that it does not meet the requirements of the Law, its further examination is carried out in accordance with the procedure established for the examination of citizens' appeals, and the person who made the notification is informed about it. Within 40 working days from the moment the National Agency grants the head of the organization access to the Portal, all notifications received by the organization from the time of the Portal's launch until the moment of their actual connection to the Portal must be entered into the Portal. Art. $53^2$(2) of the Law specifies the requirements for reports (including anonymous ones) and the procedure for their examination. The report must be reviewed if it contains factual information indicating the possible commission of corruption or corruption-related activities.

In accordance with Art. 131(8)(6) of the Law, one of the primary responsibilities of authorized units (authorized officials) is to investigate complaints of violations of the Law, including at subordinate organizations, institutions, and enterprises, as well as to inform the head of the appropriate body of specially authorized entities in the field of anti-corruption about the facts about the violation of legislation. Consequently, it is the authorized division (authorized person) of the relevant body that is tasked with reviewing reports received through internal channels and evaluating their factual content. Additionally, the individual responsible for the implementation of the anti-corruption program is usually entrusted with the examination of reports in legal entities specified in Art. 62(2) of the Law.

During the preliminary examination of the report, authorized units (authorized official) in accordance with Art. $53^9$(2) of the Law have the right to: request documents from other structural divisions of the organization, including those containing information with limited access (except for state secrets), and make copies of them; summon and interview persons whose actions or inactions are related to the facts reported by the whistleblower, including the head, deputy heads of the organization; submit the proposal to the head of the organization to bring guilty persons to disciplinary liability for violation the Law; to implement other powers defined by law, aimed at comprehensive examination of whistleblowers' reports and protection of their rights and freedoms. Preliminary examination of reports reports submitted through external or internal communication channels takes place within ten working days from the date of entering the information into the Portal.

If during the preliminary examination of the notification it is established that it does not meet the requirements of the Law (that is, it does not contain factual data that can be verified), its further examination is carried out in the order determined for the examination of citizens' appeals, and the person who made the notification is informed about it (Art. $53^2$(3)(2) of the Law). In this case, the executor of the report should determine the appropriate structural unit. If, during the preliminary examination of the report, it is established that it does not belong to the competence of the organization to which it was received, its examination is terminated. It is necessary to inform the person who made the notification about this, and to clarify which body or legal entity is competent to review or investigate the facts stated in the notification (Par. 3, Part 3, Art. 532 of the Law). If signs of a corruption offense or an offense related to corruption are revealed during the preliminary examination, the materials are transferred to the corresponding specially authorized entity in the field of anti-corruption or the State Bureau of Investigation (Art. $53^2$(3)(7) of the Law).

At the same time, in accordance with Art. 53(6) of the Law, officials and employees of organizations in the event of discovering a corruption or corruption-related offense or receiving a notification of the commission of such an offense by the employees of the relevant organization are obliged to take measures within their powers to stop such an offense and immediately, within 24 hours, to notify in writing about its commission by a specially authorized subject in the field of anti-corruption (taking into account the provisions of Art. 216 of the Criminal Procedure Code of Ukraine and Art. 255 of the Criminal Procedure Code). In this case, "employees of the relevant organization" should be understood as employees of the organization itself, as well as sub-departmental organizations of employees of enterprises, institutions, and organizations. Thus, the notification of the specially authorized entity in the field of anti-corruption can be carried out both upon receipt of a notification and when violations are detected during the preliminary review of such a notification (based on the results of an inspection or investigation of the facts stated in the notification). In case of non-confirmation of the facts stated in the report, the head or employee of the authorized unit (authorized official) responsible for the preliminary examination may prepare expert opinion (information sheet, report or official memo) on behalf of the head of the body that the information stated in the report was not confirmed.

If during the preliminary examination of the report it is established that it does not meet the requirements of the Law (that is, it does not contain factual data that can be verified), its further examination is carried out in the order determined for the examination of citizens' appeals, and the person who made the notification is notified about it (Art. $53^2$(3)(2) of the Law). It is up to the executor of the report to determine what structure is appropriate in this case. If, during the preliminary examination of the report, it is established that it does not belong to the competence of the organization to which it was received, its examination is terminated. It is necessary to inform the person who made the notification about this, and to clarify which body or legal entity is competent to review or investigate the facts stated in the notification (Art. $53^2$(3)(3) of the Law). If signs of a corruption offense or an offense related to corruption are revealed during the preliminary examination, the materials are transferred to the corresponding specially authorized entity in the field of anti-corruption activities or the State Bureau of Investigation (Art. $53^2$(3)(7) of the Law).

At the same time, in accordance with Art. 53(6) of the Law, officials and employees of organizations in the event of discovering the corruption or corruption-related offense or receiving a notification of the commission of such an offense by the employees of the relevant organization are obliged to take measures within their powers to stop such an offense and immediately, within 24 hours, to notify in writing about its commission by a specially authorized subject in the field of anti-corruption (taking into account the provisions of Art. 216 of the Criminal Procedure Code of Ukraine and Art. 255 of the Code of Ukraine on Administrative Offences).

Ukrainian judicial system delivered several crucial judgements regarding protection of whistleblowers. In April 2023, the Civil Cassation Court within the Supreme Court of Ukraine delivered its judgment in the case when in 2021 the applicant had appealed against dismissal.[36] In March 2021, the citizen filed a lawsuit in court to declare illegal and to cancel his dismissal, he demanded to be reinstated in his position and be paid the appropriate salary for the period of forced absenteeism. Among other things, he indicated that he had worked as a director on prevention and countering corruption, an adviser to the President of the NNEGC "Energoatom". He stated that dismissal had been implemented without the consent of the NACP. He also repeatedly informed the head of the enterprise that he had been a corruption whistleblower. In addition, disciplinary sanctions were applied only to him, although according to the results of the official investigation, they were proposed to be imposed on other persons as well. The Civil Cassation Court satisfied the cassation appeals of the NAPC and the applicant's representative, annulled the decision of the appeals court and upheld the decision of the court of first instance, making the following legal conclusions.

The Civil Cassation Court ruled that the Law of Ukraine "On Prevention of Corruption" guarantees the independence of the authorized official from influence or interference in his work, which is implemented through the mechanism of obtaining consent from the NAPC for his dismissal, if it occurs at the initiative of the head of the organisation. In this case, the granting of the consent of the

[36] For more details, see for instance the Order of the Civil Cassation Court within the Supreme Court of Ukraine dated 19.04.2023 in the case № 761/8294/21 [online]. Available at: https://verdictum.ligazakon.net/document/110395768?utm_source=jurliga.ligazakon.net&utm_medium=news&utm_content=jl01 (in Ukrainian).

NAPC is aimed at preventing the dismissal of the officials due to their reporting on the facts of corruption and corruption-related offenses. Dismissal of an authorized person without obtaining consent or contrary to the reasoned refusal of NAPC to grant consent to the dismissal of such a person is the violation of Art. 64(5)(2) of the Law.

Regarding the status of the whistleblower the Civil Cassation Court held that the whistleblower's rights arise from the moment of reporting information about possible facts of corruption or corruption-related offenses. Therefore, an individual acquires the status of a whistleblower from the moment of reporting information about a violation of the requirements of the law by another person. According to Art. $53^4$(1) of the Law, in particular, the whistleblower may not be dismissed from work, may not be subjected to other negative influence measures by the manager or employer in connection with the report. Negative measures also include formally legitimate decisions and actions of a manager or employer of a selective nature which do not apply to other employees in similar situations. At the same time, Art. $53^4$ of the said Law, guarantees are applied not only on the fact that a person is a whistleblower but on the condition that there is a connection between negative measures or the threat of their application and the whistleblower's report. The Court stated: "Having established that the applicant acquired the status of a whistleblower from the moment of reporting of a corruption violation, the court of first instance came to the correct conclusion that he was dismissed in violation of the requirements of Art. $53^4$(1)(4) of the Law, since the defendant applied to the applicant who has the status of a whistleblower negative measures, which, although they have signs of formal legality, are selective, since they were not applied to other employees in similar situations but were applied exclusively to the plaintiff without consent NAPC". The position of the Civil Cassation Court is the exact example of real enforcement of the whistleblower's rights by the judicial in Ukraine. This case-law is not vast in general but the first attempts to produce common approach for all courts of lower instances.

## 4. The basics of legal regulation in the Czech Republic

As for legal regulation in the Czech Republic, the Directive has been transposed into Czech law by a brand new Act no. 171/2023 Coll., on the Protection of Whistleblowers (further 'the Act'). This transposition has a significant impact because until August 1st 2023 there was no specific legal instrument in the Czech legal system to protect whistleblowers. As for the purpose of its adoption, it is clear from its explanatory report that the Act was not only adopted to transpose the Directive but also in response to the Czech Republic's international obligations and recommendations, arising from the Council of Europe Criminal Law Convention on Corruption, the Council of Europe Civil Law Convention on Corruption, the International Covenant on Civil and Political Rights, the United Nations Convention against Corruption and other activities of the Organization for Economic Co-operation and Development and the Council of Europe.[37] The path to adoption of the Act was not entirely easy. The original version of the bill was sent for comments on April 29th 2022. The version for the Czech government's consideration was sent to it on September 26th 2022. Two amendments were then made to the bill at the level of its consideration by the government, on November 16th and 30th 2022.

In the context of the introductory content of this article, it is unfortunately necessary to state that the Directive was transposed into the legal system of the Czech Republic too late and for this late transposition of the Directive, infringement procedure no. 2022/0043 is being held against the Czech Republic. The infringement procedure, under Art, 258 of the Treaty on the Functioning of the European Union, was initiated by the European Commission on January 27th 2022. This infringement procedure may result in the imposition of a financial penalty, and given the nature of the Directive, the European Commission will be able to use the option under Art. 260(3) of the TFEU to request the imposition of a significant financial penalty, as the case has been referred to the Court of Justice of the European Union on February 15th 2023.[38]

## 5. The state of legal regulation in the Czech Republic

At this place it should be noted that during the law-making process many objections, concerning the transposition of the Directive into the Czech legal order, were raised against the content of the Act draft. These comments were of organizational nature, related to the fundamental legal institutes regulated by the Act and related to the internal reporting system. Due to the fixed extent of this article, its content deals only with the analysis of deficiencies of fundamental legal institutes regulated by the Act. Specifically, the shortcomings and uncertainties

[37] *Explanatory report to the Act no. 171/2023 Coll., on the Protection of Whistleblowers* [online]. Available at: https://www.psp.cz/sqw/text/orig2.sqw?idd=221054 (in Czech).

[38] Ibid.

concerning the system for submitting reports, the definition of the reporting person, the competent person's powers and the possibilities of the competent person's actions in verifying the validity of the report are to be analyzed.

Regarding the system for submitting reports, legal regulation under § 7 of the Act gives a reporting person the option to choose how he or she will submit a report, whether he or she will use the internal reporting system, submit a report to the Ministry of Justice, publish a report or submit a report to the authority responsible for investigation of unlawful conduct. However, the Act does not limit the jurisdiction of the competent person who investigates reports submitted through the internal reporting system. Therefore, a situation may arise where a reporting person, who is an employee of the obligated entity and has come across possible unlawful conduct at another obligated entity in the course of his or her work, uses employer's internal reporting system to address a report. Nevertheless, the Act imposes an obligation on the competent person to investigate this report. However, investigating the report of unlawful conduct committed by another obligated entity opens up the possibility of potential misuse of the situation and the acquisition of information within the business competition, especially when, apart from the obligation of confidentiality, the Act does not regulate the relationship between the competent person and the obligated entity in any other way.[39]

Under § 9(2) of the Act, an obligated entity shall ensure that a reporting person is able to submit a report through the internal reporting system in writing, orally or in person. This applies to the person who does not perform any work or other similar activity for the obligated entity only if the obligated entity has not excluded the receipt of reports from that person. It means restricting access to the internal reporting system to persons who do not perform any work or other similar activities for the obligated entity but who have become aware of the breach of law in the connection with the performance of their work or other similar activities (e.g. work or other similar activities for another employer). In such a case, they may submit a report through their own employer's internal reporting system. The competent person must then investigate the breach of law by the obligated entity which did not authorize this competent person to carry out the actions. However, it should not be relevant for the scope of the internal reporting system for which entity the work or other similar activity is performed, but which entity is suspected of the breach of law. Thus, suspected breaches of

[39] Objections to the draft of the Act on the Protection of Whistleblowers made during law-making process [online]. Available at: https://www.odok.cz/portal/veklep/material/KORNCDXFM97V/ALBSCJMJJA9B and Joint objections of three anti-corruption NGOs to the draft of the Act on the Protection of Whistleblowers and Amendment Act [online]. Available at: https://www.transparency.cz/wp-content/uploads/2020/08/P%C5%99ipom%C3%ADnky-k-z%C3%A1konu-o-ochran%C4%9B-oznamovatel%C5%AF.pdf (in Czech).

law arising within an obligated entity should be dealt by its internal reporting system. Moreover, this restriction is in clear conflict with Art. 2(1) of the Directive, i.e. with its material scope.[40]

As for the definition of the reporting person, it should be noted that § 2 of the Act regulates the definition of the report, but does not regulate the definition of the reporting person. Therefore, it is not clear from the Act whether the whistleblower can only be a person who submits a report under the Act or whether he or she submits it in other ways. This has a major impact on against whom retaliation may not be taken. Because it is not clear who the whistleblower is, it is also not clear who is protected from retaliation. It follows from Art. 4(1)(c) of the Directive that the Act should also apply to so-called non-executive members. However, it is not clear from the text of the Directive how this requirement should be fulfilled and who all can be considered as a so-called non-executive member. It seems to include various advisers, persons in an unofficial position, etc. Nor does the Act explicitly deal with this issue. Further, it should be noted that the Act also grants protection against retaliation to any person who makes a report by way of publication or to a public authority competent under any other law or regulation of the European Union. However, the regime of protection against retaliation does not apply to reports made to superior employees, although it is common practice for employees to be instructed to inform their superiors of suspicious facts. Moreover, it should be also noted that the Act lacks a determination as to when a whistleblower must have reasonable grounds to believe that the information reported is true.[41]

On the other hand, § 2(3)(j) of the Act, for its purposes, states that, work or other similar activity includes the exercise of rights and obligations arising from a contract, the subject matter of which is the provision of supplies, services, construction work or other similar performance. This solution goes far beyond Art. 4(1)(d) of the Directive that applies only to persons working under the supervision and direction of contractors, subcontractors and suppliers. It means that only a person carrying out activities under supervision and instructions can be considered a whistleblower. This includes activities that can be considered as dependent work or activities where the contractor is bound by clear instructions from the obligated entity or its contractors or subcontractors. Thus, the Directive does not require that anyone who supplies goods or services to the obligated entity or its supplier can be considered a whistleblower. It should also be noted that the Act lacks a legal regulation reflecting Art. 4(2) of the Directive, i.e. an employment relationship that has ended in the meantime.[42]

[40] Ibid.
[41] Ibid.
[42] Ibid.

Regarding powers of the competent person, legal regulation under § 11 and § 12 of the Act imposes on the competent person the responsibility to assess the validity of reports submitted through the internal reporting system. However, the Act does not provide any means for them to arrive at a specific objective conclusion. It means that the competent person does not have the right to access necessary documents or to interview specific individuals etc. In practice, the competent person is solely reliant on the description of the situation described by the reporting person. Based on this description, it is generally not possible to reach an objective conclusion regarding the breach of law. Consequently, the competent person has no tools to evaluate the validity of the report, which could paradoxically lead to a violation of § 24(1) and § 25(1) of the Act, i.e. committing the administrative offence of failing to investigate the report. The Act also does not establish any specific rules for determining the competent person. In principle, it is not excluded that employers appoint themselves as competent persons. However, in such cases, if reports concern the activities of the employers or members of the statutory bodies, it would not be appropriate for competent persons to assess these reports. The primary task of the competent person is to assess the validity of the report. Given the fact that the competent person has to make a legal qualification of the situation and determine whether a criminal offence or a violation of a legal regulation, or even a directly applicable EU regulation in a specific area, has occurred, the qualification requirements set out in the Act for the competent person appear insufficient. Finally, it is necessary to mention that the Ministry of Justice is given a period of 3 months to assess the validity of the report. Given the fact that the Act establishes a deadline of 30 days for the competent person to assess the validity of the report, within the internal reporting system (with the possibility of extending it by an additional 30 days, and this extension can be repeated twice), and considering that work principles of competent persons and an authorized employees of the Ministry of Justice are the same, the differential setting of a deadline is definitely disproportionate. The Act, however, does not specify the moment when relevant deadlines begin.[43]

It also follows from the above, that the Act does not accurately transpose 11(3) of the Directive, because its § 12(3) states that the competent person must consider the validity of the report and inform the reporting person in writing of the consideration results within 30 days of report receipt, which is certainly a different legal construction. Moreover the Act does not expressly regulate the institute of transmission of the report in terms of Art. 11(6) and Art. 16(3) of the Directive. A further problem is that the Directive does not explicitly solve the

[43] Ibid.

situations where reporting persons make only informal enquiries which are then evaluated by competent persons as reports. In these cases, reporting persons then have no chance to influence whether or not the competent persons will transmit reports to the competent authorities. Even if the identity of whistleblowers is not mentioned in transmitted reports, their identity may in fact be revealed during the investigation of the matter by competent authorities. It should also be added that, within the meaning of Art. 20(2) of the Directive, financial assistance and support measures are not regulated by the Act.[44]

Under § 12(6) of the Act, the legal regulation stipulates that if the report is not evaluated as justified, the competent person shall promptly inform the whistleblower in writing that, based on the facts presented in the report and the known circumstances, it has not been identified any suspicion of unlawful conduct or it has been found that the report is based on false information. Whistleblowers shall also be informed of their right to submit reports to public authorities. However, the Act does not specify how the obliged person should act when the report contains facts that indicate an administrative offence or a criminal offence, under what circumstances the obliged person is bound to report such facts to the relevant public authority and whether it can disclose the identity of the whistleblower. Answers to these questions can be partially inferred from the methodology issued by the Ministry on December 15th 2021, on the direct applicability of the Directive. However, the Act does not explicitly provide clear guidance on this matter.[45]

As regards the protection of the reporting person, the Act, particularly with regard to the legal regulation under its § 3, does not fully transpose Art. 21(2)(3)(7) of the Directive, which provide for other important means of whistleblower protection. In its current state, without proper transposition of these Directive provisions, the Act substantially increases the risk of a whistleblower being sanctioned for obtaining or disclosing the information necessary to make a report, which limits the whistleblower's protection. On the other hand, it is necessary to say that the Act, with regard to the legal regulation under its § 3, sufficiently transposes Art. 3(3) of the Directive stating that the Directive shall not affect the application of Union or national law relating to any of the following issues: (a) the protection of classified information; (b) the protection of legal and medical professional privilege; (c) the secrecy of judicial deliberations; and (d) rules on criminal procedure. Although, the fact that the Act does not in any way solve the breach of the obligation of confidentiality through the

[44] Ibid.

[45] Ibid.

constituent elements of the administrative offences defined within its framework is very problematic.[46]

## 6. Conclusions

The existing Ukrainian legislation is not lacking certain deficiencies. First of all, as it was abovementioned there is the need to introduce a broad definition of the term "whistleblower" so that whistleblowers of violations of human rights, environmental standards, food safety and household items, public interests, etc. were also subject to protection. There have been no developments regarding the physical safety of whistleblowers outside of criminal proceedings. In particular, no appropriate changes were adopted that would ensure the protection of such people and their family members and meet international standards. In the future, legislative immunity should also be extended to those persons who assisted the whistleblower in making the report, etc. It will also be necessary to examine the possibility of obtaining the right to medical assistance. It should be noted that the provision of psychological assistance already provided for in the Law remains declarative due to the lack of appropriate procedures. And whistleblowers who report information containing state secrets need a higher level of protection as well. Additionally, whistleblower cases should only be examined by judges who are trained in this area (with the appropriate certification).

As for the Czech Republic, from an analysis of the basic legal institutes regulated by the Act no. 171/2023 Coll., on the Protection of Whistleblowers (further 'the Act'), it is clear that the Act is clearly a failed result of the Directive's transposition. In fact, the Act does not transpose many provisions of the Directive in a sufficient manner and in one case goes beyond the Directive. The Act thus clearly does not provide adequate support for its addressees, who will have to rely directly on the Directive. Despite this strong criticism, it is clear that the shortcomings of the legal regulation of the fundamental institutes of the Act could be eliminated by means of amendments, albeit significant ones. At this point, however, it should be pointed out that the Act fails in one absolutely fundamental aspect. The reason is Art. 11(2)(a) of the Directive binding Member States to ensure that the competent authorities establish independent and autonomous external reporting channels for receiving and handling information on breaches of law. The Directive thus seems to be heading towards the establishment of a new independent authority. But, under § 16 of the Act, the status of the external reporting channel is given to one of the departments of the Ministry of Justice.

46 Ibid.

And logically, the Ministry of Justice cannot be the real external channel for all its employees and its subordinate organizations. Such a configuration of the legal regulation under the Act, which is in contradiction with the Directive in itself, in fact represents a significant risk of undermining the effective functioning of the Directive in the Czech Republic to a large extent.[47]

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[47] *Joint objections of three anti-corruption NGOs to the draft of the Act on the Protection of Whistleblowers and Amendment Act* [online]. Available at: https://www.transparency.cz/wp-content/uploads/2020/08/P%C5%99ipom%C3%ADnky-k-z%C3%A1konu-o-ochran%C4%9B-oznamovatel%C5%AF.pdf (in Czech).

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