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SECURITY AND THE WHISTLEBLOWING MANAGEMENT SYSTEM (WMS)

Abstract

To ensure their security, organizations reach for more and more new solutions. They implement new co-management models based on the ideology of governance and Compliance Management System. One of the most important elements of the latter is the Whistleblowing Management System (hereinafter WMS), which can serve as an effective preventive barrier for an organization and a tool for collecting information from whistleblowers, verifying received information about violations of law and issuing recommendations on actions to be taken. Legal regulations being introduced in this area, both international and national, will not only allow greater access to whistleblowing channels for the majority of society but will also contribute to build a positive image of the whistleblower and increasing public awareness in this regard. Organizations are often exposed to activities that threaten their security in all dimensions. Starting with financial losses, through the most severe – image losses, or safety

of the production line, safety of employees, physical and technical security of facilities. Therefore, it is important to conduct research that will indicate the possibilities of maximizing the use of whistleblowers to ensure the security of organizations and to propose improvements in this process, which should noticeably contribute to increasing the level of security, which in these times is a priority issue.

Keywords

whistleblower, Whistleblowing Management System, safety of the organization.

Introduction

In Poland, for several years, we have been observing both changes in the development and functioning of organizations and the introduction of new management models. There appear more and more concepts and definitions of actions, implemented on the basis of foreign management models. More and more people see and understand the legitimacy of implementing a widely understood and untranslated concept of governance. Many organizations are implementing elements of compliance or building entire so-called Compliance Management Systems, although many people are still wary of these concepts. They see them as a potential brake on the organization and innovation¹.

In this publication, the authors attempt to introduce the above-mentioned concepts as well as attempt to delve into one of the areas of the compliance system in an organization, i.e. handling of whistleblower reports, and try to demonstrate the potential of the institution of a whistleblower in ensuring the security of an organization.

In the first part of the article the authors focus on explaining what governance and compliance are in general and what the legal basis of the institution of a whistleblower is. They also point out that compliance can play an important preventive role, as a mechanism for blocking actions that violate the law, often leading to severe consequences for organizations.

In the first part of the article the authors look at the institution of the whistleblower in the context of ensuring the security of an organization's operations. The authors present a new perspective on the use of knowledge provided by whistleblowers about violations of law and point to the possibility of its use to ensure broadly understood security.

As a conclusion of this publication, the authors demonstrate the role of compliance in organizations and the possibility of using its potential.

Methodological and methodical assumptions

The purpose of this publication was to present the issue of whistleblowers and the relationship between whistleblowers and organizational security. Important from the perspective of the research problem was to indicate the location of the whistleblowing management system in an organization and the network of connections between legal regulations, management models and the issue of ensuring security. For this purpose, the method of analyzing the literature on the subject and legal acts was applied, which contributed to deepening the state of knowledge and made it possible to indicate areas requiring further research. The comparison method allowed to identify common features of particular management systems aimed at ensuring safety, whereas the synthesis method made it possible to combine the facts and literature on the subject extracted and examined in the process of analysis, leading to the formulation of conclusions

¹ More: S. Chmielewski, K. Ciesiołkiewicz, *Jak połączyć ogień z wodą i uczynić z compliance motor zmiany kulturowej w organizacji*, Komitet Dialogu Społecznego Krajowej Izby Gospodarczej, Warszawa 2017.

Governance, compliance and the institution of a whistleblower

Activities undertaken in the framework of ensuring organizational safety² are part of what is broadly understood as governance, which includes activities aimed at clarifying processes and counteracting unfavorable trends in the public space³. They occur simultaneously at several levels – “upward” within international organizations, “downward” within local governments, and horizontally, between governmental and non-governmental agencies and global market structures⁴.

An important aspect of the governance model is to increase the role of citizens, understood as stakeholders, in decision-making⁵. An important aspect of the governance model, however, is that in order to put the proposed model into practice, it is necessary to transform the mentality of society and to raise the ethical standards or voluntary compliance with norms. An essential element of the governance model is also that all individuals involved in the process are treated as autonomous and are not subject to coercion, which in turn may slow down the decision-making process⁶. Another as-

pect that poses a threat in this model of governance is the difficulty of assigning responsibility for actions taken. In governance, an important role is played by partnership relations within networks, whose task is to implement jointly agreed solutions, also in the international arena.

Converging with the above mentioned governance model seems, among others, the Directive of the European Parliament and of the Council (EU) 2019/1937 on the protection of whistleblowers in the European Union.

In connection with the numerous scandals revealed in recent years, including in the area of non-payment of taxes, violation of the rules of fair competition, as well as in view of the existing lack of regulation at the European Union level in this area and the discrepancies between the laws of individual Member States, regulations were introduced to unify these laws, as well as to provide adequate protection to persons who provide information about abuses. The European Union has recognized the role of whistleblowers in the effective detection of violations of law, at the stage of investigation and prosecution of such violations. In accordance with the provisions of this directive, all member states were required to introduce appropriate legal acts at the national level by December 17, 2021. Most European countries failed to implement the relevant regulations on time. Poland only published the Draft Law on time, which met with a wide response from local governments, public administration and NGOs. On April 12, 2022, the government published a revised draft law that addressed some of the

² See: R. Gwardyński, *Safety in Praxeolog Approach*, [w:] *Security-Threats, Law and Organization*, Schriften zu Mittel- und Osteuropa in der Europäischen Integration, red. B. Wiśniewski, G.G. Sander, P. Kobes, Band 24, Verlag Dr. Kovac, Hamburg 2019, pp. 9-20.

³ A. Wiktorska-Święcicka, *Governance jako nowy paradygmat sterowania rozwojem w procesach integracji europejskiej*, Wrocław 2014, p. 2.

⁴ *Ibidem*, p. 3.

⁵ M. Oramus, *Model współzarządzania (governance) i problemy dotyczące jego wdrażania w administracji publicznej*, „Rocznik Administracji Publicznej” 2015, p. 1.

⁶ *Ibidem*, p. 8.

concerns raised. The law also extended its coverage to service personnel and professional soldiers. However, the catalog of irregularities covered by the act was not expanded to include occupational safety, and some of the sanctions imposed on entities obliged to implement a whistleblower handling system were significantly reduced. The new bill also emphasizes the need to protect anonymous whistleblowers whose identity will be revealed in the process of clarifying the report, which was questionable in the original version of the document. New concepts were also introduced into the draft, such as “legal proceedings” or “public entity”, and definitions of oral reports made by a whistleblower were clarified.

An important change in the recently published draft is the retention period for the notification register, which has been reduced from 5 years to 12 months. Another convenience is the exemption from the obligation to establish whistleblowing channels for municipalities with a population of less than 10,000. Moreover, offices or organizational units operating within one municipality have the possibility to create one common procedure in this respect. The *vacatio legis* was also significantly extended – from 14 days to 2 months and by an additional month for setting up functioning whistleblower channels, which will make it easier for organizations to fulfill their obligation. Analyzing the recently published document, a number of observations emerge, including a lack of protection of personal data of witnesses or persons identified as perpetrators of irregularities as

well as persons who helped to disclose information about abuses.

The question as to when the final version of the act will be published and thus when the document will become binding also remains unanswered.

This will have a significant impact on the construction of the Compliance Management System in the organization, which can be a solution to prevent irregularities, fraud and crime, but also implement appropriate security measures⁷. Business operations are always associated with various types of risk, which is why it is so important to seek and implement solutions that will not only minimize the risk of fraud, but above all enable effective action to be taken. Any irregularity occurring in the organization may adversely affect its operation, therefore, it is extremely important to disclose this type of information and implement corrective actions to minimize the financial and reputational risk to the organization, as publicly disclosed fraud leads to a loss of confidence in the entity, and its restoration may prove impossible. The main objective of the compliance management system in the organization is to reduce to a minimum the risk of irregularities, violations of applicable laws or internal acts adopted in the company, which can be achieved by building an appropriate structure of the organization and the use of compliance measures⁸. However, compliance in an organization consists not only of assess-

⁷ More: N. Majda, *Compliance Management System jako innowacyjna metoda zwalczania nieprawidłowości*, ArchaeGraph, Łódź-Kielce 2021.

⁸ B. Makowicz, *Compliance w przedsiębiorstwie*, Warszawa 2011, pp. 16-17.

ing the risk of irregularities, but also of providing channels for reporting them, creating procedures, and ensuring appropriate protection measures for whistleblowers. Another important element of the compliance management system (CMS) is the cyclical evaluation of the effectiveness of the applied solutions and the introduction of necessary improvements. The aforementioned sub-goals make up the main assumption of an effective CMS in an organization, which is long-term effectiveness⁹.

An important element of functioning compliance in the organization is to build and promote ethical attitudes among its members, including through the introduction of various codes, such as a code of ethics or codes of conduct. However, the example must be cascaded from the top, starting with the top management. If ethical behavior is not promoted sufficiently among the members of the organization, the system may be perceived as unnecessary formalism and thus will not be able to provide long-term results¹⁰. It is therefore equally crucial to conduct appropriate information campaigns among the members of the organization. Another important function of the system is the protection of the company, both in terms of know-how and business secrets. Another component is the so-called due diligence, which consists in verifying business partners or employees holding key positions in the organization.

⁹ Ibidem, p. 19.

¹⁰ A. Barcik, *Kapitał intelektualny i compliance w procesach konstytuowania doskonałości systemów społecznej odpowiedzialności organizacji*, Warszawa 2019, p. 108.

The whistleblower and entity security

All the activities described above significantly contribute to the broadly understood safety of the organization: firstly, by introducing appropriate procedures and building awareness among employees; secondly, by identifying risks and taking appropriate mitigating measures; thirdly, by creating channels for reporting irregularities in the organization. At this point it is important to introduce the function of a whistleblower. This is a person connected with the organization who, having knowledge of irregularities that have already occurred or are about to occur, decides to disclose them. The key, however, is to act in good faith and to believe that what is being reported is actually wrong. Research conducted in this area since 1996 by the Association of Certified Fraud Examiners (ACFE) indicates that the most effective tool for detecting fraud is information from a whistleblower, which is much more important than the next statistic of internal audit or management supervision¹¹.

According to the definition presented by Transparency International, whistleblowing refers to “the disclosure or reporting of wrongdoing that involves corruption, criminal activities, dereliction of duty, unlawful decisions, threats to public health, safety or the environment, abuse of power, unlawful use of public funds or assets, gross mismanagement, conflicts of interest, and all actions designed to conceal these irregularities”.

¹¹ M.Kutera, *Whistleblowing jako narzędzie wykrywania oszustw gospodarczych*, p. 125.

Taking this definition into account, it can be assumed that information from whistleblowers influences the security of an organization. This results from the fact that information about violations of law or abuse translates not only into financial security but also into image security, so important nowadays.

The key task of any organization, in addition to conducting statutory activity, is to ensure security, understood both as resistance to the occurrence of situations that threaten the security of the entity, as well as the ability to protect the internal values. An important role in this process is played by risk management, which allows you to anticipate threatening situations and counteract them by introducing appropriate preventive barriers. The second key element of the organization's security system, complementing the set of forces and resources and implemented procedures, is the institution of the whistleblower and the applied and effective Whistleblowing Management System. Security of the entity's functioning may be disturbed by the occurrence of one of the threat elements, such as natural hazards, technical failures, civilization or territorial threats, but also destructive human activity. Each of these elements may occur individually and in combination with other threats, thereby exposing the functioning of the organization to destabilization. It is therefore important to constantly monitor the level of threats and prepare the organization for their occurrence, as well as respond to signals of irregularities and take appropriate corrective action. To ensure an adequate level of security in the organization, in addition to the introduc-

tion of numerous procedures or regular risk analysis, employees should be made aware of their role in building security, not only by acting in accordance with applicable normative acts or laws, but also through ethical behavior, consistent with accepted standards. It is also extremely important to build awareness among organizational members about the role of the whistleblower – a person who, having knowledge about irregularities or violations of law, will decide to share the information he or she has with a relevant unit in the organization, thus making a real contribution to building its security and counteracting threats, while at the same time making it possible to quickly respond to the threat. There is no entity or institution that would not be exposed to various types of abuse. Information provided by whistleblowers is one of the methods of disclosing information about irregularities in public and private organizations and often constitutes a really effective system of protection in entities of both sectors.

The author of this publication sees a connection between the content of whistleblowers' reports and other areas of an organization's security, such as production continuity security, ensuring employees' safety, and property security. At the moment there are no scientific studies clearly showing these interdependencies, but assuming that thanks to the whistleblower's information it is possible to prevent abuse or to take appropriate measures to prevent escalation of the problem, it can be concluded that we thereby increase the level of security. Reversing the situation – if a whistleblower did not inform about

a situation of danger or abuse of power and irregularities, the effects on the safety and functioning of the organization could be incalculable.

Summary

The security of an entity is a compilation of processes, available resources and internally implemented regulations. However, it is an element that depends on internal and external factors, which according to risk management principles are defined by organizations in order to prevent them effectively. However, there remains the human factor, on which the entity often has little influence. Each person independently decides about his or her actions, whether they are legal or illegal; however, the introduction of the Whistleblowing Management System in an organization and advertising the institution of a whistleblower among employees or raising their awareness can be an effective supplement to this system and translate into a real increase in the level of security of the organization. The world knows many examples of companies and organizations whose high market position was irrevocably lost due to irregularities committed by their employees. And it does not matter whether there are many of them or just one person who decides to break the law. The consequences for the security of the entity can be irreversible, not only in the important financial context, but most importantly in the reputational context, leading to its downfall. Often, irregularities can also directly affect the safety of employees, when, for example, corrupt events occur, which, in

turn, lead to the purchase of poorer quality protective equipment, non-original parts for production machines or faulty equipment.

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Alina Wołoch, combining his professional work with scientific activity, she tries to find innovative solutions to use the institution of a whistleblower to ensure the security of facilities and build a positive image of whistleblowers in society.

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