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**COMPLIANCE**

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## TOPIC 1

# What's happening with the implementation of the Whistleblower Protection Directive?

**The deadline for implementing the Whistleblower Protection Directive will transpire on 17 December 2021. As of now, the Ministry of Development, Labor and Technology has not even presented the assumptions for this bill.**

Let's recall the facts:

- this directive entered into force in October 2019;
- the Ministry of Development, Labor and Technology (MRPiT) was designated as being responsible for its implementation in early December 2020;
- three internal webinars were held in June 2021 with representatives of the governmental ethics advisory team – representatives of the private sector did not participate in this meeting;
- MRPiT announced that internal consultations would not commence until work on implementing this directive is added to the list of the government's legislative work – this assignment has been waiting to be added for more than a year.

Poland is not the only place where the process of implementation has moved slowly. So far, a law to implement this directive has been enacted only in Latvia. In turn, the draft regulations have been published in several jurisdictions (Denmark, Germany and France, among others).

The status of the progress of the work on this directive in the member states may be tracked on the Lus Laboris website: <https://iuslaboris.com/insights>.

The failure to implement this directive on a timely basis may evince legal chaos.

Directives impose duties on the member states and at the same time they award certain rights to EU citizens. According to EU law, directives are not applied as a rule. Instead, the domestic regulations implementing them are applied.

If, however, the member states do not enact the implementing regulations on a timely basis, the Court of Justice of the European Union may decide that in such an instance a directive will be applied directly until a domestic law is enacted.

## TOPIC 2

# **The ISO Whistleblowing standard has been adopted**

**The new ISO 37002 standard entitled Whistleblowing Management Systems – Guidelines was published in late July of this year.**

**This standard articulates the detailed guidelines to construe and implement an effective whistleblowing system.**

This standard is applicable to all organizations regardless of their size, object and magnitude of their business.

This document may be especially helpful to entities that will be obligated to implement a whistleblowing system in connection with the enactment of the Whistleblower Protection Directive.

According to ISO, an effective whistleblowing system encompasses the following:

- accepting whistleblowing reports;
- qualifying reports;
- taking follow-up activities (conducting internal investigation procedures, cooperating with internal / external advisors, protecting the whistleblower).

This system is supposed to be built on the basis of the following principles: trust, impartiality and protection. Within the meaning of this standard a whistleblower means not just a person employed in an organization but also, among others, suppliers, agents, intermediaries and clients.

### TOPIC 3

## **The Polish Financial Supervision Authority provides guidelines on how to use social media**

**In August of this year the Polish Financial Supervision Authority published its Position on the use of social media by regulated entities and the persons employed by these entities.**

As it appreciates the role played by social media, the Polish Financial Supervision Authority would like to unify the rules for using social media, especially in terms of promoting products and services.

The Polish Financial Supervision Authority points out that a regulated entity is responsible not only for the content it publishes but also for shared or approved content (referred to as “likes”).

In the opinion of the Polish Financial Supervision Authority, the use of social media creates legal and reputation risks. As a result, it is necessary to take compliance-related actions, such as below:

- conducting and documenting a risk assessment related to the use of social media;
- developing and implementing a policy on the use of social media;
- conducting training on using social media;
- collaborating with the compliance unit on publishing specific content.

The guidelines of the Polish Financial Supervision Authority are not applicable to employees who use their social media accounts for their own private purposes that are unrelated to the activity of a regulated entity.

#### TOPIC 4

## **The deadline for invoking termination for cause and conducting an internal investigation procedure**

Employers must make the decision to terminate an employee's employment contract under the procedure of termination for cause within one month after learning of the circumstances justifying such a decision.

When calculating this deadline, the Supreme Court's case law takes into account the fact of conducting an internal investigation procedure.

The Supreme Court explains that the one-month deadline should start not from when an employer obtains any information whatsoever about an employee's reprehensible conduct, but from when it establishes the most important circumstances surrounding such conduct, including the level of fault and the consequences suffered by the employer.

After learning of an employee's improper conduct, an employer should launch an internal investigation procedure. This procedure should be conducted promptly. The one-month deadline specified in Article 52 of the Labor Code should be calculated starting from the conclusion of the procedure.

Efficiently conducting an internal investigation procedure increases the probability of the employer being able to prove during litigation with the terminated employee that the prerequisites have been met for termination for cause.

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## INSIGHTS

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### **COMPLIANCE DAY 2021 WHISTLEBLOWING FROM AN HR PERSPECTIVE**

23 September | 9 am to 4 pm  
Hybrid event | Free-of-charge

This year's edition is devoted to whistleblowers from an HR perspective. Apart from the challenges of organising work in the age of pandemics, whistleblowing is currently the most important topic in the area of compliance and HR.

The Polish legislator is in no hurry to implement the directive on whistleblower protection, and issues related to whistleblowing have been under discussion for years.

During the conference we will look at them through the eyes of HR and compliance law practitioners.

#### **DETAILS AND REGISTRATION**

#### **Series on criminal labour law | Criminal liability of employers and HR departments – what for and who can be held liable**

Follow our biweekly series by Damian Tokarczyk, the author of the 'Employment-related offences' commentary, for [Biznes Tuba](#).

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