



Ius Laboris Poland Global HR Lawyers

Raczkowski

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**PRO
HR**

COMPLIANCE



TOPICS

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Whistleblower
Protection Directive
still to be implemented

02

An employee convicted
of an intentional
offence of abuse
of trust must fully
redress the damage
caused to the employer

03

More and more
publicly available
sanctions lists

TOPIC 1

Whistleblower Protection Directive still to be implemented

The deadline for implementation of the Whistleblower Protection Directive passed on 17 December 2021, but Poland still has not implemented relevant national legislation.

While the Polish legislature has published two bills, the first in October 2021 and the second in April this year, the legislative process is stuck at the public consultation stage and there is no progress that would indicate that the national regulations will be adopted in the foreseeable future.

The latest bill of the implementing act is broadly in line with the basic assumptions of the EU Directive, but the precise requirements of the internal whistleblowing procedure remain a challenge, and the bill may still be subject to change before it is sent for further work.

We wrote about the legislature's second go at the whistleblower act here: <https://raczkowski.eu/en/news/publications/2022/a-second-approach-to-the-whistleblower-bill-whats-changing-pro-hr-alert.html>

Implementation of the Directive poses problems not only for Polish lawmakers. According to Ius Laboris, only 8 EU member states have implemented the national legislation.

TOPIC 2

An employee convicted of an intentional offence of abuse of trust must fully redress the damage caused to the employer

The offence of abuse of trust involves a failure to perform a duty or misuse of authority granted that resulted in property damage to the organization.

A final conviction of an employee for this act in a criminal proceeding is significant in the compensation process between the employer and the employee. If the offence of abuse of trust is committed intentionally, the employer may seek full compensation from the employee in a civil action.

A civil court is bound by a criminal judgment to the extent that it establishes the fact that a specific offence was committed and the circumstances of the offence (e.g. the time, the place of commission and, most importantly, the actions of specific persons).

The Supreme Court has held that when an employee is convicted for an intentional offence of abuse of trust, a civil court examining the issue of damages has no way to determine whether such employee's actions were intentional.

As a result, Article 122 of the Labour Code will apply in this type of case, according to which an employee who caused damage intentionally is obliged to compensate for it in full.

According to the Supreme Court, in such a situation, the employer is only required to prove that the damage caused by the offence has not been reduced or repaired.

TOPIC 3

More and more publicly available sanctions lists

Legislation passed by European Union institutions and member states, including Poland, in response to Russian aggression against Ukraine, has established new sanctions lists.

These include individuals, including entrepreneurs, and companies, whose activities may support Russian aggression.

The list, maintained in Poland by the Minister of Interior, complements already available sanctions lists maintained by EU institutions and the United Nations.

A number of prohibitions apply to the sanctioned entities with respect to entering into or continuing a business relationship with them.

Obtaining information on whether a Polish company does any business with companies or individuals on the sanctions list is the responsibility of the company, in practice its legal or compliance department.

The company needs to make sure that there are no sanctioned entities among its customers, suppliers or collaborators and put in place a mechanism to prevent such collaboration in the future.

The act on special solutions to prevent support for the aggression against Ukraine and to protect national security of 13 April 2022 refers to EU regulations, which have the same binding force as, for example, GDPR.

This ensures that there is no concern that obtaining personal data of sanctioned individuals and entities will be incompatible with the personal data processing rules.

The obligation to verify business partners in these circumstances is particularly important because violations of the prohibitions set out in the EU regulations (including the ban on importing goods from Luhansk and Donetsk regions) are crimes punishable by imprisonment from 3 to 15 years.

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INSIGHTS

SAVE THE DATE - COMPLIANCE DAY 2022 - 29 September 2022!

On the eve of entry into force of the reform of the Commercial Company Code concerning corporate groups and the challenges related to the (non-) implementation of the Whistleblower Protection Directive, the 6th edition of the Compliance Day will be devoted to:

- the realities of performing the compliance function in Polish organizations;
- the specifics of compliance management in corporate groups;
- internal proceedings after the entry into force of the holding law (amendments to the Commercial Company Code).

A detailed conference program will be announced soon.

[Register](#)

WHO'S WHO LEGAL | Janusz Tomczak a Global Leader in Investigations

In this year edition, Janusz has been highly recognized for his professionalism, wide legal knowledge combining various areas of the law, impressive international experience, analytical skills and full loyalty to his clients.

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