

**§§ BUSINESS AND WHISTLEBLOWERS:
A STUDY OF THE CURRENT STATE
OF THE INTRODUCTION OF THE
REPORTING SYSTEM IN PRIVATE
COMPANIES IN UKRAINE**





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The research is devoted to the analysis of the state of implementation of the reporting system in private companies of Ukraine. The paper examines the answers of respondents from private companies on the motivation (non) implementation of the reporting system, design of such system, the results of the functioning of the reporting system, the role of the reporting system in building a proper corporate culture in their companies.

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INTRODUCTION

Whistleblowers are an essential tool for detecting and preventing wrongdoing not only in public but also in the private sector. Prevention of any offenses and timely detection within the company will help avoid sanctions from the state and reputational losses. The world's leading private companies have long understood the importance of an internal whistleblowing system. Is such a system present in the Ukrainian business environment?

The National Agency on Corruption Prevention is actively developing the institution of whistleblowers in government bodies and legal entities of public law; however, dealing with whistleblowers in private companies is left without attention since legal entities of private law are not subject to the obligation to deal with whistleblowers, provided for by the Law of Ukraine "On Prevention of Corruption". We assume that such activities are still being carried out.

Previous studies on whistleblower activities in the private sector, although available, are fragmentary and descriptive, lacking detailed analysis of whistleblower operations in private enterprises.

It should be noted that in this study we use a broad definition of the concept of "whistleblower": these are persons who disclose information about corruption or other offenses committed in an organization or by an organization to individuals or legal entities that can prevent and/or counteract such actions, to specially authorized individuals within the organization itself, the relevant authorized authorities or the public¹. Despite the existing approach in national legislation to protect only whistleblowers, the private sector tends to apply mechanisms and safeguards to protect whistleblowers of any offense that may harm the organization, whether committed internally or by the company itself².

¹ Whistleblowing. <https://www.transparency.org/en/our-priorities/whistleblowing> (last accessed: 16.12.2021).

² What is whistleblowing: FAQ for companies. <https://cutt.ly/PluAOcV> (last accessed: 16.12.2021).

Thus, the purpose of this study is to investigate the state of implementation of whistle-blower reporting mechanisms in the private sector in Ukraine.

The research methodology involves using quantitative methods, namely questionnaires, to collect data by random sampling. **The data analysis methodology involves** the use of descriptive and multivariate (search for relationships between different variables/questions) statistical methods.

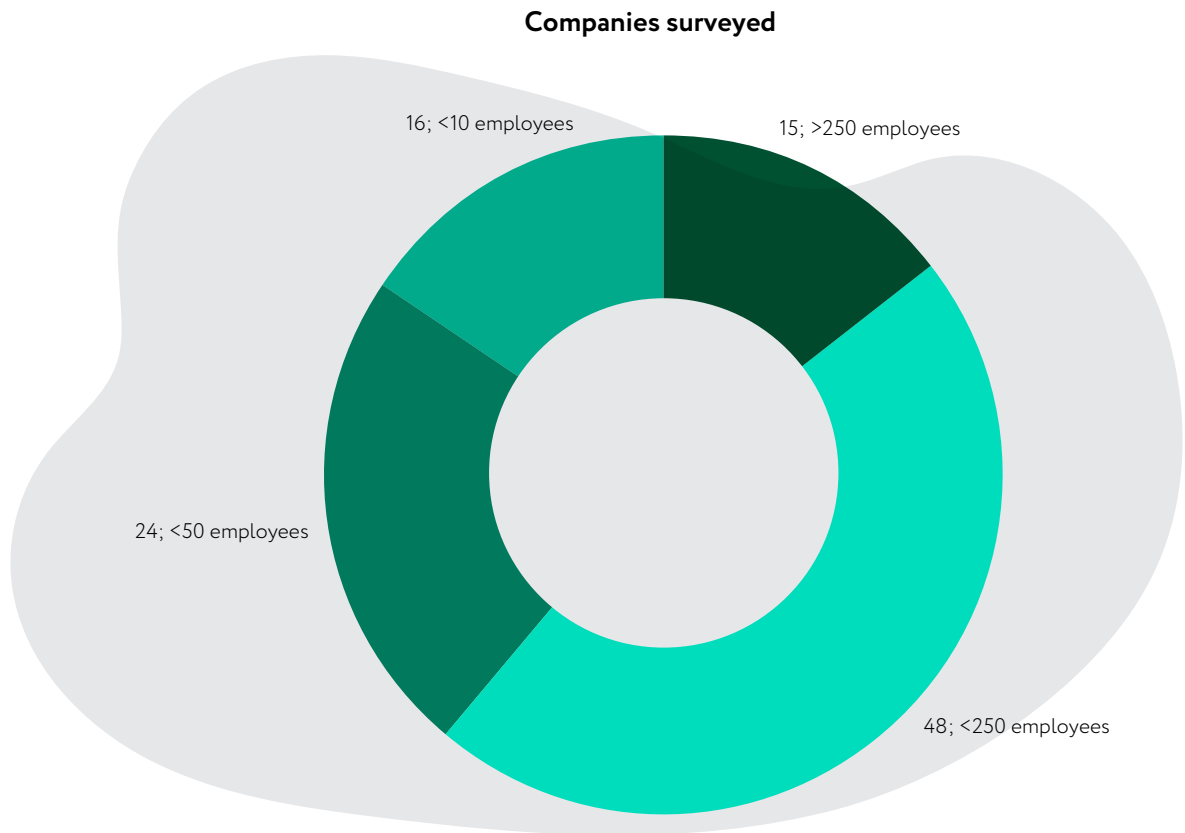
The study covered private companies from different fields of activity, with different numbers of employees (small – up to 10 people, medium – up to 50 people, large – from 100 people). The survey was aimed exclusively at companies' representatives who have a deep understanding of compliance procedures in their company, namely:

- ▶ representatives of the governing bodies of the company (Management Board, Supervisory Board, partner);
- ▶ representatives of executive bodies (executive director, administrative director, their deputies);
- ▶ representatives of financial departments (financial director and their deputies, chief accountant and their deputies, accountant);
- ▶ heads, deputy heads, and/or employees of HR departments, legal departments, compliance departments.

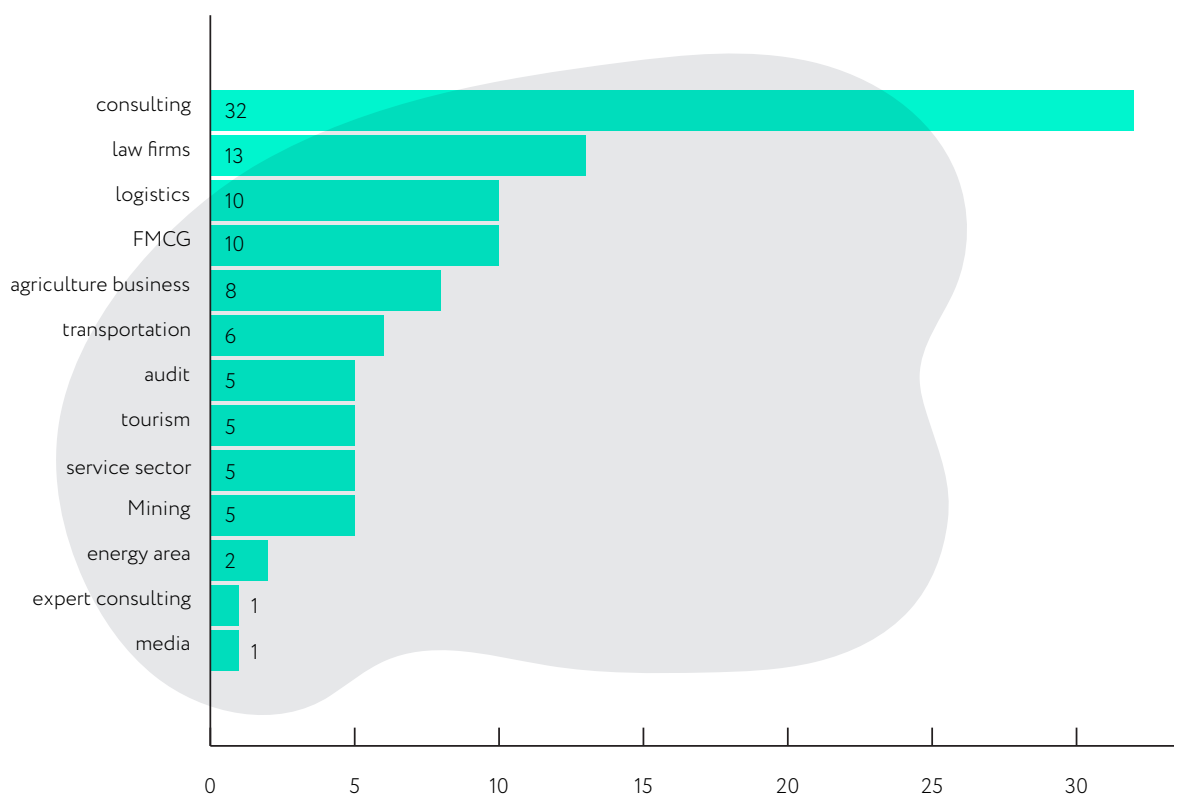


BUSINESS AND WHISTLEBLOWERS

As part of the study, 103 representatives of private companies were interviewed:



The survey covers the following areas of activity of private companies:



IMPLEMENTATION OF SYSTEM FOR DEALING WITH WHISTLEBLOWERS AND INCENTIVES FOR SUCH ACTIVITIES

The obtained data shows that 77% of respondents indicate that their companies have a system for dealing with whistleblowers (properly stated policies, channels of communication, incentives, and protection mechanisms).

An analysis of the responses of the different companies' representatives allows us to argue that medium-sized (up to 50 or 250 people) and large businesses (more than 250 people) are more inclined to implement systems for dealing with whistleblowers.

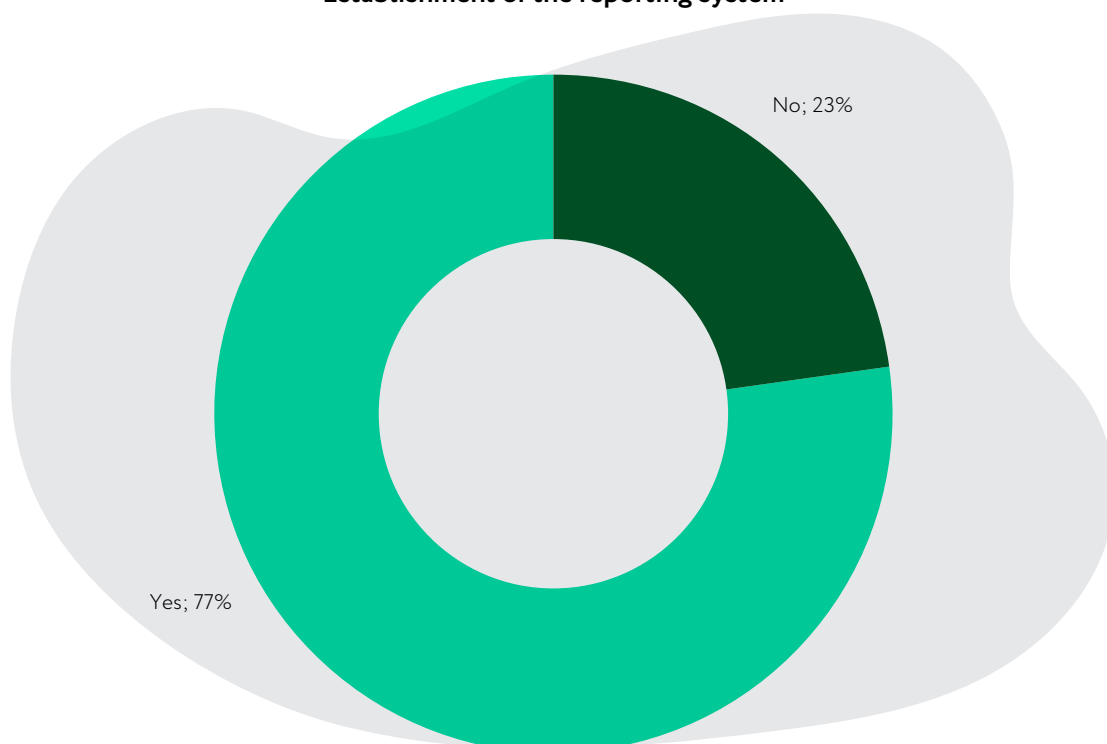
In most cases, the reasons for implementing a reporting system are the need to comply with international standards, fulfill the requirements of the central office (i. e. the Ukrainian company is a national representative office of the international one), reputational advan-

tages for the company, an instruction of the Supervisory Board/Board/Compliance Service on the need to implement such a system. However, we should note that among the main reasons for introducing the whistleblower system, there is neither desire to mitigate risks in the activities of one's company, nor the development of a corporate culture of respect for whistleblowers.

TOP 3 REASONS FOR IMPLEMENTING A WHISTLEBLOWER SYSTEM (ACCORDING TO THE RESPONDENTS)

1. "IMPLEMENTATION WAS DUE TO THE REQUIREMENTS OF THE CENTRAL OFFICE LOCATED OUTSIDE OF UKRAINE"
2. "WE HAVE IMPLEMENTED A SYSTEM FOR DEALING WITH WHISTLEBLOWERS, AS THIS LEADS TO REPUTATIONAL BENEFITS"
3. "THE INTERNATIONAL BUSINESS STANDARDS WERE THE MAIN REASON FOR IMPLEMENTING THE WHISTLEBLOWER SYSTEM"

Establishment of the reporting system



Implementation of system for dealing with whistleblowers and incentives for such activities

According to the survey results, 23% of the respondents did not confirm the existence of a whistleblower system in their companies/businesses. Most of these respondents do not see a need for it. This lack of need can be explained by a small number of employees working exclusively in markets that do not require due diligence or by the absence of reasons to believe that any type of violation is committed in the company.

TOP 3 REASONS FOR NOT IMPLEMENTING A WHISTLEBLOWER SYSTEM (ACCORDING TO RESPONDENTS)

1. "THERE IS NO NEED FOR IT"
2. "THE NUMBER OF EMPLOYEES IS TOO SMALL"
3. "THERE WAS NO REASON TO BELIEVE THAT THERE WERE ANY WRONGDOINGS"

It should be noted that all respondents in this group indicated that the primary condition for the implementation of a system dealing with whistleblowers is the existence of benefits for business. Of course, making a profit is the main goal for a business. Business representatives are not sure that this tool will bring financial benefits, so they are not in a rush to use it.

It should also be noted that the majority of respondents who indicated the absence of a system for dealing with whistleblowers are representatives of small businesses (up to 10 people), which also indicates that there is no need to implement such a system due to the small number of hired employees.



BUILDING A SYSTEM FOR DEALING WITH WHISTLEBLOWERS

Channels of reporting

Among the most popular reporting channels implemented in companies are:



The most common communication channels, which are telephone hotlines and electronic mailboxes, are easy to implement: they do not require much time and high financial costs. In addition, email with access only to specific individuals (compliance manager, head of internal security, members of the Supervisory Board) will contribute to more robust protection of the rights of whistleblowers since only specific individuals will have information about the content of their reports and their identity.

Moreover, companies also create mailboxes (6%), electronic mailboxes with access for the entire management (2%). Low percentage values indicate the lack of popularity of these channels for two reasons:

- ▶ firstly, the availability of access for the entire management of the company to the email for the whistleblowers' reports will facilitate the identification of the whistleblower and, as a result, the possibility of pressure on them;
- ▶ secondly, most such access will not exclude the possibility of installing means of tracking the mailbox in order to identify the whistleblower.

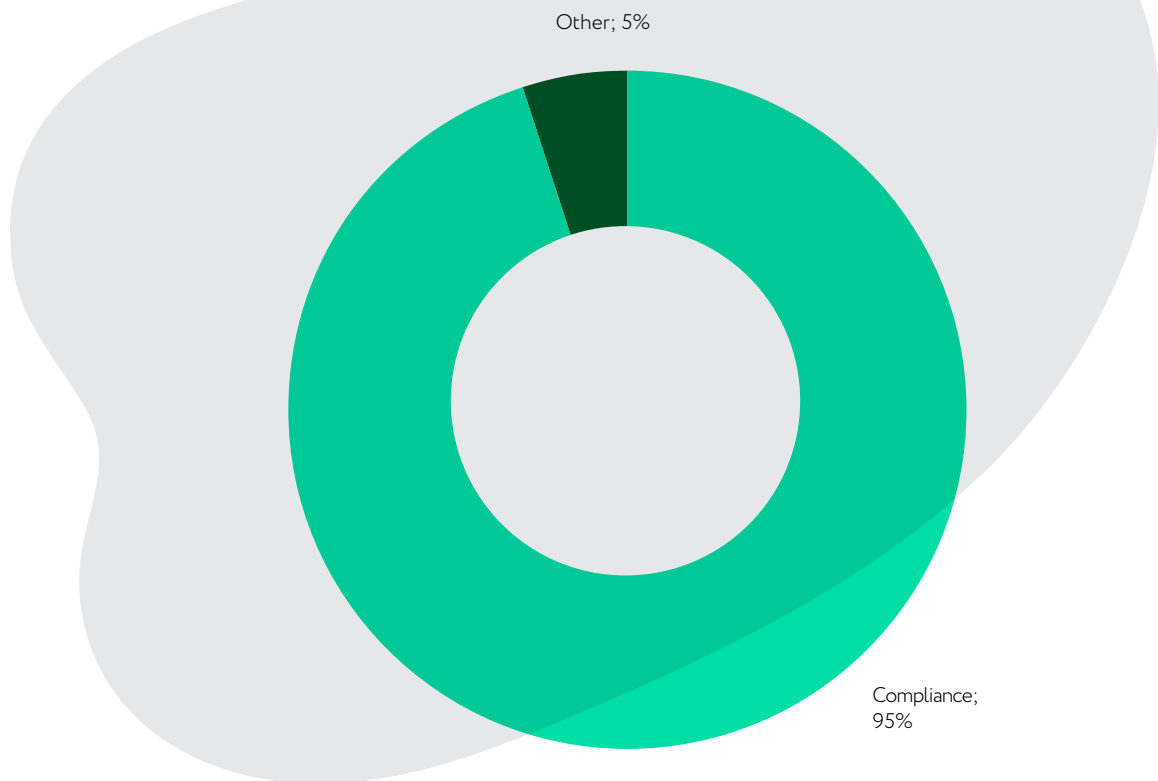
It also should be noted, that businesses are gradually moving to web-based tools, in particular online messaging portals or, to a lesser extent, mobile applications. Among the representatives of businesses that have implemented a whistleblower system, almost half (49%) use whistleblowing software (predominantly an online portal). Today, there are enough companies on the market that offer digital solutions in compliance, particularly for building a system for reporting information about detected wrongdoings.

Also noteworthy is the 100% response rate of allowing whistleblowers to report their findings of wrongdoings anonymously, which fosters a culture of reporting and provides additional safeguards against unlawful harassment at work.

Who is responsible for reporting

Most often (95%), dealing with whistleblower reporting is assigned to the compliance service, mainly to the heads of such services. In 1–2% of cases, such designated persons are the heads of legal departments, the audit service, and company management represented by a managing partner, the members of the Supervisory Board.

Departments responsible for the whistleblowing system

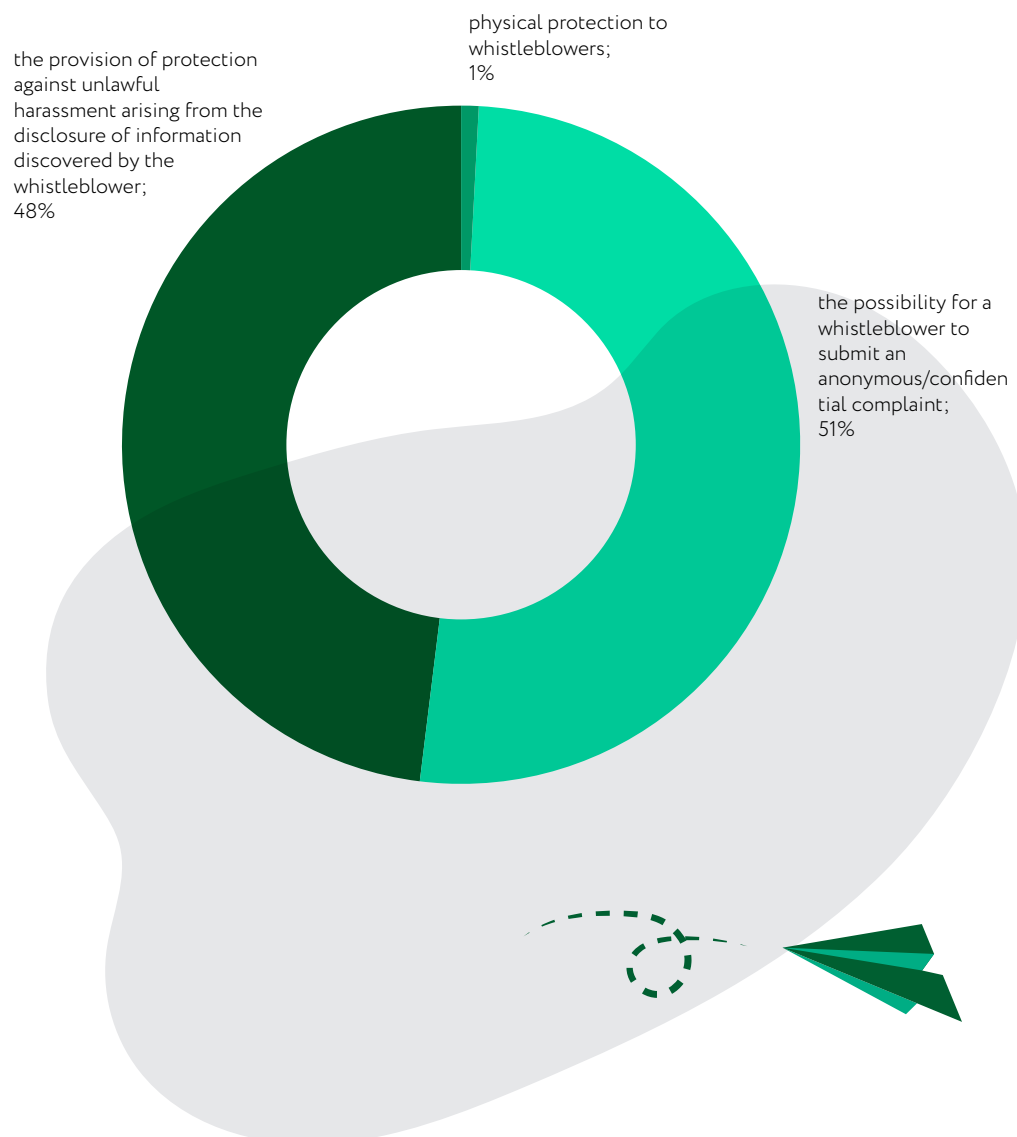


The reporting system in private companies in Ukraine

Among the protections used by their companies, the participants in the study most often mentioned the possibility for a whistleblower to submit an anonymous/confidential complaint (51%) and the provision of protection against unlawful harassment arising from the disclosure of information discovered by the whistleblower (48%). Rarely (1%) do companies provide physical protection to whistleblowers.

This difference may also be related to the financial and resource capabilities of the business: the least costly is the one-time creation of a secure line for reporting or the creation of a compliance department/service that is responsible for protecting against harassment in the workplace. The provision of physical protection requires the creation of a separate division or hiring a specialized security company (outsourcing), which may also be financially unprofitable.

Protection measures used by the companies



RESPONDENTS' ASSESSMENT OF THE WHISTLEBLOWER PROTECTION SYSTEM

One of the categories of questions posed to respondents included their assessment of the direct functioning of the whistleblower protection system: cases of harassment against whistleblowers, cases of internal investigations, and familiarization with the results of these investigations.

The majority of respondents (77%) are unaware of cases where whistleblowers have been subjected to illegitimate measures by representatives of the company or third parties (transfer to another position, attestation, changes in working conditions, unreasonable refusal to be appointed to a higher position, reduction in wages). The total absence of such cases in the company was indicated by 18% of respondents. The rest (5%) of respondents indicated that their companies used at least one of the above-mentioned negative measures. In addition, the vast majority of respondents

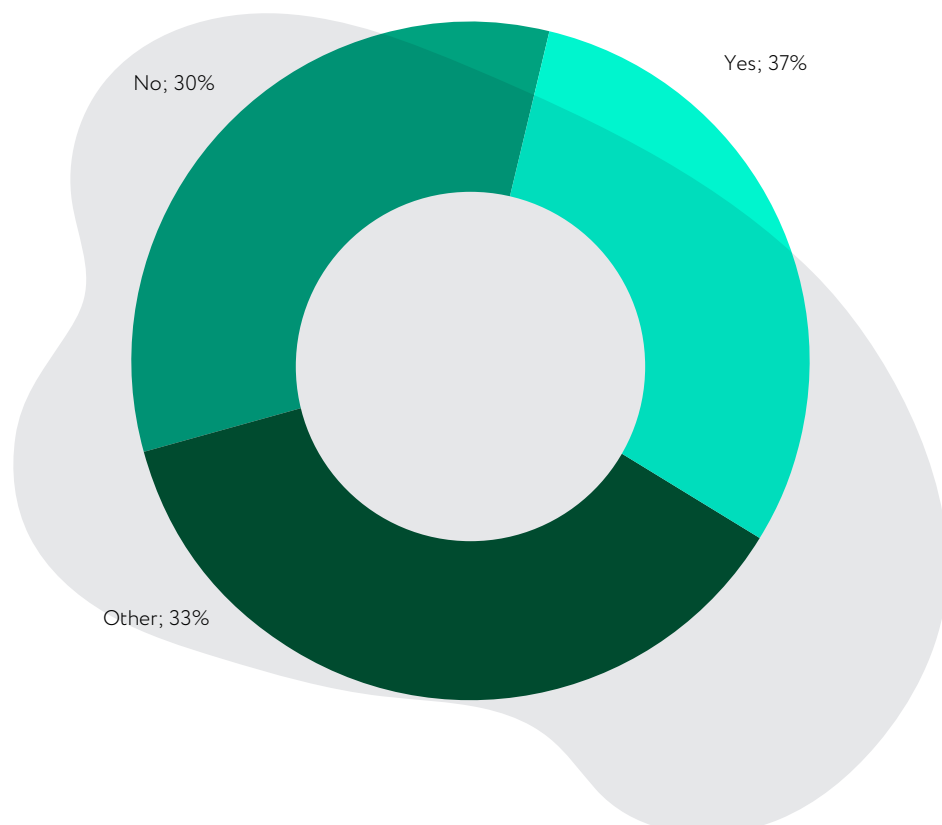
(99%) are unaware of the negative consequences for the company due to the use of negative measures to the whistleblowers.

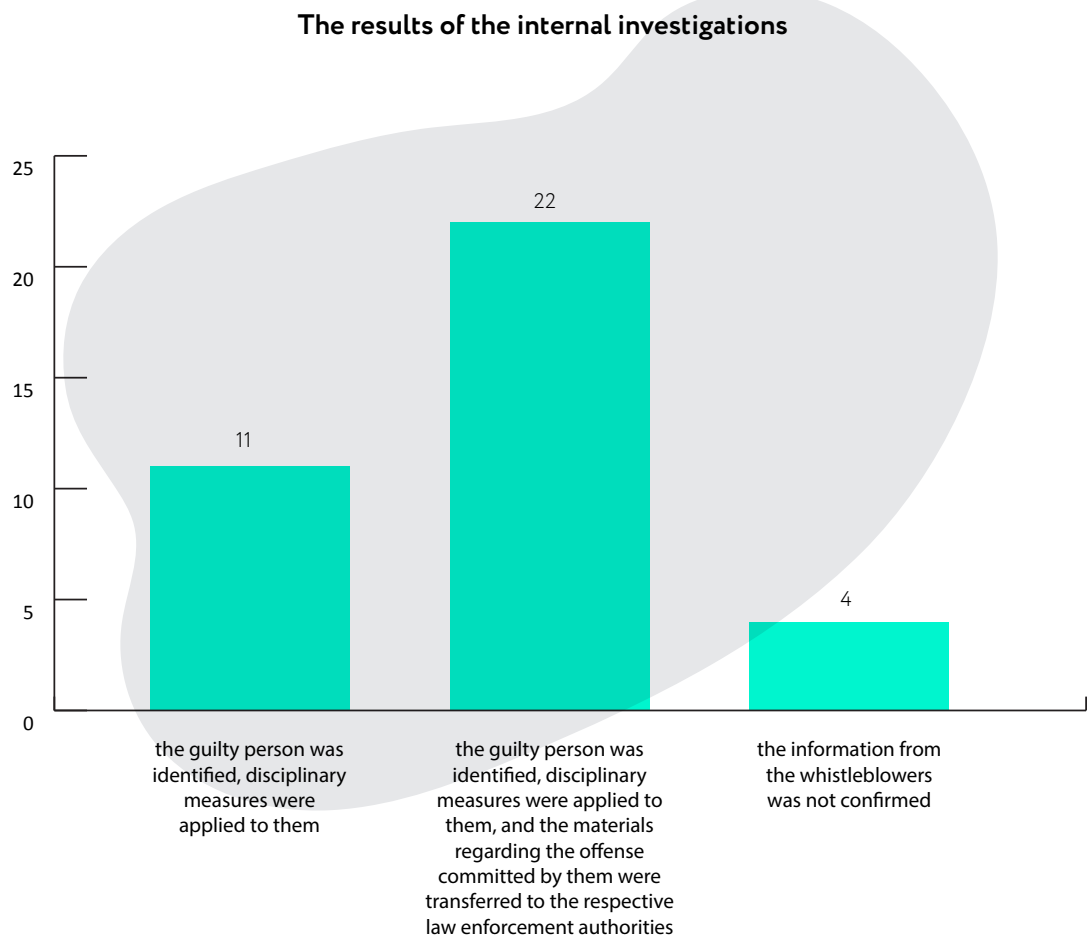
The high percentage of ignorance about cases of illegitimate measures being used against whistleblowers, although encouraging, cannot indicate that such cases do not exist at all. This unawareness may be due to the lack of internal communication, its inappropriate realization, or even the deliberate concealment of this information to avoid reputational losses.

In 37% of cases, respondents claimed that their companies had conducted internal investigations of the whistleblowers' reports during the past year. One-third of the respondents (30%) indicated that such investigations had not been carried out, and another 33% of the respondents answered that they did not know if such investigations had been carried out at all.

The answers "no" and "I don't know about it" again suggest employees' lack of awareness about the company's state of affairs and inadequate internal communication with ordinary employees.

Did your company conduct an internal investigations of the whistleblowers' reports during the past year



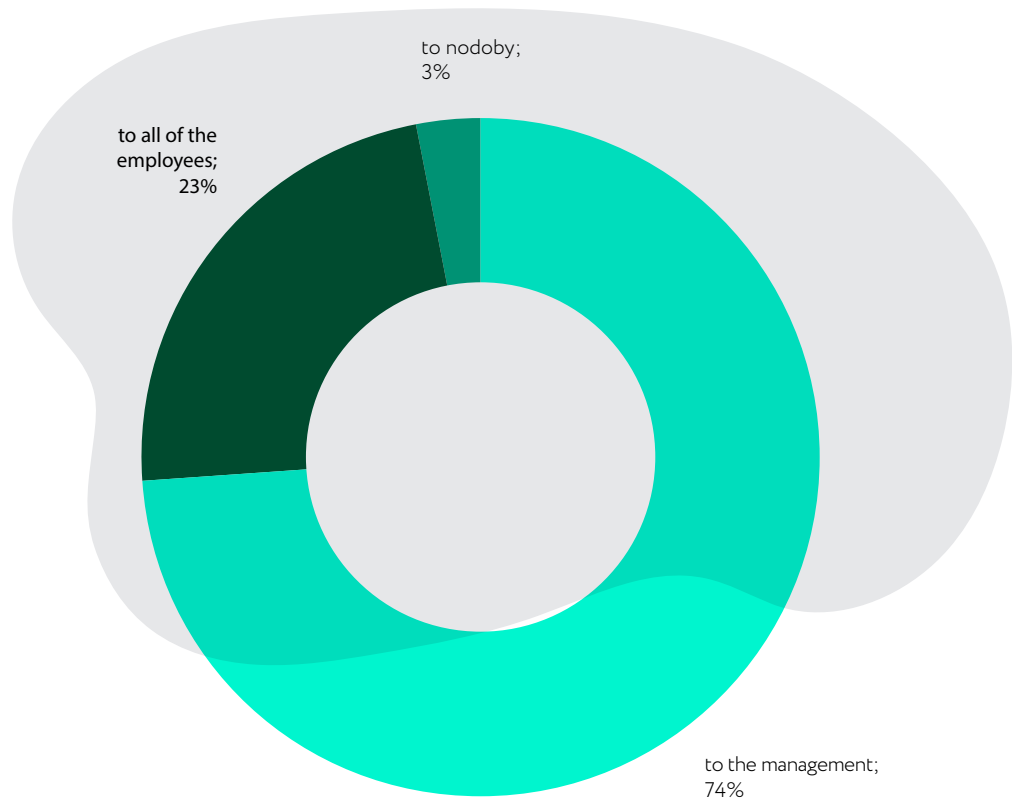


Those who are aware of the results of the internal investigations indicated that in most cases (22%), the guilty person was identified, disciplinary measures were applied to them, and the materials regarding the offense committed by them were transferred to the respective law enforcement authorities. In 11% of cases, only disciplinary measures were applied to the guilty person, and in 4% of cases, the information from the whistleblowers was not confirmed³.

Based on the above statistical data, we can argue that in the case of committing acts that have signs of administrative and/or criminal offenses, the materials collected during internal official investigations are transferred to law the respective enforcement authorities. Only a disciplinary sanction will be applied if a person has committed wrongdoing that the company considers insignificant.

³ Residual percentages mostly contain "I don't know about it" responses.

Communication of the consequences of misconduct



As for the types of liability measures applied to the guilty persons, most respondents note the usual types of disciplinary sanctions: reprimand and termination of employment. They may be subject to “external” measures of responsibility, which may be applied by law enforcement or judicial authorities if internal investigation materials are sent to them.

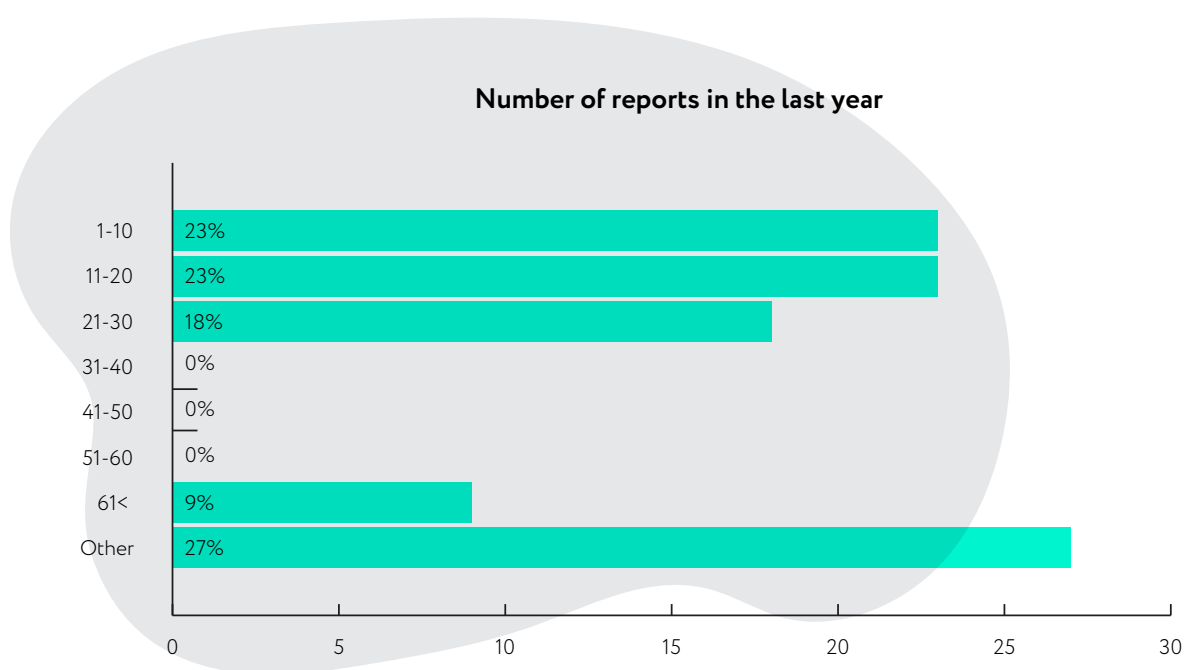
Obtained data shows that companies are more likely to disclose the results of these investigations only to management (management, members of the Board, members of the Supervisory Board, shareholders, etc.) (73%) rather than to all employees (23%). These data confirm our argument about the low involvement of key administrative personnel in communication on the internal investigations.



WORK OF COMPLIANCE MANAGERS WITH WHISTLEBLOWERS

Our study's next block of questions concerns the direct activities of persons authorized to work with whistleblowers. Several questions were identified to help understand how effective the system itself and authorized persons are in receiving these reports.

Of all respondents who answered "yes" to the question about the existence of a whistleblower system in their company, 27% were persons authorized to work with whistleblowers in their companies (22 people).



As can be seen from the graph, of this group of respondents received varying amounts of reports from whistleblowers over the past year, and a third of the respondents indicated that they did not receive such communications. This can be explained by the proper communication operations of the relevant services regarding the procedures and rules of communication; educational work on compliance with the rules and standards of conduct established by law and by a separate company.

Authorized persons mainly maintain further contact with the whistleblower, depending on the tools available: communication can be carried out by phone (41%), by email (41%), and, if available, through an online reporting portal (14%).

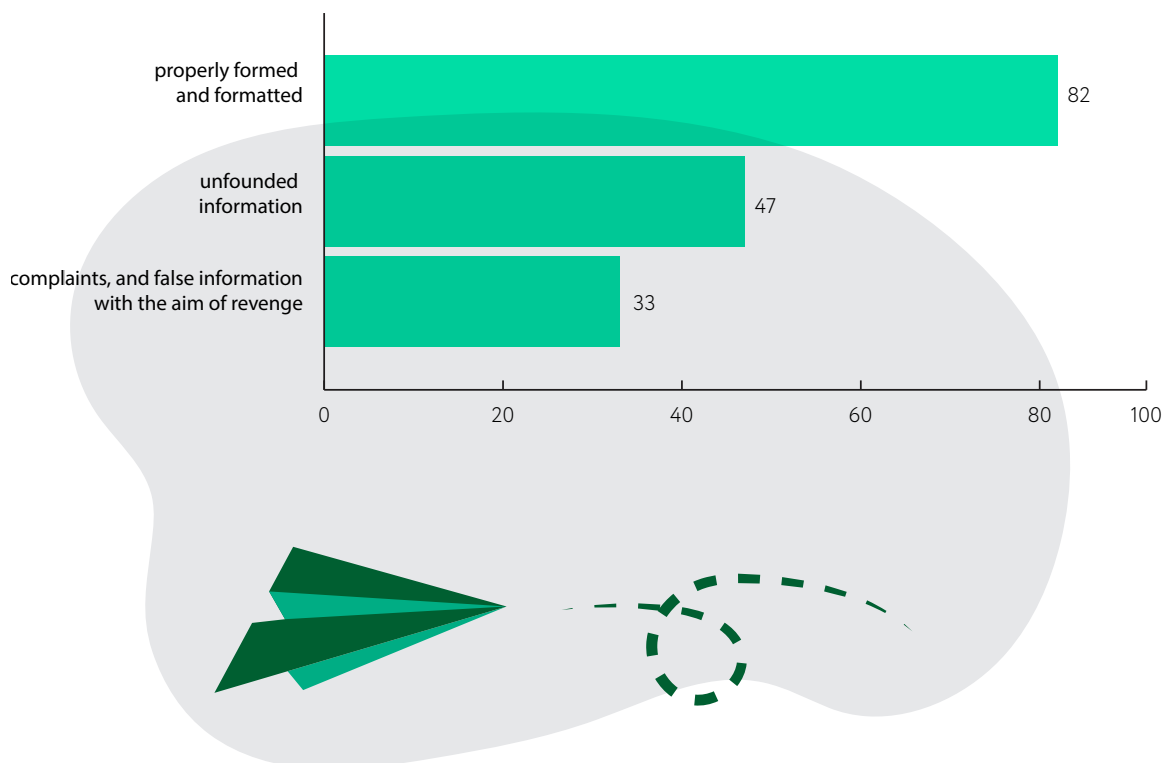
Quality of reporting

The persons responsible for dealing with whistleblowers predominantly define the information received as properly formed and formatted. This indicates that a reporting system is an effective tool for detecting illegal or unethical activities. At the same time, the percentage of unfounded information, complaints, and false information with the aim of revenge is quite significant. Comparing the percentages of these values, we can conclude that every second report contains unfounded information, and every third contains unreliable information.

At the same time, the main criteria for verifying the information contained in complaints from whistleblowers are the sufficiency and availability of supporting documents. Authorized persons also note that they conduct *“a preliminary analysis of internal processes and the collection of materials/evidence, based on which a potential violation is assessed (as far as it can be true) and a decision is made on the next steps”*.

A HIGH LEVEL OF UNFOUNDED INFORMATION MAY ALSO INDICATE A LOW AWARENESS OF SPECIFIC CATEGORIES OF EMPLOYEES ABOUT HOW TO SUBMIT INFORMATION CORRECTLY, WHAT REPORT SHOULD CONTAIN, WHAT DATA/EVIDENCE THEY NEED TO ADD.

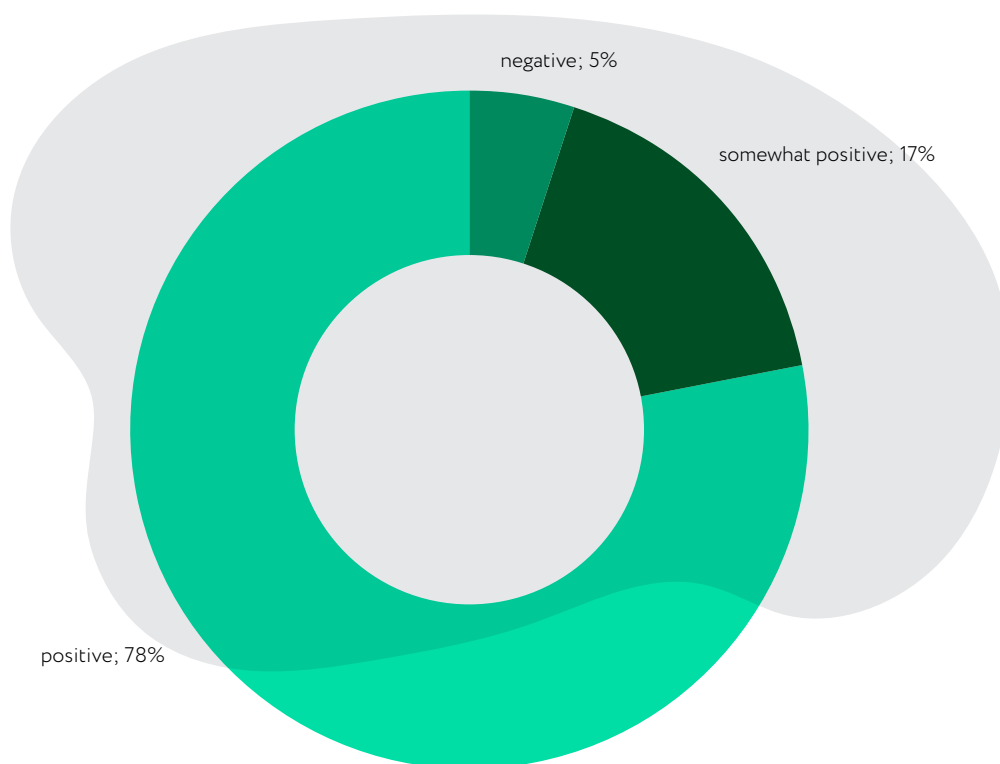
Quality of reports



CULTURE OF REPORTING AND RESPECT FOR WHISTLEBLOWERS IN COMPANIES

The final part of the survey was an assessment of the culture of reporting and respect for whistleblowers in companies: respondents were asked to answer questions related to the subjective assessment of the attitude towards whistleblowers in the company, potential factors that may influence the positive/negative attitude towards whistleblowers, as well as the assessment the activities of the company's management and responsible services to form a proper attitude towards whistleblowers.

Attitudes to the whistleblowers in the company



According to the statistics, the vast majority of respondents believe that the attitudes to whistleblowers are generally positive in their companies: both management and employees of companies support the need to report any wrongdoing. Relatively fewer respondents believe that their companies have a somewhat positive attitude towards whistleblowers: although management is implementing a whistleblowing system, conducting appropriate communication and educational campaigns, there is a distrust of such a tool among lower-level employees. A possible explanation

for this is the relatively recent implementation of this tool into the company's activities and the lack of a reporting culture among employees. New tools may be perceived negatively as they may be seen as a threat to employees: they can believe that the reporting system will primarily be aimed at identifying the guilty persons and bringing them to justice, and not at improving the moral microenvironment within the company and at the company's reputation.

5% of respondents believe that, despite the existing system for reporting information,

their companies are dominated by a negative attitude because of the lack of interest in it from both management and employees. In this case, its implementation may be conditioned by fulfilling the formal requirements of partners for entering the international arena.

Among the factors that can contribute to the positive or, conversely, negative attitude towards whistleblowers, the following are mentioned: systematic work in the company to promote the effectiveness of this tool, the development of corporate culture, the implementation of whistleblower protection guarantees, material rewards, bringing the perpetrators to justice, collective approval of such activities, etc. In general, these responses coincide with the general sentiment of the Ukrainians, which expresses their readiness to report corruption only if the above guarantees of protection are provided.

When working to encourage and create a culture of communication among employees, companies mainly use the following tools:

Most often, companies implement codes of ethics for employees, provide methodological assistance and advice on reporting (here, the proactive role of compliance services should be noted), and train employees on this topic.

At the same time, companies try to conduct explanatory (communication) work on the importance of whistleblowing at least once a year. Only a tiny fraction of companies try to do this more frequently than once a quarter – once a month or once a week. In general, it should be noted that the approach to communication of the topic of whistleblowing has to be balanced: too frequent events can lead to a negative attitude to this tool since it will be perceived as an imposition on the part of the company's management. In our opinion, in most cases, the frequency indicated in the respondents' answers (once a year, twice a year, quarterly) is the most effective.

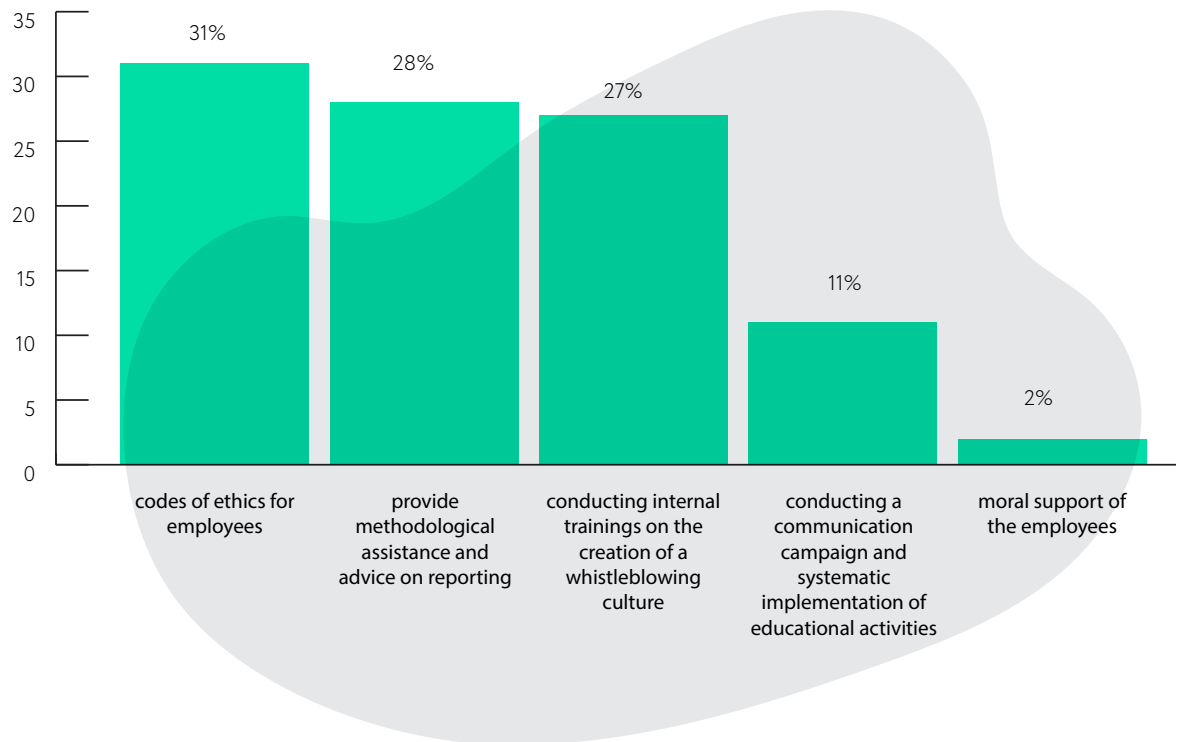
According to the survey results, respondents who are representatives of companies testify to the use of numerous means of communication with a specific frequency. However, the question arises: what idea do the respondents form about the achievements of the reporting system in their company?

Most of the respondents believe that, firstly, thanks to the reporting system, the company's image has been improved both in the domestic market and in the international arena. The reporting system helps not only to identify the facts of offenses within the company but also to protect and improve the reputation of the company. A positive reputation provides more economic opportunities, reduces marketing costs, and attracts potential partners and customers.

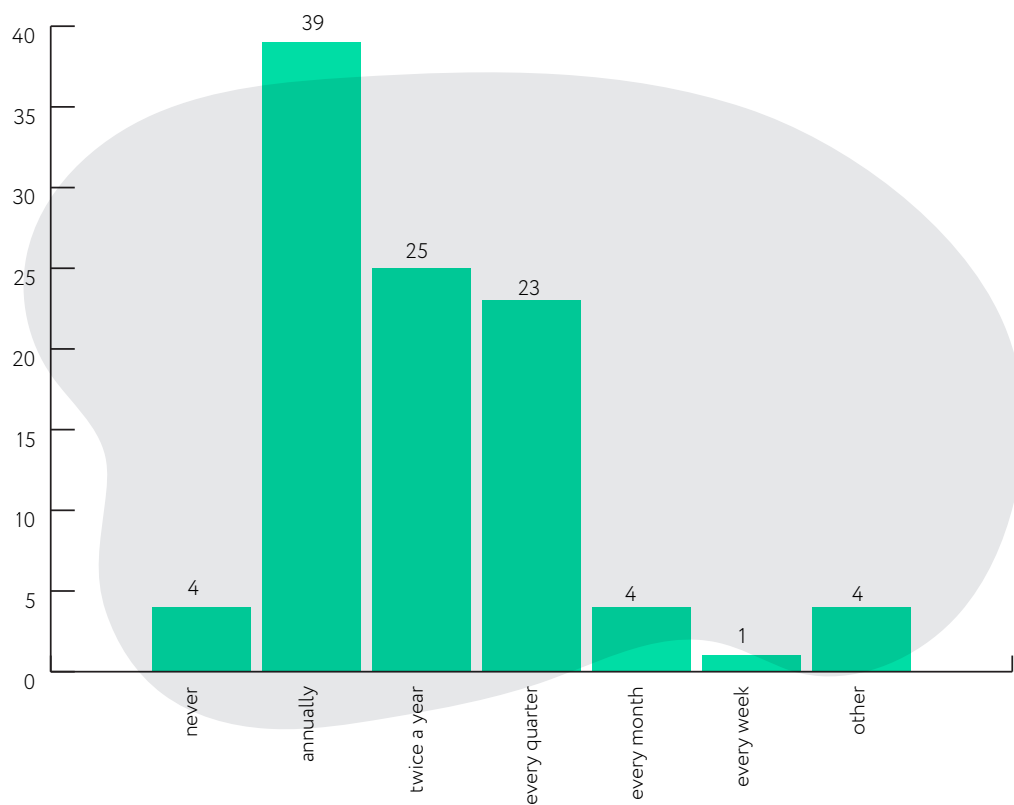
Secondly, according to the respondents, thanks to the reporting system, it was possible to increase the understanding of moral norms and rules of conduct among the company's employees, which can also contribute to the development of its reputation.

Thirdly, a minority of respondents consider the reporting system to safeguard against potential financial losses for the company. The more reports, the fewer offenses, and misconduct within the company go unnoticed. Thus, with the help of this tool, it is possible to save the funds and reputation of the company.

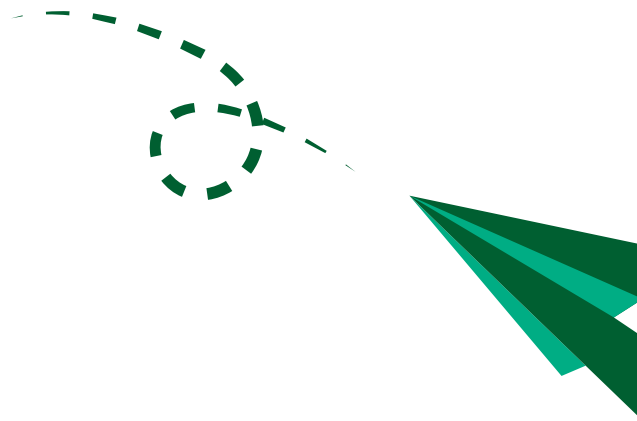
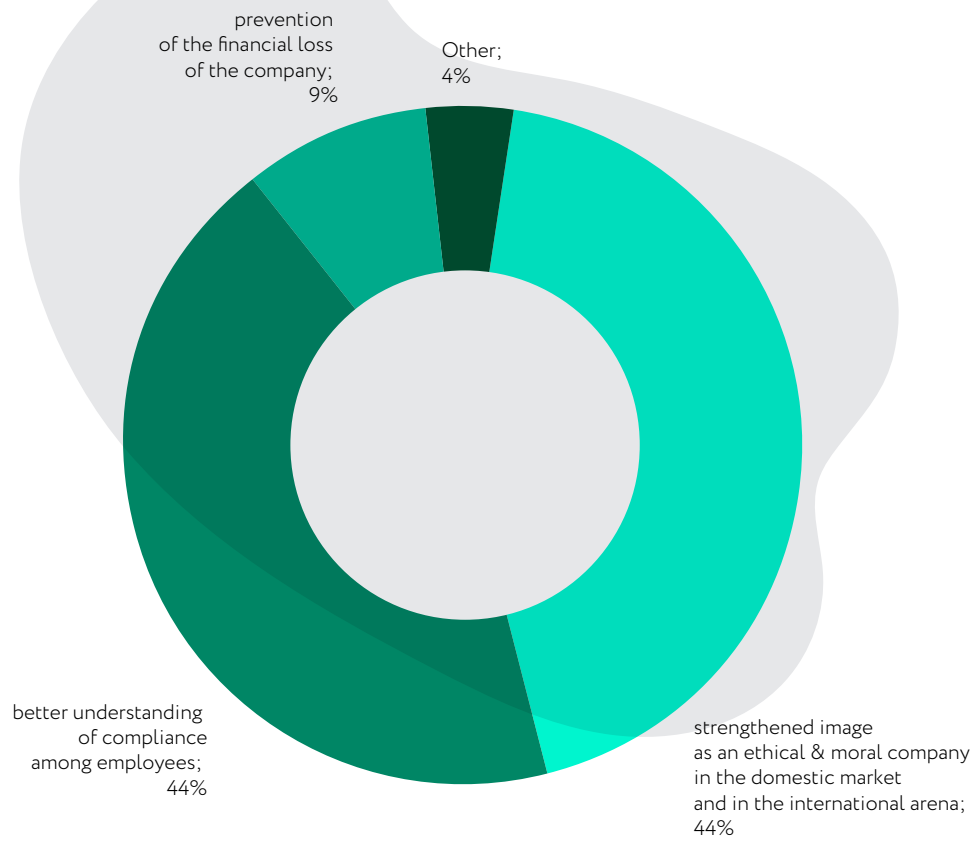
**The mechanisms for encouraging the whistleblowers
and for the creation of the whistleblowers culture**



Communication frequency



Benefits of the introduction of the reporting system



CONCLUSIONS

Illegal acts and offenses committed in a company can damage not only its financial position but also its reputation. The internal reporting system plays an important role in preventing such offenses. Our study provides an answer to the question of the implementation and operation of reporting systems in Ukrainian private companies.

It was found that the majority of the representatives of companies we interviewed (77%) testify to the presence in their companies of a system for reporting information about possible facts of offenses. Among the main reasons for implementing such a system are compliance with the best international standards and business practices, dictation of the conditions and rules of the game by the central office located outside of Ukraine, and potential reputational benefits for their own business.

At the same time, 33% of those surveyed acknowledged the absence of such a system in their companies. The absence was explained by the lack of any benefits, the small number of permanent employees, and the lack of reason to believe that the company has any kind of wrongdoings. It should be noted that the absence of such a system is mainly observed among small enterprises (up to 10 people). The conditions for the introduction of the message system, the respondents of this group indicated the existence of benefits and the need to implement such a system.

Companies that have implemented a system for reporting information about possible facts of corruption offenses are trying to build it following international practices: they implement various channels for reporting (mainly telephone hotlines, electronic mailboxes with access only to a narrow circle of officials, online reporting portals). It should be noted that, according to the respondents, all available reporting channels make it possible to report the information anonymously. In addition to anonymity, companies also provide protection against unlawful harassment in connection with the reporting and, less commonly, physical protection.

Interviewed representatives of private companies are mostly unaware of the use of negative measures against whistleblowers or indicate their absence. They are also unaware of the negative consequences for the company due to the use of negative measures to the whistleblowers. However, such data still does not allow one to be 100% sure of the absence of harassment of whistleblowers in the private sector.

Information about internal investigations carried out within the company is mainly brought to the attention of only the company's management, and less often to all company employees. Usually, depending on the severity of the offense committed, based on the materials of the official investigation, a disciplinary sanction is imposed on the guilty person; in some cases, these materials are sent to respective law enforcement and/or regulatory authorities.

The person/department responsible for dealing with whistleblowers is mostly compliance officers/compliance services. Their work with reporting indicates that they most often receive reports characterized by the sufficiency and completeness of information, although there are cases of reports sent with false information or contrived complaints. The compliance officers who took part in the study indicate that the main criteria for assessing the received report are the reliability and completeness of the information, which makes it possible to verify the facts set out in the communication.

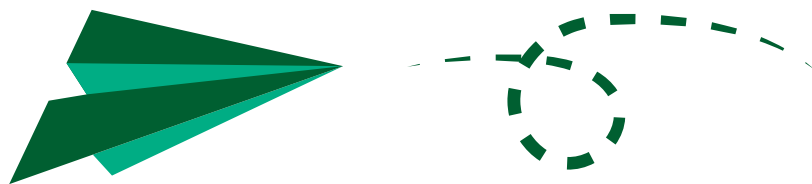
The majority of respondents (77%) in their answers confirm that their companies have a positive attitude towards whistleblowers, which is manifested in support of their activities by the company's management and its employees. However, there are cases of partial approval of such activities: 17% of respondents indicate a partially positive attitude towards whistleblowing, which is manifested in the distrust of specific categories of employees in this tool. Among the factors that can contribute to a positive attitude towards whistleblowers, the most commonly cited are systematic communication and educational work in the company, the development of corporate culture, the

BUSINESS AND WHISTLEBLOWERS

implementation of whistleblower protection guarantees, financial rewards, bringing the perpetrators to justice, and collective approval of such activities. The absence of such activity or a formal approach to it may lead to a passive/negative attitude towards whistleblowers. The respondents indicate that their companies attempt to conduct explanatory (communication) activities regarding whistleblowers at least once a year. In addition to communication and educational activities, private companies also often implement codes of ethics, provide methodological and consulting assistance to employees in whistleblowing, and conduct training on these issues. According to the respondents, thanks to the system of reporting information about possible cases of offenses, their companies have improved their own reputation at the national/international level, understanding of ethical standards of behavior within the company, and, to a lesser extent, leveled their financial risks.

Based on the analysis of the results of the study, it is possible to outline some directions for further research in this area, which are:

1. the factors contributing to the motivation for (not) implementing the reporting system in the private sector;
2. a cross-sector comparative study of work with whistleblowers;
3. the level of knowledge and practical skills of compliance officers responsible for receiving and considering reports from whistleblowers.







Kyiv, 2022