

WHISTLEBLOWER - LAW IN THE CZECH REPUBLIC

The long prepared and hotly debated law was passed a few days ago by the Lower chamber in its third reading without opposition and will most likely come into force on 1 July 2023. The long process of transposing the relevant EU directive (should have been done already in December 2021) was accelerated by the EU Commission's threat of penalty payments. Even though the Senate still has to agree, we do not expect any significant changes.

Whom does the law affect in the private sector?

Every employer with 50 or more employees as of 1 January of the year must establish a structure for reporting and protecting internal whistleblowers when reporting criminal offences and misdemeanors related to company activities no later than **15 December 2023**.

Whistleblowers must be protected from any reprisals from the company side.

What needs to be done?

A structure must be set up (internet, intranet, telephone number, mailbox) that makes it possible to report criminal offences and administrative offences with penalties exceeding CZK 100,000 orally, in writing, or electronically (an upload function for documents would be useful) to the company's designated officer. After a long discussion, the legislator did not impose the obligations of the law on anonymous reports, but nevertheless every employer would do well in his own interest to deal with them as well.

The whistleblowing officer decides, among other things, on the relevance and justification of the complaint. Information on the processing and remedial measures must be sent to the whistleblower within certain deadlines. An archive of the reports is to be kept securely.

Since offences have to be judged, it is advisable that legally trained persons become such officers, even if no specialist knowledge is required by law. When deciding whether an employee of the company or an external person should be appointed, it should be taken into account that a lawyer, in addition to specialist knowledge, ensures the best possible confidentiality of the contents of the complaint in the event of house searches (e.g. dawn raids by the cartel authorities).

If software solutions are used, it is essential to pay attention to data protection, in particular whether these process data outside the EEA.

If compliance structures already exist within the company or group, these can be built upon, e.g. so that reports can be made in Czech and the Czech specifics of the law are respected. However, from 250 employees, each Czech company must establish its own whistleblower structure.

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Sanctions

Even though the original fears that sanctions could be imposed on the basis of turnover were defused in the legislative process, there is a threat of substantial fines if the structure is not introduced, but also if sanctions are imposed on the whistleblower.

It is interesting to note that even a knowingly false whistleblowing information by the employee is subject to a fine; in addition, of course, claims for damages by the company come into question.

How can we help?

bpv Braun Partners has been advising on whistleblower matters and conducting internal investigations for compliance departments for many years. Of course, we are happy to advise on setting up an efficient structure that is in line with the law, labour law and data protection law, but also with company practice.

Precisely because Czech companies are likely to have few cases in the first few years, and in view of the qualifications and specific protection of legal information and correspondence vis-à-vis state authorities, we can provide the position of External whistleblowing officer if requested.

Finally, we support clients in the necessary rapid assessment of reports and, if necessary, internal investigations by an experienced team.

Assessment of the law

For many years, successful companies have had the possibility to report feedback from employees about criminal offences or other violations of the law. Not only in antitrust law, where the decision on whether to file a leniency application often has to be made within hours, a system of internal reporting that is trusted by employees and contractual partners makes absolute sense. In this respect, the new law should not be perceived as harassment, but as the anchoring of a sensible idea.

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