

# Legal Alert

## in the field of labour law

21 September 2021

# Weinhold Legal

## Whistleblowing - Whistleblower Protection Act

### Implementation period

The Czech Republic is required to implement Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of whistleblowers (hereinafter as the "**Directive**") by 17 December, 2021.

The Directive should be implemented into the Czech legal system by the Act on the Protection of Whistleblowers, the government [proposal](#) of which (hereinafter as the "**Proposal**") is being debated in the Chamber of Deputies under No. 1150. This Act is often referred to in the media as the 'whistleblower protection' act. However, if the legislative procedure cannot be completed at least in the Chamber of Deputies before the October elections, the implementation proposal or a modified version of it will have to be re-submitted and debated in the newly elected Chamber of Deputies.

### Purpose

The Directive was adopted to set minimum standards to ensure effective protection of whistleblowers, which is intended to help strengthen the enforcement of EU policies "*where under-reporting by whistleblowers is a key factor affecting enforcement, and breaches of Union law can cause serious harm to the public interest.*"

### Main principles

The forthcoming legislation is based on the following principles:

- ▶ general legal protection of whistleblowers (a whistleblower who knowingly misrepresents facts is not protected),
- ▶ the introduction of a mandatory internal reporting system

with a set process for dealing with notifications and the alternative existence of an external reporting system operated by the Ministry of Justice,

- ▶ the conditions under which notifications can be published,
- ▶ sanctions, both for obliged entities and for whistleblowers who knowingly provide false information and
- ▶ maintaining the confidentiality of the subjects concerned.

### Notifications

The Proposal, in compliance with the Directive, sets out the conditions for the submission and assessment of notifications and the provision of protection to persons who have submitted notifications. A notification shall be deemed to be a communication

*"by a natural person containing information about an infringement" which bears "the characteristics of a criminal offence or misdemeanour or violates a legal regulation or a regulation of the European Union in the field" expressly mentioned, "the commission of which has come to the notice of the whistleblower in connection with work or other professional activity."* This includes, but is not limited to, corporate tax, AML legislation, consumer protection, including product safety, environmental protection, public procurement and other areas.

### Submission of notifications

Notifications may be submitted through the internal notification system (hereinafter as the "**Internal Notification System**"), which shall be set up by the obliged person, and also through the Ministry of Justice, where notifications will be examined by authorised Ministry staff. Under certain conditions, the notification may also be published.

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### Whistleblower

A whistleblower may be a natural person who has become aware of a possible violation of legal regulations in the above-mentioned areas in the course of his or her employment, service, self-employment, exercise of rights associated with participation in a legal entity (associates, shareholders, members of a cooperative), performance of the functions of a member of a legal entity's body, administration of a trust fund, volunteer activities, performance of professional practice or internship, or exercise of rights and obligations arising from a contract whose subject matter is the provision of supplies, services, construction work or other similar performance. This may also happen in job interviews.

### Retaliatory measures

Neither the whistleblower nor persons who have a certain relationship to the whistleblower (a close person, a person who has provided assistance in ascertaining information or assessing the validity of the notification, a colleague of the whistleblower, a legal entity in which the whistleblower is active, etc.) may be subjected to a retaliatory measure. Retaliatory measures may include, for example, dismissal, discrimination, non-renewal of a fixed-term employment contract or non-payment of a personal allowance, exclusion from the collective, etc.

### Obligation to establish an Internal Notification System

According to the Proposal, in addition to certain public contracting authorities and designated public authorities, the obligation to establish an Internal Notification System should also apply to:

- ▶ **employers** who employed **on average at least 25 employees** in the previous calendar quarter, regardless of

their field of activity,

- ▶ persons authorised to grant or arrange consumer loans,
- ▶ certain employers subject to the supervision of the Czech National Bank under the Act on Business on the Capital Markets,
- ▶ certain employers subject to the supervision of the Czech National Bank under the Act on Investment Companies and Investment Funds,
- ▶ insurance or reinsurance companies,
- ▶ employers who are authorised to arrange insurance or reinsurance under the Act governing the distribution of insurance.

According to the Proposal, the obligation to implement the Internal Notification System **must be fulfilled by 31 March 2022**.

When maintaining an Internal Notification System, obliged persons must:

- ▶ designate a so-called competent person to receive and assess the validity of the notification, to propose to the obliged entity measures to remedy or prevent the unlawful situation (unless the whistleblower could be exposed); the competent person shall be bound by confidentiality by law, even after the termination of the activity, shall act impartially and comply with the instructions of the obliged entity unless they threaten or obstruct the performance of his/her activities, and must not be sanctioned for the proper performance of his/her activities,
- ▶ publish on the obliged person's website information on the means of notification through the Internal Notification System and through the Ministry of Justice, on the competent person, on his/her telephone number and e-mail or other address for delivery,
- ▶ provide the competent person with proper instructions and resources for the exercise of his/her activities,

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- ▶ enable the whistleblower to submit notifications through the Internal Notification System in writing, orally and, at his/her request, in person,
- ▶ ensure that only the competent person has access to the notifications and that the prohibition on disclosing data is respected,
- ▶ ensure that the competent person properly assess the validity of the notification and inform the whistleblower of the receipt of the notification and of the results of the assessment of the validity of the notification,
- ▶ take appropriate remedial action.

### Misdemeanours

The obliged entity, i.e. according to the Proposal also an employer with more than 25 employees, may be fined up to **CZK 400,000 or 3% of the net turnover** achieved by the obliged entity for the last completed accounting period if it fails to provide remote access to information on the method of notification through the Internal Notification System and the Ministry of Justice, including relevant contacts, and/or fails to implement remedial measures ordered by the Ministry of Justice. A fine of up to **CZK 1,000,000 or 5% of the net turnover** achieved by the obliged entity for the last completed accounting period may be imposed, in particular, if the obliged entity fails to prevent the whistleblower or a "related or assisting person" from being subjected to a retaliatory measure or fails to identify the competent person at all, as well as fails to provide resources for the performance of his/her activities according to the law or even penalizes the relevant person for the proper performance of activities. Similarly, flaws in the functioning of the Internal Notification System (availability of the method of notification - written and oral, confidentiality of the notification, proper assessment, information obligation to the notifier) can be sanctioned.

The majority of offences of the obliged persons – employers

shall be detected and, where appropriate, sanctioned by the by the regional labour inspectorates or the State Labour Inspection Office. However, some of the facts of offences of employers as well shall remain under the authority of the Ministry of Justice (in particular sanctions for failure to prevent retaliatory measures).

The filing of a knowingly false notification is also a misdemeanor, for which a fine of up to CZK 50,000 may be imposed, as well as certain acts or omissions of competent persons (not state employees).

**We would also like to invite you to a webinar entitled "Whistleblowing - Employer Obligations to Protect Whistleblowers" held on 5 October 2021 at 10 AM. The invitation is available [here](#).**

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