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Changes to whistleblowing regulation in Slovakia – Amendment to the Whistleblowers Act

The Parliament of the Slovak Republic adopted an amendment to Act No. 54/2019 Coll. on the Protection of Whistleblowers of Anti-Social Activities, as amended. This Act, in the conditions of the Slovak Republic, constitutes a regulation which is internationally known as the protection of whistleblowers. The amendment is primarily a transposition of Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of whistleblowers with respect to EU law.

The new whistleblowing regulation brings the following changes:

1. Extension of the circle of protected persons

The extension of protection consists primarily in the modification of the definition of "whistleblower" and the introduction of a new concept of "other similar relationship", which will broaden the circle of whistleblowers within the meaning of the Act, i.e. persons to whom the Act will grant protection following a report of anti-social activity. Under the previous legislation, the term "whistleblower" referred to persons who made a report in good faith and persons close to them in the same employer or within the same organisation. By extending the definition of "whistleblower" under the amended legislation, with effect from 1 July this year, the term includes natural persons who have made a notification in good faith to the body responsible for receiving reports or to their employers, whereby whistleblowers include, for example, natural persons who:

- have made a notification at a time when their employment or other similar relationship has already ended; or
- have made a notification at a time when their employment or other similar relationship has not yet begun

By introducing a completely new concept "other similar relationship", the legal protection applies not only to persons in an employment relationship, but also to persons in a "similar employment relationship", and according to the amendment, this concept also includes members of the bodies of a legal entity or persons exercising rights related to their participation or management in a legal entity, self-employed persons, trainees in the course of their professional or graduate practice, volunteers, activists, contractual partners in contracts for the supply of goods, the performance of construction work or the rendering of a service.

2. Changes regarding internal verification of notifications

Already the previous legislation introduced an obligation for employers to have an internal procedure for whistleblowing verification – the so-called internal system for verification of notifications, as well as an obligation to designate a responsible person within this system.

Previously, this obligation only applied to employers in the private sector having at least 50 employees. Under the new legislation, from 1 September, employers providing financial, transport safety or environmental services are obliged to prepare an internal procedure for verification of notifications even if they employ less than 50 employees.

In addition, under the previous legislation, the employer could also designate a person who was not employed by him as the person responsible for verifying notifications. Under the new legislation, as of 1 September, such person must be designated from among the employees or must be a person within the employer's organisation. In addition to this person, an external person who is not an employee may, on the basis of a contract with the employer, also receive and verify reports on behalf of the employer. For employers employing up to 250 employees, such external person may also carry out the verification of notifications.

The amendment also adjusted the time limits for internal reporting. Employers were previously obliged to inform whistleblowers of the result of the verification of the notification within 10 days of verification. Under the amended legislation, they are obliged to do so within 90 days of acknowledgement of receipt of the notification and, if receipt has not been acknowledged, within 90 days of receipt. In addition, they must comply with the new deadline for acknowledging receipt of the notification, which is set at 7 days after receipt. The new deadlines are effective from 1 July this year.

Employers are required by law to keep records of notifications for a period of three years from the date of their receipt, and the data to be kept within that period includes the name, surname and residence of the whistleblower. The new legislation introduces the concept of 'anonymous whistleblower', logically excluding this obligation in the case of anonymous whistleblowers.

3. Changes to the prohibition on retaliatory measures against whistleblowers

The amendment also introduced a new definition of "retaliatory measure", which according to the amendment is an act or omission of an act related to the employment relationship or other similar relationship causing harm triggered by the notification or disclosure of information on anti-social activity. The amendment explicitly prohibits such conduct under the threat of sanction, thereby providing the persons concerned with certain protection automatically, i.e. not only if such a person requests protection. The new wording of the law also provides an exemplary list of such acts, listing, for example, dismissal, immediate termination of employment, downgrading, refusal of promotion, change of job duties, failure to grant remuneration or a personal allowance, failure to provide training, withdrawal from a contract for the supply of goods and services. This list is only exemplary, which means that various other acts may also be prohibited retaliatory measures if the above definitional features are met.

Under the new legislation, it is prohibited to threaten or sanction with retaliation not only the whistleblowers, but also their close persons or persons who have provided them with assistance in connection with the reporting of criminal activity, as well as persons responsible for verifying internal reports. Retaliation against persons controlled by the whistleblower, in which the whistleblower has an interest, in which he or she holds a position of a body member or for which he or she performs work, and against persons who control such persons, shall also be prohibited. All changes regarding retaliatory measures are effective as of 1 July.

4. A wider range of offences which constitute serious anti-social activity and therefore whistleblowers can be given protection when reporting them

In this context, we would first of all like to draw attention to the difference between a notification and a so-called qualified notification and the related difference between reporting information on "anti-social activity" and "serious anti-social activity". While a notification is a statement of facts concerning an anti-social activity, a qualified notification is one which may contribute or has already contributed to the clarification of a serious anti-social activity or to the detection or conviction of its perpetrator. A qualified notification also includes entitlement to a reward and special protection that a whistleblower may claim. The protection in such a case is that the employer may only take an employment action, i.e. take a legal action or make a decision in an employment relationship, against the protected person with the consent of the Office for the Protection of Whistleblowers.

Under the previous legislation, the upper limit of the sanction for offences considered to be serious anti-social activity was set at three years' imprisonment. Under the amended legislation, this upper limit has been reduced to two years.

In addition, the Act on the Protection of Whistleblowers of Anti-Social Activity also lists the offences for which the Office may grant protection regardless of the upper limit of the prison sentence. Prior to the entry into force of the amendment, these offences included, for example, the offence of corruption. The new legislation has added a number of other offences to this list, such as endangering health with defective food, unauthorised drugs, medicines and medical devices, copyright infringement, unauthorised waste management, infringement of plant and animal protection, or unauthorised use of personal data, unauthorised disclosure, access to or publication of personal data.

5. Increased fines and new types of sanctions

The amendment increased the fine from the previous 2,000 euros to 6,000 euros in the case of a misdemeanour, while also changing the very definition of a misdemeanour. The fine can be doubled for repeated behaviour.

The amendment also adds a fine of up to 100,000 euros to the system of fines for an employer who, without the consent of the Authority, takes an employment action against a whistleblower or protected person where the consent of the Authority is required for such action, where the employer threatens the whistleblower or protected person with retaliatory measures, or where the employer attempts to take retaliatory measures. An employer who employs 250 or more employees and breaches any of the obligations relating to the internal system for verification of notifications shall also be liable to a fine of the same amount.

The amendment also imposes a new fine of up to 50,000 euros for an employer who is not a public authority and who employs at least 50 employees and less than 250 employees, or an employer who is a public authority and who employs at least 5 employees and less than 250 employees who breaches any of the statutory obligations relating to the internal system for verification of notifications.

Under the new legislation, a fine of up to 30,000 euros is imposed on an employer who fails to take measures to eliminate deficiencies identified in the internal system for verification of notifications or fails to submit a written report to the Authority on the measures taken to eliminate their deficiencies.

In the event of a repeated breach of one of the legal obligations relating to the internal system for verification of notifications, the fine may be doubled under the new legislation.
All the new types of fines mentioned above were added to the system of penalties with effect from 1 September.

6. Further changes

Under the previous legislation, notifications relating to trade secrets were exempted from protection. As of 1 July, the amended legislation also protects whistleblowers who communicate facts related to trade secrets.

The new legislation also introduces and defines, as of 1 July, a new concept of "Authority competent to receive a notification", which, according to the current wording of the law, is the Office for the Protection of Whistleblowers of Anti-Social Activity, the Public Prosecutor's Office, as well as any administrative authority competent in proceedings concerning an administrative offence which the Act on the Protection of Whistleblowers of Anti-Social Activity defines as a serious anti-social activity. This also includes the relevant institutions, bodies, offices and agencies of the European Union.

It is foreseeable that, in practice, various situations will arise over time which will require further measures to be taken to improve whistleblower protection. We will monitor further developments in the regulation of whistleblowing and will include any changes in our Newsletter.

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