

The Slovak Act on the Protection of Whistleblowers has undergone a significant amendment

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The National Council has approved a rather significant amendment to **Act No. 54/2019 on the Protection of Whistleblowers and on the amendment and supplementation of certain laws** (“Whistleblowers Protection Act”). The changes brought by the amendment include, in particular, the transposition of Directive (EU) 2019/1937 of the European Parliament and of the Council, of October 23, 2019 on the protection of persons who report infringements of Union law (OJ L 305, 26.11.2019), as amended. The European Commission has threatened sanctions for late transposition of this Directive. At the same time, the amendment responds to practical issues of the current legislation identified in application practice. The amendment of the Act was approved by the National Council on May 10, 2023. Most of the provisions will enter into force on **July 1, 2023**, with a minor part of the provisions going into effect from **September 1, 2023**.

Presently, the European Commission is taking legal action against a number of states for not having transposed the Directive. However, it should be noted that the Slovak republic not only transposed the Directive, but also has

its second Act on Protection of Whistleblowers, and special office has also been established, which is not common in other countries. Slovak Republic is one of only two member states to have established such office (the Netherlands being the other).

THE MOST IMPORTANT CHANGES INTRODUCED BY THE AMENDMENT

1. Extension of personal and material competence

The amendment has broadened the concept of whistleblower and thus the persons who fall under protection of the Whistleblowers Protection Act. Whistleblowers who are in an employment relationship as well as other similar relationships (e.g. entrepreneurs, sole traders, persons holding positions in legal entities, interns, volunteers, etc.) will now fall under the Act's protection.

The material scope of the definition of "anti-social activity" has been expanded. The upper limit for offences defined as anti-social activities is reduced from more than three years to more than two years. It means that from the effectiveness of the amendment, all crimes punishable by a term of imprisonment with its upper limit exceeding two years will be automatically considered as anti-social activity. But at the same time, the amendment expands the range of anti-social activity offences, that fall under the definition of "anti-social activity" compared with the original wording.

Furthermore a definition of "retaliation measure" has also been introduced; the law includes under this term, for example, dismissal or immediate termination of employment, reduction of wages, as well as coercion, intimidation or harassment, among others.

The amendment also makes it possible for whistleblowers to disclose facts related to trade secrets and still be protected under the Whistleblowers Protection Act. Before the amendment, facts communicated in connection with trade secrets were exempted from protection.

2. Changes to employer's obligations and procedure for receiving notifications

The amendment narrows the scope of the powers of the person who carries out the employer's obligations in respect of receiving and verifying whistleblower notifications, based on a contract with the employer. According to the amendment, effective from September 1, 2023, their competence will be limited to the receipt and validation of whistleblower notifications. In addition, they will be allowed to carry

out the verification of whistleblower notifications, but only if the employer employs fewer than 250 employees and is not a public authority, while the obligation to carry out a verification of the whistleblower notification for such an employer also remains with the responsible person within the employer's organization. Even if carrying out these obligations is delegated to a person outside the organization, the employer is still obliged to have a designated responsible person appointed.

The obligation to have an internal notification system in place has also been extended to employers providing services in the finance, transport safety or environmental sectors.

A mechanism should also be in place to protect the identity of the whistleblower. Written consent of the whistleblower is required to disclose information about his or her identity.

Employers have also been given the additional obligation to "take action against an employee who obstructs making a notification or keeping of a record of notifications."

3. Changes in time limits

The time limit for informing the whistleblower about the outcome of the examination of the complaint has been shortened—an important change that deserves mentioning. Until effectiveness of the amendment to the Whistleblowers Protection Act, the time limit was determined on the principle of 90 + 30 + 10 days. The employer was obliged to receive and verify each notification within 90 days of its receipt, with the possibility to extend this by a further 30 days in certain circumstances. The employer was then obliged to inform the whistleblower about the outcome of the verification within 10 days. Now, the time limit has been shortened to a single 90-day period, which starts with the acknowledgement of receipt of the notice (or, if not acknowledged, seven days after receipt of the notice) However, if the notice has been referred to the Criminal Procedure Authority, the 10-day period for informing the whistleblower about the outcome of the review remains. In this case, the employer is obliged to request the results of the Criminal Procedure

Authority examination to the extent permitted by the special regulation and to inform the whistleblower about the results within 10 days receiving them.

4. Change of name of the Whistleblower Protection Office

The amendment also involves some formal changes. The name of the Office for the Protection of Whistleblowers of Anti-Social Activities is changed to “Whistleblower Protection Office,” thereby reflecting the name that has been used in practice.

5. Sanctions

New administrative offences are introduced with the amendment, and increased fines. For example:

- An increase in the fine from original €2,000 to €6,000 for an offence committed by a person who: a) threatens, attempts, or penalizes a whistleblower in connection with making or publishing a notice, b) breaches a duty of confidentiality regarding the identity of the whistleblower or the identity of the concerned person, c) or attempts to prevent or obstruct the making or publishing of a notice
- A fine up to €100,000 on an employer, who takes an employment action against a whistleblower or a “protected person” without consent of the Whistleblower Protection Office, threatens to retaliate against or attempts to retaliate against the whistleblower or the “protected person”. A fine of up to €100,000 may also be imposed on an employer employs 250 or more employees and has violated any of the statutory obligations relating internal whistleblowing systems.

- A fine of up to €30,000 on an employer that has not taken measures to remedy deficiencies detected during an inspection checking for compliance with the obligations of the Whistleblowers Protection Act or has not submitted to the Whistleblower Protection Office a written report on the measures taken to remedy the detected deficiencies.

For completeness, we point out that in the meantime the Whistleblower Protection Office already issued its first fine for breach of the Whistleblowers Protection Act. The amount of the fine is not at the upper limit, but that shouldn't be considered a common practice. The Whistleblower Protection Office has been operating in the Slovak Republic for just a year and a half and is still in the process of developing its decision-making practice in this respect. It is currently focusing its activities on raising awareness, which in our opinion is the right approach.

Conclusion

Even though the changes to employers' obligations under this amendment are not extensive at first glance, it is important to pay attention to them. The amendment does not contain transitional provisions to address the issue of the effectiveness of legal relationships that will arise during this period; therefore, employers will need to comply with their obligations under the amendment from the first day of its entry into force. We therefore recommend that companies begin incorporating into existing internal regulations relevant changes resulting from the wording of the amendment now, to ensure their compliance with the law.

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