

# Obligations of the Employer under the Czech Whistleblowing Act

## In brief

The Czech Act on Protection of Whistleblowers ("**Whistleblowing Act**") which implements the EU Whistleblowing Directive 2019/1937 was finally adopted and will become effective from 1 August 2023. The Whistleblowing Act introduces the obligation of employers to establish a whistleblowing channel to enable reporting of selected violations, and to protect individuals that filed such report.

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## Key takeaways

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## In depth

### Who is obliged to establish a whistleblowing channel?

Companies employing more than 250 employees must set up and operate their own internal reporting channel. Such reporting channel must be set up by 1 August 2023. In other words, such companies cannot rely on a shared group whistleblowing channel.

Companies with 50 to 249 employees must set up an internal reporting channel by 15 December 2023 at the latest. Such companies may also use a shared reporting channel (e.g., a global reporting channel), provided that they

meet all the conditions set forth in the Whistleblowing Act.

The number of employees employed in the Czech Republic as of 1 January of each calendar year is relevant for the purpose of assessing the threshold. In case of several group companies operating in the Czech Republic, each company is considered separately for the purpose of meeting the thresholds related to number of employees.

### **What needs to be done?**

Companies that established a whistleblowing channel must, inter alia, (i) publish required information on the company's website, and (ii) determine a designated person(s).

The following information must be **published on the company's website**:

- How to report through the whistleblowing channel
- How to report to authorities
- Name of the designated person(s), their telephone number and e-mail address or other delivery address
- Whether the whistleblowing channel is available only to employees, volunteers and interns or also to independent contractors, suppliers, service providers, business partners, shareholders and statutory directors.

The company is obligated to determine at least one **designated person** to receive and follow up on whistleblowing reports. This could be a Compliance Officer, HR Director, Legal Counsel, etc. We recommend to determine several designated persons in case one of them is unavailable.

As the designated person must enable a personal receipt of whistleblowing reports, we recommend that it is an individual who is predominantly located in the Czech Republic and speaks Czech.

### **Can the whistleblowing channel be operated by an external provider?**

Yes, the technical aspects of the operation of the reporting channel can be outsourced.

### **Does local law require any consultation with employee representatives prior to implementing the internal reporting channel?**

No, since it is a statutory obligation.

### **Does local law require that the internal reporting channel be available in local language?**

Information to employees on the whistleblowing channel can be in English, provided that the employees are fully proficient. However, employees must be allowed to file a report in Czech.

### **What is a whistleblowing report?**

A whistleblowing report is an information on alleged:

- Violation which qualifies as a criminal offense
- Violation which qualifies as an administrative offense punishable by a fine with an upper limit of at least CZK 100,000 (approx. EUR 4,300)
- Violation of the Whistleblowing Act

- Violations of legal regulation (including EU legal regulation) in selected areas, in particular: public procurement; financial services, money laundering and terrorist financing; corporate tax; product and transport safety; environmental and nuclear safety; food and feed safety; animal health and welfare and public health; consumer protection; data protection and protection of economic competition.

### **Who can file a report using the company's whistleblowing channel?**

Companies may limit who can use their internal whistleblowing channel. It must always be available to employees, job applicants, volunteers and interns, however it is possible to exclude certain categories of reporters, such as independent contractors, suppliers, service providers, business partners, shareholders and statutory directors.

### **Can the report be anonymous?**

The report must contain the direct identification of the whistleblower, or information allowing such identification. An anonymous report does not trigger the mandatory steps under the Whistleblowing Act. However, once the anonymous whistleblower is identified, such whistleblower become protected and the report must be properly investigated.

### ***How can a report be filed?***

The report can be filed in writing, as well as orally. If requested by the whistleblower, the designated person must allow a personal filing of the report within 14 days.

### **What happens after a report is filed?**

The designated person must confirm the receipt of the report in writing, within seven days. Furthermore, the designated person shall inform the whistleblower of any action taken, the status of the internal investigation as well as the outcome thereof within a reasonable period of time, but no later than 30 days from the confirmation of receipt. In the event of factually or legally complex cases, this period may be extended once or at most twice with each extension lasting up to 30 days. The designated person is obligated to inform the whistleblower in writing of the extended deadline and the reasons for its extension before the deadline expires.

### **Shall we keep evidence of the received reports?**

The designated person is obligated to keep evidence of the received reports in an electronic form. Furthermore, the designated person is obliged to store the report submitted through the internal reporting channel and documents related to the report for five years from the date of receipt of the report. Access to the above evidence, the report submitted through the internal reporting channel and documents related to the report is restricted to the designated person only.

### **How is the whistleblower protected?**

Whistleblowers must be protected against (threats and attempts of) any form of retaliation, including suspension, dismissal, demotion, transfer of duties, reduction in wages or working hours, withholding of a promotion or training, disciplinary measures, intimidation, harassment, discrimination, failure to convert a temporary contract into a permanent contract or to renew a contract, and early termination.

The whistleblower qualifies for protection if:

- The report was not anonymous.
- The whistleblower had reasonable grounds to believe that the information was true at the time of reporting.
- They made their report in accordance with the relevant procedures.

## What are the sanctions in case of breach of whistleblowing rules?

### Corporate Liability

Companies may be held liable, in particular, for the following breaches:

- Failure to set up and operate an internal reporting channel.
- Failure to appoint a designated person.
- Failure to confirm receipt of the report and to inform the whistleblower of any action taken, the status of the internal investigation as well as the outcome thereof.
- Breach of duty of maintaining confidentiality.

Each of the above administrative offenses is punishable by a fine. The maximum fine ranges from CZK 400,000 (approx. EUR 17,000) to CZK 1 million (approx. EUR 43,000). The decision as to whether and to what extent to impose an administrative fine is at the discretion of the competent authority.

### Individual Liability

The Whistleblowing Act sanctions, in particular, the following breaches by individuals:

- Hindering reporting
- Retaliation or attempted retaliation
- Breach of duty of maintaining confidentiality

Each of the above administrative offenses is punishable by a fine. The maximum fine ranges from CZK 80,000 (approx. EUR 3,500) to CZK 1 million (approx. EUR 43,000). The decision as to whether and to what extent to impose an administrative fine is at the discretion of the competent authority.

### Data Privacy

If the confidentiality obligations are violated, there is an associated risk that data privacy obligations were violated as well. As a consequence, the sanction regimes under the GDPR may apply.

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We will continue to keep you updated on any major development that may impact your business. In the meantime, do not hesitate to contact us if you have any questions or comments.

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