

Implementation of the EU Whistleblowing Directive in Hungary

On 25 May 2022, after much back and forth, the Hungarian Parliament passed the new Whistleblowing Act (Act XXV of 2023; "Whistleblowing Act"), which transposes into national law the EU Whistleblowing Directive [Directive (EU) 2019/1937, the "Directive"].

To aid standardisation and afford protection to whistleblowers, the Whistleblowing Act mainly contains provisions similar to those in the Directive and introduces specific mandatory requirements for the establishment of internal whistleblowing systems.

The Whistleblowing Act enters into force 60 days after its publication, i.e. on 24 July 2023, by which time all companies with 250 or more employees are required to have an internal whistleblowing system in place that is in line with the newly adopted rules. A slightly longer period (ending on 17 December 2023) in which to establish a whistleblowing system applies to companies with 50 to 249 employees.

In the following, we describe the key requirements of the Whistleblowing Act, which will impose significant obligations on a wide range of businesses with regard to setting up and operating internal reporting channels.

Scope of the companies concerned

The number of employees or the industry in which the business operates is the key criterion for determining whether the obligation applies.

The obligation to establish and operate an adequate whistleblowing system applies to all companies with 50 or more employees. As mentioned above, employers with 50 to 249 employees will have until 17 December 2023 to meet the new obligation, whereas companies with 250 or more employees must act as soon as the Whistleblowing Act comes into force.

Regardless of the number of employees, employers within the meaning of Hungary's Act on the Prevention and Combating of Money Laundering and Terrorist Financing and employers operating ships and aircraft are obliged to set up an internal whistleblowing reporting channel by 24 July 2023.

Who can be a whistleblower?

Under the Whistleblowing Act, a wide range of possible whistleblowers can report abuse. With regard to any of the companies concerned:

- current or former employees, regardless of the type of employment,
- volunteers and trainees (paid or unpaid),
- persons with whom the procedure for the establishment of an employment relationship has been initiated,
- sole proprietorships and private entrepreneurs if they have a contractual relationship with the company,
- the company's shareholders, members of its administration, managing directors, and management or supervisory board members, including non-executive members

can all be whistleblowers.

Internal reporting channels

The Whistleblowing Act introduces a three-tier reporting structure in line with the Directive:

- the first tier is an internal reporting channel, through which whistleblowers can report a possible violation within the company,
- the second is the external reporting channel, which concerns the reporting of violations to the competent national authorities, and
- the third is the public disclosure of violations.

The first-tier reporting channel may be operated internally by a designated person or department or may be provided externally if a company

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appoints a whistleblowing attorney or another external organisation. It is important to note that the establishment and operation of internal reporting channels must comply with strict data protection requirements.

Those employers that are obliged to set up an internal reporting channel must inform employees about its operation and the applicable data protection rules.

In practice, this means that the employer should prepare a policy on the operation of the internal reporting channel and communicate it – preferably – on the company's website. When a report is filed, both the whistleblower and the person(s) identified in the report must be informed of the processing of their personal data pursuant to the GDPR. The data processing is only allowed in connection with the investigation of the reported abuse, and should not continue beyond the end of the investigation, except where a legal claim based on the abuse reported is being pursued.

Companies with 50 to 249 employees can establish a whistleblowing system jointly, which could simplify the process.

In the case of a Hungarian subsidiary of an EU-based parent company, the whistleblowing system should primarily be implemented by the subsidiary in Hungary. Based on the Whistleblowing Act, it is unclear whether the parent company can incorporate the Hungarian system into its group-wide whistleblowing system. However, given the lack of (serious) sanctions that can be imposed in the case of non-compliance, the application of multinational systems might be an acceptable solution if the requirements of the Whistleblowing Act (e.g. the use of Hungarian) are otherwise met.

What kind of abuses can be reported?

The whistleblowing system can be used for reporting information to the employer about unlawful or allegedly unlawful activities, omissions, or other information in relation to abuses, as well as actions and behaviours

defined as unlawful in the employer's internal policies.

Reporting procedure and deadlines

The employer must also send the whistleblower an acknowledgment of receipt of the report within seven days and provide information on the assessment and follow-up. A reasonable timeframe for informing a reporting person should not exceed three months. In the course of the investigation, further information must be requested from the whistleblower if necessary. The investigation should include an assessment of the relevance of the circumstances described in the report and the adoption of appropriate measures to remedy the violation.

The Whistleblowing Act protects whistleblowers by maintaining their anonymity and protecting them against any adverse measures, reprisals, or retaliation of any kind.

Potential consequences

The competent government offices are entitled to monitor employers' compliance with their obligations under the Whistleblowing Act regarding internal reporting channels. In the case of violations of the Whistleblowing Act, the competent labour inspectorate can only notify a company that it must comply with the relevant whistleblowing provision. Under the current legislation, failure to set up an internal whistleblowing system will not result in the imposition of fines.

Whistleblowing in the context of ESG

Whistleblowing is a key element of ESG-led corporate culture and implementing a whistleblowing system might bring significant benefits. Setting up a whistleblowing system will help companies build solid foundations for corporate governance while allowing them to meet both the regulatory requirements and the expectations of employees or potential investors.



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