

Bird & Bird

New whistleblowing regulation

Legal news

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Protection of whistleblowers

Last week, the **new Act on the Protection of Whistleblowers** was sent for publication in the Collection Laws, which finally transposes into Czech law EU Directive No. 2019/1937 of 23 October 2019 on the protection of persons who report breaches of Union law.

The aim of the Act is to protect whistleblowers, i.e., persons who report on possible illegal conduct of which they have become aware in connection with the performance of their work or other similar activities.

Whistleblowers will be protected directly by law from any retaliation, such as having their employment or other form of cooperation terminated, their salary reduced, being transferred to another work position, or being removed as a manager.

What does the new legislation mean for employers and other obliged entities?

- The new regulation will significantly affect employers who employ **at least 50 employees** as of 1 January of the relevant calendar year, as well as other entities designated by the Act as obliged entities (“**Company**”).
- Companies **will have to establish an internal reporting channel (“IRC”)** through which facts about illegal conduct can be reported. To enhance the efficiency of the reporting channels and to minimise the costs to obliged entities, the Act also **allows IRCs to be managed by third parties**.
- Additionally, Companies with **up to 249 employees** can share an IRC or use a channel established by another entity.

Companies will also be required to **designate a competent person** to receive reports, assess their justification and propose corrective measures.

Competent persons will be **bound by confidentiality**, meaning they must not provide any information to third parties that could harm or jeopardise the purpose of the reporting. The identity of the whistleblower will only be disclosed with their written consent, or without consent solely to public authorities.

The competent person will also keep an **electronic record of the details of reports received**. A record must include the date of receipt of the report, the identity of the whistleblower and of the person against whom the report is directed, a summary of the content of the report, and the date and result of the assessment of the report's justification. Reports must be retained for **five years** from the date of their receipt.

Companies must provide information on the manner of reporting, the persons whose reports are accepted, the designation of the competent person and their contact details **in a way that allows remote access** (e.g. on their website).

What will the reporting process be?

Through the IRC, a report can be filed **orally or in writing** and, at the request of the reporting person, also in person (within **14 days** of the submission of a request).



The competent person confirms receipt of the report **within 7 days**.



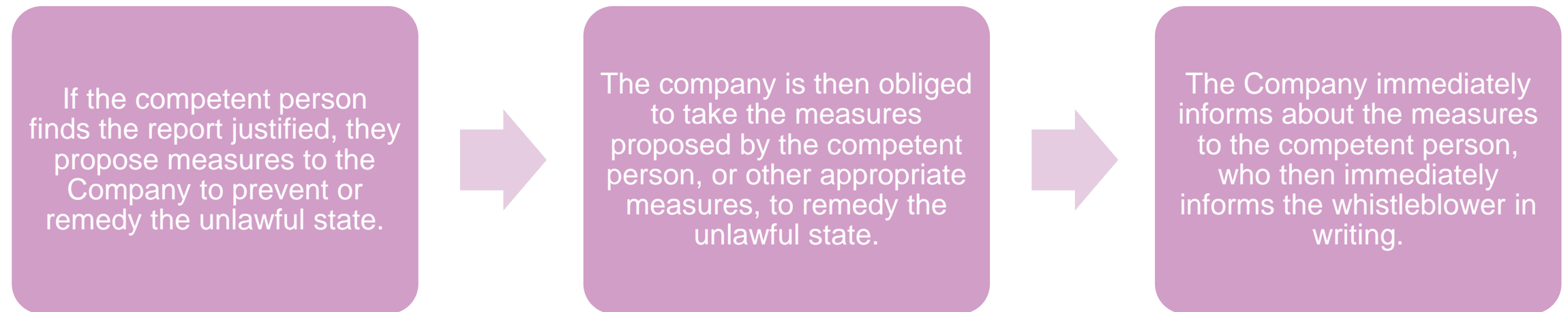
Within 30 days of receipt of a report, the competent person assesses whether the report is justified and informs the whistleblower in writing of the results of the assessment.



The time period for assessing a report may be **extended by up to 30 days**, but no more than twice.

... and assessment process?

The competent person assesses the report as either justified or unjustified. If the report is found to be unjustified, the competent person must promptly notify the whistleblower in writing and advise them of their right to file a report through the channel of the Ministry of Justice.



Does the new legislation also protect anonymous whistleblowers?

All **non-anonymous reports** made via the external reporting channel of the Ministry of Justice or private IRCs are protected by law.

Anonymous reports are not regulated by the Act, meaning that how they are handled, particularly in terms of assessing whether they are justified, as well as the obligations to advise the whistleblower of their rights and to propose corrective measures are not subject to the above process until the whistleblower's identity is revealed. Once their identity is known, however, all the above rules apply, and to the same extent.

It is, therefore, recommended to properly record and keep even anonymous reports.

Is there any defence against retaliation?

If, despite the foregoing, the whistleblower is subject to retaliation that results in non-monetary damage, they are entitled to claim compensation.

In this respect, the new legal regulation stipulates a **reversal of the burden of proof**.

In legal proceedings where a whistleblower, as the plaintiff, claims there has been retaliation against them, it is the Company, as the defendant, that must prove that the measures it took were objectively justified by a legitimate goal, and were both proportionate and necessary.

We recommend that facts and evidence to demonstrate a legitimate goal be properly recorded.

How will whistleblowing affect the data protection rules?

When reports are filed and investigated, personal data will be processed, including those of the whistleblower, the person against whom the report is filed, and possibly other persons, as well.

The Company, which will normally be the controller of those personal data, will therefore be obliged **to ensure compliance with its data protection obligations** such as data retention, data access, data confidentiality and the protection of the rights of data subjects.

Specific rules may apply when sharing or outsourcing IRCs. Depending on the nature of the cooperation between the entities, a person other than the Company may be the processor of the personal data. In such a case, it will be necessary to enter into a data processing agreement with the processor and to further regulate, for example, issues relating to security or how reports are to be recorded.

How to prepare for whistleblowing?


Companies with more than 50 and less than 250 employees will be given sufficient time to implement the IRC, **by 15 December 2023**.



For other Companies, this obligation will apply as soon as the Act enters into force, i.e. within approximately **two months** of its promulgation.



If a Company does not establish an IRC within these time periods and thus does not allow its workers to file reports, it will have committed an administrative offence for which a fine of up to **CZK 1,000,000** may be imposed.



We recommend you get ready for this new regulation by setting up your own or a shared IRC and making sure that personal data are processed properly.

Of course, we will be glad to provide you with assistance in implementing a whistleblowing system in your company.



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