
NEW HUNGARIAN WHISTLEBLOWING LAW ENTERED INTO FORCE ON 1 JANUARY 2014

Introduction

On 1 January 2014 a new law (Act CLXV of 2013 on Complaints and Reports of Public Interest; the **Whistleblowing Act**) entered into force, which, amongst other issues, lays down detailed rules for the implementation and operation of whistleblowing hotlines by employers in Hungary. Set out below are the most important details of the new regulations and its ramifications for employers.

Legal basis and purpose

Article 14 of the Whistleblowing Act enables employers to set up a hotline with a view to investigating reports relating to the breach of the employer's code of conduct, and to control the personal data of both the person making the report as well as those of the person to whom such report relates for the purpose of investigating the reported wrongdoing.

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Reportable conduct

The hotline must be based on the employer's publicly available code of conduct and procedural rules which should also specify the conducts in relation to which reports may be submitted. Employers are free to regulate the conduct they wish to monitor so long as they are deemed to breach public interests or significant private interests. Accordingly, employers are free to regulate wrongdoings related, for instance, to accounting, internal audit controls, financial matters, anti-bribery issues or antitrust / competition law related matters.

Reports

Employees or other third parties who have a legitimate interest in remedying the reported conduct may report wrongdoings that they believe or have a reason to believe breach the employer's code of conduct. When submitting reports, the notifying persons shall be notified of the consequences of bad faith and false allegations and that the reporters' identity shall be treated confidentially during the whole investigation.

Investigation of reports and sanctions

Anonymous reports may be disregarded and reports relating to matters which came to the attention of the reporter more than 6 months ago may be refused, but all other reports are to be investigated by the employer according to its hotline procedural rules. If it is obvious that a report is false or was submitted in bad faith, the reporter's data may be provided to the relevant authorities, especially if the report falls as a crime. If the report is not substantiated or requires no further action, the whole report and all data therein are to be erased within 60 days of the closing of the investigation. If any action is taken on the basis of a report, the data may only be processed up to the legal and binding conclusion of the procedures launched on the basis of the report. If the employer discovers the commission of a crime on the basis of a report, it shall file a notice with the police. If the employee discovers the breach of the rules relating to the employee, the employer may impose sanctions according to labour law regulations.

Subject access rights and remedies

Persons to whom the reports relate shall also be informed of the allegations relating to them as well as their rights. Also, they shall be given the chance to defend themselves even through legal counsel. It is of note that the notification to the accused person(s) may be delayed, i.e. provided at a later stage if the prompt notification were to frustrate the investigation. As a general rule, the employer shall investigate all reports within 30 days, but in particularly exceptional cases this period may be longer, but may not exceed 3 months.

Prohibition of the processing of sensitive data

Importantly, the new law prohibits the processing of sensitive data (such as data relating to health, religious views etc.) as part of the operation of hotlines, although certain information relating to a person's criminal past, political views or maybe trade union membership might well be relevant in certain cases and such prohibition might therefore also have an impact on the outcome of these cases.

Registration obligation

The new act provides that whistleblowing hotlines shall in all cases be notified to the Data Protection Authority (the **DPA**) for registration in the Data Protection Registry, and the hotline may only be launched following such registration has been completed. The registration usually takes up to 8 days, but if there is no response from the DPA during such period, the hotline is deemed to have been approved for registration by the DPA).

Data transfers

The law expressly allows the transfer of personal data to any and all entities involved in the investigation. Although the law remains silent on this aspect, it is likely that cross-border transfers to parent companies and other third parties are also allowed, on condition that the general rules on cross-border data flows are complied with.

Whistleblowing attorneys

The new law introduces the category of "whistleblowing attorneys" to whom certain tasks (such as functioning as the recipient or processor of reports or engaging in direct contact with the reporters) may be outsourced by the hotline operators.

Penalties

Although the Whistleblowing Act does not contain specific penalties for non-compliance, the hotlines are also subject to the general data protection regulations which are set forth in Act CXII of 2011 on Informational Self-determination and Freedom of Information (the **Data Protection Act**). Accordingly, any infringement of the specific or general data protection rules in the context of the operation of a whistleblowing hotline may be sanctioned with a fine by the Data Protection Authority, with the amount of potential fines ranging between HUF 100,000 to HUF 10,000,000 (approx. €33,000).

"infringement of the specific or general data protection rules in the context of the operation of a whistleblowing hotline may be sanctioned with a fine"

Comment

The adoption of the Whistleblowing Act is certainly a welcome development as it regulates an area that has been the subject of much contention of late and it provides specific guidance on several issues, such as the legal basis of hotlines and the investigation of reports.

There are, however, several issues which will require further clarification either via further legislation or legal practice. For instance, it appears to be unclear whether employers have a positive obligation to report any and all crimes they might, as the operators of hotlines, come across while processing the reports. It is also questionable whether foreign regulations might also be relevant when assessing whether a reported conduct falls as a crime. In our view the Whistleblowing Act should not override the general rule in criminal law that an obligation to report a crime to the police is applicable only in case of those crimes where such positive reporting obligation is expressly prescribed by law. Furthermore, employers must have a margin of appreciation in considering whether to immediately report an activity and/or to seek legal advice in relation to the given conduct before taking legal action.

As the Whistleblowing Act enters into force on 1 January 2014, employers currently operating such hotlines should consider the implications of the new rules and adapt their activities accordingly. It is also worth noting that although the act does not provide for a grace period with respect to its implementation, we do not expect it to be enforced vigorously from day one.

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