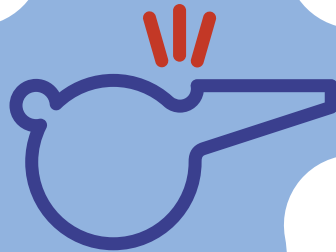


# Whistleblower protection brochure



*The present brochure has been produced as part of the project “Strengthening the Fight against Corruption by Increasing General Awareness of the Public Sector Focusing on Judges, Prosecutors and Public Administration” supported by the EEA Grants 2014–2021. A wide range of activities related to the topic of whistleblowing are being implemented within the project, in particular a Comparative Study on Whistleblower Protection and a two-day international conference entitled “Strengthening the Fight against Corruption: Whistleblowing” on 17 and 18 January 2023.*

*All the outputs from the project are available on the website [korupce.cz](https://korupce.cz).*

The study was prepared by the organisation **Oživení, z. s.**, which has focused on whistleblowing for more than 10 years. It runs a consultancy service for whistleblowers and local governments, is a member of the Whistleblowing International Network and the UNCAC Coalition, and has long advocated for the passage of quality whistleblower-protection legislation in the Czech Republic.

Prague, August 2023

Iceland  
Liechtenstein  
Norway grants



# Contents

<b>1 INTRODUCTION</b>	<b>4</b>
<b>2 INTRODUCTION TO WHISTLEBLOWING</b>	<b>5</b>
2.1 Why do whistleblowers need to be protected?	5
2.2 Who are the whistleblowers and what do they report?	6
2.2.1 To which reports of unlawful conduct does the Act apply?	6
2.3 Retaliation and whistleblower protection	7
2.3.1 How is a whistleblower protected?	7
2.3.2 Who is protected from retaliation?	7
<b>3 WHISTLEBLOWING SYSTEMS</b>	<b>8</b>
3.1 What are internal and external whistleblowing systems?	8
3.2 Confidentiality – a fundamental principle for the functional protection of whistleblowers	8
3.3 Investigations	8
3.3.1 General recommendations for investigating reports	9
3.4 Internal whistleblowing systems	10
3.4.1 Legal requirements for internal whistleblowing systems	10
3.4.2 Internal whistleblowing systems in practice	11
3.4.3 What does a functional whistleblowing system need?	12
3.4.4 How to proceed with the appointment of a facilitator?	12
<b>4 COMMUNICATION – AN IMPORTANT PART OF WHISTLEBLOWER PROTECTION</b>	<b>13</b>
4.1 Communication within internal whistleblowing systems	13
4.1.1 Professional communication – training, sharing good practice, methodologies	14
4.1.2 Communicating with a whistleblower – why communication may be challenging and the guiding principles	15
4.2 Communication within the company/authority	16
4.2.1 Information for staff	16
4.2.2 Internal guidelines	17
Position of the facilitator in the company/authority	17
4.3 Examples from the Czech environment and abroad	18
<b>5 SELECTED CONFERENCE FINDINGS</b>	<b>20</b>
5.1 Slovak experience	20
5.2 Croatian experience	21
5.3 The Dutch experience	21
5.4 Technical solution for whistleblower protection	22
<b>6 USEFUL LINKS</b>	<b>23</b>
<b>7 SOURCES</b>	<b>24</b>

# 1 Introduction

Whistleblowing, i.e. the reporting of suspected unlawful conduct, and the protection of whistleblowers, is a new institute in the Czech Republic with which many institutions and organisations do not yet have practical experience. This claim is not changed by the fact that since 2015 there has been the opportunity to report unlawful conduct to investigators designated in service offices pursuant to Government Regulation No 145/2015 Coll.<sup>1</sup>, while in the private sector the number of companies introducing compliance programs, which include reporting channels, is slowly growing.

The purposes of this brochure are a) to briefly introduce the basic aspects and principles of whistleblowing, b) to provide obliged entities from the public and private sectors with basic information/practical guidance on how to work with whistleblowers and whistleblowing, and c) to present some of the main conclusions from the international conference “Stepping up the Fight Against Corruption: Whistleblowing”.

The brochure is intended mainly for facilitators pursuant to the Whistleblower Protection Act, or other persons involved in the practical provision of internal whistleblowing systems in organisations.

Laws transposing EU Directive 2019/1937 of 23 October 2019 on the protection of persons who report breaches of Union law (hereinafter the “Directive”) have passed through the legislative process and been published in the Collection of Laws as Act No 171/2023 Coll. on the protection of whistleblowers (hereinafter the “Act”) and Act No 172/2023 Coll.<sup>2</sup> amending certain laws in connection with the adoption of the Whistleblower Protection Act. Both these laws came into effect on 1 August 2023.

---

<sup>1</sup> Government Regulation No 145/2015 Coll., on measures related to reporting suspected unlawful conduct in public office.

<sup>2</sup> <https://www.zakonyprolidi.cz/cs/2023-171>; <https://www.zakonyprolidi.cz/cs/2023-172>

## 2 Introduction to whistleblowing

### 2.1 Why do whistleblowers need to be protected?

The legal protection of whistleblowers is based on practical experience, which has shown that the status of whistleblower is associated with many problems and challenges. At the same time, however, past reports have led to the discovery of serious unlawful conduct threatening, among other things, the public interest, and it has therefore become necessary to effectively help these whistleblowers defend themselves when they are exposed to retaliation.

#### What are the main reasons for enforcing statutory whistleblower protection?

- 1) The whistleblower is often in a position of dependency and, by reporting unlawful conduct, may be exposed to existential threat in the event of retaliation. The whistleblowing may then have an impact not only on the person's career but also on their family life. It is precisely this position of dependency and the possibility to retaliate and take action against whistleblowers quite easily that are the main reasons why legal protection is necessary.
- 2) Effective detection of unlawful conduct. Data show that fraud, for example, is best detected by offering incentives.<sup>3</sup> Multiple people usually know about the dangers of a drug, just as they know about, for example, modifications to emissions measurement (Dieselgate).<sup>4</sup> A whistleblower generally has access to accurate information and evidence about the reported conduct. It is precisely because of their contribution to the detection of unlawful conduct that efforts are being made to directly and indirectly motivate whistleblowers. Direct motivation includes, for example, a financial reward, while indirect motivation can be seen as efforts to minimise any negative impact on the whistleblower.
- 3) For an organisation, whether a private or public entity, a functioning whistleblower protection system is essential to enable them to learn of unlawful conduct as early as possible and to address the situation in a timely manner, thus minimising damage and risk. Either by preventing the continuation of the unlawful conduct or by setting up protective processes to prevent or reduce the possibility of future unlawful conduct and other undesirable phenomena.
- 4) Whistleblower protection promotes transparency and accountability in the workplace. It can help prevent legal and financial risks and protect the reputation of the organisation. It raises ethical standards by fostering an atmosphere of trust, openness and fairness in which employees feel safe. Experience shows that some problems in the workplace – bullying, mobbing, extreme staff turnover - can be manifestations of more serious problems or criminal activity.

<sup>3</sup> For example, internationally, these data are tracked by The Association of Certified Fraud Examiners (ACFE). Links to recent studies are provided in the resources at the end of this booklet.

<sup>4</sup> For example, David Graham, an employee of the American FDA, and Dinesh Thakur, a chemical engineer at Ranbaxy, have reported on the dangers of drugs, see <https://www.cbsnews.com/news/ranbaxy-whistleblower-reveals-how-he-exposed-massive-pharmaceutical-fraud/>, <https://whistleblower.org/whistleblower-profiles/dr-david-graham/>. The Dieselgate fraud was discovered by the American Environmental Protection Agency (EPA), yet it is certain that both Volkswagen engineers and management must have known about the fraud.

## 2.2 Who are the whistleblowers and what do they report?

A whistleblower is an individual who reports on unlawful conduct in their organisation. In order for legal protection to be complete and effective, all persons in a position of effective dependence on an organisation must be able to submit such reports. Potential whistleblowers generally perform work for an organisation for payment and are therefore in a weaker position in the event of the reporting of unlawful conduct in the organisation.

A potential whistleblower may therefore be, in particular, an employee, a job applicant or a former employee. However, a self-employed person, a volunteer or a trainee can also be a whistleblower. Whenever there is a relationship of material dependence between a whistleblower and employer, the whistleblower will most likely be a whistleblower as defined pursuant to the Act. The full list of potential whistleblowers is set out in the Act.

### 2.2.1 To which reports of unlawful conduct does the Act apply??

One of the first tasks of a facilitator upon receipt of a report is to establish whether the report is relevant in terms of the Act, i.e. whether it falls within the material scope of the Act.

#### Important questions for determining the relevance of a report are:

- 1) Does the report concern a crime? If so, this is whistleblowing pursuant to the Act. This assessment is necessary to establish whether it will be necessary to contact any external authorities (Police of the Czech Republic, the relevant supervisory authority, etc.).
- 2) Does the report relate to conduct that has the characteristics of an offence with a maximum fine of at least CZK 100,000?
- 3) Does the report relate to conduct that violates the Whistleblower Protection Act itself?
- 4) Does the report relate to conduct that violates a legal regulation and falls into any of the following areas?
  - a) financial services, due diligence and other assurance services, financial products and financial markets,
  - b) income tax for legal persons,
  - c) prevention of money laundering and terrorist financing,
  - d) consumer protection,
  - e) compliance with product requirements, including product safety,
  - f) transport, traffic and road safety,
  - g) environmental protection,
  - h) food and feed safety, animal health and welfare,
  - i) radiation protection and nuclear safety,
  - j) competition, public auctions and public procurement,
  - k) protection of internal order and security, life and health,
  - l) protection of personal data, privacy and security of electronic communications networks and information systems,
  - m) protecting the financial interests of the European Union,
  - n) functioning of the internal market, including the protection of competition and state aid under European Union law..

If so, this is whistleblowing pursuant to the Act.<sup>5</sup>

- 5) An internal directive or otherwise designated internal regulation of the organisation may specify that reports beyond the scope of the Act can be accepted. Does the report relate to conduct that falls within the scope of an internal regulation? In such a case, the whistleblower must be informed that they are not protected by the Whistleblower Protection Act..

<sup>5</sup> In practice, there will be cases where the determination of the relevance (reasonableness) of a report is controversial. The final decision is always for a court to make, however as regards the facilitator, it is sufficient that they are convinced that it is reasonable.

## 2.3 Retaliation and whistleblower protection

Retaliation is any conduct or omission occurring in a work context which is triggered by an internal or external report or disclosure and which causes or is likely to cause unjustified harm to the whistleblower or the facilitator.

The Act contains a demonstrative list of retaliatory measures. These include termination or non-renewal of the employment relationship and, in the case of a civil service relationship, its termination, release from service and placement outside the service, imposition of disciplinary measures, reduction of pay, salary or remuneration, change of working hours, negative employment report, etc.

However, the above list does not mean that the employment of a whistleblower cannot, for example, be terminated or that they may not be given a negative employment report. It must always be the case that the retaliation is triggered by the fact a report has been made.

### 2.3.1 How is a whistleblower protected?

A fundamental imperative of the Whistleblower Protection Act is the **prohibition of retaliation** against a whistleblower or other person who is protected along with the whistleblower. This prohibition applies to the employer, but also to other persons in the work environment.

In the event of retaliation, a whistleblower has the right to seek compensation from the originator of the retaliatory measure. A major advantage for a whistleblower in any court proceedings is that they do not have to demonstrate the existence of retaliation; instead, it is up to the employer to demonstrate that retaliation did not take place.

A whistleblower is also protected when obtaining information that later becomes the subject of a report. If a whistleblower has not committed a criminal offence when obtaining such information, there is no breach of a contractual or legal obligation of the whistleblower. This does not apply if the whistleblower had reason to believe that the report was necessary to detect possible unlawful conduct.

### 2.3.2 Who is protected from retaliation?

**The Act provides both a whistleblower, and persons protected along with the whistleblower, with protection from retaliation.** These include natural persons who helped the whistleblower obtain information contained in the report, persons close to the whistleblower, employees or colleagues of the whistleblower, as well as legal persons in which the whistleblower is a shareholder.

## 3 Whistleblowing systems

### 3.1 What are internal and external whistleblowing systems?

To ensure confidentiality in the reporting process, it is important to set up internal whistleblowing systems (hereinafter “IWS”) in organisations. An IWS ensures that communication between a whistleblower and the person responsible for receiving and handling reports (**the facilitator**), but also represents a set of procedures and tools used to receive and handle reports and to protect identities and information contained in such reports.

An external whistleblowing system is operated by the Ministry of Justice of the Czech Republic. A whistleblower may also directly contact the supervisory authorities, the Police of the Czech Republic and the public prosecutor’s office. Although a whistleblower can choose between internal and external whistleblowing, in practice an IWS plays a crucial role because it allows the situation to be addressed closest to the source of the problem, and by a person most likely to understand the nature of the problem. An IWS also helps the whistleblower overcome one of the sensitive moments of the decision whether or not to file a report, namely the issue of loyalty to the employer. Although the image of whistleblowers as “troublemakers” prevails in the Czech Republic, whistleblowers usually make reports in an effort to help the organisation, not to harm it.

If the IWS is truly functional and inspires confidence in potential whistleblowers, they prefer it to external whistleblowing.

### 3.2 Confidentiality – a fundamental principle for the functional protection of whistleblowers

The principle of confidentiality primarily consists in receiving and investigating reports with complete confidentiality as regards both the whistleblower and the subject of the report. Potential whistleblowers must be able to disclose the information they have easily and in complete confidence. The subjects of reports should be given the opportunity to explain their conduct.

Confidentiality is a fundamental principle, without which whistleblower protection cannot be implemented. If information is disseminated in an uncontrolled manner, in the form of suspicion, without knowledge of the facts, reputational damage or unnecessary conflict in the workplace, among other things, can arise.

### 3.3 Investigations

In addition to strict adherence to confidentiality and the number and quality of reporting tools, the functioning of internal whistleblowing channels is ensured in particular by the investigation process. An investigation will be carried out by the facilitator upon receipt of a report, with the aim of establishing the validity of the report and of proposing measures to remedy or prevent an unlawful situation. They will propose measures to the obligated person, usually the employer, and is then no longer responsible for their application.



### 3.3.1 General recommendations for investigating reports

#### Identification of irrelevant messages

First and foremost, it is important to identify reports that are not relevant in terms of the Act and that are therefore not considered to be reports. With reports that are not covered by the Act, it is still important to provide feedback to the whistleblower and, where appropriate, take action if a report that is clearly in breach of internal or other regulations has been made. The facilitator should pay attention to the content and to reports that are not protected by law so that adequate measures can be taken to prevent damage or other harm where appropriate. How non-relevant reports will be dealt with should be specified in an internal directive.

#### Contacting the whistleblower

It is necessary to establish communication with the whistleblower as soon as possible in accordance with the statutory deadlines. We recommend creating a feedback template so you can respond quickly. If a report does not contain sufficient information and you have the opportunity to question the whistleblower, ask them for more detailed information.

#### Investigation

An internal investigation should be initiated immediately if there is sufficient evidence that a breach of regulation has occurred. The evaluation of documents (including evidence obtained from the whistleblower) and interviews with staff are usually essential parts of an investigation. However, it is advisable to clarify in advance who we are interviewing and why, what information we need from them and, in particular, to consider whether the person in question may be involved in the conduct being reported. As part of this process, it is necessary to comply with employment law, and confidentiality and data protection requirements. All relevant investigation documents and outputs should be kept in a secure file.

#### Proposing corrective measures

Once an investigation is complete, the results must be summarised for management and corrective actions must be proposed to stop the unlawful conduct.

## 3.4 Internal whistleblowing systems

### 3.4.1 Legal requirements for internal whistleblowing systems

The Whistleblower Protection Act specifies the obligations of the employer when establishing an internal whistleblowing channel and the facilitator who ensures it fulfils its purpose. Together, these obligations form a mosaic of minimum requirements that need to be met to keep the internal whistleblowing channel functional and secure:

#### Identification of the person responsible for receiving and handling reports (the facilitator) and for publishing this information

The employer shall indicate which person or persons are responsible for receiving and handling reports. It is good practice to designate at least two persons so that in the event one is ill or away, someone will always be available with the authority to communicate with the whistleblower and ensure that legal deadlines are met. This information should also be published on the website. The designation of more than one person is also important because the position of facilitator may not be accepted entirely without issues within the organisation. It is important that the facilitator has the opportunity to consult someone else about the report and the subsequent procedure. If the whole process is left to one individual, it can be very difficult for them to meet all the requirements to which they are subject.

#### Publication of information on reporting methods via the IWS and the Ministry of Justice

There are many ways a report can be made. The Act requires the possibility to submit a report in writing as well as orally or, at the request of the whistleblower, also in person within 14 days from making a request. A written report can then be made in several ways, e.g. by email or using an encrypted communication tool. This information should also be published on the website.

#### Ensuring confidentiality

Reports submitted may only be consulted by a facilitator, while the protection of the identity of the whistleblower and other persons and information contained in the report must be ensured.

#### Due consideration of the justification and veracity of a report

During an investigation, the facilitator will be guided in particular by the employer's internal regulations, which should set out their powers in more detail, e.g. the authorisation to request cooperation from other employees of the obligated entity, to request documents or to enter the offices and other premises of the employer.

#### Obligation to notify the whistleblower of receipt of their report

A whistleblower must be informed by the facilitator within seven days of the submission of a report, and of the results of the assessment of the report within 30 days of confirmation that the report has been received. We do not notify the whistleblower only if they have expressly requested not to be notified or if it is clear that the whistleblower's identity would be disclosed by notifying them of receipt of the report. In complex cases, the 30-day period for examining the report may be extended by another 30 days, yet only twice.

#### Taking appropriate measures to remedy or prevent an unlawful situation

The facilitator will propose appropriate remedial measures according to their findings. The employer need not follow the recommendation but is responsible for taking appropriate action.

### 3.4.2 Internal whistleblowing systems in practice

A properly functioning internal whistleblowing system can be of great benefit as it allows the organisation to keep track of issues that occur in the workplace. It is important to realise that a whistleblower does not have to use the internal channel and can turn directly to the external channel – the Ministry of Justice or the supervisory authority directly. A report made outside the organisation also carries the risk of a greater burden on the organisation, for example, due to the verification procedure of the supervisory authority. It is always preferable for an organisation to be the first to know about a suspected breach rather than having it addressed directly by the relevant authorities.

The Act allows for the sharing or outsourcing of an IWS to an external contractor under certain conditions. Sharing is available mainly to private entities with between 50 and 249 employees and to local governments. Outsourcing can be used by all obligated entities. It is advisable to consult any doubts regarding the setting up of an IWS with the Ministry of Justice or to check the procedure on the website at <https://oznamovatel.justice.cz/>.

#### Should I set up an internal or external IWS?

- This is one of the main questions when implementing or evaluating the effectiveness of an IWS. Both approaches have their advantages and disadvantages.
- It is not strictly necessary to choose one or the other as the two approaches can be combined in various ways, and an IWS can also be shared.
- The establishment of the entire system must be appropriate to the organisational structure and capabilities of the organisation; simply “copying” a setup used by another organisation may not be successful.

Responsibility always lies with the obligated entity, even if it outsources its internal system.

#### Outsourcing:

Positives	Negatives
easier to arrange, service packages are available	primarily in the follow-up process - the actual investigation of a report often requires knowledge of the internal structure and functioning of the organisation
a whistleblower may be more comfortable submitting their report outside the organisation	proposals for action may also only be of a formal nature
it will most likely provide a lawyer able to properly assess the material scope of the report, communicate with other authorities, etc.	it is important to establish the quality of the services provided in advance – deficiencies in this area can result in much more serious problems for the whole organisation

#### Managing internally:

Positives	Negatives
labour and personnel issues or breaches of internal rules can be addressed depending on management requirements	finding suitable facilitators is not easy
the possibility of greater control that everything is set up correctly, as there are already technical applications to help with administration and security	it may take longer to build up the trust of whistleblowers
knowledge of the organisation's environment allows for a tailored solution to the problem, and in some cases is more likely to ensure that the complaint is investigated	at the beginning more capacity is required to set up the whole system

### 3.4.3 What does a functional whistleblowing system need?

- active support and participation of the organisation's management – the use of various communication methods inside and outside the organisation,
- the setting up of processes in internal regulations – technically ensuring that reports can be received is a start – the functionality will then be demonstrated especially during the investigations and remedial actions,
- communication of actions taken and problems solved is the best credibility-booster,
- technically ensuring confidentiality. Email is similar to a postcard, meaning that an email itself is not very secure. Recommendations to improve security can be found in the Ministry of Justice's methodological recommendation.<sup>6</sup> We recommend you consider some of the encrypted systems available on the market.

### 3.4.4 How to proceed with the appointment of a facilitator?

- neither the Directive nor the Act provide any guidance as to who is a suitable facilitator,
- in addition to the legally required legal capacity, legal age and integrity, a facilitator should have the time and professional capacities needed for the position and enjoy an elementary level of trust among employees,
- if the anonymity of a whistleblower is not ensured legally, the facilitator must anticipate increased demands for confidential reporting,
- private companies have an incentive to give more authority to investigate – looking after their own interests, the possibility of being exempted from liability, etc., whereas in the public sector the position is perceived more as overseeing the transfer of information to controlling or law enforcement bodies,
- even in the public sector, whistleblowing can be investigated effectively, but it is necessary to have well-developed internal powers and processes for the operation of the internal whistleblowing system,
- it is better to appoint more than one person, as they can cover for each other and/or hear cases together. The role of facilitator can be challenging, especially during the course of an investigation,
- the training of facilitators is important – without the expertise to know how to act, a facilitator will be a mere relay for information,
- the procedures to be followed to investigate a report vary according to the type of report. Experience has shown that it is a good idea to prepare in advance what and who to ask and in what order to request information for inspection,
- remedial actions will also vary widely - communication with management and their active role in taking them is important,
- the procedure for communicating with whistleblowers and investigating reports is not governed by the Administrative Procedure Code.

---

6 <https://oznamovatel.justice.cz/oznamovaci-systemy/>

## 4 Communication – an important part of whistleblower protection

The Whistleblower Protection Act poses major challenges for application in practice. Processes that are part of functional whistleblowing systems interfere with arrangements inside an organisation. The situations addressed by a report can be very diverse, and finding appropriate solutions can be challenging.

The focal point of whistleblowing is the whistleblower and the information they provide. Those responsible for investigating allegations need to be able to sensitively communicate with the person in question yet also evaluate the information they provide. Yet a whistleblower is not always a compliant partner. They may be in a difficult mental state, differ in their ability to describe the conduct in question, or place more emphasis on information that is important to them yet not essential to the investigation and resolution of the case.

The effectiveness of whistleblowing also begins and ends with willingness to make a report. Each whistleblower debates whether or not to devote more effort to issues that may affect them only marginally. In all likelihood, the information in their report concerns someone else – a colleague or supervisor – and the whistleblower therefore also assesses the impact on their own position in the team, future career progression and other potential problems at work.

All of the above aspects are linked by the assumption that those responsible for whistleblower protection in organisations are able to communicate well with the whistleblower and with employees, and that the whole organisation is able to provide information on whistleblower protection in an appropriate way.

Some practical tips and principles for communicating whistleblower protection and with whistleblowers are provided in this part of the brochure.

### 4.1 Communication within internal whistleblowing systems

According to a survey, the first part of which was prepared for Oživení by the Behavio agency in 2020, Czechs are not used to addressing suspected breaches of rules. The vast majority – 72% – would only confide in their colleagues or family, while 19% would not address it at all. If they are already planning to take action, they would most commonly report the conduct in question to their supervisor; only 6% would contact external authorities such as the police or the Office for the Protection of Competition.

These results show that people are generally not very interested in reporting outside their own organisation – if they do, they are usually forced to do so by some other circumstance. However, the results also show that Czech society in general is not used to reporting suspected unlawful conduct at work. This again places increased demands on communication with workers, as persuading them to use reporting channels may not be easy.

The survey also tracked responses to the question of how satisfied people who had tried to resolve a situation were with the outcome. A majority of respondents said that no one had paid attention to their report (53%). The fear of risking deteriorating relationships or other problems at work yet without getting anything resolved is the dominant reason given for workers not submitting reports (34%).

These results should not be ignored. Although there are loud opinions in the public debate about the problem of abuse of the institute of reporting, data from practice – both Czech and foreign – do not support this. Around 7% of all reports are problematic, which is not a massive problem.

#### 4.1.1 Professional communication – training, sharing good practice, methodologies

The functioning of internal whistleblowing systems is largely dependent on the activity of the facilitators and others who are responsible for the implementation and operation of the system. The conclusions of the above survey, as well as data from the work done by investigators in state authorities, show that it is not enough to simply set up reporting channels yet not provide more information about the issue. At the same time, it should be mentioned that the common assertion that if no one contacts the person in question, then everything is fine in the organisation, is simply not true. A much more common cause is that ordinary workers are unaware of the existence of whistleblowing channels or do not feel confident using them.

Therefore, facilitators should not only receive training in whistleblower protection legislation, but should also improve their skills in communicating with whistleblowers and the management of the organisation, and in investigating and proposing remedial measures.

Investigation is one of the main areas that requires expertise. The procedure presented at the ERA<sup>7</sup> conference by Rebecka Thörn from Delphi, Sweden,<sup>8</sup> can serve as inspiration.

- 1) First, collect and review written materials and documents
- 2) Interviews follow after a thorough overview of the case has been obtained
- 3) These are then followed by analysis of the information and requests for additional information
- 4) Report on the results of the investigation
- 5) Proposal for possible action and a report for the whistleblower

#### Example of an investigation report form

<p><b>1. Background</b></p> <p>1.1 -----</p> <p>1.2 The part of the notification relating to c) -----, but not a) - b) above, has been classified as a whistleblowing case. However, the events described in a) - b) above constitute relevant background information.</p> <p><b>2. Issues and methodology</b></p> <p>2.1 Delphi has received the following documentation, which was compiled and sent by ----- on X X 202X:</p> <p><i>Processes, policies and guidelines:</i></p> <p><b>Whistleblowing report:</b></p> <p>In addition to telephone conversations with the whistleblower, the undersigned also interviewed the following persons by telephone:</p> <ul style="list-style-type: none"> <li>- XXX, title,</li> <li>- XXX, title,</li> <li>- XXX, title,</li> </ul> <p>2.2 Based on the interviews with the aforementioned X persons and the material provided to Delphi, the undersigned has - overall - understood the circumstances surrounding -----, and X's involvement in and responsibility for ----- in accordance with what is presented below in section 3 (Delphi's investigation).</p>	<p><b>3. Delphi's investigation</b></p> <p>Enrolment -----</p> <p>To what extent has -----?</p> <p>What are the responsibilities of XX for -----?</p> <p><b>4. Summarising conclusions</b></p> <p>To summarise: -----</p> <p>Manager X is guilty of ----- The undersigned's view is that the incident is so serious that there are grounds for dismissal on personal grounds.</p> <p>In order to avoid the recurrence of a similar situation, the undersigned recommends that ----- consider to -----</p> <p>----- make an addition to point X of -----'s policy on ----- as follows: -----</p> <p>----- conduct regular employee surveys in order to get early warning signals...</p>
--	--

Methodological support is primarily provided by the Ministry of Justice. The Ministry of Justice also offers training for facilitators. It is also possible to contact the non-governmental sector, for example the Whistleblowing Centre.<sup>9</sup>

<sup>7</sup> The "Whistleblowers' Protection in Europe" conference was organised by ERA - The Academy of European Law on 27 and 28 April. ERA is an international centre for training lawyers on European legislation issues.

<sup>8</sup> Rebecka Thörn is a lawyer with many years of experience in setting up whistleblowing systems and receiving and investigating reports for clients.

<sup>9</sup> <https://www.whistleblowingcenter.cz/poradenske-centrum>

#### 4.1.2 *Communicating with a whistleblower – why communication may be challenging and the guiding principles*

When a whistleblower decides to file a report, they are often risking getting into trouble. If serious unlawful conduct is reported, their personal safety may also be at risk. Whistleblowers often find themselves under a lot of stress because of this. It is therefore necessary for the facilitator to be aware of this and to adapt their behaviour accordingly. The whistleblower does not always give structured statements – they may first need reassurance that they are not in danger.

**Important questions that should be answered at the beginning of the communication with a whistleblower include:**

- 1) Is anyone in danger? This can be whether a report is made or not made.
- 2) What are the facts and what may only be personal assumptions?
- 3) Is there a legal obligation to report specific conduct pursuant to the Criminal Code?
- 4) In the case of an anonymous report - is it possible to trace the identity of the whistleblower from the content of the report?

It is a good idea to discuss these issues with the whistleblower, especially if they are unsure as to whether to make a report. In practice, point 2) is particularly difficult and common. This places demands on the facilitator, as they should be able to help the whistleblower stick to the facts.

**Possible challenging situations:**

The Czech Republic still lacks enough real experience that can help in setting good practices and procedures. The following situations may arise and their resolution will always be more complicated than with a normal report.

- 1) The **report is motivated by malice** – motivation alone is not relevant pursuant to the Act, and can be very difficult to discern. The basic guideline is to stick to the facts. If they are relevant/true, then the person should be treated as a whistleblower.
- 2) “**A thief is calling for another thief to be caught**” – as with the first case, this situation can be very difficult to recognize. It is important to stick to the facts and always try to verify information provided by a whistleblower. It may also be a case of abuse of the institute of whistleblowing.
- 3) The **whistleblower participated in the criminal conduct** – whistleblowers are not necessarily black-and-white heroes. Their information can be very accurate and valuable precisely because they have participated to some extent in the unlawful conduct. In such a case, it is important to assess the seriousness of such conduct. Although the whistleblower is protected from prosecution for unlawful conduct they committed in connection with making the report (unless they committed a criminal offence), such report does not exempt the whistleblower from liability and possible prosecution if they participated in the unlawful conduct.
- 4) The **whistleblower is a chronic complainant** – it is appropriate to specify in internal rules exactly how non-relevant complaints are handled. Since it is possible to investigate information internally above and beyond the scope of the Act, it should be clear in advance which complaints cannot be investigated through internal channels and how they will be addressed. This type of worker can generally bring problems to workplace relationships. However, this is not an argument for trying to minimise whistleblowing channels. Personnel relations should be handled by the relevant department, independent of whistleblowing.
- 5) The **whistleblower abuses the reporting process** – although there is significant concern that the institute will be abused, in practice, with IWS, the facilitator should always discover such abuse. If the information in the report is true, this is not a case of abuse. The principle of confidentiality also serves to minimise abuse – the information is supposed to be confidential and no action is taken until it has been verified.



**The Eurocadres toolkit<sup>10</sup> suggests some practical tips on how to approach the role of facilitator:**

- 1) Separate the message from the messenger. Whistleblower protection depends on the accuracy of the facts/information in the report. It is not the motivation of the whistleblower and their ability to write/communicate the complaint that is important.
- 2) Remember to thank the whistleblower who raises a concern – even if they are mistaken about the concern.
- 3) Deal with concerns seriously and promptly, don't question the motive.
- 4) Ask the whistleblower for their views on how things could be put right. Sometimes those with technical knowledge and understanding are best placed to find the solution.
- 5) Respect promises of confidentiality. When this is undermined, the chances of others coming forward is reduced. At the same time, the Act also provides for penalties.
- 6) Signpost for support. Relationships in the workplace may be disrupted and some professional counselling may be needed.
- 7) Communicate regularly with employees – remedial actions as a result of reports, the positive impacts that reports have brought should be shared to strengthen employee confidence in the internal whistleblowing system.
- 8) Also present the results to management – especially the impact on the organisation's performance and efficiency. Management support is very important for the proper functioning of the internal whistleblowing system.
- 9) If the whistleblower is willing, try to give them as much feedback as possible, while respecting the requirement of confidentiality.
- 10) Find out how the internal whistleblowing system works. What do employees think of the internal whistleblowing system? How do whistleblowers rate it? Has there been any retaliation?

## 4.2 Communication within the company/authority

This chapter looks more comprehensively at suggestions and tips on how to approach whistleblowing within an organisation.

### 4.2.1 Information for staff

The survey showed that informing people about the possibility to submit a report may not be sufficient if this information is only posted on the website, intranet or notice board. It is necessary to repeatedly remind people, and in various forms, of the possibility of reporting together with the fact that the organisation management supports and appreciates whistleblowers.

The decision on which forms to choose should be based on the arrangements in the organisation. Communication in a company with a hundred employees and in smaller companies and authorities should be approached differently. Several recommendations have emerged from interviews with representatives of various organisations that had already established reporting channels before the Act was passed:

- 1) General information is certainly important, yet should be supplemented with specific cases and stories or other more personal messages.

---

<sup>10</sup> The title of the guide is "Whistleblowing toolkit – Eurocadres best practice guide". It was published by the European trade union Eurocadres in partnership with the British organisation *Protect*, one of the first non-profit organisations in the UK to help whistleblowers.



- 2) The stories should be directly from practice or relate to the work of the employees. The more similar the story is to real problems that employees may encounter, the more likely they are to understand that they should report such conduct. For example, Czech Post adapts its examples to whether they are ordinary delivery people or, for example, senior management.
- 3) The whole whistleblowing process can be shown visually – with a diagram or other image.
- 4) Management should be involved in the communication. Without active management support, internal whistleblowing systems usually do not work..

#### **Possible formats for communication:**

You can use formats that the organisation is used to, but it is not a bad idea to consider more creative forms. Czech Post, for example, prints its own magazine, while modern technologies can also be used, and various, including interactive, forms of training and webinars can be provided. Investigators at the Ministry of Transport mentioned that it is very useful to have regular in-person training sessions where the results of the investigators' work are presented. Meetings are useful because they allow for personal introductions to facilitators and again increase staff confidence in whistleblowing.

#### *4.2.2 Internal guidelines*

##### *Position of the facilitator in the company/authority*

It is recommended that the position of facilitator in the organisation be regulated by an internal regulation that also takes into account possible conflicts or problematic situations, such as possible conflicts of interest, overlapping powers, etc. For example, facilitators have specific positions in local government offices, where it will be necessary to assess relationships with politicians. It is very important to regulate, through internal systems, the powers of the facilitator as regards their investigations – the cooperation of employees, the possibility to partially and – within the limits of the Act – to monitor the electronic communications of employees, access records and databases, etc.<sup>11</sup>

Central administrative offices already have departmental internal anti-corruption programmes, while compliance departments often already exist in the private sector. Whistleblowing should be part of a clearly established relationship between whistleblowing and, for example, the internal audit department or other control departments, as well as towards management. Whistleblowing channels should also be reviewed to see if there is any duplication and whether their use is effective.

There is already a specific ISO standard (37 002) for setting up whistleblowing in an organisation. Setting up reporting channels is also part of ISO 37 001, the standard that sets out the management of anti-corruption systems. For example, Prague municipal companies were required to go through the entire ISO 37 001 setup process. The advantage of this solution is obtaining a truly practical system and therefore an improvement in its functionality. However, the implementation of ISO standards is time- and money-consuming and it is necessary to take into account significant organisational changes in authorities and companies.

<sup>11</sup> <https://www.uoou.cz/zamestnavatele/ds-5057>

### 4.3 Examples from the Czech environment and abroad

**Czech Post**<sup>12</sup>: this company started to develop management control only after several corruption cases. The aim was to be able to apply Section 8(5) of the Act on the Criminal Liability of Legal Persons and Proceedings Against Them, according to which a legal person is exempt from criminal liability if it has made all efforts that could reasonably be required of it to prevent the unlawful conduct being committed.<sup>13</sup>

The company has an ombudsman to deal with personnel issues and a compliance department that investigates suspected unlawful conduct in cooperation with internal audit or the legal department. All these positions cooperate in the investigation of the report depending on the report type. Czech Post takes an active approach to employee training – the aim is to provide information in a clear and understandable manner, but especially to give examples that relate directly to work at the company.

<https://www.ceskaposta.cz/o-ceske-poste/profil/compliance-v-cp>

**Pražská vodohospodářská společnost** (water management): this is the first Prague municipal company to pass the ISO 37001 certification audit (in 2021) and employs 120 people.

According to compliance program manager Martin Moulis, the company already had a code of ethics, compliance line and risk management in place, but lacked properly established processes. Compliance with ISO standard 37 001 helped in setting them up. The whole process includes preparation – analysis of anti-corruption processes and their weaknesses, and subsequent implementation of improvements to these processes. Implementation does not just mean creating an internal regulation, but actually changing the structure of the organisation to make the processes work.

<https://www.pvs.cz/profil/compliance-program/>

**Brno-Centre City District Office**: the office has had several large cases. After this experience, it introduced whistleblowing channels before the directive came into effect. Secretary Petr Štika also comments on his experience publicly:

*“The introduction of the anonymous whistleblowing channel has been very successful for us. Initially, we perceived it only as a tool to prevent corrupt conduct. However, whistleblowers use this tool. We have already received several dozen submissions through it,”* says Petr Štika, secretary at Brno-Centre City District Office. Since the introduction of the NNTB.cz tool in autumn 2021, Brno-Centre City District Office has received several complaints in the context of labour relations, the investigation of which led to the termination of the employment relationship with one manager. *“We took the situation very seriously because we consider the working environment important. Thanks to the anonymous whistleblowing channel, we have been able to create dignified working conditions for our employees. Interestingly, these workplaces then saw an increase in overall work performance,”* Štika adds.<sup>14</sup>

<https://www.brno-stred.cz/urad-mc/bezpecnost-a-prevence/nenech-to-byt>

#### Great Britain

Some creative approaches from abroad to communication and education towards workers can be particularly inspiring. In Britain, the system is highly decentralised, but in several areas it is possible to find practices that can also be used in the Czech Republic.

For example, the methodological instruction that not only the regular management of the organisation, but also top managers and executives should promote whistleblowing systems. And not only in terms of communication, but also in their conduct at work. The goal is to create an open culture that increases the likelihood that a worker will speak up about any misconduct they encounter.

<sup>12</sup> In 2023, Czech Post was facing major financial problems. It is worth mentioning here that although properly adjusted risk management and compliance systems are important for protecting the economic interests of organisations, they do not have the power to reverse or resolve poor strategic management decisions.

<sup>13</sup> More information on the possibilities of exculpation of legal entities is provided by the methodology of the public prosecutor's office – <https://verejnazaloba.cz/wp-content/uploads/2020/11/Metodika-NSZ-k-§-8-odst.-5-ZTOPO-2020.pdf>

<sup>14</sup> [https://roklen24.cz/?quick\\_news=whistleblowing-v-cesku-pomaha-k-lepsimu-pracovnimu-prostredi-jiz-tri-mesice-ke-statni-sprave-se-dobrovolne-pripojuji-i-velke-firmy](https://roklen24.cz/?quick_news=whistleblowing-v-cesku-pomaha-k-lepsimu-pracovnimu-prostredi-jiz-tri-mesice-ke-statni-sprave-se-dobrovolne-pripojuji-i-velke-firmy)

**Healthcare:** the Speak up Month 2022-October campaign. The campaign is comprehensive, building on an established network of participating organisations and “guides”. The campaign is divided into four weeks, each week having its own focus. Throughout the month, the NGO urged those working in the sector to take part in Wear Green Wednesdays to visibly show support for Freedom to Speak Up. On the website below, you can download the accompanying materials and methodologies, take an e-learning course, subscribe to a newsletter, and more.

<https://nationalguardian.org.uk>

**Finance:** the “In confidence, with confidence” campaign. As part of this campaign, the FCA is encouraging people working in financial services to report any misconduct and reminding them of the confidentiality procedures in place. The authority has published materials that companies can share with employees, and has also developed a digital toolkit – leaflets, videos and more – to encourage individuals to come forward.

<https://www.fca.org.uk/news/press-releases/fca-launches-campaign-encourage-individuals-report-wrongdoing>

## 5 Selected conference findings

The conference entitled *“Strengthening the Fight against Corruption: Whistleblowing”* took place on 17 and 18 January 2023. The conference featured many international and Czech speakers, experts and whistleblowers who shared their experience. The following text summarises the experience with whistleblower protection in Slovakia, Croatia and the Netherlands presented at the conference. It also provides information on the technical options available to address whistleblower protection. Presentations and other outputs from the conference are also available on the Ministry of Justice website.<sup>15</sup>

### 5.1 Slovak experience

The Act on the Protection of Whistleblowers of Anti-Social Activities in Slovakia came into effect in March 2019. Unlike the majority of EU Member States, Slovak legislation has moved towards the establishment of an independent Whistleblower Protection Office (hereinafter the “Office”) with national competence and extended powers. Zuzana Dlugošová, its president, presented the basic parameters of whistleblower protection in Slovakia and, in the second half of her presentation, focused on the challenges for the future, especially on how to bring the topic of whistleblower protection into the social ecosystem.

The Office has been given quite broad powers, beyond providing an external whistleblowing channel, meaning it can suspend the validity of an employee’s termination, file criminal charges on behalf of a whistleblower, and provide consent to employers taking action against an employee who is a whistleblower. The Office also provides legal support to whistleblowers, as well as to employers when establishing internal whistleblowing systems, and is dedicated to public education and outreach.

Zuzana Dlugošová, the Office president, named raising public awareness as one of the greatest challenges. In Slovakia, as in the Czech Republic, there is no general knowledge of the institute of whistleblowing, there is little willingness to report, and there is a lack of general awareness of the existence of the Act and the Office itself.

The Office has therefore commissioned a marketing campaign to raise awareness of its activities. Thanks to this campaign, awareness of the Office has increased from the initial 7% of respondents to just under a fifth of the Slovak population, while the number of visitors to the Office website has increased eightfold. On the other hand, the theoretical willingness to report has not increased, with 58% of Slovaks willing to report unlawful conduct, according to the survey.

Although the Act came into effect in the first quarter of 2019, some employers that are obligated entities have not yet set up internal whistleblowing systems. This applies not only to private employers but also to administrative authorities. Monitoring compliance with legal obligations will be a challenge for the Czech Republic as well.

---

15 <https://korupce.cz/projekt-zintenzivneni-boje-proti-korupci/zintenzivneni-boje-proti-korupci-whistleblowing/>

## 5.2 Croatian experience

In Croatia, the legislator decided to assign competence over the external whistleblowing channel to the Ombudsman's Office. Dijana Kesonja, representative of the Croatian Ombudsman, presented the experience of the Office so far.

The Ombudsman's Office has set a deadline for organisations to set up internal whistleblowing channels and appoint facilitators to deal with the reports. The Office also monitors internal whistleblowing channels and receives information on reports received from facilitators. If the Office concludes that there has been retaliation against a whistleblower, it will draw up a report to that effect.

The Ombudsman's Office also engages in educational and awareness-raising activities. It educates the general public, employees and trade unions, as well as facilitators, lawyers and judges. As part of its awareness-raising activities, it seeks to eliminate negative stereotypes about whistleblowing in society.

One important missing element for functional whistleblower protection identified by the Ombudsman is the need for accessible legal aid for whistleblowers. This challenge also applies to the Czech Republic, as legal aid for whistleblowers is lacking here.

## 5.3 The Dutch experience

The Netherlands is another EU Member State to set up an independent whistleblower protection office (Huis voor klokkenluiders), doing so in 2016. Similar to the Slovak office, the Dutch office serves both as an external reporting channel and also provides legal advice, psychological support to whistleblowers, and the possibility to conduct investigations into the reported conduct and any retaliation against the whistleblower. However, the office has no power to take punitive or preventive measures to protect the whistleblower, and can only issue an anonymised report based on its findings.

Other roles of the office are to raise awareness of whistleblower protection and to encourage organisations to establish good internal whistleblowing systems. During the presentation, Wilbert Tomesen, director of the office, and his colleague Kristien Verbraeken, also shared the findings of a study by Utrecht University on the determinants of successful whistleblowing.

### Such determinants include:

- The staff who deal with reports within the organisation are knowledgeable and objective, well-intentioned and empathetic.
- The internal whistleblowing channel meets legal requirements.
- The internal whistleblowing system is open and transparent.
- The procedure for dealing with reports within the organisation is followed carefully and quickly.

## 5.4 Technical solution for whistleblower protection

Whistleblowing methods required by the Act include written, oral and personal reporting. An email inbox may serve as a communication channel for written reports. However, the use of more advanced solutions in the form of online platforms directly designed for whistleblowing is preferable.

Such platforms benefit not only the whistleblowers but also those responsible for receiving and handling the reports. Data protection is ensured by end-to-end encryption for sent messages, and by other security mechanisms. Such platform can also have other functionalities such as notifying the facilitator of deadlines, sorting submissions and documents, translating messages and storing them on secure online servers.

Such a technical solution allows the whistleblower and facilitator to communicate while preserving the whistleblower's anonymity. It is therefore logical that the confidence of whistleblowers in a secure platform will be significantly higher than, for example, in a physical "trust box", which also does not enable follow-up communication between the whistleblower and facilitator. The Don't Let It Be platform was introduced at the conference.

When choosing a supplier, it is a good idea to look at references and, if necessary, have the declared security settings of the communication independently assessed. Many new companies have appeared on the Czech and European market offering technical support, but do not always have sufficient experience and knowledge. Any deficiencies can cause major problems, especially if the whistleblower is put at risk.

## 6 Useful links

A website for whistleblowers and the external whistleblowing system of the Ministry of Justice:

<https://oznamovatel.justice.cz/>.

The Ministry of Justice has also prepared a model internal regulation with a commentary:

<https://oznamovatel.justice.cz/vzorovy-vnitri-predpis-k-provozovani-vnitriho-oznamovaciho-systemu-podle-zakona-o-ochrane-oznamovatelu-povinnym-subjektem/>

A website of the Ministry of Labour and Social Affairs entitled Důstojné pracoviště (Dignified Workplace), which offers methodologies and documents for investigating bullying and other problems in public administration workplaces, can also be of use to facilitators: *Dignified Workplace*.

You can also contact the Whistleblowing Centre at [www.whistleblowingcenter.cz](http://www.whistleblowingcenter.cz), which aims in particular to provide comprehensive advice to whistleblowers.

## 7 Sources

### Legislation:

Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law

Act No 171/2023 Coll., on whistleblower protection

Act No 172/2023 Coll. amending certain laws in connection with the adoption of the Whistleblower Protection Act

### Guides and methodologies:

Ministry of Justice (2022): Methodology on the direct applicability of Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law

Ministry of the Interior, Civil Service Section (2022): Opinion on the applicability of Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law

Stöhr (2022): Whistleblower investigation process: how to prepare for an internal investigation

Eurocadres (2020): Whistleblowing toolkit. Eurocadres best practice guide

Ministry of Justice (2022): Comparative study on whistleblower protection

Prosecutor General's Office (2020): Application of Section 8(5) of the Act on the Criminal Liability of Legal Persons and Proceedings Against Them. Guide to legislation for public prosecutors.

EDPS (2019): Guidelines on processing personal information within a whistleblowing procedure

### Data support:

European Commission (2017): Special Eurobarometer survey on corruption and whistleblowing 2016

Behavio (2020): Whistleblowing, a survey of Czech public attitudes

The Association of Certified Fraud Examiners (ACFE): A Report to the Nations 2022

EQS Group (2021): White Paper, Whistleblowing Report 2021

### Chapter Selected Conference Findings:

Whistleblowing conference, First panel, presentation Presentation on transposition arrangements in some Member States, Dluhošová Zuzana

Whistleblowing conference, Second panel, presentation Experience of selected countries, Verbraeken Kristien

Whistleblowing conference, Second panel, presentation Experience of selected countries, Kesonja Dijana

Whistleblowing conference, Second panel, presentation Technical whistleblowing solutions, Sláma Jan



