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AKTUELNI MEĐUNARODNI RAZVOJ: NOVA PRAVILA O ZAŠTITI Uzbunjivača u EU

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Rezime

U pripremi je nova Nova Direktiva EU o zaštiti uzbunjivača. Ova direktiva ima za cilj da se u najvećoj mogućoj meri osnaže standardi, jasnije urede obaveze i obveznici, kao i da se u većoj meri zaštite uzbunjivači.

Ključne reči: EU Direktiva, uzbunjivanje, zaštita uzbunjivača, novi standardi

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CURRENT INTERNATIONAL DEVELOPMENT: NEW RULES ON WHISTLEBLOWER PROTECTION IN THE EU

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Summary

A new EU Directive for protecting whistleblowers is under preparation. This directive aims to strengthen the standards, clearly define the obligations and taxpayers, as well as to better protect whistleblowers.

Keywords: EU Directive, whistleblowing, protection of whistleblowers, new standards

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Pravila o obradi izveštaja o nepravilnostima unutar organizacija do sada su bila fragmentirana i raznolika u širem evropskom području. Nova Direktiva EU o zaštiti uzbunjivača sada će napraviti preokret u ovom polju i dovesti do dalje harmonizacije u narednim godinama. Evropska komisija je u aprilu ove godine predložila takvu direktivu. Inspirisana je nedavnim skandalima, kao što su Diselgate, Luxleaks, Panama dokumenti i Cambridge Analytica. Potpredsednik Komisije, Frans Timmermans, naglasio je glavni cilj direktive - zaštitu uzbunjivača, budući da mnogi nedavni skandali možda nikada ne bi izašli na videlo da neko iznutra nije imao hrabrosti da progovori (Evropska komisija, 2018b).

Šta tačno zahteva direktiva? „Sve kompanije sa više od 50 zaposlenih ili sa godišnjim prometom od preko 10 miliona evra moraće da uspostave unutrašnju proceduru za izveštaje uzbunjivača. Sve države, regionalne uprave i opštine sa više od 10.000 stanovnika biće takođe pokriveni novim zakonom. Ovi zaštitni mehanizmi moraju sadržati jasne kanale izveštavanja /.../, sistem za izveštavanje sa tri nivoa /.../, obavezu povratnih informacija za vlasti i kompanije, /.../, svi oblici osвете su zabranjeni i treba da budu sankcionisani. Ako se uzbunjivaču svete, on ili ona treba da imaju pristup besplatnom savetovanju i odgovarajućim pravnim sredstvima (npr. mere za sprečavanje uznemiravanja na radnom mestu ili sprečavanje otkaza). Teret dokazivanja biće preusmeren u takvim slučajevima, tako da osoba ili organizacija moraju dokazati da ne čine ništa da se osвете uzbunjivaču. Uzbunjivači će takođe biti zaštićeni u sudskim postupcima, posebno oslobođanjem od odgovornosti za otkrivanje informacija“ (Evropska komisija, 2018b). Sažetak ocene učinka Direktive pokazuje da će se pravila o uspostavljanju sistema unutrašnjih postupaka za prijavljivanje lošeg ponašanja usredsrediti na sledeće oblasti: javna nabavka, sprečavanje pranja novca i finansiranje terorizma, zaštita tržišne konkurencije, izbegavanje poreza, bezbednost proizvoda, bezbednost hrane, transport,

zaštita životne sredine i zaštita životinja, javno zdravstvo, zaštita potrošača, privatnost i lični podaci i sigurnost informacija (Evropska komisija, 2018c). Među prednostima, u Komisiji ističu pozitivan efekat na privredu, društvo i okolinu. Očekuje se da će Direktiva doprineti otkrivanju prevara i korupcije, a samim tim imati i pozitivan uticaj na budžet EU, koji sada izdvaja između 179 i 256 milijardi evra na račun takvih rizika. U oblasti javne nabavke očekuje se godišnja ušteda od između 5,8 i 9,6 milijardi evra na nivou EU. Uopšteno govoreći, Evropska komisija očekuje da će zaštita uzbunjivača doprineti pravednijoj konkurenciji na zajedničkom tržištu i značajnom poboljšanju privrednog, radnog i društvenog okruženja delujući kao podsticaj za povećanje integriteta i transparentnosti u javnom i privatnom sektoru (ibid.).

Vlada Slovenije je podržala predloženu direktivu, ali se zalaže za jasnoću odredaba, „jer će se tako sprečiti različit tretman iste činjenice u različitim državama članicama“ (Državni savet Slovenije, 2018.). Pozicija Austrije, koja je preuzela polugodišnje Predsedništvo EU 1. jula, takođe je izuzetno važna - predana je pokretanju Projekta integriteta EU. Njegov rad će se temeljiti na aktivnostima četiri radne grupe, od kojih će se jedna baviti isključivo zaštitom uzbunjivača (HATVP, 2018). Šta je sa vremenskim rokovima Direktive? Direktiva je trenutno u fazi predloga. Trebalo bi da bude dovršena do kraja 2019. godine, a kao krajnji rok za države članice da sprovedu Direktivu postavljen je za 15. maj 2021. godine, članom 20 ovog predloga (Evropska komisija, 2018a). Očekuje se da će sve procedure praćenja, statistike i procene uticaja (od strane različitih organa EU) biti završene do 15. maja 2027. godine.

Evropski institut za komplajans i etiku (EICE) svesrdno pozdravlja takve inicijative, a temu integriteta postavlja na bitno mesto na dnevnom redu konferencija i drugih događaja, kao što je, između ostalog, ovogodišnja Konferencija o komplajansu i etici na Bledu.

The rules on processing reports of irregularity within organizations have so far been fragmented and diverse in the wider European area. The new EU Directive on Whistleblower Protection is now going to be a game changer in this field and will lead to a more unified form in the upcoming years. The European Commission has put forth a proposal for such a directive in April this year. This was motivated by some recent scandals, such as Diselgate, Luxleaks, Panama documents and Cambridge Analytica. The Vice President of the Commission, Frans Timmermans, highlighted the Directive's main goal, i.e. the protection of whistleblowers, since many recent scandals may have never been detected if insiders had not had the courage to speak out (European Commission, 2018b).

What exactly will the Directive require? "All companies with more than 50 employees or with an annual turnover of over €10 million will have to set up an internal procedure to handle whistleblowers' reports. All state, regional administrations and municipalities with over 10,000 inhabitants will also be covered by the new law. These protection mechanisms must include clear reporting channels /.../, a three tier reporting system/.../, feedback obligations for authorities and companies, /.../, all forms of retaliation are forbidden and should be sanctioned. If a whistleblower suffers retaliation, he or she should have access to free

advice and adequate remedies (for example measures to stop workplace harassment or prevent dismissal). The burden of proof will be reversed in such cases, so that the person or organization must prove that they are not acting in retaliation against the whistleblower. Whistleblowers will also be protected in judicial proceedings, in particular through an exemption from liability for disclosing the information" (European Commission, 2018b). The summary of the Directive's impact assessment shows that the rules regarding the establishment of internal procedure systems for reporting misconduct are going to concentrate on the following fields: public procurement, anti-money laundering and terrorist financing, competition protection, tax avoidance, product safety, food safety, transport, environmental and animal protection, public health, consumer protection, privacy and personal data, and information security (European Commission, 2018c). The highlighted benefits are the positive effect on economy, society and environment. The Directive is expected to contribute to the disclosure of fraud and corruption, and thus have a beneficial impact on the EU budget, which now accounts for between 179 and 256 billion euros at the expense of such risks. In the area of public procurement, EU-wide annual savings of between 5.8 and 9.6 billion euros are expected. In general, the European Commission expects the protection of whistleblowers to contribute

to the fairer competition in the common market, and significant improvement of the economic, working and social environment, by acting as a stimulus for increasing integrity and transparency in the public and private sectors (ibid.).

The Slovenian Government has supported the proposed Directive, but it advocates for the clarity of the provisions, "because that is the only way to prevent a different treatment of the same facts in different Member States" (Slovenian National Council, 2018). The position of Austria, which took over the half-year Presidency to

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the EU on 1 July, is also extremely important - it is committed to launching the EU Integrity Project. Its operations will be based on the activities of four working groups, one of which will deal exclusively with the protection of whistleblowers (HATVP, 2018). What about the Directive's time frames? The Directive is currently a proposal. It is supposed to be finalized by the end of 2019, while the deadline for Member States to implement the Directive is set for 15 May 2021, pursuant to Article

20 of the proposal (European Commission, 2018a). All follow-up procedures, statistics and impact assessments (by various EU bodies) are expected to be completed by 15 May 2027.

The European Institute of Compliance and Ethics (EICE) full-heartedly welcomes such initiatives, while it places the topics on integrity high on the agenda of its conferences and other events, including this year's Conference on Compliance and Ethics in Bled.