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Workplace compliance and whistle-blowing in Hungary***

ABSTRACT: Employers have several obligations that do not stem from labour law alone. This study presents the phenomenon of workplace compliance with several associated issues. This study examines diversity management, one of the most colourful challenges of companies, and discusses the workplace whistle-blowing system, with its domestic rules and possible future amendments.

KEYWORDS: workplace compliance, whistle-blowing, labour law.

1. Introduction

Employers have several legal obligations in managing their operations. When organising production, it is essential to monitor, comply with, and enforce rules with employees. This includes obligations arising from labour law, health and safety standards, and other requirements arising from national and international legal sources. Global regulations have a significant impact on the way employers operate, organise, and administer their businesses. As Balogh states, independent companies no longer exist.¹ As part of the global market, employers face diverse expectations, such as the increasing need to produce ESG (environmental, social, and governance sustainability) reports or the development of a labour compliance audit process. There is a growing expectation of sustainability from companies, with an increasing focus on social sustainability in addition to environmental sustainability. The expectations of sustainability have many dimensions, one of which is meeting social needs. The world is now curious

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*** This study was prepared as part of the linkage project of the Humboldt Research Group "On the systematisation of criminal responsibility of and in enterprises" led by the University of Heidelberg and the University of Miskolc (2020-2025).

¹ Balogh, 2019.

about the processes and corporate policies using which a product or service was created, and the impact it had on the rest of the world.²

2. Workplace compliance

Compliance with the law is generally recognised as having an impact on companies' interests, however, there is growing social and business recognition that morally objectionable behaviour threatens companies' interests.³ One of the pillars of sustainable business is workplace compliance, which is a prerequisite for ethical business. Workplace compliance permeates all segments of a company's activities and decisively influences operational strategies. Employers' workplace compliance can be considered as a form of risk management that can be divided into two parts: regulatory and corporate compliance. Regulatory compliance comprises what an employer does to comply with the external standards and regulations that apply to its industry. In contrast, corporate or company compliance comprises the internal measures implemented to ensure that the actors and employees in the organisation comply with external and internal requirements in their work and conduct so that individuals behave appropriately and create a safe working environment.⁴

Ensuring maximum effective compliance in the workplace includes the development, implementation, and monitoring of company policies and practices, and appropriate training for staff and employers.

How can we define the areas of workplace compliance? Violations of workplace compliance can assume several forms. It can include violations of the requirement of equal treatment that cannot be objectively justified, sexual harassment in the workplace, corrupt practices by employees, unfair business policies, and breaches of duty by employers, such as late payment, endangering the safety of employees, and failure to respect the work-life balance of employees.⁵

² Balogh, 2019.

³ Ambrus, 2020.

⁴ Malyk, no date.

⁵ Malyk, no date.

3. An area of workplace compliance: diversity management

Employees in the workplace often perform their work based on uniform contracts, however, each employee has a unique range of skills, qualities, motivations, and competences. The protection of the individuality of the worker is also reflected in the prohibition of discrimination based on the principle of equality, the regulation and practice of which are constantly evolving and face new pitfalls and difficulties such as gender issues. To reduce discrimination in Hungary, Act No. CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (hereinafter, the Equal Opportunities Act) provides in Article 63 Section (4) that budgetary bodies and majority state-owned legal entities with more than 50 employees are obliged to adopt an equal opportunity plan. The legislature only imposes the obligation to draw up an equal opportunity plan on the public sector employers, however, many employers in the competitive sector also have an equal opportunity plan. Equal opportunity plans cover, among other things, workplace support measures for women, young workers, ageing workers, and workers with disabilities, which may go beyond what is required by law. Therefore, we must formulate a system for organising diversity management. Diversity management aims to ensure that the advantages and disadvantages arising from belonging to a particular group do not play a role in the workplace.⁶ This is a holistic and strategic set of behaviours that aims to maximise the potential of each individual to contribute to the achievement of the organisation's goals by harnessing individual talent and differences in a diverse workforce environment. Managing interpersonal relationships in a diverse workforce environment presents several challenges related to changes in social, legal, and economic environments; individual expectations and values; and inevitable changes in organisational culture.⁷

This activity requires a wide range of employer skills. An important step is to understand and embrace the concepts of diversity management, recognising that diversity permeates all aspects of management. Moreover, employer awareness of their own internal culture is of paramount importance in understanding prejudices and stereotypes. The employer's

⁶ Primecz, 2019.

⁷ Gwele, 2009.

attitude is emphasised, as it requires a willingness to critically examine and change institutional practices that create barriers for different groups.⁸

Managing diversity on a broad scale is a clear advantage in the labour market, as flexibility and creativity are key to competitiveness. Employer organisations must be flexible and adaptable to meet new consumer demands; therefore, adequate diversity management is an integral part of this. Heterogeneity fosters creativity, and heterogeneous groups have been proven to produce better problem solving and higher levels of critical analysis. A study conducted by an international organisation, the Boston Consulting Group, reveals that running diverse organisations, is clearly advantageous.⁹ This can be a vital advantage when companies are undergoing significant changes to identify new and more efficient mechanisms to operate sustainably.¹⁰ According to Primecz, eight groups in Hungary are eligible for support: women, Roma, immigrants, non-Christians, people with disabilities, young people, people over 50 years of age, and people with a minority sexual orientation. There are many ways to support them; however, previous studies suggest that the most effective way is not to provide undue advantages. Rather, what is required is training and information for employees who are not part of the protected groups (the majority) to eliminate prejudice and develop a more inclusive organisational culture.¹¹

Diversity management offers appropriate programmes for women and other workers with protected characteristics to strategically promote better outcomes. However, workplace and family issues owing to the COVID-19 pandemic have also caused setbacks in this area. Clearly, the caregiving role has shifted to women, with more women being forced to reduce their previous work activities.¹² According to a United States (US) survey, only 35% of working mothers stated they planned to work in the same manner as before the pandemic. These challenges imply that companies require more nuanced tools to ensure that vulnerable groups, such as women, can advance and develop their talent. Therefore, based on this analysis, researchers hypothesise that once the requirements of such workforces are identified

⁸ UC Berkeley, no date.

⁹ Jenei et al., 2021.

¹⁰ UC Berkeley, no date.

¹¹ Primecz, 2019.

¹² Novacek et al., 2022.

and met as accurately as possible, companies can achieve positive employee outcomes.¹³

Contrary to the US experience, the area is unregulated in the European Union (EU), with a plethora of internal regulatory material. An initiative was launched in 2004 with the creation of the European Diversity Charter, which set out to promote EU anti-discrimination and equal opportunity policies in the workplace. Its aim is to shape attitudes, engage, and support managers in achieving organisational diversity and inspire the development and rethinking of human resource management. In 2016, several large companies in Hungary signed the European Diversity Charter, whose primary objectives included striving for equal opportunities and non-discrimination in the workplace.¹⁴ Another important objective is to inform employees about their rights and obligations in relation to the implementation of the principle of equal treatment and to provide them with opportunities for work-life balance and individual development. As aforementioned, one of the benefits of joining the Charter is its potential for better business results. Increasingly, domestic employers are also recognising that improving work-life balance, improving employee satisfaction, and retaining talent are important factors in promoting organisational competitiveness and are important objectives for organisations adopting the Charter. Diversity management addresses a wide range of issues within an organisation, among which it is essential to demonstrate a commitment to well-known CSR (corporate social responsibility), as diversity is one of the cornerstones of CSR. In addition, the optimisation of human resource management stands out, which can contribute to management objectives by identifying and better exploiting available employee competencies and improving the working environment. The aim is to improve a company's economic performance by improving its innovation capabilities, enhancing its image, and better understanding its customers' expectations.

Compliance with legal and regulatory constraints is of particular importance and can be achieved through the effective management of compliance in the workplace.

¹³ Novacek et al., 2022.

¹⁴ Az Európai Sokszínűségi Karta Magyarországon, 2019.

4. The system of whistle-blowing in Hungary

The proper functioning of the compliance system requires that employees of the company anonymously report about irregular workplace practices, equal treatment violations, or suspected cases of corruption to the employer through appropriate reporting channels. Corporate internal whistle-blowing systems have become increasingly common in multinational companies following a change in regime with the emergence of multinationals. In Hungary, a law came into force in 1977 under the socialist system^{15, 16}. According to the explanatory memorandum, the Act provides uniform rules for the submission, investigation, and substantive handling of citizens' notifications, complaints, and proposals of public interest and provides more effective protection for citizens who make proposals. Simultaneously, it is intended to prevent unfounded and irresponsible reports and complaints. Ambrus stated that despite its socialist nature, the legislation was forward-looking and modern. This legislation was in force until 1 May 2004 after which a uniform standard came into force in 2009, Act No. CLXIII of 2009 on the Protection of Fair Procedure and Related Amendments. This Act introduced whistle-blowing protection for the first time in Hungary. The aim of the legislature was to expose corruption and protect people who reported corruption. In addition to the classic preventive measures, the Act places under the Office for Public Procurement and Public Interest Protection the power to investigate cases of violations of the requirement of due process and to protect employees who make whistle-blowing reports. An employee's complaint may concern any breach of public interest, and not only those which fall within the scope of the Office's investigations.

Comparing the Hungarian legislation of the time with the institution of whistle-blowing known abroad, the explanatory memorandum of the Act states that the institution is based on a civil organisation, and the person who discloses the abuse is primarily provided legal protection, and there is no automatic remuneration for their activities, only compensation. In practice, a well-established whistle-blowing system creates a transparent and well-regulated working environment in which reporting channels and investigations can effectively resolve organisational problems. The safe atmosphere, awareness of the rights and values of those involved, and predictable consequences mean that whistle-blowers' primary objective is

¹⁵ Act No. I of 1977 on Public Interest Reports, Proposals, and Complaints.

¹⁶ Ambrus, 2019.

not to settle personal disputes with others, pursue their own career goals, or obtain financial benefits, but to help the organisation function effectively. This approach contributes significantly to preventing corruption and prioritises the prevention of sanctions.

In Hungarian legislation, the notifier is also entitled to a success fee, and if the Office imposes a fine based on the notification, the notifier is entitled to 10% of the fine. Unfortunately, the law on the establishment of the Office for Public Procurement and Public Interest Protection did not enter into force; it was sent back to the Constitutional Court, which did not create new legislation after the 2010 parliamentary elections. Therefore, in the absence of the necessary authority to apply this law, the procedures under the law could not be conducted, making the law inapplicable.

On 1 January 2014 Act No. CLXV of 2013 on Complaints and Notifications of Public Interest (hereinafter Pkbt.) entered into force. Since then, it has been the law currently in force.

The legislature has recognised that private employers are increasingly using whistle-blowing systems, which has raised data protection concerns for the legislature. Therefore, in relation to employment reporting schemes the Act aims to establish the basic conditions for the use of such reporting schemes, while simultaneously limiting and conditioning the processing of employees' personal data.

The legislature has provided guarantees for the operation of such systems, such as, purpose limitation, notification to the register of data processing, prohibition of processing of specific personal data, conditions for the cessation of processing, information to employees, and prevention of abuse.

This law lays down the primary principles for examining notifications. This ensures the protection of whistle-blowers and the employer's obligation to investigate. The employer must provide whistle-blowers the opportunity to defend themselves in accordance with the principle of due process and must be able to conduct a proportionality test to ensure that minor cases do not overburden the available resources. In addition, the employer is under a general obligation of confidentiality with regard to the investigator of the complaint. From a data protection viewpoint, an important principle is to define the conditions for guaranteeing the transfer of data abroad. Moreover, the law regulates procedural deadlines and defines the measures to be adopted following notification.

The law must be applied in conjunction with the principles of the general provision of personal rights in the Labour Code (Act I of 2012 on the Labour Code). According to this principle, an employee's right to privacy may be restricted if the restriction is absolutely necessary for reasons directly related to the purpose of the employment relationship and proportional to the achievement of the objective. Moreover, the Labour Code stipulates that employees must be informed in writing in advance of the manner, conditions, and expected duration of the restriction of the right to privacy and of the circumstances justifying its necessity and proportionality. The employer may, considering the above labour law rule, establish rules of conduct protecting public interests or overriding private interests, which the employer must publish in a manner accessible to all, together with a description of the procedure involved. This internal set of rules is known in the employer sector as the Code of Conduct or Code of Ethics.

A Code of Ethics can set standards of conduct in several areas, the most relevant being mission, core values, organisational vision, workplace culture, reputation protection, fair business conduct, dealing with customers, dealing with third parties (e.g. suppliers, authorities), use of the Internet, social media, dealing with the media, relationships within the organisation, respect for each other, health and safety, and expectations for behaviour outside the workplace. In addition, anti-corruption, giving/accepting business gifts, hospitality, conflicts of interest, data protection, confidentiality, cybersecurity, competition law, expectations of managers, communication within and outside the organisation, and credibility of financial reporting are also significant. Areas of direct relevance to employment relationships are protection of the working environment, working conditions, work equipment, energy efficiency, obligation to attend required training, prohibition of equal treatment, discrimination, prohibition of harassment, psychoterrorism, intimidation, and reporting of abuse. Further, the Code of Ethics sets out the penalties and measures to be adopted, that is, the consequences of breaching it.

Therefore, the employer may establish a whistle-blowing system for reporting breaches of these rules of conduct (which are rules protecting the public interest or overriding private interests) and of the law, under which employees of the employer and persons who have a contractual relationship with the employer's organisation or who have a legitimate interest in

reporting or in remedying or ending the conduct which is the subject of the report may report abuse (Article 14 of the Pkbt.).

To ensure publicity, the Act requires employers to publish detailed information on the operation of the notification system and the notification procedure on the website of the employing organisation (Article 14, Section (2) of the Pkbt.)

In addition to substantive rules, the law provides procedures and investigations. When filing a notification, the notifier must declare that the notification is made in good faith concerning the circumstances in which he/she is aware of or has reasonable grounds to believe that they are true (Article 15, Section (6) of the Pkbt.). The employer, or the representative who conducts the investigation, must draw the whistle-blower's attention to the consequences of making a report in bad faith, the procedural rules governing the investigation, and the fact that if the whistle-blower's identity is disclosed, it will be treated confidentially by the employer at all stages of the investigation.

Further, the law provides safeguards for the person concerned in the report as if it were based on the presumption of innocence. These include informing the person concerned with the notification, their rights in relation to the protection of personal data, rules governing the processing of their data, their right to legal representation, and the possibility of presenting evidence.

The legislature provides two time limits for conducting investigations: subjective and objective. The general time limit is 30 days from the receipt of the notification (subjective time limit), from which, except in the case of a notification by an anonymous or unidentified notifier, an exception may be made only in particularly justified cases with simultaneous information of the notifier; however, even in this case, the duration of the investigation may not exceed three months. However, if the notification is made six months after the date on which the notifier became aware of the act or omission complained of, the investigation may be waived (objective time limit).

It is important that the whistle-blower's identity remains completely confidential if the whistle-blower has provided his/her name. This is the purpose of the rule that states that the notification system should be designed such that the identity of the non-anonymous notifier cannot be known to anyone other than the notification investigators. Until the investigation is closed or formal prosecution is initiated as a result of the

investigation, the investigators of the report must keep confidential information on the content of the report and the persons involved in the report, and may not share it with any other department or employee of the employing organisation, except for the person involved in the report (Article 15, Section (2) of the Pkbt.).

Employers may adopt different measures depending on the seriousness of the infringement or ethical breach. If the facts of the case justify this, the employer initiates criminal proceedings by complaining to the investigating authorities. If no criminal offence is suspected but other rules have been infringed upon by the person concerned, other types of employer action may be adopted. These measures may include termination of employment, which is the most serious legal sanction, but the employer may also apply other legal sanctions, such as a reprimand or a fine.

If the notification is unfounded or no further action is required, data should be deleted within 60 days of completion. At the end of the investigation, the employer should inform the whistle-blower of the outcome of the investigation and the actions to be taken. If the complaint is made before an administrative authority, the complainant must also be informed. However, the content and quality of the measures may not be challenged by the whistle-blower, even before the court of law. If the whistle-blower does not consider the measures adopted to be sufficiently serious, he or she may initiate administrative proceedings before the appropriate administrative authority.¹⁷

No investigation is required under the Act - an investigation may be waived - if the notification was made by the notifier without revealing his/her identity, the notification was a repeat notification by the same notifier with the same content as the previous notification, the notification was made by the notifier six months after the date on which he/she became aware of the act or omission complained of. Moreover, the procedure may also be waived if the harm to the public interest or overriding private interest is not proportionate to the restriction of the rights of the person concerned resulting from the investigation of the notification.

¹⁷ The Supreme Court, Kpkf. 39.155/2022/3.

5. The European Union Directive and expected changes to national legislation

The European Union (EU) has recently made it an important objective for Member States to detect and act upon breaches of EU law. The creation of Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report infringements of EU law (the "Directive") was an important moment in this legal policy objective. The Directive had to be transposed by Member States by 17 December 2021.

The Directive aims to establish a common set of minimum standards for the protection of persons reporting infringements of EU law in specific EU policy areas (including public procurement, financial services, prevention of money laundering and terrorist financing, product safety, transport safety, environment, nuclear safety, food and animal health, public health, consumer protection, data protection, competition law, financial interests of the European Union, internal markets, and corporate taxation) by means of a horizontal, uniform EU legal instrument. Within the framework of these minimum standards, EU encourages Member States to establish a three-step notification system. The first step is the internal notification channel, which involves the notification of the infringement within the legal entity concerned. The second step is the external notification channel, whereby the notifier communicates the infringement to the competent national authority designated by the Member State. The third step is the publication of the infringement.

On 28 February 2023 the Minister of Justice submitted a proposal for a law in conformity with the EU Directive. The proposal for Law No. T/3089 'On complaints, notifications of public interest and rules relating to the notification of abuses' (hereinafter: the Proposal).

The Proposal regulates the protection system for whistle-blowing in detail in accordance with the rules of the Directive.

The legislation mandates the establishment of an internal abuse reporting system for private employers who employ at least 50 persons in an employment relationship, a provision which is in accordance with the Directive.

The Proposal uses the relief allowed by the Directive for entities with between 50 and 249 employees - these entities may establish a joint internal abuse reporting system, thus reducing the burden on smaller businesses -

and provides in a transitional provision that the obligation to establish an internal abuse reporting system will be fulfilled from 17 December 2023.

The Proposal sets out the guarantee rules for the functioning of the internal whistle-blowing system and the primary issues related to the making, receiving, and handling of whistle-blowing reports, in this context, the rules for the control of the functioning of the internal whistle-blowing system. The Proposal is based on the premise that whistle-blowing is easier to handle if there are fewer bureaucratic rules and conditions. Therefore, it provides for the handling of all whistle-blowing in general and relieves employers from having to handle whistle-blowing in a differentiated manner to decipher the complex scope of the Directive, which often leads to litigation.

The Proposal lays down different obligations for public sector employers. Generally, all public sector entities and all entities owned or controlled by public sector entities must establish an internal whistle-blowing system. Under the Directive, Member States may be exempt from this obligation if they have municipalities with fewer than 10,000 inhabitants, municipal bodies with fewer than 50 employees, or entities owned or controlled by public bodies or local authorities. The Proposal uses this derogation and, in accordance with the Directive, provides the possibility for several municipalities to share the operation of an internal whistle-blowing system. This is intended to reduce the burden on smaller bodies. The Proposal states that rules applicable to a public sector employer in the context of the operation of an internal whistle-blowing system should be applicable to a private sector employer, as required by the Directive.

In any event, the submission of this Proposal to Parliament represents an important step forward, which, if adopted, should lead to a greater number of reports of employer abuse, considering its binding scope.

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