LAW ON WHISTLEBLOWERS

1.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The concept of "authorized body" and the relationship between internal and external whistleblowing should be specified.	2015			√
Criminal offences in connection with whistleblowing, as well as any special penal responsibility for the grave violations of the rights of whistleblowers should be appropriately envisaged.	2015			√
Introduce rules on remuneration of whistleblowers to effectuate the purposes of this Law	2017			√

CURRENT SITUATION

The Law on the Protection of Whistleblowers (hereinafter: the Law) entered into force on 4 December 2014 and has been in application since 5 June 2015.

The Law regulates whistleblowing, the whistleblowing procedure, the rights of whistleblowers, the obligations of the state and other bodies and organizations, and legal entities and individuals in connection with whistleblowing, as well as other issues of importance for whistleblowing and the protection of whistleblowers.

The Law prohibits retaliation against whistleblowing and protects all persons in work engagement. Besides whistleblowers, under certain conditions, the Law also protects persons connected to the whistleblower, as well as any person wrongly labelled as a whistleblower, holders of public office, and persons seeking information regarding a specific whistleblowing case. The Law also envisages the protection of the whistleblowers' personal data. Abuse of whistleblowing is prohibited.

Whistleblowing can be internal (disclosure to the employer), external (disclosure to an authorized body) or public (disclosure of information to the media, through the Internet, at public meetings, or in any other manner in which information can be made available to the public). The employer and the authorized body are also obliged to act based on anonymous tips regarding the disclosed information, within their authority.

In the European Union, whistleblowing through non-governmental organizations and trade unions is a key element in ensuring the protection of workers and citizens, as well as in strengthening the transparency and accountability of institutions and the economy. The inclusion of these mechanisms in the legal framework of Serbia would contribute to the improvement of the fight against corruption and the strengthening of the rule of law, following European standards and best practices.

In order to ensure the protection of whistleblowers, it is necessary to determine the duration of the procedure, that is, establish the maximum possible period for the duration of the procedure. A clearly defined time frame allows complaints to be dealt with properly, reduces the risk of delays and ensures that whistleblowers receive protection and support in a timely manner. In this way, trust in the legal system is strengthened and citizens are more willing to report irregularities, which is essential for the fight against corruption and illegal actions.

External whistleblowing starts with disclosing information to an authorized body, but the Law does not specify which body.

The Law envisages judicial protection of whistleblowers. A claim must be filed within six months of the date of learning of the undertaken adverse action (subjective term), and within three years from the date when the adverse action toward the whistleblower was taken (objective term).

European regulations, such as the EU Whistleblower Directive and the German Supply Chain Due Diligence Act (LkSG), have a significant impact on improving the protection of whistleblowers and can serve as a model for the further development of Serbian legislation, especially in creating a more comprehensive and effective whistleblower system. The directive's requirement that companies establish a reporting system, combined with LkSG's focus on supply chain monitoring, has led to the development of unique reporting systems that satisfy both internal and external mechanisms. This synergy has resulted in improved com-

munication and transparency for whistleblowers, as well as a reduced technical and organizational burden on the reporting system. These regulations also share common goals, such as drawing attention to abuses and promoting responsible reporting. Although there are technical differences between the two laws, such as the requirement for external reports in the LkSG, overall, the EU Whistleblower Directive and the LkSG have created a better environment for whistleblowers, with reporting systems in place and the necessary entities to ensure their protection and support.

In particular, the new EU Whistleblower Protection Directive, which was adopted in 2019, sets standards for the protection of whistleblowers within the European Union, obliging member states to introduce effective mechanisms for the reporting and protection of whistleblowers.

Also, LkSG orders companies with at least 1,000 employees to take responsibility for human rights and environmental protection within their supply chains. The LkSG obliges German companies to establish effective whistleblowing mechanisms to ensure that violations of human rights and environmental standards in supply chains can be reported and adequately addressed. Furthermore, the EU CSDDD (EU Corporate Sustainability Due Diligence Directive) further expands the obligations of companies to include mechanisms for gathering information through whistleblowing especially in the context of sustainability and social responsibility.

The appeal mechanisms provided for in the CSDDD are also a key part of the new requirements, including the source of information for mapping purposes. Although the directive expressly provides for a link with the whistleblowing directive, existing whistleblowing schemes are unlikely to cover all the requirements of the regulation and will need to be updated.

The aforementioned improvements have established comprehensive reporting mechanisms, reducing organizational burden and increasing transparency for whistleblowers and complainants.

POSITIVE DEVELOPMENTS

Bearing in mind that there were no changes in the legislative framework in this area, including by-laws, there was no closer definition of the concept of authorised body, nor the relationship between internal and external whistleblowing. In the same context, criminal offences related to whistleblowing were not foreseen in the previous period, as well as rules on rewarding whistleblowers were not introduced.

REMAINING ISSUES

- Existing reporting systems may not meet all the requirements of the new regulations. On the other hand, there was no amendment of the Criminal Code, where, as an alternative to the option mentioned above, such criminal acts would be prescribed especially with respect criminal acts against environment and health of people, corruption.
- The integration of reporting systems for internal and external complaints can be challenging, making it difficult to implement effective safeguards.
- Whistleblowers continue to face the risk of retaliation. Although the law provides protection, practice shows that retaliation still occurs, creating uncertainty for potential whistleblowers.
- Existing laws may not provide enough protection for whistleblowers from retaliation and other negative consequences.
- Although the adoption of this Law was a significant step, some provisions are contradictory or incomprehensible, and in some segments the Law should be more precise.

FIC RECOMMENDATIONS

- It is necessary to harmonise the Serbian law on the protection of whistleblowers with the EU Whistleblower Directive and supply chain regulation in order to ensure adequate protection of whistleblowers in accordance with the best European practices. This includes revising and amending the law to cover all types of embezzlement, including those within supply chains. To that end, it is necessary to better prescribe the criteria that must be

met by the application channels, specifically ensure better application security, as well as the introduction of deadlines that are currently missing, such as the deadline by which the procedure should be completed. It would also be useful to ensure the possibility of reporting not only within the legal entity to which the report refers, but also that it is possible to do it through external institutions. It can also be added that the EU Directive has an established system where competent authorities can determine the priority of the case, thereby ensuring more efficient operation of the system.

- Increase cooperation with international organisations to ensure compliance with global whistleblower protection standards. Sharing experiences and best practices can help improve the national framework for whistleblower protection.

- Continue to educate judges, prosecutors, lawyers and employed persons about the rights and obligations under the Whistleblower Protection Law, as well as the best practices related to the protection of whistleblowers, thereby making the legal provisions clearer and more understandable. This will contribute to a better understanding of the law and increase confidence in the system.

- Update existing reporting mechanisms to cover all the needs of the new legislation and enable reporting of irregularities within supply chains. This includes technical and logistical support for establishing and maintaining the reporting system.

- Provide appropriate technical and logistical support for the establishment and maintenance of the application system. This implies the development of digital platforms that enable simple and safe reporting of irregularities where any person in the most efficient manner, in plain language can make a claim.