Compliance Activities against Fraud and Corruption in Hungary

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Abstract

The risk of corporate wrongdoing in Central and in Eastern Europe – mainly of fraud and corruption – is considerably higher than in the West. To prevent, uncover, and handle such deeds, corporate compliance activities offer an effective solution in the most general respects. It is already evident that the handling of such activities within the traditional national criminal framework (investigative authority, prosecution, and criminal court) is becoming a less and less reassuring prospect. Accordingly, this study offers an overview of compliance activities such as forensic data analytics and whistleblowing systems.

Keywords: *compliance, corruption, fraud, forensic data analytics, whistleblowing*

1. Introduction

Due to the unique features of the market environment, the risk of corporate wrongdoing in Central and in Eastern Europe – mainly of *fraud and corruption* – is considerably higher than in the West. According to estimates by corporate wrongdoing experts, the damage caused by corporate crime on the global level reaches 5% of companies' revenue[1]. This number on its own should justify that companies undertake effective countermeasures against wrongdoings, whether using the instruments of criminal law or otherwise. According to a recent Hungarian survey, however, 94% of responding companies had no "ethical infractions" in the last 5 years. Only of 53.9% of participating Hungarian corporations had a so-called Code of Ethics, though the international rate for this is 81%. 28.5% have a dedicated channel (ethics hotline), while globally this index is at 60%. Only 18% of companies check for conflicts of interest. The risk of data loss, which is made increasingly dire by technological development, is recognized less and less by Hungarian companies each year. While in 2012 36.4% of

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[1] See Association of Certified Fraud Examiners: Report to the Nations on Fraud and Abuse. 2016 Global Fraud Story (source: http://www.acfe.com/rttn2016/about/executive-summary.aspx).

corporate chiefs thought that an existing employee will never leave with the company's data assets, this same metric in 2016 was 61.3%. This change goes against formal logic. The numbers above show that the standards for combating corporate wrongdoing in Hungarian-owned companies do not correspond with international norms. It would then logically follow that there is a distinct possibility that the relative loss in turnover due to these abuses also exceeds the global average. This would indicate the presence of a whole host of disadvantages, the identification of these, however, is beyond the scope of our present effort.

Taking into account the facts above, companies operating in our geographic region should pay special attention to the creation and operation of efficacious compliance control environments and frameworks, and to the implementation of these into their corporate cultures[2]. This is a challenge for companies, because owners and upper management are, according to the axioms of economics, of a profit-oriented persuasion[3]. The positive effects of compliance controls (including whistleblowing regimes) on profitability, however, can only be felt in the medium and long term, and it is very difficult to measure them (how can something which has not occurred be measured?). The introduction of compliance controls could potentially have a negative effect on corporate productivity, because it requires expertise, human resources, technical support, and training – and these have significant costs. Besides, it is quite probable that a company suffers a competitive disadvantage due to its ethical operation as the controls introduced make it stiffer, more bureaucratic, and slower to react. A company's functioning, due to these very measures, can become more expensive, while its competitors are unburdened by these added encumbrances. An even more difficult scenario involves the loss of business opportunities due to ethical functioning – for example, if a company is no longer willing to engage in bribery or offer its potential business partners lavish gifts or luxurious trips.

2. The use of compliance devices

Fundamentally, the academic consensus is that in a globalized world ethical business operation and the development of an effective corporate culture against fraud, bribery, and other corrupt activities will eventually lead to a competitive advantage, because these nurture trust in third-parties – and even in partners who, as a result of globalization, function in completely different geographic or social milieus[4]. As a result, external trust can be described as a corporate *value* which is difficult to cultivate but easy to destroy with any acts which raise questions about a company's general ethical approach.

It is counter-intuitive for the upper management to admit that, on the long term, it is practical to conduct business in an ethical mode, as they have their performance evaluated based on profit obtained on short periods. It is thus unsurprising that 42% of

[2] For a more detailed account, see W. Brammertz, *Risk and Regulation*, Journal of Financial Regulation and Compliance, 2010/1, pp. 46-55.

[3] It may be said that the economic sector can be described along the lines of a binary value system of profitability or unprofitability.

[4] Cf. J.A. Petrick, J.F. Quinn, *The Challenge of Leadership Accountability for Integrity Capacity as a Strategic Asset*, Journal of Business Ethics 2001/3, pp. 331-343. P. Verhezen, P. Morse, *Consensus on Global Governance Principles?* Journal of Business Ethics, 2009/1, pp. 84-101.

financial leaders believe unethical business conduct is acceptable to reach targets[5]. Explaining clearly these complicated correlations to senior executives and getting them to commit to and maintain corporate compliance even under considerable daily pressure are the greatest challenges for compliance professionals.

Encouraging and conserving commitment among senior leadership, hiring compliance experts, creating and operating internal regulatory environments, periodical risk analysis, implementing whistleblowing systems, and appropriately training staff are all traditional *compliance tools*. Though these are effective instruments on their own, *IT support* plays an increasingly essential role in the field. Without proper IT support for compliance processes, companies' complex business processes are more and more difficult to oversee. This boosts the odds of abuse. It should be noted at this point that a well-constructed compliance control environment with apt IT support helps a company protect its financial assets and data, as well as safeguard its operational continuity against *external* (cyber-attacks) and *internal threats* (employee data theft).

3. Forensic data analytics (FDA) tools as compliance activity

So-called *forensic data analytics* (FDA) tools are able to process enormous quantities of information from multiple sources. They can reveal and display patterns and trends that hint at suspicious activities or indicate abuse, and which would remain concealed if we could only rely on human expertise or analytical ability[6]. Even the very existence of such systems can have a *general preventive effect*, because they can dissuade external or internal perpetrators from executing their plans. Simultaneously, early detection in the initial stages of abuse is likewise an important element of prevention, as it can minimize damage. FDA systems allow the documentation of misconduct in a manner that can later aid legal (even criminal) proceedings. Optimally, an effective corporate compliance environment can discourage wrongdoing in a general preventive manner, or abuses can be discovered early, e.g. via whistleblowing or FDA instruments. This is followed by a professional *internal investigation*, the goal of which is to process the affair and document evidence (perhaps with the use of FDA) in a manner that preserves evidential force. When a criminal complaint is made, the authorities can essentially receive a complete case, and this can already be observed at today's more mature organizations. Presenting such a complete portfolio can make criminal proceedings faster, more effective, and, notably, more prolific. It also minimizes the strain on authorities' resources.

A well-functioning compliance environment amplifies the general preventive character of criminal law, and it aids in the timely discovery of criminal activities. What is more, it can facilitate internal investigations, as well as the preservation and use of evidence for criminal proceedings. This is possible if companies, at least on the middle-management level,

1. acting on their own initiative or perhaps at the behest of some additional legislative encouragement, invest in compliance functions, including FDA tools;

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[5] EY Global Fraud Survey 2016 (source: http://www.ey.com/gl/en/services/assurance/fraud-investigation---dispute-services/ey-global-fraud-survey-2016).

[6] EY Global Forensic Data Analyitics Survey 2016 (source: http://www.ey.com/gl/en/services/assurance/fraud-investigation-dispute-services/ey-shifting-into-high-gear-mitigating-risks-and-demonstrating-returns).

2. establish clear whistleblowing rules within the legal framework, encourage the use of the system, evaluate risk regularly (including through the use of data-based and FDA assessments);

3. invest in both human and technological resources to combat cyber-attacks;

4. carry out due diligence prior to establishing business relationships; and

5. establish and maintain compliance awareness at all levels of the company through uniquely-tailored training.

4. Compliance and Criminal Law

In a point of view of Criminal Law, we have to say, that misconduct committed within and for the benefit or detriment of a company or (public) institution, though it often falls under one of the offenses contained in Act C of 2012 on the Hungarian Criminal Code ("Criminal Code"), rarely results in criminal proceedings. This does not mean that such forms of conduct occur only sporadically. Investigating and proving these crimes, however, is unusually difficult[7], and, as such, latency in this area is especially high[8].

Nonetheless, these activities' global pervasiveness and the social and economic damage they cause justify why some of the issue's legal ramifications and its institutional framework should be explored, along with certain expected (or, at least, desirable) developmental trends. An outcome of globalization is that companies operate across borders. This means that the foundations of a Hungarian approach cannot be established without analyzing foreign legal instruments (mainly from the English-speaking world) or literature concerned with the practical and academic aspects of the topic.

It is already evident that the handling of such activities within the traditional national criminal framework (investigative authority, prosecution, and criminal court) is becoming a less and less reassuring prospect. The causes for this can be found in the previously-mentioned interdisciplinary nature, the axioms of the globalized economic system, and the phenomenon of a quasi-permanently unfolding digital revolution. In today's so-called Big Data Era, when neither borders nor technology can block the flow of data or halt its processing, it is difficult to fight crime with traditional tools. That in increasingly information-based societies a company's greatest assets are information and data – which, due to the digital revolution, can be easily appropriated using illegal tools – only expands this problem.

We agree that corporations' interests are threatened not just by behaviors that fall within the scope of criminal law but also by those in the purview of other legal fields, as well as potentially lawful but morally objectionable acts. To prevent, uncover, and handle such deeds, *corporate compliance activities* offer an effective solution in the most general respects. In the interest of brevity, this study will concentrate on wrongdoing that can be classified as criminal, a preventive strategy that is a subcategory of compliance known as *whistleblowing*, and possible reactions to misconduct.

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[7] J. Pascoe, M. Welsh, *Whistleblowing, Ethics and Corporate Culture: Theory and Practice in Australia*, Common Law World Review, 2011/2, p. 146.

[8] D. Lewis, A.J. Brown, R. Moberly, *Whistleblowing, its Importance, and the State of Research.* In: D. Lewis, A.J. Brown, R. Moberly, W. Vandekerckhove (eds): *International Handbook on Whistleblowing Research*, Edward Elgar Publishing, Cheltenham, 2014. p. 33.

Today, corporate *internal investigations* or the Hungarian *employers' whistleblowing system* may be placed among the traditional institutions of criminal law or, if viewed chronologically, *before* these. We will examine how general prevention strategies can succeed within a company through responsible corporate governance and the establishment and operation of an appropriate compliance control environment, and what responsibilities corporate leadership has to owners and, potentially, other stakeholders[9] in this respect.

5. The concept and types of whistleblowing as a compliance activity

In 2014, a cross-continental group of researchers released the *International Handbook on Whistleblowing Research.* It defines a whistleblower as "an organizational or institutional 'insider' who reveals wrongdoing within or by that organization or institution, to someone else, with the intention or effect that action should then be taken to address it"[10]. However, this general definition, according to many, could require further categorization. It could also potentially be amended with several substantive elements.

For instance, Daniel Westman delineated three subcategories: active, passive, and embryonic whistleblowing. *Active* whistleblowing refers to individuals who make an actual disclosure, while *passive* covers employees who refuse to carry out their employer's orders when they believe these to be illegal. *Embryonic* whistleblowing can be both active and passive, though the individual is removed from his or her position prior to disclosure due to a lack of trust[11].

Robert Vaughn distinguishes between *legal* and *illegal* whistleblowing[12]. The basis of this differentiation – less candidly referred to as *direct* or *indirect* whistleblowing – is whether the addressee of the disclosure has a right to initiate proceedings or sanction. An example of a situation where this is not the case occurs when whistleblowing is conducted through the media[13].

Amanda Leiter divides whistleblowing into *hard* and *soft* variants. Under the second category she includes employee declarations which do not conflict with any company rules, legal or moral, though, according to the discloser's position, they refer to arbitrary or reckless activities[14].

Finally, the most commonly used categorization fits whistleblowing into *internal* and *external* forms. The former contains the case of when the disclosure takes place within one of the company's internal forums. The external whistleblower, however, divulges to an entity independent from the company. We can also speak of a *mixed* whistleblowing system if the announcer can turn to both internal and external forums[15].

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[9] In the English-speaking world, stakeholders are persons or groups to whom a company owes responsibility, though they cannot be regarded as owners.

[10] D. Lewis, A.J. Brown, R. Moberly, *op. cit.*, p. 33.

[11] D.P. Westman, *Whistleblowing: The Law of Retaliatory Discharge*, The Bureau of National Affairs, Washington DC, 1991. pp. 19-20.

[12] R.G. Vaughn, *The Successes and Failures of Whistleblower Laws,* Elgar Publishing, Cheltenham, 2012. p. 11.

[13] J. Fisher, E. Harshman, W. Gillespie, H. Ordower, L. Ware, F. Yeager, *Privatizing Regulation: Whistleblowing and Bounty Hunting in the Financial Services Industries*, Dickinson Journal of International Law, 2000/3, p. 128.

[14] A.C. Leiter, *Soft Whistleblowing*, Georgia Law Review, 2014/2, p. 436.

[15] S.M. Kohn, *Concepts and Procedures in Whistleblower Law,* Quorum Books, Wesport, Connecticut, 2001. p. 23.

The cradle of (modern) whistleblowing is undoubtedly the United States. The construction of a veritably modern federal whistleblowing regime was initiated by the 1978 Civil Service Reform Act (CSRA) and the Whistleblower Protection Act (WPA) from 1989[16]. Following the Enron and WorldCom scandals, a new milestone was reached with the Sarbanes-Oxley Act of 2002 (SOX)[17]. The Dodd-Frank Wall Street Reform and Consumer Protection Act (commonly referred to as the Dodd-Frank Act), which amended the SOX Act, was passed in 2010 following the 2007 start and 2008 global deepening of the Great Recession. After this, finally the Council of Europe began planning whistleblowing recommendations in 2010 too. As a part of this effort, a commission explored the subject, chiefly by reviewing US regulations. Based on the commission's report – which gave a concrete definition of whistleblowing – the Committee of Ministers passed Recommendation CM/Rec(2014)7. This document called for the creation of relevant regulations within member states, and it noted that these regulations should give due consideration to human rights. After this, especially due to the Edward Snowden affair, events started to speed up. Two reports were completed in January and May 2015, respectively, to facilitate safeguards for whistleblowers. These recommended setting up whistleblowing regimes in both the public and private sectors, the establishment of independent authorities to monitor these regimes, and taking steps to ensure the protection of whistleblowers who are exposed to domestic persecution[18].

The European Court of Human Rights (ECtHR), too, had to address issues related to whistleblowing, albeit in an employment law context. In *Heinrich v Germany*, the applicant worked in a nursing home of which the Berlin government was a majority owner. Downsizing caused the staff to be overwhelmed, and the proper quality of care could no longer be maintained. In 2004, the discloser, via a legal adviser, notified the management in writing that this was the case and called on them to remedy the situation. The leadership refused, and in December 2004 the lawyer made a criminal complaint against the company. In January 2005, the nurse was laid off – supposedly due to a periodically recurring illness. The nurse attacked the dismissal in a labor court. The investigation of the nursing home was restarted in February 2005 and the caretaker cited as a witness, but the probe was halted in May. The Berlin Labor Court ruled that employment could not be considered terminated, because it was ended illegally. The appellate court, however, struck down the first instance decision because it viewed the employee's reaction as disproportionate vis-à-vis the harm which effected it. Thus, the nurse was not exercising a constitutional right but breaching a duty arising from employment. The Federal Labor Court similarly rejected the appeal, as did the Federal Constitutional Court. Subsequently, the nurse turned to the ECtHR, which ultimately validated her claim and stated that the discloser utilized a constitutional right when reporting misconduct at her place of employment (and acted, fundamentally, as a whistleblower would). Based on this decision, public interest disclosures can now be fitted into the catalog of human rights[19].

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[16] N. Keith, S. Todd, C. Oliver, *An International Perspective on Whistleblowing* Criminal Justice, 2016/3, p. 15.

[17] For a Hungarian account of the Enron scandal, see A. Kecskés, *Az Enron botrány és az üzleti jog rohadt almái,* [The Enron scandal and the rotten apples of business law] Magyar Jog, 2008/6, pp. 429-440.

[18] G. Schirmer, S. Coliver, *Resolution 2060 on Improving the Protection of Whistle-blowers*, International Legal Materials, 2015/6, p. 1131.

[19] *Heinrich v. Germany*, Application No. 28274/08, 21 July 2011.

4. The Example of Hungary

While examining the relevant Hungarian rules, it becomes evident that its roots reach back to the middle of the socialist period – to the time of the so-called "soft dictatorship." Then, after a brief legislative detour, the lawmaking initiatives of the most recent period opened a fundamentally new chapter in the story of reporting abuses.

The nearly analogous – although not entirely accurate – Hungarian terminology for whistleblowing may be the categories of *public interest discloser* or *company discloser* (*közérdekű bejelentő* and *vállalati bejelentő,* respectively*).* The first appearance of these was a legislation in effect from 1977 until Hungary's 2004 EU accession: *Act I of 1977 on Public Interest Disclosures, Recommendations, and Complaints*. According to § 4(1) of this law, "a public interest disclosure highlights circumstances, errors, or deficiencies the remedying of which serves the interests of the community or society as a whole. It draws attention to behaviors or facts which are illegal, contrary to socialist morals or the principles of socialist economy, or otherwise offend or endanger the interests of society." The addressee can be a state agency, a company, an institution, an association, an oversight body etc. (Act I of 1977, § 2). It must be highlighted that this law already emphasized the protection of the discloser, and, as such, allowed anonymous reports. If, however, it became clear that the discloser acted in bad faith, his or her identity had to be revealed [Act I of 1977, § 15(3)].

The next stop was *Act CLXIII of 2009 on the Protection of Fair Procedure and Related Amendments*. This was not at all akin to the previous regulation, but, as the relevant parliamentary memorandum states, it utilized certain solutions from the US. It can be emphasized, that the law's general Explanatory Memorandum referred to, on the one hand, the Hungarian Constitutional Court's position on fair trial [primarily to decisions 6/1998. (III. 11.) and 14/2004. (V. 7.)]. On the other, it mentioned *expressis verbis* the *whistleblowing phenomenon*, which it defined as "an employee of an organization, who sets aside his/her personal interests, acts to avert harm (prevention) threatening others (the community in a narrow or broad sense) by revealing an irregularity (misconduct) detected at his/her place of employment". The law prescribed a procedural fine ranging from 50,000 to 500,000 HUF for offenders (or, in the case of legal persons, from 100,000 to 5 million HUF) [Act CLXIII of 2009 § 11(1)]. For a person making an unfounded claim, the sanction may be between 50,000 and 300,000 HUF (a falsely disclosing organization can receive a charge stretching from 200,000 to 1 million HUF). Furthermore, echoing its American forerunner, § 16(1) of the 2009 Act states that "if the Authority imposed a fine due to a failure to fulfill the requirement of fair procedure, the Authority's president may award the discloser 10% of the fine". As it can be discerned from the quote above, § 4 of the law intended to establish a Public Procurement and Advocacy Authority (according to the preamble to increase efficiency in combating corruption), but this never materialized.

Primarily because of the legal guarantee it offers, it is necessary to highlight Article XXV of the Fundamental Law of Hungary, according to which "everyone shall have the right to submit, either individually or jointly with others, written applications, complaints or proposals to any organ exercising public power."

The current legal environment was created by *Act CLXV of 2013 on Complaints and Public Interest Disclosures* ("the complaint law"), which came into force on 1 January 2014. This law can be described as one enabling disclosures in both the state and private sectors. According to the definition in § 1(3), a disclosure "calls attention to a

circumstance the remedying or discontinuation of which is in the interest of the community or the whole society. A public interest disclosure may also contain a proposal." The public interest disclosure must be evaluated within thirty days [complaint law, § 2(1)].

Moreover, the general Explanatory Memorandum – in addition to referring to the above-quoted passage from the Fundamental Law – also notes that "[a] characteristic of the new regulation is that it supports anti-corruption measures in the private sector in addition to those in the public sector, and thus it allows organizations to formulate distinct procedures for handling disclosures and to enter into agency contracts with lawyers for the receipt of disclosures (discloser protection lawyer)." The goal of this legal institution is for "the principal (typically a business organization) to engage the discloser protection lawyer within a tripartite legal relationship to receive in its name disclosures relating to the principal either from its employees or external partners" (detailed Explanatory Memorandum).

A similarly novel solution is the creation of w*histleblowing systems* sketched out in §§ 13-16, in connection with which the law "records the most important guarantees for the operation of the system (finality, entry into a data protection register, the prohibition on processing of special personal data, the requirements for terminating data handling, notification of employees, and containment of misuse). That legal persons in a contractual relationship with the employer (subcontractors, suppliers) can also make reports in the whistleblowing system is an important requirement, as this aids the more comprehensive information of management" (detailed Explanatory Memorandum). What is more, § 14(6) decrees that "persons having a legitimate interest in making a whistleblower report or in remedying the conduct concerned" may also make reports.

5. Significant theoretical and practical issues in whistleblowing

In this section, we will highlight the most notable characteristics that must be considered during the legal regulation of whistleblowing and the creation of whistleblowing systems. Our primary aim is not to evaluate the Hungarian legal environment, however, but to present common questions within a broader perspective.

5.1. The first obvious question which may arise concerns *who* is entitled to make a disclosure. According to the main rule, natural persons (or the representatives of legal persons) employed or in other employment-oriented legal relationships with the company have standing. Thus, according to general opinion, a personal qualification is necessary. In addition to the above-referenced § 14(6), a clause which expands the category of qualified persons, it may also be possible to make an exception based on *chronology:* On the basis of an overriding interest, it is possible for a person previously employed by the company to disclose, too, though his or her legal relationship might have been terminated already at the time of the disclosure.

5.2. Dividing whistleblowing according to its object is primarily based on whether the misconduct to be disclosed is legally or morally objectionable. If the issue in question happens to be unlawful, it must be decided whether the given activity or omission violates or compromises criminal law rules or, perhaps, another field of law (e.g. regulatory offences). According to the correct position, which we already quoted, public interest disclosures may also play a role in the previously-mentioned cases, as well as in civil law-related detriments such as negligence or violations of personal rights (e.g.

those concerning reputation). Nonetheless, the most common forms of misconduct pertain to malfeasance in connection with financially valuable data. The future of whistleblowing will, increasingly, lie in criminality of this nature[20].

5.3. The establishment of a whistleblowing system, as demonstrated by the effective Hungarian legal environment, can occur within both the private and public sector. In connection with the latter, the only criteria that must be noted is that such a system, due to parallelism, may sometimes conflict with disciplinary regulations in a given field, thus special attention must be paid to harmonization[21]. This can be particularly relevant in policing[22].

5.4. When speaking of the direction of disclosure, we intend to differentiate between whether it should occur internally within the company's own regime or if it is to be targeted towards an external forum. Academic literature indicates that both solutions can have drawbacks. If the only available option is external whistleblowing, this can easily turn into fertile ground for retaliation against the discloser. On the other hand, if the opportunity is exclusively external, it can serve as a path for a disappointed employee's vendetta, perhaps after failing to receive a much-anticipated promotion. This can result in a damaged reputation, which is an essential factor in determining a company's competitiveness[23]. Keeping this in mind, our position is that a combination of internal and external whistleblowing may be the most effective solution. The Hungarian complaint law is thus especially forward-thinking in its introduction of a "middle man", the discloser protection lawyer.

5.5. If the internal investigation conducted as a result of whistleblowing yields suspicions of a crime, the question arises whether the company has a *duty to make a criminal complaint*. § 16(3) of the complaint law states a fairly clear rule pertaining to this point: "If the investigation of the conduct reported by the whistleblower warrants the initiation of criminal proceedings, arrangements shall be taken to ensure that the case is reported to the police". Our attitude in relation to the appropriateness of this solution is highly skeptical. Although § 171(1) of Act XIX of 1998 on Criminal Procedure states that "[a]nyone may lodge a complaint concerning a criminal offence," the main rule in Hungary's system of criminal law is that an absolute duty to this effect only exists under exceptional circumstances. Consequently, establishing this duty in connection with misconduct of *any severity* hardly seems justified. On our part, to increase the efficiency of investigations, *we would endorse legislative amendments that would allow exceptions from the ex officio principle by considering it an impediment to punishability if a lesser non-violent offence was uncovered through an employer's whistleblowing system, if it can be handled "in-house", and if a criminal procedure in connection with the matter does not serve a pressing social interest.* It should be noted that the timeliness of criminal proceedings would also improve if, for example, a small-scale workplace embezzlement did not necessarily warrant the use of the state's punitive powers.

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[20] E.S. Callahan, T.M. Dworkin, D. Lewis, *Whistleblowing: Australian, U.K., and U.S. Approaches to Disclosure in the Public Interest*, Virginia Journal of International Law, 2004/3, pp. 903-904.

[21] Cf. e.g. Act CXCIX of 2011 on Public Officials §§ 155-159

[22] E.g. chapter 15 of Act XLII of 2015 on the Service Status of Professional Members of Law Enforcement Agencies ("Hszt.")

[23] M.E. King, *Blowing the Whistle on the Dodd-Frank Amendments: the Case Against the New Amendments to Whistleblower Protection in Section 806 of Sarbanes-Oxley*, American Criminal Law Review, 2011/3, p. 1483.

5.6. The complaint law states already in its preamble that the protection of public interest disclosers must be ensured as much as possible. Furthermore, § 11 includes the guarantee that all measures disadvantageous for the whistleblower and arising as a result of the disclosure will be unlawful (notwithstanding cases of bad faith), even if they would otherwise be legal. § 12(3) extends forms of assistance contained in Act LXXX of 2003 on Legal Aid to whistleblowers as well.

It must be noted that § 257 of Act IV of 1978 (the previous Criminal Code) criminalized the initiation of any disadvantageous measures against a person making a public interest disclosure up until 31 January 2013 (the offence of "persecution of a public interest discloser"). This act is now only a regulatory offence (as per § 206/A of Act II of 2012 on Regulatory Offences, Regulatory Offences' Procedure and the Regulatory Offence Registry System). Determining which field of law should criminalize an act dangerous to a given society is fundamentally a legislative prerogative. Instead of undertaking such an endeavor, our position is that it is efficiency which must be increased in relation to both criminal and petty offenses.

5.7. This is a widespread solution in English-speaking countries, and, as we have seen, Hungarian lawmakers have also toyed with the idea of introducing whistleblower rewards in 2009, thus providing motivation for disclosures[24]. Due to present circumstances in Hungary, however, the introduction of such a system presumably will be delayed – at least until whistleblowing regimes are so common and developed that it can be assumed that the majority of claims are authentic reports of abuse and not simply venal and baseless allegations.

5.8. To conclude this section, we may declare that a position, which would not only support penalizing courses of action against whistleblowers (either with tools meant for felonious or petty offenses) but would also create the possibility – if a *sui generis* case is established and in addition to liability for damages – of sanctioning bad-faith whistleblowers involved in severe instances of abuse, would be a respectable one to hold.

6. Summary and final recommendations

Our present study offered guidance on how to counter corporate wrongdoing more effectively. Finally, we must attempt, as completely as possible, to answer our initial question: How can corporate compliance activities be made more effective?

1. Our position is that the proposition, which states that at least some companies must be *legally required* to set up and run whistleblowing systems, needs to be considered and debated carefully. It is possible that a threshold could be established based on revenue or the number of employees, and the establishment of a system could be mandated once this threshold is reached. Another workable approach would be to compel all businesses that do not have SME status[25].

2. It is also worth considering making certain *benefits* conditional on the establishment of control systems, such as tax breaks (e.g. on corporate and dividend tax) or more lenient legal consequences if a wrongdoing done for the company's benefit (or in its name) is uncovered.

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[24] For the latest American solutions, see K. Hastings, *Keeping Whistleblowers Quiet: Addressing Employer Agreements To Discourage Whistleblowing*, Tulane Law Review 2015/2, pp. 497-500.

[25] SMEs are micro, small and medium-sized enterprises. Support for their development is detailed in § 2 of Act XXXIV of 2004.

3. It seems unavoidable to have to contemplate the popularization of disclosure and *best practices from the United States or Western Europe.* Even the best-constructed whistleblowing system will remain ineffective if it is not used by the employees.

4. To provide legal guarantees, it is necessary to legally prescribe an internal regulatory requirement relating to internal investigations[26].

5. Furthermore, we recommend that if an internal investigation leads to suspicions of illegal activity, *it should not be generally mandatory to make a criminal complaint.* In practice, it is often the difficulties associated with criminal proceedings (witness duty, legal and travel costs) that deter corporate leadership from establishing a whistleblowing system. The desired goal of legal policy would be advanced if managements could decide freely whether to report certain crimes – though, naturally, such liberties would solely exist in relation to non-violent offenses and only below a certain monetary threshold. Nonetheless, such a measure would increase the number of companies operating control mechanisms, and these companies would be more likely to communicate the regime's usefulness to their employees.

6. Today, rules of criminal law and procedure allow for more exceptions from the principle of *ex officio.* Keeping this in mind, it would not be unreasonable to suggest that punishment for certain low-value financial misdeeds by an employee at the expense of the company should be *conditional* on a criminal complaint being made by the company[27]. For example, it would be practically convenient for both companies and the authorities to avoid prosecuting a minor embezzlement case uncovered by an internal investigation to which an employee confessed and for which he or she perhaps even already compensated for.

7. Finally, our stance is that the key to all problems arising in connection with whistleblowing systems is *the individual*. Therefore, it is useful for increasing awareness and developing conscious employee behaviors to have annually recurring and mandatory training sessions, as these can provide up-to-date information on the current legal environment and continuously-changing corporate mechanisms.

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[26] E.g. in a manner analogous with § 24(3) of Act CXII of 2011 on the Right of Informational Self-Determination and on Freedom of Information

[27] For a high number of crimes, this possibility would be automatically precluded due to the communal nature of the legal object. Such would be the case for the offence of corruption.

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