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## WHAT DOES THE NEW PUBLIC TRANSPARENCY ACT MEAN FOR THE BUSINESS?

Public consultations are under way regarding the **draft act on public transparency** developed by the Intelligence Service Coordinator, Mariusz Kamiński. The proposed act requires **all medium and large enterprises, i.e., all enterprises employing at least 50 persons or whose trade volume exceeds EUR 10 million, to introduce and apply effective internal anti-corruption procedures.**

The planned **effective date of the new regulations is 1 March 2018.**

**From the point of view of your business activity, the proposed changes mean that it will be necessary to:**

- implement or at least adapt internal anti-corruption solutions to the new requirements and ensure a system of control to demonstrate that those solutions are applied in practice and are effective;
- introduce a system of regular training programs for employees and collaborators regarding anti-corruption rules and procedures;
- regularly check the effectiveness of anti-corruption solutions, and to introduce an adequate level of documenting those solutions (proper audit and controlling processes) – in the event of an accusation as to their effectiveness or illusory nature (e.g., appointing internal boards for their application, such as compliance committees/boards);
- introduce an effective whistleblowing system and procedures for internal auditing;
- introduce a system for verifying business partners in terms of their reliability and credibility;
- verify existing contracts and forms of agreements for compliance with the requirements under the new regulation (in particular, introducing anti-corruption clauses);
- set proper standards for internal and external communication;
- prepare the organization and train employees for a Central Anti-Corruption Office (CBA) inspection (e.g., an inspection simulation).

## FINANCIAL PENALTIES FOR NON-COMPLIANCE WITH THE ACT

Non-compliance with the obligation to introduce and apply internal anti-corruption procedures will involve a **risk of a CBA inspection, a financial penalty of up to PLN 10 million and a 5-year ban on seeking public procurement**

**contracts.** The initiation of a CBA inspection and penalties provided for in the Act will also involve **reputational risk.**

Penalties will be imposed by way of decisions of the President of the Competition and Consumers Protection Office (UOKIK) issued at the request of the Head of CBA if a **CBA inspection** conducted at an enterprise **demonstrates that internal anti-corruption procedures were not applied or were ineffective or illusory.** For a CBA inspection to be conducted, it will be sufficient that charges of a corruption crime are raised against a person acting in the name or on behalf of that undertaking – regardless of the final outcome of the criminal proceedings.

**It will be very important to introduce effective anti-corruption policies – a prompt reaction to irregularities may protect an undertaking from liability under the Act. The draft act provides that the Head of CBA may decide not to demand penalties if proceedings concerning a given corruptive action were already initiated based on an earlier notification by the undertaking.**

## PUBLIC PROSECUTION'S PROTECTION FOR WHISTLEBLOWERS

The draft Act provides for public prosecution's protection for whistleblowers reporting a suspicion of a crime of corruption perpetrated by their employer or business partner to law enforcement agencies. For businesses this means a serious reputational risk even if information reported by a whistleblower proves to be untrue.

The status of a whistleblower is to be granted by a public prosecutor with the consent of the person concerned. A condition for granting protection will be reporting **credible information on suspected crime** such as corruption, bribery, influence peddling, fraud, material value invoice fraud, money laundering and inaccurate documentation.

**The whistleblower status will be available,** among others, to an employee, a collaborator under a mandate agreement or another civil law agreement, an undertaking that has a contractual relationship with the entity whose activities are reported.

The public prosecutor will inform the employer or the entity whom reported information concerns of granting a whistleblower status.

The whistleblower status involves **special protection for the person** such as:

- it will be prohibited to terminate a contract with such person (unless terminated upon the parties' agreement) or to change the conditions of such contract to less favorable (in particular, as regards remuneration, place or time of work);
  - for a period of one year from the termination or completion of criminal proceedings initiated against the perpetrator by a final and non-appealable decision;
  - without the public prosecutor's consent expressed at the request of the whistleblower's employer or business partner.

**If you would like to receive additional information on the draft act or a detailed review of the impact the act may have on your business once it comes into effect, please do not hesitate to contact us.**

## COMPLIANCE TEAM AT DZP



**Dr Anna Partyka-Opiela**  
Senior Associate  
Head of Compliance Team  
[anna.partyka-opiela@dzp.pl](mailto:anna.partyka-opiela@dzp.pl)  
+48 661 363 505



**Anna Hlebicka-Józefowicz**  
Associate  
[anna.hlebicka-jozefowicz@dzp.pl](mailto:anna.hlebicka-jozefowicz@dzp.pl)  
+48 571 207 060