





# Implementation of the transposed national laws aligned with the EU Whistleblowing Directive in Southeast European EU Member States

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Southeast Europe Coalition on Whistleblower Protection 2025\*

The Southeast Europe Coalition on Whistleblower Protection is a network of NGOs, media organisations and activists that specializes in protecting whistleblowers, strengthening whistleblowers' legal rights and protection, and promoting whistleblowing as a crime-fighting and anti-corruption tool. Founded in 2015, the Coalition is comprised of about NGOs, journalism groups, research institutions and independent experts from the Southeast and Eastern European countries. In the framework of its ongoing work to fill in the gaps in whistleblower laws, polices and regulations in order to align them with the most advanced international standards, the Coalition promotes the transposition of the EU Directive on Whistleblowing through research, monitoring, and advocacy.

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### TABLE OF CONTENT

LIST OF ACRONYMS	4
FOREWORD	5
INTRODUCTORY CHAPTER	8
Context	8
Main Findings	
RECOMMENDATIONS FOR EU MEMBER STATES	
RECOMMENDATIONS FOR EU CANDIDATE COUNTRIES	14
BULGARIA	16
EXECUTIVE SUMMARY	16
Introduction	
TRANSPOSED NATIONAL LEGAL FRAMEWORK UNDER FURTHER DEVELOPMENT	18
Regulatory framework	
PRACTICAL IMPLEMENTATION	23
OBLIGED ENTITIES	24
REVIEW OF AVAILABLE STATISTICAL DATA	24
THE OMBUDSMAN'S ROLE IN PROTECTING WHISTLEBLOWERS AND COMPLIANCE WITH THE LEGAL FRAMEWORK	27
Case Law	28
QUALITY OF TRANSPOSED LEGISLATION AND ITS IMPLEMENTATION	30
Conclusions	32
RECOMMENDATIONS	33
References	35
CROATIA	37
EXECUTIVE SUMMARY	37
Introduction	38
IMPLEMENTATION OF THE TRANSPOSED NATIONAL LAW AS PER THE COMPLIANCE TOPICS	39
Conclusions	49
RECOMMENDATIONS	52
References	53
GREECE	54
EXECUTIVE SUMMARY	54
Introduction	55
IMPLEMENTATION OF THE TRANSPOSED NATIONAL LAW AS PER THE COMPLIANCE TOPICS	57
Conclusions	64
RECOMMENDATIONS	66
References	68
ROMANIA	69
EXECUTIVE SUMMARY	69
Introduction	
IMPLEMENTATION OF THE TRANSPOSED NATIONAL LAW AS PER THE COMPLIANCE TOPICS	
Conclusions	
RECOMMENDATIONS	
References	81

#### LIST OF ACRONYMS

**CPDP** Commission for Personal Data Protection

E.A.D National Transparency Authority

FSA Romanian Financial Supervisory Authority

H.P.A High Public Administration (H.P.A.)

Law on the Internal Control System in the Public Sector

MPU Ministry of Justice and Public Administration

NIA National Integrity Agency

NPP Nuclear Power Plant

R.R.O Responsible Reporting Officer

UIN Unique Identification Number

**SLAPP** Strategic lawsuits against public participation

**ZZPN** Whistleblower Protection Act

#### **FOREWORD**

As coordinator of the Southeast Europe Coalition on Whistleblowing, I am pleased to introduce this crucial publication on the implementation of transposed national laws aligned with the EU Whistleblowing Directive in Southeast Europe. This report arrives at a pivotal moment, as countries across the Southeast Europe region and the Western Balkans in particular grapple with the complexities of translating a landmark piece of European legislation into tangible protections for those who dare to speak truth to power.

The EU Whistleblowing Directive, adopted in 2019, held the promise of a new era of transparency, accountability and corruption fighting across the EU member states and those aspiring to join the EU. It recognized that whistleblowers – individuals who risk their careers and reputations to expose wrongdoing – are essential allies in the fight against corruption, fraud, and other threats to the public interest. By mandating comprehensive legal frameworks to protect these courageous individuals from retaliation, the Directive sought to unleash the power of free speech and empower citizens to hold their governments and institutions accountable.

However, the path to the transposition and implementation has been far from smooth. As this report makes clear, many EU member states in Southeast Europe, missed the initial deadline for transposing the Directive into national law. This delay underscores the challenges of overcoming entrenched interests and bureaucratic inertia in the pursuit of greater transparency. Even now that laws have been passed, the critical question remains: are these laws truly fulfilling the vision of the EU Directive? Are they providing effective protection for whistleblowers in practice, or are they weakened by loopholes and gaps that render them largely symbolic?

This report seeks to answer these questions by examining the experiences of Bulgaria, Croatia, Greece and Romania - four countries that have now enacted whistleblower protection laws. Through detailed analysis and case studies, it assesses the strengths and weaknesses of these legal frameworks, identifies key challenges in implementation, and offers concrete recommendations for improvement.

Several themes emerge from this analysis. First, while many of these countries have made progress in aligning their laws with the EU Directive on paper, significant gaps remain in practical implementation. Insufficient awareness among institutions and the general public, limited confidence in reporting mechanisms, reluctance to report for fear of retaliation, and inadequate penalties for violations continue to undermine the effectiveness of whistleblower protection in the region.

Second, the report highlights the importance of pre-emptive protections. Laws should be designed to shield whistleblowers from retaliation *before* it occurs, rather than relying solely on reactive measures after the fact. This requires a shift in mindset, from viewing whistleblowers as troublemakers to recognizing them as valuable assets who play a critical role in safeguarding the public interest.

Third, the report underscores the need for independent and well-resourced authorities to oversee the implementation of whistleblower protection laws. These authorities must have the power to investigate reports of retaliation, impose meaningful sanctions on perpetrators, and provide effective remedies for victims.

Finally, the report emphasizes the importance of learning from the mistakes of others. As six countries in the region - Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia, and Serbia - are now in the process of assessing their practices drawing on the implementation of existing legislation and developing and planning to, or already in the process of updating their whistleblower protection laws, they have a unique opportunity to draw lessons from the experiences of their neighbours and create truly effective legal frameworks.

This report offers concrete recommendations for both EU member states and candidate countries, including:

- Establishing administrative systems that provide rapid protection for whistleblowers, without requiring them to file lawsuits.
- Banning retaliation and putting employers on notice that it is illegal and punishable by criminal and civil penalties.
- Granting victimized employees automatic compensation based on a binding formula.
- Subjecting those who commit egregious acts of retaliation to increased penalties and professional bans.
- Focusing on pre-emptive protections, so employees who report wrongdoing do not have to "prove" they are whistleblowers.
- Making it as easy as possible for victimized employees to be reinstated and made whole.
- Giving a designated public authority the independent power to pre-emptively protect a person from being fired or immediately reinstate and compensate a victimized employee.

Ultimately, the success of whistleblower protection in Southeast Europe will depend on a sustained commitment of the government institutions to transparency, accountability, and the rule of law. It will require a change in culture, where speaking out against wrongdoing is not only tolerated but actively encouraged and celebrated.

As we move forward, let us remember that protecting whistleblowers is not just a legal obligation - it is a moral imperative. It is about creating a society where truth prevails, justice is served, and the public interest is protected.

I recommend this report, along with a previous report produced by the Coalition on the same topic in 2023 to policymakers, civil society organizations, and all those who are working to build a more transparent and accountable Southeast Europe.

Arjan Dyrmishi

Coordinator, Southeast Europe Coalition on Whistleblowing

#### INTRODUCTORY CHAPTER

#### Mark Worth,

Executive Director, Whistleblowing International

#### Context

When the European Union in 2019 ordered all EU countries to pass a whistleblower protection law, this reform held the potential to be one of the broadest expansions of free speech in Europe in decades. It also marked a complete reversal, as EU officials said as late as 2013 that the issue was nowhere on their agenda

Passing new laws was a very slow process in most EU countries, with nearly every country missing the December 2021 deadline and the European Court of Justice issuing fines against some countries totalling tens of millions of euros. The EU countries profiled in this report - Bulgaria, Croatia, Greece and Romania - are no exception, with all of them missing Brussels' deadline by at least four months.

Now that Bulgaria, Croatia, Greece and Romania have passed whistleblower laws and set up putative mechanisms to handle whistleblower cases, this report focuses on how closely these laws fulfil the vision of the EU Directive. Protecting people who report crime and corruption – people who have done nothing wrong themselves – has proven to be a very steep learning curve. This should be a straightforward and uncontroversial procedure: preventing crime witnesses from losing their jobs and being sued. It remains to be seen whether these four countries will perform better than a majority of countries who laws are weakened by gaps and grey areas.

# MAIN FINDINGS



#### **Main Findings**

#### **BULGARIA**

Bulgaria's law took effect in 2023 and placed the Commission for Personal Data Protection in charge of implementing and enforcing it. In 2024, 40 were made within workplaces and 101 were made to the Commission, 87 of which its closed on various legal grounds. The system faces several obstacles, including insufficient awareness among institutions and the general public, limited confidence in reporting mechanisms, reluctance to report for fear of retaliation, and inadequate penalties for violations.

According to the most complete information available, five people have requested and received retaliation protection from the Commission. In a case about alleged violations at Kozloduy Nuclear Power Plant, a whistleblower and a family member reportedly received protection, though it is not known what type of protection was granted and how effective it has been, if at all. The Ombudsman has asked the Commission to provide opinions on four other complaints.

Courts have contributed by revoking improper practices or confirming proper decisions by lower courts. This includes declaring retaliation null and void, and ruling on claims for compensation for damages. The Supreme Court of Cassation ruled in July 2024 that people should be receive "a prompt, certain and effective remedy" for retaliation.

#### **CROATIA**

Croatia's law took effect in 2022, improving on its previous law from 2019. Measures have been enhanced for identity protection, court protections, damages, free legal aid and emotional support. The Ombudsperson supports people who make reports to either internal or external reporting channels.

Challenges persist, particularly in handling real-life cases. Knowledge and understanding among employers and employees needs improvement, including the scope of the law and reporting procedures. Caseworkers in the workplace, who are crucial for internal reporting, often lack adequate resources, training and secure facilities to perform their duties effectively. Many internal reports are deemed unfounded or not covered by the law, highlighting the need for greater clarity and awareness raising.

Enforcement is also a concern, with slow judicial procedures and a lack of dedicated court tracking mechanisms. This impedes data collection and may discourage whistleblowers from coming forward. Free legal aid access remains restricted by financial eligibility criteria, hindering protection.

The Ombudsperson received 38 reports in 2023, most of which were declared unfounded. Some cases, typically about public procurement irregularities or abuse of power, were well-founded and forwarded to prosecutors and other public authorities. The Ministry of Justice and Public Administration says there have been 14 cases of protection issued by courts.

#### **GREECE**

Greece's law took effect in 2022 and placed the National Transparency Authority in charge of receiving external reports, regardless of their nature the organization involved. It is responsible for receiving and processing reports within three months in typical cases or six months when more work is justified. The agency is required to have monitoring measures to assess the accuracy of reports, and respond to them through internal investigations, prosecutions, recovery of misused funds or other appropriate legal remedies. It may refer reports to other authorities for investigation and ensure proper follow-up, and must inform whistleblowers investigation outcomes.

Certain industries face stricter obligations due to their potential impact on public welfare. Companies operating financial services and markets, transportation and environmental protection, as well as any industries that could pose a significant risk to public health or the environment, must designate a whistleblower caseworker regardless of their workforce size.

Public disclosures are justified if an employee reasonably believes a violation poses an immediate risk to the public interest, constitutes an emergency, carries the potential for irreversible harm, or if reporting to the National Transparency Authority or Public Prosecutor's Office could expose him or her to retaliation.

There is no known public information about the number and type of reports and retaliation complaints have been filed so far under Greece's new law.

#### **ROMANIA**

Romania's law took effect in 2022 following disagreements and delays. Thus far, weaknesses have emerged. Key concerns include a lack of clear legal immunity for whistleblowers, absence of meaningful interim relief, a requirement for employees first to make reports within the workplace, and a three-month waiting period before being able to make a public disclosure.

Some companies have misinterpreted the law's requirements and there are concerns about administrative burdens and costs, especially for small businesses. There is a risk that financial assistance will not be available for whistleblowers if a court

11

rejects their challenge to retaliation measures. Consequently, whistleblowers remain vulnerable to retaliation, without a reliable safety net in court.

In 2025 two employees of the Financial Supervisory Authority faced retaliation after reporting alleged irregularities about the private pension system. One employee warned managers, but the agency began a disciplinary investigation against him, led by the very superiors he had reported. The other employee, after reporting misconduct to Parliament, was informed by colleagues that a disciplinary investigation against her was being prepared.

Several recent court decisions show mixed results: an order to transfer an employee was suspended until a final ruling, in a rare example of interim relief; a court overturned an employer's actions against an employee, but the person was dismissed anyway; after a reinstated employee was dismissed again, a court overturned the second dismissal; and a court provided strong interim relief by suspending an employee's dismissal and reinstating the person.

#### **Recommendations for EU Member States**

Though their laws largely comply with the EU Directive on paper, public officials in Bulgaria, Croatia, Greece and Romania can take many concrete steps to make sure their new laws do their intended job of protecting employees from retaliation in real-life cases. Some of these measures, actually, should be taken to compensate for gaps and shortcomings in the Directive itself.

Among the most important measures, the four countries should:

- establish an administrative system in the executive branch that would protect people rapidly through a simple unbureaucratic process, without the need for victimized employees to file lawsuits. If a person is not satisfied with the outcome of the administrative system, he or she then could seek judicial relief.
- protect people before they suffer retaliation, to prevent victimization from occurring in the first place. This could be achieved by banning retaliation and putting employers on notice that retaliation is illegal and punishable by criminal and civil penalties. If an employee is retaliated against or threatened, he or she immediately would be reinstated or shielded from retaliation.
- grant victimized employees automatic compensation if they are fired, demoted, suspended or otherwise retaliated against. This should be based on an official, binding formula that calculates lost wages and other damages.
- subject people who commit egregious or repeated acts of retaliation to increased criminal and/or civil penalties, and to professional bans depending on the sector in which they work.
- not overpromise the effectiveness of the system by announcing to citizens
  that they will be protected from retaliation if they make a report. No
  whistleblower system is perfect far from it, and especially not a new
  untested one. It is irresponsible to make promises to the public that cannot
  be met.
- not create any barriers or discourage people in any way from *reporting misconduct anonymously*. This is by far the most effective way to shield a whistleblower from exposure, reprisals and threats.

#### **Recommendations for EU Candidate Countries**

Six countries now are developing new or updated whistleblower protection laws that comply with the Directive. This is part of a series of anti-corruption reforms required in order for these countries to join the EU: Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia and Serbia. We strongly recommend that these countries learn from the well-documented mistakes made in other countries that have led to thousands of people worldwide having no recourse against retaliation.

Among the most important measures, the six countries should:

- focus on *pre-emptive protections*, so employees who report crime or corruption and who have done absolutely nothing wrong by doing so do not have to "prove" they are whistleblowers and "prove" they should be protected. Protection should be evident and automatic.
- make it as easy as possible for an employee who have been fired or otherwise victimized to be reinstated and otherwise made whole. This should be prompt if not immediate and not require the person to file a lawsuit or appear in court for any reason.
- give a *designated public authority* the independent power to pre-emptively protect a person from being fired or immediately reinstate and compensate a victimized employee.

# COUNTRY CHAPTERS





#### Maria Yordanova

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#### **Executive summary**

Effective mechanisms for protecting and supporting whistleblowers are crucial to combating fraud, abuse, and corruption in all forms. This overview of Bulgaria's whistleblower protection legislation and its implementation during 2023-2024 assesses legal developments, regulatory measures, practical enforcement, and challenges in fostering a culture of whistleblowing.

In Bulgaria, the legal framework for whistleblowing continued to evolve in 2023-2024 at both the legislative and regulatory levels.

Since coming into force in 2023, the Protection of Persons Reporting or Publicly Disclosing Information on Breaches Act (Whistleblowing Act) has been amended three times to improve its provisions and bring it more in line with the requirements of the EU Directive 2019/1937. A fourth draft amendment aims to address the European Commission's criticism of compliance gaps and to fulfil Bulgaria's commitments under the National Recovery and Sustainable Development Plan. The main proposed changes include extending whistleblower protections to additional categories of persons, removing the restrictive time limits for whistleblowing, increasing penalties for non-compliance, etc., while maintaining the inadmissibility of anonymous whistleblowing.

The Commission for Personal Data Protection (CPDP) has been designated as the central external authority for whistleblowing in Bulgaria. It has developed key regulations, including guidelines for receiving and processing reports, maintaining whistleblowing registers and ensuring legal compliance. By the end of 2024, new regulatory acts issued by the CPDP were incorporated into the initial regulatory framework and key methodological guidelines for all obliged entities. It regularly publishes clarifications on its website regarding the application of the Whistleblowing Act. The CPDP has also launched the "SIGNAL" electronic whistleblowing reporting and tracking system.

Most obliged entities in the public and private sectors have now set up internal whistleblowing channels and provide guidance on reporting procedures, handling reports, and protective measures. These channels have begun receiving and

processing reports. However, early observations indicate that the external reporting channel is used more frequently, despite efforts to encourage the use of internal mechanisms. 36 reports were submitted through the external channel in 2023, rising to 101 in 2024. Internal reporting mechanisms recorded a modest 40 cases in 2024. Many reports submitted through the external channel have been dismissed primarily because they did not fall within the scope of the law (no public interest violations were reported), have been redirected to the Anti-Corruption Commission, or pertain to the Personal Data Protection Act. Some cases have led to on-site inspections, while others have resulted in administrative penalties for legal violations.

The case law in this area is still in the development stage, but it is beginning to gain momentum.

In conclusion, while Bulgaria has made progress in whistleblower protection, the system is still evolving. It faces several obstacles: insufficient awareness among the institutions and the general public, limited confidence in reporting mechanisms, reluctance to report for fear of retaliation, and inadequate penalties for violations. A culture of silence continues to prevail over a culture of whistleblowing. The number of reports filed, and decisions made indicate that whistleblowing in Bulgaria remains under-utilized, with employees showing limited trust or interest in the system. This overview highlights the need for stronger protections and an improved culture of trust and transparency.

#### Introduction

This chapter provides an update on whistleblower protection legislation in Bulgaria and tracks its implementation over the period 2023-2024. It is based on a desk research and analysis of the evolution of the initially adopted Protection of Persons Reporting or Publicly Disclosing Information on Breaches Act<sup>1</sup> (Whistleblowing Act) and regulations, as well as the establishment of whistleblowing channels and their practices to date. Sources for the report also include primary data from the relevant institutions responsible for implementation and oversight, institutional and other reports, internet websites and relevant media articles. A review of the initial case law was carried out.

The study also aims to serve the advocacy objectives of further improving the legal framework and practice and promoting a whistleblowing culture in the country, as well as disseminating lessons learned to support the transposition process in the Western Balkan countries.

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<sup>&</sup>lt;sup>1</sup> Adopted on 27 January 2023, promulgated in State Gazette No. 11 of 2 February 2023, with effect from 4 May/17 December 2023.

Whistleblower protection is a relatively new and very dynamic area, and in order to overcome time constraints, it will be necessary in the future to periodically review the legal and institutional infrastructure, as well as good and bad practices.

# Transposed national legal framework under further development

During the period 2023-24, the legal framework for whistleblowing continued to evolve.

#### THE WHISTLEBLOWING ACT

The Act was amended three times in the first year of its enactment, 2023. It was noted that despite the three subsequent amendments to the Act (SG No. 65, 84 and 88 of 2023). The three successive amendments introduced editorial changes to better reflect the context of the Directive and other national laws. Some texts of the general provisions, the exceptions to the scope of the Act and the personal scope are clarified and the procedural powers of the CPD as an external whistleblowing authority are detailed. In terms of improving the protection of whistleblowers, the new provisions introducing the application of corrective/interim measures to stop or prevent retaliation against a whistleblower are important.

However, there are still gaps in the full transposition of Directive (EU) 2019/1937. A proposed fourth amendment was published for public consultation in November 2024.<sup>2</sup> The purpose of the proposed amendments is to respond to the criticism of the European Commission (EC) regarding the non-compliance of the law with the requirements of the Directive and its full implementation, as well as the need to implement the commitments made by the Republic of Bulgaria in the National Recovery and Sustainable Development Plan. The same draft law (with very few, mostly technical, exceptions) was submitted to the newly constituted 51st National Assembly in December 2024.<sup>3</sup>

The motives to the draft amendments states that they aim to address some of the weaknesses of the current law, including bringing it more fully into line with the Directive. Among the expected outcomes, they point to the achievement of effective protection for a wider range of whistleblowers and a workable transparency and accountability mechanism for local authorities and local government.

**-** | 18

<sup>&</sup>lt;sup>2</sup> https://www.strategy.bg/publicconsultations/View.aspx?lang=bg-BG&Id=8668.

<sup>&</sup>lt;sup>3</sup> https://www.parliament.bg/bg/bills/ID/165864

Some of the main changes proposed:

Firstly, to amend Art. 4, point 3 in two respects -

- Replace the current wording "persons practicing as lawyers" with the wording "the confidentiality of conversations and correspondence between lawyers and their clients" in order to effectively narrow the scope of cases where the law will not apply on the grounds of professional secrecy.
- Delete the second part of Art. 4, p. 3, namely that this law shall not apply in cases "for which there is a legal obligation of professional secrecy".

This has been criticized by the Supreme Bar Council as being imprecise in terms of language and content. They consider that the proposed limitation of the exceptions to the scope of the law is a violation of the legal professional privilege protected by the Directive and a violation of the protection of legal and professional secrecy in general <sup>4</sup>

Other comments<sup>5</sup> received through the consultation portal suggest a redrafting of the entire text of Article 4, aiming to provide greater clarity and certainty for whistleblowers and obliged entities in dealing with reports, and to provide incentives to overcome the culture of silence and reluctance among potential whistleblowers. It is pointed out that Bulgarian legislation currently deals with more than 40 types of secrets, which are described in as many other legal acts, often not in great detail. In this context, it is proposed that the law should apply to whistleblowing and to cases of various forms of professional and occupational secrecy, with the exception of the explicit prohibitions mentioned therein, namely in cases concerning:

- the rules applicable to public contracts awarded in the fields of defense and national security where these fall within the scope of Article 346 of the Treaty on the Functioning of the European Union;
- the protection of classified information within the meaning of the Protection of Classified Information Act;
- information which is protected by the confidentiality of conversations and correspondence between lawyers and their clients;
- the confidentiality of health information within the meaning of the Health Act;
- the confidentiality of court hearings;
- the rules of criminal proceedings.

<sup>4</sup> (see: Opinion of the Supreme Bar Council, published on: <a href="https://www.strategy.bg/publicconsultations/View.aspx?lang=bg-BG&Id=8668">https://www.strategy.bg/publicconsultations/View.aspx?lang=bg-BG&Id=8668</a>.)

 $<sup>^5</sup>$  See all opinions published on:  $\underline{\text{https://www.strategy.bg/publicconsultations/View.aspx?lang=bg-BG\&Id=8668}}$ 

Secondly, the scope of reporting persons to whom protection is granted under the Act would be further extended by the proposed amendment to Article 5, para 2, points 6 and 7 and would include:

- a person whose employment is about to commence or a person who is about to enter into a contract for the provision of services,
- an employee and any other person where the information is obtained in the context of an employment, service or other professional relationship which has ended at the time of the alert or public disclosure. It provides for extending the scope of personal protection (as in the Directive) not only to employees but also to certain categories of service providers.

This proposed change was generally supported by those consulted.

Thirdly, to delete Article 9 (2), which introduces the legally and practically unjustified two-year limitation period for cases in which proceedings can be brought under the Whistleblowing Act.

This proposal is one of the most needed. There is no such absurd limitation in the Directive and the political purpose of the original wording is obvious. This makes the outcome of the vote in the Parliament unpredictable, despite the broad public support for the proposal. Retaining the two-year time limit would further hamper whistleblowing and its effectiveness.

Fourthly, the draft differentiates some of the penalties for non-compliance with the provisions of the law.

However, the experts consulted consider that the draft does not address one of the main shortcomings, namely the low level of penalties provided for in Chapter Four. The alternative proposals are to increase the penalties, with much wider ranges between the maximum and minimum value of the fines imposed, in order to allow the administrative sanctioning body to make a differentiated assessment of the unlawful event. Increasing the fines for willful non-compliance with legal obligations would also have a disciplinary effect and would be an additional prerequisite for the effectiveness of the law, which is currently lacking.

Fifthly, the draft proposes also amendments to the Local Self-Government and Local Administration Act towards the creation of a Code of Ethics for Municipal Councilors. In the opinion of the various experts consulted, the proposed amendments are inconsistent with the scope and other provisions of the amended Act and constitute an unacceptable legislative technique. It is proposed that the proposals be considered and included in a separate draft amendment to the Local Government and Local Administration Act.<sup>6</sup>

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<sup>&</sup>lt;sup>6</sup> See https://www.strategy.bg/publicconsultations/View.aspx?lang=bg-BG&Id=8668

The draft, as it stands, does not provide for the removal or relaxation of the impossibility of anonymous whistleblowing where the whistleblowing contains sufficient information that a crime has been committed, and the person has concerns for their (and their colleagues') safety. Positive public support for such a change is evident. A survey commissioned by the influential NGO <u>Bulgarian Institute for Legal Initiatives (BILI)</u> in 2021 as part of the implementation of the Directive shows that the possibility of anonymous whistleblowing is supported by over 70% of Bulgarian citizens. More than 80% would feel somewhat more protected in the event of whistleblowing if such a mechanism existed.<sup>7</sup>

In the current version of the Whistleblowing Act, the regulation of the public disclosure of information on irregularities is still not regulated in detail. On the one hand, because of Bulgarian society's deep-rooted mistrust of many of its institutions, various forms of public disclosure are very often the preferred form of civil reaction to injustices and violations. On the other hand, it is the public disclosure of information that allows for the subsequent protection of those who have provided information, even anonymously. Last but not least, more clarity is needed on the channels for public disclosure and the role of the Commission for Personal Data Protection in monitoring them and responding to information disclosed through them. However, the proposed fourth amendment does not address this issue either.

It is not yet clear what the fate of the proposed amendment will be - when and if it will be voted on, in what version, etc.

#### Regulatory framework

Following the adoption of the Whistleblowing Act, the Commission for Personal Data Protection (CPDP), the designated central authority for the receipt and processing of external reports, was able to create, in a very short period of time, all the necessary conditions in the national system of obliged entities in the public and private sectors, competent authorities and whistleblowers to ensure the implementation of the Act and the achievement of its objectives. Information and clarifications were regularly published on the Commission's website. In the first months of 2023, the necessary regulations and key methodological guidance for all obliged entities were prepared. From that time until the end of 2024, new legal acts issued by the CPDP have been added to the regulatory framework:

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<sup>&</sup>lt;sup>7</sup> See <a href="http://www.bili-bg.org/cdir/bili-bg.org/files/WHISTLEBLOWING\_SOCIOLOGY\_090621.pdf">http://www.bili-bg.org/cdir/bili-bg.org/files/WHISTLEBLOWING\_SOCIOLOGY\_090621.pdf</a>

<sup>&</sup>lt;sup>8</sup> In addition, the CPPD has published on its website (https://cpdp.bg/en/explanatory-materials-on-the-whistleblowers-protection-act/) explanations of some of the main issues related to the application of the Whistleblowing Act. These explanations are regularly updated and expanded, considering both the questions received from citizens and obliged entities and the development of practice in the application of the law. There are also detailed answers to frequently asked questions about the Whistleblowing Act (https://cpdp.bg/en/frequently-asked-questions-on-the-wpa/).

 Methodological Guidelines № 1 on receiving, registering and handling reports received at the obliged subjects under the Protection of Persons Reporting or Publicly Disclosing Information on Breaches Act<sup>9</sup>

#### The Guidelines are intended to:

- Support the activities of the obliged subjects, including the employees/units designated by them, who are in charge of receiving, registering and handling reports;
- Establish uniform rules and criteria for the performance of the functions of receiving, registering and handling reports received through an internal reporting channel at the obliged subject;
- Prohibit inconsistent practices and provide predictability in the application of the legal framework for the protection of persons who report or publicly disclose violations.
- Ordinance No. 1 of 27 July 2023 on the keeping of the register of reports under Article 18 of the Whistleblowing Act and on the referral of internal reports to the CPDP<sup>10</sup>
  By virtue of the Ordinance the Commission shall develop a model registry and approve a model form for receipt of reports and post it on its website for free use by all entities required by law. The procedure for keeping the register shall be determined by an internal act of the obliged entity in implementation of this Regulation and the methodological guidelines of the CPDP.
  - Methodological Guidelines No. 2 on the submission to the Commission for the Protection of Personal Data of the required statistical information under the Whistleblower Protection Act<sup>11</sup>

These Guidelines specify the periods and deadlines for the submission of documents and aim to:

<sup>&</sup>lt;sup>9</sup> https://cpdp.bg/en/wp-content/uploads/sites/4/2023/12/WPA\_Guidelines\_27\_07\_2023\_En.pdf, adopted by a decision of the CPDP under protocol No. 28/27.07.2023

 $<sup>^{10}</sup> https://cpdp.bg/\%D0\%BD\%D0\%B0\%D1\%80\%D0\%B5\%D0\%B4\%D0\%B1\%D0\%B0- \\ \underline{\%E2\%84\%96-1-\%D0\%BE\%D1\%82-27-\%D1\%8E\%D0\%BB\%D0\%B8-2023-\%D0\%B3- \\ \%D0\%B7\%D0\%B0-$ 

<sup>&</sup>lt;u>%D0%B2%D0%BE%D0%B4%D0%B5%D0%BD%D0%B5%D1%82%D0%BE-</u>%D0%BD%D0%B0-%D1%80%D0%B5<u>%D0%B3</u>/, effective from 04.08.2023

<sup>&</sup>lt;sup>11</sup>https://cpdp.bg/%d0%bf%d1%80%d0%b0%d0%b2%d0%bd%d0%b0-%d1%80%d0%b0%d0%bc%d0%ba%d0%b0/, adopted by decision of the CPDP under protocol No 45 /13.12.2023

- Support the activities of obliged entities and their designated officers/report processing units in providing statistical information to the CPDP;
- Establish uniform rules and criteria for the reporting and aggregation of statistical information;
- To create a uniform practice in the submission of statistical information and to establish controls exercised by the CPDP in the implementation of whistleblower protection legislation.

As a general rule, the statistical information shall be submitted electronically by each obligated entity independently (not jointly) through the Commission's dedicated information system for the registration and processing of whistleblower reports ("SIGNAL"). <sup>12</sup> Obligated entities should not submit statistical information to the CPDP if no reports have been received during the reporting period.

#### **Practical Implementation**

#### THE COMMISSION FOR PERSONAL DATA PROTECTION (CPDP)

The CPDP, as Bulgaria's external whistleblowing channel, continues its regular activities in 2023-24 to discuss the application of the legal and regulatory framework and inter-institutional interaction, e.g. issues such as the handling of whistleblowing cases, the consideration of sector-specific legislation, the application of corrective measures, the provision of information by the competent authorities on the handling of whistleblowing cases referred to them by the CPDP, the interaction between the CPDP and the Anti-Corruption Commission, etc.

The Commission's website<sup>13</sup> publishes explanations of the basic issues of the application of the Whistleblowing Act, which are constantly updated and supplemented, taking into account both the questions received from citizens and obliged subjects and the development of practice in the application of the legal framework. It also provides detailed answers to frequently asked questions concerning the legal provisions on the protection of whistleblowers.<sup>14</sup>

<sup>&</sup>lt;sup>12</sup> Statistical information on the reports should be submitted by 31 January of the year following the relevant reporting period, in accordance with the Statistical Information Submission Form. For the 2024 reporting period, the information is currently being processed and is not yet available.

<sup>&</sup>lt;sup>13</sup> https://cpdp.bg/en/explanatory-materials-on-the-whistleblowers-protection-act/

<sup>&</sup>lt;sup>14</sup> https://cpdp.bg/en/frequently-asked-questions-on-the-wpa/

#### **Obliged entities**

The overwhelming majority of obliged entities have set up internal whistleblowing channels within the legal timeframe. More or less detailed explanations on how to report and deal with submitted reports, as well as information on protective measures, are published on their websites. The level of details provided varies, with some companies providing very comprehensive explanations and others providing less detailed guidance.

Despite the relatively established legal and institutional infrastructure for whistleblowing, a review of practice in 2023-2024 shows that very few whistleblowing reports have been made through internal and external channels in Bulgaria to date.

#### Review of available statistical data

#### NUMBER OF WHISTLEBLOWER REPORTS

According to the statistics reported to the European Commission<sup>15</sup> and additional data provided by the CPDP, a total of 36 whistleblower reports were received through the external channel during the period 4 May - 31 December 2023, all of which were dealt with by the competent authorities. Of these, one inspection was closed as the report was forwarded to the relevant District Prosecutor's Office for investigation and is now being monitored by the European Public Prosecutor. Another inspection was closed as a result of court proceedings, while one inspection resulted in sanctions. The number of closed investigations by area of violation is as follows: one case involved a violation affecting the EU's financial interests as defined under Article 325 TFEU and the relevant Union measures, while two cases involved violations outside the material scope of Directive (EU) 2019/1937.

Although no official statistics have yet been published for 2024, information is available in the CPDP at the end of each calendar year on the reports received through internal channels via the Unique Identification Number (UIN)<sup>16</sup> generated by the designated officials on behalf of the entities obliged under the Act. The CPDP provides information on the reports submitted through internal channels for 2024, a total of 40, based on the UINs generated. In terms of the reports submitted in 2024 via the external channel, a total of 101 reports were received, for which the

<sup>&</sup>lt;sup>15</sup> The CPDP is required to provide information to the European Commission in response to a questionnaire, which only covers irregularities under the Directive and not also under national law.

<sup>&</sup>lt;sup>16</sup> Transposition of the EU Whistleblowing Directive in Bulgaria, in: Transposition of the EU 2019/1937 directive on whistleblower protection in Southeast Europe, Challenges and lessons learned, p.29, <a href="https://see-whistleblowing.org/wp-content/uploads/2023/07/Transposition-of-the-EU-20191937-directive-on-whistleblower-protection-in-Southeast-Europe.pdf">https://see-whistleblower-protection-in-Southeast-Europe.pdf</a>, p.29.

appropriate legal action was taken within the CPDP's jurisdiction in a timely manner, including an analysis of their regularity and admissibility. For 87 of the reports received, the CPDP decided to close the case on the relevant legal grounds, as follows:

- In the case of 18 reports, the CPDP took its decision following an inspection by the competent authority and a report prepared by the External Reporting Channel Directorate.
- In the case of 44 reports, the CPDP decided to close the case because the reports did not fall within the scope of the law (no public interest violations reported).<sup>17</sup>
- In the case of 13 reports of alleged violations of privacy and personal data protection, it was decided to close the case under the Whistleblowing Act and to open a case under the Personal Data Protection Act.
- In the case of 12 reports, the CPDP decided to refer the case to the Anti-Corruption Commission.

For 10 reports, the investigation is still ongoing within the three (or six) month period. For 4 of the reports, on-the-spot checks were carried out as follows: in Kozloduy (Nuclear Power Plant, Kozloduy), village of Yana (Metropolitan Waste Treatment Plant), Sofia (Sofia Municipality and its 10 municipal enterprises, University of National and World Economy). 18

#### DATA ON THE CPDP'S ADMINISTRATIVE-PENAL ACTIVITIES

From the enactment of the Whistleblowing Act until the end of 2024, four administrative proceedings have been initiated. Four administrative offence notices were issued and served, and four administrative liability proceedings were initiated under the Administrative Offences and Penalties Act, three of which were still pending at the end of 2024. At the beginning of 2024, a penal decree was issued and entered into force (based on administrative criminal proceedings initiated at the end of 2023). Two fines totalling BGN 10000 (ten thousand leva) were imposed for

interest cannot and should not be filed and considered under the Whistleblowing Act. The closure of these cases by the CPDP is therefore justified.

<sup>&</sup>lt;sup>17</sup>The majority of these reports most often concerned private rights and interests in the areas of labor law and the civil service (which they implicitly concern), and did not concern an affected public interest. Although Directive (EU) 2019/1937 allows Member States to include additional areas for reporting breaches (such as the inclusion of labor law and legislation relating to the performance of a civil service under Article 3, para 2, points 2 and 3 of the Whistleblowing Act), this should consider the objective of the Directive: protection of the public interest. For this reason, reports of interpersonal complaints arising in the context of work that does not generally affect the public

<sup>&</sup>lt;sup>18</sup> Information provided at the request of the CSD in an official letter from the CPDP dated 31 January 2025 and updated in subsequent emails until mid-February 2025.

violations of the Whistleblowing Act. 80% of the fines imposed were paid, totalling BGN 8 000 (eight thousand leva).

#### COMPLAINTS TO THE OMBUDSMAN

Since the entry into force of the Whistleblowing Act until the end of 2024, the Commission has been asked by the Ombudsman of the Republic of Bulgaria to provide opinions on 4 complaints filed with the Ombudsman regarding the application of the Whistleblowing Act. In response, detailed opinions were provided by the CPDP. <sup>19</sup>

#### **COURT CASES**

In 2024, the Commission in its closed meetings adopted 62 decisions related to the implementation of the legal framework, all of which are subject to appeal by interested parties in accordance with the Code of Administrative Procedure. In 2024, 6 court cases were initiated against decisions of the CPDP, of which 5 resulted in a final judgment in favor of the Commission, as the court ruled that the decision in question had been issued by a competent authority in the prescribed form, without any material breach of the rules of administrative procedure and in accordance with the substantive provisions and the purpose of the law. The case is pending in the second instance.

#### PROTECTION MEASURES

Five persons, at their request, were granted protection by the CPDP against retaliation. <sup>20</sup> For example, in one of the requests, after the information about violations at Kozloduy Nuclear Power Plant (NPP) was made public, the person who disclosed the information submitted a request for protection under the Whistleblowing Act to the CPDP. The request for protection was made in relation to possible retaliation by the person's employer, Kozloduy NPP, alleging possible consequences as a person who publicly disclosed information about violations at Kozloduy NPP. Protection was also requested for a family member of the whistleblower. The CPDP granted protection under the Whistleblowing Act to both the whistleblower and the third party named in the report.

<sup>19</sup> Ibid

<sup>&</sup>lt;sup>20</sup> Ibid

# The Ombudsman's role in protecting whistleblowers and compliance with the legal framework

The Ombudsman of the Republic of Bulgaria is empowered by the Whistleblowing Act to conduct an external audit of the CPDP. The inspections include an examination of the compliance with the deadlines for processing reports, the quality of the interaction between the CPDP and the other competent authorities, the compliance of the registers with the law and other aspects of the CPDP's activities that make it possible to assess its effectiveness in processing reports. In addition, the Ombudsman receives and investigates complaints against the CPDP from whistleblowers, including complaints about failure to protect or breach of confidentiality of information contained in the CPDP. To this end, a new Directorate for the Audit of Whistleblowing and Whistleblower Protection has been established within the Ombudsman's Office and the necessary infrastructure, including rules for independent external auditing, methodology, etc., has been put in place.

The first audit of the external whistleblowing channel took place in December 2023. <sup>21</sup> In the Annual Report on the Ombudsman's Activities in 2023, there is a subchapter entitled "Audit of the activity of working with complaints and protection of complaints", which contains a description of the Ombudsman's powers and the findings and conclusions of the first audit. It contains detailed information on the implementation of the legal framework. <sup>22</sup> The audit concluded that the CPDP has a well-established capacity to deal with administrative sanctions, but that human resources need to be increased and strengthened in order to effectively protect whistleblowers.

Based on the findings and conclusions, a number of recommendations have been formulated:

- Strengthen the internal procedures and/or methodology for the examination of reports;
- Improve the effectiveness of cooperation and interaction between the Commission and other competent authorities and organizations and the timing of notification;
- Continue to protect the confidentiality and self-identification of the whistleblowers in the "Signal" register and its use for the autonomous random distribution of reports and keep a separate register for the random distribution and for the administrative sanction notices issued.

<sup>&</sup>lt;sup>21</sup> The report for 2024 has not been prepared yet and there is no information on the last audit. There has been no ombudsman since last spring, and subsequently the Deputy Ombudsman resigned, leaving both positions vacant.

<sup>&</sup>lt;sup>22</sup> https://www.ombudsman.bg/bg/p/godishen-doklad-za-deynostta-na-ombudsmana-p-581 https://www.ombudsman.bg/en/p/annual-report-of-activities-summary-2023-581

 Undertake a wider public awareness campaign on how to obtain support measures and on the modalities and procedures for obtaining immediate protection.

#### Case Law

The case law is still in its infancy but is gaining momentum.

There were already proceedings under Art. 25, para 2 of the Whistleblowing Act, on appeals against decisions of the CPDP under the Code of Administrative Procedure. <sup>23</sup>

In turn, the highest judicial bodies contribute to the implementation of the protection of whistleblowers by annulling the wrong practice or confirming the correct practice of the lower courts. This includes declaring the retaliation against whistleblowers "null and void", and ruling on claims for compensation for pecuniary and non-pecuniary damages suffered as a result of a breach of the prohibition of retaliation. With regard to the application of the protection under the Whistleblowing Act, the jurisprudence of the Supreme Court of Cassation has been established, as set forth in Order/Ruling No. 3727 of 24.07.2024 in Case No. 2512/2024 of the Third Chamber of the Supreme Court of Cassation, which has been fully followed by other Chambers in their subsequent cases. <sup>25</sup>

According to the case law, "it is clarified that the protection of persons thus established at national level under Article 5 of the Whistleblowing Act should be considered and assessed in the light of, and in accordance with, the principles set out in recitals 1 to 110 of Directive 2019/1937. As the Directive has been duly transposed, the implementation of the rights of persons under Article 5 of the Whistleblowing Act has been introduced into domestic law. In so far as the person concerned is afforded a prompt, certain and effective remedy - by being given the opportunity to seek a declaration that the employer's retaliatory action against him in the form of a dismissal order is invalid and to be reinstated in the position he

28

<sup>&</sup>lt;sup>23</sup> Ruling No 11161 of 8/07/2024 of the Sofia Administrative Court in administrative case No 3772/2024 and similar.

<sup>&</sup>lt;sup>24</sup> See: Ruling No 3727 of 24/07/2024 of the Supreme Court of Cassation in a private civil case No 2512/2024,

Ruling No 11589 of 30/10/2024 of the Supreme Administrative Court in administrative case No 8572/2024,

Ruling No 9871 of 19/09/2024 of the Supreme Administrative Court in administrative case No 3639/2024

<sup>&</sup>lt;sup>25</sup> See Ruling № 6062. Sofia, 30/12/2024 of the Supreme Court of Cassation, 3rd civil division, CIVIL DIVISION, 1st chamber, annulling the ruling of the appellate court (Gabrovo District Court), available at: <a href="https://www.vks.bg/pregled-akt.jsp?type=ot-spisak&id=D0CCAAC91D0A149EC2258C0A00302E28">https://www.vks.bg/pregled-akt.jsp?type=ot-spisak&id=D0CCAAC91D0A149EC2258C0A00302E28</a>

occupied before that order was invalidated by the provisions of Article 33(4) and (5) of the Special Act - the court cannot refuse that remedy". <sup>26</sup>

The case law confirms that the Whistleblowing Act is special in relation to the Labor Code because it provides remedies applicable to the specific situation of retaliatory dismissal of a person who is proven beyond a reasonable doubt to have been a whistleblower. It also concludes that claims brought on this specific ground are not inadmissible and should be decided by a court of competent jurisdiction.

In the years 2023-2024, the number Strategic lawsuits against public participation (SLAPP) cases has increased in Bulgaria, as well as in a number of other European countries. 27 These are usually unfounded and disproportionately high claims, mostly for defamation, against journalists, media, activists, NGOs etc. In practice, similarities are emerging between anti-SLAPP and whistleblower defenses. The Anti -SLAPP Directive entered into force on 6 May 2024. 28 The main tools for effective defense against such claims are early termination of the proceedings if the claim is unfounded, reversal of the burden of proof and the possibility of requiring "the claimant who has brought abusive court proceedings against public participation to bear all types of costs of the proceedings that can be awarded under national law, including the full costs of legal representation incurred by the defendant unless such costs are excessive". 29 Bulgaria is in the process of transposing the Anti -SLAPP Directive. Meanwhile, it is worth noting that at the end of January 2025, Judge Radoslav Angelov of the Sofia District Court submitted a request for a preliminary ruling to the European Court of Justice<sup>30</sup> about the interpretation of Directive 2019/1937 in relation to the right of citizens to blow the whistle on matters of public importance, the subsequent SLAPP-cases and the application of Directive 2024/1069.31

The case before the CJEU is expected to provide guidance for improved implementation of whistleblower protection in Bulgaria.

<sup>&</sup>lt;sup>26</sup> Ibid.

<sup>&</sup>lt;sup>27</sup> A 2024 Report on SLAPPs in Europe: Mapping Trends and Cases - <a href="https://www.the-case.eu/resources/a-2024-report-on-slapps-in-europe-mapping-trends-and-cases/;See">https://www.the-case.eu/resources/a-2024-report-on-slapps-in-europe-mapping-trends-and-cases/;See</a> also: <a href="https://aej-bulgaria.org/slapp-report-europe-2024/">https://aej-bulgaria.org/slapp-report-europe-2024/</a>

<sup>&</sup>lt;sup>28</sup> Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic lawsuits against public participation') - <a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32024L1069">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32024L1069</a>

<sup>&</sup>lt;sup>29</sup> Ibid.

<sup>30</sup> https://curia.europa.eu/jcms/jcms/Jo2 7024/en/

 $<sup>\</sup>frac{31}{https://defakto.bg/2025/01/29/sadiya-radoslav-stoyanov-ot-srs-postavi-12-vaprosa-na-ses-za-delata-shamari-i-zasthitata-na-podatelite-na-signali/$ 

#### Quality of transposed legislation and its implementation

In summary, the quality of transposed legislation and its implementation over the two years can be assessed as follows:

#### SCOPE OF COVERAGE

Almost all compliance topics are fully covered with one exception where compliance remains partial - the protection of whistleblower rights from gag orders. In terms of material scope, the Bulgarian legislation is wider than the Directive. For example, it includes additional areas for the reporting violations (such as violations of labor law and legislation relating to the performance of a civil service (Article 3, para 2, points 2 and 3 of the Whistleblowing Act).

#### **FORUM**

- Legislation and case law confirm substantial compliance.
- Burdens of proof
- The situation regarding compliance topic "Merits test" to qualify for protection remains the same partial compliance, regarding "Realistic standards to prove violations of rights" rather substantial compliance.

#### RELIEF FOR WHISTLEBLOWERS WHO WIN

No significant relief for successful whistleblowers observed so far. The few cases known from the domestic case law are against retaliatory measures - actions to invalidate retaliatory measures taken by the employer against the whistleblower, consisting of the issuance of a dismissal order, involving and not finally resolved disputes about the applicable law - the Whistleblowing Act as a special law or the Labor Code. However, it is too early to speak of a concrete impact or public notoriety.

#### EDUCATION, OUTREACH AND TRANSPARENCY

Substantial compliance was demonstrated by CPDP regular training and awareness activities:

 A series of events for its own staff and representatives of the competent authorities to discuss specific issues related to the implementation of the legal framework and inter-institutional interaction, e.g. issues related to the handling of whistleblowing reports, review of sectoral legislation, implementation of corrective measures, provision of information by competent authorities, interaction between the CPDP and the Anti-Corruption Commission, etc. This includes two annual meetings with the competent authorities, with the participation of representatives of the Anti-Corruption Commission and the National Legal Aid Bureau, organized and held by the CPDP in late 2023 and 2024 respectively, to discuss the interaction under the whistleblower protection legislation.

- A series of training sessions and joint events (with other institutions and CSOs) in Sofia and throughout the country with representatives of the obligated entities, incl. municipalities, senior officials and experts from the public administration etc.
- Participation of the External Whistleblowing Channel Directorate of the CPDP in training sessions, incl. Anti-SLAPP trainings, organized by other institutions and organizations involved such as National Legal Aid Bureau, Transparency International - Bulgaria, Bulgarian Center for Not-for-Profit Law etc.
- At the request of the CPDP, the National Legal Aid Bureau provided promotional materials on the protection and support measures under the Whistleblowing Act. The CPDP is using them to promote the legal protection and support for whistleblowers, including through the Commission's website in the section on the Whistleblowing Act. There is also a video clip from the National Legal Aid Bureau on the provision of free legal aid.

Detailed information is provided on the official website of the CPDP.

• A number of CSOs (<u>BILI Foundation</u>), <sup>32</sup> private companies (<u>APIS Europe JSC</u>, <u>Temida training centre</u>) <sup>33</sup> and civic initiatives (<u>Law with Wine</u>) <sup>34</sup> offer training and/or discussion formats, some law firms offer expert services in this area.

<sup>32</sup> https://bili-bg.org/2/page.html

<sup>33</sup> https://www.apis.bg/en/

 $<sup>^{34}</sup>$  <a href="https://www.facebook.com/p/ПРАВО-С-ВИНО-61556214315588/">https://www.facebook.com/p/ПРАВО-С-ВИНО-61556214315588/</a>

## Conclusions

The Bulgarian Whistleblowing Act, which was adopted late, had a number of shortcomings in its original form, in particular with regard to the protection of whistleblowers and the minimum standards of protection introduced by Directive (EU) 2019/1937. Subsequent amendments and proposals for amendments aim to address many of the shortcomings. Despite the legal framework and its further development, practical implementation remains a challenge. A sufficiently strong and clearly functioning system of protection and support for whistleblowers has not yet been established. This is one of the reasons for the fear and reluctance to report violations. Given the short period of time since the legislation came into force, its dynamic development and the fact that statistics (on reporting via internal and external channels, the status of the reports, support and protection measures provided) are still incomplete, it is not possible to present a more complete picture and to point to more examples of concrete positive impact.

It is still difficult to accurately measure the effectiveness of reporting channels in Bulgaria due to the low number of whistleblowing reports or court cases. Available data show that external reporting channel is used more often, although individuals are advised to focus primarily on the internal channels. The main reasons for this are mistrust and fear of retaliation. Further development of legislation and its practical implementation should therefore focus on building trust through positive experiences and transparency. Positive outcomes, such as swift action following a report, could be key to building confidence and encouraging more employees to use the whistleblowing system. If employees see that their reports lead to real results and that their identities are kept confidential, they would be more likely to participate.

There are already examples, albeit few, of real protection for whistleblowers. In Bulgaria, the whistleblowing culture is not yet sufficiently developed, and employees have little interest or confidence in using the system. A confident whistleblowing culture needs to be underpinned by trust mechanisms with regular evaluation of the effectiveness of the system. Improving the confidence and effectiveness of the system requires constant feedback, monitoring and adjustment of procedures. To improve the overall whistleblowing culture, internal policies need to be regularly reviewed, and lessons learned shared with other organizations.

Anonymous reporting is still not allowed, despite public support for such a change. The issue remains controversial, with a number of concerns raised about potential abuse of rights, the possibility of defamation and the vilification of individuals and institutions.

Statistics indicate that sanctions are already being imposed for breaches of the legislation.

## Recommendations

Based on the findings and conclusions drawn, some specific recommendations can be made.

- It is necessary for all obliged entities to establish and maintain internal whistleblowing channels in accordance with the requirements of the law and the guidelines of the CPDP. To this end, in the public sector, higher authorities should make an "inventory" of the entities in their system and provide them with the relevant instructions as soon as possible. This could be included in the supplementary provisions of the Whistleblowing Act when it is amended. In the private sector, the only control will continue to be the occasional inspection by the CPDP, which should carry out an inspection when an information is received and impose a penalty in the event of a breach.
- The material scope of the Bulgarian law, which is wider than the mandatory scope required by the Directive, requires clarification of violations affecting the public interest and those affecting the private interest of the reporting persons. The current, albeit brief, practice shows confusion and frequent filing of reports and requests for protection under the Whistleblowing Act in cases of violations of private interests, especially in the field of labor law. It is therefore advisable to reconsider the modification of the inclusion of employment and public service violations in the scope of the Whistleblowing Act. In practice, from the entry into force of the Act until the end of 2024, the overwhelming number of reports received through the external whistleblowing channel are in these areas. The vast majority of cases were closed on the grounds that they related to private/personal interests rather than a breach of the public interest. This suggests that the current version of the Whistleblowing Act is being used as a parallel system to the handling of individual employment disputes.
- In order to provide more effective protection for whistleblowers and more effective monitoring of employers' compliance with the prohibition of retaliation, consideration could be given to the introduction of a fast-track procedure similar to that introduced in the Electoral Code. The CPDP supports and explains this proposal. For example, a whistleblower who has requested protection from the competent authority to which his or her whistleblowing has been referred and has not been granted protection within 24 hours should have the right to apply to the competent court, which should rule within 24 hours. The same procedure should apply where protection is requested from the CPDP, with a time limit of three days for the provision of protection and, consequently, for the decision of the competent court. In particular, it might be advisable to consider amending the law to allow, where

- necessary, an application to the competent court to oblige an employer not to retaliate against a whistleblower.
- The introduction and implementation of measures for the **psychological protection** of whistleblowers and other vulnerable persons would be beneficial.

All of these recommendations above could be discussed and included in the proposed draft amendment to the Whistleblowing Act.

- In addition, according to practicing lawyers and civil society in Bulgaria, a clear link needs to be established at the legislative level (EU and national law) and in practice that would allow the protection of freedom of expression and defamation suits (SLAPP) to be linked to the protection of whistleblowers.
- Considering the possibility of anonymous reporting, subject to certain limitations and precise conditions, would encourage whistleblowers who fear retaliation.

Aligning whistleblower protection with anti-SLAPP measures and allowing anonymous reporting within strict limits and conditions can further strengthen the whistleblowing environment.

 Despite the initial and ongoing campaigns, there is still a need for a targeted and continuous campaign to raise awareness and provide information on the legislation transposing the EU Directive 2019/1937 in order to encourage whistleblowing in practice. To promote a culture of whistleblowing against the still prevailing culture of silence, it is also necessary to change the perception of a whistleblower from a snitch to a person performing an important public duty.

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# Croatia

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#### **Executive summary**

Croatia's most recent Act on the Protection of Persons Reporting Irregularities<sup>35</sup> from 2022 transposes the EU Whistleblowing Directive, by improving whistleblower protection with a broader scope and enhanced judicial options. This legislation designates the Ombudsperson as the external reporting body, supports both internal and external reporting channels, and aims for alignment with EU standards.

However, challenges persist, particularly in practical implementation. Despite the strengthened legal framework, there remains a lack of knowledge and understanding of the Act among employers and employees, hindering its effectiveness. Confidential persons, crucial to internal reporting processes, often lack adequate resources, training, and secure facilities to perform their duties effectively. Many internal reports are deemed unfounded or outside the Act's scope, highlighting the need for greater clarity and awareness raising.

Enforcement is also a concern, with slow judicial procedures and a lack of dedicated court tracking mechanisms impeding data collection and potentially discouraging whistleblowers. While the State Inspectorate has issued fines and indictments for failures related to internal reporting channels, broader enforcement data is limited. Free legal aid access remains restricted by financial eligibility criteria, hindering protection.

A key development in the 2023-2024 period was the adoption of the Rules of Procedure on Emotional Support appointing the Rehabilitation Centre for Stress and Trauma as provider of the emotional support. While the legislative framework is in place, addressing practical challenges is vital to fully realize the Act's potential in fostering a culture of transparency and accountability in Croatia.

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<sup>&</sup>lt;sup>35</sup> Act on the Protection of Persons Reporting Irregularities (OG 46/22), available at: https://www.zakon.hr/z/1927/Zakon-o-za%C5%A1titi-prijavitelja-nepravilnosti

#### Introduction

The new Act on the Protection of Persons Reporting Irregularities<sup>36</sup>, colloquially known as the Whistleblower Protection Act, entered into force on 23 April 2022. This Act transposed the Directive 2019/1937 (EU) of the European Parliament and Council on the Protection of Persons Who Report Breaches of Union Law<sup>37</sup> into Croatian legislation thereby replacing the first Act from 2019. Even though the main protection mechanisms for whistleblowers remained unchanged, the Act introduced several novelties in order to harmonize with the EU standards.

The most relevant changes introduced concerned, among others, the area of application of the new act, the more detailed definition of irregularities and the method of submitting reports, the expansion of the circle of persons who can be whistleblowers, the possibility of choosing between internal or external reporting channel, the expansion of the jurisdiction of courts to provide judicial protection to whistleblowers, more detailed regulation of the prohibition of retaliation, as well as exemption of whistleblowers from responsibility for disclosing information.<sup>38</sup>

Measures for support of persons reporting irregularities have also been expanded, granting them the right to protection of their identity and the confidentiality of their report, court protection, indemnity for the damages they might have suffered, primary free legal aid in line with the provisions of the special act regulating the provision of free legal aid, emotional support, and the possibility of obtaining free secondary legal aid.<sup>39</sup> In addition to the whistleblowers themselves, the new Act protects confidential persons and their deputies, as well as other related persons, including assistants to whistleblowers, their relatives, colleagues, as well as legal entities they own.

Following the evaluation of the transposition of the EU Whistleblowing Directive in the previous 2023 report, the most significant update for the two-year period 2023-2024 is that, after a delay of about one year, the Rules of Procedure on the Provision of Emotional Support<sup>40</sup> were adopted in September 2023. Additionally, the

<sup>&</sup>lt;sup>36</sup> Act on the Protection of Persons Reporting Irregularities (OG 46/22), available at: https://www.zakon.hr/z/1927/Zakon-o-za%C5%A1titi-prijavitelja-nepravilnosti

<sup>&</sup>lt;sup>37</sup> Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, available at: <a href="https://eur-lex.europa.eu/legalcontent/en/TXT/?uri=CELEX%3A32019L1937">https://eur-lex.europa.eu/legalcontent/en/TXT/?uri=CELEX%3A32019L1937</a>

<sup>&</sup>lt;sup>38</sup> Southeast Europe Coalition on Whistleblower Protection, Transposition of the EU 2019/1937 Directive on Whistleblower Protection in Southeast Europe: Challenges and Lessons Learned, 2023, available at: <a href="https://www.kucaljudskihprava.hr/publikacije/transpozicija-direktive-eu-2019-1937-o-zastiti-zvizdaca-u-jugoistocnoj-europi-izazovi-i-naucene-lekcije/">https://www.kucaljudskihprava.hr/publikacije/transpozicija-direktive-eu-2019-1937-o-zastiti-zvizdaca-u-jugoistocnoj-europi-izazovi-i-naucene-lekcije/</a>

<sup>&</sup>lt;sup>39</sup> Ibid.

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<sup>&</sup>lt;sup>40</sup> Rules of Procedure on the Provision of Emotional Support to Persons Reporting Irregularities (OG 111/2023), available at: https://www.zakon.hr/cms.htm?id=58213

Rehabilitation Center for Stress and Trauma was tasked with providing emotional support to whistleblowers in September 2024. 41 Considering a rather short period of its implementation, it remains to be seen how this system will function in practice and whether it will fulfill its purpose.

Most reliable data concerning the evaluation of the implementation trends so far is available in the annual report of the Ombudsperson of Croatia, which is the state institution with the most comprehensive approach towards the protection of whistleblowers. The Ombudsperson 's report highlights a lack of knowledge and understanding of the Act among both employers and employees, including uncertainties concerning the scope, procedures for reporting irregularities, and reporting methods. Insufficient awareness of rights and obligations undermines the effectiveness of the legislation and indicates the need for more extensive educational activities and campaigns.<sup>42</sup>

## Implementation of the transposed national law as per the compliance topics

#### SCOPE OF COVERAGE

When it comes to subject matter covered by the scope of the Act, it expands on the ten areas defined in the EU Whistleblowing Directive to include other national provisions, the breach of which would endanger the public interest, whereas defense and national security are excluded insofar as EU law is not affected and separate reporting processes are established in this area by specific acts. <sup>43</sup> The EU Directive specifically covers breaches of EU law in areas such as public procurement, financial services, and environmental protection, yet the national Act appears to have a broader scope, potentially covering all irregularities that threaten the public interest. <sup>44</sup>

In the 2022 Annual Report, the Ombudsperson's Office recommended that the Ministry of Finance, in collaboration with the Ministry of Justice and Public

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<sup>&</sup>lt;sup>41</sup> Available at: https://rctzg.hr/pruzanje-emocionalne-podrske-prijaviteljima-nepravilnosti-u-rct-u/

<sup>&</sup>lt;sup>42</sup> Southeast Europe Coalition on Whistleblower Protection, Transposition of the EU 2019/1937 Directive on Whistleblower Protection in Southeast Europe: Challenges and Lessons Learned, 2023, available at: <a href="https://www.kucaljudskihprava.hr/publikacije/transpozicija-direktive-eu-2019-1937-o-zastiti-zvizdaca-u-jugoistocnoj-europi-izazovi-i-naucene-lekcije/">https://www.kucaljudskihprava.hr/publikacije/transpozicija-direktive-eu-2019-1937-o-zastiti-zvizdaca-u-jugoistocnoj-europi-izazovi-i-naucene-lekcije/</a>

<sup>&</sup>lt;sup>43</sup> Act on the Protection of Persons Reporting Irregularities (OG 46/22), Article 4, available at: <a href="https://www.zakon.hr/z/1927/Zakon-o-za%C5%A1titi-prijavitelja-nepravilnosti">https://www.zakon.hr/z/1927/Zakon-o-za%C5%A1titi-prijavitelja-nepravilnosti</a>

<sup>&</sup>lt;sup>44</sup> Act on the Protection of Persons Reporting Irregularities (OG 46/22), Article 4 (1(d)), available at: https://www.zakon.hr/z/1927/Zakon-o-za%C5%A1titi-prijavitelja-nepravilnosti

Administration, draft amendments to the Law on the Internal Control System in the Public Sector (LICSPS) and the Ordinance on Handling and Reporting Irregularities in the Management of Public Sector Institutions' Funds. <sup>45</sup> The aim was to separate the roles of the confidential person under the Whistleblower Protection Act from the irregularities officer under the LICSPS. The Ministry of Finance established an Expert Working Group in April 2023 to draft amendments to the LICSPS, however, the working group's task was not completed in 2023.

The need for amending the LICSPS is further emphasized by a situation that occurred in 2023. 46 The Ombudsperson's Office received an annual report from a confidential person, who also serves as an irregularities officer, detailing irregularities observed in a company. According to the LICSPS and the Ordinance, this report should have been submitted to the competent organizational unit within the Ministry of Finance responsible for budget supervision. Confidential persons are only required to submit notifications about individual irregularity reports received under the Whistleblower Protection Act to the Ombudsperson's Office, but in their capacity as irregularities officers under the LICSPS, they are obligated to submit annual reports to the Ministry of Finance.

#### **FORUM**

A report can be submitted through the internal whistleblowing system to a confidential person specifically appointed by the employer to receive and handle reports of irregularities and to protect whistleblowers; through the external whistleblowing system to the Ombudsperson as the competent authority for external reporting of irregularities; or through public disclosure, by revealing irregularities to the public via media, online platforms, social networks, elected officials, civil society organizations, trade unions, or professional and business organizations. The new Croatian Act allows whistleblowers to report directly to the external channel (the Ombudsperson) without first using the internal channel which is more flexible than the EU Directive's general preference for internal reporting first.

#### INTERNAL REPORTING OF IRREGULARITIES

The Whistleblower Protection Act stipulates that confidential persons are obligated to notify the Ombudsperson's Office in writing about received reports and the outcomes of their handling within 30 days of deciding on the report. This

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<sup>&</sup>lt;sup>45</sup> Report of the Ombudsperson for 2023, March 2024, available at: https://www.ombudsman.hr/hr/interaktivno-izvjesce-za-2023/

<sup>46</sup> Ibid.

requirement enables the Ombudsperson's Office to collect data essential for monitoring the application of the Act. In 2023, the Ombudsperson's Office received 38 notifications from confidential persons regarding internal irregularity reports. <sup>47</sup> Of these, 14 related to irregularities in legal entities founded by or in which the Republic of Croatia or local and regional self-government units have separate or joint majority ownership. Twelve notifications concerned irregularities in private sector employers and crafts, eight in legal entities performing public services, two in bodies with public authority, one in state bodies, and one notification related to irregularities in local and regional self-government units.

Based on the data provided by confidential persons, most reports were deemed unfounded, often involving issues outside the scope of the Whistleblower Protection Act, such as individual labour rights violations that do not threaten public interest. At In a smaller number of cases, confidential persons found reports to be well-founded, typically involving public procurement irregularities or abuse of power, which were then forwarded to competent authorities like the State Attorney's Office. Some confidential persons still face challenges in handling irregularity reports and misunderstand certain provisions of the Act. Some confidential persons report lacking proper facilities for confidential conversations, document storage, unhindered internet access, and other necessary conditions for performing their duties under the Whistleblower Protection Act.

Data from misdemeanour proceedings and communication with confidential persons indicate that some employers still fail to properly publish information about internal reporting systems and appointed confidential persons, often limiting it to notice boards or intranet. <sup>50</sup> This hinders access to information for all potential whistleblowers, including board members, volunteers, and suppliers. Publishing such information on the employer's website would be more appropriate. Some employers struggle to find willing employees to serve as confidential persons and deputies. In one case, an employer issued a warning about the obligation to establish an internal reporting channel but couldn't appoint a confidential person as neither the union representative nor at least 20% of employees proposed anyone, and no employee consented to the appointment, which is a legal prerequisite.

<sup>&</sup>lt;sup>47</sup> Report of the Ombudsperson for 2023, March 2024, available at: https://www.ombudsman.hr/hr/interaktivno-izvjesce-za-2023/

<sup>&</sup>lt;sup>48</sup> Ibid.

<sup>&</sup>lt;sup>49</sup> Ibid.

<sup>&</sup>lt;sup>50</sup> Ibid.

#### EXTERNAL REPORTING OF IRREGULARITIES

As the competent authority for external reporting of irregularities, the Ombudsperson's Office handled 57 newly opened cases in 2023.<sup>51</sup> Of these, 19 related to legal entities performing public services, 10 to legal entities founded by or in which the Republic of Croatia and/or local and regional self-government units have separate or joint majority ownership, eight each to various state bodies and employers in the economy and crafts, six to bodies with public authority, five to local and regional self-government units, and one to a natural person, which falls outside the scope of the Whistleblower Protection Act.<sup>52</sup> It should be emphasized that the actual number of external irregularity reports is much higher than the stated number of cases, as cases are managed by whistleblowers, and some often submit multiple irregularity reports regarding the same employer. The trend of more frequent use of external reporting of irregularities by whistleblowers from the so-called public sector continued in 2023, although compared to previous years, there has been an increase in external reports of irregularities concerning employers in the economy and crafts sector.

#### PUBLIC DISCLOSURE OF IRREGULARITIES

A whistleblower who publicly discloses an irregularity is entitled to protection if they first submitted a report through the internal and external reporting system or directly to the competent authority for external reporting (the Ombudsperson), but appropriate measures were not taken in response to the report within the prescribed deadlines. For Protection is also granted if the whistleblower has reasonable grounds to believe that the irregularity may pose an immediate or explicit danger to the public interest, such as in the case of a crisis situation or risk of irreparable damage. Additionally, protection applies if, in the case of external reporting, there is a risk of retaliation, or the prospects of the irregularity being effectively addressed are low due to the particular circumstances of the case. In 2023 there was an increase in public statements by individuals exposing various illegal activities, although in some cases the conditions prescribed by the Whistleblower Protection Act for protecting whistleblowers who publicly disclose irregularities were not met. The Ombudsperson's office, recognizing the importance of protecting whistleblowers'

<sup>&</sup>lt;sup>51</sup> Report of the Ombudsperson for 2023, March 2024, available at: <a href="https://www.ombudsman.hr/hr/interaktivno-izvjesce-za-2023/">https://www.ombudsman.hr/hr/interaktivno-izvjesce-za-2023/</a>

<sup>&</sup>lt;sup>52</sup> Ibid.

<sup>&</sup>lt;sup>53</sup> Ombudsperson of the Republic of Croatia, Guide for Whistleblowers, September 2024, Available at: <a href="https://www.ombudsman.hr/wp-content/uploads/2024/09/Vodic-za-prijavitelje-nepravilnosti.pdf">https://www.ombudsman.hr/wp-content/uploads/2024/09/Vodic-za-prijavitelje-nepravilnosti.pdf</a>.

<sup>&</sup>lt;sup>54</sup> Report of the Ombudsperson for 2023, March 2024, available at: https://www.ombudsman.hr/hr/interaktivno-izvjesce-za-2023/

rights and serving the public interest, proactively opened cases related to media appearances. 55

#### ACCESS TO FREE LEGAL AID AND EMOTIONAL SUPPORT

Regarding access to free legal aid, it should be noted that there are no provisions specifically related to the provision of free legal aid for whistleblowers, and the Act allows whistleblower access to free legal aid under the general conditions applicable to all citizens in Croatia for all legal issues, which is further regulated by the Free Legal Aid Act. <sup>56</sup> This means that whistleblowers cannot exercise the right to free legal aid regardless of their financial status, as it is only available under certain conditions, that is subject to a means test.

In Croatia, free legal aid is divided into primary and secondary legal aid.<sup>57</sup> Primary legal aid is provided by county administrative bodies, the City Office for General Administration of Zagreb, authorized civil society organizations, and registered legal clinics. It includes general legal information, legal advice, drafting submissions to public authorities, the European Court of Human Rights, and international organizations, representation before public authorities, and assistance in out-of-court dispute resolution. In this regard, it is important to allocate sufficient financial resources to primary free legal aid providers to enable appropriate training and increase their capacity to expand their work to providing legal assistance to whistleblowers. Existing organizations providing primary free legal aid are overburdened and often lack the capacity to expand their activities to the area of whistleblower protection, making it unlikely that the current circumstances will allow adequate whistleblower support.

Secondary legal aid is provided by lawyers includes legal advice, drafting submissions for labor rights protection, drafting court submissions, representation in court proceedings, and assistance in peaceful dispute resolution. To qualify, the applicant's household income must not exceed the budgetary base per household member (441.44 EUR in 2024), and total household assets must not exceed 60 budgetary bases (26,486.40 EUR). For most whistleblowers, secondary legal aid will be particularly important, as it includes court representation. However, only

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<sup>&</sup>lt;sup>55</sup> More information on cases available in the Report of the Ombudsperson for 2023: https://www.ombudsman.hr/hr/interaktivno-izvjesce-za-2023/

<sup>&</sup>lt;sup>56</sup> Free Legal Aid Act (OG 143/13, 98/19), available at: <a href="https://www.zakon.hr/z/286/Zakon-o-besplatnoj-pravnoj-pomo%C4%87i">https://www.zakon.hr/z/286/Zakon-o-besplatnoj-pravnoj-pomo%C4%87i</a>

<sup>&</sup>lt;sup>57</sup> Free Legal Aid Act (OG 143/13, 98/19), available at: <a href="https://www.zakon.hr/z/286/Zakon-o-besplatnoj-pravnoj-pomo%C4%87i">https://www.zakon.hr/z/286/Zakon-o-besplatnoj-pravnoj-pomo%C4%87i</a>

<sup>&</sup>lt;sup>58</sup> Free Legal Aid Act (OG 143/13, 98/19), available at: <a href="https://www.zakon.hr/z/286/Zakon-o-besplatnoj-pravnoj-pomo%C4%87i">https://www.zakon.hr/z/286/Zakon-o-besplatnoj-pravnoj-pomo%C4%87i</a>

those with the lowest incomes will qualify for it. To encourage whistleblowers to report irregularities, and given the high legal fees, it is necessary to provide them with free legal aid regardless of their financial status.

After a delay of about one year, in September 2023 the Rules of Procedure on the Provision of Emotional Support<sup>59</sup> were adopted, and the Rehabilitation Center for Stress and Trauma was tasked with providing emotional support to whistleblowers only in September 2024.<sup>60</sup> The Rules of Procedure explicitly state that this type of support does not include providing psychosocial support, while the Directive lists psychological support as one of the possible, but not mandatory, support measures.

Emotional support does not include providing psychosocial support, which, in addition to communication, enables the acquisition of skills necessary for overcoming difficulties encountered as a whistleblower. However, if the person providing emotional support determines after talking with the whistleblower that they need another form of support or professional assistance, they will refer them to appropriate individuals or institutions that provide such support or professional help. So far, the Rehabilitation Center for Stress and Trauma has a small number of users but has received many inquiries about general information and legal advice. Considering a rather short period of its implementation, it remains to be seen how this system will function in practice and whether it will fulfill its purpose.

#### **BURDENS OF PROOF**

In court proceedings or before other bodies concerning damages suffered by a whistleblower, the rule of shifting the burden of proof to the opposing party applies. <sup>63</sup> This means that the whistleblower must make it probable (not prove with certainty) that they suffered damage due to submitting a report of irregularities or public disclosure of information about irregularities in accordance with the Whistleblower Protection Act. It is then presumed that the damage occurred as retaliation for the report or public disclosure, and the person alleged to have taken the retaliatory action must prove with certainty that their action or omission was based on justified reasons (e.g., that the termination of the employment contract

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<sup>&</sup>lt;sup>59</sup> Rules of Procedure on the Provision of Emotional Support to Persons Reporting Irregularities (OG 111/2023), available at: <a href="https://www.zakon.hr/cms.htm?id=58213">https://www.zakon.hr/cms.htm?id=58213</a>

<sup>&</sup>lt;sup>60</sup> Available at: https://rctzg.hr/pruzanje-emocionalne-podrske-prijaviteljima-nepravilnosti-u-rct-u/

<sup>&</sup>lt;sup>61</sup> Ombudsperson of the Republic of Croatia, Guide for Whistleblowers, September 2024, Available at: https://www.ombudsman.hr/wp-content/uploads/2024/09/Vodic-za-prijavitelje-nepravilnosti.pdf.

<sup>&</sup>lt;sup>62</sup> Inputs provided by RCT

<sup>&</sup>lt;sup>63</sup> Ombudsperson of the Republic of Croatia, Guide for Whistleblowers, September 2024, Available at: <a href="https://www.ombudsman.hr/wp-content/uploads/2024/09/Vodic-za-prijavitelje-nepravilnosti.pdf">https://www.ombudsman.hr/wp-content/uploads/2024/09/Vodic-za-prijavitelje-nepravilnosti.pdf</a>.

was not a consequence of reporting irregularities, but a real and specific violation of work obligations, such as unjustified absence from work).

#### RELIEF FOR WHISTLEBLOWERS WHO WIN

Judicial protection of whistleblowers is exercised through a special procedure initiated by filing a lawsuit for whistleblower protection. <sup>64</sup> With this lawsuit, the whistleblower may request that it be established that retaliation has been taken against them; that retaliation be prohibited, its repetition prevented, and its consequences eliminated; that compensation be awarded for damages caused by the violation of rights protected by this Act; and that a judgment confirming the violation of the whistleblower's rights be published in the media at the defendant's expense.

#### STATISTICAL DATA

The Ministry of Justice and Public Administration (MPU) is obligated to maintain records and statistical data on court cases related to judicial protection in accordance with the Whistleblower Protection Act. According to MPU data, 14 such misdemeanour cases are recorded in the eSpis system<sup>65</sup> at municipal courts and the High Misdemeanour Court, while civil cases are not visible in eSpis, so statistical data on these cases were not provided. <sup>66</sup> Courts that were asked to provide data on whistleblowing-related cases, with the exception of the Municipal Court in Osijek, responded that they have no recorded data on such cases. However, according to data directly provided by parties to court proceedings and publicly available information, at the time of preparing this report, there were eight such first-instance civil proceedings and one administrative dispute ongoing. <sup>67</sup>

Consequently, it is problematic that according to the provisions of the Court Rules of Procedure<sup>68</sup>, there is no special designation for cases related to whistleblowers,

<sup>&</sup>lt;sup>64</sup> Act on the Protection of Persons Reporting Irregularities (OG 46/22), Article 29, available at: https://www.zakon.hr/z/1927/Zakon-o-za%C5%A1titi-prijavitelja-nepravilnosti

<sup>&</sup>lt;sup>65</sup> eSpis is an information system used for case management by municipal, commercial, county, and administrative courts, as well as the High Criminal Court, High Misdemeanor Court, High Commercial Court, High Administrative Court, and the Supreme Court of the Republic of Croatia.

<sup>66</sup> Ibid.

<sup>&</sup>lt;sup>67</sup> Ibid.

 $<sup>^{68}</sup>$  Court Rules of Procedure , (OG 37/2014, 49/2014, 8/2015, 35/2015, 123/2015, 45/2016, 29/2017, 33/2017, 34/2017, 57/2017, 101/2018, 119/2018, 81/2019, 128/2019, 39/2020, 47/2020, 138/2020, 147/2020, 70/2021, 99/2021, 145/2021, 23/2022, 12/2023, 122/2023, 55/2024, 136/2024) available at:

and statistical data on them are not kept separately. This is important for fulfilling the legal obligation of the MPU to maintain records and statistical data on cases related to judicial protection in accordance with the Whistleblower Protection Act, as well as for fulfilling Croatia's obligation to the European Commission, in accordance with Article 27, Paragraph 2 of the EU Directive on the protection of persons who report breaches of Union law.

#### EDUCATION, OUTREACH AND TRANSPARENCY

At the end of July 2022, the Action Plan for the period from 2022 to 2024 was adopted along with the Strategy for the Prevention of Corruption for the period from 2021 to 2030. Also, in 2023, the Council for the Prevention of Corruption held two sessions. <sup>69</sup> The sessions discussed the implementation of the Whistleblower Protection Act, specifically Article 40 of the Act, which mandates the Ministry of Justice and Administration to submit available statistical data on reported irregularities to the European Commission each year through the Ombudsperson. Additionally, in accordance with the Act, the Ministry of Justice and Administration is required to maintain records and statistical data on court cases related to judicial protection.

Regarding the implementation of the National Recovery and Resilience Plan of the Republic of Croatia, the development of an IT solution is planned to enable simpler and more secure submission of whistleblower reports to the Office of the Ombudsperson, the competent channel for external reporting. <sup>70</sup> In addition to the existing reporting methods established in accordance with the law, this solution would create an additional channel for reporting irregularities, ensuring the secure submission of reports and communication with the whistleblower. In 2024, the Ministry of Justice, Administration, and Digital Transformation has launched an informational and educational campaign aimed at raising awareness of the harmful effects of corruption and encouraging citizens to actively participate in the fight against corruption. <sup>71</sup>

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 $\underline{https://www.zakon.hr/z/1277/Sudski-poslovnik-\%E2\%80\%93-pro\%C4\%8Di\%C5\%A1\%C4\%87eni-tekst$ 

46

<sup>&</sup>lt;sup>69</sup> Report on the Work of the Council for the Prevention of Corruption for 2023, available at: <a href="https://mpudt.gov.hr/UserDocsImages//dokumenti/Antikorupcija//Izvje%C5%A1%C4%87e%20o%20">https://mpudt.gov.hr/UserDocsImages//dokumenti/Antikorupcija//Izvje%C5%A1%C4%87e%20o%20</a> radu%20Savjeta%20za%20za%20sprje%C4%8Davanje%20korupcije%20za%202023%20god.pdf

<sup>&</sup>lt;sup>71</sup> Available at: https://mpudt.gov.hr/pokreni-promjenu-prijavi-korupciju/28346

Due to increased interest in 2023, the Ombudsperson's office continued conducting workshops for confidential persons, holding two workshops in Zagreb for confidential persons from both the private and public sectors. The beginning of the year, they participated in a webinar for employees of the Central Agency for Financing and Contracting of European Union Programs and Projects. In collaboration with the Judicial Academy, they took part in educational sessions for judges, court advisors, state attorneys, and state attorney advisors on the application of the Whistleblower Protection Act at the Academy's regional offices in Varaždin, Rijeka, and Split. The Academy's regional offices in Varaždin, Rijeka, and Split.

Additionally, in September 2024, the Ombudsperson presented a comprehensive Whistleblower's Guide<sup>74</sup>, aimed at increasing the number and quality of irregularity reports by improving understanding of the legal framework. The Ombudsperson also publishes annual reports that include information on whistleblower protection activities and cases. With the same goal, in December 2023, the POMAK Association published an e-book titled "Handbook for Whistleblowers", containing basic general legal information about the Whistleblower Protection Act (ZZPN). The book was presented at the roundtable discussion "(Let's) Clean Croatia of Corruption."<sup>75</sup>

The conference "Strengthening Integrity and Compliance in Business - ESG Standards as an Instrument for Corruption Prevention," held in December 2023 and organized by the Croatian Chamber of Commerce and the International Chamber of Commerce, contributed to raising awareness among employers about their obligations under the Whistleblower Protection Act and the importance of fulfilling them. Representatives from the Ombudsperson's office participated as speakers and panellists at this event. The conference aimed to increase awareness across all levels of the public and corporate sectors about the necessity of combating corruption, strengthening the culture of integrity, transparency, and ethics in business operations, as the foundation of corporate responsibility and good governance.

On December 6, 2024, the conference "Together for Integrity - Synergy Between the Business Sector and Public Administration in the Fight Against Corruption" was held, organized by the Ministry of Justice, Administration and Digital Transformation, the National Contact Point for Responsible Business Conduct, and the International

<sup>74</sup> Ombudsperson of the Republic of Croatia, Guide for Whistleblowers, September 2024, Available at: <a href="https://www.ombudsman.hr/wp-content/uploads/2024/09/Vodic-za-prijavitelje-nepravilnosti.pdf">https://www.ombudsman.hr/wp-content/uploads/2024/09/Vodic-za-prijavitelje-nepravilnosti.pdf</a>.

<sup>&</sup>lt;sup>72</sup> Report of the Ombudsperson for 2023, March 2024, available at: <a href="https://www.ombudsman.hr/hr/interaktivno-izvjesce-za-2023/">https://www.ombudsman.hr/hr/interaktivno-izvjesce-za-2023/</a>

<sup>&</sup>lt;sup>73</sup> Ibid.

<sup>&</sup>lt;sup>75</sup> Available at: https://udrugapomak.hr/skini-prirucnik-za-prijavitelje-nepravilnosti/

<sup>&</sup>lt;sup>76</sup> Available at: <a href="https://hgk.hr/icc-hrvatska/konferencija-jacanje-integriteta-i-uskladenosti-u-poslovanju-esg-standardi-kao-instrument-prevencije-korupcije-najava">https://hgk.hr/icc-hrvatska/konferencija-jacanje-integriteta-i-uskladenosti-u-poslovanju-esg-standardi-kao-instrument-prevencije-korupcije-najava</a>

Chamber of Commerce.<sup>77</sup> As a panelist in the discussion dedicated to the Whistleblower Protection Act, as one of the key tools for preventing corruption, Deputy Ombudsperson presented the activities of the Ombudsperson's institution, with emphasis on the mandate of protecting whistleblowers, which is largely connected to the area of combating corruption

#### **REVIEW**

Regulatory evaluation is a method used to assess the implementation, outcomes, and/or impact of existing regulations by analyzing their enforcement, achieved purpose and objectives, and results over a specific period to determine the need for amendments or supplements. It is prescribed in the recent Act on Better Regulation Policy Instruments<sup>78</sup> and is conducted based on a decision by the competent authority, a resolution of the Government, or a resolution of the Croatian Parliament, as well as when required by law governing better regulation policies. The Act on the Protection of Persons Reporting Irregularities does not fall into the category of laws for which regulatory evaluation is mandatory, but conducting such an evaluation would be beneficial.

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<sup>&</sup>lt;sup>77</sup> Available at: https://www.ombudsman.hr/hr/rasprava-o-va-nosti-antikorupcijskih-politika/

<sup>&</sup>lt;sup>78</sup> The Act on Better Regulation Policy Instruments (OG 155/23), available at: <a href="https://www.zakon.hr/z/3646/Zakon-o-instrumentima-politike-boljih-propisa">https://www.zakon.hr/z/3646/Zakon-o-instrumentima-politike-boljih-propisa</a>

## Conclusions

#### REPORTING CHANNELS EFFECTIVENESS

There is still a perceived lack of knowledge and understanding of the Act among both employers and employees, including uncertainties concerning the scope, procedures for reporting irregularities, and reporting methods as highlighted in the Ombudsperson 's report.<sup>79</sup> Confidential persons often face challenges such as insufficient knowledge of the Act, leading them to handle anonymous reports or cases where there is no breach or threat to the public interest but rather violations of individual rights. Some confidential persons report lacking a secure space for discussing irregularities with whistleblowers and maintaining documentation, unobstructed internet access, and other necessary conditions for performing their duties under the Act. Furthermore, some claim to face retaliation from employers for handling irregularity reports. In some cases, individuals were appointed as confidential persons without their prior consent. On the employers' side, challenges include failure to establish internal reporting channels, as some have not adopted regulations for internal reporting or appointed a confidential person and their deputy, despite being legally obligated to do so under the Act. In such cases, the State Attorney's Office initiates misdemeanour proceedings.

#### REAL PROTECTION OF THE WHISTLEBLOWERS

One of the greatest challenges is the financial exhaustion of whistleblowers, as well as insufficiently fast judicial procedures. Judicial protection procedures for whistleblowers are urgent, but in some cases, more than a year passes between filing a lawsuit and the first hearing, and more than two years until a first-instance judgment is delivered. By failing to adhere to the provisions on urgency, judicial protection of whistleblowers is not fully effective, as whistleblowers may endure violations of their rights until the enforcement of a final judicial decision, and such lengthy procedures can be discouraging for persons who would want to report irregularities in the future. Before initiating proceedings for the protection of whistleblowers, during and after the court proceedings, and until enforcement is carried out, a whistleblower may propose to the court to determine a temporary

<sup>&</sup>lt;sup>79</sup> Report of the Ombudsperson for 2023, March 2024, available at: https://www.ombudsman.hr/hr/interaktivno-izvjesce-za-2023/

<sup>&</sup>lt;sup>80</sup> Report of the Ombudsperson for 2023, March 2024, available at: https://www.ombudsman.hr/hr/interaktivno-izvjesce-za-2023/

measure.<sup>81</sup> In this proposal, the whistleblower can request a prohibition on acts of retaliation, the removal of consequences caused by retaliation, and the postponement of the execution of decisions that have put them at a disadvantage or violated any of their rights in the work environment. However, there is still insufficient data to draw conclusions about the use of temporary measures in practice.

#### **ANONYMOUS REPORTING**

If a person decides to submit a report anonymously, the Whistleblower Protection Act will not apply to them, and they will not enjoy protection under the Act. 82 However, anonymous whistleblowers whose identity is subsequently revealed and who suffer retaliation gain the right to protection provided by the Act under certain conditions. These conditions are: at the time of reporting or disclosure, they had reasonable grounds to believe that the reported or publicly disclosed information about irregularities was true; the reported information falls within the scope of application of the Act; and they submitted the report in one of the ways explicitly provided for by the Act - through the internal or external irregularity reporting system or through public disclosure of irregularities. 83

## APPLICATION OF SANCTIONS FOR BREACHES OF THE LEGAL PROVISIONS

Sanctions for breaches of the legal provisions are prescribed in the Articles 35-39 of the Act. Employers with 50+ employees face fines of 10,000-30,000 kuna for failing to implement proper whistleblowing procedures, and 30,000-50,000 kuna for obstructing whistleblowing or not protecting whistleblowers. These fines apply to responsible individuals and employers. Whistleblowers abusing the system face fines of 3,000-30,000 kuna, as do confidential persons misusing their authority against whistleblowers. It is notable that the fines are still listed in kuna, which will need to be updated due to the change in the official currency.

According to data from the State Inspectorate of the Republic of Croatia (DIRH), 12 indictments were filed against legal entities as employers and responsible persons in legal entities, and three misdemeanour warrants were issued for offenses

50

<sup>&</sup>lt;sup>81</sup> Ombudsperson of the Republic of Croatia, Guide for Whistleblowers, September 2024, Available at: https://www.ombudsman.hr/wp-content/uploads/2024/09/Vodic-za-prijavitelje-nepravilnosti.pdf.

<sup>&</sup>lt;sup>82</sup> Ombudsperson of the Republic of Croatia, Guide for Whistleblowers, September 2024, Available at: <a href="https://www.ombudsman.hr/wp-content/uploads/2024/09/Vodic-za-prijavitelje-nepravilnosti.pdf">https://www.ombudsman.hr/wp-content/uploads/2024/09/Vodic-za-prijavitelje-nepravilnosti.pdf</a>.

<sup>83</sup> Ibid.

prescribed by the Whistleblower Protection Act. <sup>84</sup> These primarily relate to the failure to appoint a confidential person and/or deputy confidential person, and the failure to adopt a general act regulating the reporting of irregularities and the appointment of a confidential person. For the same offenses, the education inspectorate filed two indictments, and the defendants in the misdemeanour proceedings were found guilty. <sup>85</sup> The filing of indictments was preceded by seven inspections, and in four of these inspections, the education inspectorate ordered the adoption of a general act regulating the reporting of irregularities and the appointment of a confidential person. <sup>86</sup>

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<sup>&</sup>lt;sup>84</sup> Report of the Ombudsperson for 2023, March 2024, available at: <a href="https://www.ombudsman.hr/hr/interaktivno-izvjesce-za-2023/">https://www.ombudsman.hr/hr/interaktivno-izvjesce-za-2023/</a>

<sup>85</sup> Ibid.

<sup>86</sup> Ibid.

## Recommendations

- Given the continuing lack of knowledge and understanding of the Act among both employers and employees, it is necessary to work on raising awareness of the existence of the Act and the protection mechanisms it offers.
- Allocation of additional funds for education and support to confidential persons is needed, as well as strengthening cooperation between the state, employers, and trade unions, with the Ombudsperson office playing a key role in this process.
- Review provisions related to free legal aid for whistleblowers, enabling them
  to exercise the right to free legal aid regardless of their financial status and
  allocate sufficient financial resources for providers of free primary legal aid
  to expand their activities to providing legal assistance to whistleblowers
- The Ministry of Justice and Administration should amend the Court Rules of Procedure to assign a special designation to cases conducted under the Whistleblower Protection Act or in which parties refer to it, allowing for the maintenance of specific records and statistical data on such cases.
- The Ministry of Justice and Administration and the Judicial Academy should continue to provide ongoing training for judicial officials on the implementation of the Whistleblower Protection Act.
- Conduct a regulatory evaluation in accordance with the possibilities provided by the Act on Better Regulation Policy Instruments.

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#### Dr. Angelos Kaskanis

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#### **Executive summary**

Over the past five years, there has been a significant shift in the application and enforcement of the law, extending beyond public sector cases to include matters in the private sector as well. Until 2022, there was a notable increase in public awareness and engagement, with individuals and organizations actively utilizing platforms provided by various independent and national authorities<sup>87</sup>. A key development during this period was the establishment of the National Transparency Authority, which was founded in the same year that the relevant Directive was enacted.

The 2022/Law<sup>88</sup> incorporates European Directive 2019/1937, which establishes a framework for the protection of public interest whistleblowers. The primary reason for passing this bill is the delay in transposing the relevant Directive into Greek law, which was due by December 17, 2021. Specifically, the law prohibits all forms of retaliation and acts of retribution against whistleblowers, whether these come from employers or third parties. In addition to retaliation related to general and special employment terms, the bill also forbids any other harmful actions against the whistleblower in both their professional and social environments that are related to their report. Examples of prohibited actions include suspension or dismissal, demotion, denial or withholding of promotions, removal of duties, change of workplace, reduction of salary, and alteration of working hours.

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<sup>&</sup>lt;sup>87</sup> National Transparency Authority. Link: https://aead.gr/submit-complaint.

<sup>&</sup>lt;sup>88</sup> External reporting is carried out through the National Transparency Authority (NTA), which serves as an external reporting channel. The NTA is the designated authority responsible for receiving, handling, and monitoring reports that are submitted directly to it.

Additionally, as previously mentioned, reporting can also take place through public disclosure—meaning that the individual making the report may choose to disclose the information publicly and directly through an appropriate medium, such as social media platforms or other relevant channels. Néos Nóμos για το Whistleblowing. Link: https://www.dikaion-law.com/nea-nomothesia-gia-whistleblowing-295

When Greece introduced its new whistleblower protection law in line with the Directive, the move was hailed as a long-overdue step towards greater transparency. Public bodies responded quickly and in the early days, their willingness to adapt was widely praised. However, the law was not without its critics. Some questioned the clarity of its language, others the boldness of its scope. The main problems according to NGOs were that it did not introduce meaningful protections for whistleblowers or/and for defendants, according to compliance directors.

But overall, there was broad agreement: this was a crucial principle. Even those who were wary of the details agreed that with time—and revision the law could evolve into a much stronger safeguard for those who speak out.

Now, three years after the directive was adopted, the debate in Greece has changed. A growing number of legal disputes and controversies in the public sector have come to light, from mismanagement of funds to long-standing inefficiencies. Whistleblowing is no longer a theoretical issue - it is a real and visible force in the country's accountability landscape. And as these cases come to light, they are testing new laws, like the one in 2024.

Even though our organization does not handle cases directly but rather provides guidance and direction, we have received an average of over 20 inquiries per year regarding a wide range of issues. These cases span various sectors, including environmental concerns, corruption in public administration, energy policies, higher education institutions, and diplomatic services. The breadth of these reports underscores the increasing willingness of individuals and organizations to bring such matters to the forefront, signaling a shift toward greater transparency and accountability within both governmental and institutional frameworks.

#### Introduction

The 2022/Law recognizes whistleblowers as key players in the fight against corruption and is in line with the needs and description of the European Directive. This was the first step in cultivating a culture of integrity and social responsibility, within the Greek CSOs and companies that saw an opportunity to strengthen mechanisms to prevent corruption and promote ethical governance. Our Business Integrity Forum members regard whistleblowers as playing a crucial role in uncovering and facilitating the prosecution of corruption-related offenses. Their contributions are considered significant, provided they act in good faith and with genuine intent to uphold transparency and integrity in private and public services.

The methodology used in this research extends beyond the use of academic literature. It also incorporates discussions and interviews with experts from both private companies and universities. As Transparency International Greece, we express our gratitude to these contributors, whose insights have helped shed light on a range of systemic issues. Some of these challenges are not thoroughly

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documented in existing literature—partly due to a lack of comprehensive studies on the subject—but are instead reported through newspapers and online news platforms.

Article 20 of Law 5095/2024<sup>89</sup> also included violations of national law, specifically the offenses of bribery and trading in influence, within the material scope of Law 4990/2022. The above EU and national legal framework provides the opportunity for former and current employees, civil servants, job applicants, volunteers, unpaid workers, interns, self-employed persons, shareholders and persons belonging to the administrative, management or supervisory body of a company or organization as well as to persons working under the supervision and direction of contractors, subcontractors and suppliers, to file a complaint of violations that fall within the above scope of application of the law, without being subject to direct or indirect retaliation by their employer.

Businesses with fewer than 50 employees<sup>90</sup> are given the flexibility to appoint a Responsible Reporting Officer (R.R.O.), but they are not legally required to do so. However, for companies with a workforce ranging from 50 to 249 employees, the appointment of an R.R.O. is mandatory, with a deadline set for December 17, 2023. Once the appointment is made, these businesses must formally notify the Labor Inspectorate within a period of two months. Larger organizations, specifically those employing more than 249 individuals, are subject to a stricter timeline. They were required to designate an R.R.O. within six months from November 11, 2022, ensuring that their compliance was in place within the specified timeframe. Like mid-sized businesses, they are also obliged to inform the relevant Labor Inspectorate of the appointment within two months.

In addition to size-based requirements, certain industries face stricter regulatory obligations due to their potential impact on public welfare. Companies operating in sectors such as financial services, financial products and markets, transportation, and environmental protection, as well as any industries that could pose a significant risk to public health or the environment, must designate an R.R.O. regardless of their workforce size. This requirement underscores the heightened responsibility these businesses have in ensuring compliance with regulatory frameworks and mitigating risks associated with their operations. The appointment of an R.R.O. in these sectors is a key measure to enhance accountability, enforce ethical standards, and promote transparency in industries where regulatory oversight is particularly crucial.

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<sup>&</sup>lt;sup>89</sup> Whistleblowing: N. 4990/2022 και ζητήματα πρακτικής εφαρμογής. Link: https://www.lawspot.gr/nomika-nea/whistleblowing-n-4990-2022-kai-zitimata-praktikis-efarmogis

<sup>&</sup>lt;sup>90</sup> The protection of "public interest witnesses" - "whistle-blowers" at work. Link: https://tarpinidis-law.gr/en/articles/prostasia\_martyron\_dimosioy\_symferontos\_stin\_ergasia

The process that a private entity subject to compliance must follow for monitoring internal reports under Law 4990/2022 may also incorporate policies for handling internal complaints related to incidents of violence and harassment, as outlined in Article 10 of Law 4808/2021. In such cases, the reception and examination of these complaints will be integrated into the broader framework of internal reporting procedures. Additionally, the submission of such complaints will be facilitated through the internal reporting channel established under Law 4990/2022.

However, the integration of policies for managing internal complaints concerning violence and harassment into the internal reporting monitoring process must be carried out in strict compliance with the requirements set forth in Articles 9 and beyond of Law 4808/2021. Furthermore, where necessary, this integration should take place only after collective negotiations with employee representatives within the organization, ensuring that all procedural and regulatory obligations are met.

## Implementation of the transposed national law as per the compliance topics

In Greece, the first cases of whistleblowers were in 2009 and for five years, during the economic crisis, the framework and the respective complaint platform existed in internal regulations in large companies headquartered in Germany, e.g. OTE Group or Lidl. With Directive 1937/2019, which was incorporated into Greek law through Law 4990/2022, existence and national legal framework in the applicable practice was adopted in the Greek legal system and a series of provisions and practices «essentially found a home».

It is clarified, in this regard, that the legislator (national and EU) is not interested in protecting whistleblowers from reporting any violation, but only those that concern exclusively the following twelve (12) EU sectors:

- public procurement,
- financial services, products and markets, as well as the prevention of money laundering and terrorist financing,
- product safety and compliance,
- transport safety,
- environmental protection,
- radiation protection and nuclear safety,
- food and feed safety, animal health and welfare,
- public health,
- consumer protection,

- privacy and personal data protection, and security of network and information systems,
- violations affecting the financial interests of the Union under Article 325 TEU and
- violations relating to the internal market, as referred to in paragraph 2 of Article 26 TEU (e.g. violations of Union rules on competition and state aid, corporate taxation, etc.).

For public offices or institutions with a workforce of up to 49 employees<sup>91</sup>, the role of the Responsible Reporting Officer (R.R.O.) is assigned to the Integrity Advisor of their supervising Ministry. In other words, the High Public Administration (H.P.A.) official of the respective Ministry assumes this responsibility. This designation must be completed within six months from November 11, 2022. For organizations with more than 50 employees, the appointment of an R.R.O. follows a similar structure, with the Integrity Advisor of the supervising Ministry being designated as the R.R.O. However, if such a position has not been established, the organization must appoint one of its own employees—either a permanent staff member or one with an IDAX contractual relationship—within the same six-month timeframe.

Regardless of the designation process, the R.R.O. has specific responsibilities concerning whistleblower reports. Upon receiving a report, the R.R.O. must acknowledge receipt within seven days and update the whistleblower on the progress of their case within three months of issuing the confirmation. Additionally, the R.R.O. is obligated to handle reports with strict adherence to data protection laws, ensuring the confidentiality of the whistleblower's identity. Whistleblowers are permitted to make their disclosures public, such as through a journalist—only under specific circumstances. They may choose this route if they have previously submitted an internal and/or external report, but the body responsible or the National Transparency Authority (E.A.D.) failed to act. Alternatively, public disclosure is justified if the whistleblower reasonably believes that the violation poses an immediate risk to the public interest, constitutes an emergency, carries the potential for irreversible harm, or if reporting the matter to the Public Prosecutor's Office or the E.A.D. could expose them to retaliation.

According to Articles 11 and 12 of Law 4990/2022<sup>92</sup>, individuals who report violations of European Union law have two options: they can either resubmit reports that were previously filed through internal reporting channels to an external reporting

<sup>&</sup>lt;sup>91</sup> The protection of "public interest witnesses" - "whistle-blowers" at work. Link: https://tarpinidis-law.gr/en/articles/prostasia\_martyron\_dimosioy\_symferontos\_stin\_ergasia

<sup>&</sup>lt;sup>92</sup> https://www.syntagmawatch.gr/trending-issues/to-neo-thesmiko-plaisio-gia-anaferontes-paravaseis-enwsiakou-dikaiou/

channel, or they may choose to submit their reports directly to the external reporting channel.

The law designates the National Transparency Authority (E.A.D.) as the sole external reporting channel for all types of reports, regardless of their nature or the entity involved. The E.A.D. is responsible for receiving and processing reports within a reasonable timeframe, which must not exceed three months, or six months in cases where an extension is duly justified. Once an investigation is conducted based on a report, the E.A.D. is required to inform the whistleblower of the final outcome. Furthermore, the E.A.D. must implement appropriate monitoring measures to assess the accuracy of the allegations, address reported violations through internal investigations, prosecutions, recovery of misused funds, or other appropriate legal remedies. Alternatively, the E.A.D. has the authority to refer a report to another competent authority for further investigation, ensuring proper follow-up and oversight of the case by the relevant institution.

More recently, Law 5090/2024<sup>93</sup> introduced an amendment to Article 218 of the Code of Criminal Procedure, adding paragraph 7. This new provision stipulates that the appropriateness and necessity of protective measures must be continuously evaluated by the competent prosecutor. At any time, if these measures have been imposed by their order, the prosecutor has the authority to modify or revoke them. Alternatively, they may propose their modification or revocation if they determine that the reasons for implementing them have changed or no longer exist.

According to the relevant provisions of the Code of Criminal Procedure, the status of a public interest witness can be revoked at any stage of criminal proceedings. This decision rests with the prosecutor who initially granted the status, should they conclude that the conditions justifying the designation are no longer met. Such a revocation may occur if it is discovered that the witness acted out of self-interest, is implicated in the case, or provided information that is not deemed substantial. Since the criteria for recognizing an individual as a public interest witness must be met collectively, failure to satisfy any of these conditions could lead to the removal of the witness' protected status.

It is noted that the field of labor law is excluded from the objective scope of application of the law and the Directive, and therefore, any report of violations related to work (e.g. violation of health and safety conditions) leaves employees exposed to the possibility of retaliation (without, of course, negating the protection that may be provided to them by other relevant provisions). The absence of regulations in the area of labor law discourages future whistleblowers from reporting

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<sup>&</sup>lt;sup>93</sup> Μάρτυρες δημοσίου και όχι ιδιοτελούς συμφέροντος. Link: https://www.protothema.gr/blogs/vasileios-h-arvanitis/article/1525755/martures-dimosiou-kai-ohi-idiotelous-sumferodos/

violations, which is difficult anyway due to the inherent dependence of the employee on his or her counterparty.

The developments in the Novartis case<sup>94</sup> have once again brought to the forefront the ongoing debate in our country regarding the role and protection of public interest whistleblowers. Specifically, the terminology often used publicly to describe these individuals frequently diverges from the spirit of Directive 2019/1937, which aims to protect those who report violations of Union law. Phrases such as "masked" or "the masks have fallen" do not align with the protective intent of the Directive, which promotes the institution of the whistleblower and encourages member states to raise public awareness about the legislation and the importance of this institution.

#### ACCESS TO FREE LEGAL AID AND EMOTIONAL SUPPORT

In an era where whistleblowers are publicly ridiculed as "masked individuals," moral and psychological support for whistleblowers is more important than ever and is a burden that civil society organizations understand and share In the meantime the last independent journalists also face direct attacks and unbearable lawsuits through the practice of SLAPP, the proposed legal framework for whistleblower protection in the draft law for the incorporation of European Directive 2019/1937 appears to be timid in some areas. It should have been structured more decisively, without restrictions or room for misinterpretation.

According to the Directive, which was transposed into Greek law in 2019, along with additional legislative measures enacted in 2022 and 2024, whistleblowers are entitled to a range of legal protections and free legal support/coverage. This protection framework is reinforced not only by law firms and civil society organizations that are particularly engaged in whistleblower rights but also by various institutes and independent organizations committed to safeguarding transparency and accountability. Furthermore, the Greek state assumes both a legal and moral obligation to ensure the protection of whistleblowers' rights and to uphold the integrity of the cases that arise from their testimonies. This reflects a broader commitment to strengthening ethical governance, promoting transparency, and encouraging individuals to report misconduct without fear of retaliation.

Supporting public interest whistleblowers is crucial to ensure they feel safe and confident in reporting wrongdoing. The use of terms like "public interest

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 $<sup>^{94}</sup>$  Δελτίο Τύπου – Οι Whistleblowers στην Ελλάδα και Βήματα για την ενίσχυση της προστασίας τους. Link: https://transparency.gr/%ce%b4%ce%b5%ce%bb%cf%84%ce%af%ce%bf-%cf%84%cf%80%ce%bf%cf%85-%ce%bf%ce%b9-whistleblowers-%cf%83%cf%84%ce%b7%ce%bd-%ce%b5%ce%bb%ce%bb%ce%ac%ce%b4%ce%b1-%ce%b3%ce%b1%ce%b9-%ce%b2%ce%ae%ce%bc/

whistleblowers" highlights their significant role in exposing violations to employers, authorities, or the media. Whistleblowers are invaluable allies in promoting transparency and justice, and they must be protected. The Directive provides our country with an opportunity to break free from outdated stereotypes and reshape the culture surrounding the institution of whistleblowers. It is essential to strengthen internal policies and enhance awareness in order to genuinely promote the whistleblowing system.

Additionally, the law states that the whistleblowing platform must be managed by an autonomous and independent authority. However, the work of organizations like ours becomes more complicated when the authority responsible for handling reports is national rather than independent.

This shift in perspective is not just about legal protection but also about fostering a broader societal understanding that whistleblowers play an essential role in maintaining ethical standards and ensuring accountability. When individuals are willing to step forward and reveal misconduct, it demonstrates a commitment to upholding the rule of law and contributing to the common good, even at personal risk.

By advancing policies that not only protect but also actively encourage the reporting of violations, the country can begin to dismantle the negative stigmas and misconceptions that have historically surrounded whistleblowers. This involves creating a more supportive environment, where the importance of whistleblowing is recognized and celebrated as an act of civic responsibility rather than one of betrayal or disloyalty.

#### **REVIEW**

With the incorporation of the Directive through Law 4990/2022, Greek Public Sector now bears the responsibility of informing the public and employees about the institution of whistleblowing and its benefits, thereby enhancing understanding and acceptance. This institutionalization of the Directive is a crucial tool in combating corruption and violations that burden the country's economy and society. However, the use of terms and expressions that undermine the seriousness of the Directive creates the impression that citizens and employees are discouraged from utilizing the protective framework provided by the legislation. References to "masks" and "hoods" evoke dark historical periods unrelated to the institution of public interest whistleblowers.

Avoiding these negatively charged terms will benefit not only the public image of the country but also the institution of public interest whistleblowers itself. The narrative surrounding whistleblowers should focus on their essential role in maintaining transparency, upholding the law, and contributing to the common good. The public perception of whistleblowing must evolve to recognize it as a positive,

| 61

courageous action that supports the integrity of society and the rule of law, rather than something to be feared or stigmatized.

Encouraging the use of neutral and respectful language when referring to whistleblowers is vital for creating an environment where individuals feel empowered and protected to report wrongdoing. The legal protections offered under Law 4990/2022 should be actively promoted, and the public should be educated on how these protections safeguard whistleblowers from retaliation. Only by changing the tone of the discourse and aligning it with the principles of justice and accountability can the true value of the whistleblowing «statute» be realized.

With the introduction of a second amendment to Article 218 of Law 4855/21, along with the enactment of Law 5090/24, Article 79<sup>95</sup>, the new legislative framework appears to be in formal compliance with the relevant directive. However, it falls short of safeguarding the anonymity of whistleblowers and creates significant deterrents for individuals who might otherwise come forward to provide testimony in cases related to corruption and other serious offenses. Instead of reinforcing protection mechanisms for those willing to expose wrongdoing, the revised provisions undermine their security and discourage potential witnesses from stepping forward.

This contentious legislative change was approved in February 2024, and within just a month of its implementation, high-profile political figures moved swiftly to demand the revocation of witness protection for individuals classified as public interest whistleblowers in the Novartis scandal<sup>96</sup>. The timing of this development raises serious concerns regarding the broader implications of the amendment and its potential to obstruct efforts to combat corruption.

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 $<sup>^{95}</sup>$  Νόμοι εργαλείο για την προστασία των διεφθαρμένων – Πώς μεθοδεύτηκε η νομοθέτηση για την αποκάλυψη των προστατευόμενων μαρτύρων. Link: https://www.documentonews.gr/article/nomoiergaleio-gia-tin-prostasia-ton-dieftharmenon-pos-methodeytike-i-nomothetisi-gia-tin-apokalypsi-ton-prostateyomenon-martyron/.

<sup>&</sup>lt;sup>96</sup> The Novartis scandal revealed the bribery of politicians, public officials, and doctors within Greece's National Health System (NHS). The investigation into the scandal was not limited to Greece, as it was also pursued by the U.S. Department of Justice. The approach in the U.S. and Greece was drastically different. In the U.S., in 2020, Novartis Hellas was forced to pay \$225 million as part of an out-of-court settlement, admitting its guilt. In Greece, however, the case against the political figures was dropped, and the prosecutor who initiated the case faced charges. Senior members of the SYRIZA government were referred to a special court. Last week, the Economic Prosecutor's Office, following repeated lawsuits and legal actions from the implicated politicians, suspended the protection status for two whistleblowers in the Novartis case and revealed their identities. As a result, the former ministers and former prime minister seem vindicated by the unmasking of the whistleblowers, now free to pursue the witnesses with legal and financial claims. This decision effectively eliminates the protection of public interest whistleblowers and sends a message that those with knowledge of such matters should keep quiet. It is a judicial decision that undermines justice itself.

The revised legal text now explicitly states: "The appropriateness and necessity of the protective measures shall be continuously reviewed by the competent prosecutor, who has the authority, at any time, to modify or revoke these measures if they were imposed by their order. Alternatively, the prosecutor may propose their modification or revocation if, in their judgment, the reasons for which the measures were initially imposed have changed or ceased to exist."

Through the addition of paragraph 7 to Article 218 of the Code of Criminal Procedure, as outlined in Article 79 of Law 5090/2024, the legislative framework has now introduced a highly controversial provision that effectively weakens the institution of public interest witness protection. This change has opened the door to rolling back protections for individuals who play a critical role in exposing illicit activities and ensuring accountability, thus significantly diminishing the effectiveness of the system as a whole. If someone perceives whistleblowing as merely another legal obligation, they might initially argue that the law adequately addresses the fundamental legal aspects. The definition of witnesses and whistleblowers has been established, and both internal and external reporting channels and platforms are in place.

## Conclusions

The protection of whistleblowers, provided by Greek legislation prior to Law 4990/2022, was limited to the protection of public interest witnesses<sup>97</sup> in criminal proceedings based on articles 47 and 218 of the Criminal Procedure Code. Furthermore, within the framework of article 14 of Law 4706/2020, the Capital Market Commission had previously imposed a decision on public limited companies with shares or other securities listed on a regulated market in Greece to maintain an Information and Communication System with appropriate whistleblowing channels, however, without further specification of its operating conditions and the protection measures for reporting persons.

With the entry into force of Law 4990/2022, a decisive step was taken towards the establishment of a comprehensive network of protection for whistleblowers in our country, which was expected to have a positive impact on the enforcement of the rules of EU law for the benefit of businesses, citizens and society. However, Forum representatives point out that in many cases the law is being circumvented. When employees realize that they are about to be fired, they file a report, which even a false one takes a while to be examined and rejected. There are cases involving the Speak Up culture, Public Meetings and even harassment between partners.

All of the above makes it difficult for compliance managers to draft a comprehensive and modern policy, and they are often called upon to introduce fields of application into reporting platforms that go beyond the law or its loopholes. As has been said many times, the law protects witnesses exclusively and not whistleblowers, making the work of authorities and companies more difficult. A particular problem is observed in large companies that collaborate with the State, in infrastructure, heavy industry and investments.

On the other hand, the same judicial system, as an independent authority, does not seem to apply the legislation with priority given to whistleblowers or even witnesses. The recent actions taken by prosecutors concerning two protected witnesses involved in the Novartis case 98—executed in accordance with this new legal provision—are widely regarded as a decisive blow to the institution of witness

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 $<sup>^{97}</sup>$ Το πλαίσιο προστασίας του νόμου 4990/2022 για το Whistleblowing. Link: https://lawandtech.eu/2022/11/25/%CF%84%CE%BF-

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<sup>%</sup> CF% 80% CF% 81% CE% BF% CF% 83% CF% 84% CE% B1% CF% 83% CE% AF% CE% B1% CF% 82-% CF% 84% CE% BF% CF% 85-n-4990-2022-% CE% B3% CE% B9% CE% B1-% CF% 84% CE% BFwhistleblowing/

<sup>&</sup>lt;sup>98</sup> Σκάνδαλο Novartis και άρση προστασίας μαρτύρων: Μην τολμήσει κανείς να (ξανα) καταγγείλει διαφθορά. Link: https://www.documentonews.gr/article/skandalo-novartis-kai-arsi-prostasias-martyron-min-tolmisei-kaneis-na-xana-kataggeilei-diafthora/

protection. In many modern legal systems, whistleblower protection is considered an indispensable tool for tackling organized crime and systemic corruption.

However, with the implementation of these amendments, Greece appears to be taking a step in the opposite direction, eroding a mechanism that is fundamental to the rule of law and the fight against serious financial and political crimes.

In conclusion, this shift in language and perception is critical not only for enhancing public trust in the whistleblowing system but also for encouraging a culture of openness and transparency. It will ensure that individuals are more likely to come forward with valuable information, which can ultimately help combat corruption and prevent further violations. By fostering an environment of support and respect for whistleblowers, Greece can contribute to a broader European and global effort to promote integrity and ethical conduct in both the public and private sectors.

## Recommendations

Steps to Strengthen the Protection of Whistleblowers and the Effectiveness of the Reporting Process

Strengthening the protection of whistleblowers<sup>99</sup> is of paramount importance for ensuring transparency and accountability, while also contributing to the prevention and addressing of violations. To achieve this, the implementation of specific measures and policies is necessary:

- The Greek government should consider introducing legal amendments to the current legislation to better protect whistleblowers. A major issue is the limited ability to report violations, as the current legislation limits its application only to the areas of interest of the European Union, as defined in the relevant directive. It is appropriate to broaden the scope of application to include violations of national, European and international law (as described in the implementation by the 12 cases).
- The Greek authorities should promote awareness of the importance of reporting, using targeted information campaigns. The creation of specialized websites, where citizens can access useful information, guidance and examples, is crucial. Furthermore, it is necessary to promote research initiatives in the field of whistleblowing. The European Commission has underlined the importance of changing the negative social perception around whistleblowing, aiming to create a positive and supportive environment.
- Strengthening the participation of civil society organizations in the policy-making and decision-making process is necessary. These organizations have extensive experience and can offer valuable knowledge for improving the institutional framework. The recent first evaluation report of the European Commission is an opportunity for the Greek legislator to make necessary amendments to the legislation, in view of the final report expected in 2026. The initiation of consultations with civil society organisations, which were not sufficiently involved in the previous process, is crucial to enhancing transparency and trust.

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 $<sup>^{99}</sup>$  Δελτίο Τύπου – Οι Whistleblowers στην Ελλάδα και Βήματα για την ενίσχυση της προστασίας τους. Link: <a href="https://transparency.gr/%ce%b4%ce%b5%ce%bb%cf%84%ce%af%ce%bf-%cf%84%cf%80%ce%bf%cf%85-%ce%bf%ce%b9-whistleblowers-%cf%83%cf%84%ce%b7%ce%bd-%ce%b5%ce%bb%ce%bb%ce%ac%ce%b4%ce%b1-%ce%b3%ce%b9-%ce%b2%ce%ae%ce%bc/

• The field of whistleblowing is still new for Greece, making systematic education and training necessary in both the public and private sectors. It is essential that competent people who deal with complaints or be called upon to make decisions have adequate training for the effective management of whistleblowing cases and the protection of whistleblowers.

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### Simona Ernu Andrei Macsut

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#### **Executive summary**

Romania's implementation of the EU Whistleblower Protection Directive faced conflicts and delays, weakening its effectiveness. The legislative process lacked inclusiveness, with civil society's concerns ignored. Key issues include unclear legal provisions, particularly regarding national security exemptions and protections for whistleblowers exposing unethical but technically legal practices. Anonymous whistleblowers face high burdens of proof, and there is no clear legal exoneration from liability, discouraging disclosures. Additionally, the absence of meaningful interim relief leaves whistleblowers vulnerable to retaliation. Some problems were corrected in the final law, but restrictive measures remained, such as requiring whistleblowers to first report internally and imposing a three-month waiting period before public disclosure. The National Integrity Agency, responsible for overseeing implementation, has yet to conduct a comprehensive review. In the private sector, compliance varies. While many companies have internal reporting mechanisms, scepticism about external reporting persists due to distrust in authorities. Some companies misinterpret the law's requirements and there are concerns about administrative burdens and costs, especially for small businesses.

#### Introduction

The scope of the present analysis is to examine the implementation process of the EU Whistleblower Protection Directive over a two-year period, from its last amendment, in March 2023 to March 2025.

The aim is to study the quality of its implementation by using the quality of transposition matrix as a framework of analysis. Table 1 below presents the situation in March 2025. As of this date, no amendments have been made to Law 361/2022. Therefore, the problems highlighted in the previous report have remained the same. The effectiveness review will take place in December 2025.

Table 1: Quality of transposition matrix

Compliance topics	Romania
Scope of coverage	
Comprehensive horizontal rights harmonizing EU Directive and national law	Partial compliance
Broad whistleblowing disclosure rights with 'no loopholes'	Partial compliance
Wide subject matter scope for scope of EU authority	Partial compliance
Protection against spillover retaliation at the workplace	Substantial compliance
Protection for non-employees who report work-related information	Substantial compliance
Reliable identity protection	Noncompliance
Protection against full scope of harassment	Substantial compliance
Shielding whistleblower rights from gag orders	Substantial compliance
Forum	
Right to a genuine day in court	Substantial compliance
Burdens of proof	
"Merits test" to qualify for protection	Partial compliance
Realistic standards to prove violations of rights	Noncompliance
Relief for whistleblowers who win	
"Make whole" compensation	Substantial compliance
Interim relief	Noncompliance
Coverage for legal fees and costs	Substantial compliance
Personal accountability for reprisals	Substantial compliance
Institutional whistleblower channels	Substantial compliance
Whistleblower enfranchisement	Substantial compliance
Education, outreach and transparency	
Guidance requirements	Substantial compliance

Transparency requirements	Substantial compliance
National administrative support agency	Substantial compliance
Review	
Review channels for effectiveness every 3 years	Deadline in 2025

Source: author's compilation

One of the major limitations of the present analysis is the fact that, due to the delay in transposing the EU directive, the review period was also delayed. In this sense, no substantial information on the implementation process and its quantitative and qualitative outcomes were collected from the National Integrity Agency (NIA), the official institutional external reporting channel. Therefore, this study focused on the legal text and information published in the media.

# Implementation of the transposed national law as per the compliance topics

### SCOPE OF COVERAGE

Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law was transposed into national law via Law no. 361/ 2022 on whistleblower protection in the public interest in December 2022.

In terms of scope of coverage, the transposition evaluation study, published in July 2023, considered that the Romanian national law contains ambiguities and omissions that may impede a proper implementation process in the future. Essentially, it was concluded that the lack of clarity on national security exemptions, burdensome proof requirements for anonymous reports, insufficient protection against legal retaliation, and failure to cover non-illegal but abusive practices all create potential loopholes that may deter individuals from coming forward and reduce the law's overall effectiveness in safeguarding whistleblowers<sup>100</sup>. Additionally, the process of determining the good faith principle remains subjective, which may leave room for inconsistent legal interpretation. While the legislation has a wide subject matter scope, it fails to protect whistleblowers that expose abusive but technically legal practices. This omission of explicit statutory protection weakens the law's

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<sup>&</sup>lt;sup>100</sup> Read the full report here: <a href="https://see-whistleblowing.org/wp-content/uploads/2023/07/Transposition-of-the-EU-20191937-directive-on-whistleblower-protection-in-Southeast-Europe.pdf">https://see-whistleblowing.org/wp-content/uploads/2023/07/Transposition-of-the-EU-20191937-directive-on-whistleblower-protection-in-Southeast-Europe.pdf</a>

effectiveness, as it does not fully address ethical breaches that may betray public trust. Although NIA was expected to clarify this issue, it has not yet done so. Additionally, Article 1(5) limits the scope by reinforcing secrecy protections for classified information, judicial deliberations, criminal procedural rules and professional privileges (lawyers' professional secrecy and confidentiality of medical information), which could further constrain disclosure.

Retaliation protections generally follow the Directive, but the law fails to specify examples of passive retaliation, and the absence of an explicit definition may lead to difficulties in court cases, where whistleblowers could struggle to prove they suffered retaliation. This omission weakens enforcement by allowing employers to argue against less overt forms of workplace retribution. While the law prohibits gag orders that restrict whistleblower rights, the law does not fully exempt whistleblowers from liability for slander, copyright infringement, or violations of professional and commercial secrecy. Without clear exoneration, whistleblowers remain vulnerable to legal action, which could deter reporting and contradict the Directive's intent.

A significant issue lies in Article 1(4), which merely translates rather than harmonizes the Directive's provision on national security exemptions. The vague language regarding what qualifies as essential military procurements creates uncertainty, potentially deterring whistleblowers from reporting due to fear of legal consequences.

#### **FORUM**

With regard to the right to a genuine day in court, Article 23 of the law offers administrative and judicial due process rights in contesting disciplinary measures and in providing relief against retaliation.

#### BURDEN OF PROOF

Regarding broad whistleblowing disclosure rights, the legislation imposes, via Article 6 on the content of reports, a higher burden of proof on anonymous whistleblowers by requiring "clues" rather than the "sufficient information" standard set in the Directive. This discrepancy could make it harder for anonymous whistleblowers to receive legal protection.

Regarding personal accountability for retaliation, Article 28 of the law establishes civil and criminal liabilities for those who violate whistleblower protection provisions, detailing the types of misdemeanors and the associated financial sanctions. The misdemeanors foreseen are the following:

- blocking or preventing reports from being made by the person responsible for receiving and recording them, or by someone in the designated department of an organization;
- unjustifiably refusing to respond to NIA requests by public institutions, public entities or private companies;
- not setting up the required internal reporting channels within private entities;
- failure to comply with other required obligations; and
- individuals failing to keep confidential the identity of whistleblowers, the person involved, or third parties.

In practice, courts have shown willingness to apply Law 361/2022 directly, even without exhausting internal channels. However, even when outcomes were favorable to the claimants, it still required significant legal effort by the whistleblower. Courts often demand rigorous evidence of causal links between protected disclosures and adverse actions, given that public institutions and companies often frame reprisals as neutral administrative measures, shifting burdens onto whistleblowers to prove intent.

### RELIEF FOR WHISTLEBLOWERS WHO WIN

In terms of whistleblower compensation and legal protections, Articles 22 and 23 legally guarantee protections such as coverage for legal fees and interim relief. However, the law fails to provide meaningful interim relief as outlined in the Directive. While some judicial procedures may offer generic relief, the Directive specifically mandates non-routine access to interim protection, which is not adequately reflected in the law. Therefore, there is a risk that financial assistance will not be available for whistleblowers if a court rejects their challenge to retaliation measures. Consequently, whistleblowers remain vulnerable to retaliation and without any safety net during legal proceedings.

A case in point was revealed by the press in February 2025, when two whistleblowers from the Romanian Financial Supervisory Authority (FSA) sent out reports on serious irregularities within the institution and are now facing retaliation<sup>101</sup>. A former actuary was dismissed in January 2025 after alerting Parliament about oversight issues and subsequent risks in the private pension system. Prior to this official report, he had warned FSA's leadership about decisions that negatively impacted the pension system, but the entity initiated a disciplinary investigation against him,

jurnalul/asf-concedieri-avertizori-integritate-988778.html

Diana Scarlat, "ASF își concediază avertizorii de integritate. Angajații care raportează fraude sunt anchetați de șefii pe care-i "toarnă" (FSA fires its whistleblowers. Employees who report fraud are investigated by the very bosses they expose), Jurnalul, 6 February 2025, <a href="https://jurnalul.ro/special-">https://jurnalul.ro/special-</a>

led by the very superiors he had reported. His dismissal was justified on the grounds of "serious disciplinary violations" consisting in damaging the image of the FSA's Vice President. The whistleblower claims he has documents proving the truth of his allegations and intends to take FSA to court. The second whistleblower exposed another Vice President's interventions, which led to changes in the findings of FSA's inspections, in favor of an insurance company. After reporting these actions to Parliament, she was informed by colleagues that a disciplinary investigation against her was being prepared.

Although the whistleblowers' reports were submitted to multiple parliamentary committees, no concrete action has been taken to investigate their claims or discuss directly with the whistleblowers. Instead, FSA reportedly is treating these cases as internal disciplinary matters, without addressing the actual accusations.

Several recent court decisions highlight systemic weaknesses in ensuring real protection for whistleblowers persists, despite some positive judicial trends:

In civil judgment no. 32/2025, the claimant, who worked for the Customs Authority, reported irregularities in import operations to the Ministry of Finance. Subsequently, the Customs Authority issued an order to transfer the claimant temporarily to another customs office. The claimant argued this measure was retaliatory and claimed suspension of the transfer order via preliminary injunction ("ordonanță președințială") under Art. 23 of Law 361/2022. The court ultimately suspended the transfer order until the final ruling on the annulment case. This is a rare, concrete example of a Romanian court granting interim relief using the specific provisions of Law 361/2022 (Art. 23). The case stands out because the preliminary injunction protected the whistleblower during the legal process<sup>102</sup>.

In case 687/2024, the claimant - an airport employee - reported suspected EU funds fraud, triggering a whistleblower disclosure to NIA. After the disclosure, the employer allegedly retaliated (changing workspace conditions, restricted access, refused to adapt working conditions following medical issues). A previous decision (no. 916/2023) had already suspended employer measures taken post-disclosure. The claimant faced continued actions, including issuance of pre-dismissal notice, and eventual dismissal, which they claimed constituted ongoing retaliation prohibited under Art. 22 of Law 361/2022. Thus, they requested suspension of the pre-dismissal and dismissal measures using a preliminary injunction under Art. 23 of the law. Despite earlier judicial protection, sustained retaliatory measures persisted, a sign that the employer was circumventing protections and that the courts had limited ability to prevent ongoing retaliation once initial relief was granted <sup>103</sup>.

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 $<sup>^{102}</sup>$  Bucharest Tribunal, Civil Judgment No. 32/2025, delivered on 4 February 2025

<sup>&</sup>lt;sup>103</sup> Bacău Court of Appeal, Civil Decision No. 687/2024, delivered on 21 November 2024

In civil judgment no. 478/2025, the claimant - a university lecturer - had previously reported institutional irregularities and was reinstated after a prior dismissal. Shortly after reinstatement, the university's Ethics Committee issued a decision to dismiss them again, citing ethical violations. The claimant argued the disciplinary action was retaliatory, linked to their prior whistleblowing activity, invoking Law no. 361/2022 (Art. 22 on reprisals prohibition). The court suspended the dismissal, acknowledging timing and disciplinary reasoning as indicative of reprisals 104.

In civil Judgment no. 107/2025, the claimant - a university employee - reported workplace harassment, salary discrimination, and a hostile work environment. They submitted internal and external reports, including to the National Council for Combating Discrimination (CNCD) and faced subsequent disciplinary proceedings, including reduction of salary by 10% for one month due to secretly recording conversations with colleagues. They challenged the legality of the disciplinary sanction on multiple procedural grounds (lack of clear description of the offense, failure to consider her whistleblower status, and hasty disciplinary procedures) and invoked protection under Article 21 of Law 361/2022. The case is still pending final resolution in the full decision<sup>105</sup> but it illustrates unclear application of Law 361/2022 protections when whistleblowers gather evidence (e.g., recordings).

In case 245/2025, an employee of AQUASERV company reported irregularities, invoking whistleblower status. They faced disciplinary action and eventual dismissal, allegedly for workplace conduct (messages sent via WhatsApp, union activities, etc.). They claimed these disciplinary sanctions were retaliation and filed for preliminary injunction to suspend dismissal. The court provided strong interim relief, suspending dismissal and reinstating the whistleblower, explicitly citing Art. 23<sup>106</sup>.

The courts have actively applied preliminary injunctions to prevent ongoing retaliation, yet reliance on courts instead of institutional compliance imposes significant burdens on whistleblowers, reinforcing the need for non-judicial enforcement mechanisms.

Court cases reviewed do not involve anonymous whistleblowers. However, they highlight challenges even for identified whistleblowers, particularly around employer retaliation disguised as administrative discipline. There is little evidence of coordination between internal and external channels (e.g., no cases where whistleblowers escalated from internal to external and faced reprisals). No significant sanctions against retaliating employers have been recorded, reflecting

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<sup>&</sup>lt;sup>104</sup> Tribunal, Civil Judgment No. 478/2025, delivered on 5 March 2025

<sup>&</sup>lt;sup>105</sup> Tribunal, Civil Judgment No. 107/2025, delivered on 21 January 2025

<sup>&</sup>lt;sup>106</sup> Tribunal, Civil Judgment No. 245/2025, delivered on 26 February 2025

enforcement gaps. This lack of sanctions creates a perception of impunity, undermining the deterrent effect envisaged by the Directive.

### EDUCATION, OUTREACH AND TRANSPARENCY

The law addresses the transparency, information, and feedback requirements mandated by the Directive. Specific measures for whistleblower enfranchisement, such as the provision of information and feedback, have been included, ensuring that whistleblowers are informed of the status of their reports and given appropriate support. These provisions help to establish a clearer and more supportive framework for whistleblowers.

In terms of education, outreach, and transparency, the law also aligns with the Directive's requirements. Articles 10, 15, 23, and 26 lay out the necessary steps for raising awareness and providing information about whistleblower rights and procedures. Additionally, Article 15 mandates that the NIA will publish annual statistics related to whistleblower protection activities, ensuring ongoing transparency in the law's implementation.

### **REVIEW**

NIA, through its Whistleblowers Department, is the responsible entity that will periodically, but at least every 3 years, review the procedure for receiving reports and taking subsequent actions for both public and private entities. NIA has published on its website all the legally mandated information as well as contact data, FAQs and guidelines pertaining to the whistleblowers' law as well as the legal obligations for public and private entities<sup>107</sup>.

Since the national law came into force in December 2022, the review deadline would be December 2025. Therefore, NIA has not issued any specific review of the law as of writing this report. Nevertheless, in January 2025, NIA issued Order no. 693/2025 for submitting statistical data in accordance with the provisions of Law No. 361/2022 on the protection of whistleblowers in the public interest<sup>108</sup>. This tertiary piece of legislation sets the deadline, starting from 2025, for public entities in submitting the annual statistical reporting form as the last Friday of February. The order also sets content and structure of the annual statistical reporting form.

The only review of the law's implementation consists in a series of interviews, conducted in early 2023, with several private sector companies, done by a civil

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<sup>107</sup> https://avertizori.integritate.eu/

<sup>108</sup> https://legislatie.just.ro/Public/DetaliiDocument/293818

society coalition focusing on supporting whistleblowers' rights<sup>109</sup>. The conclusion of this research was that, despite issues caused by the law's ambiguity, the success of the law's implementation depends on the concrete measures companies take in response to reports, as these will be decisive in gaining employee trust.

For the private sector, the law requires the creation of internal procedures for reporting legal violations and offering protection to whistleblowers, including a ban on retaliation. The obligations were implemented in two phases: for companies with more than 250 employees, the provisions took immediate effect, while for those with 50-249 employees, compliance became mandatory starting from December 17<sup>th</sup>, 2023.

Private companies have generally perceived the transposition of the Directive as a necessary formality, considering that most of those interviewed already had internal systems for anonymous reporting of corruption or other legal breaches. These consist in at least one channel for anonymous reporting, either digital or through other means such as email or telephone. These channels are accessible to both employees and business partners and are considered essential for maintaining an ethical work environment. Confidentiality is also strictly managed, with management having access only to statistical data on reports, not their content. The interviewed representatives underlined that, even when certain reports seem unfounded, all are investigated, as they may sometimes indicate real issues. To eliminate subjectivity in whistleblower evaluations, some companies have even established mixed investigation committees. Despite having such systems in place for years, company representatives believe the law is necessary to encourage whistleblowers to report, especially in a country where corruption is still perceived as a major issue.

However, some companies interpret the law as allowing pre-existing reporting procedures to override the minimum standards set by the Directive. This interpretation is facilitated by the vague wording of Article 1, paragraph 3, which does not explicitly state that existing procedures must be adapted to meet the minimum protection standards. On the other hand, some large corporations believe their compliance standards, inspired by American legislation, are already superior to those required by the law, meaning the impact of the new provisions will be minimal. Nevertheless, companies are still required to formally update their internal procedures to explicitly include all obligations imposed by the law.

Moreover, although many companies use sophisticated systems to protect whistleblower anonymity, they remain hesitant about additional obligations imposed by the law, such as the requirement for written procedures covering all available reporting methods, that are seen as difficult to implement and excessively

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<sup>&</sup>lt;sup>109</sup> "Cum văd companiile private legea privind protecția avertizorilor de integritate" (How private companies view the whistleblower protection law), Avertizori.ro, February 2023, https://avertizori.ro/cum-vad-companiile-private-legea-privind-protectia-avertizorilor-de-integritate/

bureaucratic. For instance, Article 7, which mandates keeping records of reports, requires obtaining the whistleblower's consent for recording conversations or inperson complaints. Additionally, requiring a whistleblower's signature for phone reports is viewed as unnecessary, since most whistleblowing is done through anonymous email addresses created specifically for this purpose. In addition, the obligation for private companies to inform employees about the option to report to external institutions is also met with skepticism, given the widespread distrust in Romanian investigative authorities. Some companies have expressed frustration over the lack of response from authorities to past reports, preferring to handle issues internally.

With regard to the anonymity topic, some company representatives argue that it cannot be maintained in litigation cases since, although anonymity may initially be preserved, those involved in the investigation will inevitably learn the whistleblower's identity. The proposed alternative is ensuring protection against retaliation rather than absolute anonymity.

There are also concerns that the new law could be misused for blackmail or as a tool to settle personal or professional conflicts. In this regard, some company representatives have noted that in Romania, whistleblowers are still often associated with "informers,", but stated that younger employees are more open to using reporting channels.

With regard to costs and actual impact, companies did report some needed spending since they are obliged to designate impartial personnel to handle reports, raising concerns about potential conflicts of interest, as well as invest in technology for whistleblowing channels. These actions could represent a significant burden for small businesses. As a solution, some companies are considering fully outsourcing the reporting and analysis process to ensure impartiality.

## Conclusions

Romania's transposition of the EU Whistleblower Directive remains incomplete and faces challenges in its practical implementation. While the law provides a legal framework for whistleblower protection, its effectiveness is undermined by legal ambiguities, insufficient enforcement mechanisms, and a lack of strong institutional support. Key concerns include limited protections for anonymous reporting, burdensome proof requirements, and inadequate interim relief measures for whistleblowers facing retaliation. While Romania's courts have begun to meaningfully interpret whistleblower protections, systematic employer noncompliance and procedural burdens persist. Institutional mechanisms, including employer training, administrative oversight, and clear sanctioning regimes, must be enhanced to align fully with the Directive's goals.

The effectiveness of reporting channels remains inconsistent. While private companies have largely adapted their internal procedures, there is scepticism about external reporting mechanisms, especially given the lack of response from investigative authorities. The National Integrity Agency (NIA), the designated external reporting body, has yet to conduct a comprehensive review of the law's implementation, further delaying necessary improvements.

Weak protection for whistleblowers due to unclear legal provisions regarding retaliation. Existing gaps, such as the failure to protect whistleblowers exposing unethical but technically legal practices, leave room for employer retaliation. The high burden of proof on whistleblowers also discourages reporting. Cases such as those involving the Financial Supervisory Authority (FSA) illustrate that whistleblowers remain vulnerable to retaliation, with institutions treating reports as internal disciplinary matters rather than addressing allegations.

The application of sanctions for non-compliance is inconsistent. While penalties exist for obstructing reports and violating confidentiality, enforcement remains weak, with no significant cases of sanctions being applied. The lack of meaningful penalties for retaliation contributes to a culture of impunity, discouraging whistleblowing.

### Recommendations

### Strengthen reporting channels

- Improve NIA's external reporting mechanism by ensuring timely responses and follow-ups to whistleblower reports.
- Increase public trust in external channels by enforcing transparency measures, including mandatory reporting on case outcomes.
- Publish clear guidelines for establishing internal reporting mechanisms for the private sector.

### • Enhance whistleblower protection measures

- Amend the law to provide full anonymity protections in line with the Directive.
- Lower the burden of proof for whistleblowers by removing the requirement for "clues" in anonymous reports and aligning with the Directive's "sufficient information" standard.
- Introduce mandatory interim relief to protect whistleblowers from retaliation while investigations are ongoing.
- Clarify legal exemptions to prevent national security concerns from being used as a blanket justification for suppressing disclosures.

### Ensure effective sanctions for non-compliance

- Strengthen enforcement by increasing penalties for retaliation against whistleblowers and ensuring they are actively applied.
- Introduce specific consequences for authorities and organizations that fail to act on whistleblower reports within a reasonable timeframe.
- Conduct regular audits to assess the effectiveness of whistleblower protections, ensuring compliance with both national and EU standards.

### Strengthen procedures

- Require employers (especially public institutions) to halt disciplinary proceedings against self-declared whistleblowers unless reviewed by an independent body.
- Ensure disciplinary bodies, HR, and management are trained on whistleblower protections to prevent misuse of disciplinary procedures.
- Empower NIA to issue binding opinions or guidelines in suspected retaliation cases.
- Mandate minimum penalties for proven retaliation, ensuring enforcement.
- Codify automatic triggers for applying Art. 23 injunctions without the need for whistleblowers to litigate extensively

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