OPINION OF TRANSPARENCY INTERNATIONAL – BULGARIA ON THE DRAFT ORDINANCE FOR KEEPING THE REGISTER OF THE REPORTS UNDER ART.18 OF THE LAW ON PROTECTION OF PERSONS REPORTING OR PUBLICLY DISCLOSING INFORMATION ON BREACHES AND ON THE REFERRAL OF INTERNAL REPORTS TO THE COMMISSION FOR PERSONAL DATA PROTECTION IN BULGARIA.

The draft ordinance submitted for public consultation is part of the legal framework for the implementation of Directive 2019/1937. The Directive implies the regulation of public relations related to the protection of whistleblowers. The Bulgarian legislator has provided for the regulation of these relations, a special law, the ordinance that specifies it. These three groups of acts all together should provide the system of rules to allow the stakeholders to adapt their behavior to their work context, to achieve the objective of the Directive. Only after all the norms have been adopted, the process of implementing the Directive will be completed. The proposed bylaw doesn't end this process. The legislator stated a closing date as for the adoption of the ordinance, a period: six months from the date of notification in the State Gazette and these apply both to the ordinance s provided for in section 19(1)(3) and to the specified instructions . Commission for Personal Data Protection in Bulgaria has submitted for public consultation only the ordinance for a short period of time. In the draft ordinance it has indicated that it intends to define, not a small range of public relations through instructions.

- The terms and conditions for the examination of reports, including the determination of the current status of the report, are regulated by Commission instructions (Article 5(7) of the draft Ordinance);
- The procedure and conditions for the transfer of company registers to the Commission (Article 9(2) of the draft ordinance);
- The procedure for keeping registers by companies (Article 1(4) of the draft ordinance).

The instructions should not create norms but should only clarify these norms to all stakeholders. The proposed ordinance does not adopt this approach. In many cases, it points to the instructions. In order to be examined and commented upon fully, the submitted ordinance must be placed in the context of the rules on all public relations which are subject to regulation within the legal framework of the transposition of the Directive, including the envisaged the instructions.

As a result of the arguments presented, TI-Bulgaria insists that the draft ordinance should be revised in two directions before it is submitted for a new public consultation:

1. Inclusion of all necessary fields of legal ordinance that have been transferred for settlement with instructions.
2. Concretization of the proposed provisions into legal norms containing specific rules of conduct.

The deadline referred to in paragraph 9 of the Act is instructive, which allows to improve the quality of the normative act already in the phase of its preparation, and to bring it in line with the requirements of Article 1a (on the content of the normative act) and Article 7 (on the scope of ordinance s as a type of normative act) of the Law on statutory Acts.

Only in the new public discussion, specific elements of the ordinance should be considered, such as: the obligation to send reports on the reports register, even in the absence of records in it, the creation of a unique identification number even for anonymous reports, that are not considered by the law. Consideration could also be given to revising the provision that through the registers the Commission for Personal Data Protection has access to both the names of all whistleblowers and the names of the persons against whom the report was send.

The creation of definitions by these ordinance beyond those provided in the law and in the Directive is a separate issue that needs attention.

TRANSPARENCY INTERNATIONAL – BULGARIA

Sofia, 20 July 2023