
Position of Transparency International Bulgaria on the gaps and inconsistencies in the secondary legislation regulating whistleblower protection in the country

Transparency International Bulgaria is deeply concerned about the continuous lackluster efforts of authorities to introduce a robust legal framework guaranteeing the protection of whistleblowers in Bulgaria.

This position is prepared in relation to the adoption of the 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 and a follow-up to the Opinion submitted by TI Bulgaria during the process of public discussion of the normative act¹.

Despite the opinion of TI Bulgaria and the opinion submitted by other civil society organizations, the Ordinance was adopted as proposed without reflecting the recommendations for resolving gaps in the regulation and the serious concerns related to the extra rights and obligations it creates for stakeholders.

Leaving gaps in the regulations, which will hinder the implementation of the Law, respectively, the transposition of the Directive

The Ordinance leaves a number of gaps related to the implementation of the Law and more particularly the processes related:

- The rules and criteria for the examination of reports, including prioritization of reports by the internal reporting channels.
- The determination of current status of reports, including the definition of “current status of report”;
- The rules and criteria for the examinations of reports, including prioritization of reports by the Commission in its’ capacity as a central authority for external reporting in Bulgaria.
- The rules for data collection and reporting by the internal reporting channels to the Commission

It should be noted that one of the arguments presented by the Commission for Personal Data Protection for the haste to adopt the Ordinance and shorten the timeframe for public discussion from 30 days to 14 days in the summer months, resulting in lack of feedback from both experts and stakeholders², was the strive towards providing protection to whistleblowers as soon as possible. This, evidently, cannot happen when such serious gaps in regulating the processes for receipt and examination of reports, for example, continue to exist and are supposed to be regulated in future instructions.

¹ The Opinion submitted by TI Bulgaria may be found here: https://transparency.bg/wp-content/uploads/2023/07/Whistleblowing_Legislation_Ordinance_Opinion_of_TI-Bulgaria_20230720.pdf

² Only 4 opinions were submitted during the 14 days of public discussion

Creating rights and obligations which are not regulated by the Law

The Ordinance creates disproportionate rights and over-authorization for the Commission for Personal Data. For instance:

- The Commission and its' employees are given the right to full access to the Registers for the internal reporting mechanisms, without any rules and criteria on the process of accessing it and regulated exemptions of this full access.
- The Ordinance appoints the Commission as responsible for receiving and storing the Register and any materials and information on reports of any obligated entity in cases when the entity closes without having a legal successor.

These and a number of other texts in the Ordinance create a situation of over-authorization of the Commission which functions as a body regulating the processes under the Law, a body that guides the processes by issuing methodological instructions to the obligated entities, a body that has the function of a central authority for external reporting of breaches, the body monitoring and controlling the implementation of the law and the one imposing sanctions to other obligated entities under the Law.

The Ordinance overburdens other stakeholders with extra obligations not regulated by the Law. For instance:

- All authorities, competent to examine reports for breaches in a particular sector, who have directly received whistleblower reports are obligated to send the reports to the Commission under the Ordinance. The Commission is not competent to examine these reports, but has the authority to discontinue the proceeding under the Law.
- The persons responsible for receiving and examining the reports for an internal reporting channel are obligated to send reports related to the activity of another obligated entity, without it being specifically mentioned in the report, to the Commission. This is not only creating disproportionate burden for employers and the appointed for the receipt and examination of reports personnel, but it is also unclear how a person could have knowledge for the number of employees in another organization to be able to assess whether this other organization is an obligated entity under the law.
- Employers in the private sector who are not obligated to establish an internal reporting channel and appoint a person to receive and examine reports for breaches are nevertheless obligated under the Ordinance to send all reports to the Commission (which is another legal nonsense).

The concerns raised in this Position reflect the long-term advocacy efforts and technical support provided by Transparency International Bulgaria for the establishment of an effective system for whistleblower protection in Bulgaria in line with 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, and the stringent analysis of the newly-adopted secondary legislation and its' dubious impact on the establishment of such a system.

To support robust expert discussion on the issues raised in this position and mobilize support for changes aimed at creating an effective system for whistleblower protection in the country, TI Bulgaria will convene a Round Table in the end of September with representatives of academia, Supreme Bar Association, Supreme Administrative Court, Commission for Personal Data Protection, Ministry of Justice, the business and others.