

## **Measures for the protection of whistleblowers in Romania will soon be needed**

by Dr. Raluca Oprişiu, LL.M. Eur. Integration, Avocat (Attorney at Law RO)

In December 2019 we reported that EU member states would have time until 17.12.2021 to implement the whistleblower directive<sup>1</sup>. According to this directive, all companies with more than 50 employees will have to take specific measures to protect persons who anonymously report illegal activities.

One measure that needs to be taken in particular is the establishment and assessment of reporting systems that can be used by reporters (whistleblowers). Companies can establish such systems, for instance, via online platforms, hotlines, IT tools etc. and operate them themselves or with the help of external service providers (for instance advisers).

There is currently a legislative proposal in Romania for implementing the directive, from which companies with more than 50 employees can already encompass the starting points for adapting their whistleblowing and compliance systems in Romania.

### **Context**

The draft of this law was debated at the end of April with NGOs and representatives from the economy. Since the proposal of the Romanian implementation partly goes beyond the provisions of the directive and partly contains unclear regulations for practice, the legislative proposal is very likely to be amended one last time in such way that it reflects the results of the debate. The following matters are already known and are very important:

### **Protected disclosures**

The whistleblowing directive aims at protecting reporters who anonymously disclose illegal activities in sensitive public or private sectors. These include inter alia public procurement, financial services, money laundering, product and traffic safety, public health, consumer and data protection.

The proposed Romanian implementation follows the encouragement of the EU to extend this list, and stipulates a general protection for reports on any breaches of law, including ethics and profession-related regulations (*norme deontologice*). There are concerns that this extended application field will dilute the purpose of the directive. In practice, it is recommended to provide whistleblowers with concrete guidelines by means of internal regulations.

### **Anonymous disclosures**

Although the directive provides that anonymous disclosures must be taken into account, the Romanian draft law stipulates, according to the model of complaints filed in the public sector, that only named disclosures may be assessed. Many potential whistleblowers may be discouraged this way and afraid, therefore, of stepping into the spotlight.

### **Priority of internal disclosures**

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<sup>1</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.

According to guidelines, companies must make available their own reporting systems and member states must use external (autonomous and independent) ones for incoming reports. Whistleblowers are encouraged to use primarily reporting systems at company level, path that may have a discouraging effect.

Some insight ideas belonging to the Romanian practice have also proposed that one single reporting channel be introduced in Romania following the pattern of the system of the competition authority and be managed by the competent authority, namely the National Integrity Agency (*Agentia Nationala de integritate – „ANI“*). It is however questionable if, in this case, due to excessive amounts, the authority will be able to comply with the short response time.

### **Financial incentives**

The Romanian legislative proposal provides no financial incentives for disclosing breaches of the applicable law, although, from the experience of other countries (for instance USA), experts would welcome such regulation. Such remuneration could be calculated as a percentage of the amounts collected following the disclosure or could be paid as a lump sum from a social fund. Companies may establish a different remuneration system.

### **Additional protection measures and details**

The rule that applies in principle states that whistleblowers and their facilitators (family members, colleagues, legal advisers) are protected against retaliation such as dismissal, downgrading/ demotion and discrimination. In Romanian practice, the need for clarity with regard to labor law related retaliation has been signaled; it is aimed in particular to avoid abusive dismissals, disguised as redundancies resulting from job cuts.

### **Conclusion and prospects**

Romania is taking important steps for implementing the new whistleblowing directive unlike many EU member states. The creation of a clear legislative framework can boost investors' trust. The active debate regarding individual regulations is also to be seen as positive.

Companies with more than 50 employees (but not only) have now 6 (six) months to prepare and create trustworthy reporting channels and boost the presence in Romania by means of an integrated compliance policy.

### **Contact and further information:**



#### **STALFORT Legal. Tax. Audit.**

Bucharest – Bistrița – Sibiu

#### **Sibiu Office:**

T.: +40 – 269 – 244 996

F: +40 – 269 – 244 997

M: [sibiu@stalfort.ro](mailto:sibiu@stalfort.ro)

[www.stalfort.ro](http://www.stalfort.ro)