

## **Protection of whistleblowers in Romania: finally implemented correctly**

by *Dr. Raluca Oprișiu, LL.M. Eur. Integration, Avocat (Attorney at law RO)*

Even before countries like Germany, where the whistleblower law failed in the federal council (Bundesrat) in February 2023, Romania managed to implement the EU Whistleblowing Directive.

We have repeatedly reported on the directive, which must be implemented by all member states by December 17, 2021<sup>1</sup>. After several attempts<sup>2</sup>, Romania enacted Law No. 361/ 2022, which entered into force on 22.12.2022.

However, after the European Commission criticized this with regard to the regulations on anonymous reporting, Romania was threatened with the cancellation of billions of euros in EU funds if it failed to adapt. Therefore, the parliament has decided at short notice a change in the law, which came into force on 31.03.2023.

### **Area of application**

The main purpose of the new law is to create a guaranteed minimum level of protection for whistleblowers by providing a uniform framework for whistleblower systems and to provide incentives for reporting breaches of the law in the private and public sphere.

According to the law, whistleblowers can be employees, self-employed persons within the meaning of Article 49 TFEU, persons who belong to an administrative, management or supervisory body of a company, volunteers, trainees and all persons who work under the supervision and management of natural or legal persons, as well as their subcontractors and suppliers. Persons whose work-based relationship has not yet commenced, who have participated in the recruitment process or who have already terminated the employment/service relationship are also covered. In addition, the possibility of anonymous reporting, which had been missing in previous drafts of the law, has been added under certain conditions.

### **Reporting**

The reporting of a whistleblower can take place via both internal and external reporting channels. Although incentives should be created for the use of internal options, the reporting channels are principally of equal importance.

Any legal entity under private law with at least 50 employees, as well as public authorities, public institutions or other legal entities under public law, are now required to set up internal reporting systems. Municipalities with fewer than 10,000 inhabitants or fewer than 50 employees, as well as private legal entities with 50 to 249 employees, can also join forces and set up a joint reporting office.

External reporting systems can be authorities and institutions that receive and process reports on breaches of the law due to special legal provisions in their area of responsibility. The Romanian Integrity Agency (rom.: *Agentia Nationala de Integritate*) launched a general external

---

<sup>1</sup> see: [http://stalfort.ro/wp-content/uploads/2021/10/20210923\\_RO\\_Obligation-to-protect-whistleblowers-are-reporting-systems-on-group-level-allowed.pdf](http://stalfort.ro/wp-content/uploads/2021/10/20210923_RO_Obligation-to-protect-whistleblowers-are-reporting-systems-on-group-level-allowed.pdf); [http://stalfort.ro/wp-content/uploads/2021/07/20210520\\_RO\\_Measures\\_for\\_the\\_protection\\_of\\_whistleblowers\\_in\\_Romania\\_will\\_soon\\_be\\_needed.pdf](http://stalfort.ro/wp-content/uploads/2021/07/20210520_RO_Measures_for_the_protection_of_whistleblowers_in_Romania_will_soon_be_needed.pdf).

<sup>2</sup> see here: [http://stalfort.ro/wp-content/uploads/2022/10/20220822\\_ADZ\\_CW\\_Duty\\_to\\_protect\\_whistleblowers\\_in\\_Romania\\_soon\\_to\\_come-EN.pdf](http://stalfort.ro/wp-content/uploads/2022/10/20220822_ADZ_CW_Duty_to_protect_whistleblowers_in_Romania_soon_to_come-EN.pdf).

reporting system in early February, which can be accessed online at <https://avertizori.integritate.eu>.

### **Public Disclosures**

Whistleblowers also have the option under the law to publicly disclose breaches of the law. This presupposes that the whistleblower (i) has reported either internally or externally but is dissatisfied with the action taken or (ii) the breach represents an immediate or manifest danger to the public interest or, in the case of external reportings, there is a risk of retaliation or, due to the particular circumstances of the case, there is little prospect of the breach being effectively addressed.

### **Anonymous reports**

Most of the discussions were related to the admission of anonymous reports. In the original version of the law, anonymous reports were to be examined only if they contained "solid indications of breaches of the law" ("*indicii temeinice referitoare la încălcări ale legii*"). Due to criticism of this, the word "solid" ("*temeinice*") has been deleted in order to improve the law's protection of anonymous whistleblowers.

### **Protective measures**

Threatening, attempting or taking any form of retaliation against the whistleblower and his or her facilitators, colleagues or relatives is prohibited. For the whistleblower to enjoy protection, there must be, among other things, reasonable grounds for him/ her to believe that the information about the reported breach was true at the time of the report. False reportings are punishable by fines.

### **Conclusion**

The main reason for the new version of the law was the criticism, especially from the European Commission.

The obligation to establish internal reporting channels within a company with 250 or more employees in Romania is now mandatory. From December 2023, this will also apply to companies with 50 or more employees. Practice will show how quickly Romanian companies adapt and when the first sanctions will be imposed.

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



**STALFORT Legal. Tax. Audit.**  
Bucharest – Bistrița – Sibiu

#### **Sibiu Office:**

T.: +40 – 269 – 244996  
F: +40 – 269 – 244997  
M: [sibiu@stalfort.ro](mailto:sibiu@stalfort.ro)  
[www.stalfort.ro](http://www.stalfort.ro)