

# PETERKA PARTNERS

THE CEE LAW FIRM

## WHISTLEBLOWING LEGISLATION ADOPTED IN BULGARIA

On 27 January 2023, the Bulgarian Parliament adopted a new law, the Act on Protection of Persons Filing Reports or Publicly Disclosing Information on Breaches of Bulgarian and EU law (the "Act"). The Act transposes Directive (EU) 2019/1937 and applies to employers in the public sector, with some exceptions regarding small municipalities, and to employers in the private sector:

- i. with 50 or more employees;
- ii. irrespective of the number of employees, who exercise any of the activities falling within the scope of certain EU Acts regulating financial services, products and markets, anti-money laundering, transport safety, and environmental protection.

The new rules shall apply in so far as there are no specific rules on the reporting of breaches provided for in the sector-specific Union acts and transposed in the national legislation to date, e.g., in the Credit Institutions Act.

**It should be stressed that the Act will enter into force three months after its publication, i.e., on 2 May 2023 for employers in the private sector with 250 or more employees and employers active in the particular areas indicated in point ii above (irrespective of the number of their employees) and such employers should thus act quickly and take the necessary steps to ensure compliance with the new set of obligations. Employers having between 50 and 249 employees would benefit from a longer period to prepare for the application of the Act since the new regulations will apply to them as from 17 December 2023.**

### I. GENERAL

The Act covers the internal and external reporting of information acquired in a work-related context on breaches of various EU and national rules, e.g., public procurement, financial services, products and markets, anti-money laundering, safety of products, safety of foods and feeds, public health, consumer protection, protection of personal integrity and personal data, security of networks and information systems, and also to reports on breaches related to publicly-prosecuted crimes, rules on payment of public debt, and notably, labour law.

Reporting persons (whistleblowers) are ensured certain protection under the Act, while the employers and public bodies concerned must comply with a set of specific obligations.

Persons eligible for protection are only those who provide information on breaches acquired by them in a work-related context, e.g., potential, current or former employees, shareholders, members of management or supervisory bodies. A report which does not concern such information may still be reviewed but the employer will not have an obligation to do so or apply the Act thereto. In addition, protection is granted to those who aid or are related to the reporting person and may be subject to repressive actions as well as to legal entities to which the reporting person is related.

It should also be noted that anonymous reports and reports concerning alleged breaches which occurred more than two years before the filing of the relevant report are outside of the scope of the Act and should not be processed.

## II. KEY ISSUES

The key issues which need to be addressed by businesses relate to filing, administering and following up on reports in a way that ensure that safe and easy-to-use reporting channels are in place and guarantee the protection of reporting persons against retaliation as well as the rights of the persons concerned by the reports.

In particular, we'd like to outline the following:

### i. **Creating and maintaining a secure internal reporting channel**

Companies are required to ensure the operation of an internal reporting channel. As per the Act, a report may be filed in writing, including by e-mail, orally – by phone or other messaging system and, upon request by the reporting person, by means of a physical meeting. Specific requirements are set out for each type of reporting. The reporting persons are allowed to choose the means to file a report, i.e., to use one of them, a combination, or all three simultaneously.

It should also be noted that legal entities in the private sector with a total number of workers between 50 to 249 may share an internal reporting channel and designate one person to receive and register reports.

### ii. **Provision of information**

The Act requires employers to provide certain information on the procedure for the internal filing of reports to potential reporting persons in a clear and comprehensive manner by placing an information notice in the office/work premises and on the employer's website.

### iii. **Assigning persons to receive, administer and follow-up on reports**

Employers are not required to hire extra staff to deal with whistleblowing-related activities. Such activities can be assigned to a corporate unit or current employees, e.g., to a company officer well placed to report directly to the organizational head, such as a chief compliance or human resources officer, an integrity officer, a legal or privacy officer, a chief financial officer, a chief audit executive, or a member of the board.

While it is explicitly provided for in the Act that receiving and registering reports may be outsourced to third parties outside the structure of the employer, this is questionable with respect to the duties of investigation and subsequent activities on reports.

### iv. **Creating an internal non-public register of reports**

The register should be stored on a durable medium and should contain information on the report, the evidence supplied to it, information on the investigation and subsequent activities on it as well as the feedback on the report.

Access to the register should be granted only to a limited number of persons comprising those involved in the processing of the report.

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## v. Adopting rules on internal filing and follow up on reports and maintaining the report register

In general, the rules should establish a comprehensive overview of the process of handling reports, means of communication between the persons involved in the processing and their obligations with respect to, e.g., confidentiality, personal data protection, etc.

Instructions regarding the application of the Act possibly affecting the internal rules and an ordinance regarding the keeping of the register of reports should be adopted by the Commission for Protection of Personal Data within 6 months after the publication of the Act.

## vi. Adjusting the data privacy policy and data privacy notice

Legal entities will have to adjust and supplement their data protection documentation with respect to the new purposes of processing determined by the Act, e.g., administering, review, follow up on reports, etc.

## vii. Refraining from retaliation

The Act prohibits any form of retaliation, including threats and attempts of retaliation, against the whistleblower and certain other persons connected to him/her or to the report, as well as retaliation against certain connected legal entities. A non-exhaustive list of forms of retaliation is included in the Act which covers, among others, adverse changes to the employment relationship (e.g., termination of employment, demotion, change of nature or place of work, working time, remuneration), discrimination, causing of damages, etc.

### III. SANCTIONS

The local Commission for Protection of Personal Data will act as a supervisory authority and has the right to sanction non-compliance with the whistleblowing regulation. Sanctions are within the range of BGN 400 (approximately EUR 200) to BGN 30,000 (approximately EUR 15,300) depending on the type of violation, recurrence, and offender.

While the Act clearly pursues legitimate objectives, it also creates additional burdens on businesses and its application will undoubtedly pose various legal and operational challenges depending on the specific circumstances. Given also the tight time frame for compliance for some of the companies covered by the law, it is recommendable to undertake measures in line with the law without much delay.

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*This article was prepared by Ivelin Chernaev, Senior Associate at PETERKA & PARTNERS for Bulgaria.*

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