



Vlad GHEORGHE
Member of the European Parliament
Uniunea Salvați România

Nr. MEP/USR/201/30.06.2022

Esteemed Commissioner for Values and Transparency,
Dear Vice-President Věra Jourová,

Please, be informed that on June 29th 2022, the Romanian Parliament adopted the new legislation aiming to implement the Whistleblower Protection Directive, but there are serious problems with the law passed, explicitly ignoring the role of this act.

Romania had to implement the provisions of the “Directive (EU) 2019/1937 of the European Parliament and of the Council of October 23rd 2019 on the protection of persons who report breaches of Union law” (Whistleblower Protection Directive) by December 17th 2021. Still, by December 14th 2021 the Romanian Government had only issued a draft law (“Law on the protection of whistleblowers in the public interest”) and although the democratic opposition, NGOs, free press and all civil society urged for transparency, the Government has unjustifiably delayed the process by constantly postponing it.

The Romanian Senate, as the first chamber to consider the matter, adopted the draft law on the protection of whistleblowers in the public interest at its sitting of April 19th 2022. On April 26th 2022, this bill also reached the Chamber of Deputies. Following debates, members of the Committee for Legal Matters, Discipline, and Immunities decided to amend and submit the draft law on the protection of whistleblowers to the plenary of the Chamber of Deputies for adoption. According to the report of the Legal Committee, 268 amendments were admitted on 28 June 2022. The draft law in its current form blatantly violates Directive (EU)2019/1937 and intentionally discourages whistleblowing. The amendments block access to information of public interest and do not protect whistleblowers, the law passed yesterday does not even exempt them from liability for defamation and copyright infringement, as provided specifically for in the European Directive in Article 21(7).

The provisions of the law adopted yesterday by the ruling majority in the Romanian Parliament go against the role and spirit of the European Directive. The principle of good faith of the whistleblower is removed, although Article 22 of Directive (EU) 2019/1937 states that: (1)



Member States shall ensure, in accordance with the Charter, that persons concerned fully enjoy the right to an effective remedy and to a fair trial, as well as the presumption of innocence and the rights of defense, including the right to be heard and the right to access their file.

The current draft law also removes without exception the provision on mandatory anonymous analysis and reporting. This is not in line with the provision of the Directive in Article 6 (3) *Persons who reported or publicly disclosed information on breaches anonymously, but who are subsequently identified and suffer retaliation, shall nonetheless qualify for the protection provided for under Chapter VI, provided that they meet the conditions laid down in paragraph 1.*

In Romania, through the present law for the protection of whistleblowers in the public interest, the internal reporting mechanism has become inapplicable for small localities with less than 10,000 inhabitants. Therefore, the law actually is null and void for the largest number of territorial administrative units in Romania.

As stated in the preamble to the Directive, public reporting and disclosures by whistleblowers "provide national and European law enforcement systems with information that enables the effective detection, investigation and prosecution of breaches of Union law, thereby increasing transparency and accountability" and contributing to "the well-being of society". The European Union's legal instruments are an essential means to achieve its objectives, and the rule of law is a core value of the Union that all Member States and the European Union institutions must respect. That is why the draft law on the protection of whistleblowers in the public interest must be fundamental to the rule of law. The text adopted by the Chamber of Deputies clearly does not offer real protection to whistleblowers in the public interest.

In Romania, not only has the deadline for transposition of this European Directive been exceeded, but also the milestone set by the National Recovery and Resilience Plan. Through this plan, Romania has expressly foreseen that the Whistleblower Protection Act will transpose Directive (EU) 2019/1937 on the protection of persons reporting breaches of Union law and will include additional provisions, specific to the national context, to effectively address integrity policy issues. The measures adopted in the current draft law discourage employees from reporting corruption.

Given that the new law in Romania, which is due to enter into force after signature by the President and publication in the Official Journal does not comply with the requirements of Directive

VLAD GHEORGHE

Brussels WIB 05M033 Phone +3222845708

vlad.gheorghe@europarl.europa.eu

<https://vladgheorghe.ro/>



(EU) 2019/1937 and does not respect the rule of law, I am informing you on this matter so that you may please take the due measures ensuring all Member States comply with EU legislation accordingly and the Union has a thorough, effective and equal application of European principles and values.

Sincerely,
Vlad GHEORGHE

A handwritten signature in black ink, appearing to be "Vlad Gheorghe", written in a cursive style.