

CMS Romania: Whistleblowing Directive transposed - constitutionality exam or confirmation from the President?



On 29 June 2022, the Romanian Chamber of Deputies adopted Draft Law no 219/2022 transposing EU Directive 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, commonly known as the Whistleblowing Directive.

The draft includes several provisions that have been criticised by the public, including provisions that state:

- anonymous reporting is not permitted; and
- the whistleblower must wait at least three months after having filed a report through internal or external channels before making a public disclosure.

The key provisions concerning legal entities in the private sector include:

- Entities with 50 or more employees must establish channels and procedures for internal reporting and for follow-up; entities with 50 to 249 employees have until 17 December 2023 to comply with the obligation to establish internal reporting channels;
- Entities with up to 49 employees are not required to establish such reporting channels or comply with the other related obligations, but whistleblowers at these companies are entitled to report breaches through external channels or public disclosure (at least three months after the external reporting has been made);
- Any type of retaliation against the whistleblower is forbidden, especially suspension of the individual's employment agreement, dismissal, salary reduction, demotion etc.;
- Failure to observe these provisions may lead to fines ranging from RON 1,500 (approx. EUR 300) to RON 30,000 (approx. EUR 6,000).

The draft is still subject to a potential challenge with the Romanian Constitutional Court over its constitutional validity, and must be confirmed by the Romanian President before promulgation.

For more information on the transposition of the *Whistleblowing Directive* in Romania, contact your CMS client partner or local CMS experts **Mihai Jiganie-Serban** and **Cosmin Cretu**.