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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**LAW \***  
**ON THE PROTECTION OF PRIVACY**

**AND**

**LAW \***  
**ON THE PROTECTION OF WHISTLEBLOWERS**

**OF “THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”**

\*English translation provided by the Macedonian authorities

## **LAW ON THE PROTECTION OF PRIVACY**

### Article 1

(1) This Law shall guarantee the protection of the privacy of the citizens of the Republic of Macedonia as warranted by the Constitution of the Republic of Macedonia and the Convention for the Protection of Human Rights and Fundamental Freedoms in relation to material arising from the unlawful interception of communication carried out in the period between 2008 and 2015;

(2) The possession, processing and public disclosure of material as set forth in Article 1 of this Law and representing a violation of the privacy of personal and family life shall be banned under this Law;

(3) The possession, processing, public disclosure and disposal in any way, shape or form of material arising from the unlawful interception of communication carried out in the period between 2008 and 2015, including the usage and disposal thereof in the electoral process and for political and other purposes and procedures shall also be banned under this Law.

### Article 2

Anyone in the possession of material arising from unlawful interception of communication as set forth in Article 1 of this Law shall be obligated as prescribed by law to hand it over to the relevant public prosecutor within 20 days from the date of entry into force of this Law.

### Article 3

(1) All citizens shall be guaranteed respect and protection of the privacy of their personal and family lives;

(2) In keeping with the provisions as laid down by this Law, privacy of personal and family life shall mean family or personal relations, affiliation to various religious or ethnic groups and political parties, as well as personal health status.

### Article 4

(1) Any person allowing an unauthorized person to become acquainted with the contents of a conversation or statement which has been intercepted or audio-recorded shall be punished with up to a year of imprisonment if the content of the conversation violates the privacy of personal and family life. This provision shall not apply to conversations or statements of public interest;

(2) Any person making public intercepted or audio-recorded conversations or parts or transcripts thereof violating the privacy of personal and family life shall be punished with one month to a year of imprisonment.

(3) Legal entities committing the act referred to in paragraph 2 of this Article shall be punished with a fine. Natural persons in charge at legal entities shall be punished with one month to a year of imprisonment.

Article 5

In applying this Law, relevant courts shall be obligated to adhere to the Convention for the Protection of Human Rights and Fundamental Freedoms and the judgments of the European Court of Human Rights.

Article 6

The provisions of this Law shall not apply to material made public on and before 15 July 2015.

Article 7

This Law shall enter into force on the day of its publication in the Official Gazette of the Republic of Macedonia and shall apply for the duration of six months after the day of its entry into force.

**LAW**  
**ON THE PROTECTION OF WHISTLEBLOWERS**

**Scope of the Law**  
Article 1

This Law shall regulate protected disclosure, rights of whistleblowers, and procedures and duties of institutions, i.e. legal persons relating to protected disclosure and to provision of protection for whistleblowers.

**Definition of terms**  
Article 2

(1) Protected disclosure within the meaning of this Law shall mean any disclosure under which reasonable suspicion or knowledge is reported about punishable activity already performed, about punishable activity being performed or about punishable activity for which there is a probability that will be performed or about any other unlawful or unallowed activity that violates or threatens the public interest.

(2) Whistleblowers within the meaning of this Law shall be persons referred to in the categories defined under paragraph (3) of this Article, who shall make a protected disclosure in good faith in accordance with this Law.

(3) Categories of whistleblowers defined under this Law shall be:

- Persons who are full-time or part-time employees at the institution, i.e. the legal person about which they are making the disclosure;
- Job applicants, applicants for volunteering or for internship at the institution, i.e. the legal person about which they are making the disclosure;
- Persons who have been volunteers or interns at the institution, i.e. the legal person about which they are making the disclosure;
- Persons who have been engaged on any grounds to perform activities at the institution, i.e. the legal person about which they are making the disclosure;
- Persons who on any grounds have or have had any business relations or who have or have had any other types of cooperation with the institution, i.e. the legal person about which they are making the disclosure;
- Persons who use or have used services of the institution, i.e. the legal person about which they are making the disclosure.

(4) The term 'public interest' within the meaning of this Law shall mean protection of fundamental human rights and freedoms, recognized under international law and set forth under the Constitution of the Republic of Macedonia, then prevention of risks to the public health, defence and security, protection of the environment and of nature, protection of ownership, free market and entrepreneurship, the rule of law and prevention of crime and corruption.

(5) The term 'persons close to whistleblowers' shall mean spouses or domestic partners, relatives of direct blood lineal descent, relatives of collateral descent to the third degree of descent, and affinal relatives to the second degree of affinity, adopted children, adoptive parents or any other person whom protected persons consider to be close and for whom protected persons request protection in line with provisions of Articles 8 and 9 of this Law.

### **Protected Disclosure**

#### Article 3

(1) Protected disclosure shall be protected internal disclosure, protected external disclosure, public disclosure in line with Articles 4, 5 and 6 of this Law made in good faith and presenting reasonable suspicions about the veracity of information contained in the disclosure at the time the disclosure has been made.

(2) Whistleblowers shall not be obliged to prove their good faith and the veracity of the information contained in the disclosure referred to in paragraph (1) of this Article.

(3) Whistleblowers shall be provided with protection in accordance with this Law and shall be guaranteed anonymity and confidentiality to the degree and for the period as requested by whistleblowers.

(4) The right to anonymity of whistleblowers may be limited under a court order, and whistleblowers shall be immediately and accordingly informed.

### **Protected Internal Disclosure**

#### Article 4

(1) Whistleblowers shall make a disclosure within the institution, i.e. legal person about which they have suspicions or knowledge that punishable activity has already been performed, that punishable activity is being performed or that a punishable activity will be performed or that any other unlawful or unallowed activity that violates or threatens the public interest has been, is or will be performed (hereinafter referred to as: protected internal disclosure).

(2) Whistleblowers shall make the protected internal disclosure verbally, upon which a report shall be made, or in a written form, with the person authorized by the managing officer of the institution, i.e. legal person about which they are making the disclosure (hereinafter referred to as person authorized to receive disclosures from whistleblowers).

(3) At institutions, i.e. legal persons that do not have designated person authorized to receive disclosures from whistleblowers, protected internal disclosures shall be made with the managing officer of the institution, i.e. legal person, in a manner and in a form set forth in paragraph (2) of this Article.

(4) The person authorized to receive disclosures from whistleblowers, the managing officer of the institution, i.e. the legal person referred to in paragraph (3) of this Article shall be obliged:

- To act upon the disclosure referred to in paragraph (1) of this Article, while respecting procedures set forth under bylaws on internal disclosure;
- To protect personal data of whistleblowers, i.e. data that may be used to detect the identity of whistleblowers who request to be anonymous or make the disclosure in a confidential manner, in line with regulations on protection of personal data;
- To inform known whistleblowers about measures undertaken with respect to the disclosure, without any delays, i.e. within 15 days from the date of receipt of the disclosure at the latest;

(5) Protected internal disclosure at public sector institutions shall be regulated under secondary legislation, which, upon the proposal of the State Commission for the Prevention of Corruption, shall be adopted by the Minister of Justice.

(6) Protected internal disclosure in the private sector shall be regulated under bylaws of legal persons, which employ at least 10 persons.

(7) Internal documents referred to in paragraphs (5) and (6) of this Article shall be published and made public in another manner for all employees at the institution, i.e. the legal person.

(8) The Minister of Justice shall prescribe the guidelines for the adoption of internal documents referred to in paragraph (6) of this Article.

### **Protected External Disclosure**

#### Article 5

(1) Whistleblowers may make protected disclosures with the Ministry of the Interior, the competent Public Prosecutor's Office, the State Commission for the Prevention of Corruption, the Ombudsman of the Republic of Macedonia or with other in-line institutions, i.e. legal persons, provided that:

- The disclosure referred to in Article 4 of this Law goes directly or indirectly against the managing officer of the institution, i.e. legal person about which the disclosure is made; or
- Whistleblowers have not received any information about measures undertaken within the time limit set forth under Article 4, paragraph (4), sub-paragraph 3 of this Law or provided that measures have not been undertaken, or in case whistleblowers are not satisfied with the measures undertaken or have suspicions that no measures will be undertaken or that the disclosure referred to in Article 4, paragraph (1) of this Law shall cause negative consequences for whistleblowers or for persons close to them (hereinafter referred to as protected external disclosure).

(2) Whistleblowers may make protected external disclosures verbally, upon which a report shall be made, or in a written form with an authorized officer, or with the managing officer at the institution, i.e. the legal person with which whistleblowers make the disclosure.

(3) Bodies, institutions, i.e. legal persons with which the whistleblowers have made protected external disclosure shall be obliged to act within their competences and process the disclosure referred to in paragraph (1) of this Article, then to protect personal data of whistleblowers, i.e. data that may be used to detect the identity of whistleblowers who request to be anonymous or make the disclosure in a confidential manner, in line with regulations on protection of personal data and to inform whistleblowers about measures undertaken with respect to the disclosure, without any delays, i.e. within 15 days from the date of receipt of the disclosure at the latest.

(4) Protected external disclosure shall be regulated under secondary legislation, which shall be adopted by the Minister of Justice.

(5) In cases in which the body with which the disclosure has been made has no competence to act upon the disclosure, such a body shall convey the disclosure to the competent body within eight days from the date of receipt of the disclosure, and shall accordingly inform whistleblowers.

(6) The competent body referred to in paragraph (5) of this Article shall be obliged to apply protection measures, which have been provided for whistleblowers by the body to which the disclosure has been conveyed.

(7) Upon the request of whistleblowers, the authorized body shall be obliged to inform whistleblowers about the course of activities undertaken in the procedure and to enable whistleblowers to inspect the case-file documents, in accordance with the law.

(8) Upon the completion of the procedure, the authorized body shall be obliged to inform whistleblowers about the outcome of the procedure referred to in paragraph (1) of this Article, in accordance with the law.

## **Protected Public Disclosure**

### Article 6

(1) Whistleblowers may make protected disclosures by making available to the public information indicating that punishable activity has already been performed, that punishable activity is being performed or that there is a probability for a punishable activity to be performed, which violates or threatens the life of whistleblowers or of persons close to them, the health of people, the security, the environment, or which involve large scale damages, and in case of imminent danger that evidence thereof shall be destroyed.

(2) Whistleblowers who shall make disclosures by making available to the public information in a manner which contravenes this Article and without previously making a disclosure with an officer authorized to receive disclosures from whistleblowers, or with a competent institution in line with Articles 4, 5 and 6 paragraph (1) of this Law, shall not have the right to protection provided under Articles 8, 9 and 10 of this Law.

(3) Whistleblowers making protected public disclosures in accordance with this Law by making information available to the public shall be obliged to respect the presumption of innocence of the person who is subject of the disclosure, the right to protection of personal data of the person who is subject of the disclosure and shall also be obliged not to threaten the course of ensuing court proceedings.

## **Protection of data and identity of whistleblowers**

### Article 7

(1) Disclosing or enabling the detection of the identity of whistleblowers shall be prohibited, except if this is requested under a court order.

(2) The officer authorized to receive disclosures from whistleblowers shall be obliged to protect data about whistleblowers, i.e. data based on which the identity of whistleblowers can be detected, unless whistleblowers shall have agreed to the disclosure of such data, in accordance with the law regulating the protection of personal data.

(3) Any person that shall learn of data referred to in paragraph (1) of this Article shall be obliged to protect such data.

(4) The officer authorized to receive disclosures from whistleblowers shall be obliged, while receiving disclosures, to inform whistleblowers that their identity may be disclosed to a competent body, in case without the disclosure of their identity it would not be possible to undertake any procedures before such bodies, being also obliged to inform whistleblowers about measures for protection of parties in criminal proceedings.

(5) In case in the course of the procedure a necessity shall arise to disclose the identity of whistleblowers, the officer authorized to receive disclosures from whistleblowers shall be obliged to accordingly inform the concerned whistleblowers, prior to the disclosure of their identity.

(6) Data referred to in paragraph (1) of this Article shall not be made available to the person to whom the information contained the disclosure is related.

## **Provision of Protection for Whistleblowers**

### Article 8

(1) Whistleblowers and persons close to them shall be provided with protection against any type of violations of their rights, against any detrimental activity or against any threat of detrimental activity in retaliation for protected internal, external, and public disclosures made.

(2) Protection referred to in paragraph (1) of this Article shall be provided by the institution, i.e. the legal person with which the disclosure has been made, which shall undertake activities for the prevention of violations of labour rights or of any other rights and for the refrainment from activities that violate or threaten any rights of whistleblowers in retaliation for their disclosure.

(3) In case whistleblowers have not been provided with protection referred to in paragraph (2) of this Article, whistleblowers shall accordingly report this with the State Commission for the Prevention of Corruption, the Ombudsman of the Republic of Macedonia, the Inspection Council, the Ministry of the Interior and the Public Prosecutor's Office of the Republic of Macedonia, which shall immediately undertake activities within their respective competencies.

(4) The right to protection under this Article shall also cover persons who are able to create the probability that the person subject of the disclosure could suspect that such persons have made disclosures against him/her.

### Article 9

(1) Upon receiving the disclosure referred to in Article 8, paragraph (3) of the present Law, the institutions referred to in Article 8, paragraph (3) of the present Law shall, without delay, request notification from the institution or legal entity against which the disclosure was made concerning the existence of any kind of violation of a right of the whistleblower or members of his or her family stemming from the disclosure.

(2) The legal entity or institution shall process the request referred to in paragraph (1) of the present article without delay and shall deliver a notification without delay and not later than eight days.

(3) If it is established that the institution or legal entity against which the disclosure was made violated a right of the whistleblower, a member of his or her family or a person close to him or her, the institutions referred to in paragraph (1) of the present article shall without delay submit a written request to the competent institutions and bodies for taking urgent measures for protection of the whistleblower by terminating the activities or eliminating the shortcomings by which the rights of the whistleblower are violated.

(4) The institutions referred to in paragraph (1) of the present article shall inform the whistleblower without delay about the activities undertaken and the findings made relating to paragraphs (1), (2) and (3) of the present article.

(5) If, despite the activity undertaken by the institutions referred to in paragraphs (1), (2) and (3) of the present article, the violation of the right of the whistleblower, a member of his or her family or a person close to him or her continues, the institutions shall, without delay and not later than eight days, launch an initiative for instituting a procedure for criminal prosecution, i.e. an initiative for instituting a procedure before the competent bodies for dismissal, reassignment, replacement or undertaking other measures of liability of elected or appointed officials, officers or persons in charge at public enterprises and other legal entities that have state capital.



(6) If the whistleblower has disclosed a crime against the state, a crime against humanity or international law or organized crime punishable under the Criminal Code by a prison sentence of at least four years the substantiation of which involves disproportionate difficulties or cannot be done without a statement of the whistleblower, who does not agree to give a statement as a witness due to the potential danger of being subjected to intimidation, threat of reprisal or danger to his or her life, health, freedom, physical integrity or property to a larger extent, the institutions shall, upon obtaining written consent from the whistleblower, submit:

- an initiative for submitting a written request for putting forward a proposal for inclusion in the Protection Programme in compliance with the Law on Witness Protection to the Ministry of the Interior or a competent public prosecutor or
- an initiative for putting forward a proposal for inclusion in the Protection Programme in compliance with the Law on Witness Protection to the Public Prosecutor of the Republic of Macedonia.

### **Court Protection**

#### Article 10

(1) The whistleblower shall be entitled to court protection before a competent court in accordance with the law.

(2) The whistleblower may with a lawsuit before a competent court request:

- a finding that a harmful activity has been undertaken or a right has been violated due to whistleblowing;
- ban on doing a harmful activity or violating a right and repeating a harmful activity or violation of a right;
- annulling an act under which the harmful activity has been done or a right has been violated;
- eliminating the consequences from a harmful activity or violation of a right;
- compensation for material and non-material damage.

(3) The proceedings brought under the lawsuit referred to in paragraph (2) of the present article shall be urgent.

(4) The proceedings for court protection relating to disclosure may be revised.

### **Burden of Proof**

#### Article 11

In the event of dispute over the existence of violation of a right of the whistleblower or a person close to him or her due to disclosure, the burden of proof shall fall on the institution or legal entity that violated the rights of the whistleblower or the members of his or her family.

### **Voidness of Provisions of Contracts and Acts**

#### Article 12

The provisions of contracts or acts establishing or governing work relations and work engagements that prohibit the disclosure of suspicion or knowledge of a punishable activity or other unlawful or illicit activity violating or endangering public interest, security or defence or define such disclosure as violating provisions of confidentiality, loyalty or professionalism shall be considered null and void.

**Damages**

## Article 13

- (1) The whistleblower shall be entitled to compensation for damage inflicted on him or her or on a person close to him or her due to protected disclosure.
- (2) The compensation for damage referred to in paragraph (1) of the present article shall be requested by lodging a lawsuit with the competent court.

**Abuse of Disclosure by the Whistleblower**

## Article 14

- (1) Abuse of disclosure by the whistleblower shall mean deliberate disclosure of false information about a natural person or legal entity in order to inflict harmful consequences on them.
- (2) Abuse of disclosure by the whistleblower shall also mean not checking the accuracy and veracity of information with due diligence and conscientiously, to a degree permitted by the circumstances.
- (3) If abuse of disclosure is established as defined by paragraphs (1) and (2) of the present article, the right to protection stipulated in Article 8 of the present Law shall be revoked.
- (4) Abuse of disclosure by the whistleblower that has caused harmful consequences to the natural person or legal entity shall be grounds for instituting liability proceedings against the whistleblower in accordance with the law.

**Reporting on Disclosures Received from Whistleblowers**

## Article 15

- (1) The authorized, i.e. managerial officers at the institutions or legal entities in the public sector to which disclosure is made in compliance with Articles 4 and 5 of the present Law shall submit biannual reports on disclosures received from whistleblowers to the State Commission for Prevention of Corruption.
- (2) The State Commission for Prevention of Corruption and the Ministry of Justice shall submit special annual reports on disclosures received from whistleblowers to the Assembly of the Republic of Macedonia.
- (3) The form and content of the biannual reports referred to in paragraph (1) of the present article shall be defined by the secondary legislation referred to in Articles 4 and 5 of the present Law.

**Misdemeanour Provisions**

## Article 16

The person authorized to receive disclosures from whistleblowers, i.e. the managerial officer at the institution or the legal entity shall be fined 3000 to 6000 euros in denar countervalue if he or she acts in violation of Article 4, paragraph (4) of the present Law.

Article 17

(1) The institution or the legal entity shall be fined 2000 to 4000 euros in denar countervalue if it acts in violation of Article 4, paragraph (7) of the present Law.

(2) The person in charge at the institution or legal entity shall be fined 30 % of the fine meted out to the institution or legal entity for the violation referred to in paragraph (1) of this article.

Article 18

The institution or the legal entity shall be fined 6000 euros in denar countervalue if it acts in violation of Article 5, paragraph (3) of the present Law.

Article 19

Any person that acts in violation of Article 7, paragraph (2) of the present Law shall be fined 3000 to 6000 euros in denar countervalue.

Article 20

(1) The institution or legal entity shall be fined 6000 euros in denar countervalue if it acts in violation of Article 9, paragraph (2) of the present Law.

(2) The person in charge at the institution or legal entity shall be fined 30 % of the fine meted out to the institution or legal entity for the violation referred to in paragraph (1) of this article.

Article 21

(1) The institution or legal entity shall be fined 4000 euros in denar countervalue if it acts in violation of Article 15, paragraph (1) of the present Law.

(2) The person in charge at the institution or legal entity shall be fined 30 % of the fine meted out to the institution or legal entity for the violation referred to in paragraph (1) of this article.

Article 22

A settlement procedure shall be conducted under the Law on Misdemeanours before submitting an application for initiating misdemeanour proceedings.

Article 23

A competent court shall try the misdemeanour proceedings and hand out the misdemeanour punishments for the violations defined by the present Law.

## **Transitional and Final Provisions**

### Article 24

(1) It shall be prohibited to use materials arising from the unlawful interception of communications carried out in the period between 2008 and 2015 as content of the disclosure referred to in Article 3, paragraph (1) of the present Law.

(2) Protection under Articles 8, 9 and 10 of the present Law shall not be provided and the provisions of the present Law shall not apply to a person whose disclosure contains contents that are prohibited under paragraph (1) of this Article.

### Article 25

The Minister of Justice shall adopt the secondary legislation referred to in Article 4, paragraph (5) and Article 5, paragraph (4) of the present Law within 60 days from the day of entry into force of the present Law.

### Article 26

The Minister of Justice shall adopt the guidelines referred to in Article 4, paragraph (8) of the present Law within 60 days from the day of entry into force of the present Law.

### Article 27

The Minister of Justice shall adopt the secondary legislation referred to in Article 5, paragraph (4) of the present Law within 60 days from the day of entry into force of the present Law.

### Article 28

The Minister of Justice shall adopt the guidelines referred to in Article 5, paragraph (7) of the present Law within 60 days from the day of entry into force of the present Law.

### Article 29

The laws governing the rights and obligations stemming from employment in the public or private sector shall be aligned with the present Law within three months from the day of entry into force of the present Law.

### Article 30

The present Law shall enter into force on the eighth day from the day of its publication in the Official Gazette of the Republic of Macedonia and shall start to apply after four months from the day of its entry into force.