OMBUDSMAN OF THE REPUBLIC OF BULGARIA

AUDIT OF WHISTLEBLOWING AND WHISTLEBLOWER PROTECTION ACTIVITIES OF THE COMISSION FOR PERSONAL DATA PROTECTION

SUMMARY OF FINDINGS OF AUDIT REPORT

COVERING 1 JANUARY 2024 - 30 SEPTEMBER 2024

LIST OF ABBREVIATIONS

APPRIPDIB / Whistleblowers Protection Act - Act on Protection of Persons, Reporting Information, or Publicly Disclosing Information about Breaches

CA - competent authority under Art. 20 of the Whistleblower Protection Act

Corrective measures - the measures taken by the competent authority under Art. 20, Para. 1 in order to stop the retaliatory actions taken against the person under Art. 5 in connection with the reported signal or publicly disclosed information

CPC - Commission on Protection of Competition

CPDP/"the Commission" - Commission for Personal Data Protection

CCC - Commission for Combating Corruption

ERC Directorate - External Whistleblowing Channel Directorate

FSC - Financial Supervision Commission

GLIEA - General Labour Inspectorate Executive Agency

Investigative actions / inspections – investigative actions by the competent authorities within the meaning of WPA and Directive 2019/1937

Kozloduy NPP EAD - Kozloduy Nuclear Power Plant Ltd

MRDPW - Ministry of Regional Development and Public Works

NCCD - National Construction Control Directorate

NOLA - National Office for Legal Assistance / National Legal Aid Bureau

NRA - National Revenue Agency

ORHR - officials responsible for handling reports

Person concerned – a natural or legal person, who is identified in the filing of the report or in the public disclosure of information as the person, to whom the breach is attributed or with whom that person is connected

PFIA - Public Financial Inspection Agency

RECP - Verification of regularity, eligibility, credibility and plausibility performed by ERC

Retaliatory actions – repressive actions carried out against the whistleblower or those helping them because of a report or public disclosure of information about breaches (ответни действия)

RMALS Directorate - Resource Management and Administrative and Legal Services Directorate of the Commission for Personal Data Protection

Rules implementing the WPA – Regulations clarifying how to implement the Whistleblower Protection Act

SANS - State Agency for National Security

SLAPP case – strategic lawsuit against public participation

Temporary measures - measures that aim to suspend the retaliatory actions taken against the person under Art. 5 in connection with the reported signal or publicly disclosed information or to restore its previous position, which are decided by the courts during the legal proceedings

UIN - unique identification number of a report

Unified report processing system "СИГНАЛ" / "REPORT"

AUDIT OF WHISTLEBLOWING AND WHISTLEBLOWER PROTECTION ACTIVITIES OF THE COMISSION FOR PERSONAL DATA PROTECTION

In 2023, the Ombudsman of the Republic of Bulgaria took on a new role, expanding the powers in advocating for the rights and freedoms of citizens. Pursuant to § 5 of the Final Provisions of the Act on Protection of Persons, Reporting Information, or Publicly Disclosing Information about Breaches (APPRIPDIB or Whistleblower Protection Act), published in State Gazette, issue 11 of 2 February 2023) and Article 19, para 1, item 14 of the Ombudsman Act, the Ombudsman shall carry out an external audit of the activities related to whistleblowing and the protection of whistleblowers. In addition, pursuant to Article 30, para 3 of the Whistleblower Protection Act, the Ombudsman shall receive and examine complaints against the Commission for Personal Data Protection (CPDP/"the Commission") from persons who have already submitted reports, including for failure to ensure protection or violations of the confidentiality of information about them.

To ensure the implementation of the new powers, a directorate was established within the institution – Audit of Whistleblowing and Protection of Whistleblowers; work capacity was built and a methodology and rules were developed to conduct an independent external audit of the activities of the Central Authority for External Reporting Channel in the Republic of Bulgaria under Article 19 of the Whistleblower Protection Act, as well as capacity to examine complaints against the CPDP from persons who have submitted reports to the External Reporting Channel.

Rules were adopted for examining complaints against the CPDP. In order to protect the identity of complainants, complaints/reports received by the Ombudsman of the Republic of Bulgaria under Article 30, para 3 of the Whistleblower Protection Act are registered by an employee of the Audit of Whistleblowing and Protection of Whistleblowers Directorate in a separate section of the electronic system of the Ombudsman institution.

Complaints and reports under Article 30, para 3 of the Whistleblower Protection Act are examined in accordance with the requirements of the Ombudsman Act and the Rules of Procedure of the Ombudsman.

An ad-hoc inspection at the CPDP may be initiated when complaints are examined.

In 2024, the Ombudsman institution received 7 complaints against the CPDP from individuals who had submitted reports to it under the Whistleblower Protection Act, the majority of which concerned failure to provide protection to the individuals. Although the number of complaints is still relatively small, they highlight some important trends and problem areas.

The complaints show that citizens find it difficult to navigate the complex legal framework governing the protection of whistleblowers and those who publicly disclose information about violations. In many cases, it is precisely the lack of understanding of the regulatory framework and the procedures that leads to false expectations about the scope of their rights and the possibilities for protection. This trend shows clearly the need for additional efforts to clarify the legal requirements and to present the procedures in a more accessible manner in order to raise the citizens' legal awareness and prevent future misunderstanding.

Next, it is clear that there is ambiguity regarding the term "whistleblower" – the Whistleblower Protection Act protects persons who report or publicly disclose information about violations within a strictly defined *work context*, as well as those for whom there are specific grounds under Article 3 of the Act (e.g. violations committed in the last two years that meet the specified criteria). The Ombudsman institution received complaints from individuals who had not submitted a report to the External Reporting Channel (ERC) but believed that any disclosure of wrongdoing automatically entitled them to protection while they were not aware of the specific requirements of the law.

Whistleblowers who are entitled to protection under the provisions of the WPA refer to the Ombudsman when they consider that their legal protection has not been ensured or has been seriously delayed. In many cases, these individuals lack information which concerns them or do not understand the reasons for the delay or refusal of protection, which leads to a feeling of legal uncertainty and lack of transparency in the institutional procedures. Timely communication and clarity regarding the protection envisaged are sometimes absent, which causes difficulties for whistleblowers. This situation highlights the need to optimise the notification and live status mechanisms.

Another problem proves to be ensuring timely and effective protection in cases of public disclosure of information about violations. For example, in early 2024, the Ombudsman received a complaint about a case that gained widespread publicity due to a lawsuit known in the public sphere as a "SLAPP case" brought against the complainant. The individual filed a request for immediate protection within the meaning of Article 23, para 3 of the Whistleblower Protection Act on 28 December 2023, after publicly disclosing information obtained in a work context about violations falling within the scope of the Whistleblower Protection Act through interviews on the Bulgarian National Radio, Darik Radio and publications in a number of other media outlets (news.bg, actualno.com, dnevnik.bg, factor.bg). Subsequently, a SLAPP lawsuit was filed against the individual by Kozloduy Nuclear Power Plant EAD, claiming damages of BGN 500 000 (approx. 250 000 EUR). The case caused a public outcry and scandal.

Still, the CPDP requested additional information from the individual and subjected the case to verification for the existence of *"reasonable grounds to believe that the person is a whistleblower within the meaning of the law"* (*verification of regularity, eligibility, credibility and plausibility -RECP*). In this case, the CPDP insisted on the submission of an explicit report through the external channel, even though a public disclosure had already been made. It is this additional stage – the mandatory submission of a report through the external channel and the subsequent verification of RECP – that compromises the principle of immediacy laid down in Article 23, para 3 of the WPA.

Ultimately, in this particular case, protection was provided with a delay (on 15 January 2024) and after the case had already gained widespread publicity. As a result of the public pressure, the claim was withdrawn and the court proceedings against the whistleblower were terminated. The case serves as a clear example of the need to refine and optimise the procedures for applying immediate protection under the WPA in order to ensure effective and timely protection for persons who publicly disclose information about violations.

EXTERNAL AUDIT

In performance of the obligations under Article 30, para 1, para 2 and para 4 of the Whistleblower Protection Act, the Ombudsman conducted an external audit of the CPDP as the Central Authority For External Reporting And Protection Of Persons under the Whistleblower Protection Act from 14 October 2024 to 18 November 2024, where the audit covered the period from 1 January 2024 to 30 September 2024.

The audit covered all key aspects of the activities of the External Reporting Channel (ERC) Directorate through an on-site review of the unit's work which included a review of the procedures and methods for receiving reports, an assessment of the cooperation / interaction with the competent authorities (CAs), the mechanisms for providing protection to whistleblowers, as well as the provision of support measures, the unified report processing system "СИГНАЛ" / "REPORT" and other aspects of the Commission's activities, allowing for an assessment of its effectiveness in dealing with reports.

The audit was finalised with a report containing findings, conclusions and recommendations to the legislature, the executive (incl. specific recommendations to the CPDP) and to the judicial branch.

FINDINGS AND CONCLUSIONS OF THE AUDIT:

1. GENERAL

A. Number and status of reports received within January – September 2024

The audit team obtained information from the ERC that, for the period under review from the beginning of 2024 until 30 September 2024, a total of 83 reports were received by the ERC. In 29 of them, the CPDP took a decision to terminate the proceedings based on the existence of the relevant legal grounds. An on-site inspection was carried out in respect of 4 reports (Kozloduy NPP EAD; Sofia Waste Treatment Plant, Yana Village; Sofia Municipality and the 10 municipal enterprises of Sofia Municipality; and University of National and World Economy). From the beginning of 2024 until 30 September 2024, in 6 reports the CPDP took a decision for follow-up actions pursuant to Article 25, para 1 of the Whistleblower Protection Act, following investigative actions (inspections) by the relevant competent authority (CA) and a report was prepared by the ERC Directorate.

A total of 40 reports were referred to CAs for verification (34 to CAs; 6 to the Commission for Combating Corruption). The investigative actions (inspections) in 44 reports are pending within the three-month (respectively six-month) deadline. Only one report concerns an infringement committed more than two years ago.

Based on ERC data: 48.19% of admissible reports were referred within the established timeframes for referral to the CAs, therefore 51.81% of the referrals to the CAs were outside of this timeframe. In comparison, of the 39 reports inspected by the Ombudsman's team, approximately 69% were outside the statutory referral deadline.

B. Thematic scope of the reports received, January – September 2024

According to the ERC, the main types of violations fall within the scope of the **labour law** of the Republic of Bulgaria, including under Article 3, para 2, item 2 of the WPA – violations of the Bulgarian legislation in the field of labour law – ***a total of 27***.

Violation of the protection against retaliatory action provided by the CPDP – total: 3.

The ERC clarifies further that the violations of the Bulgarian labour law, according to them, are 24 + 3 (3 are for violation of the protection against retaliatory action granted by the PDPC), *"since the scope of Article 3, para 1 [of the Whistleblower Protection Act] does not include infringements on the protection against retaliatory action"*. Therefore, the ERC considers that these reports concern retaliatory action which are of labour law nature and which should be classified as reports related to the labour legislation. The audit found a significant difference between the ERC statistics on the number of reports relating to the labour legislation compared to the total number of reports investigated relating only to the labour legislation. The audit team cannot accept the view of the ERC that retaliatory action of labour law nature constitute reports about infringements of the labour legislation. This partly explains the significant statistical discrepancy. The statistics provided also fail to explain how many of these 24 reports concern the right to safe working conditions or other grounds as per Article 3 of the Whistleblower Protection Act.

Other prevalent violations in the reports:

- Violation of rights in the field of public procurement – total: 1;
- Violation of the rules for payment of outstanding municipal receivables – total: 2;
- A violation concerning the financial interest of the European Union – total: 1;
- Violation of the Bulgarian legislation or European Union acts in the field of environmental protection – total: 2;
- Violation of privacy and personal data protection – total: 15;
- Violation of the Bulgarian legislation or European Union acts in the field of consumer protection – total: 2;
- Violation of the Bulgarian legislation or European Union acts in the field of financial services, products and markets and the prevention of money laundering and terrorist financing – total: 6;
- An offence of a general nature of which the whistleblower became aware in connection with the performance of their work or in the performance of their official duties – total: 9;
- Violations in the field of public health – total: 3;
- Reports about violations of procedures implemented under the National Recovery and Resilience Plan and the Rural Development Programme 2014-2020 (in essence also public procurement) – total: 15.

The CPDP reports 1 report about violated rights in the field of public procurement, while 15 reports concern "*violations of procedures implemented under the National Recovery and Resilience Plan and the Rural Development Programme"*; the audit team finds that the statistical information should be updated.

Conclusion:

The audit team found discrepancies between the statistics provided by the ERC and the findings during the audit.

2. CAPACITY

The number of staff positions in the External Reporting Channel Directorate is 15 (fifteen). At the time of the audit, 6 (six) positions were occupied as follows: Director of the Directorate – 1 (one) position, Chief Expert – 1 (one) position, Senior Expert – 2 (two) positions, Junior Expert – 2 (two) positions. It was evident to the audit team that, in the short period from February to October 2024, the composition of the ERC was almost completely changed. Action has been taken to hold competitions for another eight vacant positions in the ERC Directorate with a requirement for a law degree.

Pursuant to the Whistleblower Protection Act, officials shall conduct investigative actions (inspections), work on reports, provide legal representation, organise meetings with CAs, draft rules, develop instructions, report monthly to the CPDP, report to the EC, etc. This may prove to be physically impossible, but also daunting in view of the salaries in the ERC; it is also evident from the job descriptions.

There is a shortage and turnover of staff in the ERC Directorate. At certain times of the year (e.g. the summer season) this led to significant delays in processing some reports.

With regard to the current resources (time, technology and staff) available to the ERC in comparison to its work activities and responsibilities, the audit identified several significant opportunities for improvement:

- Greater practical autonomy for employees responsible for specific categories of reports, including being able to access remotely public registers for the purpose of verifications for RECP from their own workstations. At present, such verifications for RECP are carried out in a very cumbersome, limited and inefficient manner. This also has a negative impact on whistleblower protection by limiting and delaying it;
- Inadequate material support of the directorate – lack of USB ports, insufficient printers and scanners, which are necessary for the efficient performance of official duties (one is available with the ERC Director);

Conclusion:

With 15 positions allocated to the directorate, only six were occupied at the time of the audit, and this number includes the Director. The insufficient staffing of the ERC results in staff being unable to carry out their duties in a timely manner. The Ombudsman takes account of the fact that competitive recruitment procedures are underway to fill the vacant positions (a shortage also identified in the previous audit).

Working with a reduced staff leads to demotivation of the staff and there is a risk that the activities of the ERC may be interrupted, especially if there are several people on sick leave or on holiday.

3. **RECEIVING REPORTS** – an overview of the procedures and methods to receive reports via the External Reporting Channel

The audit team carried out checks of 39 reports. Based on them, the following discrepancies stand out:

1. Delays to register reports timely (registration first by the general registry or incorrect/incomplete registrations).

2. Failure to register a report in a timely manner, including an attempt of the general registry to return the report. An example is a report where, after a specific request, the report was forwarded from the General Registry Directorate to the ERC Director and was registered the next day.

3. Problems with the identification of verified reports: for example, two ERC numbers for the same report, missing unique identification number (UID), etc. Reports were detected where several ERC numbers were generated for an identical report. Thus, not all subsequent documents were filed under the same incoming registration number with a sequential index and date.

Conclusion:

Based on the examination of the organisation of the process of receiving reports, the audit team found that, in general, reports are received in compliance with the WPA. According to the ERC Directorate's Rules,[1] all ERC incoming and outgoing correspondence is concentrated in a single designated clerk in the *Resource Management and Administrative and Legal Services* Directorate of the CPDP (RMALS Directorate).

In absence of the clerk, this person is substituted for by one of the two designated staff members from the IT department, who are specially trained but do not carry out this activity on a daily basis.

This creates numerous prerequisites for errors and inaccuracies in the processing of incoming and outgoing correspondence of the entire ERC Directorate.

At the same time, the audit also found cases where reports were initially accepted by the general registry of the CPDP and transferred to the RMALS clerk.

In view of this, the amendments to the ERC Rules attempted to reflect the practical need for greater access to correspondence with the reports.

However, the processing of the correspondence related to reports still has many additional administrative steps that increase the risk of exceeding the deadlines under the WPA.

[1] ERC Rules of 9 July 2024 and/or ERC Rules of 17 September 2024 – Rules for receiving, registering and examining signals reports by the CPDP through the external reporting channel (ERC) and the follow-up to them pursuant to the WPA, dated 9 July 2024, amended 17 September 2024 by a CPDP decision as per Protocol No. 26 WB of 17 September 2024.

4. **EXAMINING THE REPORTS** – a review of the procedures and processing of reports; checking the time limits for the processing of reports and their referral; carrying out independent checks under Article 24 of the WPA

1. Impact of security measures on the verification for RECP

Access to public registers such as the Bulstat, the National Social Security Institute, the Commercial Register and the National Revenue Agency is limited due to the lack of internet access on official computers. The only computer with internet access is that of the Director. The lack of access makes it necessary to send letters to the relevant authorities which delays the checks. The "Ciela" legal database software is not up-to-date which further hampers work. Some staff members circumvent these limitations by using personal mobile devices for reference. The audit team believes that the heightened security measures should not lead to delays and difficulties in the verification for RECP, especially given the tight deadlines under the WPA.

2. Application of the rules for verification for RECP by the ERC

During the check of reports, the audit team established that a report was prepared to the ERC concerning every report found to be admissible and regular and not only concerning the reports falling outside the scope of the Whistleblower Protection Act.[2]

These reports describe the analysis of the case under consideration (RECP) and, if it is within the scope of the WPA, it is suggested that the report be referred to a CA for verification. However, based on the reports reviewed by the Ombudsman, it was established that only an analysis of regularity and eligibility was performed, and with **no written analysis of the plausibility and credibility of the reports**.

Verification of RECP: eligibility – cases were found where reports were reported as inadmissible initially and were subsequently remanded by the Commission for re-examination on their merits. One of the reasons for this may be inability difficulty of ERC staff to carry out timely and accurate checks of public records.

Verification of RECP: eligibility and capacity of whistleblowers – ten reports were found from persons who generally fall within the scope of Article 5, para 2, item 4 of the WPA, but the ERC required of the whistleblowers to specify whether they submitted the report in a personal capacity **or** as representatives of a legal entity, without explaining the consequences of this clarification for the report's eligibility. Nine of these ten reports were found to be inadmissible and referred to the authorities under the Administrative Procedure Code, without protection under the WPA.

For these reports, the ERC did not generate a unique ID number (UIN) but used the ERC correspondence number. In one case, the whistleblower generated the UIN themselves. This practice is formalised in Article 40, para 3, item 3 of the ERC Rules of 17 September 2024. The requirement to specify one's legal capacity creates prerequisites to narrow the scope of the WPA and delays the processing of reports, contrary to the objectives of the Directive. In cases where a whistleblower has multiple legal capacities, the CPDP considers it necessary for the whistleblower

[2] This is described in Article 41, para 4 of the ERC Rules of 9 July 2024; however, the audit team found that it was done in all cases. Still, the audit team finds that this is good practice as long as it does not lead to delays in the referral of reports.

to specify explicitly in which capacity they submit the report without informing them what impact this choice would have on the report's admissibility.

Verification of RECP: plausibility and credibility – there are no clear methods and criteria for verifying the allegations in reports, in terms of the procedure to identify "manifestly false and misleading allegations".[3] There are no uniform criteria for assessing their plausibility and credibility. It is also not clear how and by what means (e.g. information portals and registers) this verification is to be carried out.

Verification of RECP: public disclosure – in the event of an application for immediate protection under Article 23, para 3 of the WPA, the ERC requires that a report be submitted through the external reporting channel and subjects the report to a full RECP verification RECP, which compromises the immediate protection.

Verification of RECP: asking for additional information – with regard to certain reports, an unreasonably high level of evidence is required, which is contrary to the Directive and the WPA which require that protection be granted even where there are reasonable grounds for concern. Such requirements create barriers to whistleblowing and limit the effective enforcement of EU law.

Verification of RECP: interpretation of the concept "work-related context" – a case was found in which a report from a NGO volunteer was found inadmissible because the CPDP considered that there was no legal link between the NGO and the state authority headed by the person concerned against whom the report was filed.

No account was taken of the fact that both the NGO and the state authority are in the same public domain – environmental protection. The CPDP cited in its refusal a lack of specific information eligibility of retaliatory actions, although the Ombudsman team found those to be present both is in the public domain (media articles) and included in the text of the whistleblower's report itself. The whistleblower was not informed what specific information is missing and was not given the opportunity to provide further clarification.

As the **Directive** requires that the concept of "work-related context" be interpreted broadly, including in the case of threats to the public interest, volunteers and trainees must also be protected, including from reputational harm. According to the Ombudsman, denying a volunteer protection is contrary to the Directive.

3. Assessment of the time taken by ERC for report processing and referral:

Referring reports to CAs – the audit found that the ERC Rules developed by the CPDP introduce requirements and timeframes for report processing and referral that are not in line with the WPA. In particular, a discrepancy was found in the timeframes for forwarding reports to CAs. The audit found that the ERC Rules provided ERC additional time for referral to CAs, namely no later than 7 days from the receipt of **the express written consent and/or additional information requested** of the whistleblower.

At the same time, pursuant to Article, para 1 of the Whistleblower Protection Act, reports must be forwarded **immediately, but not later than 7 days from their receipt**. This WPA provision is intended to ensure speed and efficiency in the processing of reports, while providing

[3] Article 41, para 4 of the ERC Rule of 9 July 2024.

legal certainty to whistleblowers and protection of their rights under the Directive. Furthermore, Article 15, para 5 of the WPA requires that, in the event of irregular reports, a "notice" be sent to the whistleblower to remedy the irregularities within 7 days of receipt of the report. It is laid down that in the event of non-remedying the irregularity, the report shall be returned to the whistleblower within the same 7-day period. At the same time, Article 16, para 1 of the WPA provides that the *officials responsible for handling reports* (ORHR) are required to acknowledge receipt within the same 7-day period. In practice, within the 7-day period, the ORHR must carry out the following actions to process the report:

- Confirm receipt of the report;
- Assess whether there is a need to remedy any irregularities in the submission as per the minimum information required by Article 15, para 1 of the WPA (and such are to be remedied within the same 7-day period);
- Perform a RECP verification =RECP.

In addition to the WPA, the ERC Rules introduce the following requirements and deadlines:

- *Within 7 days of receiving a report, the official responsible for examining it shall check its regularity, eligibility, plausibility and credibility (Article 40, para 1).*
- *After the checks under Article 40 but not later than 7 days from receiving the report, the official shall send an acknowledgement to the whistleblower and, if necessary, request additional information (Article 41, para 1).*
- *Within 7 days of receiving the report, the ORHR shall assess the need to disclose the identity of the whistleblower and/or information in the report based on which their identity may be directly or indirectly established (Article 42, para 1).*
- *When assessing the need to disclose their identity in connection with the examination of the report, the whistleblower's explicit written consent shall be required within 7 days (Article 42, para 2).*
- *The Commission shall forward the report immediately but not later than 7 days after receiving the express written consent to disclose the identity and/or additional information requested of the whistleblower (Article 43, para 1).*

It is clear that the 7-day deadline for referral of a report may pose a challenge to ERC, especially given staff shortages. It is possible that this is why the additional time limits for clarification of a report (7 days) and for obtaining consent to disclose identity (7 days) have been set out in the ERC Rules (referred to by CPDP as *Rules on Receiving, Registering and Handling Reports Submitted to the Commission for Personal Data Protection through an External Reporting Channel and Their Follow-up Under the Act on Protection of Persons Reporting or Publicly Disclosing Information on Breaches*).

Although the confirmation of a report takes place at the same time as the request for consent to disclose the identity and, if necessary, the request for additional information, these additional requirements created by ERC (which are not in the Whistleblower Protection Act) further delay the forwarding of a report to the CAs.

It is ERC's standard practice ERC to conduct this initial communication to confirm the report and receive feedback from the whistleblower only through letters. Based on the reports reviewed, it was found that this led to delays, with real time communication initiated by ERC with the whistleblower (stating that such a letter was sent) only in the absence of a whistleblower's response.

Reports were also found where there was a delay in ERC receiving the clarification requested by it and the exchange of letters could have been replaced by a telephone call. In view of the speed of communication, the audit team believes that there are more efficient and effective ways of communicating in real time than letters, which may be even more secure than communication by post.

Based on the provision *"the Commission shall refer the report immediately but not later than 7 days after receiving of the express written consent to disclose the identity and/or additional information requested"*, the ERC extends the time limit explicitly laid down in Article 20, para 1 of the Whistleblower Protection Act - which is 7 days from receipt of the report.

While the audit team recognises that a 7-day timeframe is short to perform thoroughly the actions required by the WPA prior to referral, this extension significantly delays the referral where:

Delays in referral to the CAs were found in 27 of the 39 reports examined, i.e. in approx. 69% of them.

4. Independent investigative actions / inspections under Article 24 of the WPA

So far, no investigative actions (inspections) have been carried out based on reports of violations by CAs (independent investigative actions / inspections).

Conclusion:

The RECP assessment of whistleblower reports often exceeds the time limit for referral to the CAs under Article 20, para 1 of the Whistleblower Protection Act, which is **"immediately but not later than 7 days" from receiving the report.**

In other words, the WPA requires that reports be acknowledged, clarified and referred within seven days, without allowing for a longer time period.

The ERC Rules attempt to extend this time limit. On the one hand, a discrepancy has been identified between the ERC Rules and the WPA; on the other hand, given the complexity of the subject matter, the staff available, and other audit findings, the legislator may consider extending this time limit.

It is in the public interest for the ERC to carry out a thorough analysis of the reports and the necessary follow-up to them within the meaning and objectives of the Directive and the WPA -a process which currently may not be consistently feasible within the short 7-day period.

5. **COOPERATION** – Evaluation of the effectiveness of cooperation and interaction between the CPDP and the other competent authorities and organisations under Article 20 of the Whistleblower Protection Act

Findings

Report No. 37-36#3/05.03.2024 of the Ombudsman recommended that a methodology/procedure be developed to ensure the effectiveness of the cooperation with the CAs in order to guarantee proper determination of CAs and to comply with the statutory deadlines. In response to this recommendation, the CPDP has taken action by requesting the relevant CA under Article 20, para 1 of the WPA to submit its proposals on the content and scope of a draft methodology/procedure for effective interaction between the CPDP and the CA.

Based on the proposals received, the CPDP prepared draft Rules for Cooperation of the CPDP with CAs pursuant to Article 20, para 1 of the Whistleblower Protection Act, which were included on the agenda of the second annual meeting of the CPDP with CAs. During the meeting, each CA was requested to submit a formal opinion on the draft discussed.

Having reviewed the suggestions made, the audit team draws particular attention to the following:

- The CPDP suggests that reports under the WPA be examined by CAs as a matter of priority;
- Certain CAs believe that they have other (longer) deadlines in their special laws (*lex specialis*);
- Certain CAs consider it unnecessary to comply with the CPDP's request to provide it with information on the progress of the referral within one month of the referral;
- There are uncertainties on the part of the CPDP and the CAs about the protection measures and corrective measures. It should be noted that the CAs have serious difficulties with them and how they are to apply them;
- There are no clear procedures and rules if the CA is determined incorrectly by the CPDP and for subsequent referral at short notice;
- When a report is referred to several CAs, the CPDP does not inform the individual CAs about the others to which the report has been referred.

Analysis and findings of the audit team

At the time of the completion of the audit, the Rules for Cooperation of the CPDP with CAs pursuant to Article 20, para 1 of the WPA have not yet been finally approved, as feedback has not been received from all CAs.

The review and analysis of 39 reports highlight the following issues regarding cooperation with CAs:

1. Deadlines: certain CAs believe that they have other (longer) deadlines in their special laws, which is contrary to the spirit and purpose of the WPA. In the view of the audit team, WPA

does not interfere with the independence of the CAs, but only requires priority consideration and allocation of whistleblower reports, taking into account the short deadlines of three and, respectively, six months for rendering a decision. The authorities which find it difficult to conclude their investigative action (inspection) in a timely manner include: National Revenue Agency (NRA), Public Financial Inspection Agency (PFIA), Financial Supervision Commission (FSC), State Agency for National Security (SANS) (as regards classified information), and Commission on Protection of Competition (CPC) (as regards public procurement).

The audit found delays in referrals from the CPDP to CAs for a variety of reasons: verification of RECP; obtaining additional information; waiting for the whistleblower to consent to disclosure of their identity *"in connection with the examination of the report by the CA",*[4] and others. The additional deadlines for referral set out in Article 43, para 1 of the *ERC Rules*[5] are at the expense of the investigative action (inspection) by the CAs, leaving less time for them to examine the substance of the report. This leads to delays even before the report is referred to the CAs. At the same time, the CPDP wants the investigative action (inspection)by the CA to be completed, at the latest, two or, respectively, five months after the referral; the audit found that even shorter deadlines were set for some reports.

2. Uncertainties regarding protection measures and corrective measures: the NRA proposes that the draft Rules for Cooperation of the CPDP and the CAs specify the actions to be taken by the CAs in case of disclosure of the whistleblower's identity or in case of risk of retaliation against the whistleblower. Such situations may require operational meetings between the institutions to make decisions quickly and protect the rights of whistleblowers. The CPDP notes that written correspondence without feedback leads to ambiguities and makes the work more difficult, especially in the event of complex reports.

Based on the correspondence of the CPDP with CAs and on the examination of the reports themselves, the audit team found that there is ambiguity among the CAs as to who should provide whistleblowers' protection and enforce the *corrective measures (under Art. 33, paras 2 and 3 of the WPA)*, including how far the administration is able to enforce corrective measures and how far the courts are. For example, the General Labour Inspectorate Executive Agency (GLIEA) explicitly states that it cannot impose corrective measures on employers. This topic is dealt with further in the chapter on corrective measures. It was found that there is confusion among CAs supposed to apply these measures, with some requesting a more detailed description of the possible corrective measures that CAs may apply in the course of an inspection, notwithstanding their powers under another law. There is also a lack of coordination between CAs, as well as between whistleblower protection and remedial action. This is worrying because it undermines whistleblower protection from retaliation.

3. Referral between the CPDP and CAs, as well as between CAs: the referral process contains multiple administrative steps. There is a suggestion from a CA to clarify through the Rules for Cooperation that an authority which has identified that it is not a CA in a particular case directly forwards a report to the relevant CA, within a short period of time, informing the CPDP. Such an approach would significantly speed up the referral, although there is a risk of a report being "passed" between several CAs before any of them starts an investigative action / inspection.

[4] Article 41, para 2 of the ERC rules.
[5] Namely, "immediately but no later than 7 days" after receiving a report.

When it comes to referrals to CAs, the audit team believes that there need to be clear and unambiguous rules for avoiding conflicts of interest in the review of reports under the WPA. This is important not only for the CA staff examining a report, but also for the CAs themselves. The audit identified two cases of conflict of interest. In one of them, the whistleblower was dismissed by their employer, the "*person concerned*" (within the meaning of Art. 22 of the Whistleblowers Directive). The CPDP constituted the *person concerned* as a CA, without giving instructions for the inspection. Thus, the whistleblower's former employers are the CA, examining the validity of the whistleblower's allegations. The result of the investigative action / inspection is not surprising: an internal report of the person concerned/CA states that the whistleblower's allegations were *"unfounded, unreasoned and unsubstantiated"*. The CPDP accepted the conclusion of the affected person and closed the inspection.

Absence of CAs in Article 20 of the Whistleblower Protection Act: The Public Financial Inspection Agency (PFIA) is not listed as a CA even though it carries out financial checks under the Whistleblower Protection Act.

The CPDP is also not listed among the CAs in Article 20, para 1 of the Whistleblower Protection Act. However, "*the protection of privacy and personal data"* is within the scope of Article 3, para 1, littera k of the WPA. In Article 19, para 1 of the Whistleblower Protection Act, the legislator has set out that *"Reports relating to unlawful processing of personal data within the meaning of Regulation (EU) 2016/679, the Personal Data Protection Act and other specific laws or acts of the European Union shall be dealt with by the Commission in accordance with the general procedure laid down in those laws and acts."* In the opinion of the audit team, the procedures and practice under the general procedure of the CPDP cannot satisfy the meaning and objectives of the Directive and the WPA.

Missing conclusions in CA reports: certain CAs' reports, e.g. of the PFIA, to which reports under the WPA were referred, do not contain a conclusion whether a violation has been established or not. One such PFIA report not only was not closed after an eight-month investigative action / inspection by the PFIA and did not contain a conclusion, but also ended provisionally with *"the report of the financial inspection carried out is to be sent to the competent authorities"* without mentioning which they were. Following an enquiry by the ERC Directorate about these CAs, the PFIA clarified that the report was referred by the PFIA to the National Construction Control Directorate (NCCD) in view of its competence, and to the Ministry of Regional Development and Public Works (MRDPW) as a *"higher-ranking organisation"* on the basis of Article 20, para 1 of the Public Financial Inspection Act. Such verification is not final and not yet completed at the time of the audit (13 months since the submission of the report). Therefore, the CPDP is not in a position to issue a decision on the conclusion of the investigative action / inspection of the PFIA.

Public procurement: issues related to determining the CA to deal with reports related to public procurement, as well as issues related to the handling of reports of antitrust violations by the CPC.

Referral under Article 23, para 1, item 3 of the WPA **to the EU:** The audit found that the ERC Directorate is not entirely certain which are the *"competent institutions, bodies, offices or agencies of the European Union for the purpose of follow-up investigations where provided for in European Union acts"* because they are not explicitly listed in the WPA.

Conclusion:

The ERC has difficulties with the recommendation given by the Ombudsman institution to develop a methodology/procedure to regulate the cooperation with CAs in order to correctly determine the relevant CAs and to comply with the WPA deadlines. Such a procedure has not yet been drafted due to the facts identified above. Furthermore, a discrepancy was found between the time limits of investigative action / inspection under the WPA and the time limits under the special laws of some CAs, whilst there are no obligations for the CAs to comply with the WPA Act as a special law. Certain authorities should be included as CAs in Article 20 of the WPA but are not mentioned, such as PFIA and CPDP. In the view of the audit team, these ambiguities could also be clarified through Rules implementing the WPA (also known as Regulations Implementing the WPA).

6. REGISTER OF REPORTS AND PROTECTION OF THE CONFIDENTIALITY AND THE IDENTITY OF PERSONS CONCERNED: a review of the measures and procedures taken to protect the personal data of whistleblowers and persons concerned

A presentation was made to the audit team about the Commission's specialised information system for registering and handling reports on breaches "СИГНАЛ" / "REPORT", referred by CPDP as „СИГНАЛ" / 'REPORT' (translation of its Bulgarian name). During the presentation, it became clear that the system is linked to the website of the CPDP, in particular to the sections *"Generation of a UIN under the Whistleblower Protection Act for legal entities"* and *"Submission of a report under the Whistleblower Protection Act for natural persons"*, so that when a UIN is generated, the system will automatically create it and send it to the person submitting the whistleblower report.

Functionality of the "СИГНАЛ" / "REPORT" system

The "References" section is well developed, allowing for a number of references covering a large amount of information. Although the ERC should know which internal channel was used to generate a UIN, the audit found reports where the ERC asked the *person concerned* whether the UIN was generated through their internal channel.

It has been established that there are numerous additional administrative steps in the processing of the correspondence on reports, which increases the risk of exceeding the deadlines under the WPA. This makes it difficult to conduct easy and quick real-time checks to trace the stage of the procedure for a given outgoing letter. It transpired that any outgoing correspondence with the whistleblower could not be sent by an ERC staff or the Director, but had to go through three persons before being sent – the ERC clerk to an ERC staff to the general ERCCPDP registry.

A data sheet of the reports received from the beginning of 2024 to 30 September 2024; by the end of the audit, six different data sheets were provided and they all had multiple discrepancies, which among others, leads to uncertainty how many reports were received in total during this period.

Conclusion: The "СИГНАЛ" / "REPORT" system records and stores the IP addresses of report senders. The entire incoming, outgoing and internal correspondence is processed and attached within the system by the one RMALS Directorate employee, which creates dependency

on one person and increases the risk of delays and errors, especially during absences. The processing of correspondence involves multiple steps and passes through several individuals, increasing the risk of delays and missed deadlines under the WPA. Discrepancies were identified in the reports provided and the accuracy of the "СИГНАЛ" / "REPORT" system data sheets needs to be improved.

7. **SUPPORT AND PROTECTION MEASURES FOR WHISTLEBLOWERS** – review of the procedures ensuring the provision of comprehensive, independent, free and accessible information and advice individually and confidentially regarding procedures and protection measures; procedures for providing assistance before any authority necessary to protect against retaliation against whistleblowers

In implementation of Recommendation No. 4 in Audit Report No. 36-37#3/05.03.2024 of the Ombudsman, the audit team found that the CPDP had developed and implemented Rules for the Provision of Support Measures Pursuant to Article 35, para 1 and para 2 of the WPA ("**Rules for Support Measures**"). Rules for the Provision of Protection to Persons Who Have Reported or Made Public Information on Infringements under the WPA ("**Rules for Protection Measures**") have also been developed. Both are *de facto* subsections of the ERC Rules which also exist as separate documents on the CPDP's website.

Support measures: Having become familiar with the Rules for Support Measures, the audit team found that the letter to the whistleblower providing information about the registration and UIN also communicated the protection measures, support measures and how to obtain legal aid from the National Office for Legal Assistance (NOLA / National Legal Aid Bureau / Национално бюро по правна помощ) through three appendices. The content of the appendices repeats the statutory text without answering essential questions that a whistleblower would ask: "what action" they can take to obtain support and protection; "how"; "under what conditions"; "through whom"; "when", "where". It is also noted that citizens have the right to obtain information in a face-to-face meeting with an ERC staff member. According to the findings of the audit, neither the rules nor the appendices provide further clarity beyond what is set out in the Whistleblower Protection Act.

The support measures described in Article 35, para 1, item 1 and para 2 of the WPA are to be provided to all whistleblowers in their correspondence with the ERC, regardless of whether they have visited the ERC premises, especially in view of the requirements of equal treatment set out in the Charter of Fundamental Rights of the European Union and in relation to people from vulnerable groups.

Prior to the adoption of the ERC Rules, the appendices on the support measures, the protection measures and the provision of legal aid by the NOLA were sent by the ERC to whistleblowers only when the person explicitly requested protection, which could be several months after ERC received the report.

Whistleblower Protection: Pursuant to the Whistleblower Protection Act, whistleblower protection begins at the time a report is submitted. The audit found that protection was granted only if the whistleblower had explicitly requested such in their report. If they had not done so with the text of the report, protection was granted at a later stage when retaliatory action was taken

against the person under Article 5 and only if they requested it to protect themselves against this retaliatory action. The ERC considers that consenting to disclosure of the whistleblower's identity before an employer is equal to requesting protection, and in such a case it is due in full as per the WPA. Art. 15 point 4 of the ERC rules clarify hat full protection means – i.e. sending a notification to:

1. the whistleblower shall be informed of the protection granted in respect of his or her employer and, additionally, of protection measures and support measures and the possibility to receive legal aid from the National Office for Legal Aid;
2. the employer specifying the protection pursuant to the WPA;
3. the relevant administrative and judicial authorities, *where specifically requested*.

The audit team found instances where the whistleblower sought protection during the investigative action / inspection by the CA, and the protection provided at that point by the ERC before an employer was usually ineffective, as the individual, in most cases, was already the object of retaliatory actions. In this sense, there is a contradiction with Article 5 of the WPA and the Directive, both of which presuppose the provision of protection from the moment a report is submitted, while the ERC Rules embody the assumption that protection is due upon an explicit request for such protection in relation to an already filed report. It should be pointed out that, in some reports, it is only at this stage that information was sent to the person regarding the protection measures, the support measures and the legal aid – in the form of appendices which are identical to the information available on the CPDP website.

The audit found that the CPDP considers the whistleblower's identity disclosure as a necessary condition to provide full protection, which consists of sending a letter to the employer stating that the individual is protected; moreover, only upon an explicit request from the whistleblower. On the other hand, the ERC Rules lay out that where identity disclosure is refused, the protection amounts to not disclosing the whistleblower's identity and them being advised that legal aid is available. Thereby, a distinction has been made in the scope of whistleblower protection. According to the Directive and the WPA, the norm is that the whistleblower's identity remains undisclosed, whereas as per CPDP's practice, the norm is that it is disclosed in order for (residual) protection to be provided. While the WPA provides that identity may only be disclosed where it is a necessary and proportionate obligation to do so, there is no evidence of the CPDP assessing these – the practice has been to request the whistleblower's identity disclosure in all cases before forwarding the report to the CAs.

Prohibition of retaliatory action

The audit found a contradiction within ERC's understanding of the "*clear legal prohibition in the law against retaliatory action*". On the one hand, the ERC notes that there is a prohibition of retaliatory action, citing it as specified under Article 33 of the WPA when sending a letter to the person concerned. On the other hand, in the answers to the general questions posed by the audit team, the ERC identifies as a problem "*the lack of a legal obligation for employers not to take/institute retaliatory action"*.

With regard to the protection of the identity of whistleblowers whose reports the CPDP finds to be outside the WPA's scope, there is a clear contrast between the legitimate expectations for protection based on the Directive and the referral practice under the Administrative Procedure

Code (i.e. the usual procedure for any referral of information without additional safeguards). The ERC points out that, since the whistleblower would not have identity protection under the Administrative Procedure Code, the CPDP does not require consent from the whistleblower to refer a report to the CA as per the general procedure under the Administrative Procedure Code. The audit team sees this as contrary to the WPA and disincentive for reporting breaches.

Corrective measures

1. Legislative framework

The provision of Article 33, para 1 of the WPA lays down a prohibition of any form of retaliatory action against the persons referred to in Article 5, having the nature of repressions and placing them at a disadvantage, as well as threats or attempts at such. The legislator refers to both specific retaliatory actions that have been taken (e.g. dismissal) and actions that have not achieved their intended result yet, such as disadvantageous treatment, threats and attempts at retaliation. In cases where a whistleblower alleges retaliatory action, the person concerned to whom the allegation relates bears the burden of proving that the action taken was not related to the report. This is an extremely important mechanism for the protection of whistleblowers because it eliminates the risk of the difficulty that they themselves would need to prove the link between the retaliatory action and the report. However, while a retaliatory action to a report would likely formally have another legal basis, Art. 40, para 2 of the WPA provides a loophole in whistleblower protection: 'The retaliatory action shall not be considered taken as a reaction to a submitted report or publicly disclosed information by the person, when upon assessment of all the circumstances, a justified conclusion can be drawn that there is another legal basis for the measure taken'.

The provision of Article 33, para 2 of the WPA lays down mechanisms for the discontinuance of retaliatory actions taken against the person under Article 5 (i.e. the whistleblower in relation to a report or information made public by them), defined by the legislator as *corrective measures*. They are applied by the CA under Article 20 of the WPA and are intended to discontinue retaliatory actions taken only until the completion of the investigative action / inspection carried out by the CA under Article 20, para 1. Article 33, para 4 of the WPA describes that *"retaliatory actions under para 1 of the Act taken against a person under Article 5 in relation to a report submitted shall be invalid"*. Pursuant to para 5 of the same provision, "*A person under Article 5 against whom retaliatory action has been taken may apply to the competent authority for restoration to the position in which the person was before the retaliatory action was taken.*"

However, the audit team found that, to date, no corrective measures had been imposed by CAs under Article 20 of the WPA. Confusion was found among CAs as to who should apply these measures, with some requesting that consideration be given to a more detailed description of the possible corrective measures CAs may apply in the course of an investigative action / inspection, notwithstanding their powers under any other law. The findings also show the lack of coordination between CAs and a lack of regular co-ordinated or joint action on whistleblower protection as well as corrective measures. This is of particular concern because it undermines whistleblower protection from retaliatory actions.

The audit of a sample of reports found that the implementation of CAs' protection procedures often does not ensure that the whistleblower is protected from retaliatory actions. Even in cases where retaliation against a whistleblower is suspected, despite the protection, in practice there are no procedures to fulfil the function of the corrective measures set out in Article 33 of the

WPA and the Directive. Accordingly, it can be concluded that, under the legislation in force, no corrective measures are being applied.

2. Practice of ERC and GLIEA

The audit found that the ERC most often referred for corrective measures to the GLIEA. Usually, when a whistleblower explicitly informs ERC Directorate of retaliatory actions, the Directorate refers for corrective measures to the GLIEA because the ERC sees most retaliatory actions to be of a labour law nature, and thereby constitutes GLIEA as an additional CA (sometimes in the middle of the investigative action / inspection of other CAs). Nonetheless, the WPA directs that corrective measures be taken by the CA conducting the inspection and notwithstanding their authority under any other law.

The audit team found that, in such situations, there is an established practice for the GLIEA to oversee mainly work discipline aspects under the Labour Code and the Public Officials Act, rather than to prioritise the protection under the WPA. On the one hand, in its correspondence related to specific reports, the GLIEA says that *it cannot impose corrective measures when the retaliatory action has not been carried out*. On the other hand, it states that *it cannot impose them in other cases as well because such an action (e.g., dismissal) has already occurred*. Thus, the GLIEA does not apply corrective measures under the WPA when a violation is found, and it does not use its key administrative powers under the WPA but refers whistleblowers to seek protection in court. It is evident that the GLIEA only monitors the compliance with labour laws in view of its powers as per Chapter Nineteen, Section I *"Control of Compliance with Labour Laws"* of the Labour Code, giving precedence to the Labour Code and disregarding its additional powers under the WPA to apply corrective measures.

3. Analysis of the corrective measures in view of the Bulgarian legal doctrine

In line with Article 33, para 3 of the WPA, the corrective measures aim to *"discontinue any retaliatory actions taken under para 1* ***until the completion of the investigation carried out by the competent authorities under Article 20, para 1****"*. In other words, any CA should be able to apply such, temporarily and pending the completion of the inspection, and may, upon request, issue an order restoring the position of the whistleblower before the actions were taken. The legislator has clarified in Article 33, para 4 that such retaliatory actions (as well as threats or attempts at such) shall be deemed **invalid until the CA has completed its investigative action / inspection**. This does not prevent the whistleblower from asking the court to restore the previous situation in the meantime (thus examining the causal link between the report and the retaliatory action).

Undoubtedly, under Bulgarian law, *"invalidity"* is determined only by a court, but this is at odds with the possibilities for corrective administrative measures that CAs can take under the WPA and the Directive, especially for retaliatory actions already taken. Moreover, it would delay the protection in time (contrary to Recital 96 of the Directive).

In its current form, the WPA does not contain a procedure or a clarification on the scope of the corrective measures. As a result of this legal gap, CAs are hesitant and the **corrective measures** central to the Directive and the WPA **are not applied**.

According to the audit team, the possible solutions include:

- If it continues to be assumed that the GLIEA is the authority that is to apply corrective measures for retaliatory actions of a labour law nature: aligning the Labour Code to the WPA; **or**

- If each CA is to apply corrective measures: for the legislator to clarify how corrective measures are applied by the CA, especially when they concern retaliatory actions, which have already taken place. **This would require** the legislator to explicitly clarify that **CAs have the right to declare retaliatory actions temporarily invalid until a court's final judgment**. Such an approach would ensure immediate whistleblower protection in accordance with the spirit and objectives of the Directive (Recital 95). However, it would introduce *"temporary invalidity"* into Bulgarian law **or** include retaliatory actions under the WPA in the case of *"suspended invalidity"* existing in contractual relations (where there is a legal impediment outside the factual circumstances of the act that prevents the legal consequences of that act from occurring).

- Organising trainings/seminars for all government bodies related in any way to the implementation of the WPA. This is extremely important for both executive authorities and judicial authorities conducting judicial review of executive actions or inactions against the meaning, objectives and requirements of the WPA and the Directive.

Conclusion:

Support measures: The Whistleblower Protection Act assigns the obligations of providing support measures to the CPDP and the NOLA. The audit found that, presently, although Rules for support measures have been developed, it is not clear how these obligations are to be implemented. This results in the **risk of discouraging whistleblowers from submitting reports.**

Protection measures: In view of the above, the audit team finds that there is no methodology in place to determine when it is necessary and proportionate under Article 31, para 4 and 5 of the WPA to disclose identity to the CA and the persons concerned in order to protect the whistleblower and to determine whether the whistleblower's identity should be disclosed or hidden when a referral is made to another authority.

Corrective measures: The legislator should clarify the provision of Article 33 of the WPA to avoid potential contradictions and misinterpretations. Article 33, para 4 of the WPA provides for the **possibility for the CA (which is an administrative body), to declare the retaliatory actions invalid. However, according to the Bulgarian legal doctrine, the declaration of nullity, invalidity and voidability is solely within the prerogative of the court. This would require** the legislator to clarify/assess that CAs have the right to declare retaliatory actions temporarily invalid pending the completion of the investigative action / inspection of the CA. Such an approach would ensure immediate protection for the whistleblower in accordance with the spirit and objectives of the Directive.[6] However, it would introduce *"temporary invalidity"* into Bulgarian law **or** include retaliatory actions under the WPA in the case of *"suspended invalidity"* existing in contractual relations (where there is a legal impediment outside the factual

[6] Recital 95 of the Directive.

circumstances of the act that prevents the legal consequences of that act from occurring). Both corrective measures and the judicial process whereby retaliatory actions are declared invalid (with the situation returned to how it was before the retaliatory actions) are provided for in the WPA and a way should be found to implement both. Otherwise, there is no way to apply corrective measures and their absence renders meaningless the administrative protection under the WPA, which also includes corrective measures. It is in the whistleblower's interest, while the **temporary corrective measures** are applied by the CA under Article 20 of the WPA, to request the court to restore the previous situation (thus examining the causal link between the report and the retaliatory actions).

The audit found that there is a need to develop Rules implementing the WPA in its entirety and in relation to the meaning and objectives of the Directive. It should specify how existing CAs are to implement corrective measures and how to provide interim protection to whistleblowers.

Based on the findings and conclusions of the audit, recommendations were sent to the Personal Data Protection Commission in its capacity of External Reporting Channel.

8. PROBLEMS WITH THE IMPLEMENTATION OF THE WHISTLEBLOWER PROTECTION ACT

A. LEGAL AID (see Section VII "Support and protection measures for whistleblowers")

As regards the legal aid, also described in Recital 99 of the Directive and in Article 35, para 1, item 3 and para 2 of the WPA as a support measure, it was found that whistleblowers who sought legal aid under the Legal Aid Act[7] followed the general procedure for the provision of legal aid, i.e., by definition, it is not free for them. **This category of persons is not included in the categories of persons under Article 22 of the Legal Aid Act** and, de facto, **there is no facilitation regarding the application procedure and no added benefit for whistleblowers.** Other EU Member States provide for **free** legal aid as a form of protection against retaliatory actions.[8]

B. PUBLIC INTEREST IN THE CONTEXT OF LABOUR LAW (see "Comments of the audit team")

The reports inspected often revealed issues in distinguishing the public interest in reports related (in whole or in part) to labour law breaches as retaliatory actions against whistleblowers (usually of a private labour law nature) were interpreted by the EWC as evidence that the public interest requirement under Article 3, para 2, item 2 is not satisfied. WPA does not contain a definition of "public interest" in the context of labour law violations.

C. Cooperation (see Section V "Cooperation")

Audit Report No. 37-36#3/05.03.2024 of the Ombudsman recommended that a methodology/procedure be developed to ensure the effectiveness of the cooperation / interaction with CAs in order to properly determine the CAs and to comply with the deadlines laid down in the WPA. In implementation of the recommendation, the CPDP took action but the audit team

[7] This can be done either by the National Office for Legal Aid, or by the Regional Advice Centres of the Bar Councils, or by the court when proceedings are brought before it.
[8] For example in Croatia, Greece, Latvia, Lithuania, Romania, Slovenia and Spain.

found that the CPDP was having difficulty with the recommendation. Such a methodology/procedure has not been developed yet for the following reasons:

1. Discrepancy between the deadlines under the WPA and the deadlines laid down in the special laws of certain CAs

Certain CAs believe that they have other (longer) deadlines in their special laws without taking into account that the deadlines under the WPA should prevail. The audit found that the following authorities had difficulties to render an opinion within the deadline for completion of investigative actions (inspections) under the Whistleblower Protection Act: National Revenue Agency (NRA), Public Financial Inspection Agency (PFIA), Financial Supervision Commission (FSC), State Agency for National Security (SANS -as regards classified information), and Commission on Protection of Competition (CPC- as regards public procurement).

2. Uncertainties regarding protection measures and corrective measures

Based on the correspondence of the CPDP with CAs and on the examination of the reports themselves, the audit team found that there is ambiguity among the CAs as to who should provide the whistleblower protection and enforce the corrective measures, including how far the administration is able to enforce corrective measures and how far the courts are. For example, the General Labour Inspectorate Executive Agency (GLIEA) explicitly states that it cannot impose corrective measures on employers. This topic is dealt with further in the chapter on corrective measures. It was found that there is confusion among CAs supposed to apply these measures, with some requesting consideration of a more detailed description of the possible corrective measures that CAs may apply in the course of an investigative action / inspection under WPA, notwithstanding their powers under other laws. There is also a lack of coordination between CAs and no coordination / joint action on whistleblower protection as well as remedial action. Given these uncertainties concerning the CAs' cooperation and corrective measures, the WPA protection cannot be realised fully.

3. Absence of CA in Article 20 of the Whistleblower Protection Act

It should be noted that even though the scope of the WPA includes breaches entailing a financial inspection, the **PFIA** is not listed as a CA in Article 20, para 1 of WPA. In the event of potential breaches in concluding contracts and awarding activities without conducting the required procedures under the Public Procurement Act, the reports for breaches are to be referred to the PFIA whose competence includes oversight over the implementation of Article 238, para 1 of the Public Procurement Act.[9] Even though the audit found that the PFIA carried out financial investigative actions (inspections) under the WPA, the PFIA should be added to the list of CAs under Article 20, para 1 of the WPA.

Although the *"protection of privacy and personal data"* is within the scope of Article 3, para 1, littera k of the WPA, the **CPDP** is not listed among the CAs under Article 20, para 1 of the WPA. It is not clear how, given the scope of Article 3, para 1, littera k of the WPA, protection and support are provided in the CPDP's general procedure, how the whistleblower is notified of the

[9] If an investigative action / inspection by the PFIA is necessary, the CPDP writes to the Ministry of Finance which, on its part, refers the report to the PFIA; this delays the inspection.

outcome of the inspection (within a *"reasonable time"*) and how the whistleblower may benefit from judicial review of that decision.

4. Public procurement

According to Article 20, para 1, item 1 of the WPA, the Commission on Protection of Competition is the CA that examines reports under Article 3, para 1, item 1, littera a (violations of public procurement) and item 3. However, in its opinions, the CPC states that it cannot examine such reports, as it is not a general oversight authority, but an authority for appeals against public procurement and concession procedures. In this sense, there is a serious concern with the ambiguity as to who should be the CA to examine reports regarding public procurement reports.

9. RECOMMENDATIONS OF THE OMBUDSMAN AND ISSUES IN FORMALISING THE COOPERATION BETWEEN THE CPDP AND THE COMPETENT AUTHORITIES

After the completion of the final report on the audit carried out in the period from 14 October 2024 to 18 November 2024, the Ombudsman institution received a letter on 25 February 2025 regarding the results of the actions taken by the CPDP on recommendation No. 3 of Audit Report No. 37-36#3/05.03.2024 of the Ombudsman of the Republic of Bulgaria for the development of a methodology/procedure to ensure effective cooperation with the CAs and in order to determine the CAs accurately and to observe the statutory deadlines. The letter also includes a description of the objections raised by the Commission on Protection of Competition, the Financial Supervision Commission and the Ministry of Transport and Communication. In the letter, the CPDP informs the Ombudsman institution that there is no legal basis to adopting Rules for the cooperation with CAs under Article 20, para 1 of the WPA.

Comments of the audit team on the implementation of Recommendation No. 3 of the Ombudsman of the Republic of Bulgaria:

Even though the law does not provide for mandatory formalisation of cooperation, establishing clear and documented procedures for cooperation between the CPDP and the CAs under Article 20 is essential to ensure the prompt, transparent and effective handling of reports while guaranteeing the protection of whistleblowers' rights and compliance with the statutory deadlines.

In view of this, the legislator should consider the possibility of amendments to allow for formalising and clarifying CAs' cooperation under the WPA in each of the (special) laws concerning CAs listed in Article 20 of the WPA, as well as the creation of Rules implementing the WPA which would define in detail the mandatory procedures for information exchange and coordination.

RECOMMENDATIONS

In view of the findings, the audit team finds it necessary **to amend and supplement the WPA** to, inter alia:

1. Clarify the extent to which the WPA is special with regard to the procedural rules and deadlines that the competent authorities need to comply with in the course of their investigative actions / inspections of reports.
2. Refine the list of CAs in Article 20 of the WPA.
3. Clarify how the CPDP ensures protection in relation to reports about violations against "*the protection of privacy and personal data*" with regard to the minimum requirements of the WPA which are considered by the CPDP under the general procedure.
4. Clarify what constitutes "public interest" in the context of reports of violations of labour law and legislation related to the performance of public service.
5. Extend the deadline for forwarding reports to the competent authorities to 14 days, given the findings of the audit team and the difficulties encountered by the ERC.
6. As for the lack of procedure and specifics on the scope of corrective measures:
    a. Align the Labour Code to the WPA if the General Labour Inspectorate Executive Agency is to be the authority that must apply corrective measures for retaliatory actions of a labour law nature; **or**
    b. Clarify how corrective measures are implemented by the CAs, especially when they concern retaliatory actions taken, if the approach is that each CA implements corrective measures, **as well as**
    c. Refine who declares a retaliatory action invalid within the meaning of Article 33, para 4 of the WPA.[10]
    d. Clarify whether corrective measures can be applied to retaliatory actions already taken, as well as to "attempts" at such within the meaning of Article 33 of the Whistleblower Protection Act.
7. Clarify whether Article 33, para 5 of the WPA is to be interpreted as:
    a. A person under Article 5 (a whistleblower) against whom retaliatory actions were taken may submit a request to the competent administrative authority for restoration of the situation in which the person was before the retaliatory actions were taken; **or**
    b. A person under Article 5 (a whistleblower) against whom retaliatory actions were taken may submit a request to the competent court for restoration of the situation in which the person was before the retaliatory actions were taken.
8. Supplement the text of Article 22 of the Legal Aid Act with a new category of persons in line with the practice in other Member States.[11]

[10] Such an approach would ensure immediate whistleblower protection in accordance with the spirit and objectives of the Directive (Recital 95). However, it would introduce "temporary invalidity" into Bulgarian law or include retaliatory actions under the WPA in the case of "suspended invalidity" existing in contractual relations (where there is a legal impediment outside the factual circumstances of the act that prevents the legal consequences of that act from occurring).

[11] For example in Croatia, Greece, Latvia, Lithuania, Romania, Slovenia and Spain.