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How to report corruption and obtain legal protection?

This content aims to provide the public with information on the possibilities of protected reporting of corruption in Brcko District. Presented below is the information on what protected reporting involves, who can report corruption, and which irregularities can be reported. Information on how and where one can file a report will also be included herein. The following content provides information on the possibilities for protection against detrimental actions that may be taken to deter someone from making the report or in retaliation for the filed report.

Based on the information provided below, it is possible to assess information at one's disposal that may indicate corruption and decide if it provides a basis for protected reporting of corruption, as well as possible consequences of both reporting corruption and abusing it.

This content was prepared based on the applicable regulations, primarily the Law on Whistleblower Protection in the Institutions of Bosnia and Herzegovina. The information provided here do not constitute legal advice; for this purpose it is recommended to consult the law in more detail and address the competent authorities. The following content also provides information about institutions and organizations providing legal aid.

Basic information about protected reporting of corruption

What is protected reporting of corruption?

Protected reporting is corruption reporting subject to protection of persons filing a report, pursuant to the Law on Whistleblower Protection (BD BiH Official Gazette, 25/18, available at

<https://skupstinabd.ba/ba/zakon.html?lang=ba&id=/Zakon%20o%20zas--titi%20lica%20koja%20prijavljuju%20korupciju>, hereinafter: the Law).

“Whistleblower” is a person who files a report in line with conditions prescribed by the Law. Persons who are granted whistleblower status as prescribed by the Law, have the right to protection, i.e. corrective measures seeking to remedy the detrimental actions.

Protected reporting refers to reporting of corruption in the public administration bodies and institutions, public companies, institutions and other legal persons established by Brcko District, legal persons and entrepreneurs, and it includes filing a lawsuit, appeal or complaint, as well as giving testimony before court or in a disciplinary procedure, and cooperation with investigative bodies.

Special form of protected reporting is publicly disclosing or making in any other way publicly available the information that indicate the corruption.

Who can report corruption?

If they have information and/or material evidence on corruption, any person employed in the public administration bodies and institutions, public companies, institutions and other legal entities established by the Brcko District, regardless of their employment status, can report corruption to the competent authority based on suspicion or circumstances indicating the existence of corruption, if they have information or material evidence of corruption.

Who has the right to protection for reporting corruption?

According to the Law, protected reporting refers to any person employed in the public administration bodies and institutions, public companies, institutions and other legal persons established by the Brcko District, legal person or entrepreneur, as well as any other person of age regardless of their employment status, who in good faith file a report to the responsible persons or institutions, in line with the Law, based on the reasonable belief or circumstances that indicate the existence of corruption.

The protected whistleblower status enables protection from detrimental action and is afforded to the whistleblower who reports corruption in good faith, regardless of whether detrimental action occurred or the whistleblower only suspects that such an action could be taken against him/her. Protected reporting starts from the day of filing a report on corruption.

The Law does not explicitly protect those who assist the whistleblower to report corruption, nor those linked to him (e.g. colleagues, family members, friends). The Law also does not explicitly protect persons who are about to report corruption (conducting research necessary for the report that reflects reasonable grounds to believe its truthfulness) or are (mistakenly) suspected that they had reported corruption.

Is anonymous corruption reporting allowed?

Anonymous reporting is not regulated by the Law.

The model rulebook on internal reporting of corruption and protection of persons reporting corruption, proposed to the intuitions by the Agency for Prevention of Corruption and Coordination of the Fight Against Corruption, provides for the possibility of anonymous internal reporting and such recommendation has been integrated into rulebooks on internal reporting and protection of persons reporting corruption in Brcko District.

Is corruption reporting by whistleblower treated as confidential?

Protection of identity and identifying information of the whistleblowers have not been explicitly regulated by the Law.

The model rulebook on internal reporting of corruption and protection of persons reporting corruption, proposed to the institutions by the Agency for Prevention of Corruption and Coordination of the Fight Against Corruption, provides for the possibility of confidential internal reporting. Confidential internal reporting is the reporting whereby persons in charge of receiving an internal report are informed about the identity of the person making the report, but are obliged to treat the report, data from the report and identity of the making the report as confidential. This solution was integrated through rulebooks on internal reporting and protection of persons reporting corruption in Brcko District, so that these rulebooks provide for the possibility of confidential internal reporting

Which irregularities can be reported?

The Law stipulates that person can report information on acts or omissions that they have reasonable grounds to believe are act of corruption.

According to the Law, corruption is any abuse of authority entrusted to the civil servant, employee, advisor, elected or appointed person in the legislative, executive or court authority of the Brcko District of BiH (hereinafter: Brcko District), including public companies, institutions and other legal persons established by the Brcko District, employer and the employee, which may result in private gain for that person, or any other natural or legal person; corruption in particular may include requesting directly or indirectly, offering, giving or accepting the bribe or any other undue advantage or the prospect thereof, which violates appropriate performance of any duty or behaviour expected from the recipient of the bribe.

Is it necessary to have evidence in order to report corruption or it is sufficient to have reasonable grounds to believe?

One can report corruption to the competent authority based on suspicion or circumstance indicating to existence of corruption, if they have information and/or material evidence on corruption.

To be afforded protection, the whistleblower is not obliged to collect and submit evidence on the corruption he/she is reporting.

Is whistleblower subjected to good faith test in the process of being granted protection?

According to the Law, good faith is a condition for protected reporting, i.e. for being afforded the whistleblower status. Good faith represents personal knowledge of the whistleblower based on the facts and circumstances that the whistleblower has reasonable grounds to believe are true. If it is found the whistleblower has not acted in good faith when filing a report, protection to the whistleblower will be withdrawn.

What is abuse of the reporting and what are its consequences?

In case it is found during the proceeding that the whistleblower had not acted in good faith when filing a report, protection to the whistleblower is withdrawn, and decision to suspend protection is delivered to the whistleblower and director of the public administration body and institution, public enterprise, institution and other legal person founded by Brcko District, legal person and entrepreneur where the whistleblower is employed.

According to the Law, abuse of the right to report corruption constitutes a severe breach of the work duties. A misdemeanour fine amounting from BAM 500 to 1,500 shall be imposed to the person who knowingly submits a false corruption report.

If it is found during the investigation that the whistleblower did not act in good faith, namely that he/she knowingly submitted a false report and if elements of criminal offence are established, a criminal report will be filed against this person.

Are whistleblowers exempt from disciplinary, civil or criminal liability?

The whistleblower shall not be subjected to material, criminal or disciplinary liability for disclosing a business secret in case he/she reports an act of corruption to the competent authority.

According to the Law, initiating disciplinary action is one of the detrimental actions by which employers can cause harm to the employee because he/she reported corruption.

Procedure for reporting corruption

Which types of corruption reporting exist?

Reporting of corruption may be internal and external.

Internal reporting is done by the person submitting a report to his/her supervisor or other person in their institution, who is responsible for compliance of that institution with the law, as well as the person or body in charge of oversight or audit in the Brcko District institutions.

External reporting involves reporting to the police, prosecutor's office or Brcko District Office for Prevention of Corruption and Coordination of Anti-Corruption Activities.

External reporting can also be directed towards the public, which constitutes a special form of protected reporting.

How is internal reporting of corruption done?

Internal reporting is done in the manner outlined by the institution's internal by-law on reporting of corruption and protection of whistleblowers. Each institution is obliged to adopt this internal act which needs to be displayed in a visible place on the institution's premises and on its web page. Failure to adopt this internal by-law constitutes a misdemeanour, and in such case a fine in the range from BAM 500 to 2,000 is imposed on the director of the institution.

The internal act regulates reporting of corruption, acting upon received reports, reviewing of received reports, obligation to inform the person who reported corruption about undertaken steps, protection of persons who report corruption and other issues related to internal corruption reporting. This act also identifies competent service, body or person to be in charge of receiving and reviewing the report and its content.

Internal report can be submitted directly to the institution's manager, in the event that the manager of the institution did not issue an internal by-law on reporting and protecting or the procedure for internal reporting is not known, namely if information on the service, body or person responsible for receiving and reviewing reports is not visibly displayed on the institution's premises and its web site. Corruption can also be reported directly to the manager, if the whistleblower has reason to believe that the authorised person, who had been designated to receive reports in line with the internal act, is directly or indirectly linked to the act of corruption.

The Law does not regulate how the report is submitted, but the model rulebook on internal reporting of the corruption and protection of persons reporting corruption, proposed to the institutions by the Agency for Prevention of Corruption and Coordination of the Fight Against Corruption and taken over by the Brcko District institutions, provides for the possibility that confidential internal reporting can be done either orally or in writing.

According to this model, when reporting is done in writing, it must contain information on the act of corruption or other irregularities that are being reported, description of the facts, first and last name, work title of the employee that the report refers to, motion on evidence, i.e. objects that serve as evidence, materials confirming allegations of the request (meaning the written evidence, in the appendix), first and last name, position (work post) and own signature of the person submitting the report. The Law does not prescribe any special form for reporting corruption, but rulebooks of the

institutions on internal reporting of corruption and protection of persons reporting corruption can include a form for reporting it.

When it is done orally, the person who receives the report is obliged to make an official record of this event.

Anonymous reporting can only be done in writing. Anonymous report needs to include information on the act of corruption or other irregularities that are being reported, description of the facts, first and last name, job title of the employee that the report refers to, motion on evidence, i.e. objects that serve as evidence, materials confirming allegations of the request (meaning the written evidence, in the appendix).

Person in charge of receiving and recording corruption report is obliged to report each received report, i.e. official record on the report, immediately and directly to the manager under whose office the central records of all internal corruption reports and other irregularities are maintained.

What procedure is conducted after receiving internal report?

The Law does not regulate what needs to be done upon receiving the internal report. However, the model rulebook on internal reporting of the corruption and protection of persons reporting corruption, proposed to the institutions by the Agency for Prevention of Corruption and Coordination of the Fight Against Corruption that was taken over by the Brcko District institutions, provides for the manager of the institution to designate a person who will be in charge of conducting preliminary actions to establish whether the report is well-founded. The preliminary actions, which seek to establish whether allegations from the report are well-founded and ascertain the legal qualification for the reported act, are conducted within 10 days from the day on which the assignment was received, and the manager of the institution is informed about the outcome. The person who had made the report is informed about the preliminary actions, within 15 days from the day of receiving the report at the latest. The person who made an anonymous report will be informed about the undertaken preliminary actions, if there is appropriate means of communication (e.g. anonymous email).

The person who is authorised to conduct preliminary actions and establish whether the report is well-founded is obliged to review in detail each internal report. This includes having direct insight into cases, acts and official facilities of an institution, as well as taking statements from civil servants, employees and other staff in the institution regarding subject of the report. Based on findings, the person in charge of implementing preliminary actions provides his/her opinion on whether the report is well-founded and on the possible legal qualification of the act.

If the report is well-founded, actions that can be taken include initiating disciplinary procedure against the responsible person, informing the competent prosecutor's office if the act has elements of a criminal offense, as well as taking actions to prevent further irregular conduct and remove detrimental consequences of the committed act.

When can external reporting be done?

The whistleblower can report corruption externally in case when the procedure in line with internal reporting takes longer than 15 days. External reporting can also be made if the whistleblower finds that the internal procedure in terms of the submitted report was irregular, or if the whistleblower has reason to believe that the authorised person, who in line with the internal act is designated to receive

reports, or manager of the institution, is directly or indirectly linked to the committed act of corruption.

When is public reporting of the corruption possible?

Special form of protected reporting is publicly disclosing or making in any other way publicly available the information that indicate the corruption.

Public reporting is possible provided that the whistleblower has a reason to suspect that he/she will be subjected to detrimental action by a certain person, or that in the event of protected reporting to competent authorities there will be no appropriate action taken, or that the evidence and information will be concealed or destroyed, or that if the same information had been reported to the competent authorities, but adequate measures have not been undertaken within the legal deadline.

Protecting the whistleblower from detrimental actions

What protection does the Law provide to whistleblowers?

The Law provides administrative protection to the whistleblower by affording the whistleblower status to the person who had in good faith reported corruption, regardless of whether some of the detrimental actions has occurred or the whistleblower only suspects that detrimental actions against him could be taken, as well as by ordering corrective measures to the institutions for the purpose of removing detrimental actions against the whistleblower in relation to the reported case.

Protection is applied from the day of filing the corruption report.

Against which detrimental actions is protection provided?

Detrimental actions are actions whereby the employer causes harm to the employee to deter him/her from reporting corruption. Detrimental action is also an action which represents retaliation against the employee who reported suspected acts of corruption.

According to the Law, these detrimental actions include a decision to terminate his/her employment, cancellation of the employment contract, suspension from work place, reassignment to a lower-ranked position, declaration of redundancy, initiation of a disciplinary action, blackmailing or giving negative appraisals, creating hostile work environment, absence of work engagement.

What is the whistleblower status and how to obtain it?

The protected whistleblower status enables protection from detrimental action and is afforded to the whistleblower who in good faith reports corruption, regardless of whether a detrimental measure occurred or the whistleblower only suspects that such an action could be taken against him/her. Protected reporting starts from the day of filing a report on corruption.

The protected whistleblower status is afforded by the Brcko District Office for Prevention of Corruption and Coordination of Anti-Corruption Activities, within 30 days from the day on which the request in writing was submitted, together with evidence on reporting the corruption. The Office is obliged to inform the whistleblower in writing about being afforded the protected whistleblower status.

What kind of protection is available for whistleblowers who are experiencing harmful consequences?

In case that the whistleblower informs the Office for Prevention of Corruption and Coordination of Anti-Corruption Activities that any detrimental actions have been taken against him/her, the Office is obliged to request relevant documents from the public administration body and institution, public enterprise, institution and other legal person founded by Brcko District, legal person and entrepreneur.

In case that the director claims that the same detrimental action would have been taken against the whistleblower even in case that he/she had not reported corruption, the director is required to prove it.

If it is established, based on the documentation received from the institution and/or the record, that any detrimental action has been taken against the whistleblower, in relation to the reported corruption, the Office will issue an instruction to the director of the public administration body and institution, public enterprise, institution and other legal person established by the Brcko District, legal person and the entrepreneur, requesting him/her to remove the consequences of detrimental action that the whistleblower suffered.

Director of the institution is required to take corrective measure in order to remove the detrimental action, within three days of receiving instructions from the Office for Prevention of Corruption and Coordination of Anti-Corruption Activities. A misdemeanour fine amounting from BAM 1,000 to BAM 3,000 will be imposed on director of the institution, in case she/he fails to act in line with instruction from the Office for Prevention of Corruption and Coordination of Anti-Corruption Activities and carry out such corrective measure.

The corrective measure is any action that forbids, alleviates or removes the causes or consequences of the detrimental actions against the whistleblower in relation to the reported case of corruption, which in particular covers the security measures and damage compensation.

Under which conditions is the protection withdrawn?

In case it is found during the proceedings that the whistleblower did not act in good faith when he/she reported corruption, the Office for Prevention of Corruption and Coordination of Anti-Corruption Activities will withdraw protection to the whistleblower through a decision on suspension of protection to the whistleblower. Office for Prevention of Corruption and Coordination of Anti-Corruption Activities is obliged to forward such decision to the whistleblower and director of the institution where the whistleblower is employed.

Legal aid

What legal aid is available to the whistleblowers?

The Law does not regulate legal aid for whistleblowers.

According to the Law on office for legal aid in Brcko District of BiH (BD BiH Official Gazette, 19/07 and 23/19,

The Office for legal aid in Brcko District of BiH(<https://pkbd.pravosudje.ba/vstvfo/B/683/kategorije-vijesti/117903/117908>) is in charge of providing legal advice to and representing of economically disadvantaged citizens of Brcko District and of undertaking all actions before the judicial institutions of the Brcko District of BiH. The following population categories are eligible for legal aid: welfare recipients; unemployed, without other regular allowances or income; persons in disadvantaged economic situation; children without parental care; persons of poor medical condition, without income. The Office represents economically disadvantaged citizens of Brcko District in criminal and civil proceedings, non-contentious procedures, enforcement, misdemeanour and administrative proceedings, administrative disputes and other proceedings regulated by separate laws.

Transparency International BiH also provides assistance to those who report corruption through its Centre for Legal Aid in the Fight against Corruption. Information on available assistance can be found at

<https://ti-bih.org/projekat/alac-centar-za-pruzanje-besplatne-pravne-pomoci-gradjanima/>

and <https://ti-bih.org/oblast/pravna-pomoc/>.

What addition information is available of the procedure of protected reporting of corruption?

Information on how to report corruption is available in a brochure put together by the Agency for Prevention of Corruption and Coordination of the Fight Against Corruption, at

http://apik.ba/acms_documents/Apik_antikorupcija_brosura.pdf.

Additional sources of information

According to the Law, the Brcko District Office for Prevention of Corruption and Coordination of Anti-Corruption Activities is obliged to publicise a separate annual list of public administration bodies and institutions, public enterprises, institutions and other legal persons established by the Brcko District, legal persons and entrepreneurs, where corruption was reported, noting detrimental actions and information on implemented corrective measures.