



Whistleblowing - Law regulating the transposition of the European Directive

Directive (EU) 2019/1937 of the European Parliament and the Council of 23 October 2019 (from now on "Directive") on the protection of persons reporting violations of EU law was published on 26 November. The Directive has now been transposed to Portugal with the publication of Law No 93/2021 of 20 December (hereinafter the "Law"), which establishes the general regime for the protection of whistleblowers of offences, transposing the Directive on the protection of persons reporting violations of Union law.

For the purposes of the Law, an act or omission contrary to rules contained in the acts of the European Union, national rules implementing, transposing or complying with such acts or any other rules contained in legislative acts of enforcement or transposition of the same acts shall be considered to be in breach, to national rules which carry out, transpose or comply with such acts or to any other rules contained in legislative acts implementing or transposing them, including those which provide for crimes or offences, as well as acts or omissions contrary to and in breach of the financial interests of the European Union, rules of the internal market, violent, particularly violent and highly organised crime or organised and economic-financial crime, relating to the areas of:

- i. Public procurement;
- ii. Financial services, products and markets and the prevention of money laundering and terrorist financing;
- iii. Product safety and compliance;
- iv. Transport safety;
- v. Environmental protection;
- vi. Radiation protection and nuclear safety;
- vii. Food safety for human and animal consumption, animal health and animal welfare;
- viii. Public health;
- ix. Consumer protection;
- x. Protection of privacy and personal data and security of the network and information systems.

Under the Law, any natural person who publicly denounces or discloses an infringement on the basis of information obtained in the course of his professional activity, regardless of the nature of that activity and the sector in which he is exercised, shall be considered a "whistleblower".

Pursuant to Article 8 of the Law, legal persons, including the State and other legal persons under public law, who employed 50 or more workers and, regardless, entities which are covered by the scope of the Acts of the European Union referred to in Part i.B and Part ii. of the Annex to the Directive, hereinafter referred to as "Obligated Entities", have an obligation to establish internal reporting channels. Specificities relating to autonomous regions and local authorities are defined, in particular in Paragraphs 5, 6 and 7 of Article 8 of the Law.

The Law also provides that the creation of channels of internal denunciation to which the Obligated Entities are attached, must be accompanied by the adoption of specific confidentiality measures, processing of personal data, preservation of complaints, protection of whistleblowers against retaliation and protection of the person concerned in the complaint.

Failure to comply with the obligations under the Law constitutes serious or very serious offence, depending on the rules violated, in accordance with Article 27 and 28 of that Law, determining the imposition of fines:

- i. The very serious offences provided for in the Law are punishable by fines of 1 000 (euro) to 25 000 (euro) or from 10 000 (euro) to 250 000 (euro), depending on whether the agent is a natural or legal person.
- ii. Serious offences are punishable by fines of 500 (euro) to 12 500 (euro) or from 1 000 (euro) to 125 000 (euro), depending on whether the agent is a natural or legal person.

It should also be noted that trial and negligence are punishable, even if the ceilings for fines are halved.

The Law enters into force June 18, 2022, 180 days after its publication.

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