

OCTOBER 8TH, 2021

PROTECTION OF WHISTLEBLOWERS AND ANTI-CORRUPTION MEASURES

On the 26th of November 2019, the Directive (EU) 2019/1937 of the European Parliament and of the Council was published (“Directive”). It concerns the protection of whistleblowers and sets two primary goals: (i) creation of whistleblowing channels and (ii) prohibition of any form of retribution against whistleblowers.

According to the Directive, whistleblowing channels are mandatory in all companies: (i) with more than **250 (two-hundred and fifty)** workers until **December 2021**; and (ii) with more than **50 (fifty)** workers until **December 2023**.

It was in the context described above that the draft Law no. 91/XIV/2 (“Proposal”) was presented by the Government, which aims to transpose the Directive into Portuguese law and imposes on certain legal persons the new obligation to create whistleblowing channels.

A) SCOPE OF APPLICATION

The Proposal is applicable to whom denounces or makes public infractions in the following domains:

1. Public procurement;
2. Financial services, products and markets and the prevention of money laundering and terrorist financing;
3. Products security and conformity;
4. Transportation security;
5. Environment protection;
6. Protection against radiation and nuclear security;
7. Food and feed safety, animal health and animal welfare;
8. Public health;
9. Consumer’s defence;
10. Protection of privacy and personal data and security of network and information systems;

As well as the following specific infractions.

11. Violations affecting the financial interests of the European Union;
12. Violations relating to the European internal market, including violations of European Union competition and state aid rules, as well as violations relating to the internal market with respect to acts in violation of corporate tax rules or practices whose objective is to obtain tax advantages contrary to the object or purpose of corporate tax law.

B) BENEFICIARIES OF PROTECTION

The Proposal benefits: *(i)* the identified whistleblower; *(ii)* person who aids the whistleblower; *(iii)* third party connected to the whistleblower, namely a work colleague or family member who may be the target of retribution; *(iv)* legal persons or similar entities owned or controlled by the whistleblower.

C) WHISTLEBLOWING CHANNELS

In the terms of the Proposal the infractions must be denounced through the following channels: *(i)* internal denounce; *(ii)* external denounce or *(iii)* public disclosure.

The public disclosure can only take place when: *(i)* there are reasons to believe that the infraction constitutes imminent or manifest danger to public interest, that cannot be effectively known or settled by the competent authorities, or there is risk of retribution in case of external denounce; or *(ii)* an internal and external complaint, or external complaint only, has already been lodged and no appropriate action has been taken within the deadline set.

D) PROTECTION MEASURES

The Proposal equally predicts the implementation of a set of protection measures of the people/entities referred to in chapter B), namely: *(i)* prohibition of retribution; *(ii)* measures of support; *(iii)* administrative and judicial protection.

E) SANCTIONS

Finally, in order to ensure the protection of whistleblowers, the Proposal establishes that the violation of the provisions contained therein constitutes, depending on the case: (i) a very serious administrative offence, punishable by fines of **€1.000 to €5.000** or **€2.000 to €50.000**, depending on whether the perpetrator is a natural or legal person; (ii) a serious administrative offence, punishable by fines of **€500 to €2.500** or **€1.000 to €25.000**, depending on whether the perpetrator is a natural or legal person.

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