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# Update

## Whistleblowing

### Whistleblowing: 3, 2, 1...

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#### What are your plans for 2022?

##### 1 | What is Law no. 93/2021 about?

Last week, on 20th December, [Law No. 93/2021](#) was published, transposing [Directive \(EU\) No. 2019/1937](#) on the protection of persons who report breaches of EU Law.

Specifically, it was created the obligation to implement internal reporting channels and procedures to ensure compliance with the principles underlying the new legal framework.

##### 2 | Who is obliged to set up internal reporting channels?

The subjective scope is comprehensive, including legal persons employing 50 (fifty) or more employees, such as private entities, the State and other public law legal persons.

##### 3 | Which areas are covered?

For this purpose, a reportable infringement consists of any act or omission contrary to EU Law in a wide range of areas, namely:

- Public procurement,
- Financial services and products, anti-money laundering or terrorism financing;
- Product safety and compliance;
- Transport safety;
- Environmental protection;
- Radiation protection and nuclear safety;
- Food and feed safety, animal health and animal welfare;
- Public health;
- Consumer rights;
- Privacy and personal data protection and security of network and information systems;
- Financial interests of the European Union;
- Internal market rules and company taxing;

- Violent and severely violent criminality and organised crime;
- Crimes foreseen in No. 1 of Article 1 of [Law no. 5/2002, of 11TH January](#), establishing measures to combat organised and economic and financial crime.

#### 4 | Which infringements?

The whistleblower protection regime concerns reports of:

- Infringements committed, in progress or whose commission can be reasonably foreseen; and
- Attempts to conceal infringements.

#### 5 | Who is a «Whistleblower»?

Reports are brought by individuals who have obtained such information in the context of their professional activity, including:

- Employees in the private, social, or public sector;
- Service providers, contractors, subcontractors and suppliers, or any persons acting under their supervision and direction;
- Shareholders and persons belonging to the board, management, supervisory or auditing bodies of legal persons, including non-executive members;
- Volunteers and interns, paid or unpaid.

#### 6 | Who is protected?

The protection regime is extended:

- To persons who assist, on a necessarily confidential basis, the whistleblowers;
- Those who, due to their connection to whistleblowers, may be a target of retaliation in a professional context, such as colleagues or family members; and
- To legal persons or similar entities owned or controlled by whistleblowers, for which they work or are connected with in a professional capacity.

#### 7 | Requirements for the protection

In order to benefit from the protection conferred, it is necessary that the whistleblower makes a report in good faith and with a serious belief that the information transmitted is true.

#### 8 | Requirements for the implementation of a reporting channel

The internal reporting channels must provide for the secure presentation and follow-up of reports, guaranteeing their integrity and conservation, and preventing unauthorised access.

The channels are managed by professionals specially appointed for this purpose, without prejudice to the possible operation by external agents.

The new law also establishes the mechanisms for the presentation of reports and the procedures and deadlines to be observed by the organisations.

## 9 | Confidentiality

Confidentiality has to be ensured regarding the identity of the whistleblower – who may, however, remain anonymous –, the persons concerned, and any third party mentioned in the report. The provisions of the General Data Protection Regulation must also be complied with.

## 10 | Extent of the protection

Without prejudice to special regimes that ensure greater protection, the protection granted to whistleblowers includes the prohibition of retaliation, as any act or omission that, directly or indirectly, in a professional context and motivated by the report, is capable of causing or actually causes damage to the whistleblower, including threats or attempts.

The practice of acts of retaliation dictates an obligation to compensate the whistleblowers, being the following acts presumed to be retaliatory, if practised within 2 (two) years following the report or disclosure:

- Change of working conditions;
- Suspension of the employment contract;
- Negative performance evaluation or negative reference for employment purposes;
- Failure to convert a term employment contract into an permanent one, whenever there were legitimate expectations of such conversion;
- Non-renewal of term employment contract;
- Dismissal;
- Inclusion in a list, on the basis of a sector-wide agreement, which may lead to the whistleblower not being able to find future employment in the sector or industry concerned;
- Termination of a supply or service contract.

Unless proven otherwise, a disciplinary sanction applied to the whistleblower up to 2 (two) years after the report or disclosure shall also be qualified as abusive.

## 11 | And in the event of non-compliance?

Without prejudice to the practice of other illicit acts, failure to comply with the new legal framework leads to liability for administrative offences.

## 12 | When does the diploma enter into force?

[Law No. 93/2021](#) enters into force 180 days after its publication, on 18TH June 2022.