



PROTECTION FOR WHISTLEBLOWERS OF INFRACTIONS

[Law No. 93/2021, of 20 December](#), which establishes the **General Regime for the Protection of Whistleblowers of Infractions**, was published in the Portuguese Official Gazette, transposing Directive (EU) 2019/1937, of the European Parliament and of the Council, regarding the protection of persons who report legal infringements.

> Whistleblowers

Individuals who denounce or publicly disclose infractions based on information obtained in the context of their professional activity benefit from protection, regardless of the nature of that activity and the sector in which it is carried out. It also does not matter whether the professional relationship in question is ongoing or has already ceased, or has never been established.

Employees in the private, social or public sector, service providers, contractors, subcontractors and suppliers, administrative or management bodies, volunteers and trainees, among others, are covered. In certain circumstances, the Law also allows for the extension of protection to third parties, who help the whistleblowers or with whom they are linked in a certain way, including legal persons or similar entities.

> Denunciation

The denunciation or public disclosure may have as its object infringements committed, which are being committed or whose occurrence can be foreseen, as well as attempts to conceal such infringements. To benefit from protection, the report must be made in good faith and be based on sound grounds.

> Infractions

In general, relevant offenses for reporting are those related to non-compliance with legislation in the field of public procurement, services, products and financial markets, prevention of money laundering or terrorist financing, product safety and compliance, transport security, environmental protection, radiation protection and nuclear safety, food safety, animal health and welfare, public health, consumer protection, protection of privacy and personal data, network and information systems security, illegal and harmful acts of the internal market and of the European Union's financial interests, and violent and organized crime.

> Legal obligations

Under the new legal regime, there are multiple **obligations and duties for the protection of whistleblowers**, through **whistleblower mechanisms**, applicable to **legal persons that employ 50 or more workers**, including the State and other legal persons governed by public law or, irrespective of the number of employees, to legal persons covered by the scope of application of the legislation on services, products and financial markets and prevention of money laundering and terrorist financing, transport security and environmental protection, namely:

- Obligation to create an **internal reporting channel** that allows reporting by all workers, anonymously or with identification, in writing or verbally;
- Obligation to notify the whistleblower of the **receipt of the denunciation** within 7 days and to inform him/her of the admissibility and requirements for submitting an **external denunciation** and the competent authorities to receive it;
- Obligation to inform whistleblowers of the measures adopted to **follow up on the denunciation**, within a maximum period of 3 months;
- Duty of **confidentiality** regarding the identity of whistleblowers;
- Duty to **register** and keep the denunciations received for a minimum period of 5 years;
- Prohibition of the practice of **retaliatory acts** against whistleblowers;
- Legal protection of whistleblowers.

> Internal denunciation

The internal reporting channel is operated **internally**, for the purpose of **receiving and following up on denunciations**, by persons or services designated for this purpose. Without prejudice, the internal reporting channels may be operated **externally**, for the purpose of **receiving denunciations**. Independence, impartiality, confidentiality, data protection, secrecy and the absence of conflicts of interest in the performance of their duties must be guaranteed.

> External denunciation

External denunciations are submitted to the competent authorities, such as the Public Prosecutor's Office, criminal police bodies, Bank of Portugal, independent administrative authorities, general inspectorates, local authorities and public associations, for example.

Whistleblowers who submit denunciations of infringements to the competent **European Union** institutions, bodies or agencies benefit from the protection derived from external denunciations.

> Public disclosure

Whistleblowers may only publicly disclose infringements when they have reasonable grounds to believe that such infringements may constitute an imminent or manifest danger to the public interest, that they cannot be effectively known or resolved by the competent authorities, or that there is a risk of retaliation even in the event of an external denunciation, or when you have filed an internal and external denunciation, but without adequate results.

> Offences

The sanctioning regime provides for serious offenses (such as not having an internal denunciation channel) and very serious offenses (such as carrying out retaliatory acts), as a result of breaching the duties and obligations provided for in the Law, punishable by fines between €500.00 and €25,000.00, for natural persons, and between €1,000.00 and €250,000.00, for legal persons. Attempt and negligence are also punishable.

Fines are applied, as a rule, by the National Anti-Corruption Mechanism. And it should be noted that misdemeanor liability does not rule out possible criminal liability.

Law No. 93/2021, of 20 December, comes into force on **18 June 2022** •

Article written in accordance with the legislation in force on 28 February 2022.