

## Legal Alert - The new Compliance and Anti-Corruption Regulations in Portugal

With the publishing of Resolution no. 37/2021 of April 06<sup>th</sup>, of the Ministers Council, the XXII Portuguese Constitutional Government announced the approval of the National Anti-Corruption Strategy 2020-2024, with the primary purpose of fighting the corruption and fraud phenomenon, rendering the Government's action more transparent and fairer, and reinforcing the citizens' trust in their institutions.

As we enter June 2022, two legislative acts of the utmost importance in the implementation of the National Anti-Corruption Strategy will also come into effect: Decree-Law no.109-E/2021, of December 9<sup>th</sup>, and Law no. 93/2021, of December 20<sup>th</sup>, thus creating a set of new regulations on Compliance and Anti-Corruption applicable to several public and private entities in Portugal.

### 1. Decree-Law no. 109-E/2021, of December 9<sup>th</sup>

As of **June 08<sup>th</sup>, 2022**, Decree-Law no. 109-E/2021, of December 09<sup>th</sup>, that creates the National Anti-Corruption Mechanism (MENAC) and establishes the General Regime for the Prevention of Corruption (RGCP) entered into force in the Portuguese Legal System.

The RGCP introduces a set of mechanisms applicable, among other public and private entities, to **companies with headquarters in Portugal and branches in national territory of companies with headquarters abroad that employ 50 or more employees.**

The main six mechanisms contained in the RGCP to be adopted and implemented are, in a very general outline, the following:

- The creation of a Prevention Plan of Risks of Corruption and Related Infractions (PPR);
- The creation of an Internal Code of Conduct;
- The implementation of Internal Training Programs;
- The implementation of internal control procedures and prior risk assessment;
- The appointment of a Compliance Officer;
- The creation of an Internal Denunciation Channel.

Regarding this last topic, concerning the Internal Denunciation Channel, the main purpose of this mechanism is to follow-up on denunciations of acts of corruption and related offenses under the provisions of the Portuguese legislation transposing Directive (EU) 2019/1937 (the "Whistleblowing" Directive) of the European Parliament and of the Council of 23<sup>rd</sup> of October 2019 on the protection of persons who report breaches of Union Law.

Although the decree-law has entered into force yesterday, the RGCP's sanctioning regime will only take effect as of June 8<sup>th</sup>, 2023, with the exception for entities that qualify as small or medium-sized companies, for which the date to be considered is June 8<sup>th</sup>, 2024, thus giving obliged entities a minimum period of one year to adapt their compliance plan to the new legislative requirements.

The non-compliance or violation of the provisions of the RGCP will result in an administrative offense punishable by a fine to be applied by MENAC, the independent administrative entity created by the mentioned diploma, with the mission of promoting transparency and integrity in public action and supervising the effectiveness of the policies of prevention and related infractions.

## 2. Law No. 93/2021, of December 20th

On June 18<sup>th</sup>, 2022, will enter into force Law no. 93/2021, of December 20<sup>th</sup>, which creates the general regime for the protection of Whistleblowers, thus transposing the Directive 2019/1937 ("The Whistleblowing Directive") of 23/10/2019 on the protection of persons who report breaches of Union law.

In a broad outline, this law enshrines the **mandatory implementation of an Internal Denunciation Channel when legal persons, including the State and legal persons governed by public law, employ 50 employees or more, or, regardless of the number, if they are legal persons subject to sector-specific regulations in the areas of financial services, products and markets and prevention of money laundering and financing of terrorism.**

In other cases where the internal denunciation channel implementation is not mandatory, it is recommended that companies perform a risk analysis, and if they consider the existence of internal denunciation channel to be beneficial, they should adopt measures accordingly.

The purpose of the internal denunciation channel is to enable the submission of written or oral denunciations, anonymous or identifying the whistleblower, concerning a set of offenses that have been committed, are in the process of being committed, or whose commitment can be reasonably foreseen, as well as attempts to conceal these offenses, concerning violations of Union Law.

Under the present law, and following the directive transposed herein, a reportable offense is "*any infringement that corresponds to an act or omission contrary to the rules of European Union Law*", adopting a relatively broad concept as to what may be considered an infringement or to which domain it may relate.

The non-compliance or the violation of the provisions contained in the present law, with special emphasis on the non-creation of an internal denunciation channel with the legally required characteristics, will result in an administrative offense punishable with a fine, to be applied by MENAC, under the terms of Decree-Law no.109-E/2021, of December 9<sup>th</sup>.

To conclude, and notwithstanding the legislator's option in addressing two important themes of its National Anti-Corruption Strategy in two separate acts, the adoption, creation or review of internal programs for regulatory Compliance in companies should always proceed through the interpretation and joint application of the two acts under analysis in this Legal Alert, this being the most bulletproof and reliable path for companies that want to assure that they are compliant with the regulatory framework in force.

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