

NEW OBLIGATIONS FOR COMPANIES FOLLOWING THE ADOPTION OF THE EUROPEAN DIRECTIVE ON WHISTLEBLOWING

On 7 October, the Council of the European Union announced the approval of the new "whistleblowing" Directive¹, which must be transposed into Spanish law within a maximum period of two years from its publication.

The major change introduced by the Directive is that it extends the implementation of internal reporting channels and requires both the authorities in each country and all public and private sector companies with more than 50 employees to put such channels in place. The Directive allows irregularities linked to a professional environment to be reported when a breach of EU law² occurs. It also provides for the possibility of Member States extending its application to other types of infringements.

Firstly, it is worth noting that the Directive broadens the range of potential users of the internal reporting channels beyond those who can currently use this mechanism in Spain. According to the Directive, not only employees, but also shareholders, managers, suppliers, contractors and even candidates for a job or former employees can be reporting persons.

Furthermore, important changes have been introduced, including the following particularly noteworthy changes:

- Companies are required to process all reports of breaches received. The follow-up must be carried out diligently and impartially by a specific internal department or by external advisors.
- A maximum time limit is set for deciding on the appropriate follow-up in relation to the reports of breaches and the companies are required to provide feedback to the reporting persons within this specific timeframe.
- Penalties are foreseen for companies that do not comply with the whistleblowing regulation.

Although the Directive does not introduce radical changes in Spain -where similar mechanisms were already provided for in the Spanish Criminal Code and the Personal Data

¹ The Directive was approved by the European Parliament and the Council, and is to be published in the Official Journal.

² Concerning public procurement, prevention of money laundering and terrorist financing, protection of privacy and personal data, the Union's financial interests and internal market, among others.

Protection Law- it does involve some specific changes in relation to areas such as data protection, labour matters and compliance. The following are worth mentioning specifically:

- Workers' representatives must be consulted prior to the implementation of the internal reporting channel and measures must be put in place to protect reporting persons from retaliation.
- A durable and accessible register must be created that guarantees the confidentiality of the identity of the reporting person and the protection of their personal data.
- Measures must be put in place to prevent access to the information provided by anyone other than the staff responsible for its processing.
- A rigorous internal investigation of the allegations made in the report must be carried out, although the Directive does not specify how this should be conducted.

In short, the Directive reinforces the idea that companies must have specialised resources in all areas of law affected by the processing of internal reports of breaches, in order for potential infringements and/or penalties to be avoided or reduced.

Pérez-Llorca's Investigations team is formed by lawyers who are specialised in criminal law, labour law, regulatory law, corporate governance and data protection, and it has extensive experience advising national and foreign companies on carrying out internal corporate investigations.

This Legal Briefing has been drafted by Guillermo Meilán and Paula Fernández, associates in the White Collar Crime and Investigations practice, Miguel Ángel Almansa, associate in the Employment practice, and Andrea Sánchez and Álvaro Martínez, associates in the Intellectual Property and Technology practice.

This Legal Briefing includes general information and does not constitute legal advice. This document was prepared on 17 October 2019 and Pérez-Llorca assumes no commitment to update or revise its contents.

For more information, please contact:

Adriana de Buerba

White Collar Crime and Investigations Partner

adebuerba@perezllorca.com

T: +34 91 423 67 29

Fernando Ruiz

Employment Partner

fruib@perezllorca.com

T: +34 91 426 09 36

Juan Palomino

White Collar Crime and Investigations Partner

jpalomino@perezllorca.com

T: +34 91 423 20 87

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