



# Law 2/2023 of 20 February 2023, on the protection of persons reporting regulatory infringements and the fight against corruption

Transposition into Spanish Law of the  
European Directive on the protection of  
persons who report breaches of Union law

Legal Alert



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# Law 2/2023 regulating the protection of persons reporting regulatory infringements and the fight against corruption

The final version of [Law 2/2023 of 20 February 2023, on the protection of persons reporting regulatory infringements and the fight against corruption](#) was published in the Official State Gazette on 21 February 2023. This concludes the transposition into Spanish law of the contents of the European Directive for the protection of whistleblowers.

Whistleblowing channels are a key part of any compliance model as they are designed to manage a type of information (relating to irregularities, breaches, infringements and violations of values or ethical principles) that is often only accessible to specific employees or certain persons outside the organisation.

Whistleblowers are often reluctant to report their suspicions for fear of retaliation or simply because they do not trust the way in which the information will be handled. Against this backdrop, the importance of providing balanced and effective whistleblower protection is increasingly acknowledged.

It was with this in mind that the European Union approved the Directive on the protection of persons who report breaches of Union law, also referred to as the “Whistleblower Directive”.

Although the deadline for Member States to transpose the Directive into their domestic legislation was 17 December 2021, only Sweden, Malta and Portugal completed this process on time.

The final version of the Spanish Law was published in the Official State Gazette on 21 February and will enter into force on 13 March.

## Key differences with the Directive (EU)

The Spanish Law incorporates certain features of the European Directive as is, while going a step further in relation to others. Namely:

- The **material and personal scope of application** is broader than that envisaged in the EU Directive.
- The potential for **extension of the maximum three (3) month period for investigations** envisaged in the EU Directive, in cases of particular complexity.
- The provision in the Law for **leniency programmes**.

## Scope of application

The Spanish Law broadens the basic material scope of the EU Directive (article 2 on *Material Scope*) to cover not only the infringements of Union Law envisaged for the EU in general, but also serious and very serious criminal and administrative offences provided for in Spanish law and occupational health and safety-related labour infringements.

It also extends the personal scope (article 3 on *Personal Scope*) of the EU Directive to include:

- Volunteers, interns and workers in training, irrespective of whether or not they receive remuneration.
- Workers' representatives that advise and support the whistleblower

## Who is required to implement the measures?

The Spanish Law introduces an obligation to implement internal reporting channels for the handling of reports in the case of:

- Natural persons or legal entities in the private sector with fifty (50) or more workers.
- Certain legal entities that operate in the finance sector or are subject to obligations in relation to the prevention of money laundering and terrorist financing, transport safety and the protection of the environment, irrespective of the number of workers.

It is worth noting that branches, agents and entities without a permanent establishment that render the above services are also included, even where they do not have their registered office in Spain.

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- Political parties, trade unions, business organisations and foundations, provided they receive or manage public funds.
- The above obligation also applies to all public sector entities, including constitutional bodies.

#### Responsibility for the internal reporting channel

The person responsible for the internal reporting channel is to be appointed by the managing or governing body of the relevant entity. That said, the Law clarifies that, in the private sector, the person responsible for the channel will be an executive of the company.

However, in entities or bodies that already have a Compliance Body, this body may be designated as the person responsible for the channel.

It will also be necessary to set in place a **policy to duly regulate and publish the principles governing this system and the protection of whistleblowers** and a **procedure to regulate the handling of information received**.

#### Groups of companies

Groups of companies may set in place a single, shared internal reporting channel for the group as a whole. They may also appoint a single person to be responsible for the channel at group level.

#### Investigation period

**The investigation procedure must be completed within a maximum period of three (3) months.** This period begins on the date on which the relevant report is received.

The Spanish Law provides for an additional extension of this period with respect to the Directive whereby, if the **particular complexity of the case** so warrants, the investigation period may be extended by **a maximum of three (3) more months** (article 9.d) of the Law).

*The Spanish Law provides for an additional extension with respect to the Directive for investigations of particular complexity.*

#### Duty to inform the Public Prosecutor's Office

The lawmaker has provided for the obligation to inform the Public Prosecutor's Office **immediately** where the events in question may **constitute a criminal offence**. Also, where the reported events affect the financial interests of the European Union, the relevant information must be submitted to the European Public Prosecutor's Office - article 9.2.j).

#### Independent whistleblower protection authority

The Law also provides for the creation of a public body reporting to the Ministry of Justice that will have competence to process reports received via the external channel that is also provided for in the new legislation.

The functions of this body will include both the adoption of protective measures and the imposition of penalties.

#### Prohibition on retaliation

Both the EU Directive and the Spanish Law specifically prohibit any acts that could be deemed to constitute retaliation against a whistleblower.

The Spanish Law provides for a two (2) year period, which may be extended in exceptional circumstances, for persons who see their rights affected as a result of their whistleblowing to seek protection from the competent authority.

#### Leniency programmes

The whistleblower protection measures provided for in the Spanish Law reflect those set out in the EU Directive. Nonetheless, the Spanish Law includes provisions relating to the implementation of leniency programmes (articles 40 and 41).

Thus, where the person actually involved in the perpetration of an administrative infringement reports it before any investigation or penalty proceedings are commenced against them, they may be exonerated from, or see a reduction in, the relevant administrative penalty.

#### Penalty regime

Also in line with the EU Directive, Law 2/2023 introduces the obligation to set in place a penalty regime to efficiently combat acts of retaliation against whistleblowers or other persons included within the scope of protection.

Additional measures such as public admonishment and prohibitions on subsidies and public contracting are also envisaged for very serious infringements.

### **Deadlines for the implementation of internal reporting channels**

Generally speaking, the internal reporting channels must be implemented and existing channels duly adapted within three months of the Law's entry into force, i.e. by 13 June 2023.

Exceptionally, in the case of legal entities in the private sector with 249 or fewer employees, and municipalities with fewer than 10,000 inhabitants, this deadline is extended until 1 December 2023.

### **Usefulness of international standard ISO 37002:2021**

Despite the wide range of matters regulated under this Law, doubts may well arise during the day-to-day operation of internal reporting channels regarding matters that it does not explicitly deal with. In these cases, it may be useful to refer to the provisions of ISO Standard 37002:2021, on Whistleblowing Management Systems. The international standard covers certain additional aspects. These include: (i) the concept of interested parties, which varies slightly with respect to the EU Directive; (ii) the classification of not only retaliation but also wilful misconduct as detrimental conduct; and (iii) the "need to know" principle as regards confidentiality and persons who need to be apprised of the information processed via these channels.

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