

# Companies in Spain must implement a whistleblowing system

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**The Act obliging companies to implement a whistleblowing system guaranteeing the protection of anyone who reports regulatory breaches has been published**

Spain - Legal flash

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## Key aspects

- Companies with more than 50 employees are obliged to establish an internal reporting channel, which must fulfill a series of requirements.
- These companies must publicize and provide clear and easily accessible information regarding the internal reporting channel.
- Any measure adopted against a whistleblower will be considered a form of retaliation, regardless of whether that person has an employment relationship with the company.
- The investigation process cannot exceed three months, extendable to six months in exceptionally complex cases.
- The new law sets out a specific penalty system.
- Companies with over 249 employees have three months from March 13, 2023, to establish the internal reporting channel, while the deadline for those with 50-249 employees is December 1, 2023.



The Official Gazette of the Spanish State has published *Act 2/2023 regulating the protection of persons who report regulatory infringements and the fight against corruption* (the “**Act**”), transposing Directive (EU) 2019/1937, on the protection of persons who report breaches of Union law (the “**Directive**”). The Act will enter into force on March 13, 2023

The primary goal of the Act is to facilitate the disclosure of breaches by obliging companies with a certain number of employees to implement a whistleblowing system guaranteeing the protection of anyone who reports regulatory breaches.

The new obligation is added to the wide range of staff-related policies, protocols, plans, codes and procedures that companies have to implement regarding equality, nondiscrimination, harassment, risk prevention, the use of digital tools, personal data, working day register, digital disconnection, sexual and gender-based violence and remote working, among others.

As well as fulfilling this obligation in the terms and within the deadlines imposed under the Act, it is advisable to coordinate all these protocols to ensure they are correctly set up and managed.

Below is a summary of the main aspects of the new law.

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## Objectives

- The regulation aims to facilitate the disclosure of information on breaches in companies, which must provide reporting channels and effective whistleblower protection, and make employees aware of this system.

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## Scope of application

### What it protects

- The Directive and the Act protect information and reports regarding breaches of EU law, and regarding serious and very serious criminal and administrative offenses.
- To benefit from the special protection, the information or reporting must be provided honestly and in good faith; there must be reasonable cause to believe the veracity of the alleged breach; and it must be within the Act’s scope of protection.



## Who it protects

- The Act protects whistleblowers, specifically workers, self-employed persons, shareholders, board members, persons in managerial or supervisory bodies, contractors, subcontractors and suppliers, regardless of whether the relationship has ended or has yet to begin, and even volunteers, interns, and paid or unpaid trainees.
- Besides whistleblowers, the Act also protects:
  - natural persons who assist a whistleblower in the reporting process in a work-related context;
  - natural persons connected to the whistleblower and who may suffer retaliation, such as colleagues or relatives of the whistleblower; and
  - legal entities that the whistleblower works for or is otherwise connected with in a work-related context, or in which the whistleblower holds a significant stake.

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## Internal reporting channel

- Companies with more than 50 employees are obliged to establish an internal reporting channel.
- Companies with over 249 employees have until June 13, three months from the entry into force of the Act, to establish the internal reporting channel, while the deadline for those with 50-249 employees is December 1, 2023.

## Reporting channels

- Instead of relying on a single reporting channel, informants can provide information on or report breaches and irregularities through any of the following:
  - The company's internal channel.
  - An external channel or Independent Whistleblower Protection Authority (IAA).
  - Directly to the public through online platforms or social media, or to the media, among others, when the internal or external channels have been ineffective, there is an imminent danger to the public interest, or there is a risk of retaliation or of the breach not being effectively addressed.



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## Implementation

- The company's managerial body is in charge of implementing the channel after consultation with the workers' legal representatives.

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## System requirements

### Deadlines

- Acknowledgment of receipt must be issued to the reporting person within seven days of providing information on or reporting the breach.
- The management and investigation of the information or reported facts cannot last longer than three months except in particularly complex cases, where the deadline can be extended by another three months.

### Information and public awareness

- Companies must publicize and provide information regarding the use of the internal reporting channel and about the key principles of its management procedure.
- If the company has a website, the channel must appear on the homepage in a separate, easily identifiable section.

### Person in charge

- Companies must designate a person in charge of the system, namely a manager appointed by the managerial body, who will perform these duties independently.
- The company's compliance officer may fill this position.

### Data protection

- Data processing is considered lawful in whistleblowing channels when it is obligatory to have an information system to fulfill a legal obligation. Data processing is also considered valid when the system is not obligatory, but one is established voluntarily for the performance of a task carried out in the public interest.



## Registration

- Companies must register any information they receive and their internal investigations.
- The register is not public. The content can only be totally or partially accessed if the competent legal authority submits a reasoned request to this effect.

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## Whistleblower protection

- Whistleblowers will be protected for two years from any form of retaliation for disclosing information.
- If whistleblowers reasonably prove that, having reported or publicly disclosed a breach, they have suffered a detriment, it will be presumed in legal proceedings that the detriment was made in retaliation, and the burden of proof will shift to the person who took the detrimental action, who should then demonstrate that the action taken was not linked in any way to the reporting or the public disclosure.
- Acts of retaliation will be declared null and will result in disciplinary or liability measures, including compensation for damages.
- Whistleblowers, including workers' legal representatives, will not be considered to have breached any restriction on disclosure of information in respect of their report provided that there are reasonable grounds to believe that the reporting or public disclosure of that information was necessary.

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## Penalties

- The Act establishes a penalty system, imposing fines on individuals and companies for committing offenses defined as such.
- The power to impose penalties is granted to the IAA.
- The breach of the obligation to have an internal reporting system and acts of retaliation against whistleblowers are punishable with fines ranging between €30,001 and €300,000 for individuals, and €600,001 and €1,000,000 for companies.
- The Act also lays down additional penalties, such as reprimands, a ban on subsidies and other tax advantages for four years, and a three-year ban on entering into contracts with public sector entities.



- If companies do not implement the system, the application of mitigation or exemption of companies' criminal liability provided under article 31 bis of the Spanish Criminal Code could be called into question.

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For additional information, please contact our [\*Knowledge and Innovation Group\*](#) lawyers or your regular contact person at Cuatrecasas.

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