

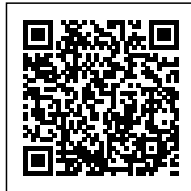
# WHAT HAPPENS WHEN SOMEONE BLOWS THE WHISTLE?

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by michael heron

On the 18 June 2022 the EU Whistleblowing Directive will enter into force. EU member countries had until the 17 December 2022, to implement the Directive into national law. Companies in the private sector with 250 workers or more had until the 17 December 2021. Entities with 50 workers or more, have an additional two years. Iberian lawyer interviewed some of the key legal practitioners advising in this space, to understand the impact this Directive is having on Spain and Portugal.

## Impact

The main concern for the business community in Iberia, is undoubtedly to understand why this new EU Directive on Whistleblowing has been implemented, and its impending impact. **Paulo de Sá e Cunha** is the coordinating partner of the White Collar Crime and Administrative Offenses area at Cuatrecasas. The lawyer responded to this question by affirming: "I believe it will not only serve the direct purpose of protecting the whistle-blowers in the workplace, but it will also have a strong impact on preventing and repressing infringements, working as a defence mechanism for organisations. Hopefully, the deterrent effect on misconduct will be even more effective than the 'damage control' effect." De Sá e Cunha continues by saying he believes that the impact will be very high, "because of the type of organisations affected (public and private organizations of all sectors with 50 collaborators or more), the scope of the wrongdoings (money laundering, organized crime, and corruption, as well as environmental crimes, public health and safety problems, and privacy breaches."

**Cláudia Martins**, partner at Macedo Vitorino, believes the, "EU Whistleblowing Directive was to

prevent puzzling rules and create consistent protection throughout the EU Member States, namely in what happens to the whistle-blower after it reports potential wrongdoing within the organisation and what actions can be taken to address it." Martins adds that there is a cultural issue at play in Portugal and that speaking out can be perceived very negatively. She said: "It is a cultural issue, which starts at the playground when we are a child, and it does not quickly disappear. The EU Whistleblowing Directive can be a good starting point. However, in doing the right thing, full compliance will depend on implementing and enforcing local rules and, mainly, the embeddedness of these rules in ethical and organisational culture. In a word, it will depend on people, so this will not be necessarily immediate."

## Technicalities

**Paulo Farinha Alves** is a partner in the Dispute Resolution practice at PLMJ, with more than 30 years of experience in Criminal law. Alves as quick to highlight the technical aspects of this new law in Portugal, influenced by the Directive. "Law 93/2021 is a very technical law, so training is crucial to prevent the mechanism from being used for other purposes. It requires companies to develop a workflow that enables them to comply with their communication obligations with the whistle-blower and, at the same time, to provide the necessary follow-up to the information collected following the complaint.

## Spanish perspective

But how do things differ in Spain, if anything? **Alain Casanovas** has been a partner at KPMG Abogados for over 20 years. When asked if there are any particularities in the Spanish legal system, compared to what other countries have implemented, he said: "The Preliminary Draft extends the contents of the European Directive, as other countries such as France and Sweden have also done. In this sense, it does not limit its scope to infringements of European Union law, but also to serious or very serious criminal or administrative offences or other labour-related offences. The regulation of leniency programmes (for informants who have participated in administrative infringements but decide to report them), clearly inspired by those that exist for the defence of competition, is an approach that is not widespread in other countries."

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