

Guillermo Meilán, Andrea Bartolomé

## Draft Whistleblowing Law approved

On 13 September, the Council of Ministers approved the **Draft Law** regulating the protection of persons who report regulatory and anti-corruption violations (the "**Draft**") - commonly known as the *Whistleblowing Law*.

When the Draft becomes law and enters into force, it will be the first national legislation specifically dedicated to this issue and will supplement and expand upon other regional legislation that has already been approved.

The text, the primary objective of which is to provide adequate protection to individuals who report certain offences when they display "courageous conduct of clear public utility", essentially maintains the wording of the **Preliminary Draft Law** approved in March of this year and transposes Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of EU law.

The Draft introduces highly relevant new features with respect to the Preliminary Draft:

### 1. Halving the maximum investigation period for companies in complex cases

The Draft **reduces by half** the period granted to companies to investigate facts reported through the whistleblowing channels in cases of particular complexity. The rule now **puts all types of communications received on an equal footing and only allows the facts to be investigated within three months** of receiving the communication.

### 2. Companies are obliged to immediately report any suspicion of a crime to the Public Prosecutor's Office

The new wording of the text **obliges companies to forward the information received to the Public Prosecutor's Office "immediately"** when the facts point to a criminal offence. This provision adds an additional burden to the system's functioning in the private sector and calls into question the safeguarding of a legal entity's constitutional right of defence in the event that the reported facts could give rise to criminal liability. In this respect, the draft regulation does not clarify whether this factor may be invoked to avoid disclosing facts of this nature.

### 3. Deadline extended for implementing the internal reporting system for SMEs

The Draft **gives SMEs obliged to comply with the standard until 1 December 2023** to implement their whistleblowing channel, thus extending the deadline initially provided for in the Preliminary Draft (1 January 2023).

### 4. Sanctions regime

Finally, the Draft **tightens the sanctions regime**. Firstly, the **failure to implement an internal information system** is introduced as a **very serious breach**, which could result in a financial penalty of up to 300,000 euros for individuals and up to 1,000,000 euros for legal entities.

Secondly, the Draft **introduces new fines for individuals** for minor offences of between 1,001 and 10,000 euros, **and increases the minimum amount above which a serious sanction can be imposed** from 5,001 to 10,001 euros.

## CONTACTS



**Juan Palomino Segura**  
Partner, White Collar Crime  
and Investigations

jpalomino@perezllorca.com  
T. +34 91 423 20 87



**Mayte Requejo Naveros**  
Of Counsel, White Collar Crime  
and Investigations

mtrequejo@perezllorca.com  
T. +34 91 423 20 84

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