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Approval of the Statute of the Independent Authority for Whistleblower Protection

On 29 October, more than a year after the approval and entry into force of Law 2/2023, of 20 February, regulating the protection of whistleblowers and the fight against corruption (“**Law 2/2023**”), Royal Decree 1101/2024 was adopted, approving the Statute of the Independent Authority for Whistleblower Protection (*Estatuto de la Autoridad Independiente de Protección del Informante, A.A.I.*) (the “**Statute**” and the “**AAI**”), which entered into force on 31 October 2024.

The AAI will be an independent administrative authority, with its own legal personality and full public and private capacity. In this regard, the AAI will enjoy full organic and functional autonomy and independence from the government and other public administrations in the exercise of its functions.

I. Functions

The Statute makes a clear distinction between issues relating to the protection of the whistleblowers and issues relating to the monitoring of compliance with the obligations of Law 2/2023. More institutional and informative functions are also envisaged.

i) Whistleblower protection functions:

- a) The processing of information and communications - complaints - received through its external whistleblowing channel; and
- b) The adoption of measures to protect and support whistleblowers.

ii) Supervisory and sanctioning functions:

- a) The initiation, investigation and resolution of enforcement proceedings; and
- b) The imposition of penalties for infringements of Law 2/2023. This power held by the AAI Presidency is exclusive and non-delegable.

iii) Institutional functions:

- a) Drafting of circulars and recommendations setting out criteria and best practices for the proper functioning of the AAI, as well as crime prevention models in the public sector; and
- b) Collaboration with other similar bodies at national, regional, European or international level.

II. Limitations

The functions of judges and competent courts, the Public Prosecutor's Office and the judicial police are expressly excluded from the remit of the AAI. The AAI also cannot investigate facts that are already the subject of proceedings with the above authorities.

In this regard, the Statute also provides that the AAI must suspend its actions, with the exception of those relating to whistleblower protection, as soon as it becomes aware that the judicial authority or the Public Prosecutor's Office has initiated proceedings in respect of the same facts as those under investigation by the AAI. In such cases, the AAI will be obliged to provide those authorities with all necessary information and support.

III. The AAI's relationship with regional authorities

The Statute, in line with Law 2/2023, allows the AAI to act as an external whistleblowing channel and as a whistleblower protection authority for regional and local administrations and cities with autonomous status, subject to the signing of an agreement.

The AAI is configured as a state body that guarantees the protection of the whistleblower and the receipt of complaints, regardless of the existence of a separate regional or local authority.

Currently, the independent regional whistleblower protection authorities are:

AUTONOMOUS COMMUNITY	INDEPENDENT AUTHORITY	SCOPE OF ACTION
CATALONIA	The Anti-Fraud Office of Catalonia (<i>Oficina Antifraude de Catalunya</i>)	Public and private sector
VALENCIAN COMMUNITY	The Valencian Anti-Fraud Agency (<i>Agencia Valenciana Antifraude</i>)	Public sector
ANDALUSIA	Andalusian Office against Fraud and Corruption (<i>Oficina Andaluza contra el Fraude y la Corrupción</i>)	Public sector
FORAL COMMUNITY OF NAVARRE	Good Practices and Anti-corruption Office of the Foral Community of Navarre (<i>Oficina de Buenas Prácticas y Anticorrupción de la Comunidad Foral de Navarra</i>)	Public sector
CASTILE-LA MANCHA	Regional Council for Transparency and Good Governance (<i>Consejo Regional de Transparencia y Buen Gobierno</i>)	Public sector
CASTILE AND LEÓN	Independent Corruption Authority (<i>Autoridad Independiente en materia de corrupción</i>)	Public sector
GALICIA	Galician Authority for the Protection of Whistleblowers (<i>Autoridad Gallega de Protección de la Persona Informante</i>)	Public and private sector

Finally, the Statute establishes that the Presidency of the AAI must convene biannual meetings with the representatives of independent regional authorities to ensure a coherent and homogeneous application of whistleblower protection regulations, which increases legal certainty for those obliged parties with companies in different autonomous communities.

IV. Conclusions

The approval of the Statute, in addition to being a step forward in the regulation on the protection of whistleblowing and the fight against corruption, is of particular significance to all public and private entities who are subject to Law 2/2023.

The creation of this new national authority heralds the beginning of a new national regulator with sanctioning powers in relation to compliance with the obligations of Law 2/2023.

It is therefore of vital importance that public and private entities that are subject to Law 2/2023 ensure that their internal whistleblowing systems and reporting channels are up to date and that they comply with its obligations.

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