

December 30<sup>th</sup>, 2021

## GENERAL REGIME FOR PREVENTION OF CORRUPTION Decree-Law no. 109-E/2021, of December 9<sup>th</sup>

Decree-Law no. 109-E/2021 was published last December 9<sup>th</sup>, creating the National Anti-Corruption Mechanism ("MENAC") and approving the **General Regime for Prevention of Corruption ("RGPC")**.

This law is included in the scope of the National Anti-Corruption Strategy 2020-2024, which recognizes that in addition to the implementation of measures within the scope of repression of corruption and related offences, an effective Compliance system must be implemented in public and private entities to prevent these phenomena.<sup>1</sup>

For that purpose, the **RGPC** obliges the required entities to implement corruption prevention programmes and establish internal control systems, specifying the parameters of each, and establishing a system of sanctions for non-compliance/insufficient application.

### A) SCOPE OF APPLICATION

The entities obliged to comply with the rules of the **RGPC** are:

- a) All private legal persons having their head office or branch in Portugal who employ 50 or more workers;
- b) All public services of the Direct, Indirect and Autonomous Administration of the State, including the public corporate sector, municipal councils, parish councils, and other entities that employ 50 or more workers;
- c) Independent administrative entities.

### B) CORRUPTION PREVENTION MEASURES

Obliged entities must now adopt an internal Plan of Prevention of Corruption, with the objective of preventing, detecting and sanctioning acts of Corruption and related offences carried out against or through the entity and which includes, at least:

- (i) a plan for the prevention of risks of corruption and related infractions (PPR) covering all its organisation and activity;

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<sup>1</sup>For the purposes of the RGPC and of this newsletter, Corruption and related offences are defined as the following crimes: (i) Corruption; (ii) Undue receipt and offer of advantage; (iii) Embezzlement; (iv) Economic participation in business; (v) Concussion; (vi) Abuse of Power; (vii) Prevarication; (viii) Influence trafficking; (ix) Laundering or fraud in obtaining or diverting a subsidy; (x) subsidy or credit.

- (ii) a code of conduct that establishes the set of principles, values and rules of action of all managers and employees in matters of professional ethics;
- (iii) an internal training program, carried out by the entities covered, aimed at all their managers and employees, so that they are aware of and understand the policies and procedures for the prevention of corruption and related infractions implemented; and
- (iv) an internal whistleblowing channel - which meets the requirements set out in the Directive.

They also need to implement policies and procedures that ensure compliance, monitoring and evaluation of these programs. To this end, a Compliance Responsible will have to be appointed.

The adoption and implementation of regulatory compliance programmes is of responsibility of the management body of the entities covered.<sup>2</sup>

## **C) PROVISIONS APPLICABLE TO PUBLIC ENTITIES**

In addition to adopting the PPR and the code of conduct, public entities are now required to:

- a) Publish on its website various documents – foreseen in the RGPC – that guarantee the transparency of the performance, structure and services of the Public Administration.
- b) Implement an Internal Control System proportional to the nature, dimension and complexity of the activity, which allows implementing, monitoring and evaluating the application of the rules of the RGPC in the entity.<sup>3</sup>
- c) Adopt measures to promote competition in public procurement and remove administrative barriers to competition.

## **D) PROVISIONS APPLICABLE TO PRIVATE ENTITIES**

In addition to the measures already mentioned in Chapter B) above, the covered private entities must also:

- a) implement internal control procedures and mechanisms covering the main corruption risks identified in the PPR;
- b) prior risk assessment procedures in relation to (i) third parties acting on their behalf; (ii) suppliers; and (iii) clients.

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<sup>2</sup> Without prejudice to the powers conferred by law on other bodies, managers or employees.

<sup>3</sup> The said internal control system shall cover policies and procedures aimed at ensuring the management of conflicts of interest that may occur, as well as preventing situations of favouritism.

## **E) SANCTIONING REGIME**

Without prejudice to any criminal, civil or disciplinary liability, the **RGPC** determines the application of administrative offences - both to the public and private sectors - for the non-adoption or deficient/incomplete adoption of compliance programmes, which range from **€1.000,00** to **€44.891,81** in the case of legal persons and up to **€3.740,98** in the case of natural persons.

## **F) NATIONAL ANTI-CORRUPTION MECHANISM**

For control of the application of the **RGPC** and the instruction and sanctioning of administrative proceedings for non-compliance therewith, an independent administrative authority is also established with authority **MENAC** and eliminated the Council for the Prevention of Corruption, with the consequent revocation of Law 54/2008, of September 4th.

## **G) ENTRY INTO FORCE**

This decree-law shall enter into force 180 days after its publication - on June 7<sup>th</sup>, 2022.

However, non-compliance with the rules on the RGPC will now only be sanctioned:

- a) one year after the entry into force of the said decree-law for public entities;
- b) two years after its entry into force for private entities.

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**PARES | Advogados** has extensive experience in the area of anti-corruption compliance, particularly in the creation of internal control systems in public and private entities, as well as in the implementation of corruption prevention systems in accordance with the ISSO 37001 rule, being available to provide specific information on this and other topics in a more concrete and appropriate manner to the reality of each client.

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