



NEWS, LATEST, CURRENT TOPICS

APPLICABILITY OF THE GENERAL REGIME FOR THE PREVENTION OF CORRUPTION TO MEDIUM-SIZED COMPANIES, IN PARTICULAR, THE RESPECTIVE SANCTIONING REGIME

“Entities bound by the RGPC include any legal persons with their registered head office in Portugal, and branches in Portugal (...)”

Decree-Law 109-E/2021, of 9 December, created the National Anti-Corruption Mechanism and implemented the General Regime for the Prevention of Corruption (“RGPC”).

- **Obliged Entities:**

Entities bound by the RGPC include any **legal persons with their registered head office in Portugal**, and **branches in Portugal** of legal persons with their registered head office abroad, that **employ 50 or more employees**.

Although Decree-Law 109-E/2021 came into force on the 7th of June 2022, it was determined that the **sanctioning regime provided for therein would only take effect for “medium-sized companies” two years later, on the 7th of June 2024.**

For this purpose, **“company”**; shall mean any entity which, regardless of its legal form, carries out an economic activity. Furthermore, a **“medium-sized company”**; shall mean any company that **i) employs more than 50 and less than 250 people, and ii) whose annual turnover does not exceed 50 million euros or whose annual balance sheet total does not exceed 43 million euros.**

- **Measures to be adopted by the Obligated Entities:**

In order to ensure compliance with the RGPC, the obliged entities must adopt and implement a **regulatory compliance programme** that includes, at least:

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- a) a plan for the prevention of risks of corruption and related offences;
- b) a code of conduct;
- c) a training programme;
- d) a whistleblowing channel.

Furthermore, obliged entities must designate a **regulatory compliance officer** to ensure and monitor the execution of the regulatory compliance programme they have instituted. Moreover, they must implement mechanisms for evaluating the **regulatory compliance programme** and **internal control procedures** that encompass the main corruption risks identified therein.

The compulsory adoption and implementation of these mechanisms is aimed at preventing, detecting and sanctioning acts of corruption and related offenses carried out against or through the obliged entity.

- **Sanctions:**

Within the scope of the sanctioning regime of the RGPC, the respective administrative offense regime provides for various types of administrative offenses, punishable by fines ranging from 1,000.00 euros to 44,891.81 euros.

In particular, failure to implement a **regulatory compliance programme** that complies with the legally stipulated requirements will be punishable as an administrative offense – and a fine may be imposed, ranging:

- c) from 2,000.00 euros to 44,891.81 euros, in the case of a legal person or equivalent entity;
- d) up to 3,740.98 euros, in the case of a natural person.

The following will also be punishable as administrative offenses: failure to draw up control reports; failure to review, publicise to employees and/or communicate to the competent authorities the PPR or the respective control reports; failure to draw up infringement reports; failure to review and/or publicise the code of conduct; failure to communicate the code of ethics and the relevant reports – under the terms legally established. These administrative offences are punishable by fines ranging:



“Within the scope of the sanctioning regime of the RGPC, the respective administrative offense regime provides for various types of administrative offenses, punishable by fines ranging from 1,000.00 euros to 44,891.81 euros.”

- a) From 1,000.00 euros to 25,000.00 euros, in the case of a legal person or equivalent entity;
- b) Up to 2,500.00 euros, in the case of a natural person.

These amounts will, however, be halved if the offenses are perpetrated through negligence.

According to the legally established regime, in principle, the entities themselves will be responsible for committing administrative offenses – except when the members of their bodies, proxies, representatives or employees act against the express orders or instructions of the entity.

Similarly liable for administrative offenses are the **members of the management body or directors of legal persons, the regulatory compliance officer**, as well as **those responsible for the management or supervision of areas of activity in which an administrative offence is committed**, when they commit the offence or when, knowing or having knowledge of its practice, they fail to take the appropriate measures to immediately put an end to them.

The liability of legal persons does not exclude and is not dependent on the individual liability of the aforementioned agents.

Thus, medium-sized companies shall ensure the implementation of a regulatory compliance program that meets the legal requirements, failing which they will be liable for administrative offenses as of the 7th of June 2024.