



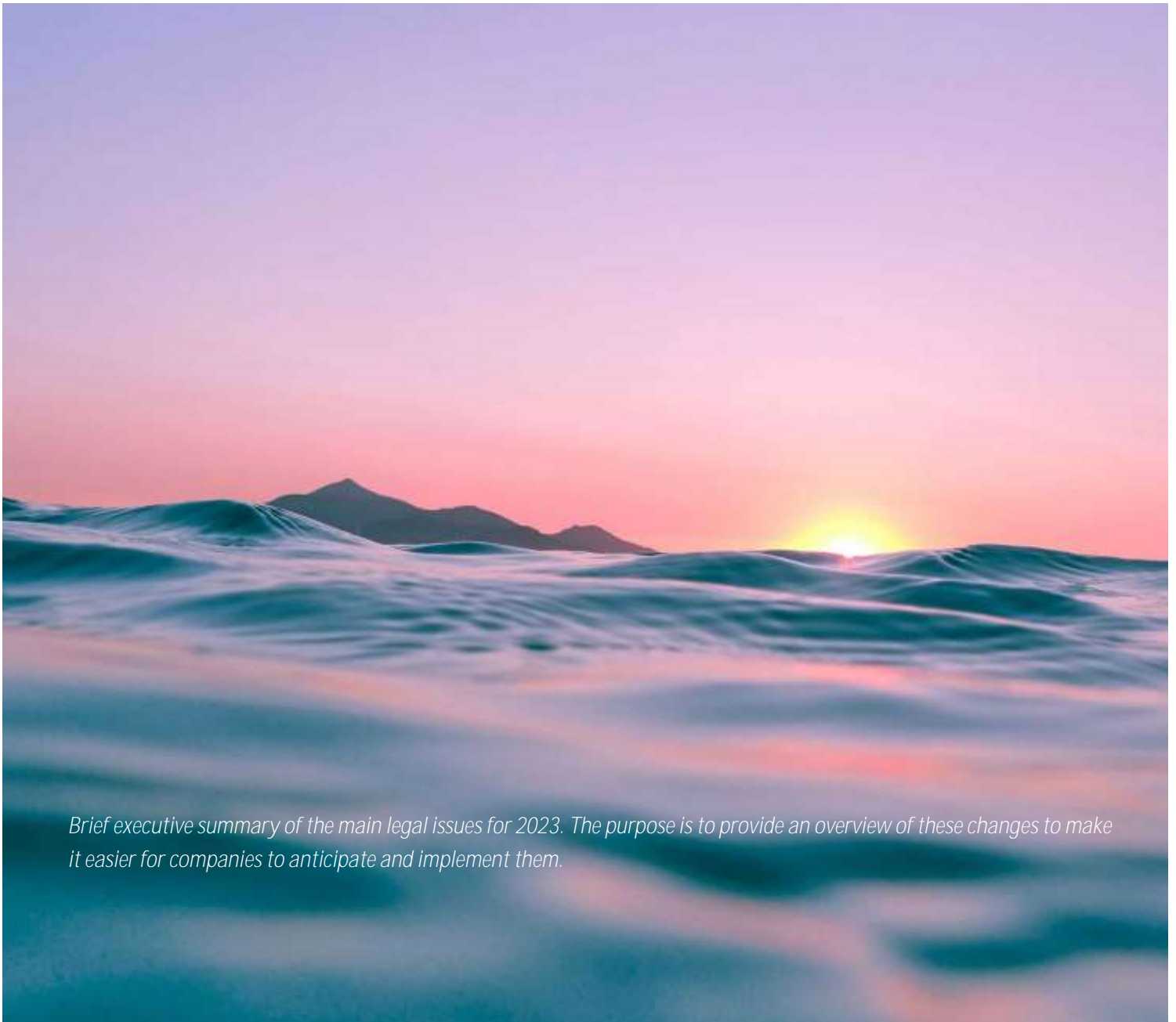
CUATRECASAS

Portugal

What to expect in 2023?

Key points for companies

January 2023



Brief executive summary of the main legal issues for 2023. The purpose is to provide an overview of these changes to make it easier for companies to anticipate and implement them.



Key points

Startups

Draft Law 56/XV on startups was presented at the end of 2022. This proposal establishes the legal definition of startup and scaleup, as well as a regulatory framework of incentives for developing the startup and scaleup ecosystem in Portugal. It is expected to be approved in the first quarter of 2023.

Listed companies

On December 7, 2022, the European Directive on boosting gender equality in the management positions of listed companies and related measures was published. This directive must be transposed by December 28, 2024, and amendments to Law 62/2017 of August 1 are foreseen. The implementation of this law is to be assessed in 2023 (five years after it entered into force on January 1, 2018).

Capital markets, banking and finance

The proposals for regulations and directives aimed at reforming the rules for admitting securities to trading on a regulated market in the **European Union (“EU”)** are under consultation until February 2023. Regarding Environmental, **Social, and Governance (“ESG”)**, we highlight the rules established in the Taxonomy Regulation and the Delegated Regulation on Sustainable Financial Reporting (“SFDR”), which will both come into force in 2023. The non-performing loans directive must be transposed by the end of 2023. We also highlight the public consultation on the **Portuguese Securities Market Commission’s (“CMVM”)** proposal for a single regulation on issuer transparency and the regime applicable to takeover bids. Finally, we look at Law 4/2023, which aims to approve the Legal Regime for Asset Management.

Insolvency

On December 7, 2022, the European Commission published a proposal for a directive to harmonize aspects of insolvency law that essentially regulates the (i) recovery of assets of the insolvent estate, (ii) efficiency of procedures, and (iii) fair distribution of value among creditors. This proposal is expected to be processed in 2023.

Competition and EU law

We begin by summarizing the priorities of the Portuguese Competition Authority (“AdC”) for 2023. Between the first and second quarter of 2023, the European Commission is expected to review the merger control procedure. Between the second and third quarter, the Commission will review its notice on the definition of relevant market, which is essential for defining the limits of competition between companies. In mid-2023, the Foreign Subsidy Regulation (FSR)



will enter into force. The transition period for companies to adapt to and comply with the new block exemption regulation for vertical agreements ends in May 2023.

Labor

In 2023, we expect to see many legislative changes under the Decent Work Agenda (*Agenda do Trabalho Digno*), which will raise doubts **among companies**. **We will also see how the “four-day week” pilot program is implemented and evaluate whether implementing it definitively in the public and private sectors is feasible**

Real estate

The law approving the State Budget for 2023 makes changes to (i) the IMT exemption regime for the purchase of buildings for resale, (ii) the special IMT regime for real estate swaps, and (iii) the limits on the advance payment of rent and security deposits. We also emphasize the 2% limit on rent increases in 2023 introduced by Law 19/2022 of October 21. This legislation establishes extraordinary **personal income tax (“PIT”)** and **corporate income tax (“CIT”)** relief for rental income earned in 2023. We also highlight the continued lease protection—until December 31, 2027—for historical stores that have transitioned to the **New Urban Lease Regime (“NRAU”)**. The municipalities and associations of municipalities have to comply, by December 31, 2023, with the obligation to include the land classification and qualification rules in the municipal and intermunicipal plans. Showing the trend towards bringing the construction sector in line with sustainability objectives, we highlight Decree-Law 84/2022 of December 9, which establishes a regime for promoting the use of renewable energy in municipal construction.

Public law and environment

The Portuguese Government presented a proposal for a decree-law that aims to simplify administrative activity by eliminating unnecessary licenses, authorizations, and administrative acts. The legal regime for the prevention of soil contamination to safeguard human health and the environment (“PRoSolos”) is also expected to be published in 2023.

Energy

We highlight some of the exceptional measures for implementing renewable energy production and storage projects and initiatives: (i) urban planning operations for projects with a capacity of up to and including 1 MW are exempt from prior urban planning control; (ii) the installation of renewable energy production plants, storage facilities, production units for **self-consumption (“UPACs”)**, and **facilities for the production of hydrogen by water electrolysis** are now subject to prior control through a prior notice, not depending on the existence of a prior information request.



Tax

We begin by highlighting the amendments that the law approving the State Budget for 2023 makes to PIT, CIT, value-added tax (“VAT”), stamp duty, **property transfer tax (“IMT”)**, and tax benefits. We also highlight how the tax calendar is made more flexible to make it easier for companies to manage their invoices and inventories. We also look at the regulations for applying the temporary solidarity contribution to the energy and food distribution sectors. Finally, we summarize several changes to the forms for reporting certain tax obligations.

Intellectual property

In November 2022, the European Commission presented proposals to amend the regulation and directive on designs. This new legal framework aims to make the EU design protection system more appropriate for the digital age. The Unitary Patent Regulation and the international agreement that forms the basis for setting up the Unified Patent Court will enter into force in 2023. This court will have sole jurisdiction over EU patent disputes, regardless of whether unitary effect patents or “classic” EU patents are involved. The Portuguese Government approved Draft Law 52/XV to transpose the long-awaited directives on copyright protection in the digital environment. The directive is expected to be discussed and approved in early 2023.

Personal data and privacy

The European Data Protection Board (“EDPB”) is currently examining the adequacy decision for legitimizing personal data transfers to the United States (“US”). Once the EDPB’s opinion has been published, the proposal will still have to be approved by a committee consisting of EU Member State representatives.

Digital and artificial intelligence

Under the Digital Markets **Act (“DMA”)**, digital platforms that meet the criteria established in the DMA will have to notify the European Commission of their designation. As of May 2, 2023, these platforms will have six months to adapt their practices to the obligations imposed by the DMA. The Digital Services **Act (“DSA”)** will apply in full to all online intermediary services as of February 17, 2024. Digital platforms have to publish their average number of active users by February 17, 2023. We also highlight the proposal for a regulation of the European Parliament and of the Council aimed at establishing harmonized rules on artificial intelligence.

Cybersecurity

We highlight Directive (EU) 2022/2555, which entered into force on January 16, 2023. This new directive aims to harmonize cybersecurity requirements across the EU.



1. Startups

Draft Law 56/XV on startups was presented at the end of 2022. This proposal establishes the legal definition of startup and scaleup, as well as a regulatory framework of incentives for developing the startup and scaleup ecosystem in Portugal. It is expected to be approved in the first quarter of 2023.

On December 22, 2022, the Council of Ministers approved Draft Law 56/XV/1, which establishes the regime for startups and scaleups, amends the taxation regime for stock option plans for employees of startups and companies in the innovation sector, and boosts the system of tax incentives for business research and development.

- Definition of startup. The legislative framework to be approved is expected to provide a legal definition of the concept of startup. The requirements for this status will include the length of time in business, the number of employees, turnover, non-existence of any corporate relationship with a large company, having its headquarters or at least a substantial degree of business activity in Portugal, and this activity being in the area of research and development (R&D).
- Definition of scaleup. The legal regime will also establish the broader concept of scaleup, which will be granted the same benefits as those of certified startups. Specifically, companies that want to obtain scaleup status will not have to meet the requirements regarding the length of activity, number of employees, and turnover.
- Awarding the status of startup and scaleup. Startup Portugal will be in charge of awarding this status.
- Tax incentives system. As an incentive for investing in and developing the Portuguese ecosystem, the tax incentives system for business research and development (SIFIDE II) was also boosted by (i) increasing from 8 to 12 years the period for reporting expenses that were not deducted due to insufficient taxable income, and (ii) increasing from 110% to 120% for expenses relating to R&D activities and environmental design projects and products.
- Employee stock option plan. Draft Law 56/XV/1 also provides substantial clarification regarding the tax regime applicable to the stock option plan (“ESOP”) for employees and collaborators of startups and scaleups that acquire this status. It provides that when employees of these companies exercise their stock options, they will not be taxed on the



financial gain from acquiring this stock, and the taxable event is postponed until the stock acquired through these programs is sold. Therefore, the time the income is actually made and the time it is taxed will correspond.

2. Listed companies

Gender equality in listed company management positions

On December 7, 2022, Directive (EU) [2022/2381](#) of November 23 on boosting gender quality in listed company management positions and other related measures was published (see [Legal Flash](#)).

To transpose the directive—the deadline for which is December 28, 2024—amendments to Law 62/2017 of August 1 are foreseen to introduce the new European directive requirements.

- Minimum legal quotas: by June 30, 2026, the under-represented gender must reach at least:
 - 30% of non-executive management positions; or
 - 33% of all executive and non-executive management positions.
- National lawmakers can suspend the key measures of this directive if certain conditions are met. In Portugal, Law 62/2017 of August 1 already establishes binding thresholds, but the transposition of the directive may require adjustments to the current regulatory framework.
- To comply with the objectives of the directive, listed companies that have not achieved this goal must give priority in their recruitment procedures to candidates of the under-represented gender (when they are on an equal footing). The obligation applies unless there are legally compelling reasons—such as the pursuit of other diversity policies—put forward in the context of an objective assessment that considers the situation of a candidate of the under-represented gender based on non-discriminatory criteria.

Under the directive, the selection of a candidate of the over-represented gender over one of the under-represented gender gives rise to an obligation to inform the unsuccessful candidate of (i) the qualification criteria on which the listed company based the selection; (ii) the objective comparative assessment of the candidates based on these criteria; and (iii) the



considerations that tipped the balance in favor of the candidate who is not of the under-represented gender.

A legal presumption that the non-selected candidate has the same professional qualifications as those of the selected candidate should also be introduced, placing the burden of proof on the listed company if the non-selected candidate decides to challenge its decision.

- Finally, the directive also introduces the obligation to publish an annual report and provide information to the competent authorities about gender representation in the respective corporate bodies, distinguishing between executive and non-executive directors, as well as the measures taken to attain this goal.

3. Capital markets, banking and finance

Simplifying admission to trading in the EU

On December 7, 2022, the European Commission published legislative proposals for three areas: [clearing, insolvency, and listing package](#). The third area aims to reform the rules for admitting securities to trading on a regulated market in the EU, aimed primarily at easing the burden of entering the capital market.

In terms of listing, the European Commission put forward three legislative proposals:

- Prospectus, market abuse, and markets in financial instruments

[Proposal for a Regulation](#) (and [annexes to the proposal](#)) amending the Prospectus Regulation ([2017/1129/EU](#)), the Market Abuse Regulation ([596/2014/EU](#)), and the Markets in Financial Instruments Regulation (“MiFIR”) ([600/2014/EU](#))

- MIFID II

[Proposal for a Directive](#) amending the MIFID II Directive ([2014/65/EU](#)) and repealing the



Listing Directive ([2001/34/EC](#))

➤ Multiple-vote shares

[Proposal for a new directive](#) on multiple-vote share structures in companies that seek the admission to trading on an SME growth market

The feedback period for the proposals for regulations and directives lasts until February 2023.

ESG

Taxonomy: rules applicable in 2023

The Taxonomy Regulation ([Regulation \(EU\) 2020/852 of June 18](#)) established a unique classification system for sustainable economic activities.

- As of January 1, 2022, companies that fall within the scope of the regulation began reporting information in accordance with the EU taxonomy rules.
- As of January 1, 2023, the information disclosure requirements under these rules are extended regarding the environmental objectives listed in articles 9.c) to 9.f) of the Taxonomy Regulation.

SFDR: Delegated Regulation 2022/1288

Commission [Delegated Regulation 2022/1288](#) of April 6 supplements the SFDR Regulation on the disclosure of sustainability-related information in the financial services sector.

- The SFDR, effective as of January 1, 2023, introduces a mandatory form for reporting information about negative impacts on sustainability factors that primarily benefits data comparability.
- On November 17, 2022, the **European Banking Authority** (“EBA”) published a set of [Q&As](#) for the new form.



Non-performing loans directive

[Directive \(EU\) 2021/2167](#) of the European Parliament and of the Council of November 24 establishes a set of rules that applies to those who manage and purchase non-performing loans (NLPs) originally granted by a credit institution in the EU.

Main new features:

- Servicers will now have to apply for authorization before they can start their business activity: the authorization application must be regulated and the competent national authority will only grant authorization if certain requirements are fulfilled.
- Member States must keep an up-to-date public record of authorized servicers.
- The transfer of the creditor's rights or of the loan agreement must be communicated in a notice with a minimum pre-established content.
- The relationship between the servicer and the loan purchaser/creditor must be governed by a written contract, with certain minimum mandatory information.
- Rules on crossborder loan management activities have been introduced.
- Duties applicable to loan purchasers have been introduced.

Directive (EU) 2021/2167 must be transposed into the law of each Member State by December 29, 2023.

Draft CMVM regulation: issuers' information duties and takeover bids regime

At the end of 2022, the CMVM released a proposal for a single regulation (only available in Portuguese) on issuer transparency and the regime applicable to takeover bids for public consultation. The primary aim of the proposal is to reduce and simplify the burdens on CMVM-supervised issuers and to bring the Portuguese regulatory framework in line with the EU framework, following the recent reform of the Portuguese Securities Code.



The draft regulation proposes to revoke the following CMVM regulations and bring the matters addressed in these regulations together in a new regulation:

- CMVM Regulations 5/2008 and 7/2018 (which republished the former): reporting duties
- CMVM Regulation 3/2006: offerings and issuers
- CMVM Regulation 11/2005: scope of the International Accounting Standards
- CMVM Regulation 6/2002: presentation of financial information by segment

Legal Regime for Asset Management

- On January 16, Law 4/2023 was approved, aimed at approving the Legal Regime for Asset Management.
- This law will enable the government, through an authorized decree-law, to approve the asset management regime, as well as to introduce the necessary amendments to harmonize the current legal framework with the Portuguese Securities Code.
- The asset management regime will bring together all the asset management aspects, including venture capital and specialized investment activity, reducing the complexity of the types of entities and collective investment undertakings that currently exist and creating a regulatory regime that is more proportional to and appropriate for small management companies. The aim is to provide a more flexible and competitive regime for national and international market agents operating in Portugal.

4. Insolvency

Proposal for a directive to harmonize insolvency matters

On December 7, 2022, the European Commission published a [proposal for a directive on the harmonization of certain aspects of insolvency law](#).

The primary aim of the new proposal is to lessen the differences between the insolvency laws of



each Member State. The proposal for a directive essentially regulates three aspects:

➤ The recovery of the assets of the insolvent estate

A set of rules is proposed to (i) protect the insolvent estate; (ii) track the assets of the insolvent estate; (iii) regulate the pre-packaging procedures (aimed at expediting the sale of the insolvent company); and (iv) regulate the duty of directors to file for insolvency, where applicable.

➤ The efficiency of procedures

Specifically, the proposal aims to streamline the winding-up procedure for micro enterprises.

➤ The fair distribution of value among creditors

The proposal dedicates a separate title to the regulation of creditors' committees to favor the participation and safeguard the rights of creditors—particularly those of individual creditors—in insolvency proceedings.

The proposal for a directive should be processed in 2023 and, once adopted, transposed by each Member State.

5. Competition and EU law

AdC priorities for 2023

The AdC announced the priorities of its competition policy for 2023. As in previous years, the **AdC's main** priority will be to detect and punish competition-restricting practices, but with a greater focus, in 2023, on restrictions in labor markets and digital economic activities, as well as on the product and service markets that are more relevant in times of financial hardship and high inflation.

Generally, no slowdown is expected in AdC investigations and sanctions, especially given the entry into force of Law 17/2022 of August 17. This law transposes the ECN+ Directive, which increased the **AdC's** investigative powers.

The AdC's main competition policy priorities in 2023 are to:



- detect, investigate, and sanction anti-competitive abuses or practices with a more substantial impact on households and businesses, including cartels and other unlawful competition practices;
- continue investigating evidence of digital abuse and collusion through the work of the AdC's digital team, in close cooperation with other EU authorities;
- intensify the contribution to fostering an open and competitive labor market in which employers behave independently and competitively, thereby contributing to more innovation and opportunities for employees; and
- contribute, through an effective competition policy, to the ability of Portuguese companies to compete on merit in global value chains.

Developments in EU competition law

- At an EU level, multiple legislative changes are expected to have a direct impact on the economic activity of stakeholders and M&A transactions.
- To speed up the analysis of mergers that are unlikely to generate competition concerns and to enable the European Commission to focus on the most complex and important cases, between the first and second quarter of 2023, the European Commission will revise the merger control procedure, adopting new notification forms and new guidelines for the simplified merger analysis process. The main expected changes include (i) broader criteria and greater flexibility for a transaction to benefit from the simplified procedure, and (ii) a decrease in the amount of information required from companies.
- Between the second and third quarter of 2023, the European Commission will review its notice on the definition of relevant market, an essential instrument for identifying and defining the limits of competition between companies, providing a framework for the enforcement of competition rules. This amendment aims to introduce criteria other than **the “price factor”** for determining the relevant markets and will affect digital and technology markets in particular.
- In November 2022, the [Foreign Subsidies Regulation \(“FSR”\)](#) was adopted and will enter into force in mid-2023. This regulation empowers the European Commission to investigate financial contributions granted by public authorities of a third country and prevent these from distorting competition in the internal market. It also establishes notification obligations for companies receiving this support if certain criteria are met, whether in M&A transactions



or participation in public tenders, as well as *ex officio* investigation tools for the European Commission.

- May 2023 is the end of the transition period for companies to adapt and implement the internal measures and contractual changes necessary to comply with the [new Block Exemption Regulation for Vertical Agreements](#), which entered into force in June 2022, specifically as regards distribution agreements and their relationships with suppliers or B2B customers (see [Legal Flash](#)).
- New rules on cooperation agreements between competitors are expected to enter into force in January 2023, more specifically, the revision of the European Commission's Block Exemption Regulations applicable to R&D agreements and specialization agreements, and the accompanying Horizontal Guidelines. These changes aim to facilitate cooperation between companies, specifically on environmental and social sustainability issues, and provide new guidelines on information exchanges, mobile infrastructure sharing agreements, and tender consortia.

6. Labor

- The COVID-19 pandemic has brought about new ways of working that are here to stay, such as telework and smart work (which combines on-site work with telework).
- Working remotely for an employer based in a country other than the one where the employee is physically located will become increasingly common. This will give rise to “international telework” situations, which should be analyzed on a case-by-case basis, as they may have significant labor, tax, and social security implications.
- After the publication of the ordinance defining the terms for developing the “Four-Day Week,” a pilot program aimed at striking a better balance between personal and professional life and increasing productivity, observing the extent to which companies take up the program and the final outcomes of the project will be important to assess whether implementing the program definitively in the public and private sectors is feasible.
- The Decent Work Agenda (*Agenda do Trabalho Digno*) proposal was voted on by Parliament at the specialty stage, and amendments to the labor law are expected to enter into force in



2023. These will have a significant impact on several aspects of individual and collective labor relations, particularly in the following areas:

- Temporary work
 - Parenthood
 - Combating false self-employment
 - Term contracts
 - Digital platforms and algorithms
 - Collective bargaining agreements
 - Reconciling work, personal, and family life
 - Combating undeclared work
 - Protection of young employee-students and interns
 - Boosting the powers of the Working Conditions Authority (ACT) and administrative simplification
- > Among the amendments to the Portuguese Labor Code relating to the Decent Work Agenda (*Agenda do Trabalho Digno*) that have already been approved at the specialty stage, the following stand out:
- The amount paid by companies as compensation for the additional expenses incurred in telework should be stipulated in the employment contract or in the applicable collective bargaining agreement.
 - Companies cannot outsource in the 12 months after collective dismissals or redundancies of job positions.
 - The mandatory paternity leave increases from the current 20 working days to 28 consecutive or non-consecutive days.
 - The compensation payable to the employee for termination of a term employment contract will increase from 18 to 24 days of base remuneration and seniority allowance for each year of seniority.



- Employees can no longer waive the amounts due by the employer for the termination of their employment contracts.
- The minimum monthly guaranteed salary was increased to **€760.00**, as from of January 1, 2023.

7. Real estate

Property transfer tax

The following amendments were made to **property transfer tax** (“IMT”) by Law 24-D/2022 of December 30 (approving the state budget for 2023):

- IMT exemption on the purchase of buildings for resale

The IMT exemption regime for the purchase of buildings for resale established in article 7 of the IMT Code was amended. The exemption will apply if the taxpayer submits a certificate issued by the competent tax office proving that they usually and habitually engaged in the activity of purchase for resale in the previous two years. This certificate must certify that, in each of the past two years, at least one of the properties purchased for resale was resold. In the past, two possibilities were accepted: (i) the purchase of a property for resale, or (ii) the resale of a property purchased for that purpose - and proof of these operation was only required for the year before the transaction in question.

- Real estate swap – special regime

In real estate swaps, the rule that only the declared difference between the values of these assets — if higher than the difference between the taxable values—is considered the basis for assessing IMT does not apply to real estate transferred within one year of the swap date. In this case, and according to the new wording of article 12.6 of the IMT Code, “the original party who swapped the real estate must submit a declaration on the official form at the competent tax office within 30 days of the transfer date.”

- Rates

The IMT bracket limits were increased by 4%, but the marginal and average rates remain the



same.

Lease

> Limits on advance rents and security deposits

The law approving the state budget for 2023 made the following amendments to article 1076 of the Portuguese Civil Code:

- Advance rents: Advance rents may be paid by written agreement for a period not exceeding two months. Previously, the law established a limit of three months for advance rent payments.
- Security deposit: Parties can now only secure the performance of their obligations using any of the legally established ways up to the amount equivalent to two rents. The law did not establish any maximum limit for the security deposit.

> Limit on rent updates and extraordinary tax benefit for leases

On an exceptional basis, Law 19/2022 of October 21 established the following:

- > Two percent limit on rent updates in 2023: the law introduces a 2% limit for rent increases in land and property lease agreements entered into in or before December 2022 that do not stipulate a rent update regime or expressly refer to the annual rent coefficient determined by the INE.
- > This law establishes extraordinary personal income tax (PIT) and corporate income tax (CIT) relief on rental property income earned in 2023 and calculated in 2024. The objective of the law is to compensate landlords, as a maximum threshold of 2% for rent increases when applying the annual coefficient determined by the **National Statistics Institute** (“INE”) based on the consumer price index (excluding housing in the 12 months ending in August) would result in 5.43% increase. This benefit is granted to landlords for rents that fall due and paid in 2023, and part of the property income will be exempt from PIT and CIT (see [Legal Flash](#)).
- > Protecting historical stores

Law 1/2023 of January 9 extended—until December 31, 2027—the protection of historical stores that have transitioned to the NRAU. Regarding leases that have transitioned to the



NRAU, under the applicable law, landlords cannot oppose the renewal of the new contract entered into under the NRAU until December 31, 2027.

Deadline for land classification review

The “new” land classification and qualification rules established in the Law on the Bases for Land, Zoning and Urban Planning (LBPSOTU) called for an in-depth review of municipal and intermunicipal plans, specifically to eliminate the class of land called “**land for development.**”

In the meantime, Decree-Law 45/2022 of July 8 did the following:

- Extended the deadline to December 31, 2023, for municipalities and associations of municipalities to comply with their obligation to include the land classification and qualification rules in municipal and intermunicipal plans.
- Provided for the possibility of making the most of acts and formalities that have already been carried out—through a municipal council resolution to this effect—in cases where the procedure for preparing municipal plans has already expired. As the deadline for preparing municipal plans can only be extended once—for a maximum period identical to the previously established period—this possibility may be crucial for speeding up the process should the procedure deadline expire.

In addition, the non-inclusion of the land classification and qualification rules in municipal and intermunicipal plans by December 31, 2023, for reasons attributable to the municipality results in the suspension of the rules of the territorial plans in force in the area in question.

No acts or operations involving the occupation, use, and transformation of land may take place for the duration of the suspension unless the urbanization of this area was established in a detailed plan, urbanization/urban development contract, or in a building or allotment permit (See [Post](#))

Passive and renewable-source energy systems in the construction sector

In light of the decarbonization and energy transition goals for a more sustainable future, Decree-Law 84/2022 of December 9 established targets for the consumption of energy from renewable sources, completing the transposition of Directive (EU) 2018/2001 of the European Parliament



and of the Council into Portuguese law.

- Article 26 of this decree-law establishes a regime for promoting the use of renewable energy in municipal construction.

Article 26.2 states the following: “Intermunicipal and municipal zoning plans, when drawn up, amended or revised, as well as municipal regulations and other applicable construction laws and regulations, must include appropriate measures to increase the use of passive energy systems and, where necessary, energy from renewable sources in the construction sector, as well as promote the use of renewable energy-based heating and cooling systems and equipment that achieve a significant reduction in energy consumption.”

In this context, it provides that both municipal zoning plans and municipal regulations and other applicable laws and regulations on construction must provide for the use of the following:

“(a) of energy or eco-labels or other appropriate certificates or standards developed at a national or EU level, if any, as a basis for incentivizing these systems and equipment;

(b) in the case of biomass, of conversion technologies that achieve a conversion efficiency of at least 85% for residential and commercial applications and at least 70% for industrial applications;

(c) in the case of heat pumps, those complying with the requirements of the eco-labelling scheme established by Commission Decision 2007/742/EC of November 9, 2007, as amended, which establishes the ecological criteria for awarding the EU eco-label to heat pumps powered by electricity, gas, or gas-absorption;

(d) in the case of solar thermal energy, of certified equipment and systems based on European standards, if any, including eco-labels, energy labels, and other technical reference systems established by the European standardization bodies.”

- The provisions of article 26 on intermunicipal plans and municipal zoning plans, municipal regulations, and other construction regulations will take effect on January 1, 2024. Therefore, 2023 will be an important year for preparing the adjustment of these plans and regulations with a view to their coming into force in the following year. This legislation is a clear reflection of the current growing trend toward bringing the construction sector in line with sustainability objectives.



8. Public law and environment

Simplification of administrative activity

As part of the Simplex 2022 program, the government presented draft Decree-Law 169/XXII/2022, which aims to promote the simplification of administrative activity through the continuous elimination of unnecessary licenses, permits, and administrative acts. The final version of the decree-law is expected to be published in the second quarter of 2023, but the following environmental measures are to be brought forward:

- Reduction or elimination of situations that depend on a case-by-case analysis or in which environmental impact assessment is mandatory
- Elimination of the need to renew the environmental license
- Creation of the Single Environmental Report to simplify and dematerialize reporting obligations, including all monitoring related to environmental regimes within the competence of the Agência do Ambiente, I.P. and the regional coordination and development committees deriving from EU law
- Adoption of the principle of one water-resource-use title per operator

Prevention of soil contamination

In 2023, to safeguard the environment and human health, the government is expected to publish the legal regime for the prevention of soil contamination (PRoSolos), which will also include the following updates:

- Obligation to carry out an inventory of contaminated sites and draw up a timeframe for decontamination—independently of the soil quality assessment—and respective remediation.
- Soil quality assessment and remediation work, avoiding excessive, disproportionate, and overly taxing charges for owners that were not responsible for the contamination.



- > The state will assume the obligation to carry out a soil quality assessment and do any necessary remediation work, whenever it is not possible to identify the polluter or apply the liability principle, in every situation and not just in cases where the environmental issues constitute an imminent danger to public health or the environment.

9. Energy

Projects and initiatives for producing and storing energy from renewable sources

Within the context of adopting the exceptional measures for implementing projects and initiatives for producing and storing energy from renewable sources that will be in force until April 2024, the following developments are particularly important:

- > Urban development operations for projects up to and including 1 MW are exempt from prior urban development checks.
- > The setting-up of renewable energy production plants, storage facilities, UPACs, and facilities for the production of hydrogen through water electrolysis is now subject to prior control—by way of a prior notice—and does not require a prior information request.

10. Tax

State Budget for 2023

The law approving the State Budget for 2023 makes the following amendments:

- > PIT
 - Creation of a tax regime for crypto asset transactions, including the definition of crypto assets for PIT purposes: For category B purposes, commercial activities are now



considered to be those arising from transactions related to the issuance of crypto assets or validation of transactions through consensus mechanisms. Beyond this scope, capital gains deriving from crypto assets held for less than 365 days and capital income (which is exempt from withholding tax) are taxed.

- The PIT bracket limits are increased by 5.1%: the marginal rate of the second bracket is reduced from 23% to 21% and, consequently, the average rate in the remaining brackets decreases.
- Withholding tax: Withholding entities will now inform the effective monthly withholding tax rate on pay slips or pension payments. Withholding tax rates for employees and rates for the self-employed have been amended. The possibility of withholding tax reduction for home mortgage holders has been introduced.

> CIT

- Rise in eligible expenses incurred in connection with travel passes from 30% to 50% for the purpose of determining taxable income.
- Tax losses: There will no longer be a time limit for deducting tax losses. This amendment will apply to deductions from taxable profits for tax periods beginning on or after January 1, 2023, as well as to tax losses from tax periods before January 1, 2023, the deduction period for which is still in course on the date this law enters into force. The tax income base for deducting tax losses decreases from 70% to 65%. The need to submit an application to the tax authorities to justify the economic interest in a change in ownership of more than 50% of the share capital or voting rights is repealed.

A single 12-year period will now be considered for deducting the tax losses of permanent establishments located outside Portugal.

- Reduced CIT rate for small and medium-sized enterprises (“SMEs”): The threshold for applying the reduced CIT rate of 17% rises **from the first €25,000 to the first €50,000** of taxable income. This reduced rate will now apply to companies classified as small mid-cap (“SMC”).
- Autonomous levy: An autonomous levy of 10% was introduced for vehicles powered exclusively by electric energy with an acquisition value of over €62,500 (excluding VAT, if deductible). The autonomous levy rates for plug-in hybrid cars and light passenger vehicles powered by compressed natural gas will be reduced to 2.5%, 7.5%, and 15%, depending on the respective acquisition values.



The 10-percentage point increase in the case of a tax loss will not apply for the 2022 and 2023 tax years when (a) the taxpayer has obtained taxable profit in one of the three previous tax periods and complied with the reporting obligations established in articles 120 and 121 of the same code (Form22 and IES form) for the two previous tax periods; or (b) these correspond to the tax period in which the taxpayer started their activity or one of the two subsequent periods.

- Extraordinary relief regime for electricity and gas expenses: Introduction of the extraordinary relief regime for electricity and gas expenses, with the possibility of a 20% increase in the portion of the expenses incurred for electricity and natural gas consumption that exceeds those of the previous tax period (net of any relief already granted).
 - Extraordinary relief regime for agricultural production costs: Introduction of the extraordinary relief scheme for agricultural production costs, with the possibility of a 40% increase in expenses connected with the acquisition of agricultural goods (net of any relief already granted), such as fertilizers and similar products, flour and other goods for feeding animals intended for human consumption, irrigation water, and glass bottles.
- VAT - Circular Letter 30254/2023 of January 5
- VAT tax vacations – periodic declaration and payment: The deadline for filing the periodic VAT declaration and paying the VAT for the month of June and the 2nd quarter will move from the last day of August to September 20 and 25, respectively.
 - Special exemption regime—article 53 of the VAT Code—increased turnover limit: The limit on the application of the special exemption regime established in article 53 of the VAT Code will change progressively until it reaches €15,000. Therefore, this limit will be €13,500 in 2023, €14,500 in 2024, and €15,000 as of 2025 (inclusive).
- Tax Benefits Statute (“EBF”) and Investment Tax Code (“CFI”)
- Conventional share capital remuneration – article 41-A: The tax benefit for conventional share capital remuneration is revoked. For contributions made until December 31, 2022, the agreed share capital remuneration continues to apply to the amounts invested until that date.
 - Deduction for retained and reinvested earnings (“DLRR”): The DLRR tax benefit is repealed.



- Salary increase tax incentive – article 19-B: A 50% tax benefit is introduced for expenses related to salary increases (of at least 5.1% over the previous year and above the guaranteed minimum monthly remuneration) for employees with permanent contracts.
- Creation of the tax benefit incentive for company capitalization by replacing the conventional remuneration of share capital and DLRR – article 43-D and revoking of article 41-A: The new tax benefit incentive for company capitalization is created and provides for a deduction in taxable income by applying a rate of 4.5% (5% for SMCs) for eligible net equity capital increases. The deduction can be made during 10 tax periods and the portion that exceeds the 30% threshold of taxable EBITDA can be deducted in the following 5 periods with the application of that same limit in those periods. In each tax period, the deduction is limited to the higher of €2 million or 30% of tax EBITDA. It applies to contributions made in tax periods beginning on or after January 1, 2023.
- Tax benefits applicable to inland territories – article 41-B: A 20% increase is introduced for expenses related to the net creation of jobs for companies located in inland Portugal.

The 20% DLRR increase for investments in inland Portugal is revoked as a result of the revoking of the DLRR tax benefit.

- Investment support tax regime (RFAl): Increase from 25% to 30% of the relevant investments on the amount invested up to €15 million for determining the deduction from CIT taxable income, in the case of investments made in the eligible regions listed in the table in article 43.1 of the CFI.

> Stamp duty

- Free transfers of crypto assets are now subject to stamp duty, and crypto asset service providers are liable for brokerage commissions and charges. The crypto asset service provider's client bears the burden of the tax.
- Stamp duty exemption for loans created under the legal regime for housing loans: alteration and extension operations, as well as the signing of new contracts for debt refinancing, carried out between November 1, 2022, and December 31, 2023, are exempt from stamp duty.

> IMT

- See section 7 above on real estate



> Others

- Early access to retirement savings plans, education savings plans, and retirement/education savings plans: In 2023, the partial or total access to these plans is allowed in accordance with the conditions for the tax benefit. This access is exempt from the obligation not to withdraw the funds for a minimum period of five years and is not subject to the penalty established in article 21.4 of the EBF.

Making the tax calendar for invoices and inventories more flexible

Ordinance 8/2022-XXIII of December 13, 2022, establishes the following:

- > The deadline for reporting invoices in 2023 will move from the 12th to the 5th day of the month after the month in which the invoice is issued (amendment approved by the State Budget Law 2023, effective as of January 1, 2023). However, because of technology restrictions, the Secretary of State admits that the obligation to communicate invoices and other relevant tax documents can be fulfilled until the 8th day of the month after they are issued.
- > As regards reporting 2022 inventories, the ordinance provides that the obligation can be fulfilled up to February 28, 2023, or by the end of the second month after the end of the tax period (when this does not coincide with the calendar year).

Temporary solidarity contributions in energy and food distribution sectors

- > The law approving the state budget for 2023 regulated the application of the temporary solidarity contribution created by Regulation (UUE) 2022/1854 of October 6, on emergency intervention against high energy prices ("Energy TSC") and created the temporary solidarity contribution for the food distribution sector on emergency intervention to deal with inflation ("Food Distribution TSC").
- > TSCs are applicable in 2022 and 2023 to surplus profits exceeding 20% of the increase in the average taxable profits in the four tax periods from 2018 to 2021, at a 33% rate.



Changes to the forms for reporting tax obligations

- > The changes to the periodic income declaration (Form 22), its appendices, and its completion instructions were approved through Ordinance 47/2023 of January 3, 2023.
- > The new Form 44 - “Annual Communication of Rents Received” and completion instructions were approved by Ordinance 287/2022 of December 2. The Directorate of PIT Services subsequently issued Circular Letter 20246 of January 3, which contains additional clarification.
- > On January 3, the Directorate of PIT Services published Circular Letter 20247 on the changes to Form 25, Form 37, and Form 39 approved by the following ordinances:
 - Ordinance 288/2022 of December 2, which approved the new Form 25 - “Donations Received” and the respective completion instructions, to be filed as of January 1, 2023;
 - Ordinance 286/2022 of December 2, which approved the new Form 37 - “Permanent Housing Interest, Insurance Premiums, Health Expenses Co-payments, Retirement Savings Plans and Pension Funds and Supplementary Schemes” and its completion instructions, to be filed as of January 2023;
 - Ordinance 289/2022 of December 2, which approved the new Form 39 - “Income and Withholding Rates” and its completion instructions, to be filed as of January 2023.

11. Intellectual property

Designs

In November 2022, the European Commission presented proposals to amend the regulation and directive on designs (see [Legal Flash](#)).

This new legal framework aims to make the design protection system in the EU more appropriate for the digital age and substantially more accessible and efficient for individual designers, SMEs, and design-intensive industries, with a reduction in costs and inherent complexity, as well as greater speed.



The proposed reformulation of the Directive on the legal protection of designs will also introduce a “repair clause,” which will allow the reproduction of original designs for the purpose of repairing complex products, thereby contributing to open and increased competition in the spare parts market (of particular relevance in the vehicle sector). The goals of the European Commission’s new proposals are to:

- modernize, clarify, and strengthen protection for designs;
- make design protection more accessible to citizens and businesses across the EU;
- ensure greater compatibility and standardization of national and EU rules on design protection; and
- further harmonize EU design protection rules for spare parts.

Unified Patent Court

The Agreement on the Unified Patent Court (“AUPC”) provided for in the [Unitary Patent Regulation](#) is expected to enter into force in mid-2023.

The Unitary Patent Regulation will enter into force at the same time as the AUPC and together will establish a new avenue of patent protection in addition to national protection and “classic” EU patents.

Similarly, a new Unified Patent Court (“UPC”) will start working and Portugal will fall under its jurisdiction as a UPC Contracting State. This UPC will have exclusive jurisdiction over disputes relating to EU patents with unitary effect and “classic” EU patents if their holders have not opted out of UPC jurisdiction (which, in any case, will only be possible with regard to “classic” EU patents and during the transitional period established in the AUPC). Holders of “classical” EU patents that do not opt out of UPC jurisdiction will see disputes that would previously have come under the jurisdiction of the Portuguese Intellectual Property Court having to be submitted to the UPC.

Transposition of Directive (EU) 2019/790 of the European Parliament and of the Council of April 17, 2019, on copyright and related rights in the digital single market

The Portuguese Government approved Draft Law 52/XV in which it proposes to transpose into Portuguese law one of the long-awaited directives on copyright protection in the digital



environment. Two of the main amendments that transposing this directive will bring are (i) the creation of a new related right for press publishers regarding the use of their online publications by information society service providers, and (ii) the establishment of a regime applicable to the use of copyright-protected content by online content-sharing service providers.

This proposal was published on November 28, 2022, and it is expected to be discussed and approved in early 2023. The transposed directive regulates:

- > copyright exceptions to expand access to knowledge by introducing mandatory copyright exceptions to promote text and data mining, use works digitally for teaching illustration purposes, and preserve cultural heritage;
- > protection of press publications for online use;
- > Use of content protected by online content-sharing platforms;
- > fair remuneration for authors and performers;
- > transparency and revocation; and
- > modification of contracts.

12. Personal data and privacy

New adequacy decision for personal data transfers to the US

- > The draft adequacy decision approved by the European Commission on December 13, 2022, to legitimize the transfer of personal data to US companies that are certified by the US Government now comes under the scrutiny of the EDPB.
- > After the EDPB's opinion is issued, the draft must still be approved by a committee consisting of representatives from the EU member states and only then will the European Commission deliberate on it.
- > If this adequacy decision is issued, there are those who argue that it could be challenged again and lead to a **hypothetical** "Schrems III." However, until the European Court of Justice



issues its judgment, companies will be able to transfer data to the US under the conditions imposed by the adequacy decision without additional safeguards.

- This new agreement expects that the US Federal Government will implement mechanisms for EU citizens to lodge complaints about the use of their data, as well as establish greater restrictions on the use of these data by US intelligence agencies. Although the agreement has not yet been officially approved, it is expected to enter into force in 2023.

13. Digital and artificial intelligence

This year, the Digital Services Package rules will be (partially) implemented in practice.

Recently, the EU adopted the [DSA](#) and the [DMA](#), which are two complementary legislative initiatives of the European Commission aimed at creating a safer digital space where users' fundamental rights are protected and establishing a level playing field for businesses (see [Legal Flash](#)). Some of the provisions will apply as of 2023 and both the DSA and the DMA will enter into full force in 2024.

DMA

As of May 2, 2023, digital platforms that meet the criteria set in the DMA will have to notify the European Commission of their designation as a “gatekeeper.” These platforms will have six months from the time of this notice to adapt their practices to the obligations imposed by the DMA. Some of these obligations will result in significant changes to these companies' **business** models.

Among other measures, gatekeepers are prevented from favoring their own or third-party services on the platform in a discriminatory manner. They are also now covered by duties of interoperability and reporting to the European Commission of acquisitions/mergers in the digital sector.

According to the DMA, gatekeepers will have to:



- ensure that users are entitled to unsubscribe from the platform's core services in a similar way to subscribing them;
- allow application developers fair access to the additional functionalities of smartphones (e.g., NFC chip); and
- give sellers access to their marketing or advertising performance data on the platform.

DSA

Digital platforms are required to publish their average number of active users by February 17, 2023. Based on these figures, the European Commission will designate which large online platforms and services are subject to the DSA obligations. These companies will then have four months to comply with the obligations established in this regulation, which aims to increase their transparency and provide ammunition for the fight against the dissemination of unlawful content and the detection and mitigation of systemic risks caused by the use of these services.

The regulation that establishes the DSA will apply in full to all online intermediary services as of February 17, 2024. This will require a comprehensive adaptation of services, terms and conditions of use, and reporting mechanisms, including due diligence obligations to establish mechanisms for reporting and removing unlawful content, collaboration in identifying third parties that provide services for final consumers (marketplaces), and carrying out independent audits.

Specifically, the DSA contains:

- measures to combat unlawful online services or content;
- new measures to empower users and civil society, including the ability to challenge content moderation decisions of these platforms and transparency measures;
- risk assessment and mitigation measures; and
- enhanced European Commission supervision and enforcement for large online platforms.

Artificial Intelligence Regulation

The proposal for a Regulation of the European Parliament and of the Council laying down harmonized rules on artificial intelligence—also known as the [Artificial Intelligence Act](#)—aims to establish a harmonized regulatory framework for this matter.



These rules, which are likely to become a global standard for regulating artificial intelligence (“AI”), aim to create an “ecosystem of trust” for managing the risks posed by AI and prioritize human rights in AI development and deployment. The legislative process has been lengthy. However, after almost two years, the proposal is expected to be approved, and the regulation will enter into force by the end of the year.

The AI regulation uses a risk-based approach to determine both the obligations and penalties for the different types of systems. Consequently, systems are classified as low or minimal risk, limited risk, high risk, or unacceptable risk:

- Low-risk systems constitute the majority of the systems currently in use in the market. These systems have no obligations under the regulation in its current form.
- Limited-risk systems are those that (i) interact with humans, (ii) detect humans or categorize a person based on biometric data, or (iii) produce manipulated content.

The obligations for these systems relate to transparency. Users must be informed that they are interacting with an AI system, that an AI system will be used to infer their characteristics or emotions, or that the content they are interacting with was generated using AI.

- High-risk systems are those that can have a significant impact on a user’s life. Stringent requirements must be met for these systems to be deployed in the EU market.
- Unacceptable-risk systems are prohibited and cannot be sold on the EU market.

14. Cybersecurity

NSI Directive 2

- The final version of [Directive \(EU\) 2022/2555](#) of the European Parliament and of the Council of December 14, 2022 on measures for high common level of cybersecurity across the Union, amending Regulation (EU) 910/2014 and Directive (EU) 2018/1972, and repealing Directive (EU) 2016/1148 (also known as the NIS 2 Directive) was adopted and published in December 2022. The NIS 2 Directive entered into force on January 16, 2023.
- Therefore, the NIS 2 Directive will become the new reference standard for cybersecurity in the EU. This new directive is essentially an update of the previous one, meaning most of its



current content will remain in force or undergo only minor changes. This directive aims to harmonize cybersecurity requirements and the implementation of cybersecurity measures across the Member States. To achieve this, it establishes minimum rules for a regulatory framework and mechanisms for effective cooperation between the competent authorities of the Member States. It also updates the list of sectors and activities subject to cybersecurity obligations, which establish remedies and penalties to ensure effective compliance.

- > In addition, the European Cyber Crisis Liaison Organization Network (EU-CyCLONe) will be formally created. Its main goal will be to provide support for the coordinated management of large-scale cybersecurity incidents.
- > Another important development is the introduction of a new criterion to determine which essential service operators will be considered as such: the size-cap rule. In other words, all medium and large entities that operate or provide services in the sectors covered by the regulation will fall within its scope. This amendment is important because it eliminates the margin of appreciation that the previous NIS directive granted to Member States to determine the regulatory criteria for considering operators as essential service operators.
- > This new legislation will not apply to entities operating in the field of national defense or security, public security, law enforcement, and the judiciary sector; this exclusion will also apply to the activities of parliaments and central banks. Central and regional public administration bodies will also be covered by the NIS 2 Directive. However, it will be for Member States to decide whether it will apply at a local level.
- > To avoid excessive notifications and to ensure the entities covered by the regulation are not overburdened, the NIS 2 Directive simplifies the notification obligations.

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