



## New Legal Regime for Economic Offenses (RJCE)

On 29 January 2021, Decree-Law No. 9/2021 was published in the Diário da República, which establishes the Legal Regime for Economic Administrative (Non-criminal) Offenses (RJCE).

Its primary objective is to solve problems of “inconsistency” in the sanctioning regimes provided for in the various statutes that regulate economic activity. For this reason, the RJCE makes changes to a wide range of legislation that covers economic offenses within the scope of economic activity, to achieve the desired uniformity.

This law defines an economic offense as *“any illegal and objectionable fact that corresponds to a violation of legal and regulatory provisions, relating to the access to or exercise of economic activities by any natural or legal person in the food and non-food sectors and for which a fine is imposed”*.

This notion is complemented by the exclusion of specific offenses in the environmental, financial, tax

and customs, communications, competition, and social security sectors.

The following novelties are highlighted:

- **A new classification of the economic offenses** covered by the RJCE, according to their severity and the relevance of the protected legal assets, as “light”, “serious” and “very serious”;
- The **amounts of the fines are dependent on their classification**, and on **the type of agent**;
- **The liability of legal persons** is extended, making them responsible for the acts performed, by themselves or on their behalf, either by the members of their corporate bodies, people in managerial or leadership positions, by their employees who act in the exercise of their duties, or by their representatives;
- **In terms of the statute of limitations**, a number of grounds for interruption or suspension are included, a **common period of five years** is established for serious and very serious offenses, and **three years** for minor offenses;

- **Precautionary measures are extended and reinforced**, namely, in the case of the exercise of activities or practices through websites, establishing the possibility of: (i) withdrawing content; (ii) restricting access to an online interface; (iii) mandating the display of alerts for consumers when they access the online interface; and (iv) service providers blocking the website in question's access to the internet, without prejudice to the communication of this measure to the central supervisory entity, under the terms of the law applicable to electronic commerce.

The pieces of legislation amended by the RJCE are mainly related to the following sectors: consumption, sport, gambling, money laundering prevention, intellectual property, health, and wine. It is worth highlighting some matters that now fall under a new sanctioning framework:

- The **price indication** regime, which now categorizes infringements related to forms of price indication and exposure, written or printed catalog advertising, and joint/batch sales as serious economic offenses;
- **The sale of consumer goods and guarantees**, where the failure to repair or replace the goods and the failure to comply with guarantee requirements are now serious economic offenses;
- Infringements related to the manufacture and marketing **of fruit juices and certain similar products** that are now serious economic offenses;

- **The wine sector**, whose infringement regime now foresees the violation of rules in terms of e.g. production, labeling, transport and use of designation of origin and geographical indication as serious economic and very serious economic offenses;
- The rules regarding **pre-packaged products**;
- **Contracts for the purchase and sale or supply of foodstuffs**, where payment and deadline defaults constitute serious economic offenses;
- Regarding the regime related to **Individual Restrictive Trade Practices (PIRC)**, it was adjusted according to the new classification of offenses according to their severity, although the measures of the applicable fines have not changed. Considering the considerable amounts that the fines may reach, it is necessary to consider the innovative aspects of the RJCE, namely the regime related to the liability for economic offenses and the regime related to the publication of the court decision.

As for the now approved and published sanctioning framework, the RJCE sets the minimum and maximum limits for fines, which vary according to the classification of the economic offense and the agent's singular or collective nature.

When there is an infringement by a legal person, minimum and maximum limits of fines are also established, depending on their size: "micro company", "small company", "medium company" or "large company"

These minimum and maximum limits vary between € 150 (minimum fine for a natural person for a minor offense) and € 90,000 (maximum fine for a large company for a very serious offense), as included in the following table:

Fines - minimum and maximum limits					
Offence	Dimension of the legal person				
	Natural person	Micro-enterprise	Small enterprise	Medium enterprise	Large enterprise
Light	€ 150 - € 500	€ 250 - € 1,500	€ 600 - € 4,000	€ 1,250 - € 8,000	€ 1,500 - € 12,000
Severe	€ 650 - € 1,500	€ 1,700 - € 3,000	€ 4,000 - € 8,000	€ 8,000 - € 16,000	€ 12,000 - € 24,000
Very Severe	€ 2,000 - € 7,500	€ 3,000 - € 11,500	€ 8,000 - € 30,000	€ 16,000 - € 60,000	€ 24,000 - € 90,000

In this new harmonizing and sanctioning framework, both **attempt** and **negligence** become punishable, although the size of the applicable fines is, as a rule, **half** that which was initially foreseen in each piece of legislation. In turn, the average fines applicable to **serious and very serious** offenses are **doubled**, when damage to the health or safety of people or property is at stake, or when the economic benefit generated by the infringement is greater than the maximum applicable fine, and there are no other means to remove this benefit.

Additionally, accessory sanctions are included, such as, for example, the prohibition of exercising professional activity; withdrawal of the right to participate in national or international conferences, fairs or markets, in order to buy / sell or advertise products or activities; withdrawal of the right to participate in public contracts; the closure of the establishment; withdrawal of the right to tax benefits, credit benefits or lines of credit; the suspension of licenses, permits or authorizations related to the exercise of the activity in question.

Despite this worsening of the sanctioning framework, this new legal regime also includes a list of specific situations that justify the mitigation of the sanctions provided for therein:

- (i) In cases where there are circumstances that markedly reduce the unlawfulness of the act, the fault of the agent or the need to impose a fine, the possibility of a **special mitigation of the fine** is foreseen, which means a reduction of the applicable minimum and maximum limits by half. In cases where the agent repairs the damage and stops the illegal conduct, mitigation is mandatory;
- (ii) Provision is made for the possibility of an admonition decision replacing the fine, in cases of minor offenses, and the possibility of suspending the execution of the accessory sanctions applied;
- (iii) When there is **voluntary payment** of the fine, prior to taking an administrative decision, a 20% reduction in the minimum amount of the fine is foreseen, regardless of the classification of the offense, and the payment of costs are reduced by half when the accused makes the payment during the period allowed for the presentation of the defense.

The RJCE consolidates several previously separate pieces of legislation, while adopting some new solutions. Thus, it constitutes a special economic offense regime applicable across a wide number of economic offenses, covering the most diverse domains. In the alternative, the RGCO will apply, which the RJCE makes reference to.

Decree-Law no. 9/2021 comes into force 180 days after its publication, that is, on 28 July 2021, with ASAE being the competent entity for the inspection, instruction, and decision of processes.

**SRS has a team dedicated to consumer issues, at your disposal for any clarifications.**

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