

# **REGULATION FOR THE MANAGEMENT OF REPORTING ILLEGAL ACTIVITY AND THE PROTECTION OF THE REPORTER (WHISTLEBLOWER)**

## **1. General Information**

With legislative decree 10 March 2023, n. 24 (hereinafter "Decree"), EU Directive 2019/1937 concerning "the protection of people who report violations of Union Law" (so-called whistleblowing discipline) has been transposed into Italian law.

The objective of this legislation is to combat and prevent the enactment of illegal activity in public and private organizations, encouraging the reporting of illegal conduct - of which the whistleblower has become aware within his working context - which can create damage to the belonging entity and which can cause damage to the community.

The legislation protects the whistleblower and this protection extends to subjects other than those who make the report, such as the facilitator or the people mentioned in the report, confirming the legislator's intention to create conditions to guard legality in the company's interest.

The legislation was completed with the ANAC Guidelines (hereinafter "LG ANAC"), adopted by a resolution of 12 July 2023, establishing procedures for the presentation and management of external reports, as well as indications and principles to be considered for the internal channels of public and private entities.

The purpose of this Regulation is to discipline the procedure of Management of reporting of illegal activity and to disclose how the entity guarantees the protection of the whistleblower and the subjects mentioned in the report.

## **2. Persons entitled to protection**

### *2.1 Individuals who are protected in case of reporting, denunciation or public disclosure in the private sector*

New discipline's protection is guaranteed to the individuals:

- **Employed persons**, including:
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  - Workers whose employment relationship is regulated by Legislative Decree no. 81/2015. It concerns, for example, part-time, intermittent, fixed-term, outplacement, apprenticeship employments and casual work;

- Workers who carry out occasional services (whose employment relationship is regulated by art. 54-bis of Legislative Decree no. 50/2017, converted with mm.ii. by Law no. 96/2017).
- **Self-employed workers, including:**
  - Self-employed workers specified in Chapter I of the Law. n. 81/2017. It concerns workers with independent employment relationships, regulated by Title III of Book V of the Civil Code, including work contracts referred to in art. 2222 of the same civil code;
  - Holders of a collaboration relationship referred to in art. 409 of the Civil Procedure Code. It refers to agency relationships, commercial representation and other collaborative relationships with a continuous and coordinated performance of work, predominantly personal, even if not of a subordinated nature;
  - Holders of a collaboration relationship referred to in art. 2 of Legislative Decree no. 81/2015. It concerns - pursuant to co. 1 of the aforementioned law - collaborations organized by the client, which take the form of exclusively personal and continuous work, the methods of execution of which are organized by the client.
- **Freelancers and consultants** who may be in a privileged position to report violations, which they witness.
- **Volunteers and interns**, paid and unpaid, who still risk suffering retaliation for reporting violations. Retaliation against these individuals could take the form, for example, of no longer using their services, giving them negative work references, or otherwise damaging their reputation or career prospects.
- **Shareholders (individuals)** who hold shares and who have become aware of the reported violations in the exercise of the rights they hold by virtue of their role as shareholders in the company;
- **Persons with administrative, management, control, supervisory or representation functions**, even if these functions are exercised merely by private sector entities. It concerns subjects, connected in a broad sense to the organization, in which the violation occurs and in which they exercise certain functions, even in the absence of regular investiture (de facto exercise of functions): for example, the members of the Boards of Directors, even without executive positions, or members of the Supervisory Boards.

It is specified, that the regulation also applies in the case of reports, that occur in the context of an employment relationship that is subsequently terminated, if the information was acquired during its carrying out, as well as if the relationship has not yet begun and the information of the violations has been acquired during selection or in other pre-contractual phases.

Protection is also extended to individuals who support the whistleblower.

It concerns the following individuals/entities:

- **Facilitator**, an individual who assists the reporter in the reporting process, operating within the same work environment and whose assistance must be kept confidential.
- **Persons from the same work environment as the whistleblower**, complainant or person making a public disclosure and who are **related to them by a stable emotional or kinship relationship within the fourth degree**.
- **Work colleagues of the whistleblower**, complainant or person making a public disclosure **who work in the same work environment** as that person and who have a **usual and current relationship** with that person.
- **Entities - owned-exclusively or in majority third-party partnership - of the whistleblower**, complainant or public discloser. Entities where the whistleblower, complainant or public discloser work (Art. 3, par. 5, letter d)).
- Entities that operate in the same work environment as **the whistleblower**, complainant or public discloser.

### **3. Subjects of the report**

Particularly, the reports may relate to the violations summarized below:

#### **Violations provisions of national law**

This category includes criminal, civil, administrative or accounting illegal activities other than those specifically identified as violations of EU law.

Secondly, the violations under consideration could be:

- the predicate offenses within the scope of Decree 231;
- violations of the organization and management models as per the aforementioned Decree 231, which are also not attributable to violations of EU law.

#### **Violations of European regulations**

It concerns:

- **illegal activities committed in violation of the EU regulations** listed in Annex 1 to the Decree and **all national laws implementing them**

Particularly, these are illegal activities related to the following areas: (i) public contracts; (ii) financial services, products, and markets and prevention of money laundering and terrorist financing; (iii) product safety and compliance; (iv) transportation safety; (v) environmental protection; radiation protection and nuclear safety; (vi) food and feed safety and animal health and welfare; (vii) public health; (viii) consumer protection; and (ix) privacy and data protection and network and information system security.

For example, consider so-called environmental crimes, such as, discharge, emission or other releases of hazardous materials into the air, soil or water, or unlawful collection, transportation, recovery or disposal of hazardous waste

- **acts or omissions, affecting the financial interests of the European Union** (Art. 325 TFEU fight against fraud and illegal activities affecting the financial interests of the EU) as identified in EU regulations, directives, decisions, recommendations and opinions.  
For example, consider: fraud, corruption, and any other illegal activities related to EU expenditures;
- **acts or omissions relating to the internal market, that impair the free movement of goods, persons, services and capital** (Article 26(2) TFEU). This includes violations of EU competition and state aid rules, corporate tax, and mechanisms whose purpose is to obtain a tax advantage that frustrates the object or purpose of the applicable corporate tax law;
- **acts or conduct that frustrate the object or purpose of EU provisions in the areas indicated in the preceding points.** This includes, for example, abusive practices as defined by the case law of the Court of Justice of the EU. Consider, for example, a company operating in a dominant market position. The law does not prevent this company from gaining, through its own merits and abilities, a dominant position in a market, or from ensuring that less efficient competitors remain in the market. However, this company could undermine, by its conduct, effective and fair competition in the internal market through the use of so-called abusive practices (adoption of so-called predatory pricing, target discounts, tying sales) contravening the protection of free competition.

In this respect, it should be noted that, in the public sector, reports may relate to violations inherent in national law as indicated above (thus criminal, civil, administrative, or accounting offenses, 231 offenses and violations of the Organizational Model 231) and European law in the matters indicated above.

For the private sector, reports can only concern violations of national regulations concerning 231 offenses and violations of the Organizational Model 231, as well as those concerning European law in the above-mentioned matters.

Secondly, **reports are excluded from the scope of the new regulations if they are:**

- related to a personal interest of the reporter, which pertains to his or her working relationships, or inherent in working relationships with hierarchically superordinate figures (e.g., labour disputes, discrimination, interpersonal conflicts between colleagues, reports on data processing carried out in the context of the individual working relationship in the absence of an injury to the public interest or the integrity of the private entity or public administration);
- related to matters of national security and defense;
- related to violations already mandatorily regulated in certain special sectors, to which the ad-hoc reporting regulations continue to apply (financial services, money laundering prevention, terrorism, transportation safety, environmental protection).

#### **4. Content of the report**

Reports are defined as information, including well-founded suspicions, about violations that have already been committed or have not yet been committed (but which, on the basis of concrete evidence, could be committed), as well as conduct aimed at concealing them (e.g., concealment or destruction of evidence).

These must be behaviours, acts or omissions of which the whistleblower or the complainant **became aware in the work context**.

Concerning the meaning to be attributed to "work context," according to the Decree and LG ANAC, it is necessary to refer to a broad scope of application and not limited to those who have an employment relationship "in the strict sense"

with the organization. It refers, indeed, to consultants, collaborators, volunteers, trainees, shareholders, and persons with administrative, management, control, supervisory or representative functions. In this regard, regarding shareholders, the ANAC LGs clarify the perimeter of application of the discipline and, in particular, of the reports, specifying that these are "those who have become aware of violations subject to reporting in the exercise of the rights they have because of their role as company shareholders."

As for the content, reports should be as detailed as possible to enable evaluation of the facts by those responsible for receiving and handling the reports themselves.

In particular, **the following essential elements of the report must be clear:**

- the circumstances of time and place in which the event, that is the subject of the report, occurred;
- the description of the fact;
- the particulars or other elements that would make it possible to identify the person to whom the reported facts can be attributed.

It is also useful for the report to be accompanied by documents that may provide evidence of the facts being reported, as well as an indication of other individuals potentially aware of the facts.

**It is important to notice, that situations of a personal nature, that do not constitute a predicate offense and false reports for the sole purpose of causing harm to the organization and/or colleagues and superiors, cannot be handled through the tool described herein.**

## **5. Reporting channels**

The Decree regulates the channels and methods to be employed when making a report.

In particular, concerning possible channels, three cases are distinguished:

- a. reporting through an **internal channel** within the entity;
- b. reporting through a **channel external** to the entity, established and managed by ANAC;
- c. **public disclosure**.

The internal reporting channel ensures the confidentiality of the identity of the reporter and the persons involved, the content of the report, and related documentation.

Article 4 of the Decree stipulates that reports can be made in several ways: (i) **in written form**: analog or computer-based; (ii) **in oral form**, through dedicated telephone lines or voice messaging systems and, at the request of the

reporter, through a face-to-face meeting with the report handler, which must be scheduled within a reasonable time (within 10 days of the reporter's request).

**Vulcaflex** has adopted XDATANET's **WHISTLETECH** platform, which guarantees the anonymity of the reporter, whether the report is in written or oral form.

Below the link: <https://vulcaflex.whistletech.online/>

The entity in charge of handling the reports described above is the **Supervisory Board** currently appointed by the organization.

## **6. Report management**

### *Receipt of the report*

**Within 7 (seven) days** of the submission of the report, the manager shall issue the reporter with an **acknowledgment of the receipt** of the communication. Once the phase related to the transmission of the acknowledgment of receipt is completed, a preliminary examination of the report received, its eligibility, and admissibility is carried out.

In order to initiate the proceedings, the reporting handler must first verify the existence of certain prerequisites and, specifically, (i) **to reach all the necessary admissibility criteria, it is necessary that the following points are included in the report in a clear manner:**

- circumstances of time and place in which the fact that is the subject of the report occurred and, therefore, a description of the facts that are the subject of the report, containing details of the circumstantial news and, if any, also the manner in which the reporter became aware of the facts;
- the generality or other elements that would make it possible to identify the person to whom the reported facts can be attributed.

In light of these indications, the report can, therefore, be deemed **inadmissible** for:

- lack of data constituting the above-mentioned essential elements of the report;
- manifest groundlessness of the facts attributable to the violations typified by the legislature;
- exposure of facts of broad and unspecific nature, such that the departments or entities in charge cannot understand them
- production of exclusively documentation without actual reporting of

violations.

Once the assessment activity is completed, the reporting handler may dismiss the report as unfounded, giving reasons, or declare the report well-founded and refer it to the relevant internal organs/functions for follow-up. Specifically, the report handler is not responsible for any assessment regarding individual responsibilities and any subsequent measures or proceedings.

During the inquiry and investigation phases of the report, the confidentiality of the identity of the reporting person, the reported person and all persons involved and/or mentioned in the report must be protected.

Within **3 (three) months** of the receipt acknowledgment date, the reporting handler must provide feedback to the reporter. In this regard, it should be specified that it is not necessary to conclude the assessment activity within the three months, considering that there may be cases that require, for verification purposes, a longer time.

Therefore, it is a feedback that, at the expiration of the specified time limit, may be **final if the investigation is completed or of an interlocutory nature, on the progress of the investigation, if not yet completed.**

## **7. Protection of the Reporter and related parties**

One of the main focuses of the whistleblowing discipline is the protection of the whistleblower for reports made in compliance with the discipline.

Specifically, the Decree establishes:

- the obligation to keep the identity of the reporter confidential;
- the prohibition of retaliatory acts against the reporter;
- the limitation of the reporter's liability for the collection or diffusion of certain types of protected information

These protective measures, apply not only to the reporting person but also to other individuals who could be the recipients of retaliation, because of the role assumed in the event or the particular proximity or relationship with the reporting person.

Confidentiality must be guaranteed for every mode of reporting, therefore, even when said reporting takes place in oral form (e.g. telephone lines, voice messaging, face-to-face meeting).

As part of the disciplinary proceedings initiated by the entity against the alleged perpetrator of the reported conduct, if the charge is based (in whole or in part) on the report and the identity of the reporter is indispensable to the defense of the person charged with the disciplinary action or the person otherwise involved in the report, said identity will be usable for the purposes of the disciplinary



proceedings only with the express consent of the reporting person to the disclosure of his or her identity.

**In such cases, prior notice shall be given to the reporting person, by written communication, of the reasons that make it necessary to disclose the confidential data.**

**If the reporting party denies consent, the report cannot be used in the disciplinary proceeding, which, therefore, cannot be initiated or continued in the absence of additional elements on which to base the challenge.**

**In any case, the entity's right to proceed with a complaint to the judicial authority remains unaffected, if the prerequisites are met.**

The Decree prohibits any form of retaliation against the whistleblower, understood as any behavior, act or omission, even if only attempted or threatened, that occurs in the work context and that causes-directly or indirectly-unjust damage to the protected subjects.

Examples of retaliation may include:

- a) dismissal, suspension or equivalent measures;
- b) demotion in grade or non-promotion;
- c) change of duties, change of workplace, reduction of salary, change of working hours;
- d) suspension of training or any restriction of access to it;
- e) negative merit notes or negative references;
- f) the adoption of disciplinary measures or other sanctions, including fines;
- g) coercion, intimidation, harassment or ostracism;
- h) discrimination or otherwise unfavorable treatment;
- i) the failure to convert a fixed-term employment contract into an permanent employment contract, where the employee had a legitimate expectation of such conversion;
- j) the non-renewal or early termination of a fixed-term employment contract;
- m) damage, including to a person's reputation, particularly on social media, or economic or financial harm, including loss of economic opportunities and loss of income;
- n) improper listing on the basis of a formal or informal sectoral or industry agreement, which may result in the person being unable to find employment in the sector or industry in the future;
- o) the early termination or cancellation of the contract for the supply of goods

or services;

- p) the cancellation of a license or permit;
- q) the request to undergo psychiatric or medical examinations.

## **8. Limitations of liability for the reporter**

Further protection accorded by the Decree to the reporter is the limitation of his liability with respect to the disclosure and dissemination of certain categories of information, which would otherwise expose him to criminal, civil and administrative liability.

Specifically, the reporter will not be held accountable either criminally, civilly or administratively for:

- disclosure and use of official secrets (Article 326 of the Criminal Code);
- disclosure of professional secrecy (Article 622 of the Criminal Code);
- disclosure of scientific and industrial secrets (Article 623 of the Criminal Code);
- breach of duty of fidelity and loyalty (Article 2105 Civil Code);
- of violation of the provisions on copyright protection;
- violation of the provisions on personal data protection;
- disclosure or dissemination of information about violations that harm the reputation of the person involved.

However, the Decree places two conditions on the implementation of the above limitations of liability: 1) at the time of disclosure or dissemination there are reasonable grounds to believe that the information is necessary to disclose the reported violation; 2) the report is made in compliance with the conditions provided by the Decree to be protected from retaliation (well-founded reasons for believing the reported facts to be true, the violation is among those that can be reported, and the terms and conditions of access to the report are complied with).