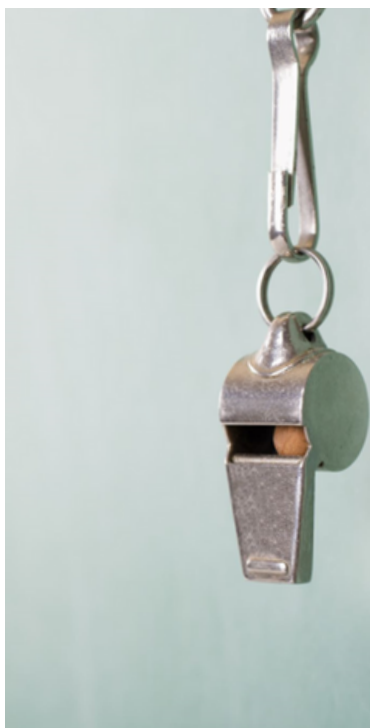


LEGISLATIVE DECREE NO. 24 OF 10 MARCH 2023 – TRANSPOSITION OF EU DIRECTIVE 2019/1937

NEWSLETTER NO. 8/2023



On 30 March 2023 Legislative Decree no. 24 of 10 March 2023 was enacted. It transposed law in the Italian legal system EU Directive no. 2019/1973 on the protection of persons who report breaches of Union law. The Decree contains provisions on the protection of persons that report who report breaches of national law (Whistleblowing Directive) and it will become effective based on entity to which it applies, on 15 July 2023 or 17 December 2023, respectively

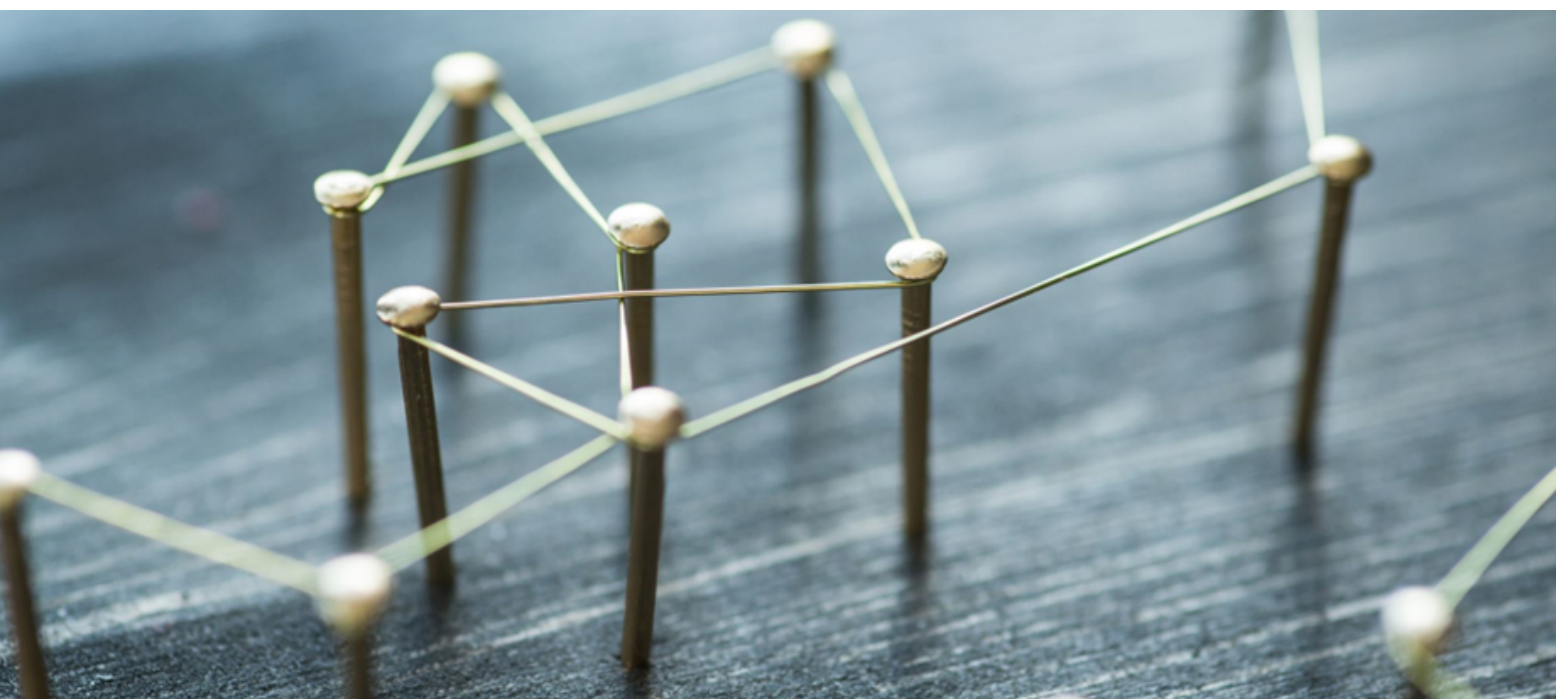
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MATERIAL SCOPE OF APPLICATION

Protection is guaranteed to persons that report breaches of national and Union law that are harmful to the public interest or the integrity of a government authority or private entity, which they became aware of in the context of government or private employment (for instance, accounting, administrative, civil-law or criminal law infringements, breaches of the Organization Model under Leg. Dec. 231/2001, actions or omissions that are harmful to the financial interests of the EU, breaches of competition regulations).



PERSONAL SCOPE OF APPLICATION

STATE SECTOR:

- Government authorities and agencies;
- Independent administrative supervisory and regulatory authorities;
- Public institution of commercial nature;
- Private institutions subjected to state control under article 2359 of the Italian civil code;
- In-house companies;
- Bodies governed by private law;
- Licensed operators of public services.



PRIVATE SECTOR:

- Entities that in the last year had an average headcount on payroll of at least 50 people hired with fixed-term or permanent employment contracts;
- Entities that in the last year did not have an average headcount of 50 but nonetheless fall under the scope of application of the Union acts referred to in Sections I.B and II of the Annex to Leg. Dec. 24/2023 (financial services, products and markets and prevention -of money-laundering and terrorism financing, and sale and use of sensitive and hazardous products);
- Entities that in the last year did not have an average headcount of 50 but adopted an Organization Model under Leg. Dec. 231/2001.





INTERNAL REPORTING CHANNEL

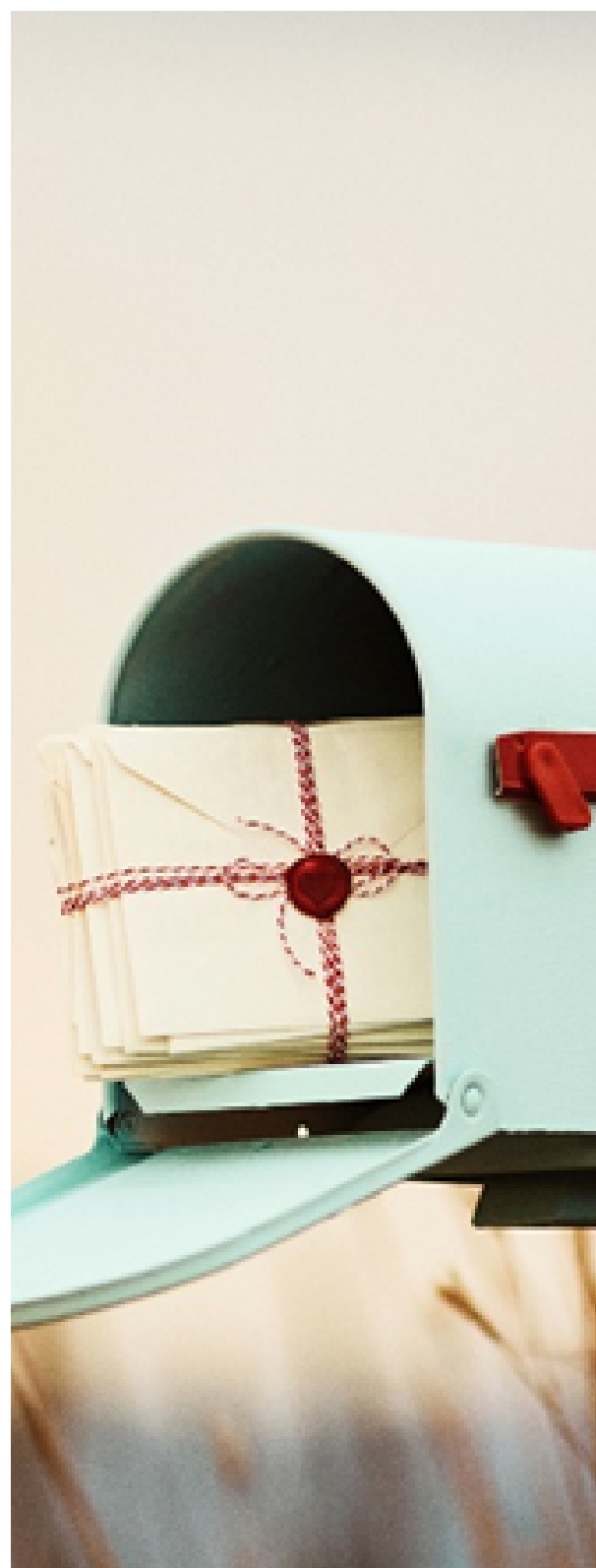
Entities to which the provisions apply are required to introduce operating internal reporting channels, which ensure confidentiality - including by resorting to encryption tools - of the identity of the reporting person, the person involved, the person mentioned in the report, the content of the report and any related documents.

Reports may be in writing (including with IT tools) or oral (voice messaging services, telephone hotline, or in person meeting).

Operation of the reporting channel must be entrusted to a dedicated person or office with staff appropriately trained to operate the channel or to an external party, such as the external member of the Surveillance Committee under the 231 Organization Model.

Within 7 days after receiving the report, confirmation of receipt must be sent to the reporting person and within 3 months after such date feedback on the report must be given.

Required parties must give appropriate disclosure on the reporting channel they adopted, the procedure, and conditions for reporting.





EXTERNAL REPORTING CHANNEL

ANAC (Italy's anti-corruption agency) is expected to set up an external reporting channel, ensuring confidentiality of the reporting person's identity, the content of the report and of any documents, including through encryption tools, that may be resorted to in the following cases:

- When an internal reporting channel is not required or operating;
- When the internal report was not followed up;
- When the reporting person has reasonable grounds to believe that the internal report was not effective and there is a risk of retaliation;
- When a reporting person has reasonable grounds to believe that the breach may cause harm to the public interest.

Reports through the external channel may be in writing through a dedicated IT system, or oral through telephone lines or voice messaging services or in-person meetings with a dedicated person (upon the reporting person's request).

Within 7 days after receiving the report, the reporting person must be sent confirmation of receipt and within 3 months the reporting person must receive feedback.

If there are justified reasons, within 6 months after receiving the report, ANAC must notify the reporting person of the final outcome.

By 30 June 2023, ANAC will publish guidelines for the procedures to handle external reports.



PUBLIC DISCLOSURE

Public disclosure is admitted when:

- Further to an internal or external report no action is taken in the following 3 months;
- There are reasonable grounds to believe that there is an imminent harm to the public interest.

CONFIDENTIALITY OBLIGATION

A strict confidentiality obligation applies as to the reporting person, whose identity shall not be disclosed to parties other than persons authorized to receive and handle the report. The identity of the reporting person cannot be disclosed without their express consent.



PROTECTION MEASURES FOR THE WHISTLEBLOWER

Protection measures to the benefit of the whistleblower apply:

- At the time of the report or compliant to the judicial or audit authorities or of the public disclosure, the reporting or complaining person had reasonable grounds to believe that information on reported breaches were true and fell within the material scope of application of the regulations under review;
- The report or public disclosure was made in compliance with the procedures in the Decree.

Protection measures also apply to cases of anonymous reports or disclosure to government authorities, on condition that at a later time the reporting person was identified and suffered from retaliation.

Instead, no protection measures apply to the reporting person if their criminal liability is established for the offenses defamation or slander, or civil liability for willful misconduct or gross negligence.

SANCTIONING REGIME

In the event of failure to comply, ANAC may administer non-criminal financial penalties ranging from €10000 to €50000, if:

- No reporting channel is set up;
- No procedure to make and handle reports is adopted;
- Retaliation occurs;
- Reporting is hindered;
- Confidentiality obligation is breached.

Instead, penalties from €500 to €2500 may apply if the criminal liability of the reporting person is established for the offenses of defamation or slander.



DISCIPLINARY SYSTEM ORGANIZATION MODEL UNDER LEG. DEC. 231/01

Entities that adopted an Organization Model under Leg. Dec. 231/2001 are required to include in their disciplinary system under the Model specific penalties for those who breach whistleblower's protection measures.

EFFECTIVE DATE

The provisions will be effective on 15 July 2023 for companies that in the last year had an average headcount on payroll, with fixed-term or permanent contracts, higher than 249. While they will become effective on 17 December 2023 for companies that had an average headcount on payroll equal to or lower than 249.

