



International Employment Lawyer

Guide to Whistleblowing

Italy



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Legal basis for whistleblowing

1. Which body of rules govern the status of whistleblowers?

For a long time, the specific legislation on whistleblowing only covered civil servants (article 54-bis of Legislative Decree No. 165 of 30 March 2001, as introduced by Law No. 190 of 6 November 2012) and, following Legislative Decree No. 72 of 12 May 2015, employees in banks and financial institutions.

Concerning the private sector in general, Law No. 179 of 2017 regulated the status of the whistleblower within the framework of Legislative Decree No. 231 of 8 June 2001, which provides for entities to adopt organisational models that are exempt from liability for certain criminal offences.

Now, Directive (EU) 2019/1937 of the European Parliament and of the Council on the protection of persons reporting infringements of Union law (the EU Whistleblower Directive) has been adopted.

For the implementation of this directive, Legislative Decree 10 March 2023, No. 24 was recently issued (in force as from 15 July 2023). This is intended to be the regulatory point of reference for whistleblowing, both for the public and private sectors.

Implementation of the whistleblowing procedure

2. Which companies must implement a whistleblowing procedure?

The whistleblowing procedure provided for by Legislative Decree No. 24/2023 must be adopted by the following public sector entities:

- public administrations;
- independent administrative authorities;
- public economic bodies;
- bodies governed by public law;
- public service concessionaires;
- publicly controlled companies;
- in-house companies, even if listed.

Regarding private entities, the whistleblowing procedure must be adopted by:

(a) entities that have employed, in the past year, an average of at least 50 employees with indefinite or fixed-term employment contracts;

(b) entities operating in the banking, financial, transport, safety or environmental protection sectors, even if they did not have

the average number of employees referred to under (a) in the preceding year;

(c) entities that fall within the scope of Legislative Decree No. 231/2001 (ie, entities with legal personality, companies and associations, including those without legal personality) and adopt organisational and management models provided for therein, even if in the last year they have not reached the average number of employees referred to under (a).

3. Is it possible to set up a whistleblowing procedure at a Group level, covering all subsidiaries?

Legislative Decree No. 24/2023 does not set out the possibility of adopting a whistleblowing procedure at a Group level, covering all subsidiaries.

However, this Decree allows private-sector entities that have employed, over the previous year, an average of fewer than 249 employees, under permanent or fixed-term contracts, to share internal reporting channels and its management.

4. Is there a specific sanction if whistleblowing procedures are absent within the Company?

Employers may be fined between EUR 10,000 and EUR 50,000 where:

- reporting channels have not been set up;
- procedures for making and handling reports have not been adopted or the adoption of such procedures does not comply with those set out in Legislative Decree No. 24/2023; and
- the verification and analysis of the reports received have not been carried out.

5. Are the employee representative bodies involved in the implementation of this system?

Legislative Decree No. 24/2023 requires that entities adopting whistleblowing procedures must involve trade union representatives before activating the internal reporting channel.

6. What are the publicity measures of the whistleblowing procedure within the company?

Entities adopting whistleblowing procedures must make clear information available on such procedures.

This information should be displayed and made easily accessible in the workplace, and also be made available to persons who, although not attending workplaces, may nevertheless make reports.

If entities adopting whistleblowing procedures have their own website, they should also publish information on whistleblowing procedures on a dedicated section of their site.

7. Should employers manage the reporting channel itself or can it be outsourced?

Legislative Decree No. 24/2023 provides that entities adopting whistleblowing procedures should activate their own internal reporting channels. The management of these channels should be entrusted to a dedicated independent internal person or office with specifically trained staff, or an independent external

entity with specifically trained staff.

Private-sector entities that have employed no more than 249 employees under permanent or fixed-term employment contracts over the past year may share their internal reporting channels and management.

8. What are the obligations of the employer regarding the protection of data collected related to the whistleblowing procedure?

Legislative Decree No. 24/2023 contains several provisions regarding the protection of data collected related to the whistleblowing procedure.

The identity of the whistleblower cannot be disclosed to persons other than those competent to receive or follow-up on the reports until the conclusion of the proceedings initiated based on the report without their express consent.

Legislative Decree No. 24/2023 also provides specific rules for the protection of the identity of the whistleblower in criminal and disciplinary proceedings and proceedings before the court of auditors.

Whistleblowing reports also may not be used beyond what is necessary for adequate follow-up.

Reports and related documentation should be kept for the time necessary to process the report and in any case no longer than five years from the date of the communication of the outcome of the whistleblowing procedure.

An administrative fine of between EUR 5,000 and EUR 50,000 may be imposed where there has been a violation of certain provisions regarding the protection of data collected related to the whistleblowing procedure.

9. What precautions should be taken when setting up a whistleblowing procedure?

The internal reporting channel must be able to ensure – including through the use of encryption tools – the confidentiality of the identity of the person making the report, any person involved and any person mentioned in the report, as well as the contents of the report and any relevant documentation.

Entities obliged to adopt whistleblowing procedures must entrust the management of the internal whistleblowing channel to persons who are independent and have specific training.

Scope of the whistleblowing procedure

10. What types of breaches/violations are subject to whistleblowing?

Breaches subject to whistleblowing are violations of national or European Union regulatory provisions that harm the public interest or the integrity of a public administration or private entity.

Italy has extended the scope of the directive to include violations of national rules.

11. Are there special whistleblowing procedures applicable to specific economic sectors or professional areas?

There is a special whistleblowing procedure for certain sectors such as banks, financial institutions and insurance companies, set out in article 52-bis of Legislative Decree No. 385/1993, in article 4-undecies of Legislative Decree No. 58/1998 and in article 10-quater of Legislative Decree No. 209/2005. In these cases, breaches subject to whistleblowing are those related to a violation of the special rules of the relevant sector.

Identification of the whistleblower

12. What is the legal definition of a whistleblower?

A whistleblower is defined as a person who makes a report or public disclosure of violations based on information acquired within a working context.

13. Who can be a whistleblower?

Within entities that must adopt whistleblowing procedures, the following may qualify as a whistleblower:

- employees;
- self-employed persons and contractors;
- freelancers and consultants;
- volunteers and trainees, paid and unpaid;
- shareholders and persons with administrative, management, control, supervisory or representative functions, even where such functions are exercised on a de facto basis.

The persons referred to above are also considered whistleblowers in the following circumstances:

- when the legal relationship with entities that must adopt whistleblowing procedures has not yet begun, but information on violations has been acquired during the selection process or in other pre-contractual stages;
- during the probationary period; and
- after termination of the employment relationship, if the information was acquired in the course of such a relationship.

14. Are there requirements to fulfil to be considered as a whistleblower?

The requirements to be a whistleblower are:

- being a person listed in question 13;
- making a report concerning one of the violations relevant under the decree, of which one has become aware through work; and
- complying with other provisions of Legislative Decree No. 24/2023.

15. Are anonymous alerts admissible?

No express provision is made for anonymous reports: the legislature has decided not to exercise the option granted by the directive in this respect.

However, Legislative Decree No. 24/2023 also expressly extends the protection regime provided for whistleblowers to

anonymous reporters whose identity has been discovered and who have suffered retaliation because of it.

16. Does the whistleblower have to be a direct witness of the violation that they are whistleblowing on?

Legislative Decree No. 24/2023 requires only that the whistleblower has become aware of the reported violations through work.

The requirement of being a direct witness is not laid down by the decree.

However, it is, provided that, at the time of the report, the whistleblower had reasonable grounds to believe that the information on the reported violations was true and fell within the objective scope of Legislative Decree No. 24/2023.

Processing of the whistleblowing procedure

17. What are the terms and conditions of the whistleblowing procedure?

In the context of the whistleblowing procedure, the managers of the internal reporting channels issue the whistleblower with a notice of receipt of the report within seven days of the date of receipt. It is possible to request additional information from the whistleblower, if necessary.

Diligent follow-up must then be given to the reports received.

Finally, feedback must be given to the whistleblower within three months from the date of the notice of receipt or, in the absence of such notice, within three months from the expiry of the seven-day period starting from the submission of the report.

18. Is there a hierarchy between the different reporting channels?

Under Legislative Decree No. 24/2023, preference is given to internal reports, while external ones seem to be possible only occasionally, under certain circumstances.

In particular, the use of an external reporting channel is possible if one of the following conditions is met:

- absence of the internal reporting channel within the working context of the whistleblower;
- the whistleblower has already made an internal report and this has not been followed up or has resulted in a final negative action;
- the whistleblower has reasonable grounds to believe that, in the case of an internal report, the report would not be effectively followed up or that the report might give rise to a risk of retaliation; or
- the whistleblower has reasonable grounds to believe that the breach may constitute an imminent or manifest danger to the public.

In addition to internal and external reporting channels, Legislative Decree No. 24/2023 allows for the possibility of public disclosure. Protection is only guaranteed for such disclosures if:

- the person making the disclosure has previously made an

internal and external report or has made an external report directly and no reply has been received within the time limits provided for in the decree;

- the person making the disclosure has a well-founded reason to believe that the breach may constitute an imminent or manifest danger to the public; and
- the person making the disclosure has reasonable grounds to believe that the external report may involve a risk of retaliation or may not be effectively followed up because of the specific circumstances of the case.

19. Should the employer inform external authorities about the whistleblowing? If so, in what circumstances?

Legislative Decree No. 24/2023 does not impose any particular obligation on the employer to send reports to other competent bodies.

20. Can the whistleblower be sanctioned if the facts, once verified, are not confirmed or are not constitutive of an infringement?

To enjoy the protection of the law, the whistleblower must, at the time of the report, have reasonable grounds to believe that the information about the reported violations was true.

The whistleblower may incur criminal liability for the offences of defamation or slander. The whistleblower may also be held civilly liable, for the same offences, if there is wilful misconduct or gross negligence.

In such cases, the protections provided for under Legislative Decree No. 24/2023 will not be guaranteed and the whistleblower may be subject to a disciplinary sanction as well as to an administrative fine.

21. What are the sanctions if there is obstruction of the whistleblower?

An administrative penalty of between EUR 10,000 and EUR 50,000 may be imposed if the report has been obstructed or if an attempt has been made to obstruct it.

Whistleblower Protection

22. What procedure must the whistleblower follow to receive protection?

The whistleblower receives protection if at the time of the report he or she had reasonable grounds to believe that the information about the reported violations was true and fell within the scope of Legislative Decree No. 24/2023.

The procedures to follow are the ones described regarding the use of internal and external reporting channels.

Reports directly to the public are subject to strict conditions that must be met to obtain protection. See question 18.

23. What is the scope of the protection?

In addition to the whistleblower, protection measures also apply to:

- facilitators (ie, persons who assist a whistleblower in the reporting process, operating within the same working

- environment and whose assistance is kept confidential);
- persons in the same employment context as the whistleblower and who are bound to that person by a stable emotional or family relationship up to the fourth degree;
- colleagues of the whistleblower who work in the same work environment as the whistleblower and who have a regular and current relationship with that person;
- entities owned by the whistleblower, or for which the same persons work, as well as entities that work in the same work environment as the above-mentioned persons; and
- persons that report directly to the public, but only if certain strict conditions are met.

24. What are the support measures attached to the status of whistleblower?

Extensive protection against retaliation is provided for whistleblowers.

In the event of disputes concerning retaliation against the whistleblower, there is a legal presumption in favour of the whistleblower.

Even in the case of a claim for damages made by the whistleblower, the damage is presumed to be a consequence of the whistleblowing.

It is expressly provided that the following may constitute retaliation:

- dismissal, suspension or equivalent measures;
- downgrading or non-promotion;
- change of duties, change of place of work, reduction of salary, change of working hours;
- suspension of training or any restriction on access to it;
- negative merit notes or references;
- the adoption of disciplinary measures or any other sanction, including a fine;
- coercion, intimidation, harassment or ostracism;
- discrimination or otherwise unfavourable treatment;
- failure to convert a fixed-term contract of employment into a contract of employment of indefinite duration, where the employee had a legitimate expectation of such a conversion;
- the non-renewal or early termination of a fixed-term employment contract;
- damage, including to a person's reputation, particularly on social media, or economic or financial loss, including loss of economic opportunities and loss of income;
- blacklisting based on a formal or informal sector or industry agreement, which may result in the person being unable to find employment in the sector or industry in the future;
- the early termination or cancellation of a contract for the supply of goods or services;
- the cancellation of a licence or permit; or
- a request to undergo psychiatric or medical examinations.

Other support measures (ie, information, assistance and advice) offered by third-sector bodies are then provided for the whistleblower.

There is also an exemption from liability where the whistleblower discloses or disseminates information on breaches covered by an obligation of secrecy or relating to the protection of copyright or the protection of personal data. This also applies to breaches that affect the reputation of the person involved or reported, where, at the time of the

disclosure or dissemination, there were reasonable grounds to believe that the disclosure was necessary for the report and the report was made under the provisions of Legislative Decree No. 24/2023.

25. What are the risks for the whistleblower if there is abusive reporting or non-compliance with the procedure?

See question 20 regarding defamation, slander and disciplinary sanctions.

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Angelo Zambelli, Founding and Managing Partner of Zambelli & Partners law firm, is a leading expert in employment law, labour law and industrial relations, as well as in all related labour disputes.

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