

Studio Legale Marsaglia

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ITALY - WHISTLEBLOWING

In Italy at the present time no autonomous legislation on the issue is in force, therefore provisions suitable for protecting whistleblowers or ruling the matter of information disclosing which also apply to whistleblowing must be searched in other codes or laws (Civil Code, Criminal Code and Labour Law).

As far as public sector is concerned, public bodies do not have specific internal reporting procedures. The more frequent behaviour of civil servants who want to disclose information about malpractice or other irregularities is to report outside their organization, directly to judiciary authorities.

When internal report is carried out, usually the line manager is the subject receiving any possible disclosures by employees. Sometimes internal reports are made to the Ministry for Public Administration which forwards to the Inspection Office of the Civil Service Department.

It is worth to mention the Law no.15/2009 appointing the Ministry for Public Administration as responsible for public transparency and efficiency. Within this law the Minister has started a "Transparency Plan" which includes the improvement of controls within the public bodies and a more open flux of information from the Public Administration to the public.

Further, some public agencies are trying to promote internal reporting of irregularities or malpractice in their respective reference areas. For example: the Court of Accounts is competent to review financial controls and to receive possible disclosure about financial malpractice in the public sector; the Authority for Fair Competition pushes for the introduction of whistleblower protection in order to promote reports about illegal trusts or cartels; the Bank of Italy promotes the use of internal reporting of money laundering episodes and the protection of whistleblowers in this field.

With reference to the private sector, only a few major multinational companies have proper whistleblowing schemes. In particular, companies that have to comply with Sarbanes-Oxley Act to be listed on U.S. Stock Exchange have consequently the duty to establish proper whistleblowing procedures.

These procedures (often containing links to Code of Ethics and Code of Conduct) have several points in common: a subject, sometimes called the Chief of Internal Audit, is appointed to receive disclosures and to carry out preliminary evaluation; then he co-operates with other functions such as the Audit, Legal Department, Security Department, Human Resources, Finance Administration and Control.

Single provisions contained in various Italian laws and regulations can apply to the issue of whistleblowing. For example:

- the Legislative Decree no.81/2008 (known as Consolidated Act about Work Security) introduced a duty on the workers to inform the employer about dangers to workers' security in the workplace.
- In corporate matter, the Civil Code (Sect.2408) provides that each shareholder can report not appropriate conducts to the Board of Internal Auditors. A CONSOB (Authority on Companies and Stock Exchange) Directive of 1997 extends the competence for the Board of Internal Auditors of listed companies to receive disclosures from employees as well.
- The Legislative Decree no.58/1998 (Consolidated Act about financial mediation) provides a duty for the Board of Internal Auditors to report to CONSOB each irregularity found during its activity.
- The Legislative Decree no.231/2007, fulfilment of the European Directive 2005/60/CE on money laundering prevention, provides for the appointment of a Financial Information Unit (UIF) as the body receiving reports about possible crimes in this field.

The Italian Workers' Statute (Law no.300/1970) does not provide whistleblowers with a specific protection.

Anyway, as workers can be dismissed only for a just cause or a justified reason, a general strong protection against unfair dismissal even without a specific whistleblowing discipline is actually provided.

With reference to unfair dismissal and consequent damages suffered by the worker (whistleblower included) some compensation is awarded: in particular re-engagement and lost wages.

No rewards for whistleblowers are instead available, neither remedies are available against different kinds of reprisal at the workplace following a disclosure of information, such as demotion, transfer, loss of promotions, passive discrimination etc. Decisions about these issues are left to the court discretion.

Court cases

As in Italy a specific legislation is missing, only a few major whistleblowing cases have come to a court decision in the last years. Two of them ended with judgements by the Court of Appeal of Genoa, whilst relevant decisions from the Court of Cassation have still to come.

The first case was about an employee of F.S., the biggest operator of the Italian railway network, who had fired for disclosing (by anonymous report to media) dangerous defects on trains and rails. The Court decided for re-engagement as the dismissal was demonstrated to be clearly unlawful.

The second case concerned a doctor fired after writing a book exposing corruption with his employer hospital. In this case only compensation and loss wages were awarded by the Court.