

TRYING TO BLOW THE WHISTLE: ITALY'S STRUGGLES WITH THE TRANSPOSITION OF THE EU DIRECTIVE

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ABSTRACT

This chapter aims to examine the main critical issues in Legislative Decree no. 24/2023, which transposes European Directive no. 1937/2019 into the Italian legal system. The analysis is conducted through a comparative approach with the national legislation of other European Union Member States, such as France, which, in this regard, has adopted pioneering regulations.

A detailed assessment of national legislation reveals inconsistencies with certain provisions that may need to be disapplied at the EU level due to procedural delays that undermine the protection regime provided for whistleblowers. In this context, it is important to mention Article 6, concerning "Conditions for Making External Reports," and Article 21, concerning "Sanctions," of the Italian regulation, which, in contrast to the regulatory standards established by the EU legislator, introduce a diversified range of protections. These are just some of the main critical issues encountered at the national level, largely due to misinterpretations or difficulties in applying key principles set out in the European Directive. Such challenges stem from the existence of a previous national legal framework which, though incomplete and fragmented, failed to establish uniform regulatory standards and often conflicts with Article 25 of the European Directive.

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What happens if Member States blatantly ignore EU provisions? What if the process of verifying the correct transposition of EU Directives by Member States takes so long that it undermines the rights of EU citizens?

Keywords: European directive; external reporting channel; non-regression clause; retaliation sanctions; whistleblowing

A comparative analysis of the protection framework provided in the field of whistleblowing, as implemented in Italy and France, allows for the identification of best practices and critical issues within their respective legal systems. Such an in-depth examination requires the contextualization of whistleblowing within both the national and supranational systems.

The initial Italian legislative formulation, dating back to 2012, was initially limited in scope to the public sector. This regulation was subject to subsequent revisions in 2017 and, more significantly, in 2023 following the transposition of the 2019 European Directive. The latter delineates a uniform and harmonized framework developed by the EU, applicable to all Member States.

Recent Italian legislation has been found to exhibit characteristics that could be interpreted as potential violations of the non-regression clause of Article 25 of the relevant EU Directive, particularly in relation to the conditions for accessing the external reporting channel, which is managed by the National Anti-Corruption Authority (ANAC), and the sanctions imposed on individuals who engage in retaliatory or discriminatory actions against whistleblowers as a consequence of their reports (Cantone, Frascchini, Parisi, Parisi, & Ubaldi, 2023). In particular, Article 6 of Legislative Decree No. 24/2023 is a provision that outlines the conditions under which access to the external reporting channel, established by ANAC, is permitted. This regulation stands in clear contrast to the European provision, which encourages the use of internal reporting channels and permits whistleblowers to choose between internal or external reporting options. Additionally, Article 21 of Legislative Decree No. 24/2023 introduces administrative pecuniary sanctions aimed at ensuring the criteria of proportionality, effectiveness, and deterrence. However, the sanctions provided under the national framework appear neither proportional nor effective and are rarely enforced by ANAC.

The Legislative Decree No. 24/2023 has been analyzed in order to provide a comprehensive understanding of the provisions included therein, highlighting any weaknesses in the Italian system and providing a basis upon which the advanced nature of French legislation can be compared. In contrast, Italy has undergone a discernible regression in its regulatory framework, prompting civil society organizations and third-sector entities to petition the European Commission to ensure the implementation of minimum protection standards for all EU Member States (Transparency International Italy, 2024a).

WHISTLEBLOWING IN THE ITALIAN SYSTEM: HISTORICAL AND CULTURAL CONTEXT

Whistleblowing is an institution that can be traced back to Anglo-Saxon traditions, and it enables individuals employed within both the public and private sectors to disclose suspected irregularities or potential illegal activities of which they become aware in the course of their employment (Holdsworth, 1923; Notes, 1972; Pizzuti, 2019, p. 2). The purpose of this practice is to encourage the exposure of unhealthy work environments characterized by corruption and maladministration.

Within the Italian legal system, this tool assumes a dual role, serving both a preventative and repressive function. The primary objective of the institution is the protection of the public interest and the integrity of public administration or private entities. The reporting of wrongdoing constitutes the fulfillment of the non-derogable duties, as provided for under Article 2 of the Italian Constitution. (Corso, 2020, pp. 15–22; Italian Republic, 1948). The system is multitiered in nature (Damiri, 2024), serving as a form of social control used by society members and organizational production structures within companies. Its primary aim is to prevent and counter the proliferation of corruption and the mismanagement of administration within the public sector (Gargano, 2016, pp. 6–10).

It is noteworthy that the initial formulation of the national whistleblowing legislation focused on the public sector. Consequently, the competent authority that wields regulatory and sanctioning powers is the National Anti-Corruption Authority (ANAC). This public-focused characteristic is consistent with other national legal systems that are at an advanced stage in this area, such as France, where the institution emerged in response to financial scandals linked to the global economic crisis and, therefore, from irregularities related to alleged illegal activities involving so-called white-collar crimes.

The advent of whistleblowing legislation in the Italian legislative framework is largely attributable to the concerted efforts of political initiatives and support proposals articulated by civil society organizations, culminating in the enactment of an anti-corruption law. Law No. 190 of 2012, the so-called anti-corruption law, was named after the Minister of Justice at the time—Paola Severino—who served under the relevant government and is therefore also referred to as the “Severino Reform.”

This legislative measure was designed to combat corruption in all its forms and to implement a radical reform of laws pertaining to crimes against public administration (Frascini, Parisi, & Rinoldi, 2011; Lattanzi, 2010; Martone, 2016; Parisi, 2016; Riccio, 2017). Thus, the Italian legislator, through the creation of a detailed framework of substantive and procedural protections, seeks to protect and safeguard the rights of potential whistleblowers who choose to report irregularities or illegal activities they have become aware of. As a result, under no circumstances can they be targeted by discrimination or retaliation on account of the act of reporting illicit activities.

National and Supranational Regulatory Framework in Italy

The initial introduction of whistleblowing into the Italian legal system was due to the Severino reform, which refers to Law No. 190 of November 6, 2012, concerning preventive and repressive measures to combat corruption in public administration ([Italian Republic, 2012](#)). This law allowed workers in the public sector to report potential irregularities or alleged illegal activities discovered during the course of their work ([Belsito, 2013](#); [Cantone, 2013](#); [Garofoli, 2013](#); [Monzani, 2016](#)). The 2012 anti-corruption law forms part of the provisions contained in the consolidated text on public employment (Legislative Decree No. 165/2001; [Italian Republic, 2001a](#)), which, through the introduction of Article 54-bis concerning the protection of public employees who report wrongdoing, outlines the scope of application and the protection regime provided for whistleblowers who are public employees ([Carinci, 1974](#); [Cerri, 1989](#); [Pizzuti, 2019](#), p. 88; [Ricciardi, 1984](#); [Santoro, 1968](#), p. 609; [Ventura, 1994](#)). The rationale behind this legislative provision lies in the legislative intent to safeguard the public worker who, in the interest of the public administration's integrity, makes a report, either to their hierarchical superior, the ANAC, or the competent judicial authority. Article 54-bis, paragraph 1, of Legislative Decree No. 165/2001 provides that the report may be submitted by a worker in the public sector (a public employee) and identifies as recipients either the Prevention of Corruption Officer (RPCT) of the relevant public administration—understood as the hierarchical superior—or, alternatively, the competent judicial authority, which, depending on the irregularity or wrongdoing being reported, may be either the ordinary judicial authority or the court of auditors. ([Buratti, 2013](#); [Corso, 2016](#); [De Rosa, 2017](#); [Jazzetti & Bove, 2014](#)).

The legislative provision set out in Article 54-bis of Legislative Decree No. 165/2001 allows us to affirm that the reporting of wrongdoing by a public employee cannot, in any way, lead to the adoption of measures that may be classified as any form of sanction against the whistleblower. Paragraph 1 of the same article, in this regard, highlights the role played by the ANAC in cases where unlawful measures are adopted as a consequence of the report.

The unlawful adoption of a measure that is discriminatory and/or retaliatory measures enables the public employee to appeal to the National Anti-Corruption Authority (ANAC) in order to protect the violation of the alleged right ([Gelmini, 2018](#)).

The regulations outlined in Article 54-bis of Legislative Decree 165/2001 provide clear directives regarding the protection of whistleblower's identity. A balance is struck between the conflicting interests of the whistleblower and the reported person, identified respectively as the right to confidentiality for the former and the right to defense for the latter—understood as the opportunity to be informed of the allegations made against them in order to demonstrate their lack of foundation. ([Bassetti, 2023](#)).

In paragraph 3, the legislator expressly states that the identity of the whistleblower cannot be disclosed, while outlining the procedural limits that apply

within the context of a criminal proceeding and within the context of an accounting procedure before the Court of Auditors.

The limitations also apply, albeit in a different manner, within the context of disciplinary proceedings where the identity of the whistleblower cannot be disclosed, except in cases where the disciplinary charge is based on the report. In such cases, therefore, the identity of the whistleblower constitutes an essential element for the defense of the accused, and the report may be used only with the whistleblower's consent.

In such cases, the identity of the whistleblower must be protected and kept confidential if the charge is based on findings other than those contained in the report.

The national legislator, while respecting the right to privacy of the whistleblower's identity, permits the disclosure of their personal details only in necessary circumstances for defending the accused individual. The verification of the facts contained in the whistleblower's report enables the assessment of its validity and allows the use of the report's content to initiate a potential disciplinary procedure against the reported individual. In this case, the reported individual must be able to know the identity of the whistleblower, though such disclosure is still subject to the whistleblower's consent (Borgogelli, 2009; Mainardi, 2010).

The recognition of the key principle underlying the institution of whistleblowing, namely the right to confidentiality, may, however, be waived in exceptional cases based on the use of the whistleblower's report in a disciplinary procedure. It is important to note that this exception does not apply in the context of a criminal or accounting procedure.

An analysis of the scope of protections offered by the anti-corruption law to public employees soon reveals the lack of protection for workers in the private sector. This situation prompted the legislator to intervene with Law No. 179 of November 30, 2017, concerning the protection of individuals who report crimes or misconduct of which they became aware during their employment relationship (Italian Republic, 2017).

It is important to further examine, in this regard, Bill No. 3365/2015 and Bill No. 3433/2015, which address the legal institution of whistleblowing, with the aim of introducing a legal framework intended to protect an instrument still unknown to the Italian state (Corso, 2020, pp. 157–162).

The 2017 legislative intervention can be considered a development of the anti-corruption legal framework established previously by the 2012 anti-corruption law. In particular, the 2017 law modified the provisions of the preceding Article 54-bis of Legislative Decree 165/2001 with regard to public sector workers. Additionally, the 2017 intervention introduced protection for private sector workers who wish to report irregularities discovered during the course of their employment. The amendments introduced by Law No. 179 of 2017 to Article 54-bis of Legislative Decree No. 165/2001 are primarily observed in relation to the subjective scope of application, considering the expansion of the category of potential whistleblowers, aimed at including employees of public administrations, employees of public economic entities, and those of private law entities subject to public control, as well as workers and collaborators of companies that

supply goods or services and perform work for the public administration. (Pizzuti, 2019, pp. 99–104; Palla, 2018; Bosnari, 2016).

In particular, Law No. 179 of 2017 provides for the introduction of paragraphs 2-bis, 2-ter, and 2-quater in Article 6 of Legislative Decree 231/2001—the legislative decree that regulates the administrative liability of legal persons, companies, and associations, thereby specifying the existence of new requirements related to the organization, management, and control model (so-called MOG 231) for the prevention and repression of the underlying crimes provided therein (Italian Republic, 2001b). In light of the recently introduced regulatory provisions, private entities and companies are obligated to review the MOG 231. This revision involves the formulation of a policy, either as an integral component of the model or as a standalone procedure, with the objective of explicitly delineating the functions and responsibilities entrusted to the individuals responsible for the managing the reporting of illegal activities. This policy outlines the measures adopted to protect the confidentiality of the whistleblower's identity, the content of the report, and the protection regime against potential discriminatory measures.

The regulation introduced for the private sector, although structured for the needs of companies with the 231 organizational, management, and control model, cannot be assimilated to the legal framework established for the public sector (Avio, 2018). It was not until 2017 that the Italian legal system provided a comprehensive protection framework for whistleblowers in the private sector, seeking to harmonize the two sectors of reference according to the preexisting internal limits.

The legislative framework established between 2012 and 2017, with the appropriate legislative amendments, also allowed Italy to align with the protection regime already provided by individual Member States within the European Union. The legislation developed at the national level, including the 2012 anti-corruption law and the amendments introduced by Law No. 179 of 2017 allow us to assert that the provisions for the public sector are in line with the requirements set out in the EU Directive. However, the same statement cannot be made for the private sector, where the regulation appeared to be significantly different. Nonetheless, the heterogeneity of the individual EU States and the inconsistency of their treatment gave rise to the intervention of the supranational legislator with Directive No. 1937 of 2019, concerning the protection of people who report violations of Union law. In 2018, the European Parliament and the Council put forward a proposal for Directive 2018/0106, “on the protection of persons reporting on breaches of Union law,” consisting of as many as 86 recitals and 23 articles, in which whistleblowing is considered a “tool useful for providing information and prosecution of cases of violations and lack of effective protection can negatively impact the protection for whistleblowers.”

The proposal presented was amended, and the adjustments made were incorporated into Directive 2019/1937, the final text of which consists of 110 recitals and 29 articles. (Andreis, 2019; Coppola, 2018; Nicolichia, 2023, p. 23).

The EU legislator sought to create common minimum legal standards for all Member States, with the aim of establishing a uniform protection framework

within the European Union. The fragmented and uneven nature of the protection framework developed by individual Member States is explicitly addressed in Recital 4 of the Directive under examination, given that:

Whistleblower protection currently provided in the Union is fragmented across Member States and uneven across policy areas. The consequences of breaches of Union law with a cross-border dimension reported by whistleblowers illustrate how insufficient protection in one Member State negatively impacts the functioning of Union policies not only in that Member States, but also in other Member States and in the Union as a whole. (Recital 4)

The final deadline for national regimes to comply was set as December 17, 2021; the significant delay in the transposition procedure of the EU Directive by the Italian State is addressed by the NGO Transparency International Italy. (Fraschini, 2022; Parisi, 2020).

Due to its mandatory nature, this deadline was not met by most of the Member States, resulting in the initiation of numerous infringement procedures. In this regard, on July 3, 2024, the European Commission published an explanatory report outlining the current status of the EU Directive's transposition by individual Member States, highlighting the main issues encountered in the related transposition process. The European Commission's report, titled "Report on the transposition of the Whistleblower Protection Directive (Directive 2019/1937 (EU)) on the protection of persons who report breaches of Union law." (European Commission, 2024; Transparency International Italy, 2024b).

It is important to note that the nature of the act chosen by the EU legislator, such as the adoption of a Directive, does not, by itself, make the normative provisions contained within it binding. These provisions must be transposed through a specific domestic legal source by each Member State. Moreover, the transposition of these provisions must comply with Article 25 of the Directive, which prescribes more favorable treatment and the non-regression clause for Member States. This clause stipulates that the EU States may maintain internal provisions that are more favorable, even at the expense of transposing supra-national provisions. The adoption of a protection regime that is detrimental, although compliant with the Directive, undoubtedly constitutes a reduction of the protections already provided by the Member States and, therefore, an explicit violation of Article 25 of the EU Directive.

The European Directive has been transposed into the Italian legal system through Legislative Decree No. 24/2023, concerning the "Implementation of Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law and containing provisions regarding the protection of persons who report breaches of national regulatory provisions." This decree introduces significant innovations, particularly regarding protections in the private sector, where its applicability is conditioned by factors such as the number of employees within the company and the adoption of an organizational, management, and control model pursuant to Legislative Decree No. 231/2001. It is only through this legislative intervention, therefore, that the protections for employees, both

public and private, have been effectively established in Italy, ensuring safeguards for individuals who report misconduct encountered during their professional activities (Magri, 2022).

THE WHISTLEBLOWING SYSTEM IN FRANCE

The introduction of whistleblowing in France can be traced back to the financial scandals that occurred in the 2000s and the economic crisis of 2008, which emphasized the need for a cohesive legal framework to protect individuals who report unlawful activities in the public interest.

A protection regime that can be defined as rudimentary for potential whistleblowers, although not strictly falling under the category of whistleblowing, was provided by the “*Loi Le Pors*,” contained in the French Labor Code, which sought to safeguard the interests of workers who report violations of their rights. This was followed by the “*Loi pour la Confiance dans l'Économie Numérique*,” which offered cross-cutting protection for personal data, imposing transparency obligations on the use of digital platforms and the processing of sensitive data.

The fragmented nature of the protections provided, which were further articulated in multiple sector-specific regulations, appeared inadequate to offer a uniform protection system for whistleblowers in a strict sense, as these protections appeared limited to specific areas, such as workers' rights and personal data protection.

A significant turning point in this area was marked by the 2016 enactment of the “*Loi Sapin II*,” legislation which, within the context of corruption prevention and corporate compliance, established reporting channels (both internal and external), accompanied by measures to protect against discrimination or retaliation following the report. The development of a comprehensive framework of protections for whistleblowers contributes to addressing the issue of transparency and combating the phenomenon of corruption.

The peculiarities of the Sapin II Law are addressed in a newsletter titled “*La lotta alla corruzione in Francia: brevi note sulla legge Sapin II*.” (Pavia & Ansaldo, 2018).

The French Anti-Corruption Agency (AFA) was established under the same law, operating as an institutional body within the jurisdiction of the Ministry of Justice. The AFA assumed the functions of the erstwhile Central Service for Corruption Prevention (SCPC), an interministerial entity entrusted with the responsibility of preventing corruption and overseeing the efficacy of corruption prevention mechanisms implemented by public authorities and private enterprises.

French legislation has been regarded as “pioneering” in the field of whistleblowing due to the strict protection mechanisms contained in the *Loi Sapin II*, which allowed the country to align with the best international anti-corruption standards. However, it was also necessary to conform to the EU regulations set out in the European Directive 1937/2019. This Directive was transposed with the “*LOI n° 2022-401 du 21 mars 2022 visant à améliorer la protection des lanceurs*

d'alerte,” which significantly innovates the scope of protection granted to whistleblowers. The law was formally recognized under the appellation “the Wasserman law.” France is the eighth country to have transposed the EU Directive into its legal system. For a detailed examination of the legislative journey from the bill proposal to the enactment of the well-known “Wasserman” law. ([La Maison des lanceurs d’alerte, 2021](#)); [Assemblée nationale, 2020, 2021](#); [Défenseur des droits, 2020](#)). The legal text developed by the French legislator has been crafted with the objective of extending the scope of the regulation beyond the minimum standards set out in the EU Directive. It identifies immunities that can apply within both civil and criminal proceedings, economic support and psychological assistance, and establishes a precise and strict sanctions regime designed to deter potential offenders from taking retaliatory and/or discriminatory actions. The imposition of a substantial fine or a prison sentence of up to three years is also a possibility ([Loi Wasserman, 2022](#)).

COMPARISON OF THE TRANSPOSITION OF THE EUROPEAN DIRECTIVE 2019/1937: THE ISSUES IN LEGISLATIVE DECREE NO. 24/2023 AND IN LOI NO. 2022-401

The European Directive—the first specific regulatory act developed by the EU on whistleblowing—has been transposed into the Italian legal system through the recent Legislative Decree No. 24/2023. This legislative act aims to establish a protection regime for whistleblowers in accordance with supranational provisions. The main innovations or challenges of the (future) whistleblowing legislation within the Italian legal system are highlighted in the draft transposition of the EU Directive ([Matarise, 2023](#), pp. 10–11).

In order to achieve a more complete and nuanced comprehension of the regulatory regression that has transpired within the Italian framework, a comparative analysis of the EU Directive and the recently adopted national legislative decree is deemed a valuable exercise. This comparison will facilitate the identification of issues in the latter text, thereby enabling the determination of any violation of the non-regression clause outlined in Article 25 of the Directive. It can be argued that the objectives set by the national legislator in certain provisions have created significant contrasts with the original spirit of the regulation. This is particularly evident in the conditions that have been introduced for making a report through the external reporting channel and in the imposition of administrative fines in cases of discriminatory or retaliatory actions following a report.

The regulation will then be compared with the provisions of the recent *Loi Wassermann* of 2022, adopted in France, a Member State of the EU, which has a solid legislative framework designed to protect whistleblowers in a broad sense.

The decision to undertake a comparative analysis with the legislation in the French legal system, as opposed to selecting another EU Member States, is attributable to the analogous regulatory evolution that has transpired in France, paralleling the developments observed in Italy. The countries under consideration are characterized by the same socioeconomic conditions, rendering the comparison both meaningful and relevant. This text aims to compare and contrast the recent whistleblowing laws that have been adopted in the aftermath of the transposition of the EU Directive. The purpose of this comparison is to highlight the best practices that France has adopted, practices which, unfortunately, Italy has not yet adopted.

The External Reporting Channel

The European Union Directive facilitates the reporting of misconduct by public and private sector workers. Firstly, the Directive encourages workers to utilize the internal reporting channel or, alternatively, to directly use the external reporting channel established with competent authorities designated at the national level. See Recital 33 of the EU Directive under examination, which states that:

Reporting persons normally feel more at ease reporting internally, unless they have reasons to report externally. Empirical studies show that the majority of whistleblowers tend to report internally, within the organisation in which they work. Internal reporting is also the best way to get information to the persons who can contribute to the early and effective resolution of risks to the public interest. At the same time, the reporting person should be able to choose the most appropriate reporting channel depending on the individual circumstances of the case. (Recital 33)

The EU legislator, therefore, encourages potential whistleblowers to first use the internal reporting channel, while maintaining the right to use the reporting channel deemed most suitable to serve the interests underlying the report of wrongdoing.

It is necessary, in this regard, to provide a definition of external reporting. As stated in Article 5, paragraph 1, point 5, this consists of “oral or written communication of information on breaches to the competent authorities.”

Article 10 of the Directive, found in Chapter III titled, “external reporting and follow-up,” states that “reporting persons shall report information on breaches using the channels and procedures referred to in Articles 11 and 12 (reference to the subsequent regulatory provisions regarding the external reporting channel), after having first reported through internal reporting channels, or by directly reporting through external reporting channels,” thus, it leaves to the whistleblower the discretion to freely choose whether to use the internal or external reporting channel.

This provision has been adopted by the Italian legislator in Legislative Decree No. 24/2023 ([Italian Republic, 2023](#)). Despite the discretion granted at the European level to the whistleblower to choose the preferred reporting channel, the legislation requires the use of the external reporting channel under certain

conditions. This requirement can also be observed from the title of the relevant article ([Transparency International Italy, 2023](#)).

Article 6 of Legislative Decree No. 24/2023, concerning the conditions for making an external report, enables the whistleblower to submit a report through the (external) channel established at ANAC when there is a failure to activate an internal reporting channel, in the event of an internal report not being followed up on, or if there are well-founded reasons to believe that the whistleblower may face personal repercussions, or in the event of there being well-founded reasons to believe that there is an imminent or obvious threat to the public interest, the whistleblower is entitled to report to ANAC. The absence of these alternatives, however, precludes the whistleblower from reporting to ANAC, as there is no legitimate basis for doing so.

Within the Italian regulatory framework, the external reporting channel is thus subordinate to the internal reporting channel. This configuration conflicts with the rationale of EU legislation ([Nicolicchia, 2023](#), pp. 39–45). This contradiction highlights a regulatory regression, since under the previous national framework, while the whistleblower was provided with specific guidance to use the external reporting channel at the ANAC, they were not required to first make an internal report and then an external one.

This regulatory regression not only contravenes Article 10 of the EU Directive but also conflicts with the non-regression clause of Article 25 of the same text. The transposition of supranational provisions should not result in the application of a protection regime that is inferior to the previous regime outlined in the national legal system.

Conversely, the provision in Article 10 of the EU Directive has been correctly transposed into the French legal system, since the subsidiary or alternative nature of the external reporting channel, established by the *Loi Sapin II* of 2016, has been fully superseded.

Article 3 of the 2022 *Loi Waserman* is expressly an amendment to the preceding Article 8. The latter, having undergone reformulation, establishes the legal principle that the utilization of the internal reporting channel is permissible on the condition that this course of action does not result in any detrimental impact on the personal or professional sphere of the individual exercising it. Article 8-I-A permits the whistleblower to use the internal reporting channel on the condition that doing so does not make them vulnerable to the prospect of facing potential retaliation, which could have an impact on their personal and professional life.

According to the current legal framework in France, the whistleblower may alternatively and freely use the external reporting channel established at the competent national authority, the Defender of Rights, the judicial authority, or the institutions and bodies of the European Union designated to receive information concerning violations.

The regulatory provisions outline a more protective framework for potential whistleblowers compared to the 2016 regulation, as they no longer establish a subsidiarity requirement for resorting to external reporting channels. The current formulation in force in France authorizes the individual who discloses

wrongdoing to select the most suitable reporting channel. Nevertheless, the prevailing inclination within the legal system remains toward the utilization of the internal reporting channel, with a view to facilitating a more expeditious and prioritized resolution pertaining to the purportedly infringed interest. Consequently, the sequential requirement for whistleblowers to first utilize the internal reporting channel before resorting to the external reporting channel has been eliminated. This represents a substantial change and innovation in the realm of whistleblowing, as it grants whistleblowers the discretion and, consequently, the freedom to select the reporting channel they perceive as most effective in safeguarding their interests.

Sanctions for Discriminatory Acts

The European legislator, in an effort to develop a uniform framework of protection for whistleblowers within the individual Member States of the European Union, fully safeguards the interests of whistleblowers who, as a result of making a report of wrongdoing, become subject to discriminatory and/or retaliatory measures.

The implementation of such measures can be seen as a detrimental outcome within the context of the whistleblowing framework, as it has the potential to dissuade individuals from coming forward, due to the possible ramifications for their personal and, consequently, professional lives. In this regard, supranational legislation establishes a strict framework of sanctions against those who implement measures against whistleblowers. See Recital 88 of the EU Directive under examination, according to which “Where retaliation occurs undeterred and unpunished, it has a chilling effect on potential whistleblowers. A clear legal prohibition of retaliation would have an important dissuasive effect, and would be further strengthened by provisions for personal liability and penalties for the perpetrators of retaliation.” In addition to this recital, Recital 102 is also relevant, as it expresses the same legal principle, stating that:

Criminal, civil or administrative penalties are necessary to ensure the effectiveness of the rules on whistleblower protection. Penalties against those who take retaliatory or other adverse actions against reporting persons can discourage further such actions. Penalties against persons who report or publicly disclose information on breaches which is demonstrated to be knowingly false are also necessary to deter further malicious reporting and preserve the credibility of the system. The proportionality of such penalties should ensure that they do not have a dissuasive effect on potential whistleblowers. (Recital 102)

Article 23 of the European Directive, titled “Sanctions”—included in Chapter VI dedicated to the “Protective Measures” provided in favor of the whistleblower—states, in paragraph 1, the imposition of effective, proportionate, and dissuasive sanctions against those who obstruct or attempt to obstruct the reporting of wrongdoing, take retaliatory measures, initiate vexatious proceedings, or violate the obligation of confidentiality regarding the identity of whistleblowers. The EU Directive, in this regard, states that:

Member States shall provide for effective, proportionate and dissuasive penalties applicable to natural or legal persons that: (a) hinder or attempt to hinder reporting; (b) retaliate against

persons referred to in Article 4; (c) bring vexatious proceedings against persons referred to in Article 4; (d) breach the duty of maintaining the confidentiality of the identity of reporting persons, as referred to in Article 16. (Article 23, paragraph 1)

The Directive, in the cases mentioned above, provides for the imposition of sanctions that are defined as “effective, proportionate and dissuasive,” without specifying the meaning of the terms related to the effectiveness, proportionality, and dissuasiveness of the imposed sanctions.

The protection framework established at the EU level is also applicable to individuals who submit a report subsequently determined to be inaccurate or flawed.

Paragraph 2 of the same article states that such sanctions shall also be imposed on those who have knowingly made false reports, also providing for measures that may take the form of compensation for damages. Paragraph 2 of Article 23, in fact, provides that:

Member States shall provide for effective, proportionate and dissuasive penalties applicable in respect of reporting persons where it is established that they knowingly reported or publicly disclosed false information. Member States shall also provide for measures for compensating damage resulting from such reporting or public disclosures in accordance with national law. (Article 23, paragraph 2)

The content of this provision has been faithfully transposed by the Italian national legislator into Article 21 of Legislative Decree No. 24/2023, which, under the same title as the Directive’s article, provides in paragraph 1 for the application of administrative pecuniary sanctions ranging from €10,000 to €50,000 in cases where retaliation is established, the obligation of confidentiality is breached, or reporting channels have not been established. Furthermore, the legislation stipulates the imposition of administrative pecuniary sanctions, ranging from €500 to €2,500 in the event of a conviction for the offenses of defamation or slander ([Transparency International Italy, 2023](#)).

The Italian State, in accordance with the regulatory provisions outlined, grants the sanctioning power recognized therein to the ANAC. Once the existence of a violation or the adoption of a discriminatory measure has been established, the ANAC can impose an administrative financial penalty on the authors of retaliatory measures, within the statutory limits provided for the specific cases indicated ([ANAC, 2023](#)). These sanctions, although theoretically described as proportionate, effective and dissuasive, in practice suffer from limited enforceability, as their enforcement is restricted to public entities and private entities that have implemented MOG 231. Individuals belonging to these entities rarely receive financial penalties, which, when imposed, are generally close to the statutory minimum. This suggests that such penalties do not have a deterrent effect against the commission of unlawful conduct.

The sanctions that, in practice, have been imposed by the ANAC, moreover, do not consider the economic and professional repercussions that affect the whistleblower. The sanctioning measures issued by the Authority appear to be

entirely redacted, as they contain numerous “*omissis*” to protect the confidentiality of both the whistleblower and the reported party, and also lack a moral sanction for the author of the retaliatory measure.

The imposition of financial penalties within the stringent statutory limits in the Italian system does not, in any way, fulfill the requirements of effectiveness, proportionality, and deterrence set by the supranational legislator. This is evidenced by the fact that the sanctions, if imposed, seem to be considered part of a risk-management strategy by a public entity or a private company (D’Amora & Uletto, 2023).

In contrast, the implementation of the same European legal provision in the legislative context adopted in France appears to be different, as the legal formulation developed more effectively meets the criteria of effectiveness, proportionality, and deterrence.

In this regard, the French legislator, through Article 8 of the recent legislation, amends Article 13 of the previous *Loi Sapin II* by providing for the application of a custodial sentence of up to three years or a fine of €60,000, for those who adopt discriminatory or retaliatory measures against the whistleblower.

The French system therefore provides for the imposition of a penalty of up to 3 years’ imprisonment or a fine of €60,000 for those who adopt discriminatory and retaliatory measures against the whistleblower. The provision of such a measure creates a real deterrent against potential perpetrators of such actions, who, in the event of a positive finding, will be subject to or will be the recipients of a prison sentence and/or a very high fine. The significant legal limits provided for in France seem, at least in theory, to be sufficient to deter perpetrators from committing discrimination and/or retaliation as a result of a whistleblowing report, given the potential consequences they could face.

Article 25 of the European Directive and the Non-Regression Clause

The main problem found in Italian legislation is the result of an incorrect and incomplete transposition of the provisions contained in the European Whistleblowing Directive, which, in contradiction with the content of the Directive, leads to a possible violation of the provision in Article 25, titled “More favourable treatment and non-regression clause” (Transparency International Italy, 2024a). According to Article 25, paragraph 1, “Member States may introduce or retain provisions more favourable to the rights of reporting persons than those set out in this Directive, [. . .]” and continues in paragraph 2, stating that “the implementation of this Directive shall under no circumstances constitute grounds for a reduction in the level of protection already afforded by Member States in the areas covered by this Directive.” What this means is that the principles contained in the EU Directive in question may not be transposed into national legal systems if the transposition of these principles leads to regulatory regression and, consequently, to the recognition of a lower level of protection than the existing one (Transparency International Italy, 2023).

The considerations made in the previous paragraphs, in particular with regard to the external reporting channel established with the ANAC (paragraph

4.1), outline a real regression, given that the whistleblower can only resort to ANAC upon the verification of the conditions set out in Article 6 of national legislation. This circumstance, however, was not present under the previous regime, where the choice between internal or external reporting channels was left to the discretion of the whistleblower.

FINAL CONSIDERATIONS

The transposition of the European Whistleblowing Directive was carried out through Legislative Decree No. 24 of 2023 in Italy and Law No. 401 of 2022 in France. However, the provisions of these national legislations only partially align with the provisions developed by the EU legislator. It is possible to consider individual national legislations as compliant with the supranational one. A comparison between Italian and French legislation has revealed the respective issues and peculiarities, particularly with regard to internal and external reporting channels and the protection regime for whistleblowers who have become the subject of unlawful discriminatory or retaliatory measures.

According to the provisions of the EU Directive, the whistleblower may freely choose either the internal or external reporting channel to report wrongdoing, while retaining the option to encourage the use of an internal channel to ensure a timely response and potential immediate correction of the flawed procedure. The alternative nature of the channels has been correctly transposed into French legislation—modifying the previous regime—but not into Italian legislation, where resorting to the external reporting channel is subject to certain conditions and the prior use of the internal reporting channel.

A parallel argument can be made regarding the imposition of administrative financial penalties on those who adopt discriminatory or retaliatory measures against the whistleblower who has reported wrongdoing. The EU legislator prescribes the adoption of effective, proportionate, and dissuasive sanctions, a principle that has been correctly implemented in France and, once again, not in Italy.

The (illegitimate) adoption of a discriminatory measure, according to the French approach, can result in a prison sentence or the imposition of a high-value fine. These parameters differ sharply from the sanctioning regime in the Italian system, where, instead, the verification procedure conducted by the ANAC may, at most, lead to the imposition of a modest penalty. These seemingly modest penalties appear to be a component of the risk management strategy employed by public entities and private companies. A comparative analysis of French and Italian legislation reveals that the former offers a more advanced level of protection. Italian legislation requires numerous corrections in order to be considered compliant with the minimum standards required by the European Union. It will be interesting to understand the progress of infringement procedures initiated by the European Union against states that did not meet the December 17, 2021, deadline for transposing the EU Directive. This is a salient point, as it contributes to the evaluation to be conducted by the European Commission regarding

national requests made by third-sector entities and civil society organizations. Through the preparation of a letter addressed to them, these entities have highlighted the issues and regressions observed at the national level.

REFERENCES

- ANAC. (2023). *Linee guida in materia di protezione delle persone che segnalano violazioni del diritto dell'Unione e protezione delle persone che segnalano violazioni delle disposizioni normative nazionali. Procedure per la presentazione e gestione delle segnalazioni esterne (Delibera n. 311, 12 luglio 2023) Approfondimenti sulle tutele e misure di sostegno - La protezione dalle ritorsioni (§ 4.2.3)*. <https://www.anticorruzione.it/-/del.311.2023.linee.guida.whistleblowing>
- Andreis, E. (2019). Towards a common minimum standard for whistleblower protection across the EU. *European Papers*, 4, 575–588.
- Assemblée nationale. (2020). *Dossier législatif: Protection effective des lanceurs d'alerte*. https://www.assemblee-nationale.fr/dyn/15/dossiers/protection_effective_lanceurs_alerte
- Assemblée nationale. (2021). *Proposition de loi n° 4398 visant à renforcer la protection effective des lanceurs d'alerte*. https://www.assemblee-nationale.fr/dyn/15/textes/115b4398_proposition-loi
- Avio, A. (2018). La tutela del dipendente pubblico che segnala illeciti nella l. 30 novembre 2017, n. 179. In M. Esposito, V. Luciani, A. Zoppoli, & L. Zoppoli (Eds.), *La riforma dei rapporti di lavoro nelle pubbliche amministrazioni* (pp. 306–ff). Giappichelli.
- Bassetti, F. (2023). Il difficile equilibrio tra lotta alla corruzione, tutela della riservatezza e diritto di difesa nella normativa di recepimento della cd. Direttiva whistleblowing. *Diritti & Lavoro Flash*, (2), 7.
- Belsito, W. A. (2013). *Il whistleblowing. Tutele e rischi per il soffiatore*. Bari.
- Borgogelli, F. (2009). La responsabilità del dipendente pubblico. In L. Zoppoli (Ed.), *Ideologia e tecnica nella riforma del lavoro pubblico* (p. 429). Napoli.
- Bosnari, R. (Ed.) (2016), *La corruzione a due anni dalla Riforma Severino*.
- Buratti, U. (2013). *Whistleblowing: Una sfida anche per la Pubblica Amministrazione*. *Bollettino Adapt it*. <https://www.bollettinoadapt.it>
- Cantone, R. (2013). La tutela del whistleblower: L'art. 54 bis del D. Lgs. n. 165/2001. In B. G. Mattarella & M. Pelissero (Eds.), *La legge anticorruzione: prevenzione e repressione della corruzione* (p. 254). Torino.
- Cantone, R., Frascini, G., Parisi, N., Parisi, P., & Ubaldi, A. (Eds.) (2023), *La nuova disciplina del whistleblowing dopo il D. Lgs. n. 24/2023*. Giuffrè.
- Carinci, F. (1974). Alle origini di una storica divisione: Impiego pubblico-impiego privato. *Rivista Trimestrale di Diritto e Procedura Civile*, 1081.
- Cerri, A. (1989). Voce Fedeltà (dovere di). In *Enciclopedia giuridica* (Vol. XIV, p. 4). Treccani.
- Coppola, E. (2018). *Nasce il whistleblower europeo: le principali novità della proposta legislativa in ambito UE*. Il Quotidiano Giuridico.
- Corso, S. M. (2016). La via italiana al whistleblowing tra obbligo di fedeltà e diritto alla legalità. *Vari Temi di Diritto del Lavoro*, (1), 178–179.
- Corso, S. M. (2020). *Segnalazione di illeciti e organizzazioni di lavoro. Pubblico e privato nella disciplina del whistleblowing*. Giappichelli.
- Damiri, G. (2024). *Il sistema di protezione del whistleblowing nel panorama normativo italiano*. Ratio Iuris.
- D'Amora, F., & Uletto, I. (2023). Le sanzioni ed il risarcimento. In R. Torino & E. M. Tripodi (Eds.), *Il whistleblowing. Guida al D. Lgs. 10 marzo 2023, n. 24. La nuova disciplina della protezione di coloro che segnalano violazioni lesive dell'interesse pubblico o dell'integrità delle pubbliche amministrazioni o degli enti privati* (p. 208). Pacini Giuridica.
- De Rosa, M. (2017). La prevenzione della corruzione nella tutela del dipendente pubblico che segnala illeciti (cd. whistleblowing). In M. Nunziata (Ed.), *Riflessioni in tema di lotta alla corruzione* (p. 141). Aracne.
- Défenseur des droits. (2020). *Avis relatif à la mise en œuvre de la législation nationale sur la protection des lanceurs d'alerte*. https://juridique.defenseurdesdroits.fr/doc_num.php?explnum_id=20315

- European Commission. (2024, July 3). *Report on the transposition of the Whistleblower Protection Directive (Directive 2019/1937 (EU)) on the protection of persons who report breaches of Union law*. https://commission.europa.eu/aid-development-cooperation-fundamental-rights/your-fundamental-rights-eu/protection-whistleblowers_en
- Fraschini, G. (2022, February 15). *Whistleblowing: Meglio una legge buona che una legge subito*. Transparency International. <https://www.transparency.it/informati/blog/whistleblowing-meglio-una-legge-buona-che-una-legge-subito>
- Fraschini, G., Parisi, N., & Rinoldi, D. (Eds.) (2011), *Il whistleblowing. Nuovo strumento di lotta alla corruzione*. Bonanno Editore.
- Gargano, G. (2016). La 'cultura del whistleblower' quale strumento di emersione dei profili decisionali della pubblica amministrazione. *Federalismi.it*, (1), 6–10. <https://www.federalismi.it>
- Garofoli, R. (2013, February 22). *Il contrasto alla corruzione: Il percorso intrapreso con la legge 6 novembre 2012, n. 190, e le politiche ancora necessarie*. <https://www.penalecontemporaneo.it>
- Gelmi, M. (2018). *Piani contro la corruzione, modelli organizzativi e whistleblowing: l'esperienza italiana*. Mantova.
- Holdsworth, W. (1923). *A history of English law*. Methuen.
- Italian Republic. (1948). *Costituzione della Repubblica Italiana*.
- Italian Republic. (2001a). *Legislative Decree No. 165 of March 30, 2001 – Norme generali sull'ordinamento del lavoro alle dipendenze delle amministrazioni pubbliche. Article 54-bis: Tutela del dipendente pubblico che segnala illeciti*. No. 103. *Gazzetta Ufficiale*. <https://www.gazzettaufficiale.it/eli/id/2001/05/09/001G0219/sg>
- Italian Republic. (2001b). *Legislative Decree No. 231 of June 8, 2001: Responsabilità amministrativa delle persone giuridiche, delle società e delle associazioni anche prive di personalità giuridica*. No. 140. *Gazzetta Ufficiale*. <https://www.gazzettaufficiale.it/eli/id/2001/06/19/001G0293/sg>
- Italian Republic. (2012, November 13). *Law No. 190 of November 6, 2012 – Disposizioni per la prevenzione e la repressione della corruzione e dell'illegalità nella pubblica amministrazione*. No. 265. *Gazzetta Ufficiale*. <https://www.gazzettaufficiale.it/eli/id/2012/11/13/012G0213/sg>
- Italian Republic. (2017, November 30). *Law No. 179 of November 30, 2017 – Disposizioni per la tutela degli autori di segnalazioni di reati o irregolarità di cui siano venuti a conoscenza nell'ambito di un rapporto di lavoro pubblico o privato*. No. 276. *Gazzetta Ufficiale*. <https://www.gazzettaufficiale.it/eli/id/2017/12/14/17G00193/SG>
- Italian Republic. (2023). *Legislative Decree No. 24 of March 10, 2023: Attuazione della direttiva (UE) 2019/1937 del Parlamento europeo e del Consiglio, del 23 ottobre 2019, riguardante la protezione delle persone che segnalano violazioni del diritto dell'Unione e delle disposizioni normative nazionali*. No. 63. *Gazzetta Ufficiale*. <https://www.gazzettaufficiale.it/eli/id/2023/03/15/23G00032/sg>
- Jazzetti, A., & Bove, A. (Eds.) (2014). *La legge anticorruzione*. Editoriale Scientifica.
- La Maison des lanceurs d'alerte. (2021). *La Maison des lanceurs d'alerte appelle le gouvernement et les parlementaires à soutenir la proposition de loi du député Sylvain Waserman*. <https://mlalerte.org/la-maison-des-lanceurs-dalerte-appelle-le-gouvernement-et-les-parlementaires-a-soutenir-la-proposition-de-loi-du-depute-sylvain-waserman/>
- Lattanzi, R. (2010). Prime riflessioni sul cd. whistleblowing: Un modello da replicare 'ad occhi chiusi'. *Rivista Italiana di Diritto del Lavoro*, (1), 341–343.
- Magri, M. (2022). La direttiva europea sul whistleblowing e la sua trasposizione nell'ordinamento italiano. *Istituzioni del Federalismo*, (3), 568.
- Mainardi, S. (2010). Profili della responsabilità disciplinare dei dipendenti pubblici. *Rivista Giuridica del Lavoro*, (1), 628.
- Martone, M. (2016). Rapporto di lavoro e corruzione. *LPA*, (5–6), 575.
- Matarise, S. (2023). *Il whistleblowing tra disciplina nazionale ed esperienza europea: lo schema di decreto attuativo della Direttiva UE 2019/1937* (pp. 10–11). *Cammino Diritto*.
- Monzani, S. (2016). Partecipazione e responsabilità dei dipendenti pubblici nella funzione di prevenzione della corruzione. *Lavoro Pubblico e Amministrazione*, (5–6), 656.
- Nicolicchia, F. (Ed.) (2023), *Etica aziendale e prevenzione del rischio reato. Una prospettiva interdisciplinare sul 'whistleblowing' riformato*. Jovene.

- Notes, V. (1972). The history and development of qui tam. *Washington University Law Quarterly*, 1972(1), 81–112.
- Palla, M. (2018). Art. 54 bis. In R. De Luca Tamajo & O. Mazzotta (Eds.), *Commentario breve alle leggi sul lavoro. Appendice di aggiornamento whistleblowing* (pp. 1–ff).
- Parisi, N. (2016). Il contrasto alla corruzione e la lezione derivata dal diritto internazionale: Non solo repressione, ma soprattutto prevenzione. *Dir. com. sc. int.*, 191.
- Parisi, N. (2020). La funzione del whistleblowing nel diritto internazionale ed europeo. *Lavoro Diritti Europa*, 3, 7–12.
- Pavia and Ansaldo. (2018). *La lotta alla corruzione in Francia: brevi note sulla legge Sapin II*. <https://www.pavia-ansaldo.it/wp-content/uploads/2018/04/La-lotta-alla-corruzione-in-Francia-brevi-note-sulla-legge-Sapin-II.pdf>
- Pizzuti, P. (2019). *Whistleblowing e rapporto di lavoro*. Giappichelli.
- Ricciardi, G. (1984). *Denunce di reato di delitti di omessa denuncia*.
- Riccio, A. (2017). La tutela del whistleblower in Italia. *DLRI*, 1, 151.
- Santoro, A. (1968). *Questioni circa l'obbligo del rapporto di reato imposto ai soggetti pubblici* (p. 609). Scuola Positiva.
- Transparency International Italy. (2023). *Report Whistleblowing*. <https://www.transparency.it/report-whistleblowing/>
- Transparency International Italy. (2024a). *Analisi della legge di trasposizione della Direttiva europea sul whistleblowing*. <https://www.transparency.it/lettera-ec-whistleblowing>
- Transparency International Italy. (2024b). *Commentary on the European Commission report on the transposition of the Whistleblowing Directive in Europe*. <https://www.transparency.it/informati/news/commento-report-commissione-europea-recepimento-direttiva-whistleblowing-europa>
- Ventura, L. (1994). Art. 54. In A. Pizzorusso (Ed.), *Commentario della costituzione* (Vol. II, p. 47). Zanichelli – Il Foro Italiano.
- Waserman, L. (2022). *Texte adopté en commission*. Assemblée nationale. https://www.assemblee-nationale.fr/dyn/15/textes/l15b4979_texte-adopte-commission.pdf