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Strengthening actions against fraud:
empowering whistleblowing directive compliance

Public Guidelines

On the real needs of public authorities, SMEs and public controlled entities in the adoption and implementation of the new Whistleblowing legislation

LA CASA DEI COMUNI anci LOMBARDIA

www.safein.anci.lombardia.it
europa@anci.lombardia.it

ANCI Lombardia
Via Rovello 2, Milano
Telefono +39 02 7262 9601

This project has received funding from European Union's Union Anti-Fraud Programme under grant agreement no Project 101140591 — SAFE-IN. The content of this report reflect only the author's view. The European Commission is not responsible for any use that may be made of the information it contain.

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This procedure was developed by a Working Group consisting of: ANCI Lombardia and Trasparency International italia

May 3, 2024

Section 1 – Introduction

Whistleblowing is a valuable tool whose use requires the active participation of civil society, meaning a broad cooperation between citizens, institutions and all entities and organisations (both public and private), so that any breaches and risks can be reported and handled, for the benefit of the entire community. Convinced that only by implementing concrete actions to promote values, as well as the right methodologies, taking inspiration from good practices in use, integrated with the different cultural and governance contexts, can a qualitative change in our society be achieved, the following survey was conducted. Lombardy, together with Transparency International Italia (on behalf of civil society and the non-profit sector), after examining the regulatory context in the public and private sectors prior to the entry into force of Legislative Decree 24/23 (hereinafter also the 'Decree') and the main legislative innovations introduced by it, in order to identify the real training needs of the target groups (Public Administration, Small and Medium Enterprises and State-owned Entities) also conducted, using the method discussed below, an additional survey on the main guidelines drawn up by Trade and/or Professional Associations on whistleblowing, the results of which were verified, using a bottom-up approach, with the main stakeholders involved in the project. In particular, in order to identify real training needs, a special working group was created, consisting of the following entities:

a) Confindustria, Assolombarda and Assoimprendil ANCE, for

the private sector.

b) Confservizi, for entities in which the Public Administration has an interest and/or which provide public services.

c) Città Metropolitana di Milano and Città Metropolitana di Napoli (hereinafter also CMM and CMN, respectively).

d) Associazione Italiana per l'Integrità della Salute (hereinafter also AIIS), representing Corruption Prevention and Transparency Officers (RPCT), risk managers and/or internal auditors of the public health sector.

This alliance with the project's stakeholders has not only made it possible to better target training needs but will also make it possible to increase the number of participants and identify/ select the organisations that will play a key role in achieving the set objectives.

Section 2 – Method and result

In order to identify, after examining the regulatory context, the first potential critical issues that entities in the public and private sectors are called upon to face and/or are facing after the entry into force – with different timeframes (15 July 2023 - 17 December 2023) – of Legislative Decree 24/23, as well as any success cases and proved best practices, to be shared with the stakeholders, the following activities were carried out:

a) Analysis of the main guidelines drawn up by Trade Associations and/or Industry Experts on whistleblowing under Legislative Decree 24/23, in addition to ANAC guidelines (hereinafter also the 'Guidelines').

b) Identification of the Associazioni di Categoria (Trade Associations) that could be involved in the project (Confservizi, Confindustria, Assolombarda, Assoimprendil ANCE, CNM, CMN and AIIS).

c) Analysis of the Guidelines and of the monitoring report on the new ANAC whistleblowing system, to identify the main implementation issues and, consequently, the main areas for which training is needed (see paragraphs 2.1 and 2.2 of this document).

d) Planning and holding of meetings with members of the Trade Associations that have joined the project to assess their training needs and/or identify some good practices to be

developed during workshops with target groups.

In particular, after analysing – using a top-down approach – the regulatory inventory and the guidelines described below, as well as ANAC guidelines, the results of the Trade Associations that joined the project were compared with what emerged from the monitoring report on the new ANAC whistleblowing system, published in March 2024, using a bottom-up approach, in order to fine-tune the main critical aspects and/or difficulties encountered in the interpretation/implementation of legislative decree 24/23 and thus identify the training needs that will have to be met by the next training sessions, also to capitalise on/ share any best practices that may have been identified, not only by involving some member organisations of the trade associations concerned, but also based on the regulatory analysis with particular reference to the implementation of the EU Directive by the member countries. In order to use this approach, the support of Transparency International Italia has been crucial, since, even before Legislative Decree 24/23 – which provides for the involvement of the third sector – came into force, it developed a special IT platform, WhistleblowingPA, and has provided support since 2014 through the ALAC (Allerta AntiCorruzione) network, implemented to assist those who witness corruption and help them find the best solution for their case[1].

[1] For more information, please refer to the following link: https://transparency.it/cosa-facciamo/supporto-ai-segnalanti

2.1 2.1 Analysis of the Guidelines and macro-areas of interest

As required by the decree, in July 2023, ANAC issued its 'Guidelines on the protection of persons reporting breaches of Union law and breaches of national laws. Procedures for the submission and handling of external reports (Approved by Resolution No. 311 of 12 July 2023)'.
Subsequently, in order to provide all the recipients of the Decree with specific indications and operational measures, also based on ANAC Guidelines, a number of trade (and professional) associations drew up the documents listed below which, given the broad scope of application of the new whistleblowing law and the types of recipient organisations, offer useful information to guide the recipients, especially those in the private sector, in the application of the new rules.

- APPROFONDIMENTO DEL 07/12/2023 – Whistleblowing Guida Operativa (Operational Guidelines), document issued by the Fondazione Studi Consulenti del Lavoro.
- Consiglio Nazionale dei Dottori Commercialisti e degli Esperti Contabili – Updated version of the Norme di comportamento del collegio sindacale di società non quotate (Code of conduct for the board of statutory auditors of unlisted companies).
- CNDCEC research paper NUOVA DISCIPLINA DEL WHISTLEBLOWING E IMPATTO SUL D.LGS. 231/200' (New regulations on whistleblowing and impact on legislative decree 231/2001) – October 2023.
- POSITION PAPER of 10 October 2023 Il ruolo dell'OdV nell'ambito del Whistleblowing (Whistleblowing: the role

of the Supervisory Board) issued by the Associazione dei componenti degli Organismi di Vigilanza pursuant to 231/01 (hereinafter also AODV)

- OPERATIONAL GUIDELINES FOR ENTITIES IN THE PRIVATE SECTOR by Confindustria NUOVA DISCIPLINA WHISTLEBLOWING – October 2023.

These documents all provide useful insights for the implementation and management of reporting channels, it being understood that entities may adopt, in compliance with the relevant regulatory framework, the most appropriate organisational solutions according to their own structure and governance. The documents cover the following macro-topics:

- The applicable regulatory framework
- The subjective and objective scope
- Report management
  - Internal and external channels
  - The internal channel manager
  - The report handling procedure (STEP 1: Receipt of reports; STEP 2: Preliminary investigation – COMPLIANCE WITH WHISTLEBLOWING REQUIREMENTS; STEP 2: Preliminary investigation – ADMISSIBILITY; STEP 3: Internal investigation; STEP 4: Closure)
  - Report follow-up
  - The duty of confidentiality
  - Personal data processing
  - Document retention
  - Public disclosure

- The measures for protection of reporting persons.

Of particular interest is the codification by Confindustria, in its GUIDA OPERATIVA PER GLI ENTI PRIVATI (Operational guidelines), of the following elements that could characterise a report management procedure:

- Persons entitled to report;
- persons qualifying for protection under the Decree;
- the objective scope of admissible and non-admissible reports, with the different consequences in terms of handling procedure and applicable protection measures;
- the requirements to be met in order to use the internal reporting channel and the applicable conditions;
- the role of reporting managers, their powers and obligations, and any budget available for assessing and handling reports, with evidence of compliance with legal requirements;
- the procedure for involving of other internal or external entities, if required for handling the reports;
- the actual procedure implemented by the entity or organisations for reporting through the internal channel (paper mail/online platform, Telephone number/ voice messaging system);
- the procedure to be implemented for handling interna reports, with a description of the different phases of the investigation to be conducted and the relevant deadlines;
- the procedure to be implemented in the event that a person other than the person responsible for handling the reports receives a whistleblowing report;

- the policy applicable to of anonymous or inadmissible whistleblowing;
- data retention and retention periods;
- the adjustments required by Article 13 GDPR for the processing of personal data;
- the requirements to be met in order to use the external reporting channel;
- the procedure for providing potentially interested parties with information on the use of the internal and external channels, as well as training activities on the applicable law and the relevant procedure.

On the interaction between the whistleblowing system and corporate governance, on the other hand, the Consiglio Nazionale dei Dottori Commercialisti e degli Esperti Contabili expressed its opinion, with its updated version of the Norme di comportamento del collegio sindacale di società non quotate (Code of conduct for the board of statutory auditors of unlisted companies) of 20 December 2023, addressing the impact of Legislative Decree 24/23 on the internal control system of SMEs and in particular on the Board of Statutory Auditors.

Finally, the CNDCEC research paper, NUOVA DISCIPLINA DEL WHISTLEBLOWING E IMPATTO SUL D.LGS. 231/2001 and the POSITION PAPER, Il ruolo dell'OdV nell'ambito del Whistleblowing, issued by AODV focus on the regulation of the following aspects:

- the updating of the Organisational Model pursuant to Legislative Decree 231/01;

- the SB and its role as supervisor of the implementation of, and compliance with the Organisational Model;
- The SB protection for whistleblowers;
- the management of Whistleblowing within corporate groups.

2.2 2.2 Analys of the monitoring report on the new ANAC whistleblowing system

In March 2024, ANAC published the results of a sample survey conducted of 319 entities in the public sector and 213 entities in private sector, to identify the peculiarities and critical aspects of the current legislation on whistleblowing, through the administration, from 4 to 22 December 2023, of a questionnaire to entities in the public and private sectors, which were required to implement internal reporting channels.

The aspects monitored were as follows:

- Coordination between internal reporting channels provided for by special legislation and channels to be implemented pursuant to Legislative Decree No. 24/2023
- Anonymous whistleblowing
- Sharing of the internal reporting channel (Article 4(4) of Legislative Decree No. 24/2023)
- Reporting persons
- Procedure for making reports in writing
- Report handling timeframe
- Oral reporting
- Staff training
- Codes of conduct/codes of ethics and disciplinary liability

- Handling of internal reports: entities in the private sector (private sector only)
- Handling of internal reports: entities in the private sector that are required to appoint an RPCT (private sector only)
- Handling of internal reports: entities in the private sector that are not required to appoint an RPCT (private sector only).

In particular, with the administration of this online questionnaire, which was anonymous, the Authority wished to investigate on:

- The implementation of reporting channels by entities in the public and private sectors;
- The handling of written, oral and anonymous reports;
- Staff training.

The results collected, in general, for entities in the public sector showed that the whistleblowing system had not been effectively implemented, mainly due to a lack of knowledge of the tool on the part employees in the public sector, inadequate training delivered by the relevant entity and – last but not least – a lack of trust on the part of employees in their employers to handle reports and prevent retaliation.

As things stand, entities have yet to adjust their system for dealing with:

- Reports made orally, during face-to-face meetings with reporting persons or over the phone, through dedicated lines;

- anonymous reports, which, however, are handled in the same way as written reports.

Most entities in the public sector, moreover, use the WhistleblowingPA IT platform made available free of charge, in 2014, by Transparency International italia for handling internal reports.
Entities in the private sector, on the other hand, have implemented different IT platforms for handling internal reports, based on individual business needs and their size, showing a preference for written oral reports and have properly trained the staff in charge.
Moreover, these monitoring activities have made it possible to:

- ***identify the main critical issues for entities in the public and private sectors, to which, following the recent entry into force of Legislative Decree 24/2023***, different regulations apply, also depending, for entities in the private sector, on the number of employees;
- ***check compliance, by these entities, with the national regulatory provisions, which became mandatory on 15 July 2023 and 17 December 2023, respectively, with the aim of promoting and implementing the whistleblowing system*** as best practice and a tool designed to prevent and fight corruption.

The Authority announced that it will take into account the results of this investigation in order to provide subsequent general guidelines, especially on internal reporting channels, also based on future developments in this regard, as ANAC is

currently drafting special guidelines on the handling of internal channel reporting.

Section 3 – Training needs

3.1 Raising awareness of the culture, values and strategic role of top-level commitment

For the success of whistleblowing, it is essential for the entities concerned to identify communication/training strategies that can promote reflection on the issues of justice, legality and active citizenship, as well as positive social attitudes in order to develop autonomous judgement and critical sensibility, so that the recipients can adjust their behaviour to each individual situation and avoid mistakes. Such actions could be based on three fundamental principles: trust, impartiality, and protection. These, in fact, are precisely the key aspects that ultimately influence the success or failure of internal reporting channels. In other words, in many cases, the low use of the whistleblowing system was due to the lack of one or more of these factors. Therefore, these three principles, in addition to being the interpretative basis of the decree, provide the framework for analysing the root causes of mistrust and poor use of reporting channels. Receiving few or no reports, in fact, does not mean that there are no situations or events that should be reported, but the exact opposite. An effective whistleblowing system, indeed, promotes:

- an improvement in the governance of entities and the assumption of responsibility by management and top management;
- transparency and the importance of corporate culture, the latter being based on ethics, risk management and

compliance in a broad sense.

In this regard, ethical and value-based interventions, aimed at fostering a corporate culture that is based on integrity , are considered as crucial in the development of whistleblowing management systems: a true culture of integrity, in fact, helps to prevent or reduce to a minimum the breaches committed by employees in the workplace and creates an internal environment that encourages reporting; furthermore, a deficient compliance culture can have a negative impact on the processes of any entity or organisation, especially on quality and efficiency. The strategic role played by these aspects is also confirmed by Confindustria in its Guidelines, especially with regard to the topics that should be covered by training, where it refers to the following general principles of conduct in order to foster adequate understanding and raise awareness of certain general principles such as, for instance: i) confidentiality – the need to take appropriate technical and organisational measures by the personnel responsible for handling the reports, in order to protect the confidentiality of information throughout the whistleblowing management process; ii) ethics and integrity – building an ethical and integral environment in the workplace, that encourages honesty, transparency and accountability in

[2] Nel 2017 l'OCSE ha definito l'integrità pubblica come "allineamento coerente e all'adesione di valori, principi e norme etiche condivisi per sostenere e dare priorità all'interesse pubblico rispetto agli interessi privati nel settore pubblico. Questa definizione può essere estesa anche al settore privato, relativamente alle violazioni che rientrano nell'ambito di applicazione della normativa sul whistleblowing. Tali violazioni, infanti, anche se messe in atto da soggetti oppure organizzazioni del settore privato, hanno un impatto negativo sui diritti e interessi di tipo collettivo, quali, ad esempio, la tutela della salute, la tutela dell'ambiente, il corretto utilizzo dei finanziamenti europei, la tutela dei consumatori, la libera concorrenza e l'integrità del sistema finanziario

the handling of reports; iii) active listening, communication skills and cooperation – raising the awareness of the staff responsible for handling the reports on active listening, empathic communication and understanding of the psychological aspects associated with the handling of reports, especially when talking to the person making the report, as well as on the importance of a cooperation between the team and the other corporate functions involved in the handling of reports (for example, the legal department, human resources, OdV). In this context, the commitment of Top Management is also crucial, as it could also reap indirect benefits from the whistleblowing system, if this tool was also promoted, vis-à-vis public opinion and stakeholders, with an appropriate external communication strategy (for example, as part of an ESG strategy).

In this regard, Confindustria guidelines recommend delivering adequate training aimed at building a culture of integrity and responsibility within the organisations.

3.2 Issues associated with the interpretation/ implementation of the regulation

3.2.1 Subjective scope: profiles of reporting persons

ANAC Guidelines point out that the new law on whistleblowing provides protection not only to employees of entities in the public or private sectors, but also to other individuals who work, even if not permanently, within such organisations and may therefore become aware of possible breaches: self-employed persons/freelancers, consultants, trainees, volunteers or employees of supplier companies who work for entities in the public or private sectors. These Guidelines also specify that the following categories of whistleblowers, other than employees/self-employed persons/consultants/ trainees/volunteers, may qualify for the protections provided for by the Decree: i) Shareholders, to be understood as natural persons holding shares in one of the entities in the public sector, in the corporate form (e.g. state-owned enterprises, in-house entities, cooperatives, etc.). These are those who may have become aware of reported breaches in the exercise of their rights as shareholders in the company; ii) Persons with administrative, management, control, supervision or representative responsibilities, even where such duties are performed on a de facto basis, in the public sector. These are persons connected in a broad sense to the entity in which the breach takes place and for which they perform certain duties, even without a holding a specific position (de facto). These include, for instance, members of Boards of Directors, even without executive powers, or members of Internal Assessment Bodies (OIV) or Supervisory Bodies (SB), as well as university

student representatives. ***Multi-disciplinary compliance analyses should be carried out, especially for companies that are subject to specific legal obligations to supervise the work of third parties, to better identify third parties subject to whistleblowing laws, in order to facilitate the implementation of the Decree (for example, pharmaceutical representatives for the pharmaceutical sector, athletes/ members for the sports sector, etc. In addition, in all other cases, such as, members of political bodies in the public sector (e.g. mayors, council members, etc.), citizens (other than individuals who work for entities in private sector that provide goods or services or work for the public sector) and/or customers/consumers, for the private sector, consideration could be given to implementing alternative protection measures on a voluntary basis***

The results of ANAC's monitoring report on the new whistleblowing system are as follows:

- In the public sector, out of 319 respondents, only 54 stated that they had received whistleblowing reports, mainly from employees of the same entity (about 71%), 1 (ASP) from a shareholder, and 12 from self-employed persons/freelancers.
- In the private sector, out of 213 respondents, only 63 stated that they had received whistleblowing reports, of which 50% were from their employees, 28 from self-employed persons/freelancers/consultants, 17 from volunteers and trainees, and 15 from shareholders.

3.2.2 Objective scope and coordination between the whistleblowing system and other special systems

The scope of the Decree is very complex and rests on a variable system of obligations and protections, which may change according to: i) the type of breach; ii) the public/private nature of the entity to which the reporting person belongs; iii) the size of entities in the private sector and applicability of Decree no. 231. Considering the large number of cases that can be reported, publicly disclosed or reported to the judiciary, the legislator has categorised the offences, acts, behaviour or omissions that can be reported, disclosed or reported to the judiciary, describing in detail, albeit with a rather complex referencing technique, what qualifies as a breach. ***This approach, since the subject of the report may change radically depending on the sector to which it belongs - for example, in the private sector, there are differences between listed companies, companies in the insurance/ financial sector (e.g. banks, leasing companies, etc.), companies that are part of foreign multinationals (subject, for example, to the FCPA/UKBA, etc.), companies in regulated sectors, that may have internal Codes or bylaws/ articles of association (e.g. the sports sector, etc.) and/ or companies in the industrial sector – seems to require, in particular for organisations in the private sector, a multidisciplinary compliance analysis (e.g. PNRR, ESG, Model 231, Enterprise Crisis, HSE, GDPR, Antitrust, etc.) in order to better coordinate the whistleblowing system and other monitoring/reporting systems to facilitate the implementation of the Decree.*** Another aspect that deserves attention and should be clarified is the relationship between

the whistleblowing regulation contained in Decree No. 24/23 and special regulations governing whistleblowing procedures in certain sectors. In this regard, it should be noted that the Decree does not apply to all those reports of breaches that are already mandatorily regulated by European Union or national acts concerning financial services, products and markets and the prevention of money laundering and terrorist financing, transport safety and environmental protection or by national acts implementing European Union acts set out in Part II of the Annex to Directive (EU) 2019/1937, as well as reports of breaches concerning national security, as well as defence-related and national security-related procurement relating to defence or national security aspects, unless such aspects are covered by relevant secondary EU legislation. Regarding the private sector, under this provision, special legislation continues to apply to specific sectors, including the financial sector and anti-money laundering and terrorist financing. In particular, the application of Article 52-ter on banking matters and Articles 4-undecies and 4-duodecies of the Consolidated Law on financial matters, respectively, remains unaffected. In addition to specific internal communication channels, the implementation of an external reporting channel is also required, for the Bank of Italy or Consob, depending on the supervisory division.
As regards anti-money laundering and terrorist financing, Legislative Decree No. 231/2007, as amended by Legislative Decree No. 90/2017, which introduced Article 48 concerning internal systems for reporting breaches, applies. For entities subject to these provisions, there is, therefore, a dual reporting system: one required by special laws for breaches covered by those laws, and the one provided for by Legislative Decree

No. 24/23 for breaches of EU law or national laws that do not fall within the scope of special regulations. ***The result is a complex general system that, on the one hand, seems to require entities to undertake a detailed multidisciplinary analysis, which is exposed to the risk of uncertainty and/or overlapping and, on the other, may produce duplication of roles, competences, organisational procedures and reporting channels, thus undermining the efficiency of the overall system (for example, reports to the AGCM of information that may help identify cartels or other breaches of competition law). In the public sector, the problem of the dual reporting system is definitely less relevant, but not entirely negligible: reports of data breaches and reports of suspected money laundering transactions (addressed respectively to the Garante della Privacy and to the Financial Intelligence Unit), for instance, will have to continue to pass through (internal and external) reporting channels different from those used for whistleblowing.***

The results of ANAC's monitoring report on the new whistleblowing system are as follows:

- In the public sector, the respondents did not have a clear understanding of what is meant by special legislation (for example, some considered special legislation to be the same as Legislative Decree no. 24/2023 or Law no. 190/2012 or Legislative Decree no. 231/2001, or Legislative Decree no. 165/2001 or Directive 2019/1937 itself).
- In the private sector, 24 % of the respondents (51 respondents) stated that they were subject to special legislation on the reporting of breaches/offences (20 Entities with 50 to 249 employees, n23 Entities with more than 249 employees and only 8 Entities with less than 50 employees); most of these Entities, about 83%, had also addressed the problem of coordination between this channel and the whistleblowing channel.

3.2.3 Use of internal vs external channels: the interests involved (private sector only)

Although no order of priority is expressly indicated for the different reporting methods, Legislative Decree 24/23 lays down certain conditions for resorting both to the external channel and public disclosure, to encourage entities to equip themselves with efficient organisational systems integrated into their internal control systems and to achieve a proper balance between protecting freedom of expression of whistleblowers and the image of the entity. ***However, notwithstanding the fact that this decree identifies, in principle, priority criteria for the use of channels, in regulating the requirements for resorting to channels other than the internal channel, the law – according to Confindustria – uses vague formulations, which give reporting persons free to select the channel to use (e.g. press, electronic tools or other dissemination tools capable of reaching a large number of people)***[3]; this risks undermining the institution's need for confidentiality and results in a distorted use of the system, that could (irreparably) damage the entity's image. ***A special internal procedure should make it clear that public disclosures may only be made through the mass media 'supervised' by industry regulations. Moreover, internal, and external reports and public disclosures shall be, according to the Decree, based on 'reasonable grounds',***

[3] Except for the press, these are tools that, in addition to not being identified, allow news to be disseminated through channels that are little or not regulated by control obligations - and authorities - (e.g. social networks): risk of dissemination of groundless news, without real guarantees. These are channels that are not aligned with principles established by law and jurisprudence, such as 'truth' of information, 'clarity and simplicity' of language, 'public interest' of information

and compliance with this requirement is entirely at the discretion of reporting persons. Also, in this respect, a clear definition of 'reasonable grounds' should be provided, by asking the reporting person to explain the reasons for the report.

3.2.4 Impact of whistleblowing on the Code of Conduct (public sector only)

One of the recently updated provisions of the Code of Conduct is the one contained in the new Article 11-ter, paragraph 3, according to which employees in the public sector must 'refrain from any action or comment' that may impact on the prestige, reputation or image of the public sector or of the entities to which they belong; according to paragraph 3, then, in order to ensure the confidentiality of communications, 'public conversations through digital platforms or social media' should normally be avoided. It might appear that these provisions preclude the right to have recourse, in the cases provided for in Article 15 of Legislative Decree 24/23, to public disclosure. Here too, therefore, the fact that there is no coordination with the whistleblowing decree and subsequent regulations could give rise to doubts and influence the actual recourse to whistleblowing. Standard-setters should avoid, then, such discrepancies in matters involving the exercise of rights and/or affecting sensitive areas, such as anti-corruption. In this regard, we should mention the complex analysis of Legislative Decree 24/23 carried out by the Community of Practice for Anti-Corruption and Transparency, initiated by the Scuola Nazionale dell'Amministrazione (SNA), which, among others, recommends an update of the Code of Conduct, in order to

ensure compliance with the Decree. If the recommendation made in the chapter ‘Per una riscrittura dell’art. 8 del codice di comportamento dei dipendenti pubblici’ (Review of Article 8 of the Code of Conduct) were to be implemented in some way, this would help strengthen the value of whistleblowing and, at the same time, of privacy.

According to ANAC’s monitoring report on the new whistleblowing system, in the public sector, slightly more than half of the respondents (53%) included in their codes of conduct/ethics any forms of disciplinary liability for the persons in charge of handling reports in the event of a breach of the obligation to protect the confidentiality of the identity of reporting persons and other persons. These are mostly municipalities, public bodies, and state-owned entities in the private sector.

3.2.5 Reporting channels other than digital platforms

Within ANAC Guidelines, transposing the opinion of the Garante della Privacy, the following statement was included – for the purposes of establishing internal reporting channels – 'Ordinary electronic mail and certified email (PEC), are considered to be tools that are not adequate to ensure confidentiality. Consequently, the only appropriate IT tool seems to be an online platform'. Moreover, according to these Guidelines, if conventional channels and techniques are used, it is necessary to list the tools made available to ensure the confidentiality required by the legislation in force, and, in this regard, a reporting system based on paper mail is mentioned, among others. According to Confindustria, although this is a solution that does not consider technological advances, it may help reduce the costs arising from the implementation of the new legislation, particularly for SMEs. Another issue that needs to be addressed, in the private sector, since ANAC (and, even before, the legislator) has not clarified the point, is the relationship between the prevention systems implemented by organisations pursuant to Legislative Decree 231/2001 and whistleblowing legislation pursuant to Legislative Decree 24/23. In fact, the characteristics of the reporting channels provided for in the 231 Models of the organisations subject to the whistleblowing decree have not been specified. According to Article 4(1) of Legislative Decree 24/2023, 'The organisational and management models referred to in Article 6(1)(a) of Legislative Decree no. 231 of 2001 provide for the internal reporting channels referred to in this decree'. Specularly, Article 24 Paragraph 5 of Legislative Decree 24/2023 replaces Paragraph 2-bis of Article 6 of Legislative Decree 231/2001 with the

following text: ‘Pursuant to the legislative decree implementing Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019, the models referred to in paragraph 1(a) provide for internal reporting channels, an explicit prohibition of retaliation and a penalty system implemented pursuant to paragraph 2(e)’. The Guidelines do not provide any clarification as to the interpretation to be given to the combined provisions of the two rules, so it is not clear whether all the reporting channels contained in the 231 Model – and therefore also those specifically provided for breaches of the Model and therefore the commission of alleged offences – must necessarily have the characteristics contained in Articles 4 to 5 of Legislative Decree 24/23. Or whether, more simply, the 231 Model may merely mention the availability of internal whistleblowing channels alongside the channels for reporting offences under Decree no. 231[4].

[4] Article Whistleblowing e linee guida ANAC: dubbi interpretativi e nodi irrisolti, by Nicola Traverso, published in the online magazine Norme e Tributi Plus by Sole 24 Ore.

The results of ANAC's monitoring report on the new whistleblowing system, regarding other forms of written reports, are as follows:

- In the public sector, in many cases, reporting persons can directly speak, in a confidential meeting, with the RPCT, who then prepares a report or transfers the report to the platform; in addition, whistleblowers may use: a telephone channel without registration, an e-mail address visible only to the RPCT, a mobile phone or a dedicated telephone number, an internal mailbox;
- In the private sector, out of a total of 213 respondents: (i) only 23% provide a certified (PEC) address; (ii) only 31% provide an ordinary (PEO) e-mail address; (iii) 44% accept registered mail; (iv) 46% accept ordinary mail; (v) 27% accepts direct delivery of reports to the record office.

3.2.6 Measures of protection for reporting persons, reported persons and other persons concerned

One of the cornerstones of whistleblowing legislation is the protection provided to reporting persons. This includes, on the one hand, the duty of confidentiality in handling the reports, and, on the other hand, an explicit prohibition of retaliation as a result of reporting by employers, and the fact that any decisions made in violation of the prohibition of retaliation shall be null and void. According to the Decree, however, regarding the prohibition of retaliation, certain conditions must be met in order for reporting persons to qualify for protection: (i) reporting persons must fall within one of the categories listed in Article 3; (ii) the information on the reported – also to the judiciary – or publicly disclosed breach must fall within the objective scope of the Decree; (iii) reporting persons must have 'reasonable grounds' to believe that, at the time of reporting or public disclosure, the information was true; (iv) reports must be made in accordance with the procedures provided by internal or external channels; (v) public disclosure is made under the conditions provided for in the legislation. ***ANAC Guidelines specify, in this respect, that, to qualify for protection, reporting persons must have 'a reasonable belief' that the reporting is relevant (for example, that an offence was committed or is about to be committed).*** On the other hand, the fact that the report was made without being sure of the matters or based on an error of judgement is not relevant. With reference to the objective scope of the decree, it does not include disputes, claims or demands involving personal interests of the reporting person or of persons reporting to the judiciary, if the report concerns situations exclusively

associated with their jobs or work-related relationships in the public sector, or with their jobs or work-related relationships, in the public sector, with their superiors. ***These criteria could appear excessively flexible and insufficient to ensure a balance between the rights of reporting persons not to suffer discrimination and retaliation for the reports made and the need to protect entities against an unlawful or abusive use of the system, which can result in considerable economic and reputational damage to the entities, especially when such conditions are laid down for public disclosure.*** It would therefore be more appropriate to limit the measures for protection to cases where the report is based on precise and concordant facts and is adequately substantiated, also by relevant documents. Moreover, it should be noted that, according to ANAC Guidelines, considering the objective scope of the Decree, reports concerning, for example, labour disputes and pre-litigation, discrimination between colleagues, interpersonal conflicts between a reporting person and another worker or his or her superior, reports concerning data processing carried out in the framework of an individual work-related relationship which do not constitute an imminent or manifest danger to the public interest the public interest or the integrity of entities in the public and private sectors do not qualify for the above-mentioned measures of protection. As regards, on the other hand, the measures of protection provided for reported persons, the Decree, responding in part to a request by Confindustria, has established a form of protection for reported persons. Indeed, reported persons ‘may’ be interviewed or, if requested, must be interviewed, in the event of both internal and external reports, but: i) it does not seem

reasonable to leave it to the discretion of the whistleblowing manager to decide if a reported person should be involved; ii) in order to ask to be heard, reported persons should be aware of the fact that a report concerning them was made. ***To provide adequate measures of protection also for reported persons and to protect their right of defence, it should be specified, by way of interpretation, that reported persons must always be informed by their manager (whether internal or external) of the existence of a report against them.***

Finally, as suggested by the CNDCEC Research Paper, the possibility that the SB (OdV) may make a report under Legislative Decree 24/2023 and, therefore, resort to whistleblowing, must be considered. ANAC Guidelines include, among those who may make reports, 'persons with administrative, management, control, supervision or representative responsibilities, even where such duties are performed on a de facto basis, in the public sector. These are persons connected in a broad sense to the entity in which the breach takes place and for which they perform certain duties, even without a holding a specific position (de facto). These include, for instance, members of Boards of Directors, even without executive powers, or members of Internal Assessment Bodies (OIV) or Supervisory Bodies (SB), as well as university student representatives'. ***The inclusion of the Supervisory Board (OdV) also seems inappropriate in consideration of its legal duties: in fact, if it becomes aware of an offence under Legislative Decree 231/2001, or of a breach of the 231 Model, the Supervisory Board must promptly inform the administrative body and any other supervisory body. If, on***

the other hand, the offence does not fall within the scope of Decree 231, the Supervisory Board shall record that the report is outside its competence and inform corporate governance.

3.2.7 ANAC's penalty system

ANAC guidelines has provided clarifications aimed at identifying the recipients (natural/legal persons) of the penalties applied by the ANAC. In particular: i) If the channel or procedures are not implemented or the procedures are not compliant, penalties apply to the policy-making body; ii) if a report is not analysed or followed up, the reporting manager shall be held responsible. Regarding penalties for retaliation, it has been clarified that penalties apply to the natural person who perpetrated retaliation. In general, this is a step forward compared to the previous version, even if some doubts remain, which have been investigated by Confindustria (for example, in the event of retaliation, who is to be held responsible in the case of, for example, dismissal or transfer, etc.). For further details on the procedure associated to every penalty, please refer to the specific Regulation that ANAC is preparing.

3.3 Organisational and management issues yet to be resolved

3.3.1 The internal channel manager

While, in the public sector, the Head of Anti-Corruption and Transparency (RCPT) has been identified as the manager of the internal channel, in the private sector it is up to those who run the organisation to identify and formally appoint the person

who meets the requirements laid down for the 'Internal Channel Manager'. This role could be assigned to an external subject, but, as clarified by the Document APPROFONDIMENTO DEL 07/12/2023 – Whistleblowing Guida Operativa (whistleblowing operational guidelines) issued by the Fondazione Studi Consulenti del Lavoro, the fact that the internal channel of an entity is entrusted to, and managed by an external organisation, including the assessment and management of individual whistleblowing reports, does not mean that the relevant responsibilities of the entity are transferred to the external organisation, so the entity will have to identify a competent organisation/person that is actually able to perform the task and can provide insurance coverage. On the other hand, if the channel is managed internally, there is no need to have a special office, since this duty may well be performed by persons/divisions already provided for by the entity's internal control system, if they are exclusively assigned to the handling of reports. This is confirmed by ANAC Guidelines which, while recognising the entity's right to choose its reporting manager, do not exclude that this duty may be assigned, by way of example, to Internal Audit or to the Supervisory Board. The latter, as is well known, is the unit, within the entity, that has autonomous powers of initiative and control, and is called upon to supervise the operation of, and compliance with the Organisational Model pursuant to Legislative Decree 231/01. It fulfils the requirements identified by the decree for the purpose of handling whistleblowing reports and, as the recipient of reports concerning breaches of the organisational model, it could well also be the recipient of whistleblowing reports. This aspect is also reiterated by the CNDCEC Research Paper,

NUOVA DISCIPLINA DEL WHISTLEBLOWING E IMPATTO SUL D.LGS. 231/2001, of October 2023, according to which, 'Based on these considerations, for entities in the private sector, certain categories of persons might not ensure the proper functioning of the channel to be managed. In particular, the following persons/offices should be excluded from the management of the reporting channel: i) administrative bodies (Chairman and members of the Board of Directors, Sole Director), as well as any support offices and staff, as they could not ensure impartiality when identifying any breaches within the organisation; ii) General Manager, as well as any support offices and staff, as they may be directly influenced by the management; iii) managers and top managers in general, as they are above the reporting person in rank, and this could be a deterrent'. ***A specific job profile should be created for the internal channel manager since, in addition to autonomy, independence, competence and integrity, the appointed person should have a good reputation within the organisation and, above all, be regarded as a 'reliable' person to whom reports should be submitted.*** Moreover, the POSITION PAPER of 10 October 2023, Il ruolo dell'OdV nell'ambito del Whistleblowing, issued by the Associazione dei componenti degli Organismi di Vigilanza, in order to identify – pursuant to Legislative Decree no. 231/01 – the possible scope of action of the Supervisory Board with respect to internal reports, refers to Article 5 of Legislative Decree to clarify what is meant by 'management of the internal reporting channel' in the framework of Whistleblowing legislation, and in particular paragraph c), 'diligently following up the reports received', where 'following up', pursuant to Article 2, 2(1)

(n) of Legislative Decree 24/2023, shall mean, 'the action taken by the person responsible for the management of the reporting channel to assess the matters reported, the outcome of the investigations and any measures taken'. And it concludes that ***the definition of 'follow-up' is ambiguous, as, from a lexical point of view, it is not clear whether the outcome of the investigations and the measures taken are encompassed in the 'follow-up' or whether these steps are included in the 'assessment' made by the Manager. Therefore, since OdV is a supervisory board, the decision to appoint it as the Reporting Manager, based on the interpretive issues discussed above, must be carefully weighed, considering all the relevant pros and cons, and making sure that there is no conflict of interest and that participation in management activities does not undermine the independence and autonomy of the Board.*** The same opinion is also expressed by the above-mentioned CNDCEC Research Paper, according to which 'appointing the Supervisory Board as the whistleblowing manager is a decision that must be carefully assessed, after considering, first and foremost, the supervisory tasks that the law assigns to it and the requirements of independence and autonomy that must be met to perform these duties. The fulfilment of these requirements, in fact, could be jeopardised due to the additional tasks associated with the 'management' of the whistleblowing channel.

The results of ANAC's monitoring report on the new whistleblowing system are as follows:

- In the private sector, the subjects involved as 'Internal Channel Managers' were often the SB, RPCT, Human Resources Manager, Compliance and Internal Audit Managers, WB Committee, Ethics Committee, Legal Department. In other few cases, this position was filled by external parties or by the CEO, the facilitator, and the relevant internal offices. These results are in line with the fact that, with respect to the question of whether the

manager is an internal or external person/board, most respondents stated that these duties were assigned to an internal board (123), that is, mainly the Supervisory Board (27), Internal Audit Board (25), internal collegial body in charge. Other answers provided under 'other' included the RPCT, compliance office, human resources manager. For those who, on the other hand, chose an external subject (60), this position was mostly (37) filled by a natural person (consultant, lawyer, etc.). Some respondents mistakenly indicated the Supervisory Board was the external subject appointed to manage the internal channel. It should be noted, however, that the latter is nevertheless one of the internal subjects.

- In the public sector, the respondents stated incorrectly that, for their entity, there is no obligation to have a RPCT; in fact, the obligation applies to entities such as municipalities, ministries, provinces, universities, public bodies); in any case, what emerged was that the reporting channel was entrusted to an internal person, including the internal audit manager, the legal officer, the SB, the school office director.

3.3.2 Involvement of internal facilitators and the role played by trade union representatives

The Decree introduces new figures in the whistleblowing system: facilitators, 'natural persons who provide assistance to whistleblowers during the reporting process and work in the same work-related context, and whose services must be kept confidential'. According to the provision, the term 'assistance' shall be understood as advice or support provided to the reporting person by someone who works in the same work-related context as the reporting person. In this regard, according to ANAC Guidelines, the term 'assistance' refers to advice or support provided to the reporting person by someone who works in the same work-related context as the reporting person. For instance, a colleague from the reporting person's office or another office who confidentially assists him/her in the reporting process could be a facilitator. ***A colleague who is also a trade unionist could be a facilitator if he or she assists the reporting person personally, without involving the trade union. It should be noted that if, on the other hand, the trade union is involved, he or she is not considered as the facilitator.*** In this case, the provisions on the involvement of trade union representatives and repression of anti-union conduct shall continue to apply. This is without prejudice to the fact that trade union representatives may inform ANAC of retaliation, whether it is a consequence of a report, even to the judiciary, or public disclosure made by them in their capacity as employees, or if they act as facilitators, without the trade union's initials, and therefore suffer retaliation for advising and supporting the person who made a report or a public disclosure.

According to the results of ANAC’s monitoring report on the new whistleblowing system, in the public sector, there is even one ministry that does not have an internal reporting channel and employees must turn to the union..

3.3.3 The internal channel manager in corporate groups (private sector only)

ANAC Guidelines do not address the possibility of implementing a single reporting channel to be shared by corporate groups. According to Article 4(4) of the Decree, certain entities may 'share' the internal reporting channel and its management. These entities include municipalities other than provincial capitals and, in the private sector, entities that have employed, in the last year, up to 249 workers, with fixed-term and open-ended employment contracts. This provision was introduced to incorporate the principles of the directive with the aim of giving smaller entities more flexibility in terms of compliance, to simplify organisational obligations and reduce costs, in line with the principle of proportionality. The wording used in the provision, however, raises the question of whether shared channels can be implemented within larger corporate groups – foe example, with more than 249 employees, with fixed-term and open-ended employment contracts – to have the same handling procedure. It should be noted that, under the previous legislation, it was common practice for a parent company to implement centralised whistleblowing procedures, by virtue of its power/duty to apply policies and guidelines, with the aim of affirming a corporate culture characterised by virtuous conduct. This is also common practice in other EU countries, some of which, in transposing the directive, have expressly provided for the possibility of implementing shared group channels regardless of the size of the companies belonging to the same group (e.g., France, Denmark and Spain). On this point, the European Commission expressed its opinion in June 2021, stating that parent companies are not precluded from also

providing centralised reporting channels, provided that there are also reporting channels within each subsidiary, to ensure proximity to the reporting person. In any case, medium-sized companies that may share the parent company's resources for receiving reports and for the investigations to be carried out, are still responsible for ensuring confidentiality, providing feedback to reporting persons and handling the reports[5]. Confindustria, in order to avoid the implementation of a different reporting channel for each individual legal entity, proposes two solutions: reports are received by the group channel but managed by each individual subsidiary , or service agreements between holding companies and subsidiaries for the management of the channel[6].

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[5]According to Confindustria Guidelines, 'a first solution is decentralised management within individual subsidiaries. In such cases, it will still be possible for the group companies to use a single IT platform, which will allow whistleblowers, once logged in, to select - from a list - the company where they work and intend to make the report. This way, the relevant office in the selected legal entity will initiate the procedure and handle the report. This organisational approach ensures compliance with the principle of proximity suggested by the European Commission, since it is the legal entity selected by the reporter that will handle the report and initiate the procedure'.

[6] According to Confindustria Guidelines, 'a second solution is to assign to the parent company – as a third party with respect to the subsidiaries – activities relating to reporting. In these cases, in addition to the use of a single IT platform (possibly with dedicated and segregated channels for each company) set up by the parent company, in line with the provisions of Article 4(2) of the Decree, each subsidiary may entrust the management of the reporting channel to the third party, identified in the parent company. This model should be regulated by specific service agreements, signed between the individual subsidiary and the parent company itself. For the purposes of managing a report, and in order to ensure the so-called "proximity", the channel operator may, on a case-by-case basis, ask for the support of the subsidiary's offices – in compliance with con-

According to the results of ANAC's monitoring report on the new whistleblowing system, in the private sector, especially for larger entities:

- 26 entities with more than 249 employees (of which 1 with 500 employees and 1 with more than 10,000 employees) reported that they had shared the channel, although they were not among the entities allowed to share it under Legislative Decree no. 24/2023;
- 4 entities with more than 249 employees stated that they intended to share the channel soon (2 in less than six months and 2 in more than six months).

fidentiality obligations – or implement, ex ante, a dedicated tool that ensures the participation of internal entities of the subsidiary to which the report refers'.

3.3.4 Conflict of interest of the Internal Channel Manager

According to ANAC Guidelines: 'Where there is conflict of interest, for the reporting manager, with respect to a specific report (for example, the manager is the reporting or reported person), one of the conditions for making an external report to ANAC is deemed to be met, since there are reasonable grounds to believe that the report in question will not be effectively followed up'. ***According to Confindustria, entities may regulate, in their internal procedures, any conflict of interest, providing for solutions to manage it, thus allowing the reporting person to make the report. Therefore, recourse to ANAC would be seen as a residual remedy, made available when the conflict of interest has not been regulated in any internal procedure[7].***

[7] According to Confindustria Guidelines, 'in such situations, it should be possible for the report to be addressed, for example, to senior management or to another person/office that can ensure its effective, independent and autonomous handling, always in compliance with the confidentiality obligation provided for by the law'.

According to the results of ANAC's monitoring report on the new whistleblowing system, there were only two responses on the issue of conflict of interest:

- In the private sector, if there is conflict of interest, the HR manager forwards the report to the Chairman of the BoD.
- In the public sector, the RPCT handles the reports received with the assistance of the Area I Director (hereinafter the 'Director') and of any support group, which is involved at the discretion of the Manager, taking into account the type of report; if there is a conflict of interest for the Manager and/or the Director with respect to the reporting person or the perpetrator of the alleged wrongdoing, they will promptly inform the Mayor. The Municipal Council, by its own deed, shall then identify the person(s) suitable to replace them in the management and analysis of the report.

3.3.5 The manager of the internal channel and the involvement of Governance and Internal Control, including in the supervision of the whistleblowing system (private sector only)

Neither ANAC Guidelines nor Confindustria Guidelines regulate the procedures for the supervision and coordination of the Internal Channel Manager of the whistleblowing system with the other internal control bodies (e.g., the Board of Statutory Auditors), nor the reporting procedures to be implemented by such Manager to the Top Management following receipt of the reports (e.g., timely transmission of the same to the Managing Director, etc.). On this subject, however, the National Council of Chartered Accountants and Accounting Experts has partially expressed its opinion in the new version of its Norme di comportamento del collegio sindacale di società non quotate (Code of Conduct for the Board of Statutory Auditors of Unlisted Companies), where a new principle is introduced: '5.5. Relations with the supervisory body: for the purposes of carrying out its supervisory activities, the board of statutory auditors acquires information from the supervisory body on the duties assigned to it by law to monitor compliance of the model implemented pursuant to Legislative Decree No. 231/2001. The Board of Statutory Auditors makes sure that the model provides for the terms and procedures of the exchange of information between the supervisory body and the administrative body and the Board of Statutory Auditors itself'. ***Therefore, it would be more appropriate to define the operating methods and/or procedures for coordination between the Internal Channel Manager and the other Management and Control Bodies by means of a specific***

internal procedure, making a distinction between cases in which the Internal Channel Manager is the SB and all other situations, as well as defining the procedures for reporting to higher ranks (as, for example, the RPCT does in its annual report, which contains information on the reports received). This could also be an opportunity to specify the areas that the Supervisory Board can monitor with regard to the whistleblowing system, such as: i) The role and duties of those who have access to reports, limiting the transfer of data and information to strictly necessary cases; ii) The methods and deadlines for retaining data and documentation, in compliance with the law; iii) Compliance of the procedure, which shall include: the recipients, the subject and content of the report, the characteristics of the internal channel and the cases in which the external channel may be used, and finally, a description of the measures of protection of confidentiality, protection against retaliation, and the responsibilities of the reporting person; iv) The required updating of the 231 model – if implemented – and, in particular, of the disciplinary system with the inclusion of penalties against those responsible for breaches; v) The provision of training activities regarding the possible adaptation of the 231 model and the Whistleblowing procedure; vi) The formal communication of Whistleblowing procedures to employees; vii) The availability of information on the use of the internal and external channels.

According to the results of ANAC's monitoring report on the new whistleblowing system, in the private sector, with regard to cooperation with other offices/bodies, several respondents stated that:

- the manager sends a report of the activity carried out to the control bodies (e.g., Board of Auditors, Supervisory Board) and/or to the general manager/corporate directorate in order to follow up the report; in particular, the latter are responsible for supervising, and in some cases, verifying the manager's assessment and defining any penalties and/or corrective actions;
- all flows to the control bodies (Board of Directors, Board of Auditors and Supervisory Board) are in place;
- the Board of Statutory Auditors is responsible for supervising the entire whistleblowing system;
- the recipients report periodically on the proper functioning of the whistleblowing system and on the activity carried out to the Internal Control Committee, the Board of Statutory Auditors and the Supervisory Board pursuant to Legislative Decree no. 231/2001.

3.4 Specification of operational aspects and/or issues to be addressed

3.4.1 Procedure for the appointment of the Internal Channel Manager and subsequent steps

For the purposes of implementing the internal channel, ANAC Guidelines emphasise the importance of issuing a specific organisational document defining the procedures for the receipt and handling of reports. This document shall: i) be adopted by the governing body; ii) define the role and duties of the various persons who are allowed access to the information and data contained in the report, limiting the transfer of the latter to strictly necessary cases; iii) define the methods and terms for retaining the data (both in digital and paper formats) collected as part of the whistleblowing process.

According to the CNDCEC Research Paper, NUOVA DISCIPLINA DEL WHISTLEBLOWING E IMPATTO SUL D.LGS. 231/2001:

- in the public sector, entities required to implement the Integrated Activity and Organisation Plan (PIAO), the Three-Year Plan for the Prevention of Corruption and Transparency (PTPCT) or the supplementary measures to the 231 Model (i.e. the document that replaces the PTPCT) may include this document within those mentioned above, together with a section on the planning of staff training on the subject.
- in the private sector, Entities which have adopted a Model 231, shall implement only one reporting channel in accordance with Article 6(2-bis) of Legislative Decree No.

231/2001, and shall define the channels within Model 231 or with an organisational document to which the Model 231 shall refer.

There is no mention of ***a deed appointing the manager of the internal channel, which, for the public sector, does not appear to be required, since, according to the law, for such entities the RPCT (where applicable) is responsible for managing the internal channel. For entities in the public sector, on the other hand, also based on Confindustria Guidelines, a formal deed of appointment of the reporting manager does not appear to be required, neither where the reporting manager is an internal natural person, nor in the case where the position is filled by an internal office/ body. Finally, if the manager of the reporting channel is an external entity, the relationship between the parties will have to be regulated by specific service contracts that, in addition to regulating the services provided between the parties, will have to include appropriate levels of service and control.***

According to the results of ANAC's monitoring report on the new whistleblowing system:

- In the private sector, 29 Entities out of a total of 153 did not define the procedure for handling internal reports with a specific organisational document, after hearing the trade union representatives (of which 7 Entities with less than

50 employees and 17 Entities with 50 to 249 employees); out of these 29, 7 identified the reasons for not defining the above procedure as the fact that there are no trade unions in the company.

- In the public sector, 45 Entities out of a total of 136 have not defined the procedure for handling internal reports with a specific organisational document, after hearing the trade union representatives, that is, 18 Municipalities and 1 Consortium of Municipalities, 3 state-owned entities in the private sector, 1 Ministry, 1 Province, 3 Regions, 12 public entities, 5 NHS Boards, 1 professional association – specifying in some cases that the document is in the process of being drawn up (this is the case of some entities in the public sector, state-owned entities in the private sector, Provinces, Municipalities and NHS Boards; others (some municipalities) pointed out that an organisational document had been drafted without hearing the trade union representatives; other entities specified that they had drafted a regulation, subject to control by the superordinate body; others (NHS authorities) reported that there is no internal regulation, but that the matter is continuously being updated and examined in depth, and clarifications are provided both in the 'anti-corruption and transparency' section of the PTPCT and PIAO from 2022, and with circulars, newsletters, direct information and training and awareness-raising courses; there are also entities that reported that no organisational document is required (several municipalities).

3.4.2 Management of the internal investigation

ANAC points out that, before even analysing the subject matter of the report, the Internal Channel Manager must complete an initial step to ensure that the requirements for providing protection are met. At this stage, especially in the public sector, the reports received should be examined to see whether they do not concern the entity but another competent body; this aspect must also be addressed to ensure compliance with the timeframes laid down by the legislation. With regard, then, to the criteria to be applied for rejecting the reports, ANAC refers to the same criteria it itself uses, including: i) – manifest groundlessness due to the absence of factual elements capable of justifying investigations; ii) ascertained generic content of the report making impossible to understand the facts, or report accompanied by inappropriate or irrelevant documentation. Once this first phase has been completed, the internal investigation on the reported matters or conduct must be initiated to assess their actual existence. In this regard, the Authority points out that all assessment activities must be carried out in compliance with specific sectoral rules and within the limits established by the provisions on remote controls, as well as those prohibiting employers from acquiring and in any event processing information and facts that are not relevant for the purposes of assessing the employee's professional aptitude or in any case pertaining to his or her private sphere. ***One aspect that should not be underestimated is the creation of a multidisciplinary team to support the Internal Channel Manager in the management of this phase and/ or the any subsequent investigations (for example, in the public sector, an analysis of the information related***

to the reported event should be carried out by the office managing Civic Access).

3.4.3 Management of follow-ups

The response to be provided to reporting persons within three months may be of an interlocutory nature, if the investigation has not yet been completed. In such circumstances, ANAC specifies that once the preliminary investigation has been completed, reports must be followed up. This ensures that reporting persons receive feedback on the outcome of the investigation, as also provided for by the Authority for the procedure for handling external reports. Furthermore, the duties of reporting managers have been defined, by specifying that they 'are not responsible for ascertaining individual responsibilities, whatever their nature, nor for assessing whether the actions and measures taken by the entity/body concerned are lawful'. According to ANAC, at the end of the investigation, appropriate feedback must be provided – which is essential for the credibility of the whistleblowing system and to avert the risk of unnecessary reports – with an indication of the measures planned or taken or to be taken to follow up the report and the reasons for the choice made. Among the possible outcomes to be notified are: i) dismissal of the case for lack of evidence or other reasons; ii) initiation of an internal investigation and, where appropriate, its findings; iii) measures taken to address the issue raised; iv) referral to a competent authority for further investigation, where such information does not prejudice the investigation or affect the rights of the persons involved.

3.4.4 Management of anonymous reports

The Decree has not exercised the option – provided for in the Directive – to include anonymous reports in its scope. Entities are therefore not required to accept anonymous reports. Furthermore, under the Decree, anonymous reporters who are subsequently identified and retaliated against, they do not enjoy protection for whistleblowers. ***According to ANAC Guidelines, entities are required to record any anonymous reports received and to keep the relevant documentation for no longer than 5 years, in order to retrieve them in the event that the reporting person subsequently informs ANAC of retaliation suffered because of the anonymous report. Moreover, if such reports are detailed and substantiated by appropriate documents, they may be handled as ordinary reports and, as such, may be processed in accordance with the internal rules, where applicable.***

According to the results of ANAC's monitoring report on the new whistleblowing system:

- In the private sector, 45% (96) of the respondents are not receiving anonymous reports; 40% of the respondents that are receiving such reports handle them mostly as whistleblowing reports (86 respondents); other respondents (24) handle anonymous reports as ordinary reports, while others (7) file them.
- In the public sector, che the majority of entities in the public sector have not received anonymous reports (212 out 319, i.e., 66%); those entities that have received anonymous reports are mainly handling them as whistleblowing reports (73 entities or 23%); only 6 entities (2%) stated that they have filed the anonymous reports received and 28 (9%) that they handle them as ordinary reports.

3.4.5 Management of internal investigations

Clearly, effective reporting systems make it possible to promptly initiate – if not anticipate – follow-up activities and any internal investigations into possible offences (including criminal offences) perpetrated within the entities. The whistleblowing system may also make it possible to meet both the different defensive needs of those involved in internal investigations, through which useful elements can be gathered for a defensive strategy, and protection needs of reporting employees, for whom being protected after reporting a breach is extremely important. Regarding this second aspect, it should in fact be noted that, based on the recent innovations introduced by Legislative Decree no. 24/23 – which generically encourage any persons to give their contribution to whistleblowing – face-to-face meetings are expressly included among whistleblowing channels; in fact, face-to-face meetings with the internal channer manager may make it possible ***for entities to acquire additional information or evidence, including elements that had been omitted by the reporting person, since considered as irrelevant. Such information could be used to defend the entity concerned, even before a court, in cases where Article 391-bis of the Code of Criminal Procedure is applicable.*** However, for entities to use such elements for their defence strategy, internal investigations must be carried out by professionals trained to do so, who know how to properly gather documentary evidence to be brought before a court. Private investigators, therefore, are not only necessary, but also, in some cases, indispensable. Having recourse to a detective agency also makes it possible to carry out real investigations that are more accurate and pervasive than what

an organisation can do internally with its own resources.

According to the results of ANAC's monitoring report on the new whistleblowing system, in the private sector only, entities show knowledge of this issue.
To the question 'Please indicate which parties are involved, their respective duties and how the internal reporting manager and internal offices cooperate', one entity in the private sector replied that 'if the internal channel manager does not have the expertise required to assess all the elements contained in the report accurately, while ensuring confidentiality, they shall promptly inform the competent corporate body. The latter will identify the most suitable unit for carrying out the investigation (the so-called investigation function). In this case, the Manager of the Internal Reporting Systems transfers the report to the investigation function, which promptly initiate the investigation, assesses the matters reported and completes the activities within the timeframes defined. Upon completion of these assessments, the investigation function promptly informs

the Reporting System Manager on (i) how the investigation was conducted and any evidence gathered, (ii) the outcome of the investigation, (iii) recommendations on any actions to be taken to remedy the breach found, as well as on any preventive actions.

3.4.6 Updating the 231/PIAO/PTPCT Model and tailoring it to implement the whistleblowing policy

According to ANAC Guidelines, entities in the private sector are merely required to 'Identify whistleblowing channels within the 231 Model or with an organisational document to which the 231 Model shall refer, after hearing the representatives or organisations referred to in Article 51 of Legislative Decree no. 81/2015', in addition to provide for – within the 231 Model – 'disciplinary measures against, inter alia, those who are found to be responsible for a breach of confidentiality in handling reports'. Also, for the public sector, since the 'procedures for receiving reports and for handling them are to be defined in a specific organisational document, the PIAO, PTPCT or MOG 231 (which contains corporate procedures aimed at ensuring the prevention of offences) may refer to this document'. It would be advisable to differentiate the procedures for updating the 231/PIAO/PTPCT Model (according to the relevant public/private sector) and/or to specify how the selected model implements the provisions, in separate organisational documents/internal procedures regulating the whistleblowing system

3.4.7 Whistleblowing system training

To ensure that reports are handled accurately and professionally, pursuant to the Decree, recipients must make internal and external resources involved in various capacities aware of the ethical, legal and confidentiality implications arising from reporting procedures, also with training and training-like activities. To this end, in fact, the Decree lists training and information obligations: i) pursuant to Article 4(2)

of the Decree, the offices or persons responsible for managing the reporting channel must receive specific training on the management of the channel; ii) pursuant to Article 5(1)(e) of the Decree, the offices or persons in charge of managing the reporting channel must provide all reporting persons (including but not limited to internal staff, external consultants, shareholders, business partners, suppliers, etc.) with clear information on the channel, procedures and the conditions to be met for making internal or external reports. According to Confindustria, such training should be delivered periodically to ensure its effectiveness. Special training should be also delivered in the event of regulatory updates on the relevant and applicable provisions concerning the management of reporting channels. In addition to the provisions applicable to reporting managers, all internal staff should also be adequately trained on these topics (including personal data processing), so as to raise awareness of the purposes and protections provided for by the Decree, and to promote a culture of integrity and responsibility within the organisations. Notwithstanding the fact that entities can determine how to deliver training activities, training programmes should be developed in such a way as to ensure that all resources are involved (e.g., classroom training sessions, workshops, e-learning, etc.). ***It might be advisable for the manager of the internal channel to cooperate with the HR Department to plan, with an approach that takes into account other compliance training requirements (e.g., Model 231, anti-corruption, etc.), whistleblowing training programmes, providing reports on their implementation to the organisation's Top Management and/or Supervisory Board and/or Board of Auditors (where available).***

Finally, we should mention Article 5(1)(e) of the Decree, according to which 'if they have their own website, entities in the public and private sectors shall also publish the information referred to in this paragraph in a dedicated section of their website'. Compliance with this provision, which also applies to entities in the private sector, is even more important for entities in the public sector, to which Legislative Decree 33/2013 also applies. In fact, the whistleblowing procedure, as a 'general administrative law act', could be published in the 'General provisions' sub-section, as well as in the 'Other contents' sub-section, as it also contains additional information and elements (such as the link to the platform; see in this regard, Annex 1 to Resolution no. 1134/2017). ***In any case, it is advisable to provide a direct link to these elements also on the homepage of the website, so as to comply with the provision referred to in Article 5(1)(e).***

According to the results of ANAC's monitoring report on the new whistleblowing system:

- In the private sector, most of the entities have planned or are planning staff awareness-raising and training sessions to disseminate the purpose of whistleblowing and the procedure for its use. These are 187 entities (88%) of which 132 are small and medium-sized (38 entities with fewer than 50 employees and 94 with 50 to 249 employees), against 26 entities (12%) that have neither planned such initiatives nor intend to do so. It should be recalled that training is aimed at covering issues such as the legislation, best practices and operational tools required to effectively manage reports, protect reporting persons and entities. Moreover, training is a corruption prevention measure to be implemented.
- In the public sector, most entities have planned or intend to plan staff awareness-raising and training sessions to disseminate the purpose of whistleblowing and the procedure for its use. In particular, 237 entities (74%) have done so, against 82 (26%) that have neither planned training nor intend to do so.

LA CASA DEI COMUNI
anci LOMBARDIA

www.safein.anci.lombardia.it
europa@anci.lombardia.it

ANCI Lombardia
Via Rovello 2, Milano
Telefono +39 02 7262 9601