



The implementation of UE Directive on Whistleblowing (2019/1937)

PROVISIONS CONCERNING THE PROTECTION OF INDIVIDUALS WHO REPORT VIOLATIONS OF NATIONAL REGULATIONS



Your partner in law.



PREMISE

Everyone must adopt the proper channels of reporting (internal, external and for public disclosures):

PUBLIC ENTITIES

With an exemption for municipalities with less than 10,000 inhabitants and for public entities with fewer than 50 employees;

PRIVATE ENTITIES

With more than 50 employees, as well as those operating in determined and specific sectors, regardless of the number of employees.

DECREE APPLICATION: SUBJECTIVE SCOPE

The approval of the decree will declare the overcoming of the actual national law on whistleblowing. Let's see which terms it will be applied:

The main innovations with respect to the provisions currently in force concern the private sector.

In fact, whereas for public employees the Italian legislation is mostly aligned with EU law, the protection of whistleblowers in the private sector is currently very **limited**, as it applies **only** to employees and collaborators of private entities that have adopted the organization model pursuant to legislative decree 8 June 2001, n. 231 and only in relation to relevant offenses according to said decree.

The new regulation being examined by the Chamber instead concerns, in line with the provisions of the Directive, both all private entities with **at least** 50 employees and those operating in certain sectors and which adopt organization and management models pursuant to legislative decree 8 June 2001, n. 231, regardless of the number of their employees.



DECREE APPLICATION: OBJECTIVE SCOPE



1. Administrative, accounting, civil or criminal **offenses**, not included in numbers 3), 4), 5) and 6);
2. **Significant** illegal conduct pursuant to legislative decree 8 June 2001, n. 231, or violations of the organization and management models provided by such decree, which do not fall within numbers 3), 4), 5) and 6);
3. Offenses relating to public procurement; financial services, products and markets and the prevention of money laundering and terrorist financing; product safety and compliance; transport safety; environmental Protection; radiation protection and nuclear safety; food and feed safety and animal health and welfare; public health; consumer protection; privacy and personal data protection and security of networks and information systems;
4. Acts or omissions affecting the **financial interests** of the EU;
5. Acts or omissions concerning the **internal market** of the EU;
6. Acts or behaviors which **frustrate the object** or **purpose** of the provisions of the EU measures in the areas indicated in numbers 3), 4) and 5).

CHANNELS OF REPORTING

Speaking of reporting methods, according to community provisions, the following reporting channels shall be:



1 Internal channels

External channels

Through a report to the National Anti-Corruption Authority (ANAC)
or other relevant authority

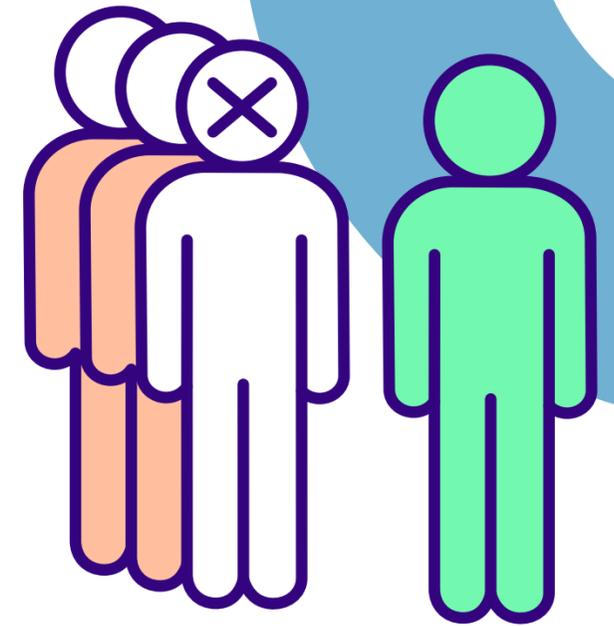
2

3 The possibility to make **public disclosures**

PROTECTIVE MEASURES FOR WHISTLEBLOWERS

First, there is a prohibition of retaliation (art. 17), which can occur in the following cases:

- Dismissal, suspension or equivalent measures;
- Demotion or failure to promote;
- Change of functions or of the place of work, reduction of salary, change of working hours;
- Suspension of training or any restriction of access to the same;
- Negative merit notes or negative references;
- Adoption of disciplinary measures or other sanctions, including financial ones;
- Coercion, intimidation, harassment or ostracism;
- Discrimination or otherwise unfavorable treatment;



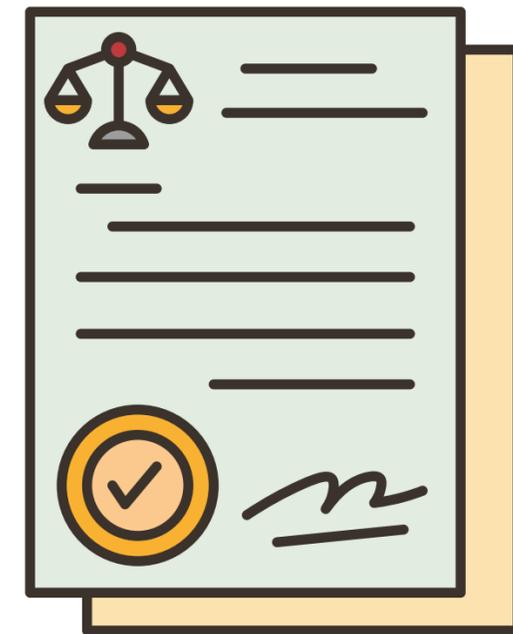
PROTECTIVE MEASURES FOR WHISTLEBLOWERS

- Failure to convert a fixed-term employment contract into a temporary employment contract permanent, where the worker has a legitimate expectation of such conversion;
- Non-renewal or early termination of a fixed-term employment contract;
- Damage, including to the worker's reputation, particularly on social media, or economic or financial prejudice, including loss of economic opportunities and loss of income;
- Improper listing based on a formal or informal sector or industry agreement, which may result in the person being unable to find employment in the sector or industry in the future;
- Early termination of the contract for the supply of goods or services;
- Termination of a license or permit;
- The request for submission to psychiatric or medical tests.

PROTECTIVE MEASURES FOR WHISTLEBLOWERS

In order to ensure protection of the **subjective** legal situation triggered, measures (art. 19), even temporary ones, will be adopted in favor of whistleblowers, such as:

- Compensation for damages;
- Reintegration into employment
- Order to cease the conduct constituting retaliation
- Declaration of nullity of the acts adopted in execution of the conduct constituting retaliation.



PROTECTIVE MEASURES FOR WHISTLEBLOWERS

Limitations of whistleblowers' liability are also provided (art. 20), if the report leads to a violation of:

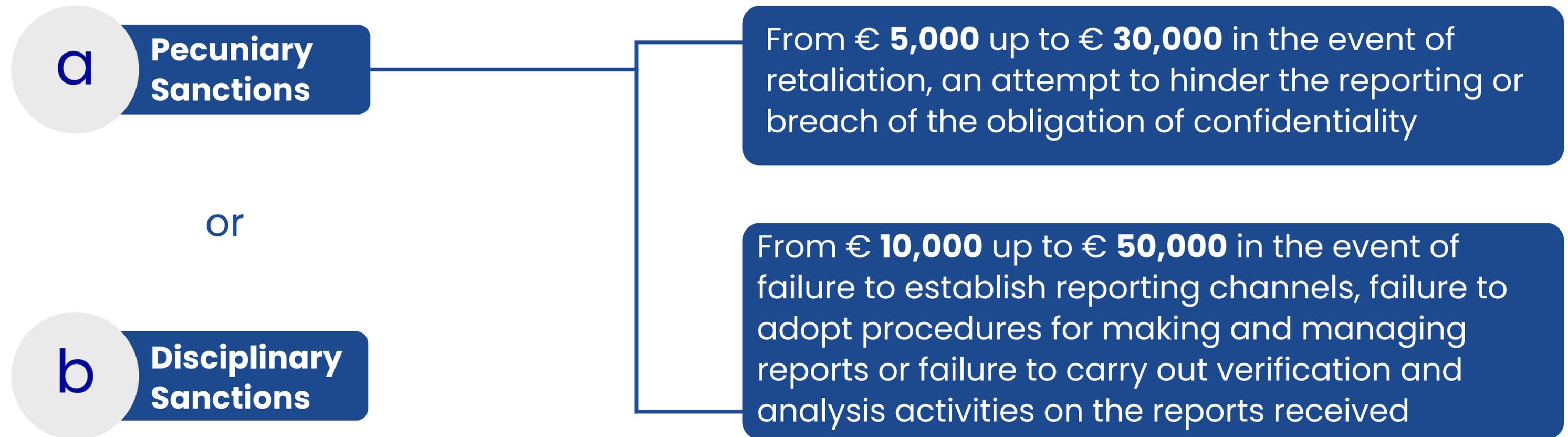
- Confidentiality obligation
- Copyright
- Personal data protection
- To an offense to the reputation of the person involved or reported



PROTECTIVE MEASURES FOR WHISTLEBLOWERS



The National Anti-Corruption Authority (ANAC) is capable of imposing sanctions (art. 21) against the person responsible, such as:



PROTECTIVE MEASURES FOR WHISTLEBLOWERS

Support measures are as well guaranteed to whistleblowers (art. 18), such as:

- Free information, assistance and advice about the methods of reporting and on the protection from retaliation offered by national and EU law
- Whistleblower's **rights**
- Methods and conditions of **access** to legal aid



OBLIGATION OF CONFIDENTIALITY

For the same purpose of protecting whistleblowers, there is an obligation of confidentiality (art. 12) regarding the whistleblowers' **identity**.

The whistleblowers' identity cannot be **revealed** or **divulged**, without their express consent, to authorities other than those competent to receive or follow up on the report.

This obligation is already provided by art. 54 bis, paragraph 3, of Legislative Decree 165/2001. The main change, however, concerns the need for consent to be express, as required by the EU Directive.

OBLIGATION OF CONFIDENTIALITY

In the event of **disclosure** of the whistleblowers' identity, a prior written communication of the reasons for the disclosure of the confidential data must be given.

A protection equal to that granted to whistleblowers is also provided for the individuals involved and or mentioned in the report, including the reported person himself.

All those involved have the right to:

- An effective **remedy** system
- An **Impartial Judge**
- the presumption of innocence and to a more general right of defense