

Whistleblower Protection Regime in Italy: The Law No 179/2017

On 30 November 2017, Italy took an important step towards whistleblower protection by adopting a new piece of legislation with comprehensive provisions. The Italian regulatory framework on whistleblower protection has been significantly amended with the adoption of the new law No 179/2017 ('the Law').

This legal brief outlines the central facets of the regulation and recommendations of the Law, who they impact, why they are important and practical recommendations for how companies can comply with these new legal requirements.

What You Need to Know – a Snapshot of the Law

Below we have provided a broad summary of the fundamental features of the Law. However, we recommend that companies affected by this legislation obtain professional legal advice if they are in any doubt as to its implications for their business.

Further details of the Law can be found at:

Gazzetta Ufficiale: <http://www.gazzettaufficiale.it/eli/id/2017/12/14/17G00193/sg>

Text in English:

<https://static1.squarespace.com/static/5a742d5ae9bdf1f3304898d/t/5a974db8419202f909ee4e01/1519865278761/Italy+WBer+law+-+2017+English.pdf>

The Purpose of The Law

The Law aims to strengthen the existing protection in the public sector and introduce the yet missing protection in the private sector.

Previously, Italy's Anti-Corruption [Law No 190](#) (commonly referred to as 'Severino Law') of November 6, 2012, applied exclusively to public sector employees reporting misconduct. The set of rules it introduced didn't cover the private sector, therefore leaving a substantial gap in whistleblower protection. It is undoubtedly an important advancement towards a more comprehensive whistleblowing system.

When Does It Come into Effect?

The requirements of the Law entered into force on December 29, 2017.

Key Amendments to Whistleblower Protection Regime

Public sector

The Law provides that a public employee, reporting illegal conduct in the interest of public administration's integrity shall not be retaliated due to the report, including sanctions, dismissal, demotion, transfers to other offices, or be subject to any other measures having a negative effect on the working conditions. When faced with a whistleblower's claim for retaliation, it is now the company's burden to prove that the actions taken against the whistleblower were not connected with the act of whistleblowing. In case it is confirmed that the employee was dismissed for reasons related to the report, he or she is entitled to the reinstatement in the workplace, the compensation for damage caused and payment of social security contributions due for the period between the dismissal and reinstatement.

The provisions against retaliation or discriminatory acts have been extended to employees of 'public economic entities' and to 'private-law employees subject to public scrutiny' as well as to 'employees and contractors of companies supplying goods or services to the public administration'.

Depending on the nature of the report, employees may report a violation either to the internal officer responsible for bribery prevention and transparency, or to the National Anti-Corruption Authority ('ANAC'), or directly to accounting authority or judiciary.

Notably, the Law reinforces the provisions aimed at protecting the whistleblower's anonymity. However, in case of a criminal trial, the identity of the reporter may be revealed in the manner and timing established by art. 329 of the Criminal Code.

In terms of sanctions, the ANAC can apply a penalty ranging between € 5,000 and € 30,000 charged to those responsible for retaliatory measures against the whistleblower. In case the internal system for reporting violations is absent or the internal officer responsible for bribery prevention and transparency has failed to follow-up on received reports, the penalty will range between € 10,000 and € 50,000.

Private sector

Previously, whistleblowing regulatory procedures in the Italian private sector were limited to specific areas, mostly covering finance and banking. Among the most relevant are the implementations of EU directives (Directive 2013/36/EU, Directive 2015/849/EU, Directive 2016/1034/EU), requiring financial institutions/insurance companies to adopt specific procedures for reporting violations.

The Law takes a more general perspective and provides for an important amendment of the Legislative Decree [No. 231/2001](#) from June 8, 2001, on the criminal liability of corporations ('the Decree'), requiring private companies which have already introduced compliance programs to set up a reporting system for whistleblowers, including:

- one or more channels allowing employees to internally report illegal conduct or violations, in the interest of an entity's integrity protection;
- at least one alternative reporting channel which would guarantee the confidentiality of the whistleblower's identity;
- appropriate measures to protect the whistleblower's identity and to maintain the confidentiality of information in any context subsequent to reporting, to the extent that anonymity and confidentiality are legally enforceable.

Again, the Law provides for a prohibition of direct or indirect retaliatory and discriminatory measures against whistleblowers for reasons connected directly or indirectly to the report and puts the burden of proof that those measures were not related to the disclosure act on the employer. At the same time, the Law details the sanctions against both, those who violate protective measures, as well as those who produce unsubstantiated reports out of intent or gross negligence.

What It Means for Companies in Italy

Companies operating in Italy have to revisit and update their compliance programs accordingly.

To accommodate the provisions of the Law into the organizational model 231 pursuant to the Decree, companies would have to provide for the following components:

- function/department responsible for the internal whistleblowing system management and maintenance;
- procedures defining those who are entitled to make reports, the contents of the reports, protective measures aimed to preserve whistleblower identity, and corresponding sanctions provided for those who violate these measures;
- appropriate communication and training on all of the above.

Actions to Take

In the face of the new Law and recent development on EU Whistleblower Protection Initiative, companies doing business in Italy should ensure that their local, regional and global compliance & ethics programs are implemented and duly monitored.

In particular, companies should provide for robust and comprehensive whistleblowing facilities. We recommend that companies doing business in Italy take the following steps:

- Review your whistleblowing system through the lens of the new legislation; incorporate necessary changes not only to the software but also to the Code of Conduct, underlying policies and procedures to keep all elements of your compliance & ethics program well-aligned;
- Address retaliation and confidentiality concerns of your employees with a revised training program;
- Assess your current Speak-Up Culture to understand the whistleblowing dynamics and identify problem areas in the organization's information flow;
- Walk the talk and follow-through in a consistent manner on the received reports to send a strong signal to your employees that you take their justice expectations seriously.

About Studio Etica

Studio Etica is a boutique consultancy that provides advice on corporate ethics and compliance programs to companies around the world. We are dedicated to working with our clients to design, maintain and optimize world-class programs with a focus on a strong, values-based culture. **Studio Etica** focuses on helping organizations achieve cultural transformations that not only drive legal compliance but lead to enhanced integrity and positive behavioral change. We are convinced that ethical culture is central to the meaningful compliance program that delivers actual results.

About the Author

Vera Cherepanova, a former Regional Compliance Officer and author of 'Compliance program of Organization' is the founder of **Studio Etica**. Vera's background includes working on-the-ground in Eastern Europe, CIS and Russia, one of the key emerging markets. Taking her experience in addressing cross-cultural challenges of ethics and compliance, Vera currently consults with international corporations, non-profits, wholesale and retail establishments, and small-to-large businesses, advising them on E&C programs.

Vera is an experienced speaker in the compliance profession and a regular contributor to prominent ethics & compliance blogs, including FCPA Blog, Corporate Compliance Insights, and SCCE Compliance & Ethics Blog. An accomplished compliance professional, in 2011 and 2016 awarded for "Best Compliance officer" at the International Compliance Association in Compliance Awards. Vera speaks Russian, English, French, and Italian.

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