

Offenses against EU law under Legislative Decree 24/2023

OVERVIEW DOCUMENT

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Preamble

The purpose of this document is to provide a possible illustrative outline of violations of European law that may be reportable under Legislative Decree 24/2023 (hereinafter the Decree) in the context of private-sector entities with a number of workers exceeding 50 (which also includes the Fondazione Compagnia di San Paolo).

Channels for reporting violations of EU law

The Decree, in addition to providing that such violations are reportable only in entities that exceed the aforementioned size threshold, also provides that - under certain conditions - they may also be reportable through channels other than the internal reporting channel, namely the external channel active at ANAC (Autorità Nazionale Anti-Corruzione, i.e. the Italian National Anti-Corruption Authority), and public disclosure.

Regarding the external channel at ANAC, the Decree stipulates that this tool can only be activated under the following conditions:

- the internal reporting channel is not active or is not suitable to guarantee the confidentiality of the whistleblower;
- the internal reporting channel has been used but the report has not been followed up by the manager of the channel within the designated timeframe or no action has been taken for its management;
- the whistleblower has reasonable grounds to believe that use of the internal reporting channel would not be effective or could result in a risk of retaliation;
- the whistleblower has reasonable grounds to believe that the violation may pose an imminent or obvious danger to the public interest (e.g., health and safety or environmental harm).

Public disclosure (through print or electronic media or otherwise through means of dissemination capable of reaching a large number of people) may be used only in the following cases:

- the whistleblower has previously made an internal and external report or has made an external report directly and no response has been received within the prescribed time limit;
- the whistleblower has reasonable grounds to believe that the violation may pose an imminent or obvious danger to the public interest;
- the whistleblower has well-founded reason to believe that the external report may involve the risk of retaliation or may not be effectively followed up due to the specific circumstances of the concrete case, such as those where evidence may be concealed or destroyed or where there is well-founded fear that the person who received the report may be colluding with the violator or involved in the violation.

Types of reportable violations of EU law

Reportable violations of European legislation are identified as follows in Article 1 of the Decree:

- 1) *offenses that fall within the scope of application of the European Union or national acts listed in Annex 1 to the Decree and all national provisions implementing them, even if the latter are not listed in the aforementioned Annex to the Decree.*
- 2) *acts or omissions affecting the financial interests of the Union referred to in Article 325 of the Treaty on the Functioning of the European Union specified in relevant secondary legislation of the European Union;*

- 3) *acts or omissions concerning the internal market, as referred to in Article 26(2) of the Treaty on the Functioning of the European Union, including violations of the European Union's competition and state aid rules, as well as violations concerning the internal market related to acts that violate corporate tax rules or mechanisms with the purpose of obtaining a tax advantage that frustrates the object or purpose of the applicable corporate tax law;*
- 4) *acts or conduct that frustrates the object or purpose of the provisions of Union acts in the areas indicated in the preceding points.*

It should be noted that the sectors mentioned in 1) referred to in the Annex to the Decree are:

- public contracts;
- services, products and financial markets, and prevention of money laundering and financing of terrorism;
- product safety and compliance;
- transport safety;
- environmental protection;
- radiation protection and nuclear safety;
- food and livestock feed safety and animal health and welfare;
- public health;
- consumer protection;
- privacy and data protection, and network and information system security.

That said, the following are - by way of example and not exhaustively - some instances of violations that could fall among those reportable under the Decree.

In the area of public procurement, it could, for example, be the subject of a report to participate in a bid for the award of a contract financed by European funds in which it emerges that an employee of the Entity has falsified bid documents or bribed some members of the evaluation commission.

With reference, on the other hand, to offenses that affect the protection of privacy and personal data, and security of networks and information systems could, for example, be the subject of reporting, the processing and storage of personal data, by the Entity, for a period longer than that permitted by the applicable regulations.

Conduct implemented in violation of environmental protection regulations could also include, for example, the discharge, emission or other release of hazardous materials into the air, soil or water or the unlawful collection, transportation, recovery or disposal of hazardous waste.

Finally, the implementation of abusive practices contravening the protection of free competition, as well as fraud, bribery and any other illegal activity related to EU expenditures, are attributable to violations of EU law covered by the Decree.

Limitations

As with all other violations covered by the Decree (even additional to those of EU law) and the internal procedure, the following cannot be reported:

- disputes, claims or requests related to a personal interest of the whistleblower, or relating only to his or her own individual working relationships with hierarchically subordinate figures;
- unsubstantiated news;
- information already in the public domain;
- information acquired on the basis of indiscretions or rumors that are scarcely reliable (e.g.,

"rumors");

- violations in the area of national security and defense-related procurement, unless such matters are covered by relevant EU secondary legislation.