

WHISTLEBLOWING IN ITALY: THE EU WHISTLEBLOWER PROTECTION DIRECTIVE

Whistleblowing has risen up the public agenda in recent months as the world grapples with the combined challenges of a global pandemic, climate change and myriad structural inequalities all made worse by deep-rooted corruption

Those who speak up against wrongdoing have long found themselves fearing a backlash against their actions. This concern is particularly prevalent in Italy with 58% of Italians afraid of reprisals for reporting corruption, making it one of the most fearful countries in the European Union when it comes to whistleblowing.

By 17 December 2021, all 27 EU member states need to meet new minimum standards under the EU Whistleblower Protection Directive (Directive 2019/1937). The regulation aims to create a standardised framework across the EU to encourage people to report wrongdoing and protect them from retaliation if they do so.

The aim is to create a greater culture of protection for those who speak out against illegal activity, at a time when Transparency International reports that almost a third of EU citizens believe corruption is getting worse in their country, and a further 44 per cent think it's not getting any better.

The new rules will affect all public organisations, as well as private organisations with 50 or more employees and all companies operating in areas vulnerable to money laundering or terrorist financing, such as financial services.

EXISTING WHISTLEBLOWER PROTECTION IN ITALY

With a score of 53 out of 100 on Transparency International's Corruption Perceptions Index (CPI), Italy is performing below the Western European average when it comes to issues such as bribery, embezzlement and favouritism.

Transparency International report that over 85% of people living in Italy think that government corruption is a big problem, and 69% believe that corporate tax avoidance and evasion are routine in their country.

Despite this, Italy has made great strides in recent years, with the country gaining 11 points on the CPI since 2012. This can be linked to significant improvements in the Italian anti-corruption system over the last decade, following legal reforms that increased the range of stakeholders responsible for preventing bribery and corruption.

Italy's first law to regulate whistleblowing, the Anti-Corruption Law No 190, was introduced in 2012 but applied only to public sector employees reporting misconduct.

The law was strengthened in 2017 by the Italian regulatory framework on whistleblower protection, which introduced additional protection for public sector whistleblowers, as well as

85%

of people living in Italy think that government corruption is a big problem

GLOBAL CORRUPTION BAROMETER
EUROPEAN UNION 2021,
TRANSPARENCY INTERNATIONAL

Misconduct at work is commonplace



29%

of Italian employees have been aware of misconduct at work. The most common types of misconduct they noticed are...



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extending protection to employees of other organisation types.

The current law ensures that public sector employees are not treated differently, for example by being demoted or forced to move office, as a result of whistleblowing. It also means whistleblowers can choose to remain anonymous, unless required to identify themselves by a criminal court. The National Anti-Corruption Authority (NACA) is active in issuing penalties, such as fines, if organisations do discriminate against whistleblowers.

OVERCOMING CULTURAL BARRIERS

In the private sector, employees are protected provided their organisation has adopted 'Organisational Model 231', a compliance programme similar to the Foreign Corrupt Practices Act in the US, designed to prevent a long and specific list of crimes.

There are signs that this regulation has made whistleblowing more commonplace in Italy. Figures from the NACA show that 873 whistleblowing reports were made in Italy in 2019, a significant increase from the 125 reports made in 2015.

But despite these improvements, it may prove difficult to further amend Italy's whistleblowing legislation to comply with the new directive.

"In countries that don't have any whistleblower protection legislation in place, it's very easy to start from scratch," says Jan Stappers, Senior Manager, Partnerships, at NAVEX Global. "Other countries that have some legislation in place – even if it's a patchwork – must adjust their existing framework to the new directive and that might be more difficult. Italy is one of these and it will require cultural change among Italian organisations and maybe even society as a whole. That's the main challenge."

Even though amending the existing legislation may be a potential challenge, the cultural attitude in Italy is positive, with 80% of Italians believing that citizens can make a difference in the fight against misconduct, according to Transparency International figures.

WHAT WILL CHANGE WITH THE NEW EU DIRECTIVE?

There are many elements of the new EU directive that are similar to the existing Italian legislation, but there are also some significant differences where change will be necessary:

1 A broader definition of a whistleblower

The directive contains an extremely broad definition of a whistleblower, including not just employees but also interns and volunteers, people whose employment is yet to start and contractors, subcontractors and suppliers. The protection measures also cover those who assist the whistleblowers in the reporting process such as colleagues and even relatives.

2 A wider scope

The scope of what counts as whistleblowing will be wider than it is currently in Italy. At the moment,

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whistleblowing reports in Italy must concern specific crimes, but under the directive reports must relate more generally to breaches of EU law.

The EU is also recommending that member states extend the scope to include breaches of national law. However, it is unable to enforce this recommendation so it remains to be seen if Italy will implement the directive in this way.

There is also no requirement within the directive for organisations to investigate reports from anonymous sources, so Italy will have to decide on a national level whether to make this mandatory.

3 Ways that people can report whistleblowing

The impact of the directive on the ways people can report whistleblowing, known as reporting channels, will be different public and private sector organisations.

PUBLIC SECTOR

Under the directive, all public bodies will need to have both internal reporting channels (unless

they or their municipality are small enough to be exempt) and external reporting channels.

The good news is that all public organisations in Italy, regardless of organisation or municipality size, should already have these systems in place to comply with the current national legislation.

PRIVATE SECTOR

While public sector organisations may not need to do anything for their existing reporting channels to comply with the new rules, private sector organisations may need to adjust their approach to reporting.

Companies that have introduced the Organisational Model 231 should already have internal, external and confidential reporting channels in place, as required by the Whistleblower Protection Law adopted in 2017. From 17th December 2021 however, all private entities with more than 50 employees will have to set up these same reporting systems for whistleblowers, including having appropriate measures in place to protect the whistleblower's identity and maintain confidentiality.

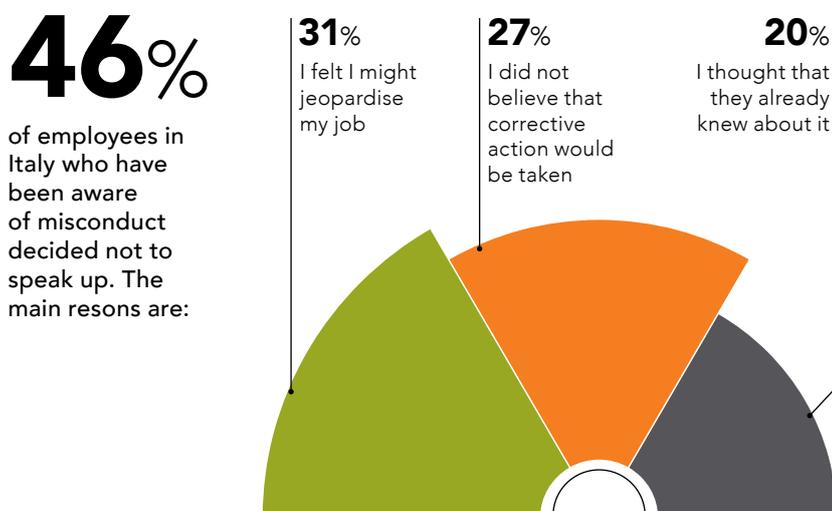
The need for an autonomous and independent external reporting channel that can receive and manage whistleblowing reports raises the question of which organisation would be up to the task of providing this service. Accordingly, extending the powers of NACA to the private sector looks like a real possibility.

Regardless of whether they're in-house or outsourced to an external organisation, any reporting channel will have to acknowledge receipt of reports and provide feedback in a timely manner - within 7 days and 3 months respectively.

HOW ARE ITALIAN ORGANISATIONS PREPARING?

Cecilia Locati is Vice President of Risk, Internal Audit and Compliance at global refractory business RHI Magnesita, which includes an office in Italy. Her team has already

Employees reluctant to speak out about misconduct



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“The mindset we have is that when we have any whistleblowing it is a good opportunity to make sure that we present value to the company

undertaken a pre-screen of the requirements included in the new directive and is confident the company already largely complies.

“We will look at our internal procedures and make sure that we make reference specifically to the regulations,” she says. “But all of our compliance efforts are global, so we are already aligned with the highest standard, and the way I see this regulation is that it’s just catching up with other regulations. But it’s a good chance to have another look at it and make sure we are fully aligned.”

The business already has an anonymous, and protected, internal reporting line for whistleblowers, which it highlighted in a recent communications push centred around World Whistleblowing Day. “The mindset we have is that when we have any whistleblowing it is a good opportunity to make sure that we present value to the company,” she says. “When it comes to any investigation, we always have the full support of the business, with the idea that if there is a problem then we want people to report it because there is an opportunity for improvement.”

She admits, however, that Italians in general tend to mistrust authority and believes some organisations may struggle to encourage people to come forward due to fears around

potential recriminations. “The cultural piece is the gamechanger,” she says. “That’s exactly what the directive is trying to trigger, but in Italy I can see some difficulties in really adopting the mindset shift that is required. But the fact that it comes from the EU is an advantage because it’s a shared effort and comes from an international perspective, so that could be a good narrative for companies to push.”

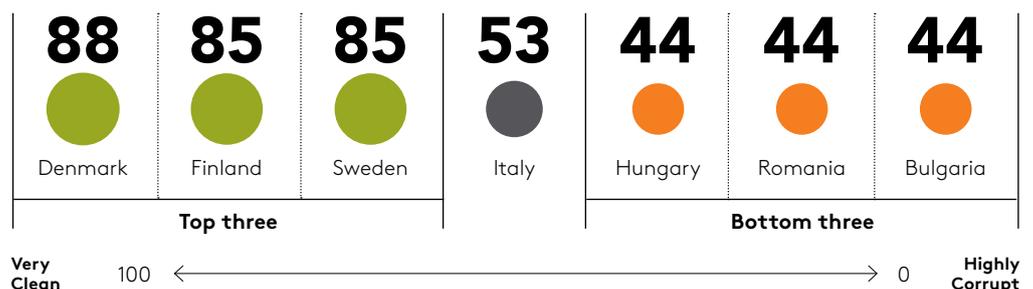
But the new regulations will be challenging for some Italian organisations, says Stappers. Part of this is because there are a large number of SMEs or national businesses with relatively few large multinationals. “Italian businesses have a strong local focus,” he says. “It’s a very specific market and you also have a lot of family businesses. There’s a very traditional way of doing business in Italy with a lot of business depending on trust. Most organisations in Italy have never really thought about this subject and they don’t have anything in place. There’s a lot of room for improvement.”

OPPORTUNITY FOR BEST PRACTICE

In April 2021, the Italian government approved a law which requires it to begin the process of incorporating the directive into national law, a process known as transposition. This is due to be completed by 17 December but there has been little information since

Top and bottom performers in the Corruption Perceptions Index in Western Europe and the European Union

The CPI scores 180 countries and territories by their perceived levels of public sector corruption, according to experts and businesspeople



TRANSPARENCY INTERNATIONAL

Whistleblowing is the most valuable source of knowledge and intelligence there is to find out about wrongdoing in organisations

April on how this is progressing.

The real question though, says Stappers, is just how far individual countries choose to go. "The directive is minimum standards and the minimum framework that every member state must have in place and then there's a very broad discretion of freedom offered to member states to fill in the blanks," he says. "Will countries say the whistleblowing directive only covers breaches of EU law or will they go beyond that? The directive leaves it open for countries to decide whether there is an obligation to follow up on anonymous reports or not."

This presents an additional challenge for organisations because until such time as legislators decide on and approve the extent of the transposition, the exact requirements remain unknown. As Cecilia Locati highlighted however, by taking an approach that incorporates global best practices, organisations should be able to prepare for any eventuality.

Stappers also urges organisations to view the directive as an opportunity to ensure best practice. "For as long as organisations exist there will be a risk of wrongdoing and things can always be improved," he says. "It's naïve to think you have a very compliant organisation where nothing goes wrong and there are no risks. Whistleblowing is the most valuable source of knowledge and intelligence there is to find out about wrongdoing in organisations. But this is a culture that has to be developed and that takes time so don't postpone it. Start those conversations now."

KEY CONSIDERATIONS AND ACTIONS

- 1 Identify if you will be affected by the upcoming changes (most organisations will)
- 2 Work out if you need to introduce new reporting channels (both internal and external) and understand best practices for receiving and handling complaints
- 3 Think about how you can change the culture of the organisation to make it more acceptable to report any concerns
- 4 Ensure workers know how and where to report wrongdoing
- 5 Acknowledge receipt of reports and provide timely feedback
- 6 Protect employees from retaliation
- 7 Protect the confidentiality of whistleblowers and those named in reports
- 8 Think of any reports of whistleblowing as an opportunity to change processes and practices for the better

To find out more, visit <https://www.navexglobal.com/en-gb/campaigns/2021-year-of-the-whistleblower> or the NAVEX Global blog for updates on transpositions across the EU at <https://www.navexglobal.com/blog/>

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