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COUNTRY REPORT – 2ND DRAFT

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COUNTRY REPORT – ITALY

Introduction

“Blowing the Whistle Harder” is a project funded by the European Commission and co-ordinated by Transparency International Secretariat with the participation of other nine national chapters. The project aims to review the state of art in the interested countries (drafting at the end a country report for each one) and to promote some advocacy activities at a national and European level.

The research part includes a legal review on existing laws and regulations about whistleblowing both in public and private sector and by a desk review of academic papers and any other documents by public and voluntary bodies about the matter. Another important source of information are interviews of four of the five largest companies in Italy by company turnover (ENI, FIAT, ENEL and TELECOM. The fifth, GSE, decided not participate to this project), 5 little/medium companies with a range of 50-200 employees (Autoservizi G.L.C., Resilia, Cartiera Fornaci, Laboratorio Farmacologico Milanese, Steber) and 6 ministries (Minister of the Interior, Department of Health, Ministry of Defence, Justice Department, Ministry of Economics, Ministry for Innovation and Public Administration). Other interviews have been made to some important key actors, such as the Privacy Authority, the Public Service for Transparency and Against Corruption (SAeT), the Authority for Market and Competition, Court of Accounts, Business Associations, Trade Unions and experts for the academic sector. An overview on national media related on whistleblowing has been made, too.

The main parts composing the report are two:

- 1) The first one analyses present provisions existing in the country to protect whistleblowers or any other person who wants to disclose some relevant information. As in Italy, at the moment, a free standing legislation doesn't exist, we reviewed all the laws and regulations which could possibly include provisions aiming to protect whistleblowers or to stop disclosures from being made. In particular some provisions from Civil Code, Criminal Code and Labour Law have been considered. Moreover some tribunal decisions related to whistleblower cases are described in their key facts and decision rationales.

Analysis of corporate governance and sustainability in ten companies have been made: we analysed codes of conduct and annual reports and, where present, whistleblowing schemes and procedures.

Statistics coming from specific institutions show us the incidence of whistleblowing in practice and the shortage in public perception about the importance of making disclosures about dangerous conditions in the workplace or caused by work activities.

Media monitoring and information from governmental agencies show the public confidence towards whistleblowing;

- 2) The second part examines the whistleblowing legislation and practice along a set of 14 assessment categories such as scale of relevant wrongdoing; subjects interested with the procedure; internal, external and other mechanisms for disclosure; rules about confidentiality and anonymity; possible restrictions due two conflicts with other laws; levels of protection against reprisals and retaliation; type of remedies offered; comparison between whistleblowing and refuse to participate to irregularities; liability for false and malicious reports; involvement of the whistleblower in follow-ups; prescription rules; independent reviews.

Section A - Overview of Whistleblowing Protection Rules & Protection in Practice

1 WB Legal Provisions: What are the existing legal provisions covering whistleblowing in the public and in the private sector?

Italy doesn't have a free standing whistleblower protection law and no law proposals of law have been made yet. At the present time, whistleblowing is not a well known issue within the institutions and only a few key actors and some big companies are aware of the matter.

Italy lacks an anti-corruption act as well, even if there are law proposals for the ratification and enforcement of the UN Convention Against Corruption which provides that "Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention."¹ Other international Conventions have been ratified by Italy, as the "OECD Convention on combating bribery of foreign officials in international business transactions" and the European Union Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests (1997).

There is not a Civil Servants Act providing protection for whistleblowers. In the Criminal Code, article 361 provides a fine for the civil servant who omits or delays to report to the judiciary or other suitable authorities a crime he has been aware of during the performance of his duties. Other internal reporting channels are not provided. With Law 15/2009 Italian Government appoints the Ministry for Public Administration as responsible for the optimisation of labour productivity and public transparency and efficiency of public administrations. Within this law the Ministry has to improve controls on the administration and internal reporting procedures could be included. The Court of Accounts is appointed to review financial controls and promotes internal reporting: on August 2nd, 2007, Attorney General De Rose reviewed and diffused a newsletter for all the public servants pushing to report possible tax violations.

Italian Labour Code ("Statuto dei Lavoratori") doesn't provide whistleblowers with a specific protection. However, article 1 provides a general freedom of expression for workers (it's a "constitutional right", too): this rule can be

¹ United Nations Convention Against Corruption, art. 33, "Protection of reporting persons".

extended to reports or disclosures about irregularities, illegal acts or perceived risks within the organisation. On the other hand, article 4 restricts the use of CCTV for investigations about the subject matter. Article 20, para. 2 (e) of the Legislative decree 81/2008 (also known as Consolidating Act about Security) provides on the workers the duty to promptly inform the employer about lacks of security and possible risks they meet during their work performances.

There is not a general witness protection act but a special protection for witnesses co-operating with authorities. These rules are intended to protect, in particular, witnesses of justice (witnesses of violent crimes, usually intended as "mafia crimes"). The general Criminal Code forbids the use of statements made by police informers if they are not heard as witnesses (art.203 Criminal Code) and excludes simple rumours from being considered as an evidence (art.194 Criminal Code). Moreover, Decree-Law no. 8/1991, as modified by Law no. 45/2001 ("Special protection measures for witnesses of justice") rules that only those who are able to report circumstances they have directly heard of will be granted the protection measures.

The Civil Code, art. 2408, provides that each shareholder can report facts that he believes not appropriate to the Board of Internal Auditors which has to check these reports. Article 149 para.3 of Legislative Decree 58/1998 (Consolidated Act about financial mediation) then provides a duty for the Board of Internal Auditors to report to CONSOB (Authority on Companies and Stock Exchange) each irregularity found during its activity. Self-discipline Code of Italian Stock Exchange provides responsibilities for the Board of Directors to set guidelines for the best internal reviews. CONSOB Directive n.DAC/RM/97001574 of 20.02.1997 extends the competence for the Board of Internal Auditors of listed companies to receive disclosures also from employees (not only the shareholders). Legislative Decree 231/2007, fulfilment of the European Directive 2005/60/CE on money laundering prevention, provides for the appointment of a Financial Information Unit (Unità di Informazione Finanziaria, UIF) which is the body established to receive reports about possible crimes in this field. At present time, other legislation or regulation containing rules to protect whistleblowers do not exist.

In Italy there is a general protection for trade secret, intellectual properties, etc. and a consequent right not to have internal information to be disclosed. This rule is provided by the Civil Code (art. 2105), the criminal law, the protection of private data and the provisions for the protection of the intellectual property. Other restrictions to the right to disclose can be contained in workers' personal contracts.

In the last years there have been two major whistleblowing cases ending with court decisions, that are not representative for the country as a whole since

these two cases were both set in Genova. The first one, Vito Belfiore v. Ferrovie dello Stato, Corte d'Appello di Genova, is about one of four employees from Ferrovie dello Stato (the biggest operator of the Italian railway network) which disclosed some dangerous defects on trains and rails. They anonymously reported their concerns to the media, letting some reporters go on trains during their routes but their identities were discovered and they were fired. He sued the employer and he was re-hired as the dismissal was demonstrated to be clearly unlawful. The second case, Cornaglia v. Istituti Gaslini, Cass., sez. lav., 5 febbraio 2004, n. 2168, concerned a doctor who wrote a book exposing corruption in the hospital. He was fired and he later sued his employer and was awarded back pay and loss wages. He wasn't re-employed because senior public servants can't be re-employed if work relationship is no longer based on trust².

Even though Italy lacks specific whistleblowing provisions, whistleblowers can get protection from unlawful dismissals under Italian laws. Major problems arise when reprisals don't lead to a dismissal and workers' abuses are other kinds of harassment, demotion, mobbing, etc.

2 WB Protection Policy & Practice: To what extent is the implementation/enforcement of these protections being promoted by government and the private sector?

Whistleblowing is not really promoted both in public and private sector but there are some exceptions. In the public sector only some agencies (Court of Accounts) are trying to promote internal reporting; in the private sector, apart from approximately ten companies, other large and smaller companies don't provide whistleblowing procedures (and smaller ones usually don't have internal reporting procedures at all).

In the public sector, whistleblowing issues are very little considered: reporting of crimes and irregularities is not seen as an issue as civil servants have a legal duty to report crimes and no procedures are established to promote whistleblowing.

In the public sector there is not a training about this kind of procedure; anyway the new Minister for Public Administration has started a "Transparency Plan" including a more open flux of information from the Public Administration to the public.

² The major provisions protecting workers from unlawful dismissals are included in the Statute of Workers (art.18).

As previously pointed out, in the public sector whistleblowers are almost not considered and whistleblowing is not considered a primary issue. Anyway some public agencies are trying to promote internal reporting in their reference areas: Court of Accounts published newsletter promoting to report tax violations³; Authority for Fair Competition pushes for the introduction of whistleblower protection to promote reports about illegal trusts or cartels; Bank of Italy governor promotes the use of internal reporting of money laundering episodes and the protection of whistleblowers in this field of practice; the Ministry for Public Administration and Innovation has recently stated that whistleblowers' protection is essential in the fight against corruption.

In the public sector the line manager is the subject that receives possible disclosure but this is not provided by either laws or regulations: most of times this person lacks the necessary independence to lead a correct investigation about the disclosure, that's why civil servants who want to disclose information about malpractice or other irregularities stay silent or report outside their organisation to justice authorities.

As to the private sector, one of the major companies stated that, as they were introduced, whistleblowing procedures have caused enthusiastic reactions with lots of disclosures. After the first period the procedure is still working even if only 15-20% of the disclosures are really related to whistleblowing. Codes of conduct do not generally contain expressly provisions about whistleblowing even if some provisions about reporting and/or disclosing information are present. Anyway some companies, which are listed on the U.S. stock exchange, have to comply with the Sarbanes-Oxley Act and are obliged to establish whistleblowing procedures. In the Code of Ethics of one of the major companies there is a reference to non-anonymous disclosures, even if there is not a specific link to the procedure. Other companies representatives were unsure in answering to this question as the majority of the disclosures are anonymous and it's difficult to track the satisfaction with the procedure. During the interviews major companies representatives stated that, if present, these procedures are used and appreciated by employees but leaders are not always satisfied with poor number of relevant disclosures (disclosures often relate to personal private issues).

In smaller companies whistleblowing is not an issue at all, as procedures for internal reporting are seen as not necessary and a useless cost (this is a common statement from interviews to smaller companies).

³ Court of Accounts, Prot. N. PG 9434/2007/P.

Whistleblowing is often considered in Code of Ethics of major companies jointly with general transparency principles that push to disclose irregularities. On the other hand whistleblowing procedures often contain links to Code of Ethics and Code of Conduct. In particular, one of the major companies included its first procedures about whistleblowing (even if not very specific) in its first Code of Ethics in 2002: now this company isn't provided with a unique procedure but it provides several reporting channels and possible addressees, depending on the kind of relevant fact (Code of Ethics still contains provisions about promoting internal reporting and granting protection for whistleblowers).

Whistleblowing cases are not reported in annual reports but companies which have established whistleblowing procedures record annually some statistics about the use of the procedures. One of the major companies stated that, although whistleblowing procedures have not been told about in the annual balance sheet, they have been described by the C.E.O. during the Annual General Meeting. In addition Internal Audit sends report to the board of statutory auditors about the progress of the procedures. Another company considers them both in the Consolidated financial statements and in the corporate governance financial statements. Another company provides several periodic reports about whistleblowing issues to the President of the company, to the C.E.O., to the Board of Statutory Auditors, to the Committee for Internal Review and to the External Auditing Company, to the C.F.O., to the President of "Organo di Vigilanza" established with the Legislative Decree 231/2001.

One of the major companies states employees are not directly trained about whistleblowing procedures which are indeed described during standard courses on company ethics. To let the employee know about whistleblowing procedures this company put an alert on intranet home page for the first week after the introduction of the procedure and the C.E.O. sent a letter to each employee describing the same procedure. On the home page there is a permanent link to the procedures. One company includes whistleblowing in training courses about corporate governance. One company trains indirectly about whistleblowing through the explanation of the Code of Ethics and a document called "Zero tolerance about Corruption" (ENEL). One company ensures the distribution of the procedure to all the employees and keeps published and updated it on internet and intranet. Smaller companies rarely have training about reporting procedures because of a lack of necessity and a matter of costs; anyway one representative from a smaller company stated that few determined people filling some determined positions would be trained on these issues if some practical events showed the necessity of it.

Major companies stated that the body in charge for the investigation of the disclosures is completely independent (reporting only to the Company

President) and sufficiently supplied with resources. If a disclosure is about this body, it's transferred immediately to other internal bodies. Smaller companies don't have proper bodies established to receive disclosures or investigate upon them; usually this task is on the same employer.

This analysis shows how little whistleblowing procedures are diffused and used in Italy, especially in the public sector. However a light trend to implement and control reporting fluxes within organisations has to be noted.

3 Incidence of Whistleblowing: How common is the practice of WB in the country?

The practice of whistleblowing in Italy is quite uncommon as the general reporting of someone else's activity is often seen as a form of "denunciation" (negative connotation related to the informers in the Second World War)⁴. In the public sector no proposals for the introduction of a whistleblowing legislation (or something related to these issues) has never been carried out.

Italian Service for Transparency and Against Corruption manages a hotline to record possible concerns from employees in the public sector but statistics are not accurate and do not refer only to whistleblowing disclosures. The Court of Accounts records some statistics about the number of reports coming in relation to tax violations. No statistics come from independent bodies.

As a consequence of this lack of statistics it's impossible to determine how many state funds were saved through whistleblowing procedures.

No statistics are available about the incidence of whistleblowing over time as no one is tracking it.

Whistleblowers get some protection in court against unlawful dismissal⁵ but they are not protected against other kinds of retaliation that terminate in cases of mobbing. Anyway, without a specific legislation, whistleblowing is far from being well known from the public and cases of whistleblowing are really not frequently reported in the media. Media usually tend to report the news coming from whistleblowers' disclosure but they don't "follow the stories": it's really hard to track the number cases per year regarding directly whistleblowing issues. About the cases coming to a court decision they are only

⁴ See Report on the application of the OECD Convention on combating bribery of foreign officials in international business transactions.

⁵ Workers' Statute, art.18.

a few because there is not a specific legislation, so people prefer to stay silent and not to risk their employment position or, in case, they try to settle⁶.

4 Cultural context: What is the public attitude towards the act of whistleblowing?

Whistleblowers are not really supported in the general population as it's widely diffused a feeling called "omertà" or conspiracy (a word often used also by people interviewed during this research, both academics and representatives from large companies), which means Italian people are not prone to expose irregularities. In the last few years some good initiatives to promote and reward best practices are being established both in the public and private sector⁷.

Existing government hotlines to fight corruption are little used (only 186 calls in 2008; and these statistics involve not only disclosures about corruption but also calls asking for simple information about corruption⁸).

Some ministries' representative we could interview told they are aware about whistleblowing issues but procedures are not being considered for the immediate future. Large companies which have already adopted a whistleblowing procedure would welcome a possible legislation and state that these procedures are really useful. They are convinced that outside their workplace the environment is quite different and Italian people are culturally extraneous to reporting. Unfortunately, as a respondent says, Italy has two big problems because it's not a homogeneous country and because people are not prone to reporting crimes and irregularities. The same company representative states that things could change if whistleblowers were motivated with economic rewards (for example tax reductions). The attitude of the elite varies quite noticeably depending on subjects: in the Government whistleblowing doesn't seem to be a primary issue but some public agencies' leaders (Ministry for Public Administration and Innovation, Service Against Corruption and for Transparency; Authority for the Fair Economic Competition, CNEL-National Counsel for Economy and Labour, Bank of Italy) strictly recommend protection

⁶ From the interview to the Professor Ferrante (see Bibliography).

⁷ One recent example is the prize "Lavorare insieme" ("Working together") awarded to the Municipality of Milan for having adopted Integrity Pacts which have led to the exclusion from tenders of the companies which used to compete in an unfair and illegal way.

⁸ See "Primo Rapporto al Parlamento" (First Report to the Parliament) from SAeT (Italian Service Against Corruption and for Transparency), February 2009.

for whistleblowers; the Authority for the Protection of Private Data is analysing the matter and a recommendation is due to come in the next few months.

Although a determined legislation about whistleblowing is not present, judiciary and enforcement authorities are usually protecting whistleblowers against unfair dismissal (protection in court is not always granted when retaliation doesn't finish with a dismissal) but strong decisions from "Corte di Cassazione", the third and last degree in Italian courts, have still to come: some jurists we interviewed stated the importance of decisions coming from these third level courts are so relevant that they could grant a strong protection to future whistleblowers in similar cases. Enforcement agencies don't have specific actions to get information from whistleblowers and, at present time, protection is granted only for people disclosing information about criminal organisation (most of times they are snitchers who used to be part of the same organisation).

Media frequently report whistleblowing cases in their initial exposure but the story is early forgotten and not deepened in the weeks and months following the disclosure. A few reporters TV shows, in particular, use the disclosure by anonymous whistleblowers to show malpractice later investigated by judiciary authorities. Unfortunately not countrywide there is a positive perception about whistleblowers: in some parts of the country, especially in southern Italy, whistleblowers are commonly perceived as traitors and spies⁹.

⁹ Information achieved from interviews to University Professors and representatives from large companies.

Section B - Extent of Whistleblowing Protection Rules & Their Application in Practice

Subject matter (definition of wrongdoing) – How widely defined are the subject matters covered by WB legislation?

As a free standing legislation does not exist, subject matters involved in whistleblowing protection provisions vary depending on the law considered: anyway no specific matters are considered in a whistleblowing legislation. Except from Law Decree January 15, 1991 n. 8 modified by Law n. 45/2001 which regards mafia and terrorism crimes, other provisions promoting the disclosure of crimes and irregularities or enforcing protection for people who disclose information are not very specific as to the subject matter. Legislative Decree 231/2001 does not provide protection to whistleblowers but provides the establishment of internal reporting procedures for a determined list of crimes: crimes committed with the Public Administration; IT crimes and illicit data processing; crimes committed against the Public Administration; falsification of money and credit cards; corporate crimes; terrorism crimes; mutilations; crimes against the person; market abuse; work security crimes; money laundering; trans-national crimes.

Without a prescriptive law companies and public bodies can decide the extent of the fields covered by procedures and the actual scope of subjects covered by WB policies varies tremendously across institutions. One of the major companies chose as wide as possible aiming at receiving more disclosures. In the procedure it's stated possible violations or induction to violations of law or regulations, Code of Ethics provisions, internal procedures, other irregularities or negligence, such as those about accountancy, documents preservation, accountable and managerial reporting compliance or other demands for explanation about own or other people's behaviours. Also other big companies are open to receive all the irregularities possible; one of them shows as the most frequent irregularities disclosed as frauds, accountant crimes and crimes provided by Legislative Decree 231/2001. One of them is much more specific and enlists a long series of irregularities regarding violations, illegal behaviours, other practices not complying with the Code of Conduct, security and mobbing matters.

Scope of personnel coverage – How wide is the scope of personnel who is protected by the WB legislation?

Laws are not specific as to the people covered by whistleblowing protection. Law Decree January 15, 1991 n. 8 modified by Law n. 45/2001 grants

protection to each person (not only workers) who witnesses mafia or terrorism crimes. Other laws are not specific and include workers in general.

Even about people covered by whistleblowing protection companies and public bodies are quite independent on their decisions. Four of the major companies are as wide as possible in relation to the subjects possibly involved in the procedure which is open to all the employees (top management included), partners, consultants, third parties which contract with the company and even customers. One of these companies then splits, in a second time, disclosures made by clients from those made by all the company's stakeholders.

This issue is not related to smaller companies which usually have not established any reporting procedures.

Internal disclosure channels – To what extent is there an adequate internal disclosure mechanism available?

Companies and public bodies can decide the extent of internal reporting mechanisms.

Legislative Decree 231/2001 on private companies liability provides internal reporting channels to an internal body called "Organo di Vigilanza" only about some determined crimes provided with the law. Legislative Decree 81/2008 about Work Security promotes reporting about dangers to workers' security within the workplace.

Companies and public bodies can establish internal whistleblowing procedures. Major companies have established some procedures limited to internal disclosing which have several common points: a subject, sometimes called "Preposto al Controllo Interno" and sometimes the Chief of Internal Audit, is appointed to receive disclosures, records them and does a preliminary evaluation. Then he co-operates with other functions, such as the Audit, Legal Department, Security Department, Human Resources, Finance Administration & Control and others. The following steps of the procedure are sometimes left to these functions. Sometimes the company is forced to go outside and to ask permissions and authorisations to the enforcement authorities, for example where an inspection in the house of a reported person has to be made and even the company's Security function can't enter a private property. The same sometimes happens when privacy issues limit the access to the personal computers used by employees at work.

Anyway the disclosure can be made to different subjects which then transfer the disclosure to the designated person or body: Human Resources,

Compliance Officers, line managers or a body established by legislative Decree 231/2001 called "Organismo di Vigilanza".

As to the internal reporting channels that have been established companies differ: one of them chose e-mail and fax and possibly via anonymous letters excluding telephone not to risk possible transcription mistakes; another one restricts to e-mail and letters; other are much more open by admitting and investigating any disclosure coming in any way: phone calls, fax, e-mails, vocal messages left on answering machines, reporting made in conversation and so on. The representative from one company told that, as they are a multinational company, it has been necessary to provide possible whistleblowers with several channels because people from many parts of the world have a different perception of the matter and they prefer to use some ways rather than others.

Smaller companies don't have specific reporting channels: the employer is often perceived as the leader of the company appointed to receive all possible information.

Public ministries and bodies don't have specific internal reporting procedures: usually the line manager is receiving disclosures by employees. However, when employees want to report a crime they do it externally to judiciary or enforcement authorities¹⁰.

External disclosure channels – To what extent is there an adequate external disclosure mechanism to independent regulators?

There is not any rule of law establishing the requirement or the need to disclose information about irregularities or crimes to external regulators.

Companies and public bodies can decide to promote or not the external disclosure of information. One of the major companies decided not to provide external channel but to deal with the disclosures only through the internal functions. Other companies don't regulate external disclosures but allow them: one of them states that sometimes the worker discloses his concerns both to internal functions and to external regulators (and, if a crime comes from the internal investigations, the internal Audit itself passes the interested information outside). One of the big companies, at last, grants the right to disclose externally to justice authorities and to specific regulators.

¹⁰ From interviews to public bodies representatives.

Additional disclosure channels – To what extent does the external disclosure mechanism include a disclosure to the media, MP or civil society organisations?

As to reporting widely laws and procedures vary: in the public sector civil servants have a duty to report crimes they witness to the judiciary authority, in the private sector employees usually are not forbidden to “go externally” unless this constitutes a breach of trade industry rules.

Law Decree January 15, 1991 n. 8 modified by Law n. 45/2001 grants protection for people reporting to the authorities about mafia or terrorism crimes.

Civil servants have a duty to report crimes they witness when performing their work duties to judiciary authorities (article 361 of the Criminal Code). However the sanction provided for civil servants not reporting illegal facts is not huge and it’s really rare a Public Prosecutor acts against a civil servants who omitted to report the commission of a crime (also because, without the disclosure the possible crime will be hardly discovered).

Companies and public bodies can decide to provide or not wider external channels in their procedures. One of the major companies decided not to provide external channel but to deal with the disclosures only through the internal functions. Also other big companies deal internally the matter but none of them expressly prohibits the worker from revealing information outside the workplace unless they break trade industry rules.

Confidentiality – Does the WB legislation include provisions ensuring confidentiality? If so, how stringent and effectively applied are confidentiality rules?

There are not laws about the confidentiality (and/or the anonymity) of whistleblowing procedures in Italy. The only provisions regarding confidentiality in Italy are provided by Sarbanes-Oxley Act which allows (and, in certain ways, promotes) anonymous disclosures: Italian companies listed on the US Stock Exchange have to comply with this law. However, anonymity implies a conflict with private data protection provisions upon which the Italian Authority for the protection of Personal Data still has to intervene.

One of the major companies, because of the vacancy of law, grants confidentiality and considers both confidential and anonymous disclosures. Anyway they are less prone to consider anonymous disclosures as relevant unless they are deeply detailed. All the big companies ensure confidentiality to

the whistleblowers through proper channels. Anonymity is granted as well and anonymous information are sometimes considered essential to the discovery of irregularities. In particular one international company points out that almost all the disclosures coming from Italy are anonymous and that a good part of the ones coming from foreign subsidiaries come through anonymous channels: in particular, in Latin America an advanced software (that keeps the address of the sender hidden but records it in order to give a feedback) is highly used, and this software is being exported to Chinese subsidiaries as well.

One representative from the Ministry of Public Administration stated anonymous disclosures are not considered at all; only when a report is signed it's sent to the Inspection Office of Civil Service Department. No consideration about providing confidentiality to people reporting irregularities has been made.

The Authority for the Protection of Private Data is considering privacy issues related to the entire whistleblowing process. A recommendation is due to come in the next few months.

Restrictions – To what extent do other legal provisions exist which prevent/restrict WB in certain areas? (e.g. state secret act)

No evident prescriptions to whistleblowing protection regulations are in force. Anyway some provisions can slightly reduce the applicability of the procedures. For example privacy issues can limit the effectiveness of whistleblowing procedures not allowing the anonymous reporting and obliging companies to make known immediately the reported person about the disclosure so that investigations about the disclosures are much more difficult. These privacy issues are included in the Privacy Code and in the article 111 of Italian Constitution (in this last case they are referred only to a criminal procedure). Privacy Authority is due to release an opinion about possible conflicts between whistleblowing procedures and the protection of private data in the next few months.

In addition civil servants can't disclose confidential information they have because of their positions (article 326 of the Criminal Code).

Four of the major companies didn't include any restriction in its whistleblowing procedure: one of them provides the only indirect limitation due to the obligation to reveal the whistleblower identity where the law imposes to do it (this is not a practice they usually perform without specific law prescriptions).

Protection against reprisal/retaliation – What is the scope of reprisals which the WB is protected against?

In Italy workers can be dismissed only because of a just cause or a justified reason (Workers' Statute). So workers get a general strong protection against unfair dismissal also without a specific whistleblowing legislation. On the other hand there is not a general protection against other kinds of reprisals on the workplace: mobbing episodes and passive discrimination are not regulated and decisions about these issues is left to the court discretion.

One of the major companies aims at providing the best possible protection also by not revealing the whistleblower name, unless in case of compliance with some rules of law. All the big companies ensure a full protection for the good faith whistleblower and protect him against any kind of reprisal. Protections are sometimes provided by company's Code of Conduct.

No protection is provided in the public sector except the general one against unfair dismissal and the specific one for people co-operating with judiciary authorities to report crimes committed by criminal organisations.

Offered remedies – How wide is the scope of offered remedies available to WB?

In relation to unfair dismissals damages suffered by the worker (whistleblower included) some compensation is awarded: in particular s/he is returned to her/his job and s/he is granted her/his lost wages. No rewards for whistleblowers are provided.

Four of the major companies have not provided any remedy for whistleblowers. Within one company's procedure the opportunity of ensuring remedies is in conflict with the Code of Ethics as well: in this Code disclosing important information is perceived as a not binding duty to the worker.

Right to refuse – To what extent does the WB legislation cover the right to refuse participation in illegal activities?

Right to refuse is never considered as a matter related to reporting procedures, both in public and private sector (information got through the interviews)

Companies have not considered this issue at all.

Civil Servants have a duty to report illegal activities¹¹ but nothing is stated about the non co-operation.

Legal liability – To what extent does the law impose legal liability for false or malicious reporting?

Law generally punishes libel and defamation. Companies which have established internal reporting procedures, fine employees reporting false information.

Article 368 of the Criminal Code generally punishes people who falsely report someone else. Anyway there are not specific whistleblowing rules on these issues.

Two of the major companies have established some sanctions for workers who deliberately make false allegations against colleagues. The review of the falsity of the allegation and the decision about possible sanctions are adopted jointly by the body established to receive reports (Internal Audit), by the Human Resources and by the Legal Department.

Other companies deal with this issue in a different way: one of them has not established any sanction but it prefers to consider facts case by case; one sanctions the person who falsely disclosed with bad faith as he had committed a crime or an irregularity himself.

Whistleblower participation – To what extent is the WB able to participate in follow-up process to the disclosure?

There are not legal provisions about the participation of the whistleblowers to the follow-up process of the procedure, so the decision is left to public and private bodies which decide to adopt whistleblowing procedures or not.

One of the major companies gives an immediate feedback to let the whistleblower understand his disclosure is being considered; during the following steps the whistleblower is rarely involved unless he is necessary to deepen the disclosure or he has specifically asked to know the following actions taken. Most of times the next feedback is given not by the body receiving the disclosure but by the specific function who deals with the irregularity.

¹¹ Criminal Code, article 361.

Other companies decided to involve the whistleblower in the following steps through different approaches: one limits the involvement to cases where it's necessary; one involves who made the disclosure only when he is a real whistleblower (as in many cases the procedures are misused or abused); one, in any case, keeps the whistleblower updated with the actions taken as a consequence of the disclosure.

Time scale – What are the limits on a time scale for whistleblowing?

A statute of limitations is normal for several crimes in Italian law. Anyway as to the disclosure of irregularities or crimes no time limitations are made, so at the present time any decision is left to public bodies and private organisations which decide to adopt whistleblowing procedures.

Major companies stated that they preferred not to insert a time limitation in order to leave a larger scale for disclosures: it's clear that a disclosure upon an old irregularity is much more difficult to investigate about.

Independent review

No independent review system has been introduced in relation to whistleblowing issues.

One of the major companies' decision has been of internalise as much as possible the management of the disclosure within the different corporate functions and not to rely on external systems. The decision of keeping the process internal is common to all the major companies. The only two cases where external resources are used are when the subject which has to investigate needs to consult external auditors or when external bodies are still aware of the disclosure as the whistleblower has sent them a copy as well.

Conclusions

Our research shows clearly how little whistleblowing is being promoted in Italy. The interviews with ministries, large, medium and smaller companies and with key informants, the legal review and the media monitoring point out that protection of whistleblowers is not largely considered in private or public sector.

A free standing legislation does not exist but whistleblowers can get some protection under other Codes or laws. Italian Labour Law gives the workers a strong protection against unfair dismissals but not against other kinds of reprisals such as demotion, transfer, loss of promotions, mobbing, etc.

The only other law granting protection to witnesses who report wrongdoing is a sector-based law protecting witness of justice reporting illegal activities committed by criminal organisations. Other provisions included in Codes, laws or regulations allow people to disclose their concerns but don't establish any protection as a consequence of reprisals by reported people.

In the very last years a few acts have been made in order to promote internal reporting about irregularities, in particular with Legislative Decree 231/2001 which establish a body suitable to receive disclosures about some determined crimes.

Interviews to ministries have shown that none of the interviewees could cite any internal regulation indicating the absence of any institutional policy on whistleblowing. Interviewees stated the normal behaviour for civil servants who want to disclose information is to report to the judiciary authorities when they witness a crime or to refer to their line manager when they witness an irregularity. Sometimes internal reports are made to the Ministry for Public Administration which forwards it to the Inspection Office of the Civil Service Department. The Court of Accounts is appointed to receive possible disclosure about financial malpractice in the public sector.

Ministry for Public Administration has been recently appointed to improve controls on the administration and important steps should be moved in order to promote internal reporting of irregularities or malpractice. At present time article 361 of the Criminal Code sanctions with a fine (of not relevant entity) civil servants omitting or delaying to report to the judiciary or other suitable authorities any possible crime they have been aware when performing their work duties but this rule is being slightly considered.

As to the private sector only a few major companies have a proper whistleblowing procedure, some of them in accordance with Sarbanes-Oxley Act they have to comply with to be listed on U.S. Stock Exchange. Smaller

companies, on the other hand, don't have any whistleblowing procedure and they lack any kind of internal reporting system as well (one of them stated it would be a huge cost related to the dimension of the company and to the limited risk related to their activity).

Italian cultural context represents a main problem in relation to whistleblowing issues. Italian people are usually not prone to report crimes or irregularities and, in case they decide to disclose information, the favourite choice is an anonymous disclosure. In the interviews both to companies managers and to relevant key actors referred to the sense of "omertà" (sometimes referred as conspiracy of silence) and to the poor reporting both in public and private sector.

Main issues and recommendations:

- No whistleblowing protection. People are protected from dismissals under Labor Law but not against other kinds of reprisals. This protection should be extended to all the other kinds of harassment, demotion and reprisals a worker could suffer and, in particular, any kind of reprisals following a disclosure of information.
- In recent years both in public and private sectors some laws and regulations promoting internal reporting have been introduced. Notwithstanding the positive effects from these actions, there is still little reporting of information: a specific law protecting people disclosing relevant information or, at least, a campaign to promote transparency and a major flux of information would bring great advantages.
- Only a few major companies have whistleblowing procedures (interviewees witnessed that only less than 10 companies in Italy have a specific whistleblowing procedures). Both minor companies and public bodies don't have policies and even internal reporting systems. Public sector bodies should adopt these procedures and companies which have already established whistleblowing procedures should be pointed as examples of good governance.
- There is a general culture of silence in Italy. Reporting is not very common. Anonymity is the favorite option of reporting. Open communications should be promoted and good examples should be emphasized.
- There are not many relevant court cases on the topic.
- Media tend to report major cases but they don't follow the next steps.

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Interviews (all made by Giorgio Frascini)

Large companies:

- ENEL: Marina Migliorato (Responsible for CSR and Relations with Associations); Giuseppe Tralongo (Audit Directorate); Pierluigi Orati (Sustainability Office)
- TELECOM: Roberto Tournour (Responsible for Special Projects and Foreign Audit)
- FIAT: Mauro Di Gennaro (Chief Audit Executive and Compliance Officer)
- ENI: Paola Pagano (Sustainability Stakeholders Relations)
- GSE: they decided not to participate to the project

Minor companies (we interviewed the directors)

- AUTOSERVIZI G.L.C.: Mr.Giuliani (Co-President)
- RESILIA
- CARTIERA FORNACI
- LABORATORIO FARMACOLOGICO MILANESE
- STEBER

Representatives from Ministries:

- Inspection Office of the Department of Public Function (Ministry for Innovation and Public Administration)
- Ministry of Economy: Michele Nardone (SECIN)
- Ministry of Justice: Giovanni Armone (Legal Office); Angelo Gargani (SECIN)
- Ministry of Defense: SECIN (Internal Control Service)
- Ministry of Health: SECIN (Internal Control Service)
- Ministry of the Interior: SECIN (Internal Control Service)
- Service Against Corruption and for Transparency (SAeT, Servizio Anticorruzione e Trasparenza): questionnaire submitted to Giovanna Gemma, General Director for Administration

Other key actors:

- Court of Accounts: Furio Pasqualucci (General Prosecutor); Ermanno Granelli (Attorney)
- Authority for the Protection of Private Data: Roberto Lattanzi

Other experts:

- Nicoletta Parisi (University Professor, University of Catania and Cattolica University of Milan)
- Vincenzo Ferrante (Cattolica University of Milan)

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