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Whistleblowing

Learn how to report a general interest offense in the context of work.



Remember:

- that a single channel must be used to submit the report/communication and to carry out subsequent additions;
- that the use of the platform is the priority channel;
- that duplication of the same report must not be submitted.

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1 The changes introduced by Legislative Decree no. 24/2023

What changes with the new discipline

In implementation of [Directive \(EU\) 2019/1937](#), Legislative [Decree no. 24 of 10 March 2023](#) was issued concerning "the protection of persons who report breaches of Union law and laying down provisions concerning the protection of persons who report breaches of national regulatory provisions".

The decree entered into force on 30 March 2023 and the provisions provided for therein are effective from 15 July 2023.

- The decree applies to entities in the public and private sectors; with particular reference to the latter sector, the legislation extends the protections to whistleblowers who have employed, in the last year, an average of at least fifty subordinate workers or, even below this limit, to entities that deal with the so-called "Tax Advisors". Sensitive sectors (services, financial products and markets and prevention of money laundering or terrorist financing, transport security and environmental protection) and those adopt organisational and management models pursuant to [Legislative Decree 231/2001](#).
- Only for private sector entities that have employed, in the last year, an average of subordinate workers, with permanent or fixed-term employment contracts, up to two hundred and forty-nine, the obligation to establish an internal reporting channel starts from 17.12. 2023.
- Until that date, the aforementioned private entities who have adopted the 231 model or intend to adopt it continue to manage the internal reporting channels in accordance with the provisions of Legislative Decree no. 231/2001.

2 Entities required to comply with the regulations

Private sector

The protection of whistleblowers operating in the private sector, provided for by Legislative Decree no. 24/2023, imposes the obligation to set up reporting channels at the expense of those entities in the same sector that meet at least one of the following conditions:

- have employed, in the last year, an average of at least fifty subordinate workers, with permanent or fixed-term employment contracts;
- they deal with some specific sectors (services, financial products and markets and prevention of money laundering or terrorist financing, transport security and environmental protection), even if in the last year they have not reached the average of at least fifty employees with permanent or fixed-term employment contracts;
- adopt the organisation and management models referred to in Legislative Decree 231/2001, even if in the last year they have not reached the average of at least fifty employees with permanent or fixed-term employment contracts.

Public sector

The obligation to set up internal reporting channels also applies to the following public sector entities:

- the public administrations referred to in Article 1, paragraph 2, of Legislative Decree no. 165 of 30 March 2001;
- independent administrative guarantee, supervisory or regulatory authorities;
- public economic bodies, bodies governed by public law referred to in Article 3, paragraph 1, letter d) of Legislative Decree No. 50 of 18 April 2016;
- public service concessionaires, publicly controlled companies and in-house companies, as defined, respectively, by Article 2, paragraph 1, letters m) and o) of Legislative Decree no. 175 of 19 August 2016, even if listed.

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3 What can be reported

Conduct, acts or omissions that harm the public interest or the integrity of the public administration or private entity and which consist of:

- administrative, accounting, civil or criminal offences;
- significant unlawful conduct pursuant to Legislative Decree 231/2001, or violations of the organisational and management models provided for therein;
- offences falling within the scope of European Union or national acts relating to the following areas: 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; protection of privacy and protection of personal data and security of network and information systems;
- acts or omissions affecting the financial interests of the Union;
- acts or omissions concerning the internal market;
- acts or conduct which frustrate the object or purpose of the provisions contained in Union acts.

4 Choosing Reporting Channels

- internal (within the work context);
- external (ANAC);
- public dissemination (through the press, electronic means or means of dissemination capable of reaching a large number of people);
- report to the judicial or accounting authority.

Internal reporting channel

The internal report intended for the Company's Reporting Manager can be submitted in the following ways:

- Paper transmission of the report** (ordinary mail or by registered mail with acknowledgement of receipt addressed to the person handling the report), which bears the words "To the attention of the Whistleblowing Report Manager – personal confidential" by means of the **postal service to the address of the registered office**;
- Short hand delivery** (i.e. in a sealed envelope addressed to the Reports Manager, with the wording confidential personal) to the registered office;
- Submission through the IT platform** for the submission/acquisition and management of whistleblowing reports.

For the transmission and management of reports made in written or oral form, Diachem S.p.A. has opted to use the "My Whistleblowing" IT platform available at the web address <https://private.mygovernance.it/mywhistleblowing/diachem/30172/report> , by filling in the form prepared for this purpose.

The platform allows you to fill in, send and receive the "Reporting Form" in a computerized way.

Following the submission of the report, the whistleblower will receive updates by email and must follow the instructions to create an account on the platform in order to follow their case, and possibly talk to the managers of the report.

The notification of successful reporting is automatically sent to the mailbox of the reporting manager.

The whistleblower can monitor the progress of the investigation only by accessing the IT Platform and using the credentials created previously.

As an alternative to internal reports made in writing through the IT platform, reports can be made:

- ✓ orally by recording a voice message within the IT platform;
- ✓ or, at the reasoned request of the reporting person, by means of a direct meeting scheduled within a reasonable time, according to the procedures published on the website <https://diachemagro.com/whistleblowing/>

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The tools for transmitting and managing reports guarantee confidentiality:

- ✓ of the reporting person;
- ✓ of the facilitator;
- ✓ of the person involved or in any case of the subjects mentioned in the report;
- ✓ of the content of the report and the related documentation.

The reporting platform guarantees protection from any conflicts of interest towards the reporting managers identified by the company by allowing the whistleblower, during the reporting phase, to direct the report itself to a "backup manager". The latter will intervene in the management of the same autonomously and exclusively, in order to preventively limit the range of action of the report and take the necessary precautions. This process can also be activated independently by the operator himself in a potential conflict of interest.

The management of the reporting channels is entrusted to:

- to a person specifically trained for the management of the reporting channel, identified in the person of Elisabet Zanini, belonging to the function of ISO 9001 Quality System Manager (Reporting Manager);
- to a person specifically trained for the management of the reporting channel, identified in the figure of Andrea Allevi, belonging to the function of ISO 9001 Quality System Officer (Backup Manager).

External signaling channel

Whistleblowers can use the **external channel (ANAC)** when:

- there is no mandatory activation of the internal reporting channel in the context of the work context, i.e. this, even if mandatory, is not active or, even if activated, does not comply with the requirements of the law;
- the reporting person has already made an internal report and the same has not been followed up;
- the reporting person has reasonable grounds to believe that, if he or she made an internal report, it would not be followed up effectively or that the same report could lead to a risk of retaliation;
- the reporting person has reasonable grounds to believe that the breach may constitute an imminent or obvious danger to the public interest.

Public Disclosure

Whistleblowers can make a public **disclosure directly** when:

- the reporting person has previously made an internal and external report or has made an external report directly and no feedback has been given within the established deadlines on the measures envisaged or adopted to follow up on the reports;
- the reporting person has reasonable grounds to believe that the breach may constitute an imminent or obvious danger to the public interest;
- the reporting person has reasonable grounds 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 specific case, such as those in which evidence may be concealed or destroyed or in which there is a well-founded fear that the person who received the report may be colluding with the offender or involved in the violation itself.

5 Conditions for reporting

Reasonableness

At the time of reporting or reporting to the judicial or accounting authority or making public disclosure, the reporting or complaining person must have reasonable and reasonable grounds to believe that information about violations reported, publicly disclosed or reported is true and within the scope of the legislation.

Modality

The report or public disclosure must be made using the channels provided (internal, external and public disclosure) according to the criteria indicated above under the heading "Choice of reporting channels".

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6 Assessment of the public interest and the personal interest of the whistleblower

Reports must be made

- in the public interest or;
- in the interest of the integrity of the public administration or private entity.

The reasons that led the person to report, report or publicly disclose are irrelevant to the person's protection.

7 What happens after the report?

How to manage reports

Diachem S.p.A. provides:

- notify the reporting person of the receipt of the report within 7 days from the date of its receipt, unless explicitly requested otherwise by the reporting person or unless Diachem S.p.A. considers that the notice would undermine the protection of the confidentiality of the identity of the reporting person;
- maintain discussions with the reporting person and request additions from the latter, if necessary;
- diligently follow up on the reports received;
- carry out the investigation necessary to follow up on the report, including through hearings and the acquisition of documents;
- reply to the reporting person within three months of the date of the acknowledgement of receipt or, in the absence of such notice, within three months of the expiry of the seven-day period from the submission of the report;
- communicate the final outcome of the report to the reporting person.

8 Protection of the confidentiality of reporting persons

- The identity of the whistleblower may not be disclosed to persons other than those competent to receive or follow up on reports;
- The protection concerns not only the name of the whistleblower but also all the elements of the report from which the identification of the whistleblower can be derived, even indirectly;
- The report is exempt from access to administrative documents and the general right of civic access;
- The protection of confidentiality is extended to the identity of the persons involved and of the persons named in the report until the conclusion of the proceedings initiated on the basis of the report, in compliance with the same guarantees provided for the reporting person.

9 Compliance with the legislation on the protection of personal data

- The processing of personal data relating to the receipt and management of reports is carried out by Diachem S.p.A., in its capacity as data controller, in compliance with European and national principles on the protection of personal data, providing appropriate information to the reporting persons and persons involved in the reports, as well as adopting appropriate measures to protect the rights and freedoms of the data subjects.
- In addition, the rights referred to in Articles 15 to 22 of Regulation (EU) 2016/679 may be exercised within the limits of the provisions of Article 2-undecies of Legislative Decree No. 196 of 30 June 2003.
- Internal and external reports and related documentation are kept for the time necessary to process the report and in any case no longer than 5 years from the date of communication of the final outcome of the reporting procedure, in compliance with the confidentiality obligations set out in European and national legislation on the protection of personal data.

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The complete information regarding the processing of personal data is accessible as follows:

- Information to the Whistleblower (art. 13 EU Regulation 2016/679)
<https://diachemagro.com/whistleblowing/> "if you are a reporter" button
- Information to the Persons involved (art. 14 EU Regulation 2016/679)
<https://diachemagro.com/whistleblowing/> "If you are a person involved in a report" button

10 Retaliation

"Retaliation" means any behaviour, act or omission, even if only attempted or threatened, carried out by reason of the report, the complaint to the judicial or accounting authority or public disclosure and which causes or may cause unjust damage to the reporting person or to the person who filed the complaint, directly or indirectly.

Examples of retaliatory behavior:

- dismissal, suspension or equivalent measures;
- demotion in rank or non-promotion;
- the change of functions, the change of the place of work, the reduction of salary, the modification of working hours;
- suspension of training or any restriction of access to it;
- negative notes of merit or negative references;
- the adoption of disciplinary measures or other sanctions, including financial sanctions;
- coercion, intimidation, harassment or ostracism;
- discrimination or otherwise unfavourable treatment;
- the failure to convert a fixed-term employment contract into an employment contract of indefinite duration, where the worker had a legitimate expectation of such conversion;
- the non-renewal or early termination of a fixed-term employment contract;
- damage, including to the person's reputation, particularly on social media, or economic or financial harm, including loss of economic opportunity and loss of income;
- improper listing on the basis of a formal or informal sectoral or industry agreement, which may result in the person not being able to find employment in the sector or industry in the future;
- the early conclusion or cancellation of the contract for the supply of goods or services;
- the cancellation of a license or permit;
- the request for psychiatric or medical examinations.

10.1 Competence to ascertain retaliation

- The management of retaliatory communications in the public and private sectors is the responsibility of ANAC, which may avail itself, as far as its respective competences are concerned, of the collaboration of the Inspectorate of the Civil Service and the National Labour Inspectorate.
- The declaration of nullity of retaliatory acts is the responsibility of the judicial authority.

10.2 Proof of Retaliation

- ANAC must ascertain that the conduct (act or omission) deemed retaliatory is consequent to the report, complaint or disclosure.
- Once the whistleblower proves that he or she has made a report in accordance with the regulations and that he or she has suffered behavior deemed retaliatory, it is the employer's burden of proving that such behavior is in no way related to the report.
- Since it is a presumption of liability, it is necessary that evidence to the contrary emerges in the cross-examination before ANAC. To this end, it is essential that the alleged perpetrator provides all the

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elements from which to infer the absence of the retaliatory nature of the measure adopted against the whistleblower.

10.3 Protection from retaliation extended to other parties

Protection from retaliation is extended to other subjects, in addition to the whistleblower:

- to the facilitator (natural person who assists the whistleblower in the reporting process and operates within the same work context);
- to persons in the same working context as the reporting person, the person who has filed a complaint or the person who has made a public disclosure and who are linked to them by a stable emotional or family bond within the fourth degree;
- to work colleagues of the reporting person or of the person who has made a complaint or made a public disclosure, who work in the same work context as the same person and who have a habitual and current relationship with that person;
- to entities owned by the reporting person or for which the same persons work, as well as to entities operating in the same working context as the aforementioned persons.

11 Protection of Whistleblowers

11.1 Non-punishability of Whistleblowers

Anyone who reveals or disseminates information about violations is not punishable:

- covered by the obligation of secrecy, other than the professional legal and medical one;
- relating to the protection of copyright;
- protection of personal data or if, at the time of the report, complaint or disclosure, he had reasonable grounds to believe that the disclosure or dissemination of the information was necessary to make the report and the same was carried out in the manner required by law.

11.2 Loss of Protections

Protections are not guaranteed when the criminal liability of the reporting person for the crimes of defamation or slander or in any case for the same crimes committed with the report to the judicial or accounting authority or his civil liability, for the same reason, in cases of intent or gross negligence is ascertained, even with a first instance judgment; In such cases, a disciplinary sanction may be imposed on the reporting or reporting person.

11.3 Support measures for whistleblowers

- Support measures are provided which consist of information, assistance and advice free of charge on how to report and the protection against retaliation offered by national and European Union legal provisions, on the rights of the person concerned, as well as on the methods and conditions of access to legal aid.
- The list of Third Sector entities that provide reporting persons with support measures is established at ANAC. The list, published by ANAC on its website, contains the Third Sector entities that exercise, according to the provisions of their respective statutes, the activities referred to in Legislative Decree no. 117 of 3 July 2017, and that have entered into agreements with ANAC.

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