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The Italian Anticorruption System: Two Good Practices

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Thank you, Madam Chair, for giving me the floor.

Thank you, Mr. Marin and Ms. Dreyfus, for the invitation to this very interesting opportunity to share experiences from our work and common commitment to both the fight against corruption and the freedom of expression through whistleblowing tool.

I PART

I'd like to introduce you to the Whistleblower protection in Italy through the knowledge of a specificity of our legal system (**Slide 2**): Italy has built an independent authority in accordance with art. 6 UNCAC (**Slide 3**).

This framework in which is the WB tool. The Authority (ANAC) is a central body connected by a close relationship of cooperation with any other entity belonging to the public administration in a wide sense (i.e. including also Soes / Public Companies).

The main responsibilities of ANAC are (**Slide 4**):

- Regulatory power, for example to issue soft laws (guidelines etc.)
- Supervisory power over public procurement, transparency and civil servants' integrity
- Monitoring and sanctioning power over public administrations in case of failure to comply with their obligations in the area of corruption prevention.

All these powers apply in the area of WBer protection.

Therefore, at the central level, there is ANAC, that adopt a National Anti-corruption Plan (from now on PNA).

At the second Level each public administration has an obligation to adopt a Three-Year Corruption and Transparency Prevention Program (from now on TYCTPP) which, based on the indications of the P.N.A., includes:

- analysis and evaluation of specific corruption risks (risk Assessment activity);
- measures to prevent those risks (**Slide 5**)

The PNA applies to public economic entities and SOEs and has the goal of guiding each PA in performing and improving its own preventive strategy. You can find some examples of this guiding role in the slide:

- Centralized planning of activities in relation to the different levels of government
- Pursuit of measurable objectives and identification of specific responsibilities
- Identification of the minimum contents of the three-year programs

The PNA is updated annually based on the monitoring of results and received feedback. **(Slide 6)**

The Three-year anticorruption and transparency programs are drafted by the person responsible for the prevention of corruption and transparency in each administration and approved by the political body. Provide for rotation of managers and officials employed in sectors particularly exposed to corruption. **(Slide 7)**

The three-year duration and annual updating of both the PTPCTs and the PNA are harmonized according to a "sliding" model

In these Programmes measures on WBer protection are included.

II PART

The WBing has considered in Italy as a tool preventing Corruption **(Slide 8):**

The Anti-corruption Law of 2012 incorporated certain provisions on whistleblowing but applied exclusively to public sector employees reporting misconduct.

The new Law No 179/2017 strengthens pre-existing whistleblower protection for public-sector employees and extends that same protection to the private sector.

The law offers protection to a wide range of public officials and civil servant, including employees of Ministries, Regions, Municipalities, judges, military personnel, state police forces, diplomatic staff, etc. **(Slide 9).**

No importance is given to the “quality” of the person who reports: the law does not ask to evaluate the reasons for which he/she reports or his/her good faith, since the purpose of the law is that of situations of illegality or irregularity can get out.

The protected disclosures are not limited to criminal corruptive conducts, but also to administrative misconduct and all form of abuse of position. **(Slide 10)**

In line with the recommendations of the recent Directive of the European Parliament, whistleblowers are offered a variety of reporting channels, with no established hierarchy between them. Illicit behavior can be reported **either** to:

- the person within the public administration who is in charge of corruption prevention and transparency
- the National Anticorruption Authority (ANAC)
- the judicial or accounting authority **(Slide 11).**

Consequently, different levels of confidentiality are provided to the whistleblower depending on the avenue chosen or the responsible authority **(Slide 12).**

ANAC is also in charge of receiving and assessing complaints of retaliatory or detrimental measure taken against whistleblowers. ANAC is also responsible for applying very high pecuniary sanctions against the authors of the retaliatory actions, as well as against inadequate or not existing procedures for managing whistleblowers' reports.

The burden of proof is on the employer: he has to prove that the alleged retaliatory measure or behavior is not retaliatory **(Slide 13).**

The whistleblower who suffered dismissal because of his/her report is entitled to be reinstated.

As for the private sector, Law 179/2017 introduces the obligation for private companies to establish whistleblowers' mechanisms when they have already introduced compliance programs (in accordance with Legislative Decree No 231/2001) **(Slide 14)**.

ANAC established an IT platform for the receipt and management of whistleblowers' complaints. The platform guarantees the confidentiality of the identity of the reporting person and the possibility for ANAC to communicate with the whistleblower throughout the process **(Slide 15)**.

As you can see from the table, the number of reports received by ANAC has consistently increased since 2014. In 2018, the number of complaints doubled the numbers of the previous year and in 2019, ANAC received reports **(Slide 16)**.

One of the issues we are facing is that the offices responsible for the prevention of corruption in each administration seem to receive very few reports compared to ANAC. One of the possible explanations is that whistleblowers are more confident to report to external channels, for fear of retaliation or simply bad reputation within their workplace. Which reminds us that the road to a "speak up" culture where whistleblowing is encouraged and rewarded is still ahead of us.

In order to strengthen the whistleblowing function and enable ANAC to meet its commitment on the whistleblowing front, ANAC requested and obtained technical assistance from the European Commission in the form of a Structural Reform Support Service (SRSS) that financed the services of an international expert for an eighteen-month period **(Slide 17)**.

In addition, ANAC is the beneficiary of two more SRSS projects aimed at strengthening its role and responsibilities:

- the "Reinforcing the Institutional Corruption Prevention Community in Italy" project, with the objective to establish a platform of communication for the responsible persons for corruption prevention and transparency in each public administration, and (that is a channel for WB report)
- the "ANAC's role in leading and coordinating national corruption strategies" project, to enhance the coordination between ANAC and international, national, and local actors involved in the prevention and fight against corruption.

Finally, I would like to remind that the European Commission (in its Communication on Country Report Italy 2019, Doc COM(2019) 150 final) states that "Italy's score has slightly improved compared to 2017 in the World Bank's 2018 'control of corruption' index and in the 'incidence of corruption' index of the 2018 Global Competiveness Report. That partly reflects recent improvements in the anti-corruption system, such as a new framework to protect whistleblowers and the stronger role of the National Anti-corruption Authority in implementing it" (SWD(2019) 1011 final, page 60) and we obviously are very proud of this "judgment".

But we are also aware that the path for an effective protection of the WBer is very difficult. A good law is necessary, but not sufficient: we have to face cultural problems that make the WBer unwelcome to the environment in which she works and also lives. Our task is also on the ground of cultural training of the whole Italian society, institutions and citizens.