



Questionnaire concerning Business, Sports & Fraud

Sports Law Commission

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Sports and Fraud: identifying the relevant framework

1. Are there specific legal forms for sports club (e.g. specific type of company structure, association, etc.) in your jurisdiction?

The main distinction has to be drawn between the amateur level clubs (so called “*società dilettantistiche*”) and the professional clubs (so called “*società professionistiche*”).

Italian law provides that the sporting activity within the amateur level clubs can be conducted by way of one of the following juridical forms¹:

- sports association with legal personality under private law;
- sports association without legal personality under private law;
- sports joint stock company or cooperative company.

As for the professional clubs (which are those who can enter into agreements with the professional athletes) the law provides that they can gather in the form of joint stock company².

2. How are sports clubs / players grouped? Are they administrative bodies, associations, federations etc.? Please provide a few examples.

According to the Italian legal order there are a number of collective organizations by way of which the sporting activity is managed and organized. In this regard, it is worth mentioning, *inter alia*, the following:

Coni

The Italian National Olympic Committee (hereinafter also referred to as “CONI”), entrusted by the International Olympic Committee (hereinafter referred to as “IOC”),

¹ See article 90, para. 17 of Law dated 27 December 2002, n. 289.

² Law dated 23 March 1981, n. 91.

provides discipline, regulation and management of national sports activities. CONI is a public entity with legal personality officially recognized by the Italian legislation³.

By way of recent regulatory amendments⁴, there has been quite an impact on CONI's organization and functioning⁵. The CONI operates under the supervision of the Italian Ministry of Sport and it is responsible for the management and strengthening of national sports and the promotion of the sports activities within the Italian territory.

CONI represents around 95.000 sports clubs and a total of around eleven million members⁶.

National sports federations

National sports federations are the representatives for the single sports disciplines in Italy. CONI would endorse a national sports federation if the following requirements are met⁷:

- they carry out on the Italian territory a sporting activity;
- they are affiliated to an International federation recognized by the IOC;
- they have internal by-laws;
- they have internal democratic procedures for the election of the executives bodies.

Today CONI endorses forty-five national sports federations (*e.g.* Italian football federation (called "FIGC"), Italian athletics federation (called "FIDAL"), Italian badminton federation (called "FIBA"), Italian baseball and softball Federation (called "FIBS"), Italian paralympic committee (called "CIP")).

³ Law dated 6 February 1942, n. 426.

⁴ Decree law dated 8 January 2004, n. 15.

⁵ Spadafora, M.T., *Diritto del lavoro sportivo*, second edition, Giappichelli Editore, 2012, p. 27.

⁶ See <http://www.coni.it/en/coni-eng.html>.

⁷ See article 21 of the CONI Statute adopted on 11 June 2014.

The national sports federations ensure that sports activities are carried out in compliance with the indications given by the IOC and the CONI and are non-profit associations with a legal personality under private law⁸.

In general, the main objective of the national sports federations is to provide discipline and regulation for the single sports disciplines and to manage the disciplinary power. The national sports federations, on the basis of the powers granted by the CONI, endorse the associations which intend to carry out the sporting activities of the national sports federation and recognize them as the quality of sports associations within the Italian sports system⁹.

Every national sports federation has its own by-laws and has technical, organizational and management autonomy, under the supervision of the CONI.

Leagues

Within the national sports federations, it is worthy mentioning also the leagues which are associations set up by clubs competing in national professional championships. The leagues are associative bodies, of a private nature, affiliated to the respective national sports federations¹⁰, which have the main goal to represent the sports clubs affiliated to the national sports federations.

The leagues organize the agonistic activity of the sports clubs associated to it, by organizing the sports events. In this regard, the following activities are worth mentioning¹¹:

- fixing the season calendar of the official competitions;
- representing the sports clubs *vis-a-vis* the national sports federations and the other leagues.

⁸ Verde F., Sanino M., *Il diritto sportivo*, CEDAM, 2015, p. 72.

⁹ See article 29 of the CONI Statute adopted on 11 June 2014.

¹⁰ See, in particular, the decision rendered by the Italian Supreme Court dated 18 March 1999, n. 154 which qualify the leagues as bodies belonging to the national sports federations.

¹¹ Verde F., Sanino M., *Il diritto sportivo*, CEDAM, 2015, p. 495.

3. What is the relevant regulatory framework for sports associations/clubs/etc. in your jurisdiction? Is State legislation applicable or is self-regulation applicable? Please provide a few examples.

As mentioned above¹², the Italian State has assigned CONI with the regulatory power in the sports sector.

CONI (and by delegation, *inter alia*, the national sports federations) are fully entitled to provide self-regulating rules, which are binding on the affiliated parties (*e.g.* the sports clubs and the athletes).

In this regard, for example CONI, in its by-laws, provides that the sports clubs are subject to the sports system¹³. As a consequence, it is for the sports legislation to set the requirements needed for a sports club to be affiliated to a certain national sports federation or to participate to a tournament.

On the other hand, the State legislation is still applicable to the sports clubs under given provisions of private law. In this regard, the sports clubs may be subject, for example, to the bankruptcy laws.

4. Are there any sport-specific risks that you may think of? Are there specific legislation for such risks? The following should be considered:

- Finance in connection with donations or subventions, misappropriation of money;
- Decision making process: nepotism, corruption regarding election or selection of the site for a big sport event;
- Health-issues (doping);
- Competition: match fixing, etc.;
- Online gambling.

¹² See above under # 2.

¹³ See article 29 of the CONI Statute adopted on 11 June 2014.

Finance in connection with donations or subventions, misappropriation of money

Please see below under # 5.

Decision making process: nepotism, corruption regarding election or selection of the site for a big sport event

Please see below under # 5.

Health-issues (doping)

The Italian sports system has made significant efforts to tackle the use of doping in sports and to safeguard the health of the athletes.

The relevant national legislation has been enacted in 2000¹⁴. This piece of legislation has introduced a specific crime offence for those who supply or consume doping products in order to improve the competitive performance. The criminal sanctions are the imprisonment from three months to three years and the punishment by a fine. Sanctions are applicable also to the trade of doping products¹⁵. The law also provides that the CONI and the national sports federations shall provide rules to sanction the doping. In compliance to this provision of law, CONI has enacted the anti-doping code¹⁶.

CONI is now considered the Authority which disciplines and is responsible for the adoption of preventive measures for fighting the doping. In this respect, CONI also implements the provisions envisaged in the WADA anti-doping programs, including

¹⁴ Law dated 14 December 2000, n. 294.

¹⁵ See article 9 of law dated 14 December 2000, n. 294.

¹⁶ Originally approved on 30 June 2005 and today made by a document implementing the world anti-doping code, approved by CONI on 29 November 2012 and revised by way of CONI's order dated 3 December 2014.

the organization of the anti-doping controls, the conduction of the investigations and of the trials.

In particular, CONI, *inter alia*, carries out the following activities:

- it makes sure that its policies are consistent with the WADA's ones;
- it conditions the affiliation and recognition of a national sports federation to the compliance of the anti-doping rules within that federation;
- it conditions the participation of the athletes to the Olympic Games to anti-doping controls;
- it promotes the research and the education in the anti-doping sector.

Competition: match fixing, etc.

Please see below under # 11.

Online gambling

Please see below under # 12.

The case for compliance

5. How are risks to be evaluated with regard to corruption, fraud and other white-collar crimes? Are there internal control systems? Transparency criteria? Compulsory controls by auditors / administrative?

Traditionally, Italian criminal law had been applied only to individuals committing crimes such as corruption and fraud. The legal entities (also in case the above crimes were committed in their favour) were therefore not subject to punishment. By way of the introduction of the legislative decree dated 8 June 2001, n. 231 (hereinafter referred to as "L.D. 231/2001"), the entire picture is changed. Companies can now indeed be held responsible and then punished for crimes committed by their officers, in case certain conditions are met.

When is a legal entity liable under L.D. 231/2001

With reference to the requirements for companies' liability, pursuant to L.D. 231/2001 the companies' liability applies in case the crime is committed¹⁷:

- by those persons who are entrusted with the representation, administration or management of the company (so called persons holding a “top position”), or by those persons who are subject to the authority of or control by a person holding a top position;
- in the interest or for the benefit of the legal entity.

The type of offences falling under L.D. 231/2001 entails also the fraud or corruption and can be divided in the following categories¹⁸:

- Ñ crimes against the State Administration¹⁹ (such as corruption, extortion, undue receipt of payments with prejudice to the State or other public entity);
- Ñ private bribery²⁰ (offences for an individual of a company to act in breach of the duties relating to its obligations or its loyalty to the detriment of the company, against the payment or the promise of money);
- Ñ corporate crimes²¹ (such as circulating or filing false company information, or issuing fraudulent forecasts);
- Ñ abuse of market offences²².

¹⁷ See article 5 of legislative decree dated 8 June 2001, n. 231.

¹⁸ It has to be noted that the type of offences falling under L.D. 231/2001 comprises, *inter alia*, also offences concerned with terrorism or the subversion of democracy, crimes against individuals (e.g. underage pornography and exploitation of prostitutes), offences related to cybercrimes, health and safety in the workplace offences, trade and industry offences, copyright offences. The tendency, under Italian system, is to widen the scope of the L.D. 231/2001. For example, recently, the Italian legislator has extended the scope of L.D. 231/2001 also to the offences in the field of the protection of the territory and of the environment.

¹⁹ See articles 24, 25 *bis* of legislative decree dated 8 June 2001, n. 231.

²⁰ See article 25 *ter* of legislative decree dated 8 June 2001, n. 231.

²¹ See article 25 *ter* of legislative decree dated 8 June 2001, n. 231.

²² See article 25 *sexies* of legislative decree dated 8 June 2001, n. 231.

In light of the above, it can be noted that this piece of legislation can directly impact the sports system. Indeed, there are a number of criminal offences, which potentially fall within the L.D. 231/2001 (*e.g.* finance in connection with donations or subventions, misappropriation of money, corruption regarding election or selection of the site for a big sport event), which could be committed by individuals and for which the entities involved in the sports system (*e.g.* sports clubs, federations, leagues, etc.) could ultimately be considered responsible.

Sanctions

In relation to the sanctions, in case the said criminal offences within the scope of L.D. 231/2001 have been committed, the company can be sanctioned as follows²³:

- Ñ pecuniary fines (calculated in quotas, which can vary from Euro 25,800.00 to Euro 1,549,000.00);
- Ñ prohibitions (from 3 months to 2 years), including *inter alia* a prohibition on the company to carry on its business on a temporary basis, the suspension or revocation of authorisations and licences issued by the public administration and the prohibition to contract with the public administration;
- Ñ seizure of the price or profit obtained by means of the offence²⁴;
- Ñ publication of the judgement.

Exemption From Liabilities

The company will be exempted from liability in case all the following conditions are met²⁵:

- Ñ the management has adopted and effectively applied an organizational model (so called “*modello organizzativo*”), prior to commission of the crimes falling within the scope of the L.D. 231/2001, suitable for preventing crimes of the kind that occurred²⁶;
- Ñ the task of supervising functioning and observance of the organizational model and coordinating its update is entrusted to a surveillance board (so called “*organismo di vigilanza*”) with autonomous powers of initiative and control;
- Ñ the perpetrators of the crime have acted fraudulently to evade the rules of the organizational model;
- Ñ the supervision of the surveillance body has not been absent or insufficient.

²³ See articles 9 to 23 of legislative decree dated 8 June 2001, n. 231.

²⁴ See article 19 of legislative decree dated 8 June 2001, n. 231.

²⁵ See article 6 of legislative decree dated 8 June 2001, n. 231.

²⁶ Please note that the adoption of an organizational model is not compulsory but is strongly incentivized.

6. How is compliance applied to sports-organization? What differences are there compared to the “traditional” business world?

No doubts arise with respect to the fact that the L.D. 231/2001 is applicable also to the sports associations and the sports clubs²⁷.

Though, it is interesting to note that some sports organizations, started before the *traditional business world* (and thus before the adoption of the L.D. 231/2001) to adopt a system of compliance in which sports clubs could be held responsible and then punished for crimes committed in the interest of the club by someone involved in the club itself²⁸.

For example, within the Italian football federation (hereinafter also referred to as “FIGC”), it is a well-established principle that the football clubs affiliated to the FIGC can be held liable for the acts of physical persons which act in the interest of the entity.

Indeed, the FIGC code of sport justice²⁹ envisages that the sports clubs³⁰:

- are directly responsible for the acts of those who represent the club;
- are objectively responsible, to face disciplinary actions, for the conduct of its managers, registered members or other specific persons who carry out their acts in the interest of the club;
- are objectively responsible for the acts of physical persons entrusted to render certain services for the club and for the acts of its supporters, both on the pitch, on the neutral ground and on the pitch of the hosting club, without prejudice for the duties of the latter;
- are responsible for the order and the security, before and after the football game, in the stadium and adjacent areas. The failure to involve the public enforcement authority entails, in any case, stricter sanctions for the clubs;

²⁷ Cupelli C., “*Problemi e prospettive di una responsabilità da reato degli enti in materia di illeciti sportivi*”, in *Le società*, 7/2013, pp. 833 and ff..

²⁸ Attanasio A., “*Il d.lgs. 231/2001 e le società di calcio: analisi e prospettive future*”, in *Rivista di diritto ed economia dello sport*, vol. X, 2, 2014, p. 90.

²⁹ Its recent version has been adopted by deliberation of the CONI’s President on 31 July 2014.

³⁰ See article 4 of the FIGC code of sport justice.

- are considered allegedly responsible for the sports frauds committed in their advantage by persons external to the club. This responsibility is excluded when there is a reasonable doubt that the sports club did not participate to the sports fraud or that it has ignored it;
- are responsible for the presence of prohibited substances under the anti-doping regulation, found in places or venues in the vicinity of the club.

In general terms, the regulation mentioned above, highlights also that, unlike the *traditional business world*, the sports clubs (in this case the football ones) are more likely to be considered liable under an objective responsibility criteria³¹.

Indeed, the sports association can be considered as responsible also in case the crime is committed by someone external to the club but in the interest of the latter (unless the club is able to prove that there is a reasonable doubt that it did not participate to the sports fraud or that has ignored it)³².

7. Could you give examples of internal compliance process/internal decision-making processes?

The league representing the first division teams affiliated to the Italian football federation, called “*Lega Serie A*”, imposed the adoption of the organizational model provided under L.D. 231/2001 as a precondition for the teams to register for the 2013/2014 first division tournament (called “*Serie A*”).

In particular, it is worth mentioning that these organizational models shall envisage³³:

- measures to guarantee the conduct of the sports activity in accordance with the laws and sports regulations and promptly identifying risky situations;
- adoption of an ethical code and of specific procedures for carrying out the internal decision making process;

³¹ Attanasio A., “*Il d.lgs. 231/2001 e le società di calcio: analisi e prospettive future*”, in *Rivista di diritto ed economia dello sport*, vol. X, 2, 2014, p. 91.

³² As we saw above, this is not comparable to what it is envisaged under L.D. 231/2001. The latter provides that the company can be held liable only for the conduct of persons holding a top position or those who are subject to the authority of or control of a person holding a top position.

³³ See article 7 of the FIGC code of sport justice.

- adoption of a disciplinary system to sanction the failure to respect the measures indicated in the organizational model;
- the appointment of a surveillance board composed by individuals with autonomous powers entrusted to control on the functioning and the observance of the organizational model.

The issue of sanctions

8. According to which provisions (e.g. criminal law, regulatory law, and administrative law, etc.) may a sports association be sanctioned in your jurisdiction?

The interrelations between sports justice and the other areas of the juridical system has been debated at length³⁴ and thus it has not been always clear according to which provisions a sports association may be sanctioned.

Finally, the Italian Constitutional Court³⁵ has identified the following three main areas which would be subject to different forms of judicial protection:

- an area which covers the economic relations existing, *inter alia*, between the sports associations, its registered members and the athletes and which is referred to the ordinary state courts;
- an area referring to the challenge of the deliberations issued by the sports bodies which is referred to the administrative justice;
- an area referring to the correct and loyal carrying out of the sports activity and to the disciplinary power related to the breaches of rules issued by the sports bodies and administered by the sports justice. An extensive reform of sports law, enacted in 2014/2015 by the CONI introduced a common code of sport justice³⁶ (hereinafter referred to as “Code of Sport Justice”), as well as harmonized procedural rules.

³⁴ Fidanzia S., Sangiuolo G., “La rinnovata autonomia della giustizia sportiva all’indomani del nuovo codice. un commento all’articolo 4 del codice di giustizia sportiva”, in *Rivista di diritto sportivo*, Coni, p. 9.

³⁵ Italian Constitutional Court decision rendered on 11 February 2011, n. 49.

³⁶ The Code of Sport Justice was adopted by CONI by way of deliberation dated 15 July 2014, n. 1518.

9. Who may be sanctioned within the association (e.g. the association itself, the board, an employee)? Please provide examples of applicable sanctions in the recent years.

National sports federations establish internal judicial authorities in order to settle disputes arising from the respective rules of conduct and regulations.

The code of sport justice enacted by the Italian football federation provides that the sanctions can be imposed on the club itself³⁷, on the managers and on any registered member or shareholder of the club³⁸.

In Italy, the most relevant scandal involving football clubs dates back almost ten years ago.

In particular, in May 2006, after investigations of the State police, it went public with a scandal (called “*Calciopoli?*”) which involved top professional football clubs accused of influencing the referees appointment. At the end of the investigations, the football clubs³⁹ found guilty have been heavily fined by the sports justice being relegated or fined with deduction of points in the tournament⁴⁰. In addition, some individuals involved in the scandal, whose offences have been considered particularly serious, were banned for life from any football-related activity by the Italian football federation at any level⁴¹.

³⁷ Article 18 of the FIGC code of sport justice provides that, *inter alia*, these sanctions may be imposed in the form of fines, obligation to play the match without spectators, obligation to play a match on neutral ground, ban on playing in the stadium, expulsion from a competition, relegation to a lower division, deduction of points.

³⁸ Article 19 of the FIGC code of sport justice provides that, *inter alia*, these sanctions may be imposed in the form of fines, exclusion for one or more games, ban to access to the stadium for a certain period of time, ban from football-related activity.

³⁹ It is worth mentioning that the teams were considered responsible whether or not they were aware or not of the crime committed by one of its registered members just by the virtue of the latter's registration.

⁴⁰ Verde F., Sanino M., *Il diritto sportivo*, CEDAM, 2015, p. 263.

⁴¹ Verde F., Sanino M., *Il diritto sportivo*, CEDAM, 2015, p. 312.

- 10. How do those sanctions interact with decisions from State courts? Is there a need for enforcement of the sanctions (i.e. is there a filter / exequatur process by State courts, as in arbitration)? Is there a possibility for State courts to consider a case also examined by a regulatory body, e.g. a federation (i.e. is there a risk of “double jeopardy”)?**

The interaction between the decisions of the state courts and those of the sports justice has been debated at length in the past⁴².

The issue has been developed and dealt with by the reform which introduced the Code of Sport Justice⁴³. In this codification the rapports existing between the decisions rendered by the state courts and those issued by the sports justice have been detailed.

In particular, the Code of Sport Justice provides that the “... *judgment rendered by the state criminal courts which resulted in a final criminal conviction ... has force in the disciplinary proceedings and it has to be considered res judicata with reference to the establishment of the fact, its criminal unlawfulness and its commission by the accused person ...*”. Likewise, the *judgment rendered by the state criminal courts which resulted in a final acquittal ... has force in the disciplinary proceedings and it has to be considered res judicata ...*” with reference to the fact that the accused person is not guilty⁴⁴.

Case studies: Online gambling, doping scandals and whistleblowing

- 11. What are the legal consequences with regards to match-fixing in your jurisdiction? Please specify the relevant legal framework.**

With regard to the match-fixing, there are two main pieces of legislation to be considered. On one side, it must be taken into consideration the role played by the Italian legislator. On the other, also the rules issued by the sports bodies have relevance.

Italian legislation

⁴² See also above under # 9.

⁴³ See above under # 9.

⁴⁴ Article 39 of the FIGC code of sport justice.

The relevant legal framework which deals with sports fraud has been set by the law dated 13 December 1989, n. 401 (hereinafter referred to as “law 401/1989”). This piece of legislation covers the gaming sector, the illegal betting and the protection of the running of competitions.

The main target of law 401/1989 is to tackle unlawful sports betting.

The law provides the imprisonment from two years to six years and a fine from Euro 1,000.00 to 4,000.00 for a person who offers or promises money or other benefits to any participant in a sports competition (for example as such as those recognized by CONI) in order to get a result different from the one that would result from a fair competition⁴⁵. The same penalties are attached to the participant to the competition who accepts the money or other benefits.

Moreover, law 401/1989 includes a specific obligation on specific individuals (such as the presidents of the national sports federations affiliated to the CONI) to report facts concerning the criminal offences related to sports fraud to the judicial authority⁴⁶.

Law 401/1989 deals also with the interrelations between the state courts and the sports justice under this matter. In particular, it is clarified that the criminal proceedings and any decision rendered by the state criminal courts do not have any impact on the validation of the sports results of the match and on any other issue for which the sports justice is competent⁴⁷.

Sports Justice

The sport more impacted by the match fixing in the last year has been football.

The Italian football federation has provided rules in this matter in its code of sport justice⁴⁸.

The Italian football federation code of sport justice bans certain individuals (*e.g.* registered members of the federal bodies, managers of the teams, registered members of the teams) from placing or accepting bets, directly or indirectly through third parties, on official games organized by the FIFA, UEFA and the Italian football federation.

⁴⁵ See article 1 of law dated 13 December 1989, n. 401.

⁴⁶ See article 3 of law dated 13 December 1989, n. 401.

⁴⁷ See article 2 of law dated 13 December 1989, n. 401.

⁴⁸ The FIGC code of sport justice was adopted by way of deliberation of the CONI President dated 31 July 2014, n. 112/52.

The infringement to this obligation entails the sanction of the disqualification not less than three years and a fine not less than Euro 25,000.00⁴⁹.

In an event where the club is found responsible, it may be punished and the sanctions are assessed on the basis of the circumstances and seriousness of the fact (there can be, *inter alia*, the deduction of one or more points in the ranking, relegation to the last place in the championship ranking, exclusion from the championship)⁵⁰.

Also in the Italian football federation code of sports justice there is the specific obligation on specific individuals (*e.g.* registered members of the federal bodies, managers of the teams, registered members of the teams) to report facts concerning the criminal offences related to sports frauds. The lack of report may entail the sanction of the disqualification not less than six months and a fine not less than Euro 15,000.00⁵¹.

12. How is online gambling considered in your jurisdiction and how is it dealt with in case of fraud?

The law dated 7 July 2009, n. 88 (hereinafter referred to as “law 88/2009”)⁵² has provided for a new legal framework for online gambling activities.

Law 88/2009 provides that a concession may be granted to a person who operates games or betting activities in an EU Member State⁵³.

More in detail, concessions granted under the legislation at hand authorize the following activities⁵⁴:

- betting on certain sports events;
- betting on sports and horse racing;
- national horse racing;
- skill games;

⁴⁹ Article 6, paras. 1, 2 of the FIGC code of sport justice.

⁵⁰ Article 6, para. 4 of the FIGC code of sport justice.

⁵¹ Article 6, paras. 5 and 6 of the FIGC code of sport justice.

⁵² Law dated 7 July 2009, n. 88.

⁵³ Article 24, para. 15 (a) of the law dated 7 July 2009, n. 88.

⁵⁴ Article 24, para. 11 of the law dated 7 July 2009, n. 88.

- fixed betting with interactions of the players;
- bingo;
- totalizer games on national basis;
- lotteries.

The unlawful exercise of online gambling and the fraud in this sector is punished and is subject to Law 401/1989⁵⁵.

13. Are any measures foreseen in your jurisdiction for the protection of “whistle-blowers”?

Historically, the “whistle-blowing” has never been part of Italian legal tradition. As a consequence, Italian legislation does not present a comprehensive legal framework in this area⁵⁶.

The first provisions in this field have been enacted with the law dated 6 November 2012, n. 112 (hereinafter referred to as “Anticorruption Law”) and refer only to the public sector⁵⁷.

There is no specific provision on law with regard to the private sector. In this case, it must be made reference to regulations such as the Italian Constitution, the collective bargaining agreements, the Italian civil code and the Italian criminal code.

Measures foreseen in the Anticorruption Law for the protection of “whistle-blowers”

The Anticorruption Law has inserted a provision to the effect that the civil servant cannot be sanctioned, dismissed or be subject of any form of discrimination in case it

⁵⁵ See above under # 11.

⁵⁶ Please note that in the Italian Parliament there is currently under discussion a proposal for a new law which aims to bolster the “whistleblowing” both in the public and private sector. This paper will not refer to this proposal (which is highly debated) but will report the legislation in force at the time of the drafting.

⁵⁷ Law dated 6 November 2012, n. 190 which have amended the legislative decree dated 30 March 2001, n. 106.

informs the Authorities about unlawful conducts it is aware of in relation to its working position⁵⁸.

The allegations made by the civil servant must be grounded on specific evidences. Indeed, the above provision, does not apply in case the “whistleblower” has made ungrounded accusations which can amount to slander or defamation.

Measures foreseen for the protection of “whistle-blowers” in the private sector

As mentioned, there is no specific legislation on the “whistleblowing” with reference to the private sector.

Nevertheless, it is a well-established principle that there must be safeguards in case an employee flags unlawful conducts which take place within the organization given the fact that there is a superior public order interest that supersedes that of the company⁵⁹.

Consequently, any dismissal or sanctioning of an employee as it disclosed unlawful conducts within the company should be considered unfair in case the disclosure has not breached the law or its employment contract.

It is interesting to note that the L.D. 231/2001⁶⁰ has provided that the organizational models enacted by the companies, must envisage for “...*information flows towards the surveillance board which shall supervise on the functioning of the model...*”.

Some Authors have expressed the view that this provision has put the basis for bolstering the Italian “whistleblowing” culture also in the private sector⁶¹.

14. How is confidential information treated in your jurisdiction? Any risks for whistle-blowers?

⁵⁸ Section 54 *bis*, para. 1 of the legislative decree dated 30 March 2001, n. 106.

⁵⁹ Supreme Court, Employment Division in the decision rendered on 16 January 2001, n. 519.

⁶⁰ See above under # 5.

⁶¹ Liguori G., “*La Figura del Whistleblower in Italia*”, in *Rivista* 231, 2, 2015, p. 161.

There is a tendency to keep confidential the information revealed by the “whistle-blower” and to protect its identity.

Nevertheless, there are some risks attached to it.

Indeed, as for the public sector, the Anticorruption Law has inserted provisions to the effect that the identity of the “whistle-blower” can be disclosed without its consent in case⁶²:

- the disciplinary complaint is grounded also on investigations which are not related to the flag of the “whistle-blower”;
- the identity of the “whistle-blower” is necessary for the accused party to duly exercise its right of defence.

As for the private sector, there is no specific provision on how the issue of confidentiality *vis a vis* the “whistle-blower” should be dealt. Nevertheless, it is possible to affirm that, according to general principles, there should be some protection for the information given by the “whistle-blower” and for its identity. In this regard, it can be mentioned the order issued by the Italian Data Protection Authority (called “*Garante della Privacy*”) according to which “... *it is inadmissible the request put forward [by the interested employee] to know the identity of the suppliers and of the employees of the company which have flagged the unlawful conduct on the basis of which it has been grounded the disciplinary complaint ...*”. Indeed, it would be possible just to “... *satisfy the request to communicate the origins of these information indicating the role, the categories, the company offices from which the information came, without indicating the physical person who materially have flagged the conduct ...*”⁶³.

Nevertheless, it cannot be excluded that an Italian court could order a certain entity to disclose the identity of the “whistle-blower” also in the private sector regardless of the principles mentioned above.

⁶² Section 54 *bis*, para. 2 of the legislative decree dated 30 March 2001, n. 106.

⁶³ Italian Data Protection Authority, order n. 1402759/2007

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