



Whistleblowing and the EU Directive n. 1937/2019

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An Effective Anticorruption Tool

- Whistleblowers have reported wrongdoing and fraud around the world, helped save millions in public funds and avert health and environmental disasters.
- The Association of Certified Fraud Examiners (ACFE) found that 46.2% of all frauds are discovered by whistleblowers, while only 3.2% are detected by law enforcement.
- Studies conducted by PricewaterhouseCoopers (PWC) and the ACFE have concluded that "workplace fraud is far more likely to be detected by a tip than by audits, controls or any other means."
- However, reporting often comes with a high price: whistleblowers risk their career, livelihood, and sometimes personal safety to expose wrongdoing that threatens the public interest.
- In some societies, whistleblowing has a connotations of treason.



An Italian survey: why people do not report?

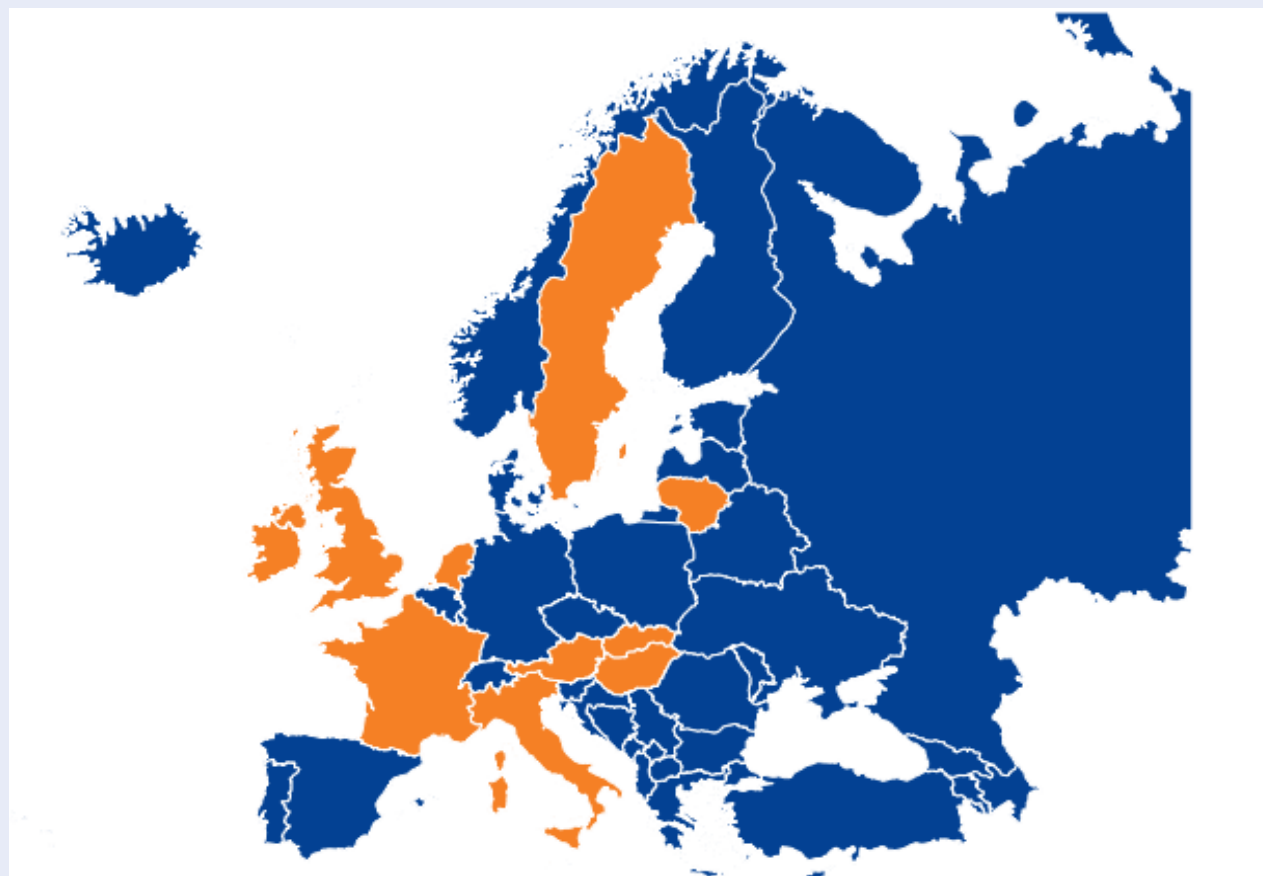
- A 2017 report by the Italian National Statistics Institute interviewed 43,000 people between 18 and 80 about corruption in Italy.
- The results shows that 7.9% of families were directly involved in corruption. 85.2% of the families who paid believed the corruption was useful for the achievement of the desired purpose.
- **Only 2.2% of families reported corruption, while 95% did not.** Among those who did not report:
 - 34.9% said they did not report because they considered **useless** to do so
 - 14% because they considered **corruption as a habit**
 - 12.5% because they would **not know to whom to report**
 - 12.4% for **fear of possible reprisals**



Prior to the EU Directive

Only a few Member States had comprehensive legislation on whistleblowing

Source: European Commission Factsheet - April 2018





The EU Directive 1937/2019: Main Provisions

- **Whistleblowing as a human right**
- **Private sector:** the Directive requires companies with more than 50 employees to adopt a system for receiving and managing whistleblowing reports.
- **Extension of the protection to:**
 - shareholders and members of the administrative, managerial or supervisory body of an enterprise, including non-executive members
 - volunteers and paid and unpaid trainees
 - any person working under the supervision and direction of contractors, subcontractors and suppliers
 - reporting persons whose employment relationship has not yet started in cases where information regarding a violation has been acquired during the selection process or other stages of pre-contractual negotiations



More Provisions

- The personal interest of the whistleblower has no relevance
- It is sufficient for the whistleblower to reasonably believe that an offense has been committed or is going to occur
- Reporting extended to unlawful facts that are not yet occurred but are about to take place



Whistleblowers' Protection

- Protection of confidentiality, through the provision on the prohibition to disclose data without express consent of the whistleblower
- Prohibition of any form of retaliation encouraged or tolerated by the employer (dismissal, suspension, demotion, change of duties, disciplinary measures, discrimination, etc.)
- Reversal of the burden of proof
- Provision of support measures, including in the form of legal aid in the event of a trial



Reporting Channels

- The use of internal channels is encouraged
- The use of the external channel (central authority) is allowed when: internal channels are not available or do not work; no actions has been taken; the whistleblower has reason to believe that he/she will be subjected to retaliation or that the central authority will take more effective action
- Reporting to the public is allowed when the use of the internal and / or external channels has not led to the resolution of the problem (i.e., it has not been investigated effectively or there is a risk of retaliation)



Sanctions

- Member States are obliged to provide effective, proportionate and dissuasive penalties applicable to natural or legal persons who:
 - obstruct or attempt to obstruct reporting;
 - retaliate against whistleblowers
 - pursue harassing proceedings against whistleblowers
 - violate the obligation of confidentiality on the identity of the reporting persons
- Sanctions are provided for whistleblowers who voluntarily report or disclose false information
- Compensation for damage is provided in favor of those who suffer harm from reports made in violation of the provisions of national legislation



ANAC as the Italian External Channel

Regulatory Powers

- ANAC issues guidelines on the procedures for submitting and managing whistleblowers' reports

Investigative Powers

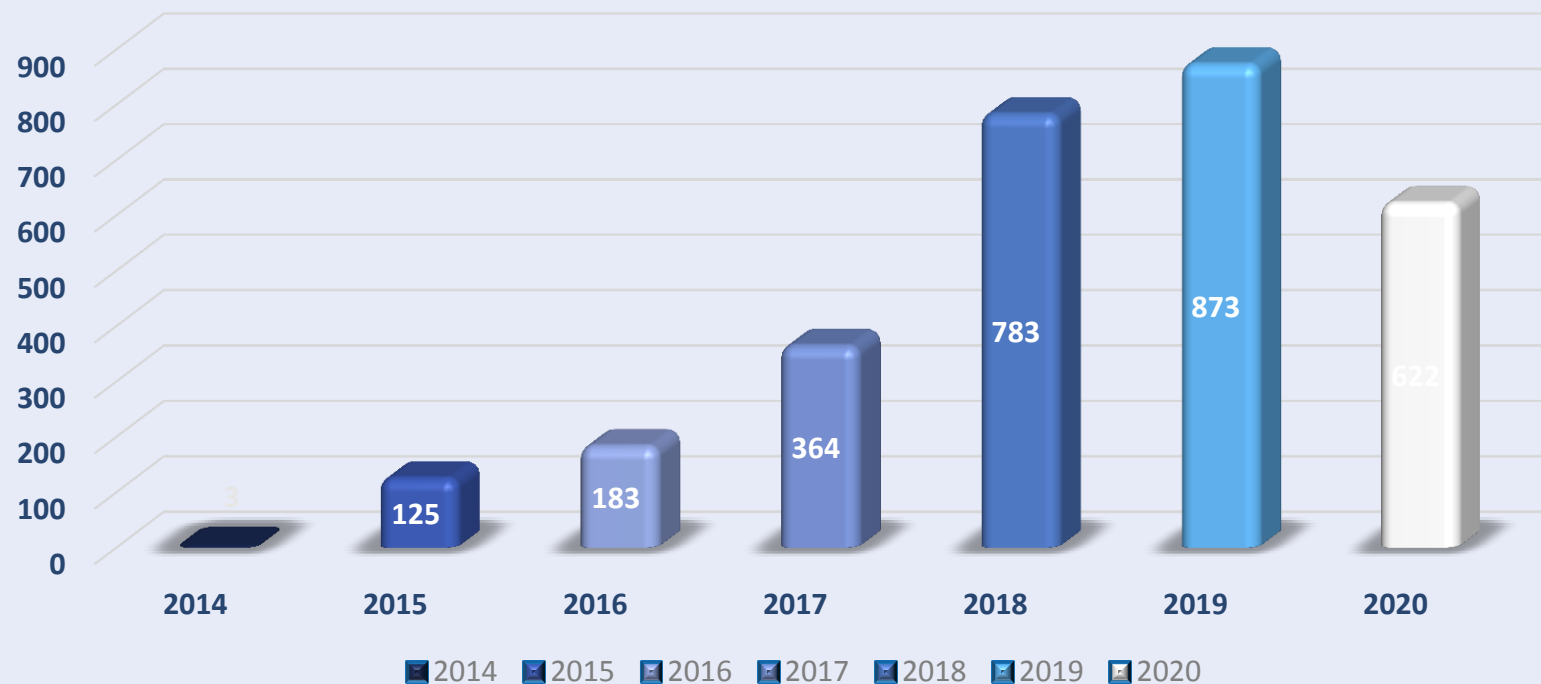
- ANAC may conduct fact-finding investigations on the report brought by the whistleblower as well as on the retaliatory measures

Sanctioning Powers

- In the event of **detrimental treatment** against the whistleblower adopted by the public administration
- In the event of **insufficient reporting procedures** and systems for managing reports
- In the event of **failure to properly examine** and process received reports



Number of reports received by ANAC

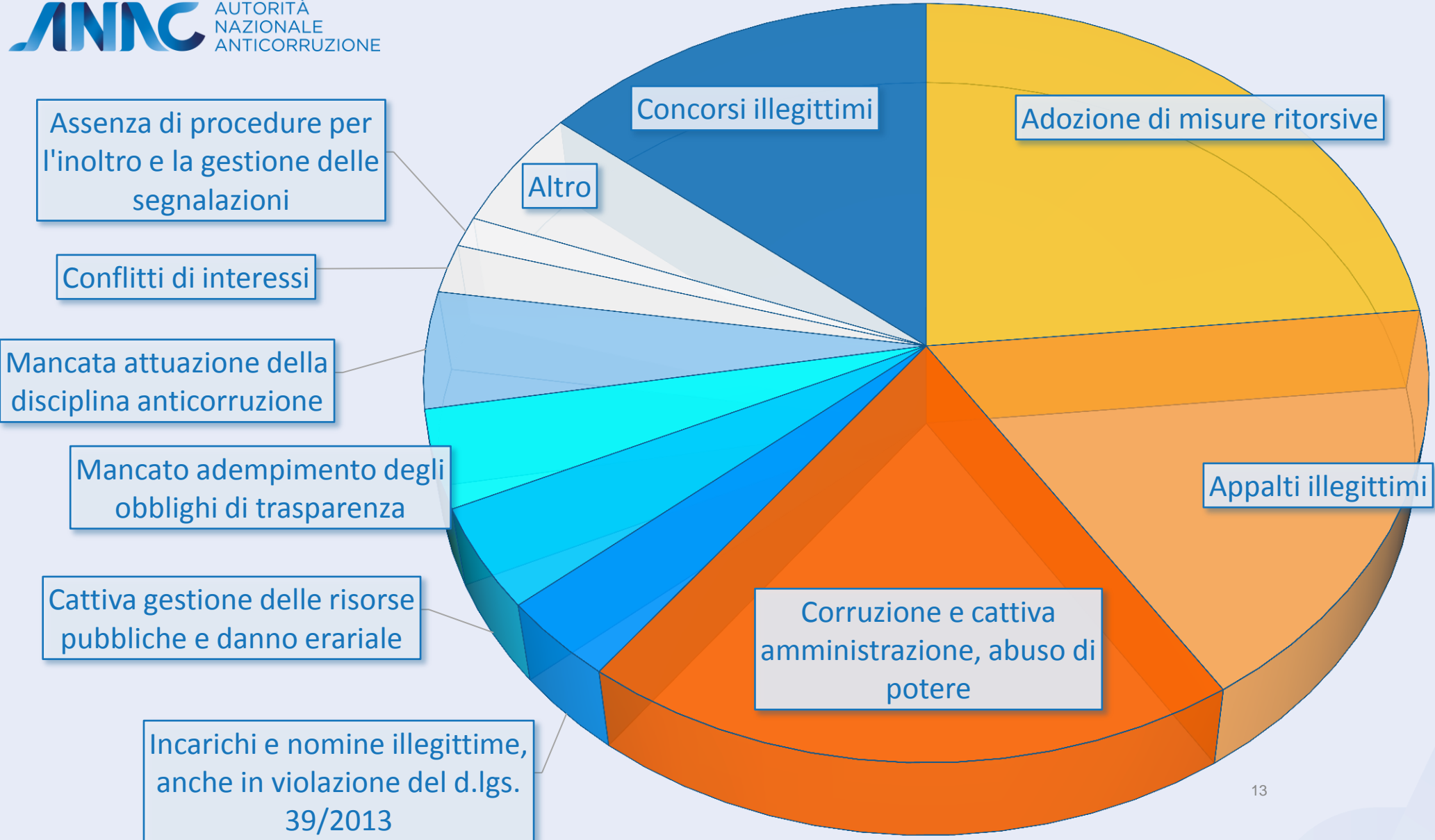


In 2020 ANAC processed 21 cases of retaliation and applied sanctions in 3 cases

ANAC Whistleblowers' reports in 2020



ANAC AUTORITÀ NAZIONALE ANTICORRUZIONE





Gracias por la atención

