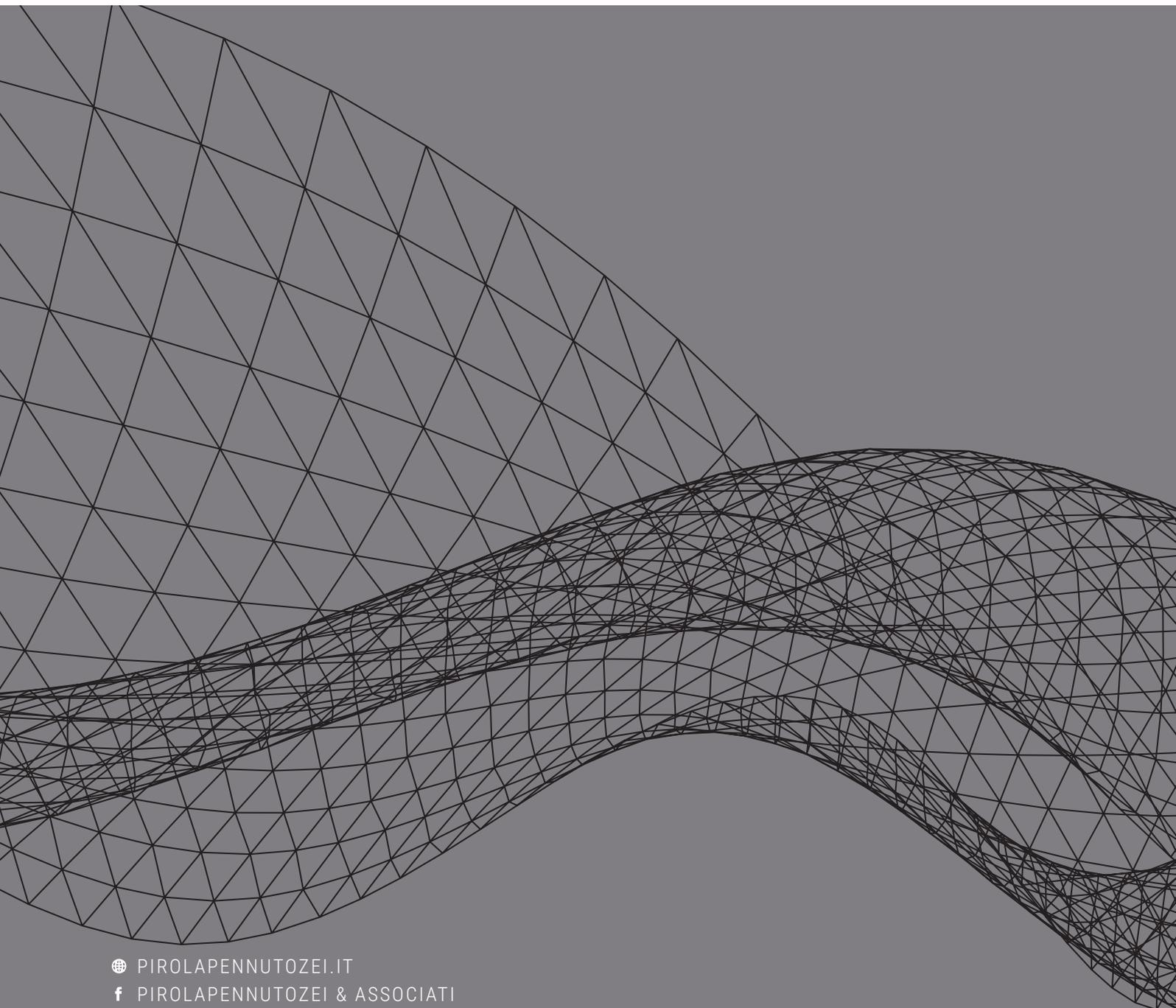


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COMPLIANCE

NEWSLETTER / DECEMBER 2018



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LEGISLATION

1.1

The new EU Regulation on non-personal data has entered into force

Regulation (EU) 2018/1807 of the European Parliament and of the Council of 14 November 2018 on “a framework for the free flow of non-personal data in the European Union” entered into force on 18 December 2018. The Regulation, published in the Official Journal of 28 November 2018, will be fully enforceable starting from 18 May 2019.

The Regulation aims to ensure the free flow of data other than personal data within the Union by laying down rules relating to data localisation requirements, the availability of data to competent authorities and the porting of data for professional users.

The Regulation applies to the processing of data provided as a service to users residing or having an establishment in the Union (regardless of whether the service provider is established or not in the Union or carried out by a natural or legal person residing or having an establishment in the Union for its own needs.

In order to ensure data porting, it is provided that the Commission should encourage the preparation of Union codes of conduct. By the end of 2022, the Commission shall submit a report to the European Parliament, to the Council and to the European Economic and Social Committee evaluating the implementation of the Regulation.

1.2

Simplification Decree: the waste traceability control system (SISTRi) has been abolished

On 12 December 2018, the Council of Ministries approved decree law No 135 of 14 December 2018 containing “Urgent support and simplification provisions for companies and the public authorities” (the Simplification Decree). The decree introduced different measures including “Provisions concerning the traceability of environmental data concerning waste” (article 6) which abolished the waste traceability control system (SISTRi) with effect from 1 January 2019. Consequently, the contributions referred to in article 14-bis of decree law no 27 of 1 July 2009 (“Funding of the waste traceability control IT system) and article 7 of the Ministry of Environment Decree No 78/2016 (“SISTRi registration contribution”) are no longer due.

It is provided that the pre-SISTRi rules will apply pending the creation of a new waste traceability system.



LEGISLATION

1.3

Anti-corruption decree

The Italian Chamber of Deputies has definitively approved the anticorruption decree (*"Decreto SpazzaCorrotti"*).

Further information on the changes introduced by the decree will be provided after its entry into force (scheduled for 31 January 2019).

GUIDANCE

2.1

ANAC (the Italian anti-corruption authority): whistleblowing regulation in public companies

ANAC Resolution No 1033 of 30 October 2018 containing the regulation for the protection of anyone who reports a crime or impropriety he/she became aware of as part of an employment relationship pursuant to article 54-bis of legislative decree 165/2001 (whistleblowers) - «*Regolamento sull'esercizio del potere sanzionatorio in materia di tutela degli autori di segnalazioni di reati o irregolarità di cui siano venuti a conoscenza nell'ambito di un rapporto di lavoro di cui all'art. 54-bis del D.Lgs. 165/2001 (c.d.whistleblowing)*» - entered into force on 4 December 2018.

Article 54-*bis* of legislative decree No 165 of 30 March 2001 regulates the forms of protection available to public-sector workers who become whistleblowers, and provides that a public-sector employee who - in order to safeguard the integrity of the public authority he works for - reports any illegal conduct he has become aware of within the scope of his employment may not be liable to a fine, be demoted, dismissed, transferred or be subject to other measures which may have a direct or indirect adverse impact on his/her working conditions.

Pursuant to article 54-*bis*(6) of legislative decree 165/2001, should the Anti-corruption Authority ascertain that the whistleblower was the target of discrimination by its employer, the latter will be liable to an administrative fine of up to 50,000 euro.

ANAC Regulation of 30 October 2018, which was adopted within the scope of the regulatory powers granted to the Authority, deals with the procedure for imposing such penalties: ANAC may act upon receiving notifications or reports through the IT platform available on its website, or *ex officio* if – in conducting the activities prescribed by the annual guidelines on the Authority's regulatory powers – it were to ascertain that one or more violations were committed. The Regulation also describes the subsequent stages of the process up until a fine is imposed.

2.2

European Data Protection Board (EDPB) - Guidelines on accreditation

During its Fifth Plenary Session held on 4 and 5 December 2018, EDPB adopted a new version of the “*Guidelines on accreditation*”, providing guidance on the interpretation and implementation of the



provisions of article 43 of Regulation (EU) 679/2016 (the GDPR) on “*Certification Bodies*”. In particular, the guidelines provide States and Authorities with indications on the accreditation of certification bodies which are allowed to issue certificates in accordance with the GDPR.

An earlier version of the guidelines had been issued by the WP 29. The new version contains an enclosure providing an indication on the additional requirements for the accreditation of certification bodies to be established by public authorities. The enclosure will be subject to public consultation.

2.3

ANAC (the Italian anti-corruption authority): the deadline for submission of the annual report by RPCTs has been extended

The *communiqué* by *Raffaele Cantone*, President of ANAC, concerning the extension to 31 January 2019 of the deadline for filing the annual report by RPCTs, i.e. the persons in charge of transparency and the prevention of corruption – was filed with ANAC’s council secretariat on 26 November 2018.

Pursuant to article 1(14) of law No 190/2012, by 15 December of each year, RCPTs are required to prepare and publish on ANAC’s website a report summarizing the outcome of their activity, to be subsequently delivered to their reporting authority (*Organo di indirizzo politico dell’amministrazione*).

ANAC has extended the deadline for the preparation of the report to 31 January 2019.

CASE LAW

3.1

Accidents at work: the principal as guarantor

On 3 December 2018, the Supreme Court filed decision No 54010/2018, providing interesting thoughts on matters of workplace health and safety.

The case at issue regarded criminal liability of the principal: as a result of the accidental death of a worker who had fallen from a height of 12 feet, the principal, the employer and the building site safety manager had been charged with negligent homicide on the grounds that not only had the worker not been adequately trained but he had been assigned to work in a building site which did not comply with the necessary safety measures.

The principal appealed to the Italian Supreme Court, claiming that there was no proof that he was aware of the danger. However, the Supreme Court emphasized that the principal's role as guarantor gave rise to his liability for the accident. On the matter of workplace accidents, the employer's duty of safety extends to the principal. The latter is discharged from accident-prevention obligations solely with respect to those precautions which require specific technical insight into the procedures to be adopted in specific processes or the use of special techniques or equipment. If, instead, the event is casually related to the principal's culpable omission - especially if the failure to adopt or the adoption of inadequate precautionary measures is immediately apparent without conducting specific investigations - he may be held liable for the worker's injury.

Therefore, the principal is required to act with due diligence and prudence, to choose the contractor and, more in general, the person to whom work is contracted, and to ascertain the technical and professional suitability of the business and the self-employed chosen, having regard to the riskiness of the works contracted out.

3.2

Corporate administrative liability: clarification by the Italian Supreme Court on the burden of proof

On 6 December 2018, the Sixth Section of the Italian Supreme Court filed decision No 54640/2018, providing thoughts on the matter of corporate administrative liability, with particular regard to the burden of proof in the event that one of the predicate offenses referred to in legislative decree 231/2001 is committed.



CASE LAW

The Court emphasized that the burden of proof varies depending on the perpetrator, making a distinction between key staff and lower level employees.

When the offence is committed by persons in top position, the failure to adopt an organizational model per se substantiates the existence of corporate liability.

Otherwise, if the offence is committed by subordinate individuals, an organization's guilt profile is not chargeable to the organization. This means that the law does not regard the offence to fall within the scope of the company's activity.

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LEGISLATION, MINISTERIAL GUIDANCE AND CASE LAW AT 31 DECEMBER 2018.
THIS NEWSLETTER IS INTENDED AS A SUMMARY OF KEY DEVELOPMENTS AND HIGHLIGHTS MATTERS OF GENERAL INTEREST,
AND THEREFORE SHOULD NOT BE USED AS A BASIS FOR DECISION-MAKING.
FOR FURTHER DETAILS AND INFORMATION, PLEASE CONTACT YOUR RELATED PARTNER OR SEND AN EMAIL TO UFFICIOSTUDI@STUDIOPIROLA.COM