

Note from Prof. Avv. Francesco Colaianni

 globalaw.net/news-posts/note-from-prof-avv-francesco-colaianni/

Note from Prof. Avv. Francesco Colaianni

The deadline for the transposition of Directive EU 2017/1371 (the so-called PIF directive) into national law expired on 6 July 2019. This directive, regarding the protection of the European Union's financial interests through criminal law, aims at standardizing the national criminal laws and creating a similar level of protection in the various Member States "for serious crimes against the VAT system" defined as such on the base of their transnational nature and the seriousness of the revenue liability (not less than ten million Euros).

With regards to tax crimes (and specifically, in relation to serious transnational VAT fraud), one of the most innovative aspects relates to the obligation to punish both the complicity and the attempted crime, which is expressly not sanctioned by Legislative Decree no. 74/00. Above all, the Member States are asked to introduce a system which also punishes collective bodies or organizations which benefit from the crimes committed against the financial interests, by introducing a breakthrough (much hoped for and invoked by part of the doctrine and the justice system) in the fiscal criminal system.

The above Directive is part of the EU documentation, object of the Bill denominated "Authorization to the Government for transposition of European directives into national law and implementation of other deeds of the European Union – European Delegation Law 2018" (Bill n. 944), currently being examined by the Senate, authorizing the Government to issue one or more legislative decrees implementing the provisions of the directive under reference. The aforesaid Bill provides for an extremely wide and generic authorization without dictating specific and stringent prescriptions and totally omitting any reference to the relevant problems already examined by the doctrine, such as the correlation with non-transnational VAT crimes and crimes regarding direct taxation as well as, the introduction of a punishment for attempted tax fraud and the distortion of the cardinal principles of the current fiscal criminal laws.

As indicated above, special attention is given to the implementation of the authorization to "integrate the provisions of Legislative Decree n. 231 of 8 June 2001, regarding the regulations for the administrative liability of legal persons, companies and associations without a legal status, expressly providing administrative liability for crimes committed by legal person which harm the financial interests of the European Union and which are not included in the provisions of the aforesaid legislative decree", and, therefore, above all, for the tax crimes described above.

After the approval of the delegation law and subsequent issue of the relative implementation decrees, the incrementation of the list of crimes detailed in Legislative Decree n. 231/01 and related extension of the scope of responsibility of entities and associations, on one hand, make it indispensable to review and update existing 231 models and, on the other hand, will determine the opportunity, if not the absolute necessity, of implementing a valid model, to limit the ever-increasing risk of crime, for anyone who has not already done so.

Avv. Francesco Colaianni