

Dear Audience:

RE: Tender irregularities, criminal sanctions are now foreseen

The new provisions to counteract irregular procurements, present in the decree-law 19/2024, redefine the concept of fraudulent administration, established more than twenty years ago by the Biagi law and subject to numerous corrective actions which led to its repeal.

In the new decree, the fraudulent administration emerges as the tipping point in various illicit situations featuring increasing severity.

The first assumption holds the procurement as irregular due to missing requirements established by the law. The distinction between a regular procurement and an irregular one is clear: whoever acts as the patron must acquire a service or a product independently made by a third party, with its own means of organization and industry risk.

It is common for this discretion to be lacking and the procurement scheme to be utilized to cover a different objective, or rather to “lend” workers to the patron, who lets them operate as if they were their own personnel without assuming any of the relative legal responsibilities.

If such assumption were to be confirmed, other than the already known civil consequences (the establishment of a work relationship carried out by the patron at the worker’s request) the decree also provides a criminal sanction: the user and the administrator are subject to punishment by arrest up to a month or a fine of 60 euros for every worker employed and for every day of employment.

The regarding penalty does not only concern illicit procurements, but can also be applied in such cases where the secondment of staff occurs in violation of statutory requirements.

Regardless of whether a procurement or a secondment is involved, the circumstances remain the same: if a legal scheme is utilized to hide the provision of the workforce, it falls back into the assumption of irregular administration (resulting in the consequent criminal penalty), on the grounds that only government authorized employment agencies can exercise this sensitive matter.

The criminal penalty can worsen when, along with irregular procurements, fraudulent behavior occurs. Based on this scenario we assume again the presence of fraudulent administration, which differs from the irregularities of the procurement as the result of the implication of an additional element, “willful misconduct”.

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It is necessary to verify, based on this aspect, the work administration has been carried out with the intent of evading mandatory law provisions or collective bargaining agreements correlated to the worker, an evaluation that is not easy to implement.

The decree reinforces the measures that have taken place to counteract irregular procurement operations also regarding work conditions.

It has been established the contractors (and possible subcontractors) are required to guarantee the personnel employed in the works or services an economic stability equal to what has been settled in the national and territorial widespread of collective wage agreements and relative to the geographical area of contract activities.

Such measure should deter away the use of the procurement to retain a mere reduction in labor costs (it cannot be used to “choose” minimum wages inferior to those applied to its own employees) or to avoid exploitation of non-regulated contracts (it is necessary to adopt prevailing agreements according to work sector and geographical area)

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