



Autorità Nazionale Anticorruzione

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Provision of information by States parties for the 10th intersessional meeting of the Working Group on Prevention from 4 to 6 September 2019

I - Information requested from States parties in relation to lessons learned in the development, evaluation and impact of anti-corruption strategies (art. 5 of the Convention)

1. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention, and in particular to develop, implement, monitor and evaluate the impact of the country's anti-corruption policies.

In accordance with article 5 paragraph 1 of UNCAC, Italy has adopted several tools to prevent corruption based on the principles of integrity, transparency and accountability. The Italian anti-corruption system is based on two major pillars: a) relevant legislation on anti-corruption (Transparency, Conflict of interest, Incompatibilities, Ineligibility, Asset/property declaration, Whistleblowing and Code of Conducts and Ethical Codes); b) the creation of a specifically dedicated National Anti-Corruption Authority (*Autorità Nazionale Anti-Corruzione, ANAC*).

According to the **Law n° 190 of 2012 (hereinafter “the Anti-Corruption Law”)**:

- All activity of the public administration must be transparent
- Each public agency/administration must include a corruption prevention officer (Responsabile della Prevenzione della Corruzione e della trasparenza - RPCT)
- Each agency/administration must establish its own anti-corruption plan in accordance with the national anti-corruption plan (Piano Triennale per la Prevenzione della Corruzione - PTPC)

The Anti-corruption Law: a) provides, inter alia, for a national anti-corruption authority in charge of the overall policy; b) extends the scope of corruption offences, c) criminalises trading in influence through a new provision that covers also the active side of the offence, d) criminalises private sector corruption, and e) increases criminal penalties for a number



Autorità Nazionale Anticorruzione

of corruption-related offences. The law also provides for the ineligibility of those individuals convicted of offences against public administration. The law introduces an obligation upon administration to develop its own anti-corruption action plan, introduces provisions on enhanced transparency on public finance, and increases access to information, asset disclosures (i.e. disclosure of information related to politically exposed persons - such as elected officials and any other person with policy-making powers at national, regional and local levels).

Additionally, the law establishes material accountability for public administration's reputational damage; it provides for codes of ethics; it introduces provisions on whistleblowers' protection and it reinforces some provisions on either conflict of interest, incompatibilities (such as introduction of cooling-off periods, to name but one) and disciplinary proceedings.

The norms introduced by Law n. 190/2012, find an essential complement in the implementing Decrees n. 33 (on transparency) and n. 39 (on the system of ineligibility and incompatibility of positions in public administration) of 2013 law, in addition to the Presidential Decree n. 62/2013 (on rules of conduct for all public employees under contract).

The National Anti-corruption Authority

ANAC is an independent collegiate body whose five members are appointed for fixed, non-renewable terms of office. Besides having significant responsibilities regarding transparency, integrity, anti-corruption plans and the development of supplemental codes of conduct for individual agencies/administrations within public administration, ANAC is responsible for overseeing public procurement and contracts. ANAC has supervisory and sanctioning powers for those in non-political positions (art. 16, Legislative Decree No. 39/2013 and Law No. 114/2014).

ANAC can apply administrative sanctions to public officials not complying with the obligation of adopting anti-corruption plans or codes of conduct (art. 19, Legislative Decree of 24 June 2014, No. 90). In contrast, ANAC has no competence concerning the validity of politically elected offices

According to article 213, par. 3, of Legislative decree n. 50/2016, ANAC shall:



Autorità Nazionale Anticorruzione

- (c) reports to the Government and Parliament, by specific act, about particularly serious phenomena of non-compliance or distorted application of sectorial legislation;
- d) advise the Government on proposals regarding changes that are required in relation to current sector regulations.

ANAC has used this power of intervention several times (this competence was provided for in the previous legislation) proposing amendments to existing legislation or to intervene during the discussion of a bill in Parliament or the adoption of a legislative decree or a Regulation by the Government. In other cases the Authority, having found in its supervision activity specific situations of particularly serious phenomena of non-compliance or distorted application of sectorial legislation, proposed amendments to legislation to avoid this phenomena.

Moreover, the law no. 190/2012 attributes to ANAC competence for reporting to the Parliament about the effectiveness of the existing disposition in matter of anticorruption. Moreover, Legislative Decree no. 39/2013 identifies ANAC as the entity in charge of the supervision on the proper implementation of the discipline in matter of ineligibility and incompatibility. Therefore, ANAC sent to the Parliament no. 5 reporting acts (so-called *Atti di segnalazione*) containing comments and proposals to amend the dispositions.

Other laws in matter of anticorruption attribute to ANAC the opportunity to integrate the legislative text through specific guidelines (so-called *Linee guida*). For instance, the recently adopted Law no. 179/2017 (Whistleblowing Law) confers to the Authority the task of the drawing-up of the guidelines relative to alerts' submission and management procedures.

Since 1999, ANAC (former AVCP) collects, analyses and publishes all relevant procurement information. The Authority has the power of requiring that the contracting authorities as well as companies provide data and information about contracts in progress, design and public contracts awards . Such activity is performed by the Observatory within ANAC that acquires electronically data and information in a Data Base (BDNCP) concerning public contracts, formulates standardized costs and provides statistical as well as economic analyses to support the ANAC activity. It is organized in a Central Unit with Regional branches.

In order to reduce the administrative burdens arising from the fulfillment of the obligation to ensure the efficiency, the transparency and the control of the administrative action for



Autorità Nazionale Anticorruzione

the allocation of the public expenditure and to prevent corruption phenomena, according to the Italian Digital Code (article 62 bis of Legislative Decree n. 82/2005, as amended by Leg. Dec. n. 235/2010) a National Database of Public Contracts has been established at the Authority and managed by the Observatory.

According to Public procurement Legislation tenders and notices are sent to the Observatory and are registered in a Database - established at the Observatory - that can be consulted by anyone having an interest to protect.

The “Company Data Base” (*Casellario Informatico*), and the data on the declarations filed by the economic operators on the reliance on the capacities of other entities are, inter alia, parts of the National Database of Public Contracts.

The Database provides different records for tenders, notices, programmes, expired and not yet expired, and the length of the storage of expired documents should be proportional to the needs of their disclosure for the exercise of the right to access administrative records and of legal claims.

The New Public contracts Code (Legislative decree n. 50/2016) provides a strengthening of ANAC functions, in order to prevent corruption within Public Procurement. As far as transparency is concerned, the rationalization of existing ANAC database; measures to promote transparency through digital platforms ; strengthened requirements for the publication of the whole public tendering process, from the design, to the financial management of the contracts.

ANAC cooperates with another national body, the National School of Public Administration (SNA), as to plan the training programs on ethics and anti-corruption for public entities and to share information about the results of the training activities. In general, ANAC has signed several other agreements with public institutions in order to give thorough and appropriate implementation to the anti-corruption provisions. An important example is the project initiated with the Ministry for Public Instructions, aimed at introducing integrity classes and courses at secondary/high school level.

Additionally, the National anti-corruption authority carries out relationships with relevant private actors, as to share information, data, experiences and good practices in the field of transparency and anti-corruption.

ANAC fully cooperates with the corresponding international bodies and in general with



Autorità Nazionale Anticorruzione

international and foreign peer agencies in the field of anti-corruption, with the goal to share information and methodologies for the implementation of anti-corruption strategies

The National Anticorruption Plan and the Three-year Plan for the Prevention of Corruption

The Anti-Corruption Law introduces a system of integrity risk assessment and risk management measures. In addition, the Law requires that each public administration should establish a prevention plan devoted to, on one hand, assess the degree of risk of corruption's exposure and, on the other hand, draw tailor-made organisational measures as to mitigate such risks.

Each public administration should adopt a three-year Plan for the Prevention of Corruption (Piano triennale prevenzione corruzione - PTCP) based on the National Anti-corruption Plan (Piano nazionale anticorruzione –PNA) adopted by the National Anti-Corruption Authority. The PTCP analyses any specific administration's risk of corruption and indicates appropriate preventive measures. In order to be effective, the PTCP must contain appropriate targets and adequate measuring indicators. In addition, it should be systematically integrated into the whole programming tool-kit, including: the budget, the Plan of Performance and the training Plan. The PNA is structured as a programmatic tool, updated annually by the inclusion of newly established indicators and targets. This continuous updating allows for the monitoring and detection of potential discrepancies (targets/ results) arising from the factual implementation of the PNA.

Incompatibilities and conflicts of interests

The Anti-Corruption Law establishes a regime of incompatibilities for managerial and elective posts, both in the civil service and state-owned/controlled enterprises. More precisely, the law includes: 1) the mandatory verification of potential conflict of interests in certain situations (such as when appointing a consultant); 2) the regulation of the practice of pantouflage (aka "revolving doors") so that public officials who have held managerial and negotiating positions in the previous three years may not exercise related duties in in a private-sector entity; 3) the voiding of contracts and/or appointments made



Autorità Nazionale Anticorruzione

in breach of the pantouflage prohibition and the banning of the private entity from business dealings with the public sector for the following three years. The Law also requires the government to issue a Code of conduct to all public officials, aiming at preventing corruption in the civil service.

Transparency in the public administration

The Anti-Corruption Law seeks to enhance transparency in public service activities. This goal is pursued through the publication of: 1) information on administrative proceedings (even when they do not follow ordinary procedure), including the cost of public works and citizens' services, and the duration of procedures; 2) an e-mail account for each office of the civil service, so that citizens (especially those with a specific interest) can send petitions, declarations and questions; 3) data on executive and managerial public positions' appointments (i.e. those with considerable political discretion; and 4) reasons and justifications related to the selection of contractors in public procurement.

The codes of conduct for public officials (see answer to article 8)

The principles provided by the Anti-corruption law have been also enshrined at the regulatory level, through the adoption of national codes of conduct for public officials, adopted by the Presidential Decree 12 Aprile 2013, n. 62

Whistleblowing

For the first time, the anti-corruption law has introduced provisions on the protection of whistleblowers reporting corruption within the public sector. The provisions refer to government employees who report wrongdoing under the conditions that they do not commit slander or defamation, and do not breach on somebody's privacy. At article 12, the Anti-Corruption Law adds Article 54b to Legislative Decree 165/2001 (Public Employment Single Act). Protection includes the prohibition of sanctions, dismissal, or any direct or indirect discriminatory measures by way of retaliation. e revealed without their consent.

In November 2017 the Italian Parliament passed a law on whistleblowing (Law n. 179 of 2017, entered into force on December 29, 2017, so called "on the protection of reporters of crimes and irregularities"). The law has a twofold effect, on both the public and private



Autorità Nazionale Anticorruzione

sector:

1. on the public sector: it eliminates and replaces art. 54 of the single act on public employment
2. on the private sector: it changes article 6 of the law 231 of 2001.

2. Please outline the actions required to ensure or improve the implementation of the measures described above and any specific challenges you might be facing in this respect.

a) The National Database of Public Contracts (BDNCP) of the Italian National Anticorruption Authority ranked first in the European Commission's competition "Better Governance through Procurement Digitalization 2018 - National Contract Register category".

- Short Description of the Practice:

The BDNCP is the Italian contract register through which contracting authorities can verify the documentation of economic operators attesting that they meet the general, technical-organisational and economic-financial requirements for participation in public tenders for works, supplies and services. It is managed by ANAC, which is also the supervisory body for public contracts. The BDNCP contains the entire universe of data related to public procurement, unifying and crossing information from different sources (Criminal records, Tax register, Single National Anti-Mafia Database, Chambers of Commerce, etc.).

The BDNCP collects the history of over 20 million public contracts published in Italy since 2007.

In addition to the contracts, 40 thousand contracting entities are also registered, organized in about 185 thousand shopping centers and 200 thousand Economic Operators active in the procurement sector.

The BDNCP is used by other state administrations: law enforcement entities (Guardia di Finanza, Carabinieri, Public Prosecutor Offices, etc.), the Ministry of Economy and Finances, the General State Accounting Department, the Court of Auditors, the Ministry of Infrastructure, the Italian Statistics Office, the Antitrust Authority and the Parliamentary Budget Office, with which Anac has stipulated specific memoranda of understanding.

- Achievement / Outcomes / Impact of the Practice:

The award represents a certification of the quality of the work done with regard to the benefits of digitalization and transparency in public procurement as a tool to prevent corruption. So much so that, according to the Commission, the BDNCP will have to be taken as a benchmark by all the other European states. The reasons for the award include "completeness, data integrity, interoperability, availability of access functions and information analysis, governance and sustainability of the Anac platform".

b) Title of the Practice: Contest on legality among secondary schools' students



Autorità Nazionale Anticorruzione

In 2016, ANAC, in collaboration with the Italian Ministry of Education, launched the initiative "Whistleblower: an example of active and responsible citizenship" among secondary schools' students.

Short Description of the Governance Practice

In particular, the participants were invited to participate in a contest aimed at identifying the most effective Italian translation of the word "whistleblower" and raising awareness on the topic among their peers through different expressive means (essays, photographs, videos, PPT, etc.).

The winning schools, one from Torre Annunziata (Naples) and the other from Caltanissetta, were invited to show their artwork and discuss about whistleblowing during ceremonies held in ANAC and the Ministry of Education in Rome.

- Achievement / Outcomes: Following the success of the first edition of the contest, a second edition was launched in 2017.

c) Title of the Practice: The "collaborative supervision" model applied to the Universiade 2019 in Naples.

The "collaborative supervision" model developed by the National Anti-Corruption Authority on the occasion of Expo 2015 was successfully applied to the Universiade 2019 in Naples

Short Description of the Governance Practice

The collaborative supervision model is a form of preventive verification of public procurements aimed at checking the correctness and transparency of the tender procedures and the execution of the contract, but also at preventing attempts at criminal infiltration.

The activity was regulated by a protocol for the Universiade signed by ANAC and the special commissioner on March 14, 2018, on the basis of what has already been experienced on the occasion of Expo 2015 and subsequently with the Jubilee of , as well as the post-earthquake reconstruction. The agreement, in particular, provided for the verification in advance of the legitimacy of all the documents relating to the selection and execution of the contracts for works, services and supplies and compliance with the provisions on transparency without slowing down the realization of the Universiade project.

ANAC supervised the auditing of all tenders (mainly redevelopment of sports facilities), with the aim of preventing criminal infiltration and corruption. The task force that operates within ANAC-- Guardia di Finanza's officers highly specialized in procurement - carried out the checks.

The special operational unit audited 144 tenders, for an amount of € 205 million. A total of 323 opinions were issued by Anac, on average issued just two days after receiving the documentation.

- Achievement / Outcomes:

The close collaboration between ANAC, local authorities, and the commissioning structure, made it possible the preventive verification of the regularity of all procurement activities under the event, to overcome delays and to open the Universiade as scheduled.



Autorità Nazionale Anticorruzione

3. Please describe any lessons learned in the development, evaluation and impact of anti-corruption policies or strategies.

3.1. The anticorruption strategy designed by law 190/2012 is articulated on two levels - central and peripheral («cascade model»)

At the central level is the National Anti-corruption Plan approved by ANAC

At the second Level each public administration has an obligation to adopt a Three-Year Corruption and Transparency Prevention Plan which, based on the indications in the National anticorruption plan, includes:

- analysis and evaluation of specific corruption risks (Risk Assessment activity); and
- measures to prevent them

The National Anticorruption plan includes

- Centralized planning of activities in relation to the different levels of government
- Pursuit of measurable objectives and identification of specific responsibilities
- Applies to public economic entities and SOEs
- Identification of the minimum contents of the three-year plans for the prevention of corruption
- Updated annually based on the monitoring of results and received feedback

The three year anticorruption and transparency plan are drafted by the person responsible for preventing corruption and for transparency in each administration and approved by the political body

- Updated every year based on the feedback received during its application
- Includes transparency measures, merging two different plans originally envisaged as distinct, in the awareness that transparency is essential to any anti-corruption strategy
- Plans appropriate training for public employees in collaboration with the National School of Administration
- Provides for rotation of managers and officials employed in sectors particularly exposed to corruption

The three-year duration and annual updating of both the PTPCTs and the PNA are harmonized according to a "sliding" model

The implementation of the first PTPCs (2013-2015) was monitored and evaluating by ANAC. We found the following issues:

- Inadequate analysis of the external context
- Inadequate risk mapping
- Inadequate risk assessment
- Insufficient planning of prevention measures



Autorità Nazionale Anticorruzione

The poor quality of the local programs (sometimes a "cut-and-paste" exercise) was without doubt partially due to the novelty of the compliance required: the public sector was not equipped to evaluate and manage the risk of internal corruption, since adequate time and appropriate occasions for developing the necessary "revolutionary" skills had not been allocated, and the same applied to the Italian legal system. The public sector was not put in a position, from the first introduction of Law n. 190/2012, to understand the logic and the benefits of the process, which consists in recognizing the specific, individual risks determined by the context (both external and internal) that characterized each entity.

Consequently, the following ANAC's PNAs have been based on the principle that the public sector is not an undifferentiated universe, consisting instead of very diverse components. ANAC has abandoned the idea of issuing the same recommendations to all entities of the public sector, regardless of their function, size and nature (whether central or local). The aim is now to appreciate the diversity of the general and specific risks, the difference between the areas at risk according to the function, the different external context, duration and stability of the entity, in a tailor-made style. This new generation of PNAs, consequently, include only few measures aimed at the public sector as a whole; whereas most of them consist of clarifications directed at specific areas of the public sector (in the PNA-2015 attention has been put to the public tender and health service sectors; in 2016 on small municipal authorities, metropolitan cities, professional associations and colleges, academic institutions, cultural heritage, territorial government and healthcare; in 2017 on the port system authorities, official receivers and universities).

This assessment has been helped by a well-oiled technique: that is, through consultation with those who for different reasons have been made aware of the contents of the national programme via joint "working groups" in which the risks of corruption and the tools available were discussed. This is the type of conceptual approach that ANAC considers more practical for guaranteeing that the recommendations for the public sector will be more effective.

3.2. The Anti-corruption Law No 190/2012 incorporated certain provisions on whistleblowing but applied exclusively to public sector employees reporting misconduct.

The new Law No 179/2017 strengthens pre-existing whistleblower protections for public-sector employees and extends those same protections to the private sector.

The law offers protection to a wide range of public officials and civil servant, including employees of Ministries, Regions, Municipalities, judges, military personnel, state police forces, diplomatic staff, etc.

The protected disclosures are not limited to criminal conducts, but also to administrative misconduct and all form of abuse of position.

In line with the recommendations of the recent Directive of the European Parliament, whistleblowers are offered a variety of reporting channels, with no established hierarchy between them. Illicit behavior can be reported **either** to:



Autorità Nazionale Anticorruzione

- the person within the public administration who is in charge of corruption prevention and transparency
- the National Anticorruption Authority (ANAC)
- the judicial or accounting authority

Different levels of confidentiality are provided to the whistleblower depending on the avenue chosen or the responsible authority. ANAC is in charge of receiving and assessing complaints of retaliatory or detrimental measure taken against whistleblowers. ANAC is also responsible for applying pecuniary sanctions against the authors of the retaliatory actions, as well as against inadequate procedures for managing whistleblowers' reports.

The burden of proof is on the employer to prove that the dismissal was not retaliatory. The whistleblower who suffered dismissal because of his or her report is entitled to be reinstated.

As for the private sector, Law 179 introduces the obligation for private companies which have already introduced compliance programs (Legislative Decree No 231/2001) to establish whistleblowers' mechanisms. ANAC established an IT platform for the receipt and management of whistleblowers' complaints. The platform guarantees the confidentiality of the identity of the reporting person and the possibility for anac to communicate with the whistleblower throughout the process.

The number of reports received by ANAC has consistently increased since 2014. In 2018, the number of complaints doubled the figures of the previous year and in the first half of 2019, ANAC had received 439 reports.

One of the issues we are facing is that the RPCTs (offices responsible for the prevention of corruption in each administration) seem to receive very few reports compared to ANAC. One of the possible explanations is that whistleblowers are more confident to report to external channels, for fear of retaliation or simply bad reputation within their workplace. Which reminds us that the road to a "speak up" culture where whistleblowing is encouraged and rewarded is still ahead of us.

In order to strengthen the whistleblowing function and enable anac to meet its commitment on the whistleblowing front, ANAC requested and obtained technical assistance from the European commission in the form of a Structural Reform Support Service that financed the services of an international expert for a 18 months period.

4. Do you consider that any technical assistance is required in order to allow you to fully implement this provision? If so, what specific forms of technical assistance would you require?

Not at this stage