

**THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED BY
ITALY**

ARTICLE 6

PREVENTIVE ANTI-CORRUPTION BODIES

ITALY (FOURTEENTH MEETING)

**3. Information in relation to the interlinkages between preventive and law enforcement approaches
(resolution 9/6 of the Conference of the States Parties to the United Nations Convention against
Corruption)**

The Anti-Corruption Law, Law No. 190/2012, in execution of the Article 6 of the United Nations Convention against Corruption, introduced in Italy a comprehensive set of measures aimed to prevent and repress corruption and illegality and established the National Anti-Corruption Authority.

The Law aligns the Italian legal system to the indications of the main international instruments subscribed by Italy (1997 EU Convention against Corruption, 1997 OECD Convention against Bribery in International

Business Transactions, 1999 Council of Europe Criminal Convention against Corruption, 2003 UN Convention against Corruption – UNCAC), and implements the recommendations addressed to Italy by the competent OECD and Council of Europe Bodies on the occasion of the mutual evaluation procedures.

The main functions of ANAC according to the Anti-Corruption Law are the following: to approve the National Anti-Corruption Plan; to analyze the causes and factors of corruption and identify measures to prevent it; to monitor the implementation and effectiveness of public administrations' Anti-Corruption plans and the compliance to transparency rules. Regarding these functions, the Law assigns to ANAC inspection powers: the power to enquire, to demand the exhibition of documents, to command the adoption of acts as well as the removal of acts and behaviors contrasting with law and with transparency rules. ANAC also defines criteria, guidelines and standard models for the code of conduct regarding specific administrative areas as specification and integration of the general code of conduct for the public sector. In addition it also cooperates with the corresponding international bodies and in general with international and foreign bodies in the field of anti-corruption to share information and methodologies for the implementation of anti-corruption strategies. ANAC reports annually to the Parliament on the activities against corruption and illegality in the administrations and on the effectiveness of the measures applied

Law No. 190/2012, as amended and completed by other following legislative interventions up to the present day, constitutes the reference point for policies aimed at fighting corruption and puts into effect a complex institutional and organizational system referred to models mainly based on prevention.

Despite its focus on prevention, ANAC has worked over the years, together with the other competent institutions for the fight against corruption, to create a "circular system" in order to make the most of the institutional synergies between the actors involved in prevention and the actors engaged in repression.

In this regard, it is worth mentioning, by way of example, the relationships between ANAC and the public prosecutors' offices and between ANAC and the Guardia di Finanza (the Italian financial police).

Concerning **relationships between ANAC and Public prosecutor offices**, since 2015, an amendment has been introduced to the Italian criminal procedure code, whose article No. 129 provides that when exercising the criminal action for crimes against the public administration (various cases of corruption and related crimes), the public prosecutor informs the president of the National Anti-Corruption Authority. Given the need to maximize the degree of overall effectiveness of measures aimed at prevention and fight against corruption in the public administration, and considering the need to make the repression of crimes against the public administration also through timely access to the information acquired via administrative proceedings, in 2016 the ANAC and the General Prosecutor's Office at the Court of Cassation signed a framework agreement. The general agreement was the basis to sign in the following years a number of specific MoU and to structure a collaboration between prosecutor's offices in all part of Italy and the Italian National Anti-corruption Authority. On the basis of these MoUs, the prosecutors send copies to the ANAC of the requests for indictment, accompanied by any orders for the application of precautionary measures and by investigative acts that supported them, for corruption and related crimes. ANAC, in all cases in which from the investigation and/or inspection activity and/or administrative procedures, in the matter of public procurement or anti-corruption, detects irregularities of potential criminal relevance, it transmits its acts and eventually conclusions to the public prosecutor's Office. More in detail, in all cases in which from the investigation and/or inspection activity of ANAC, in the matter of public contracts or anti-corruption, irregularities emerge that may have criminal implications, ANAC sends its conclusions to the Public Prosecutor's Office. So far as the elements are sent to the Public Prosecutor during the investigation, the Authority communicates the status of the procedure and the expected times for its conclusion.

Moreover, if the complaints and reports addressed to ANAC disclose potential criminal facts, ANAC immediately sends the complaint or report to the Public Prosecutor's Office in order to allow a timely start of the investigation. At the end of the activities, the Public Prosecutor communicates to ANAC the results of the proceedings initiated on the basis of the complaints or of the reports forwarded or any other different use.

ANAC has signed these kind of MoUs with all the individual public prosecutors offices who have requested them in order to regulate the various forms of collaboration and information flows between ANAC and the judicial authority, to make more effective the measures aimed at the prevention and fight against corruption in the public administration, to strengthen the administrative supervisory action regarding the assignment and execution of public contracts as well as to allow to prosecutors a timely access to the information acquired administratively.

Concerning **relationships between ANAC and Guardia di Finanza**, according to the Decree Law No. 90/2014, the President of the ANAC, for the tasks of surveillance and guarantee of the correctness and transparency of public tenders, also makes use of a special Special Operational Unit (UOS) made up of personnel from the Guardia di Finanza.

The legislator introduced an agile, fast and effective model in order to:

- verify in advance the legitimacy of the public procurement procedures related to works, services and supplies;
- verify compliance with the anticorruption and transparency obligations;
- verify compliance with the obligations deriving from the legality protocols stipulated between contracting authorities and the Prefecture;

This activity is also based on the use of the ANAC, Guardia di Finanza and Anti-Mafia databases.

With the support of the UOS, special surveillance has been carried out in last years , including for example EXPO Milan 2015, Jubilee 2015, Public reconstruction after the 2016 and 2009 earthquakes in central Italy, Universiade Naples 2019, Italian Pavillon for the EXPO DUBAI 2020.

More in general, relationships between ANAC and Guardia di Finanza (with particular regard to the Guardia di Finanza corps focused on anticorruption called "Nucleo speciale anticorruzione") are provided in the framework of a detailed MoU. According to the MoU, the collaboration in the public procurement scope is aimed at verifying compliance with sectoral norms and regulations. In this context, the collaboration between the ANAC and the Guardia di Finanza takes the form of inspections of contracting authorities, economic operators, as well as public administrations and publicly held companies and controls relating to compliance with the Authority's decisions. In the prevention of corruption scope, the collaboration between the ANAC and the Guardia di Finanza takes the form of: checks on compliance with the National Anti-Corruption Plan and with the integrity plans within each public administration; checks on compliance with transparency and accountability provisions; investigations regarding conflict of interest; controls relating the compliance with the Authority's decisions.

To support the collaboration activities envisaged by the MoU, Guardia di Finanza personnel, coordinated by a liaison officer, work directly at the ANAC headquarters.

As another valuable example of collaboration between ANAC and law enforcement institutions, it is worth citing the MoU, operating since 2015, between **ANAC and the "Arma dei Carabinieri"** in the public procurement, transparency, conflict of interest and public integrity scope. Some areas of collaboration refer, for example, to the prevention and contrast of the violation of safety and health in the execution of a public contract for works, services and supplies; sharing of information on the business activity, for the purpose of assessing the requirements for release the legality rating of companies; sharing of information relating to the reporting or verification of conflicts of interest.

THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED

BY ITALY

ARTICLE 6 UNCAC

PREVENTIVE ANTI-CORRUPTION BODY OR BODIES

ITALY (FIFTH MEETING)

The Italian AntiCorruption system.

Mandates and activities of the Italian National AntiCorruption Authority.

From the Independent National Commission for Evaluation, Transparency and Integrity (CiVIT) to the Italian National AntiCorruption Authority (A.N.AC.)

The Independent National Commission for Evaluation, Transparency and Integrity (CiVIT) was set up by the Law No. 15/2009 and further regulated by the Legislative Decree No. 150/2009.

Since its institution in December 2009 CiVIT has been operating in the areas of transparency and integrity to prevent corruption; improvement and enhancement of performance management; quality of services.

The AntiCorruption Law, Law No. 190, approved by the Parliament on October 31st 2012 and entered into force on November 28th 2012, qualifies CiVIT as the Italian AntiCorruption Authority, in execution of the Article 6 of the United Nations Convention against Corruption. The AntiCorruption Law brings a comprehensive set of measures aimed to prevent and repress corruption and illegality in the Public Administration. The Law aligns the Italian legal system to the indications stemming from the main international instruments to which Italy has subscribed (1997 EU Convention against Corruption, 1997 OECD Convention against Bribery in International Business Transactions, 1999 Council of Europe Criminal Convention against Corruption, 2003 UN Convention against Corruption – UNCAC) and implements the recommendations addressed to Italy by the competent OECD and Council of Europe Bodies on the occasion of the mutual evaluation procedures conducted until now.

Law No. 125, approved by Parliament on October 29th 2013 and entered into force on October 31st 2013, changed the name CiVIT in A.N.AC. - “National AntiCorruption Authority for evaluation and transparency of public administrations”.

According to the AntiCorruption Law, A.N.AC. analyses causes and factors of corruption to point out actions to prevent and fight corruption.

The main functions of A.N.AC. according the AntiCorruption Law are the following: to approve the National AntiCorruption Plan; to analyze the causes and factors of corruption and identify measures to prevent it; to monitor the implementation and

effectiveness of public administrations' AntiCorruption plans¹ and the compliance to transparency rules. Regarding these functions, the Law assigns to A.N.AC. inspection powers: the power to enquire, to demand the exhibition of documents, to command the adoption of acts as well as the removal of acts and behaviors contrasting with law and with transparency rules. A.N.AC. also gives optional advices to the state bodies and all the public administrations on the compliance of public employees with the code of conduct; defines criteria, guidelines and standard models for the code of conduct regarding specific administrative areas as specification and integration of the general code of conduct laid down by the Government; reports annually to the Parliament on the activities against corruption and illegality in the administrations and on the effectiveness of the measures applied.

In addition A.N.AC. cooperates with the corresponding international bodies and in general with international and foreign bodies in the field of anticorruption to share information and methodologies for the implementation of anticorruption strategies.

A.N.AC., as the National AntiCorruption Authority, in the execution of the anticorruption inspection powers assigned by the Law, can use the collaboration of the "Guardia di Finanza" for investigations and inspections. At the same time, the Authority can request inspections and reports to the Inspectorate of the Department of Public Administration. A.N.AC. also cooperates with another national body, the National School of Public Administration (SNA), to plan the training programs on ethics and anticorruption for public administrations and to share information about the results of the training activities. In general, A.N.AC. carries on several others agreements with other Italian institution to implement the provisions of the anticorruption system.

The Authority also carries on relationships with relevant private actors to share information, data, experiences and practices in the field of transparency and anticorruption. For this purpose, A.N.AC. has already established a collaborative relationship with the Italian branch of Transparency International and with World Bank's experts in anticorruption.

The Anticorruption system in Italy

Law No. 190/2012 constitutes the reference point for policies aimed at fighting corruption and puts into effect a complex institutional and organizational plan referred to models mainly based on prevention.

The AntiCorruption Law brings a comprehensive set of measures aimed to prevent and repress corruption and illegality in the public administration. It aligns the Italian legal system to the indications stemming from the main international instruments to which Italy has subscribed (1997 EU Convention against Corruption, 1997 OECD Convention against Bribery in International Business Transactions, 1999 Council of Europe Criminal Convention against Corruption, 2003 UN Convention against

¹ According to the Anticorruption Law, each entity operating in the public sector is expected to identify areas vulnerable to corruption risk and formulate annually a (rolling) three-year corruption prevention plan. It applies to both central and local governments. In recognition of possible constraints that local governments could face, the Law provides the possibility for Prefects – the central governments representatives at the local level – to provide the technical support to local authorities in order to prepare their own corruption prevention plans in accordance with the prevailing guidelines. The role of the Prefects is not mandatory but is upon the request of the local authorities.

Corruption – UNCAC) and implements the recommendations addressed to Italy by the competent OECD and Council of Europe Bodies on the occasion of the mutual evaluation procedures conducted until now.

The law is part of an intense and relevant legislative activity that has reformed the organization and the functioning of the Italian public administration in recent years. This reform is characterized for having pursued the objectives of improving the efficiency, the effectiveness and the costs of the administrative activity, not only through the identification of measures designed to affect the status of a public servant, but more through the use of instruments to implement, first of all, the diffusion of a culture of evaluation, quality and transparency, then, the simplification, the digitization and the spending review and, last, the fight against corruption.

Concerning the general anticorruption model, it should also be noted that in the framework of the anticorruption regulations, the norms introduced by Law No. 190/2012, find an essential complement in the Legislative Decrees No. 33 and No. 39 of 2013, to which the law has delegated the implementation of important principles and guidelines with reference, respectively, to the transparency and to the system of ineligibility and incompatibility of positions in public administration and in the Presidential Decree No. 62/2013 which sets out the rules of conduct which all public employees under contract must abide by.

The Legislative Decree No. 33/2013, "Reorganization of the regulations concerning the obligations of publicity, transparency and diffusion of information by public administrations" specifies A.N.AC. powers of control and inspection on public administrations concerning their duties of data and information transparency and the activity of the Responsible in charge of transparency.

The Legislative Decree No. 39/2013 provides the rules concerning the absence of conflicts of interest, both at regional and local level, and the incompatibility between management positions in public administrations, in bodies under public control, political offices and professional assignments.

Subjects

The anticorruption model is carried out through a complex and particularly articulated pattern of relationships among multiple actors with different roles - Inter-Ministerial Committee, Government, Department of Public administration (DFP), National AntiCorruption Authority, Authority for the Supervision of Public Contracts (AVCP)², Court of Auditors, Prefects and, within the administrations, the subject responsible for the prevention of corruption (RPC) and the independent evaluation body (hereafter called OIV) – and through a capillary system of accountability for the implementation of the anticorruption measures within each administration.

In this context, significant functions and powers of regulation, supervision and control are attributed to the National AntiCorruption Authority. Besides the approval of the PNA (see below), the Authority, in addition to the already existing

² According to the art. 19 of the Law Decree no. 90/2014, the AVCP is suppressed. The tasks and functions carried out by the AVCP are transferred to the National AntiCorruption Authority.

regulatory powers, has also been called to formulate guidelines for the preparation of the Three-year Program for Transparency and Integrity, as well as the codes of conduct for single administrations.

Finally of particular importance, in terms of the effectiveness of the law, is the attribution of powers of supervision and control over the application and the efficiency of the measures identified in the mentioned plans and over the compliance with transparency obligations; powers that may materialize in the course of inspection activity - through the request of information, records and documents to the administrations - and may extend to the point of the enactment of an ordinance aimed at the adoption or the removal of acts or behaviors contrasting the measures under the above plans. In the same logic, the Authority is also the addressee of the communication by the Prefect of the revocation of the, Secretary of a local authority in order to verify, within 30 days, if that decision is related to the activities carried out by the town clerk in prevention of corruption.

Moreover, in the framework of Law No. 190/2012, the Authority has a constant relationship with the administrations which, first of all, have to appoint the RPC who has the crucial tasks of proposing the adoption of the PTPC to the political bodies, verifying its correct implementation and its continuing suitability, as well as of reporting the results of the activity at the end of each year.

It is evident, therefore, that the RPC, in the system of the law, is a central figure, with significant responsibilities, as well as a privileged interlocutor of the Authority, together with the OIV, which in turn hold a number of important functions even in the field of the prevention of corruption and, in particular, the attestation of the fulfillment of the requirements of transparency.

Tools

With Law No. 190/2012, the legislator, establishing a system for combating corruption, focuses on prevention tools, outlining a framework that is not without complexity due both to the body of tools introduced, to be integrated with the already existing ones, and to the relations between the various institutional subjects involved in its implementation.

The prevention of corruption is based on a model of regulation that provides for planning and control activities, with a “cascade” planning model that affects all levels of government and that is founded on four instruments - transparency, training, codes of conduct and risk-analysis - which are in part already present in the Italian public administrations. The National AntiCorruption Plan (hereafter called PNA) is the heart of this planning model, and each public administration should adopt a Three-year Plan for the Prevention of Corruption (hereafter called PTPC) using the PNA as the basis to follow with the possibility for local authorities to be supported by the Prefect. These planning tools assume a fundamental importance in the system devised by the legislator, as long as the PNA ensures the coordination of national and international strategies for the prevention of corruption in public administration, whereas the PTPC identifies, on the basis of the first, the specific risks of corruption in individual administrations and the measures deemed necessary to prevent them.

The PNA allows for a unified and strategic planning of the activities to prevent and combat corruption in the public sector and has been calibrated for the pursuit of measurable objectives and for the identification of specific responsibilities. The PNA is structured as a programmatic tool subjected to an annual update with the inclusion of indicators and targets in order to make the strategic objectives measurable and to ensure the monitoring of the possible divergences from these targets arising from the implementation of the PNA.

The approval by the Authority of the first PNA on September 2013, represented an important and necessary step in the implementation of Law No. 190/2012 as it created the premises for administrations to prepare their PTPC.

In order to be effective, the PTPC must contain appropriate targets and adequate measuring indicators and should be coordinated with other programming tools: the budget, ensuring the financial sustainability of the interventions needed; the Plan of Performance, which should bring the strategic and operational objectives chosen by each administration, including the measures to implement the PTPC; the Three-year Program for Transparency and Integrity and the training Plan.

Appropriate forms of coordination with respect to the other documents required by law are also necessary, first among all the Three-year Program for Transparency and Integrity and the Codes of conduct to be observed by public employees.

Transparency

The valorization of the principle of transparency of the administrative action, considered instrumental to integrity was established by Legislative Decree No. 150/2009. Law No. 190/2012 has integrated this system, stressing the importance of transparency as a tool for the prevention of corruption, widening the scope of both the subjective and objective scope, and providing for a code of reorganization of a number of provisions related to transparency.

In the implementation of the mandate contained in Law No. 190/2012, the Government adopted the Legislative Decree No. 33/2013 that has reorganized the main publication requirements, not focusing only on the recognition and coordination of measures already adopted, but introducing new requirements and further compliances in addition to the numerous ones already existing. It has also extended the substantive scope of the provisions related to transparency and designed a system of checks and sanctions regarding the implementation of the mandatory publication.

In addition, the possibilities of a widespread control of the operations of public administrations have been broadened, with the recognition of the right of “civic access” to be activated by anyone for the publication of mandatory information and data in case of lack or lateness in compliance by public administrations.

A measure, therefore, that fits within the framework of the maximum diffusion of the transparency of administrative action as an instrument that, by acting as an effective deterrent of the phenomena of mismanagement of public resources, ultimately benefits the widespread control and accountability of public administration.

In the new regulatory framework, the Authority has retained its functions of orientation in terms of transparency already provided for in Legislative Decree No. 150/2009 and has seen strengthened those of supervision and control over compliance

with the system of transparency, specifically in relation to the prevention of corruption, even in respect of certain public and private bodies previously excluded from the list of recipients of the obligations.

The strategy set by the Authority regarding the immediacy of the approval of the law was to emphasize, in the guidelines, the necessary coordination between the measures of prevention of corruption and those regarding transparency.

In this perspective, the Authority adopted Resolution No. 50/2013 "Guidelines for updating the Three-year Program for Transparency and Integrity of 2014-2016" in which the close connections among the Three-year Program for Transparency, the Three-year Plan for the Prevention of Corruption and the Plan of Performance were underlined. In addition, in order to support public administrations in the planning of actions to be performed, some technical annexes on publication requirements in force and the quality of data to be published were also provided.

The Authority has, therefore, set up and started a supervision on the level and quality of the implementation of transparency not only with an accompanying perspective, but also to set up *ad hoc* measures for adapting the new institutional sites to the new provisions and to identify, in case of significant deficiencies, internal responsibilities in each agency.

Appropriate activities to direct and control publicly controlled private bodies have been undertaken - specifically considered also in Law No. 190/2012 as recipients of specific transparency requirements (budgets, contracts, permits, authorizations and selection of staff) - and interventions were undertaken to encourage the application of the norms by the independent administrative authorities, to which Legislative Decree No. 33/2013 shall apply according their dispositions, and bodies of self-governance of the judiciary sector subject to the relevant provisions in the AntiCorruption Law.

Incompatibility and Ineligibility of Positions

As mentioned, the norms introduced by Law No. 190/2012, find an essential complement in the Legislative Decree No. 39/2013, to which the law has delegated the implementation of important principles and guidelines with reference to the system of ineligibility and incompatibility of positions in public administration. The Legislative Decree No. 39/2013 has stepped in to regulate the hypothesis of ineligibility and incompatibility of positions in the public administrations with the clear intention to avoid any form of interference or confusion between politics and administration in order to prevent corruption and conflicts of interest or conflict with the constitutional principle of impartiality of administrative action.

The measure is full of innovative though problematic profiles, not only from a technical point of view, but also because of the awkwardness of the subject. The decree has clarified that while the occurrence of cases of ineligibility³ involves the permanent or

³ **Ineligibility is verified** in the case of conviction of public officials for offenses against the public administration, resulting in the impossibility of being recipients of top administrative positions and management positions, both internal and external, in public administrations, public and publicly controlled private agencies on the a national or territorial level. **There is therefore also the possibility of giving positions in national, regional and local administrations to people working for publicly controlled or funded private bodies and those who have been members of political bodies at national, regional and local levels. Ineligibility also regards the recruitment of board members for Local health who, in the**

temporary exclusion from assigning offices, the occurrence of situations of incompatibility⁴ causes, instead, the obligation, for the person who should be appointed, to decide, within 15 days under penalty of forfeiture, which of the two positions to keep.

The measure in question, as well as providing a set of definitions to refer to and identifying in detail the individual situations related to the two cases, addresses the equally important supervision of the proper application of the law that within public administrations and publicly controlled private bodies is entrusted to the RPC⁵. Due to the delicate and relevant role played by the RPC, the legislator has provided that any revocation of the assignment to the RPC is subject to the mandatory opinion of the Authority that - within 30 days, after which the measure becomes effective - may request a re-examination if there is a correlation between the revocation and the activities regarding the prevention of corruption. In this context, the Authority has the general power to supervise the proper implementation of the decree by all its recipients, also through the use of inspection powers and through the assessment of individual cases. As already stated, Legislative Decree No. 39/2013, had given an important advisory role to the Authority, to be exercised through the formulation of opinions, at the request of the administrations and agencies concerned, on the interpretation of the provisions contained in the decree and on their application to different types of ineligibility and incompatibility. The first implementation phase of the Legislative Decree No. 39/2013 soon revealed a number of problems regarding the interpretation and application of its provisions, most likely caused by the complexity and delicate nature of the content of the issues regulated; problems that have been promptly reported by those concerned and subsequently addressed by the Authority, which has decided to adopt "notices" to clarify the major concerns raised by the decree.

The choice of the legislator, aimed at increasing the advisory and support activity of the Authority with respect to public administrations, activity destined to assume a major importance in the phase immediately after the enactment of Legislative Decree No. 39/2013, however, was later reviewed in the context of a series of measures containing different provisions. In particular, the already mentioned Legislative Decree No. 69/2013, converted with amendments by Law No. 98/2013 has established that the Authority may issue "mandatory" opinions no longer on the needs of administrations and bodies concerned, but "on the ministerial circulars and directives concerning the interpretation of the provisions" of the same decree "and their application to the different types of

previous two years, held political positions or positions in publicly controlled or funded private bodies belonging to Regional Health Services.

⁴ The situations of incompatibility operate, in order, in the following cases: between assignments and positions in publicly controlled or funded private **bodies**, and between them and the professional activities; between the executive positions in local public health **bodies** and members of National regional and local administrations in the same field; between the internal and external executive positions and the positions on National, regional and local boards; between the positions of directors of publicly controlled private **bodies** and the members of political bodies in the central governments, regional and local administrations; between positions of leadership in local health **bodies** and the offices of members of political bodies in the central governments, regional and local administrations.

⁵ **The latter, in fact, is required to challenge the emergence of possible situations of incompatibility or ineligibility and report possible violations regarding the guidelines of their respective competence, to the National Anti-Corruption Authority, the Competition and Market Authority and the Court of Auditors.**

ineligibility and incompatibility of offices" (article 16, subparagraph 3, of the Legislative Decree No. 39/2013). This provision, besides reducing the powers of the Authority, also threatens to create a legal vacuum because not all of the many interpretative requests of the single administrations, with a very specific content, can find immediate response in circulars and acts emanated by the Ministry, which are necessarily of general application.

Conflict of interest

With different aims and norms from incompatibility and ineligibility of positions, the conflict of interest is regulated in the Italian legislative framework.

Regarding specifically the President of the Council of Ministers, Ministers, Deputy Ministers, State Undersecretaries and Special Government Commissioners the conflict of interest is regulated by the Law No. 215/2004, with duties of supervising and control in charge of the Italian Antitrust Authority (Autorità Garante della Concorrenza e del Mercato).

More in general concerning the subjective scope, art. 1 , paragraph 41 of Law No. 190/2012 introduces the art. 6bis "conflict of interest" in the chapter II of Law No. 241/1990 on administrative procedures. According to the art. 6bis the responsible for the procedure and the holders of the offices in charge of adopting the opinions, the technical evaluations, the acts occurring within the proceedings and the final provisions must abstain in case of conflict of interests and must signal every situation of conflict, also potential.

According to art. 15, subparagraph 2, of the Legislative Decree 39/2013 "the responsible of the AntiCorruption Plan reports cases of possible violation of the provisions of this Decree to the National AntiCorruption Authority, to the Antitrust Authority for the exercise of the functions as referred to in the Law of 20 July 2004, No. 215, as well as to the Court of Auditors, for the detection of any administrative responsibilities".

Art. 6 and 7 of the Presidential Decree No. 62/2013 containing the "regulation bringing the code of conduct of the public employees, pursuant to article 54 of the Legislative Decree No. 165 of 30th March 2001" govern, respectively, "notice of financial interests and conflicts of interest" and "obligation of abstention" with reference to every potential situation of conflict thus covering even the public procurement context. Art. 14, paragraph 2 of the Presidential Decree No. 62/2013 governs specifically contracts and the others negotiating acts stating that the employee does not conclude, on behalf of the administration, procurement, supply, service finance, or insurance contracts with companies with which the employee has signed contracts privately or from which he has received benefits in the previous two years with the exception of those concluded through prescribed forms. In the event that the administration concludes contracts with companies with which the employee has signed contracts privately or from which he has received benefits in the previous two years, he must abstain from participating in decision-making processes and in the activities related to the execution of the contract.

Moreover, the National AntiCorruption Plan, in paragraph 3.1.5 "obligation of abstention in case of conflict of interest" states that public administrations must undertake adequate initiatives to inform their personnel about the obligation of abstention and the behavior to follow in case of conflict of interest.

Whistleblowing

With the AntiCorruption Law, the Italian legislator for the first time has introduced an homogeneous protection for the whistleblower. Before the changes introduced by the AntiCorruption Law, if, on one side, the subject in question was obliged (ex art. 361 of the Italian penal code) to report to the judicial authority or to the hierarchical superior a crime of which he had had news in the exercise or due to his functions, on the other, he had no protection in case of possible retaliations following his report, except for the hypothesis of illegal dismissal as governed by the art. 18 of the Statute of workers.

This imbalance has been reduced, even if only inside the public administrations, with the introduction of the art. 54-bis in the Legislative Decree No. 165/2001 according to what provided for by the paragraph 51 of the Law No. 190. Out of the cases of responsibility for calumny or defamation, the whistleblower protection has been extended to cover other typologies of retaliations following the report of the alleged misconduct: demotion, mobbing, transfer and discriminations or similar and the decision about the possible remedies had been left to the discretion of the judge.

However some critical elements that put in discussion the effectiveness of the protection granted arise. If, on one side, the guarantee of anonymity (albeit partial) ensured to stimulate the action of the potential “informer” has been introduced, on the other, still at comma 54-bis is written that the secret on the identity of the informer can be revealed when “it is absolutely essential for the defense of the accused” that is, in the majority of cases, in conformity with the legitimate right to defense. Moreover, the prevision of an autonomous type of offence for those who contravene the provisions of art. 54-bis is missing, with the consequence of the giving out of the preventive function of the possible sanction. Regarding this last point, in fact, it is only provided that “the adoption of discriminatory measures is reported to the Department of Public Administration, to adopt the measures of competence”.

Under these premises, to guarantee more protection to the whistleblower it is necessary for administrations to consider adequate mechanisms in their Three-year Plans for the Prevention of Corruption (PTPC). Public administrations are, in fact, required to adopt the necessary practical devices so that the protection of the employee that reports the alleged misconduct could be effective and the adoption of the indispensable initiatives is an intervention to be implemented on the basis of the indications coming from the National AntiCorruption Plan (PNA) predisposed by the Department of Public Administration and approved by the National AntiCorruption Authority. The first PNA was approved in September 2013.

The PNA provides all the measures that the public administrations should take in their Three-year Plans for the Prevention of Corruption in 2014: provide different channels for receiving reports; provide reserved codes for the identification of the complainant; prepare models for receiving reports; establish duties of confidentiality for all those who receive or become aware of the report.

To this end the PNA recommends the creation of a computerized system for reporting and provides that the protection of complainants will also be supported by effective awareness, communication and training through the website of each public administration.

Recent legislative changes

The Law Decree 24th June 2014, No. 90 "Urgent measures for the simplification and administrative transparency and for the efficiency of the courts", with norms immediately applicable but that have to be converted in law by 60 days after the 24th June 2014, introduces new and impacting measures in the anticorruption system and in the A.N.AC. activities.

Among the most significant interventions intended to sharply affect the fight against corruption in Italy it must be counted the legislator's choice of anchoring the supervision on public contracts already performed by the AVCP in the system of corruption prevention outlined by Law No. 190/2013. The integration of the functions of the two institutions and the consequent extension of the powers of A.N.AC., in fact, set the conditions to oversee more effectively the scope of the contracts and public procurement in which nestles a substantial part of the corruption phenomena.

According to art. 19 of the Decree, the AVCP is suppressed. The tasks and functions carried out by the AVCP are transferred to the National AntiCorruption Authority.

The National AntiCorruption Authority receives information and reports of offences and, unless the act constitutes a criminal offense, it applies an administrative penalty which can vary from € 1,000 to € 10,000, in the case the person obliged omits the adoption of the Three-year plans for the prevention of corruption, Three-year Transparency Programs or Codes of conduct.

In addition, among the other organizational and institutional measures, in order to focus the activity of the National AntiCorruption on the tasks of transparency and prevention of corruption in public administrations, the functions of this Authority in the field of measurement and evaluation of performance are transferred to the Department of Public Administration of the Presidency of the Council of Ministers, from the date of entry into force of the law of conversion of the decree. The functions of the Department of Public Administration of the Presidency of the Council of Ministers in the field of prevention of corruption as referred to in art. 1 of Law n. 190/2012, are transferred to the National AntiCorruption Authority.

According to art. 30, tasks of high supervision and guarantee of the fairness and transparency of the procedures related to the implementation of the works of the EXPO Milano 2015 are conferred to the President of A.N.AC. .

To this end he avails himself of a special operating unit and, in addition to the tasks attributed to A.N.AC. in consequence of the suppression of the AVCP, he: verifies, in advance, the legality of the acts connected to the award and implementation of contracts for works, services and supplies for the execution of works and activities related to the development of the EXPO particularly with regard to the compliance with the provisions on transparency and with the agreements on the subject of legality signed with the Prefecture of Milan; has the powers of inspection and access to databases already attributed to the suppressed AVCP. The President of the A.N.AC. can also participate in the meetings of the specialized section of the Committee of coordination for the high supervision of the great works presided by the Prefect of Milan.

According to art. 32, in the event that the judicial authority processes certain crimes against the public administration, that is, in presence of detected anomalous situations and nevertheless symptomatic of illegal conducts or criminal events attributable to a

company awarded a contract for the construction of public works, services or supplies, the President of A.N.AC. proposes to the competent Prefect, either: to order the renewal of the corporate bodies by replacing the person involved and, if the company does not abide by the terms established, to provide for the extraordinary and temporary management of the contractor only for the full implementation of the contract covered by the criminal proceedings; to engage in the extraordinary and temporary management of the contracting company limited to the complete execution of the contract subject to criminal proceedings.

This is an innovative and disruptive measure, able to immediately intervene in situations in which corruption phenomena have arisen to contrast them, and in perspective it can also be a strong deterrent against behaviors corruption-oriented, performing from this point of view also a preventive function.

The very first application of this norm can be found in one of the EXPO's procurement <<richiesta di straordinaria e temporanea gestione della società Maltauro spa con riferimento all'appalto relativo alle "architetture di servizio" afferenti al sito per l'esposizione universale del 2015 (art. 32 d.l. 24 giugno 2014 n. 90)>>, and could be read at the link <http://www.anticorruzione.it/?p=13191>.

The complex initiation of the process

The coming into effect of Law No. 190/2012 represents an important moment of discontinuity on the Italian legislative landscape: the emphasis is on the need to prevent corruption and not only repress it and also on the fact that the various interventions are part of an integrated policy which must monitor effectiveness in order to adopt eventual corrective measures.

The organizational problems and implementation difficulties are inevitable in the early stages of any process of change regarding public administrations. In the specific case of Law No. 190/2012, they have been intensified by the complexity and scope of this innovative reform which acts upon, among other things, the delicate sphere of relations between politics and administration. However, it should be noted that the first steps of this implementation process represent the starting point of a process of compliance to the principles of law with the aim of improving the integrity of public administrations.

The Authority has intervened to help and stimulate administrations and agencies to implement the provisions of Law No. 190/2012, to help upon the various interpretative doubts emerged, to overcome the opposition and the reluctance expressed by many, and to simplify, where possible and allowed by law, all the fulfillments related to the information flows.

The requests received by the Authority give an image of a public administration that is primarily concerned about the innovations introduced and sometimes reluctant in assuming responsibility; these requests are related more to the confirmation of the law and not to acquiring the actual complexities of interpretation. In short, public administrations sometimes seem adverse to taking risks and often prefer the formal observance of due terms and procedures rather than the conscious implementation of an effective policy for the prevention of corruption. This attitude is likely to be accentuated by the increased range of managerial responsibilities provided for by law and decrees, with the possible and dangerous consequence that officials react by adopting a purely formal approach and that the administrative procedures become more cumbersome and

slow. To overcome this approach, it is necessary not only to punish deviant behavior but also to invest in the diffusion of knowledge, communication of best practices and the exploitation of differences in order to stimulate each administration to program a prevention policy. In this perspective, the degree of openness of the administration towards the outside can make a difference as well as “targeted” training but, one year after the entry into force of the law, it is struggling to establish itself.

Although the central role assigned by the legislator to training as a means of preventing corruption, it is now a missing piece of the mosaic. The activities planned by the National School of Administration (SNA) can not be said to be going 'up to speed '. Initiatives to support the RPC in the preparation of the PTPC and those related to other figures of the administrations involved in the areas at risk of corruption are being launched and have been put in practice, in the operational phase, only by few administrations.

While providing a significant increase in hours of training and assistance during 2014, it is to be expected, however, that the request of the administrations of targeted training for those who work in areas particularly exposed to corruption phenomena could be largely unanswered, with the risk of leaving space to initiatives that are not always coordinated and adapted to the complexity of the needs to be met. In this perspective the minimum training content that will guide and support the administrations in the selection of training courses must be at least defined in concordance with the Authority. Technologically advanced initiatives that expand as much as possible the scope of the training offer should also be promoted.

Inside each administration, moreover, the efficient implementation of policies for the prevention of corruption also depends on an organizational structure consistent with all of the responsibilities related to the role that the PRC is expected to perform. In addition to his proper placement in the hierarchy, powers of control and resources are necessary (in terms of professional competence and information systems) so that this figure can actually influence behavior and function and not just be a scapegoat.

A necessary condition is, however, a firm commitment by the government bodies entailed in the definition of clear objectives which are measurable and accountable in the PTPC and a real boost to the promotion of integrity.