

Brief overview of the most recent Italian anticorruption legislation

1) L. 114/2014

Decree Law No. 90 of 24 June 2014, subsequently enacted into Law No. 114 of 11 August 2014, enhances ANAC's responsibilities in the area of anticorruption and transparency. In particular, ANAC will:

- Approve the National Anticorruption Plan (PNA) and supervise the application of the PNA measures, including the public administrations' compliance with their transparency obligations.
- Impose a monetary sanction to those public administrations that failed to adopt an Anti – Corruption Plan, a Transparency Program and a Code of Conduct.
- Order public administrations to comply with the legislation on anticorruption and transparency.

ANAC's decisions will be published on its website.

In addition, law no. 114/2014 charges ANAC with the responsibility of receiving complaints on possible misconduct in the Public Sector from whistleblowers. ANAC published ad hoc guidelines (Resolution 6/2015) to support the implementation of whistleblowers' protection by public administrations.

2) L. 186/2014

Law n. 186/2014 criminalized self-laundering, in accordance with article 23 paragraph 2(e) of UNCAC.

3) L. 69/2015

Law no. 69/2015 introduced a wide range of measures against corruption. More precisely:

- Increased penalties (and statute of limitations) for corruption and for corporate crimes;
- Use of further special investigative tools and techniques in corruption cases. In particular, an extenuating circumstance has been introduced for cooperative defendants involved in corruption and other crimes against Public Administration.
- Criminalization of false accounting
- Strengthening of ANAC's supervisory function over certain categories of public contracts (i.e., those requiring special security measures; contracts awarded under international rules),
- Public Prosecutors to inform ANAC of criminal investigations into crimes against the public administration, including corruption and
- Administrative Tribunals to forward to ANAC information about any violation of transparency rules arising from administrative disputes concerning public contracts.

4) The New Code of Contracts (D. Lgs. n. 50/2016)

The New Code provides a strengthening of ANAC functions, in order to prevent corruption within Public Procurement.

- Procurement methods: all procedures are to be held through calls for tenders, while negotiated procedures will be possible for exceptional cases.
- Transparency: 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.
- Subjects' qualification: contracting authorities must be recorded in a register subject to ANAC's assessment. Economic operators will also be assessed by ANAC through qualitative and quantitative indicators.
- Conflicts of interest: contracting authorities are expected to identify, prevent and resolve any conflict or potential conflict of interest occurred during the tendering processes. To this end, the subjects who do not recuse themselves may incur in criminal, administrative or disciplinary responsibility.
- ANAC's regulatory function: ANAC can adopt the so called second level rules, (guidelines, standard tenders, standard contracts and other instruments of flexible regulation) also with binding effectiveness.

- ANAC's supervisory function: precautionary intervention on the tendering processes in order to avoid serious and irreparable damages and sanctioning function for failure to comply with ANAC's recommendations.
- Pre-litigation mechanisms: ANAC's recommendations are now binding.

5) Whistleblowing: bill No 3365 approved by the House of Representatives on January 21, 2016

The proposal, which is currently under discussion in the Senate, provides a discipline for whistleblower protection for both the public and the private sector.

- Protection for whistleblowers. The employee who in good faith reports misconduct to the anti-corruption point of contact in Public Administrations, the Anticorruption Authority (ANAC), cannot be punished, demoted, fired, transferred or subjected to any form of reprisal. ANAC may apply an administrative fine of up to 30 thousand euros to the author of the retaliatory act.
- Good faith. It involves the assessment of the reasonable belief, based on factual evidence (including documents) that the unlawful conduct has occurred. The good faith is excluded when the complainant acts with ill intent or gross negligence.
- Confidentiality. While the whistleblower identity is protected, anonymous complaints are not allowed. In the event of a criminal proceeding stemming from the whistleblower disclosure, however, the protection of the identity will cover only the preliminary investigation stage.
- Anti-slander clause. The whistleblower protection will be lifted in the event of conviction of the complainant in a criminal court for defamation or other offenses committed through the complaint.
- Private sector. The legislative decree n. 231/2001 is modified with regard to the administrative liability of legal persons.

6) Transparency: Review and simplification of the provisions on the prevention of corruption and transparency (Legislative Decree dated January 20, 2016)

The Council of Ministers, on a proposal of the Minister for Simplification and Public Administration approved a Legislative Decree containing the revision and simplification of the provisions on the prevention of corruption and transparency (L. 124 /2015 on the reorganization of the public administration).

The Decree introduces the obligation for each administration to clearly indicate and publish the overall costs and the salaries of executives. It also provides for citizens' access to all data in possession of the administration. Data access is free of charge and the request must be answered within 30 days.

7) House of Representatives' Code of Conduct (April 12, 2016)

This Code of Conduct provides ethical rules for the members of the House of Representatives (MPs).

- Asset declaration. MPs are required to disclose their property and financial assets, as well as the public or private offices held at the date of candidacy.
- Gifts and benefits. MPs may accept gifts for value of less than 250 euro.
- An Advisory Committee will provide ethical advice to MPS and will monitor the violation of the Code.
- The sanction for the violations of the Code will be the publication of the Advisory Committee's decision on the website of the House.

8) Statute of Limitations: bill No 2150 approved by the House of Representatives in March 2016

The Statute of Limitations for corruption crimes is increased by half.

Cases of suspension . The statute of limitations will be suspended for two years after a first instance conviction and for one year after an appeal conviction. In addition , the prescription will be suspended in the event of request for legal assistance abroad (6 months), complex investigations (3 months) and instances of recusal . The interruption of the statute of limitation will be effective for all the defendants.

9) Lobbying: bill No 1522 presented to the Senate on June 12, 2014

The proposal, which is currently under discussion in the Senate, provides a discipline for the representation of private interests (lobbying) within the public institutions.

- Principles: the lobbying activities must comply with the principles of publicity, democratic participation and transparency of the decision-making processes;
- Establishment of a Committee for the monitoring of the lobbying and a Public Register of lobbyists in the General Secretariat of the Prime Minister office;
- Obligation for lobbyists to adopt a code of conduct to be submitted to the Committee;
- Obligation for lobbyists to submit reports on their activity, indicating the human and financial resources involved and the policy makers who have been contacted;
- Obligation for policy makers to disclose their lobbying activity, when relevant to the decision-making processes;
- Incompatibility between being a lobbyist and a journalist. Public decision-makers cannot be lobbyists in the two years following the termination of their duties; lobbyists cannot in any case be administrators or managers of public companies.

10) Conflict of interest: bill No 275 approved by the House of Representative on March 15, 2013

The proposal, currently under discussion in the Senate, provides a discipline for the conflict of interest among government officials, members of the independent authorities, parliamentarians and members of regional councils.

- The responsible for the implementation of the provisions is the “Autorità Garante della Concorrenza e del Mercato” (Competition Authority);
- Reporting obligations to the Authority within 20 days from taking office: administrative fines in case of delay in the submission of declarations and criminal penalties for failure to declare;
- Publication on the Authority's website of the disclosures;
- Conflicts for government officials and members of the independent authorities: all cases in which the officials have a private economic interest that might influence the exercise of the public functions or distort competition; identification of the cases of incompatibility and obligations to recuse themselves;
- Conflicts for elective offices (MPs and members of regional councils): obligation to the exclusive care of public interests resulting in ineligibility;
- The Competition Authority can adopt a procedure of conflict prevention (trust management).