

The Italian AntiCorruption system.

Mandates and activities of the Italian National AntiCorruption Authority.

Context and framework

The modernization of the public sector has been a reform objective for the majority of OECD countries, generally along six main areas: open government, enhancing public sector performance, modernizing accountability and control, reallocating and restructuring, using market-type mechanisms to provide government services, organizing and motivating public servants (OECD, 2005b).

In line with these international trends, a general strategy to reform the Italian public administration was enacted into Law No. 15/2009 providing a comprehensive reform design for the Italian public administration. On 27 October 2009, the government approved Legislative Decree No. 150/2009 implementing Law No. 15/2009 on a comprehensive reform aimed to increase the overall performance of public organizations (the performance of each organization as a whole, the performance of the units within each organization and the performance of each employee) by fostering more transparency, faster and more reliable responses, less absenteeism, better quality of services, more efficient offices serving citizens and enterprises.

The main means for attaining these goals is the recognition of the merits and shortcomings of executives in the public sectors and of all government employees.

The Reform builds on the following principles: meritocracy and rewards, performance evaluation, quality of services, managerial responsibility and disciplinary sanctions, transparency and integrity. More specifically the Reform has interested the following areas.

Merit: a reinforced selection mechanism for economic and career incentives, with a view to rewarding the most worthy and skilled employees, encouraging commitment and deterring cases of malpractice.

Assessment: a performance assessment system that helps public administrations reorganize their activities according to targets and to an overall enhancement requirement. The milestones of this system are customer satisfaction, transparency and merit-rewarding.

Quality of services: qualitative and economic standards of services must be defined by each administration.

Management: managers are entrusted with concrete tools and will be subject to, inter alia, economic sanctions in case of failure to comply with their obligations.

Discipline: disciplinary proceedings have been simplified and a catalogue of particularly severe infractions leading to dismissal has been put in place.

Integrity: a structured programme of measures has been created to prevent bribery and other distortions of administrative actions, through a National Anticorruption Strategy involving all public administrations.

In the following years, other legislative provisions have improved and enlarged this reform through the attribution of new functions to different actors involved.

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.

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

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

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 Law Decree 24th June 2014, No. 90 "Urgent measures for the simplification and administrative transparency and for the efficiency of the courts", converted with modification by the Law 11th August 2014, No. 114, 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.

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.

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 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 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 (originally) designed by the Law No. 190/2012 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)², National AntiCorruption Authority, Authority for the Supervision of Public Contracts (AVCP)³, 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.

In general, the recent Law Decree 24th June 2014, No. 90 "Urgent measures for the simplification and administrative transparency and for the efficiency of the courts", converted with modification by the Law 11th August 2014, No. 114, extends A.N.AC. powers in the field of the control and supervision on public procurement.

In particular, concerning the anticorruption tools provided by the anticorruption law, besides the approval of the National Anticorruption Plan (see below), the Authority, in addition to the already existing 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.

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 Three-year Plan for the Prevention of Corruption, internal of each

² According to the art. 19 c. 15 of the Law Decree no. 90/2014, converted with modification by the Law August 11, 2014, No. 114, the functions of the DFP concerning anticorruption are transferred to the National AntiCorruption Authority.

³ According to the art. 19 c. 1 of the Law Decree no. 90/2014, converted with modification by the Law August 11, 2014, No. 114, the AVCP is suppressed. The tasks and functions carried out by the AVCP are transferred to the National AntiCorruption Authority.

administration (see below), 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 PTCP) 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 PTCP 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 literature has underlined the key role of transparency in better governance. The aim of transparency is to ensure total access to all aspects of public organization in order to ensure a widespread form of control on the pursuit of official duties and the use of public resources. This approach also concern organizing data in order to make information not just accessible but also comprehensible.

The classical approach to transparency is aimed to protect individual rights by granting access to administrative acts under specific conditions.

With the new framework emerged from the Italian public sector reform the range and scope of transparency has been extended to increase the overall level of transparency within the public administration.

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.

The link between transparency and anti-corruption is highlighted in the Reform Decrees, mainly through the adoption of transparency plans to ensure total accessibility of data and to foster a culture of integrity and legality. Each administration has to draw a multi-annual Transparency Plan to guarantee total public online access to administration performance planning and results, individual reward schemes and all other aspects of the administration's operations. The Plan also lists administrative activities in order to support citizen participation.

With the latest normative interventions, the link between transparency and anti-corruption has been strengthened by providing that the multi-annual Transparency Plan has to be a part of the Three-year Anti Corruption Plan and through an extension of the publication requirements. There are three main typologies of data to be published.

A first category is related to the publication of information related to the organization and activity of public administrations: political and administrative organs, with the indication of their skills; the articulation of the offices, the skills and resources available to each office, the names of the executives in charge of each office; the illustration of the organization of the administration in a simplified form, through the organization chart or similar graphic representations, for the full accessibility 'and intelligibility' of the data; the list of phone numbers as well as of the dedicated institutional and certified electronic mailboxes to which the citizen can apply for any request regarding the institutional tasks.

A second group of mandatory publications regards the use of public resources and includes the publication of the data relating to the budget, as well as details of the properties owned and the data relating to the results of the administrative and accounting control .

The decree also reorders the provisions relating to obligations on the services offered and services provided. Into this type of publication: service charter and quality standards; average payment related to purchases of goods, services and supplies. 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.

CiVIT first, A.N.AC. then, provided technical support for the Transparency Plan and gathered data related to Transparency Plans and Performance Plans and Reports on a transparency portal to promote open government. Sanctions were established for managers in cases of non-compliance or implementation failures.

A concept that is at the very center of the reform is the “citizen participation”.

The dimension of organizational performance defined in the Reform Decree includes the quality and quantity of citizen and stakeholder participation through two main channels: stakeholder engagement and customer satisfaction measurements. The overall performance of the organization thus takes into account the level of performance in these fields. Through the establishment of compulsory transparency days, administrations were required to share process transparency data enabling citizens to participate in shaping policy.

A.N.AC. has provided a frame for the creation of the online section on “Transparency, Assessment and Merit”, some rules for the website dataset publication process (deliberation n. 105/2010) and a list of data sets requested to administrations by law in order to realize and to implement the “total disclosure” principle. An updated list of the above mentioned data is included in A.N.AC.’s deliberation n. 2/2012 which also provides some examples of data and information relevant for integrity (e.g. data on the Executives turnover in sectors at risk).

Since 2011, A.N.AC. has published on its website Reports on transparency data sets available on ministry/agency websites and in 2012 published a specific Report on the transparency of Ministries based on the evaluation of the OIVs’ statements on transparency data sets, also offering advice for improvement to the OIV and the Responsible in charge of transparency of each administration.

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 ineligibility⁴ involves the permanent or temporary exclusion from assigning offices, the occurrence of situations of incompatibility⁵ 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 RPC⁶. 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

⁴ 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 previous two years, held political positions or positions in publicly controlled or funded private bodies belonging to Regional Health Services.

⁵ 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.

⁶ 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.

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 ineligibility and incompatibility of offices" (article 16, subparagraph 3, of the Legislative Decree No. 39/2013).

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.

Previous functions

Performance evaluation

To ensure the implementation of the performance cycle, two types of supervision have been arranged, one at a central level, the other one at a widespread level. According to this, the legislator set up two new actors in the public administration panorama through the provisions of Legislative Decree No. 150/2009 .

First, a new central institution was established, the Commission for Evaluation, Transparency and Integrity of public administration (CiVIT), as an independent body in charge of the functions of defining and disseminating performance-based quantitative and qualitative methodologies as well as of monitoring their implementation.

CiVIT, at its origins, had the following tasks and functions:

- to define and disseminate performance-based quantitative and qualitative methodologies, as well as monitoring their implementation;
- to help administrations in defining outcome-based and customer-focused performance planning;
- to help to define an effective performance based management cycle and ensure transparency of the results achieved;
- to support public administrations for the effective implementation of the provisions set forth by the Legislative Decree No. 150/2009;
- to define the criteria for appointing the Independent Evaluation Body (OIV) within each administration and to oversee their implementation;
- to orient, coordinate, and supervise the independent exercise of OIVs evaluation functions;
- to monitor the compliance of transparency obligations and the implementation of “total disclosure” principle;
- to reply to citizens’ reports and requests about the compliance of administrations with transparency and integrity obligations;
- to issue guidelines (and to monitor their implementation) on quality; on the measurement, monitoring and evaluation system; on the triennial plans for transparency and integrity; for the OIV statement regarding transparency.

The second actor is represented by the Independent Evaluation Bodies (OIV) to be appointed within administrations with the task to ensure the correct implementation of the performance management cycle.

OIVs had to:

- monitor the overall operation of the system of internal control evaluation, transparency and integrity and draw up an annual report on the state of the system;
- promptly report any problem to the relevant internal government and public service entities (court of auditors, CiVIT (A.N.AC.), department of public administration);
- ensure that performance metrics and evaluation processes are correct in order to uphold the principle of rewarding merit and professionalism;
- ensure the guidelines, methods and instruments of the CiVIT (A.N.AC.) are correctly applied;
- promote and certify the existence of transparency and integrity requirements;
- verify results and best practices of promotion of equal opportunities.

Moreover, according to Law No. 190/2012 and to the Presidential Decree No. 62/2013 the OIV is required to give its opinion in the procedure for adoption of the codes of conduct, making sure that the codes comply with the guidelines of the Commission. In addition, the OIV, is responsible for supervising the implementation of the codes of conduct. Legislative Decree No. 90/2014 has provides for the revision of the rules governing the OIVs (still not implemented).

Quality of services

According to the Legislative Decree No. 198/2009, in case of inefficient services, citizens and companies may take collective action against the relevant public administrations and public service providers to obtain an adequate provision of services.

With Resolution No. 2010 CiVIT fixed the guidelines to the definition of the standards of quality and their dimensions as a first step towards the construction of a system of diffuse control of the quality of the administrative action. After a first cycle of implementation, the criticalities emerged from the 2011 monitoring activity and, in particular, the high rate of administrations that didn't elaborate standards of quality, highlighted the need of a new intervention. With Resolution No. 3/2012 CiVIT identified the guidelines to improve the instruments for the quality of services; among others some indications about the dimensions of quality and the modalities of definition of

indicators and standards were provided as well as about the need of a greater involvement of stakeholders in the process of standards definition and of a deepened customer satisfaction analysis. Moreover, between 2012 and 2013 the Commission, in addition to its activity of control and evaluation of the standards sent by the administrations, organized several bilateral and multilateral technical meetings in order to assist administrations in the process of definition of their standards. Even in this case, according to Legislative Decree no. 90/2014 the functions and control in terms of quality of services have been transferred to the Department of Public Administration.