



**MEMORANDUM OF UNDERSTANDING**

**for co-operative activities**

**related to “EXPO Milano 2015”**

**between**

**The Italian National Anti-Corruption Authority**

**(ANAC)**

**and**

**The Organisation for Economic Co-operation and Development**

**(OECD)**

**-SECOND INTERIM REPORT-**

**Background**

This interim report covers the second phase of activity of the OECD Advisory Board under the memorandum of understanding (MoU) between the Organisation for Economic Co-operation and Development (OECD) and the ANAC (*Autorità Nazionale AntiCorruzione* – National Anti-corruption Authority of Italy) referring in particular to the supervision and monitoring of EXPO 2015 tender procedures. The MoU aims to put into practice the anti-corruption experience of both organisations, in order to ensure the transparency, propriety, effectiveness and efficiency of procedures relating to staging EXPO Milan 2015.

In exercising its role the OECD is considering the analytical frameworks previously developed and related to efficiency, integrity and competition in public procurement, namely the 2015 OECD Recommendation on Public Procurement<sup>1</sup>, the 2009 Guidelines and the 2012 Recommendation for Fighting Bid Rigging in Public Procurement<sup>2</sup> (all jointly referred hereafter as the OECD Principles).

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<sup>1</sup> <http://www.oecd.org/gov/ethics/recommendation-on-public-procurement.htm>

<sup>2</sup> <http://www.oecd.org/daf/competition/oecdrecommendationonfightingbidrigginginpublicprocurement.htm>



This interim second report summarises the work carried out during the first three months of 2015. In particular:

- The first part of this report summarises the main aspects of the discussion in the institutional meetings between the OECD Advisory Board, the Prefettura di Milano and management of EXPO 2015.
- The second part of the report focusses on the control of procurement procedures from ANAC's Operative Unit Special EXPO (UOS), which has been created especially to monitor the procurement procedures of EXPO 2015<sup>3</sup>, and in particular will comment on a selected number of control procedures in light of OECD best practices.
- The third part of the report offers a few remarks based on the experience with the specific control procedures put in place by the Prefettura di Milano for EXPO 2015 to prevent infiltrations of the organised crime in the works of EXPO 2015.

## 1. Summary of the institutional meetings

### 1.1 Meeting with the Prefettura di Milano

At the Prefettura the members of the OECD Advisory Board met with the President of ANAC and selected members of ANAC's UOS, the Prefect of Milan, the Chief of Staff of the Prefettura, and executives of the Prefettura in charge of the activities of the Specialized Section of the Prefettura di Milano responsible for monitoring large infrastructure projects (Sezione Specializzata del Comitato di Coordinamento per l'Alta Sorveglianza delle Grandi Opere, or CCASGO).

The main purpose of the meeting was to discuss the control procedures put in place by the Prefettura to prevent infiltrations of organised crime in the procurement of works for EXPO 2015. These controls are exercised by the Prefect di Milano pursuant to Art. 3 quinquies of Decree 135/2009, converted with amendments by Law no. 166/2009, which instructs the Prefect to coordinate the activities aimed at preventing organized crime from affecting in the award and execution of public contracts (so called "anti-mafia control").<sup>4</sup> According to Decree 90/2014, the President of ANAC may attend meetings of CCASGO, which are chaired by the Prefect of Milan, in order to benefit from the strong synergies between the institutional controls of the Prefettura and those of ANAC, and to ensure an effective exchange of information between the two institutions. This provision thus formally establishes a close link between the anti-mafia control procedures and the anti-corruption control procedures. It is for this reason that ANAC and the Prefettura di Milano

<sup>3</sup> <http://www.anticorruzione.it/?cat=93>

<sup>4</sup> The anti-mafia controls are complementary to the *ex-ante* controls made by the UOS of ANAC according to Art. 30 of Decree 90/2014, converted with amendments by Law no. 114/2014. See for more details the first OECD/ANAC interim report. See [http://www.anticorruzione.it/portal/public/classic/AttivitaAutorita/Expo2015/\\_expo?id=ca777b500a778042556851ff0960d517](http://www.anticorruzione.it/portal/public/classic/AttivitaAutorita/Expo2015/_expo?id=ca777b500a778042556851ff0960d517)



have established a close institutional cooperation on EXPO that could be considered at national level as a best practice of institutional synergies and integrated control procedures.

Concerning the methodology for the anti-mafia controls, the info gathering and investigation is conducted by the Prefettura with the Police, with the support of the Interagency Group for Expo Central (Gruppo Interforze Centrale per l'Expo, GICEX) and the Anti-Mafia Investigative Department (Dipartimento Investigativo Anti-mafia, DIA) through access to available databases and the cross-checking of the findings with the DIA database (SIRAC). This "fast-track procedure"<sup>5</sup> allows a preliminary screening of the factors identified in the law as *indicia* or "circumstantial evidence" for infiltration by organised crime. If any of these factors is detected, the Prefettura proceeds to a closer review. Such closer review, for example, looks at whether one is dealing with "ordinary" crime, which is not relevant to the activities and responsibilities of the Prefettura, or with "organized" crime and therefore relevant to the anti-mafia controls of the Prefettura. The controls based on information retrieved from databases are then backed up with on-site inspections by the Police which involved numerous direct accesses to the construction sites. These controls "on the field" are "targeted" on the basis of the findings from the database research. The Prefettura considers that this combination of database controls and on-site inspections for purposes of detecting in a preventive way possible infiltrations of organised crimes in public works will set up an example that will be followed in the future at national level.

The meeting also touched upon the theme of the international dimension of the anti-mafia controls. Various EXPO country pavilions are built under the procurement rules and regulation of foreign countries, to which there is no direct and automatic application of the Italian legislation. In these cases, therefore, the preventive anti-mafia controls do not apply, unless this is agreed on a voluntary basis with the foreign country.<sup>6</sup> The Prefettura explained that some foreign representatives, showing great confidence in the Italian system, requested the application of the special anti-mafia procedures of the Italian legislation and controls. This made it possible to detect the presence of firms with anomalies. These firms were promptly removed from the construction site, following access to the site by the police forces.

## 1.2 Meeting with EXPO Milan 2015

The meetings with the senior management of EXPO 2015 S.p.A. took place at the headquarters of the company EXPO and was attended by the members of the OECD Advisory Board, the President of ANAC, members of ANAC's UOS EXPO, the Prefetto di Milano and his staff, and by the Government Delegated Commissioner (Commissario Unico Delegato del Governo) for EXPO Milan 2015 and CEO

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<sup>5</sup> The database checking through the fast-track procedure allows controls within just 15 days, which are reduced to 7 for applications by EXPO 2015 S.p.A.

<sup>6</sup> The Prefettura also explained that even if sites of foreign countries are not subject to inspections by the Police or to the anti-mafia procedures, they are still obliged to provide all data related to resources and personnel entering into their construction sites. This information is inserted into a database that can be consulted by police and other control agencies for preventive screenings of companies, and to activate, therefore, targeted access.



of the company EXPO, and by the EXPO's staff responsible for procurement activities and for the project Open EXPO.

The meeting offered the opportunity to discuss issues raised in the first interim Report of the OECD Advisory Board in particular regarding the transparency principle in relation to information disclosed by the company EXPO on its website. EXPO 2015 acknowledged the points raised by the OECD, but stressed the progress had been made on this issue in recent months also with the support of ANAC. EXPO committed to promptly improve the content of EXPO's corporate website to meet the highest standards of transparency and to complete the publication of data on procurement procedures, especially with regard to the early years of the activity of EXPO.

The discussion moved to the flow of information between EXPO and ANAC and to the controls of legality on the activities of EXPO, with particular regard to the methods, outcomes and impact over time. EXPO explained that the controls on its procedures aim at preventing both infiltrations by organized crime and corruptive phenomena. EXPO representatives and the President of the ANAC emphasised how these controls have a "cooperative nature" and, in addition to prevent illegality, allow to intervene *in itinere*, i.e. while the procedures are ongoing, with a "constructive" rather than a "destructive" approach.

As for the *ex-ante* controls of the legality made by ANAC, according to EXPO, UOS has always had a problem-solving approach which is apparent in the opinions sent by UOS to the contracting authority on the procedures under review and in continuous, real time contacts between including EXPO and UOS to ensure that the contractual procedures of EXPO meet from the very first moment the standards required. Controls are also very timely as UOS is able to respond to requests from the contracting authorities within an average of five days.

Furthermore, EXPO also pointed out that this system has its costs. The interaction between EXPO 2015, the President of ANAC and the UOS has certainly led to a considerable amount of work for the contracting authority. However, this upfront commitment has had absolutely positive outcomes in the subsequent phases of the procedures.

The discussion also emphasised the importance of two instruments introduced by Art. 32 paragraph 1 of Decree. 90/2014, converted with amendments by Law no. 114/2014, namely the possibility for the President of ANAC to request the Prefect (i) to order the renewal of the corporate bodies of companies involved with criminal activities, by replacing the individual(s) involved; or alternatively, when the company does not comply, (ii) to appoint an extraordinary commissioner to run the company and ensure the full implementation of the obligations under the procurement contract.<sup>7</sup> To date, these measures have been applied only in 4 cases concerning EXPO.

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<sup>7</sup> Under Art. 32 paragraph 1 of Decree. 90/2014 these measures can also be applied in cases of disqualification orders by the Prefect of Milan following an anti-mafia control and if there is an urgent need to ensure the completion of the contract.



## 2. Review of procurement procedures from UOS

Since its establishment in July 2014, the UOS developed a comprehensive framework for controlling the public procurement procedures of EXPO 2015. This framework includes:

- 1) the definition of *Linee Operative* (Operative guide);
- 2) the setting-up of 7 models of Check Lists;
- 3) the publishing of *Linee Guida* (Guidelines);
- 4) the setting-up of the *Raccomandazioni* (Recommendations).

### 2.1 UOS procedures – An overview

Since then and using this framework, UOS, after July 2014, revised all public procurement procedures of the EXPO. When there are unconformities in the processes, UOS requests additional information to EXPO S.p.A , prior to the clearance. UOS also meets regularly with the procurement technical units of EXPO 2015, either in Rome or in Milan, holding more than 20 meetings so far. The average response time of UOS is 5 working days between the arrival of the process and the issue of the response, in order to allow the processes to continue without major interruptions or delays, which can be considered as an internationally accepted good practise for review bodies.

It is important to stress that 53 (around 1/4) of the EXPO pavilions are not included in the list of procedures revised by UOS as they were commissioned directly by the EXPO participating countries. As explained above, these works do not follow Italian public procurement legislation and therefore are not subject to the anti-corruption control of ANAC. EXPO is responsible for the construction of 140 pavilions.

The OECD Advisory Board met with the UOS in Rome and discussed the methodology used by the unit, the major challenges, achievements and conclusions from the work. Table 1 presents a summary of the work developed by the UOS as of 16 March 2015, detailed by type of procedure and outcome. As of this date, the UOS had reviewed 153 procurement processes, with a total procurement value of around EUR 589 million, with 60% of the processes related to tenders. In 136 processes UOS received the process from EXPO, in additional 17 it took the initiative to request clarifications and information from the contracting authorities (CA).



**Table 1 – Procurement procedures reviewed by UOS**

	No.	With comments from UOS (unconformities and legal issues)
Procedure/Tenders	92	80
Settlement agreements	2	0
Additional agreements	4	4
Sponsorship	3	3
Request for information	17	0
Conventions	4	4
Tender committees	8	5
Awardings	18	13
Random controls <sup>8</sup>	2	0
Intermediary note	3	0
<b>TOTAL</b>	<b>153</b>	<b>109</b>

Source: ANAC, March 16, 2015

In 109 (72% of the cases analysed) of the procedures the UOS detected unconformities or potential failures to meet legal requirements, and requested the correction of the process in one or several aspects as exemplified in the processes analysed below. For 107 procedures Expo 2015 S.p.A. has adopted the corrections formulated by the UOS and/or eventually provided the explications and the additional documentation required (some other cases are still under analysis).

### 2.1 Analysis of selected control procedures of UOS

In order to better understand the methodology applied by UOS to the review of procurement processes of EXPO 2015, the OECD Advisory Board analysed in more detail 5 procurement processes controlled by the UOS, selected due to their size, typology and characteristics (Table 2). The chosen procedures represent around EUR 250 million, 42% of the total value reviewed by the UOS.

<sup>8</sup> Art. 6.2 Linee guida del 17/07/2014



**Table 2 – Selected procedures for further analysis**

Procedures	Amount (EUR)	Type
Linee guida accordo piastra	178,000,000	Settlement Agreement
Servizi di vigilanza	23,580,852	Tender
Sistema viario molino dorino - autostrada dei laghi	20,994,000	Tender
Realizzazione albero della vita - allestimenti tecnologici	3,829,439 <sup>9</sup>	Tender with sponsorship
Sponsorizzazione intesa san paolo "banking partner"	23,100,000	Sponsorship

Source: ANAC

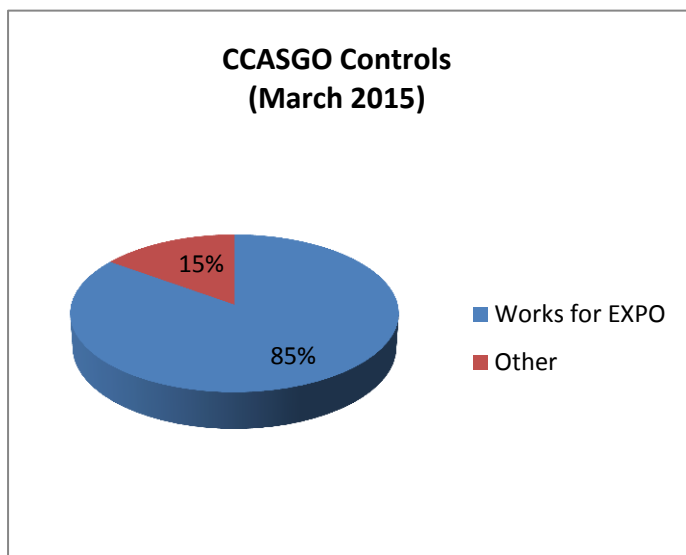
For the analysis of these procedures the OECD applied an analytical framework that included (i) the analysis of documentation and process instruction, (ii) the application of principles described in the Linee Guida of ANAC/UOS vis a vis the OECD principles and (iii) the follow-up process with EXPO and validation of the corrective measures.

In each of the above mentioned procedures it was possible to verify that UOS applied thoroughly its control framework. The processes analysed by the OECD include check-list validations and information about the procurement procedures, usually with a technical note issued by UOS about the type and object of procedure, commenting the awarding criteria, the conditions of the supply of the goods or services and contract details. They also included a note issued by the coordinator of the UOS control section with remarks and recommendations whenever necessary. In some cases these recommendations included the analysis of the object of the contract, identified incongruences, the changing of the awarding criteria, the elimination or changes in the technical specifications in order to increase competition or the improvement of requisites to assure the quality of the delivery of the goods or services. The analysis was always formalized in a letter with the assessment of each procedure sent by the President of ANAC to EXPO. In the referred processes it was possible to conclude that EXPO accepted and followed the recommendations issued by ANAC.

Moreover, even in the cases where the validation from ANAC was not mandatory, like in the case of pure sponsorship agreements, excluded from the Linee Guida, ANAC provided comments and recommendations, following the application of the principles of the guidelines.

<sup>9</sup> The total value of the project is of EUR 10 million, the remaining amount is given through a sponsorship contract.

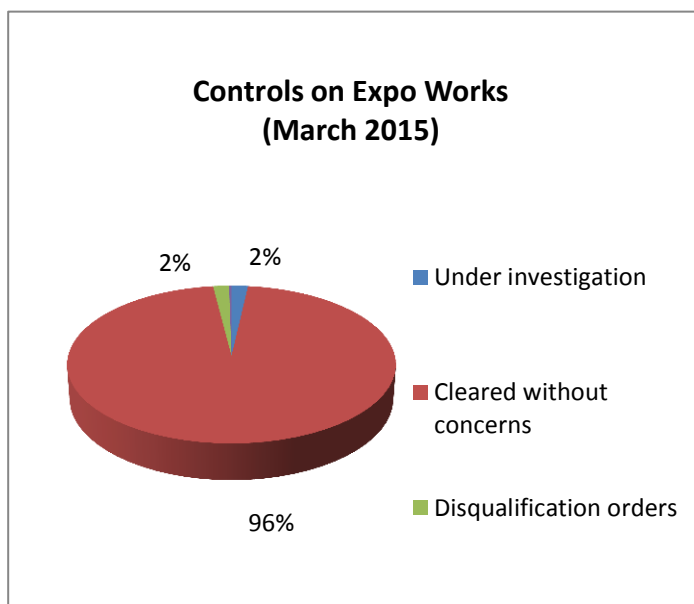
### 3. Review of anti-mafia control procedures of the Prefettura di Milano



Another important control mechanism put in place for the EXPO 2015 is the one performed by the Prefettura di Milano and the CCASGO and targeted to controls under the Anti-Mafia legislation. For that purpose, the Prefettura obtained additional powers that include the possibility of debarment and on-site inspections.

From information at our disposal it appears that since 2011 to 21 March 2015 the Prefettura di Milano inspected 5233 files, of which 4445 (85%) related to the works of the EXPO.

Source: Prefettura di Milano



Only 77 files out of 4445 are under investigation and the other 4368 are concluded. This is an extremely significant data compared with the 1665 files, with 789 under investigation, inspected as of 8 August 2013, which indicates a clear growth in the activity, also related to the increased rhythm of works towards the final phase of the EXPO project. The OECD Advisory Board also positively noticed that the cases pending investigations dropped from 65% in August 2013 to 2% in March 2015, indicating a significant improvement in the efficiency of the control procedures by the Prefettura.

Source: Prefettura di Milano

Of the 4445 controls made up to March 2015, 96% had found no connection to organised crime, and in 2% of cases the control found concerns which led to a disqualification order.

As the result of the controls and on-site inspections, the Prefettura di Milano issued 79 disqualification orders (to 54 different companies), preventing them from operating any longer not





only on the EXPO project but more generally from participating to public works. This is considered to be the most important control activity of this kind ever performed in Italy for a public work.

Disqualification orders can be a very effective tool as they have a strong deterrent effect. In that context, due consideration should be given to impact on competition in already concentrated markets.

The experience of the anti-mafia controls of the Prefettura di Milano and more in general of EXPO also shows the importance of establishing close relationships with similar control bodies in other jurisdictions, improving overall coordination and governance. Access to information is key to identify red flags, i.e. suspicious cases that would require closer scrutiny. Most large infrastructure projects see the involvement and participation of international firms so that actions to promote legality and adequate, effective and dissuasive control mechanisms cannot always be merely at national level. In the next years the convergence of the different national legal systems towards common standards and the exchange of information to combat illegality will be more and more central themes of the international debate.

### **Remarks and Recommendations**

The experience with the anti-mafia controls of the Prefettura di Milano and the anti-corruption controls of ANAC represents a model for integrated controls and institutional synergies which allows for a "co-ordinated institutional response" to organized crime and corruption. This model breaks away from the traditional silos approach to controls by different institutions and organisations, which is inevitably linked to *ex-post* detection of problematic situations rather than to an *ex-ante* contribution to better and more effective procurement procedures. Moreover this is a model of "collaborative controls" characterized by an interaction with the contracting authorities that allows preventing illegality and eventually adopting corrective measures in order to ensure the realization of the public works on time.

The experience with EXPO appears to respond more effectively to the needs of large public and social events that must be perceived "corruption-free". This is possible thanks to the recent "smart regulation", i.e. to an intelligent regulation with targeted controls. Among the positive effects of this system, the OECD Advisory Board stresses that this system acts indirectly as a deterrent to further corrupt conduct and helps restoring the confidence of market operators on transparency and fairness of awards and the subsequent management of the contracts.

The experience of EXPO 2015 so far has demonstrated that it is possible in a short time with appropriate measures and tools to radically change the frameworks for legality controls and the perception that stakeholders have of public contracts particularly when large works or events are at stake. The system put in place for EXPO 2015 combines efficiency and legality and can be used potentially as a model for other large events around the world. For example, the OECD considers



that some elements and best practices emerged from this project with ANAC can be a source of inspiration to foster integrity of other large infrastructure projects. In Italy, the model put in practice for EXPO in last few months could be eventually replicated in other context such as, for example, the works for the 2024 Olympic Games for which Italy has put its candidature forward.

Paris, March 30, 2015

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