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***REPORT CONCERNING THE FIRST YEAR OF
THE IMPLEMENTATION OF LAW NO.
190/2012***

This Report offers an initial survey of the state of implementation of the anti-corruption law by relating the first tangible facts through the analysis of the activities of the actors involved, underlining the positive and negative aspects and offering possible improvement proposals.



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An overall vision: criticalities and proposals

The complex initiation of the process

The coming into effect of Law no. 190/2012, containing “Provisions for the prevention and repression of corruption and illegality in Public Administration”, 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 should be part of an integrated policy the effectiveness of which must be monitored in order to adopt the eventual corrective measures.

The organizational problems and implementation difficulties are inevitable in the early stages of any process of change in the Public Administration. In the specific case of Law no. 190/2012, they have been intensified by the complexity and scope of this innovative reform legislation which acts upon, among other things, the delicate sphere of relations between politics and administration. It is emblematic that in the first year of implementation of the anti-corruption legislation, the Authority was able to detect that the regulations of most direct relevance to the political figures at various levels of government and especially, regulation on ineligibility, incompatibility and transparency obligations for political bodies, attracted particular attention and concern within the administrations.

Delays accrued with respect to the original deadlines prescribed by law, determined, not only by the complex mechanisms of implementation, but also by the particular political circumstances, do not allow to report about results. However, it is worth to stress the first steps of this implementation process that represents the starting point of a process of adaptation of the administrations to the principles of legislation, with the aim of improving the integrity of Public Administrations. It is a dynamic process that, in the light of the experience gained and the difficulties expressed, even though in different ways, by administrations, should be oriented in the direction of "complementarity" to other reform policies aimed at improving efficiency and effectiveness of the public action. In view of this, it seems coherent having identified CiVIT (Independent Commission for the Evaluation, Transparency and Integrity of Government) as the National Anti-Corruption Authority.

During this first year, the Authority committed to stimulate administrations and agencies to begin the implementation of the principles of Law no. 190/2012, despite the delays mentioned before, so to act upon the various interpretative doubts emerged, to intervene to overcome the opposition and the reluctance expressed by many, and simplify, where possible and allowed by legislation, all matters relating to the flow of information.

The surrounding conditions, due to the uncertainties generated by a complex and unstable regulatory framework, have certainly not facilitated this already difficult process. There were, in fact, a series of legislative provisions, intervening in a decisive way on the functions of the Authority, which limited its competences and altered its characteristics, but which not always responded to a logical and unified program. It is desirable that in the near future, other elements of uncertainty are not added on to the physiological difficulties associated with the implementation of an innovative and complex scheme.

The difficult affirmation of the culture of integrity

It appears particularly problematic to ascertain that politicians, key players in the policies of the prevention and fight against corruption, have not demonstrated, at the various levels, a particular determination and commitment towards the issue. Significant in this regard is the fact that, despite the repeated requests by the Authority, on November 28th, 2013, not all ministries had yet appointed the Responsible for the Prevention of Corruption (hereafter called RPC) and that similar delays were present both in national and territorial agencies. This issue is not of little importance, since the figure of the RPC is the focal point of the implementation of the policies to prevent corruption within each administration. The RPC has the task, among others, of ensuring the effective enforcement of the Three-Year Plan for Prevention of Corruption (hereafter called PTPC).

Meanwhile, a disparate group of people, using “targeted” and non-systematic interpretations of the law, invoke alleged specificity in order to try to circumvent the application of the law, with reference, for example, to the possibility to locate within their organizational structure a person that can fulfill the role of the RPC or to the applicability of the rules of transparency to their managing bodies.

Moreover, in a more general perspective, already in the 2012 Three-Year programs for the transparency and integrity of the central administrations, a lack of attention to issues of integrity, with the exception of isolated cases of application of risk analysis was noted. Similarly, the results of the monitoring on the beginning of the cycle of performance 2013 showed that, despite the indications given by the Authority, few administrations developed an integrated approach within the Plans of performance and provided for objectives, indicators and transparency and integrity targets in the same Plans.

The effectiveness of the prevention model

Information and experience elements on the problems expressed by administrations in setting the cycle of performance must, therefore, be valued in the definition of the preventive policies to give substance to the scheme of the legislator, which is actually based on a “cascade” programming model. This awareness has directed, among other things, the intervention of the Authority on the contents of the National Anti-Corruption Plan (PNA) and on the information in it provided for in relation to the PTPC (Three-Year Plan for Prevention of Corruption) of the administrations. In fact, in order to be effective, the PTPC must contain appropriate targets and adequate measuring indicators and should be coordinated with other programming tools: the balance sheet, that ensures the financial sustainability of the interventions needed; the Plan of performance, in which should merge the strategic and operational objectives chosen by each administration, including measures to implement the PTPC; the Three-year program for transparency and integrity and the Plan for training. Renewed emphasis has to be put on this aspect during the start of the 2014 cycle of performance to promote the effective integration between the plurality of instruments related to performance, transparency and anti-corruption.

The efficient implementation of the policies for the prevention of corruption within each administration also depends on an organizational structure consistent with all 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) are necessary so that this figure can actually influence the behaviors and the operation and not just be a scapegoat.

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

How to overcome the “compliance culture”

All the requests received by the Authority give an image of Public Administrations that are primarily worried about the innovations introduced and reluctant in assuming the connected responsibilities and these requests are formulated to obtain confirmations and not only for real interpretative complexities. In short, Public Administrations adverse to taking risks that often prefer the formal observance of due terms and procedures rather than the conscious implementation of an effective policy for the prevention of corruption. Similarly to what was found in the first years of application of the model and instruments under Legislative Decree no. 150/2009 on the subjects of

performance, transparency and quality of services, even in the first year of implementation of the anti-corruption law, a sense of "compliance" seems to have prevailed.

This attitude, endemic in the way of being of the Italian Public Administration, is likely to be accentuated by the increased range of managerial responsibilities provided for by law and legislative decrees, with the possible and dangerous consequence that executives react by adopting a purely formal approach and that the administrative procedures become more cumbersome and slow.

To overcome this approach, not only deviant behaviors have to be sanctioned but also investments in the diffusion of knowledge, in the communication of best practices and in valorizing the differences are required in order to stimulate each administration to program its own prevention policy. In this perspective, the degree of openness of the administration towards the outside can make the difference as well as a "targeted" training that however, one year after the entry into force of the law, it is struggling to establish itself.

The training

Although the role assigned by the legislator to the training as a tool for the prevention of corruption, it is today one missing piece of the mosaic. The activities planned by the National School of Administration (SNA) have not gone '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 are limited in the operational phase only to few administrations.

While providing a significant increase in the hours of training and assistance during 2014, it is to be expected, however, that the request by the administrations for a targeted training of those who work in areas particularly exposed to corruption phenomena can 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 a 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.

The need to differentiate

Particular problems have occurred during the application of a complex discipline that does not introduce the necessary differentiations in relation to the size of the administrations. In this regard the concern expressed by small local agencies that are unable to fully and properly implement specific

provisions of law, as the ones related to the appointment of the RCP or to the rotations of the executives, within organizational structures in which is present a single executive figure holding a plurality of skills is emblematic.

Even the immediate perceptiveness of transparency requirements laid out by Legislative Decree no. 33/2013, the enlargement of people required in its implementation, the need to adapt a unique legislation to administrations and agencies which are extremely diversified, as well as the abnormal extension of the number of mandatory publications (about 270 in total), are elements that clearly manifest a problem of sustainability of the system and that cause in those require to apply the law many doubts and interpretative uncertainties. Here, the Authority reiterates, as it has done on several occasions, the need to simplify mandatory publications and, however, to differentiate them by type of administration, in relation to the size and the organizational characteristics of the same, even in order to correctly valorize the content of transparency in terms of accountability.

It is desirable to develop a system of institutional networks with an active role played by associative bodies for the diffusion of information, the circulation of documents and the identification of the modalities of action most appropriate in each specific context (e.g. universities, chambers of commerce, research bodies, etc.) to implement anti-corruption policies that are differentiated but “ruled by the center”. It is also necessary that these networks interact with the Department of Public Administration (DFP) and the Authority, each within its own sphere of competence. Similarly the issue of the application of Law no. 190/2012 and Legislative Decrees no. 33/2013 and no. 39/2013 to the educational institutions must be addressed in a coordinated manner with the relevant ministry in order to find “sustainable” solutions, even in consideration of the elevated number of institutions concerned.

The Importance of information

The availability of reliable and systematic informative flows is an essential prerequisite for the successful implementation of Law no. 190/2012 and for the execution of the supervision activity. From this point of view, an important and urgent step is the definition of standardized procedures for the release of processable and comparable data and information to be realized through the coordination of the DFP with the Authority, in order to make them functional to the supervision activities. The experience gained during the monitoring of the performance of the central administrations has stressed that even in large administrations informative supports constitute a critical issue. Therefore, the efforts needed in this direction should not be underestimated.

Transparency: towards a new prospective

The process of adaptation to the rules on transparency has certainly started but the effectiveness of the publication of data, documents and information may be compromised by the fact that to the objective difficulties related to the tremendous growth of obligations - making the immediate implementation extremely difficult- a cultural attitude of administrations unwilling to give an account of their activities is added. Even in the presence of an overall effort to extend the range of information posted on institutional websites, in fact, to date the effectiveness of transparency as a means to effectively promote widespread forms of social control, is still quite unsatisfactory, even due to the reluctance or the inability of most administrations to generate and diffuse the information related to the services provided and to the related costs, the publication of which is necessary to inform about performance the outside of the administrations itself.

This aspect represents a significant element of the supervisory interventions launched this year and will be the focus of the commitment to the starting phase of the cycle of performance 2014. The still weak link between performance and transparency should also be strengthened with the explicit provision in the Plans of performance of appropriate references to objectives, targets and indicators related to the implementation of the Three-year program for transparency and integrity.

In this perspective, it would also be desirable, as already proposed by the Authority in 2012, moreover against a smaller number of obligations, to reduce the specific mandatory publications and enhance the function of the Three-year program for transparency and integrity as a targeted response to the specific informative needs connected to the functions of each administration rather than, as it is often the case, as mere summaries of the mandatory information provided for by law.

Problematic issues

The complexity of the legislative provisions has given rise to different and relevant problems of interpretation and application, particularly with regard to issues of incompatibility and ineligibility ruled by Legislative Decree no. 39/2013, in respect of which the Authority has given its contribution using its own consultative powers. The transfer of these powers to the Minister of Public Administration and Simplification through Legislative Decree no. 69/2013, containing "Urgent provisions for economic recovery", converted with amendments by Law no. 98/2013, besides creating uncertainty and confusion in the administrations, did not allow to deal with some problems that have emerged with reference to numerous specific cases, for which it would have been appropriate to provide timely clarification and which, currently, are partially unresolved. Emblematic in this regard

are the issues posed by the coexistence of different disciplines for the individual situations of incompatibility, as in the case of the provisions contained in Legislative Decree no. 39/2013 and in the Unified Code of Local Authorities, Legislative Decree no. 267/2000 (with doubts concerning incompatibility, systems of sanctions, subjective scope of application, controls between the statements made about the absence of grounds for incompatibility), to which the ones relating to the coordination between sources of different levels, mainly due to the regulatory autonomy accorded to the regions and local authorities, and some unclear legal provisions concerning the causes of ineligibility attributable to the presence of convictions, are added.

Then, there are elements of inconsistency that would require an intervention by the legislator: for example, the issues posed by the presence of provisions identifying situations of non-symmetrical incompatibility between state executives and those of regional and local governments and publically owned companies and uncertainties arising from a certain “farsightedness” in the identification of the bodies in charge between Legislative Decree no. 39/2013 and Legislative Decree no. 33/2013 are particularly significant.

There is also a lack of clarity about the rules to be applied to the sanction proceedings provided for by Legislative Decree no. 33/2013: the decree defers to Law no. 689/1981, but who is responsible for the initiation of the sanction proceedings and the enforcement of the sanctions remains unclear and in the same way the boundaries of the power of the Authority are not well defined.

The boundaries of the application of the regulations on transparency to the Public subsidiary companies participated by public administrations, are still too uncertain because of the unclear references to both "public interest activities governed by national law or by the European Union" (Article 1, paragraph 34, Law no. 190/2012), to which transparency regulations are usually applied, and to the listed companies and their subsidiaries to which transparency regulations are not applied, where "listed" and "subsidiaries" can have various meanings. An intervention aimed at defining the minimum threshold of public shareholding to which connecting transparency obligations for the participant agency would also be opportune. In addition, a clarification on how to elaborate a series of data on the services to be published, starting with the recognition of their costs, and on the definition of the boundaries, now uncertain, between the need to protect the individual security and the need to respect transparency would also be auspicial.

Some problems, even in operational terms, also derive from the absence of a time limit for the storage of data in the archive sections, pursuant to Article 9 of Legislative Decree no. 33/2013, with an obvious burden for the administrations in terms of expense. It would be useful to introduce different

deadlines to take into account the different types of documents, records and information for which the decree provides for the publication.

Finally, it is worth noting the lack of an express protection of the confidentiality of those making reports to the Authority.

Problems related to measurement

The effective fight against corruption necessarily requires the overcoming of the informative gap that exists today. A solid and adequate measurement of the phenomenon is an unavoidable and prior aspect both for a more complete understanding of its dynamic and its distribution on the territory and in the different sectors and for addressing the policies of contrast effectively.

Therefore, a national institutional commitment providing for the inclusion of the issue of corruption among those subject to systematic investigation by the National Institute of Statistics is necessary and in this sense, some positive developments as a result of the interlocution initiated with the Institute have been registered. At the same time, overcoming the lacks registered in the informative sources at the origin of judicial statistics would be desirable. The absence of a comprehensive digital archive of criminal court sentences makes it difficult to analyze and evaluate the phenomenon of corruption as it “surfaces” from juridical action.

A boost from below

The boost that comes from civil society to fight illegality is an essential component of the success of anti-corruption policies. Citizens and businesses, individuals or associated, may not only be consulted in the preparation of PTPCs, Three-Year programs for transparency and integrity and Codes of conduct of the administrations, but they can also report lack or lateness in compliance with the law or with the guidelines regarding the anticorruption regulations to the agencies that operate on different levels of control. This is true above all with reference to the fulfillment of the obligations of transparency, which are more visible from the outside, but also in relation to situations of incompatibility and violation of the codes of conduct.

The experience gained in this first year shows that the potentialities offered by the legislation on anti-corruption and transparency are far from being fully exploited, as demonstrated by the limited size of reports, mainly oriented towards issues of transparency in the reality of small administrations, often arising from the local political debate. In this direction, the strengthen of the Authority’s listening skills, during the implementation phase of the law, could be a useful tool to encourage the active

participation of citizens and small businesses. Another useful tool could be the effective launching of the “civic” access to the procedures by the administrations, an instrument that is still struggling to establish itself.

The role of the Authority

One of the key features of the model of prevention of corruption designed by Law no. 190/2012 is that to identify a National Anti-Corruption Authority characterized by a strong independence from the Executive. It is needless to emphasize the importance of independence, moreover widely recognized in the international arena, with respect to the administrations and political leaders, for the performance of functions that involve the assessment of the way in which the law is applied, of the overall functioning of the administrations themselves and of the measures taken for purposes of integrity and transparency. It is quite useful to remember that CiVIT, through the reform implemented with Legislative Decree no. 150/2009, was established to act as a fulcrum and engine of a system based on the centrality of the evaluation of the personnel and the structures, in which the cycle of performance, the quality of public services, transparency and integrity of the administrative action appeared highly integrated with each other, also in view of the prevention of corruption. Subsequently, the legislator moved the focal point concerning regulation, taking into account, on one side, the impact that the economic crisis and the consequent solutions set by public finance measures determined on the implementation of the reform and, on the other side, the growing demand for appropriate actions in the fighting of corruption. So, measures of prevention were defined among which the discipline on transparency represents a fundamental prerequisite. Legislative developments registered in recent months do not seem to fit in the model designed by the legislator during the previous three years.

The downsizing of the advisory functions of the Authority through Legislative Decree no. 69/2013, converted with amendments by Law no. 98/2013, in fact has brought back functions of interpretation to the Executive, the contents of which could restrict the exercise of supervision, if not in synchronicity with the interpretation of the Authority. The provision of a mandatory but non-binding opinion from the Authority on the directives and circulars of the Ministry provides a partial solution to the problem.

Finally, the transfer of competences related to performance - provided through Legislative Decree no. 101/2013, containing "Urgent provisions for the pursuit of the objectives of rationalization in the public administrations", and subsequently canceled on conversion of the decree - has generated

confusion and uncertainty in administrations and delayed, among other things, the appointment of the Independent Bodies for Assessment (hereafter called OIV), also called upon to perform the relevant function of certification with regard to transparency. Through the same measure, the legislator also decided to intervene on the organization and composition of the Authority, by changing its name to the National Anti-Corruption Authority and for the evaluation and transparency of Public Administrations (hereafter called A.N.AC.), increasing the number of its components and establishing the current members of the Authority leave before the “natural” end of their term. Regardless of any assessment on the compatibility between the choices made during the emergency decree and the subject of the administrative organization, especially when dealing with issues related to the independence, also recognized on a legislative level without controversy to the Authority, one cannot but foresee that this state of affairs is likely to undermine the power of the Authority, an essential requirement for the effectiveness of its work, and risks of undermining some of the fundamentals of the recent reforms, first of all the one of independence. In this perspective, the disparity between the objectives assigned to the Authority by the legislator and the means at its disposal should also be emphasized, as repeatedly reported in different institutional settings. In particular, in the presence of an activity in constant growth, the limited number of human resources and the lack of an organizational role, provided for almost all of the independent Authorities, poses considerable problems associated with, among other things, the frequent turnover of staff and the inability to ensure continuity of the operational structure, even with invariance of expenditures.

1. Premise

Objectives and limitations of the report

The Report aims to offer a first assessment of the implementation of Law no. 190/2012 one year after its entry into force, recalling briefly the essential normative frameworks, reporting the first concrete evidence through the analysis of the activity of the actors involved, emphasizing the positive and the negative aspects and offering possible suggestions for improvement based on the gained experience. In view of the delays that occurred with respect to the original deadlines provided for by law, caused not only by the complex mechanisms of implementation, but also by the early termination of the XVI legislature and by the long time it took to swear in the XVII legislature, the National Anti-corruption Authority considered it appropriate to analyze the 'state of the art' of the policies to fight corruption as the preliminary moment with respect to Article 1, paragraph 2, letter g) of the law, according to which "the National Anti-corruption Authority refers to Parliament, presenting a report by December 31st of each year, on the contrast of corruption and illegality in Public Administration and on the effectiveness of the provisions in force".

Just as a result of the delays mentioned, the report is mainly focused on the positive and negative aspects that arose in this first year, through the activities carried out by the Authority and the other institutional bodies to implement the provisions of the law - so that the system of prevention of corruption be fully into force in 2014 - because it is not yet possible to report the results. The report is organized thematically in order to underline the most problematic aspects of the new legislation and of its practical implementation.

The report, with the limitations described above, aims to offer a first contribution to the debate in the institutional locations at different levels and to the knowledge amongst the public opinion of the issues related to the effective implementation of Law no. 190/2012, in the awareness that to adequately address the complex challenges that the prevention and the fight against corruption impose on our country, a strong unity of purpose, a spirit of loyal cooperation between the institutions and a growing attention of institutions and civil society to the affirmation of a culture of legality and integrity are preliminarily needed.

2. The Context

The image of Italy is currently that of a country with a high level of corruption perceived by citizens, businesses and analysts. Political-administrative corruption begins to become an alarming element especially in the mid-seventies and increases steadily until the first half of the nineties. In 1995, it shows a decreasing trend as a result of the investigations and prosecutions of those years and then it reappears in an even more invasive way in the last two decades¹.

Added to this is the distance between Italy and most of the member countries of the European Union in international rankings, whatever the indicator used, in view of the fact that generally countries with similar levels of economic development and political-institutional structures present comparable levels of corruption. More precisely, the countries of Northern Europe (Denmark, Sweden, Finland) constantly occupy the top positions of the ranking. Austria, Germany, France, the Netherlands and the United Kingdom stand on medium-high values. Southern European countries (Italy, Greece, Spain and Portugal) are in significantly worse positions. Similarly, the level of social capital and education in our country is equally distant from that of the main European partners.

Italy presents itself as an anomaly in the European landscape also with regard to the distribution of corruption in the country, which does not appear to be homogeneous. A recent study on the quality of institutions (of which corruption is one of the pillars) conducted on behalf of the European Commission by the University of Gothenburg in 2010 recorded for Italy the greatest internal variance on a regional basis in Europe.

The pervasive and systemic nature of the phenomenon inevitably leads to a weakening of the public's confidence in institutions, the political class and Public Administration, to a debasement of the principles of good governance and public ethics and to a profound alteration of the culture of legality. From a strictly economic point of view, corruption alters the functioning of the market, penalizing healthy businesses and limiting or preventing new business initiatives reduces foreign investment flows and distributes public resources inefficiently.

¹ In the 2013 survey of *Transparency International*, Italy recorded an index of perceived corruption equal to 43 (compared to the value of maximum transparency of 100), which reflects the impact that the recent phenomena of corruption and embezzlement may have had on the national and international perception of the phenomenon. This 2013 figure, although slightly improved compared to that of 2012, is not too far from the surveys of the last decade, according to which Italy is placed in similar positions to those of many countries in Asia and Latin America.

Widespread information on the extent of the phenomenon through various types of indicators, especially in a comparative perspective, can help to increase the level of awareness and responsibility of the civil society, the political class and the Public Administration, especially in view of the adverse effects corruption has had - and will continue to have if not properly opposed - on the political, economic and social systems. The promotion of the good governance certainly passes through political and administrative institutions characterized by a higher degree of responsibility. However, it is clear that corruption is not just a problem of the structure of legal and political institutions, but also a socio-cultural problem, which is itself at the origin of the weakening of governance in the country as a whole, and certain areas in particular. An accurate quantitative detection, however limited, is an essential information platform to systematically and consistently check the dynamics of corruption in its quality traits and to identify the sectors and geographical areas in which it shows higher incidence. Achieving a goal of this kind requires likewise systematic collaboration between the Authority with the National Institute of Statistics (hereafter called ISTAT) and the information services of the ministries concerned and also with research agencies, in order to strengthen and extend the various methods of calculating the already existing and well-established phenomenon. In this sense, arranging, for example, a survey addressed to citizens regarding their direct perception and experience of corruption, regarding the various Public Administration sectors and regions, can be an important contribution to the definition of the measures to combat corruption, considering the fact that the phenomenon of corruption is distributed unevenly over the territory. At the same time, developing quantitative-qualitative analysis of court sentences and audits relating to the crimes of bribery and corruption can help to deepen the knowledge of the legal dimension of the phenomenon, in other words, integrate the knowledge of “underground” corruption with that of “surfaced” corruption providing a more complete and articulated empirical picture of the phenomenon.

2.1. The problem of measurement

The quantitative and qualitative analysis of the dynamics of corruption in Italy requires the use of precise and reliable measures that allow to provide an empirical foundation to the causes and effects of corruption in territorial contexts both on a national and local level, as well as to the definition of policies of contrast that are appropriate with respect to the size, the territorial dimension and the specificity of the phenomenon. Moreover, the legislator has assigned to the Authority the task of analyzing "the causes and factors of corruption" and of identifying "the interventions that may help to prevent and contrast it" and the measurement of the phenomenon is exactly functional to this task.

Corruption, however, is an extremely complex phenomenon and difficult to define, and even more to measure. In recent years some measurement methodologies have been consolidated at an international level that have produced different types of indicators that, by their nature, give a picture of corruption somewhat differentiated in terms of size. Subjective indicators, both perceptive and experiential, focusing on the behavioral meaning of the phenomenon, provide alarming measurements of the level of corruption in Italy. The judicial statistics (denunciations, arrests and convictions, specifically referred to the offenses against the Public Administration), however, clashing with the problem of the convergent interest in silence of the briber and the bribed, of the lack of visibility of the violation, of the reluctance to denounce and with some inefficiencies of the judicial system, a measure of corruption much more restrained. Finally, the objective indicators, based on the processing of economic data related to some extent to corruption as, for example, the cost of infrastructures or the management of the public procurement, risk to provide a measure in which it is difficult to distinguish the elements of inefficiency from those of corruption of the country. The need to improve the quantitative as well as qualitative understanding of the phenomenon of corruption is therefore clear, in the face of the limits and margins of error that characterize the existing measures and the lack of information sources.

For example, all criminal sentences are neither available on-line nor easily accessible in digital format and today there are no systematic investigations conducted by ISTAT on the phenomenon. For these reasons, during 2013 the Authority started the planning of a survey of the phenomenon of corruption in Italy that could count on a significant stratified sample to investigate both the perception of corruption and the direct experience, divided by sector and region². A collaboration was initiated with ISTAT to implement the survey, with the real prospect that the Institute will enter the survey on corruption as a specific form of the survey conducted on safety³.

The Authority has proceeded at the same time to analyze and process the data on the phenomenon of corruption from judicial sources and the data on public contracts. The judicial sources are frequently used in international practices to capture the evolution of corruption offences over the time and on a territorial level⁴, while recognizing that corruption offences that come to the attention of the judiciary authorities to then be verified represent only partial indicators of the dimension of the phenomenon.

²For the preparation of the questionnaire, reference was made to the main international experiences in the sector and an exchange of information with some experts on the subject of corruption of the World Bank has played an important role.

³The survey was conducted on a sample of approximately 50,000 citizens in 2014, and the results will be published in early 2015.

⁴ The underlying hypothesis is that the efficiency of the judicial system, the legal framework and the sanction instruments are constant over time and in different geographical areas and therefore do not influence the occurrence of the phenomenon of corruption.

In this context, the Authority has undertaken a work of analysis of different judicial sources combining the data of judicial statistics on denounces and criminal convictions for cases of bribery and corruption with the analysis of the content of the sentences given by the Court of Auditors for the same offences, so to start a methodological path that has allowed, in this early stage, to reach a first quantitative – qualitative representation, even though partial and limited, of the different aspects of the phenomenon of corruption in Italy and its territorial areas⁵.

2.2. Main results from the analysis of juridical measures

From the analysis of denunciations and offences for which prosecution⁶ was initiated emerges that in the period 2006-2011 the phenomenon of corruption and bribery in Italy is overall stable, with the exception of 2009. Such a trend is also confirmed by data relative to convictions for corruption and bribery with reference to the period 2007-2011. During the period considered, denunciations and offences for which prosecution had been initiated and those convicted for corruption always prevailed over offences relating to bribery. The data shows, however, a different dynamic for the two phenomena: decreasing for corruption and increasing for bribery. Bribery offences for which prosecution was initiated, increase from 0.43 per 100,000 inhabitants in 2006 to 0.72 in 2011, recording in 2009, the highest value of 0.88; by contrast for corruption there is a decrease of offences for which the prosecution was initiated, which switch from 1.59 per 100,000 inhabitants in 2006 to 1.24 in 2011, with a peak of 2.01 in 2009. The data regarding convictions confirm the downward trend relating to the offences of corruption (from 1.27 sentenced per 100,000 inhabitants in 2007 to 0.76 in 2011) and the increase relating to the violations of bribery (from 0.23 sentenced per 100,000 inhabitants in 2007 to 0.57 in 2011).

A substantial difference in the distribution of the phenomenon among the regions is also underlined and it shows a particular consistency of the phenomenon in the southern regions and islands. An analysis of convictions for offences of bribery and corruption became *res judicata* shows that from 2006 to 2011, despite the presence of a constant prevalence of convictions for corruption than for bribery, the number of those sentenced for corruption decreases considerably, from 1.27 in 2006 to 0.76 per 100,000 inhabitants in 2011, while the number of those sentenced for bribery triples, rising

⁵ The full analysis is contained in “Submerged Bribery and emerged corruption in Italy: methods of measurement and the first empirical evidence”, which is available on the corporate website of the Authority.

⁶ Compared to the analysis conducted by the Saet (Report to Parliament, 2009, and 2011), the Authority focused attention on bribery (317 p.c.), corruption for public office (318 p.c.), corruption for actions contrary to duties (319 p.c.), judicial corruption (319 ter p.c.), bribery by of a public service employee (320 p.c.) and instigation to corruption (322 p.c.).

from 0.23 in 2006 to 0.57 per 100,000 inhabitants in 2011. Specifically, the number of those sentenced for bribery shows a fluctuating trend in the central regions, it increases progressively in the North, nearly tripling from 2001 to 2011 in the South and Islands, where values are systematically higher.

An important aspect is represented by the length of the criminal proceedings, which is on average higher for bribery than for corruption but for both declined in the period 2007-2011, of about three years for bribery (from 7.80 to 4.42 years) and of about a year for corruption (from 4,87 to 3,72).

More articulated considerations are reached by analyzing, both from a quantitative and qualitative point of view, the sentences given in recent years by the Court of Auditors in relation to the phenomena of corruption and bribery for the period 2001-2012. This is definitely a numerically not very consistent universe (341 sentences against a very high perceived level of corruption in the country) from which can be inferred, however, some relevant information. First, it is confirmed the prevalence of corruption over bribery, already detected by the analysis of criminal statistics. With regard to the geographical distribution, more than the half of convictions during the reported period were due to events of corruption and bribery that took place in the North (59%), of which more than half in Lombardia alone (33%); instead convictions are equally distributed in the central regions (20%), more than half of which in Lazio (12%), and in the macro - area of the South and Islands (20%). This evidence seems in conflict with the findings from the analysis of denunciations and convictions in the criminal context (where the prevailing corruption phenomena are observed in the south and in the islands with respect to the center and especially the north) and cannot be immediately interpreted. In fact, on the one hand, it could lead to the conclusion that the geographic areas in which episodes of bribery and corruption occur more frequently are those of the North; on the other hand, it could indicate differences in the prosecution of cases of corruption and bribery in the different geographical areas. It must be considered, also, that more than half of convictions for offences of corruption and bribery involved employees of state administrations (62%). The phenomenon is also significant in municipalities (12%), the local health authorities and hospitals (12%) and in social security funds and assistance (12%), while violations involving provinces, regions and universities are residual.

The sectors in which the offences of bribery and corruption are most recurrent are: the general economic affairs, commercial and of labor (40%); general services (19%), of which a significant part is the financial administration and taxation; public health (12%); public order and safety (12%), which includes justice; the defense (8%). More specifically, 68 convictions, corresponding to 22%, relate to tenders, which is a transverse field to both the classification by sector and by function, that are confirmed to be of great importance in the occurrence of the phenomenon of corruption. 49% of these

regards contracts for public works, 38% regards contracts for supplies and 13% regards contracts for services.

With reference to the people charged, they are distributed homogeneously among the macro-categories of Executives/Officers, Managers/NCOs, Employees/Technicians/Operational staff, and the remaining are attributable to politicians and Consultants/Subcontractors.

Most of the citizens sued belong to the sector of state administration, while it is interesting to note that almost all of those belonging to the political sector are mayors, aldermen and councilors.

With regard to the amount of the dation, the amount of the dation or benefit received is often absent in the minutes of the court proceedings⁷. The amount of compensation requested at the arraignment is often significantly reduced in the final court sentence: the average amount of compensation for each year is equal to euro 5,305,675 in the 12 year time interval considered from 2001 to 2012.

Of the 300 sentences imposing a payment of damages, 164 are related to a financial loss and 243 to loss of reputation or image. Therefore, in most of the court sentences both types of damage can be found.

The preponderance of a micro- widespread and serial corruption instead of cases of macro-corruption less widespread but more serious emerge overall from the reports. Numerous and repeated incidents of corruption characterized by a non-significant entity of the dation and carried out by players belonging to the intermediate or base levels of the administrations are counterbalanced by a small number of corruptive practices characterized by large amounts of datations dispensed at to senior levels. Finally, it emerges that the average duration of proceedings at the Court of Auditors is equal to about 557 days⁸.

⁷ In general, on the total of 341 sentences analyzed, the compensation required at the time of arraignment was equal to euro 226,963,236.92. From 300 sentences of condemnation to the payment of damages it is clear that the total amount of compensation required at the time of arraignment amounts to euro 217,363,111, while the total amount of compensation upon conviction amounts to euro 63,668,101.

⁸ Where information on the date on which corruption occurred can be found, the average distance between events and sentences is about 10 and a half years.

2.3. Main results from the analysis on public contracts

Another area in which the Authority has initiated its efforts to understanding the phenomenon of corruption is that of public contracts, an area of great economic importance⁹ unanimously identified even at an international level with a high risk of corruption.

In this area, a working group was initiated with the Authority for the Supervision of Public Contracts for works, services and supplies (hereafter called AVCP) to set up a methodology to experimentally¹⁰ identify and calculate, through the analysis of the information in the database on public contracts available at AVCP, some indicators that represent evidence of a potential corruption risk (so-called red flags) in the context of public contracts.

The objective of this first phase of analysis was that to define a method to represent, at the regional level, the different "risk" characterising the procedures adjudicated during the period considered, classified by type of contracting (eg. city, company, etc), amount awarded¹¹, year of publication of the tender notice and type of work (eg. construction, demolition, maintenance, etc.). The identification of the "corruption risk" or, more correctly, of a possible anomaly, was carried out through the development of a set of risk indicators¹² associated with each tender procedure in question, which is then traced back to the territory.

It is important to note that these indicators only provide information about the possibility that there are anomalies in a contract. The fact that a procedure is characterized by the presence of one or more indicators of risk does not necessarily imply the actual presence of corruption in the public tender: a procedure to which one or more red flags are associated, in fact, may not be affected by the phenomena of corruption while a procedure for which there are no red flags could be.

In an experimental way the synthetic indicator of risk potentially associated with each procedure has been created using an additive function. The value of the indicator increases with the increase of situations of potential risk present in different phases of the project, so that the coexistence of multiple

⁹ In 2012, as can be seen from the 2012 Annual Report of the Authority for the Supervision of Public Contracts for works, services and supplies, the public procurement market was characterized by a demand of 25.5 billion for jobs, 43.3 billion to 26.5 billion for services and supplies for a total of 95.3 billion, equal to 6.7% of GDP.

¹⁰ In this initial phase, the analysis has been focused on the "viability" sector for which the AVCP (Authority for the Supervision of *Public Contracts*) has provided to the Authority a retrieval of its Data Bank Simog (Information System Monitoring Tenders) with regard to tendering and contracting for works superior to euro 150,000 (20,302) from 2008 to July 2013, for an aggregate value of about euro 16 billion

¹¹ There are 6 amount classes: until euro 250,000; between 250,000 and 500,000; between 500,000 and 1,000,000; between 1,000,000 and 5,000,000; between 5,000,000 and 15,000,000; more than 15,000,000.

¹² The indicators calculated, identified by the working group, derived from a comparison with the international literature, from the AVCP experience in supervision and the real possibility of calculation from the data available, are 17 associated with the different phases of the project life (award of the contract, project execution and completion of the work).

risk situations is relevant. The procedures at greater risk are identified among those registering a value of their synthetic indicator significantly higher than the average of their region¹³. In carrying out a preliminary analysis of factors associated with the riskiest procedures, it is a priority to examine their characteristics in terms of type of contracting, job type, amount awarded and year of the publication of the tender notice. This type of analysis forms the basis for a broader study, inclusive of all sectors and extendible even to contracts for supplies and services, aimed at identifying the factors associated with corruption in the sector, including the formulation of explanatory models of the link between the values of the risk indicators and potential determinants.

Finally, the indicators calculated on an experimental basis can then be made available in a systematic way and used to support the institutional purposes of supervision by A.N.AC. and AVCP.

¹³ This identification was performed through the definition of an arbitrary threshold within each region equal to $\mu + \sigma * k$ with $k = 2$.

3. The Anti-corruption model in Italy

Law no. 190/2012 constitutes the reference point for policies to fight corruption and puts into effect a complex institutional and organizational design that refers to models that are mainly based on prevention and which have been proposed by international organizations for years.

The law is part of an intense and relevant legislative activity that has affected the organization and the functioning of the Public Administration as a whole in recent years. This reform is characterized by the pursuance of the now inescapable objectives of improving the efficiency, the effectiveness and the costs of administrative activity, not just through the identification of measures designed to affect the status of a public servant, but rather by the use of instruments to implement, first of all, the diffusion of a culture of evaluation, quality and transparency, then, the simplification, digitization and public spending review and, last, even the fight against corruption.

Overall, we find ourselves faced with an ambitious plan, which will be briefly outlined in the following pages, with respect to which the close link between performance and transparency for the prevention of corruption has to be emphasized: the latter, in fact, finds fertile ground in a mediocre administration, with little attention to the evaluation and merit and in the excess of rules and bureaucracy¹⁴. Precisely in this perspective, the choice of the legislator to give CiVIT - already in charge of powers of regulation, supervision and control in performance, transparency and integrity, according to Legislative Decree no. 150/2009 - the function of National Anti-Corruption Authority is not casual

On the other hand, it should also be noted that in the framework of the anti-corruption regulations, the norms introduced by Law no. 190/2012, find an essential complement in Legislative Decrees nos. 33 and 39 of 2013, to which the law has delegated the implementation of important principles and guidelines with reference, respectively, to the reorganization of the law concerning the obligations of disclosure and transparency and to the system of ineligibility and incompatibility of positions in Public Administrations and in Presidential Decree no. 62/2013, which sets out the rules of conduct which all public employees under contract must abide by.

As will be explained, to the complexity of the regulatory provisions before mentioned and which have placed administrations in front of difficult and challenging changes, it has also added a

¹⁴The link between performance, transparency and anticorruption is well underlined by OECD (Organization for Economic Cooperation and Development) *Italy Reviving Growth and Productivity*, 2012.

considerable instability of the legislative framework, as evidenced by the fact that in five months two legislative decrees intervened to modify the structure of the Authority and on specific provisions of law, extending the scope of the already numerous interpretative doubts and uncertainties generated by a difficult legislation.

3.1. The system outlined by Law no. 190/2012

With the enactment of Law no. 190/2012, the legislator set the goal of achieving an effective policy for the prevention and repression of corruption through the definition of an initial systematic regulation of the subject, the prospective of which had already been outlined in the 2009 reform regarding the promotion of legality and integrity of the Public Administration.

The law was enacted at the end of a long parliamentary process, first of all, to meet the pressing need to respect the international obligations under the United Nations Convention against Corruption of October 31st 2003 and the Criminal Law Convention on Corruption of the Council of Europe of January 27th 1999 but even to respond to the demands from the public opinion in the wake of serious corruption phenomena that in the previous months had mainly affected some local administrations.

The international dimension

The prevention and fighting of corruption are issues that, at the international level, are eminently addressed using a "network" approach. Corruption, in fact, manifests itself in many forms but essentially in the same way in various parts of the world, so that the different theoretical perspectives and practices of analysis and contrast of the phenomenon converge in believing that corruption should be tackled with a systemic approach. For this reason, over time, at the international level the practice to create close working relationships between equivalent authorities of the various states involved in the prevention and combating of corruption in order to share approaches, methodologies and analysis has been established

In this perspective, the indication given by Article 1, paragraph 1 of Law no. 190/2012 gives the Authority the function, among others, to "collaborate with the joint foreign agencies and competent regional and international organizations." In this direction, the Authority has been working with foreign organizations, such as the French Anti-Corruption Commission (*Service Général de Prévention de la*

Corruption) and has begun the process of formal adhesion to international networks¹⁵ set up with the aim of promoting mutual assistance and collaboration with regard to the approaches, methodologies and practices of analysis and contrast of the corruptive phenomena.

Another way of systemic approach to the prevention of and fight against corruption, which over time has established itself at the international level is that of the "panels" coordinated by international organizations. Corruption is, in fact, one of the aspects in which progressively supranational organizations and forums, such as the United Nations (UN), the Organization for Economic Cooperation and Development (OECD), the European Union (EU), the Council of Europe, the Group of 20 (G20), have invested interest and resources to coordinate the efforts of the various member countries, in order to standardize approaches and methodologies of analysis and contrast, as well as to promote the diffusion and convergence of policies, legal requirements and good practice¹⁶.

In this context, the Authority participated in the process of self-evaluation relative to the implementation of the United Nations Convention against Corruption (UNCAC), within which is the process of formal recognition by A.N.AC., as the competent authority for Italy on the aspects of preventing and combating corruption is ongoing¹⁷.

Anticorruption and performance

Loking at the purposes and contents of the anti-corruption law, a line of continuity with respect to the regulatory framework outlined by Legislative Decree no. 150/2009 can be easily detect, due to the strong functional link, present in both the provisions, between transparency and integrity, for the prevention of corruption. In this perspective, after all, CiVIT was identified as the National Anti-corruption Authority:the possession of the requisite of independence¹⁸, required at international level

¹⁵ The Authority is part of the *International Association of Anti-Corruption Authorities* (IAACA) and has instaurated relations with the *European Partners Against Corruption* (EPAC) network, with the *Anti-Corruption Authorities' Portal* (ACAs) and with the *International Anti-Corruption Academy* (IACA).

¹⁶As part of the international working groups, A.N.AC.: has established relationships with the European Commission, and in particular with the Unit for the fight against organized crime, in view of the preparation of the first anti-corruption report of the European Commission; has participated in the Working Group on Public Integrity Network set up by the OECD in the drafting of the Peer Review Report prepared by the OECD Secretariat; has collaborated with the Ministry of Justice to draft the Addendum to the Compliance Report on Italy; has contributed to the recognition in the field of public procurement for the year 2013 conducted by the European Anti-Fraud Office (OLAF); has participated in the preparatory work of the G20 group to fight the corruption of the Russian Presidency of the G20. The Commission has also joined, along with other Italian institutions, the Open Government Partnership, participating in the drafting, updating and evaluation of the Action Plan 2013 related to Italy.

¹⁷ The procedure covers both the accreditation at the OUN and at the UNODC (United Nations Office on Drugs and Crime) and follows the criteria laid down by international treaty UNCAC.

¹⁸In this regard, see the opinion of the Council of State no. 1081/2010 and, subsequently, the references made by the legislature in the "Code of Administrative Procedure", in as the part in which it provides for the exclusive jurisdiction of the

for organizations working in the ambit of the prevention of corruption is accompanied by the carry out of new functions clearly configured as an expansion and upgrading of those functions previously recognized by the legislator to the same agency in terms of performance, transparency and integrity. In fact, in relation to this, the Authority can be considered a 'privileged' observer as it has elements of information and experience regarding the work of administrations, acquired through the monitoring of the performance cycle, which may be useful in this difficult passage in order to prevent the same criticities.

Tools

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

The prevention of corruption is based on a model of regulation that provides for planning and control activities, with a programming “cascade” model that affects all levels of government and that is based on four instruments - transparency, training, codes of conduct and analysis risk - which are already largely present, except the last, in the Italian public administrations.

The National Anti-Corruption Plan (hereafter called PNA) is the heart of this programming model, and each Public Administration should adopt its Three-Year Plan for the Prevention of Corruption (hereafter called PTCP) using the PNA as the basis with the possibility for local authorities to make use of a support activities by the Prefect. These programming 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, and 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. Appropriate forms of coordination are also necessary regarding the other documents required by law, first among all, the Three-year program for transparency and integrity and codes of conduct to be observed by public employees.

Subjects

The anti-corruption model is carried out through a complex pattern of relationships among multiple actors with different roles, particularly articulated to be put into practice - Inter-Ministerial Committee, Government, DFP, National Anti-Corruption Authority, AVCP, Court of Auditors, Prefects and, within the administrations, the RPC and responsible for transparency and the Independent Body for Assessment (hereafter called OIV) - and a capillary system of accountability for the implementation of anti-corruption measures within each administration.¹⁹

In this context, significant functions and powers of regulation, supervision and control are attributed to the National Anti-Corruption Authority, in line with the strategic role assigned within the scheme of the legislator and which are more extensive than those originally assigned to CiVIT through Legislative Decree no. 150/2009. Besides the approval the PNA (see below) set up by the DFP, the Authority, in addition to the 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 for the codes of conduct of the single administrations.

Consistent with the complexity of the scheme set up to support administrations in its implementation, the consultative function has been made more substantial, function to be exercised through the formulation of opinions (originally configured as optional and at the request of the administrations) on the conformity of the acts and behaviors of public officials to the law in effect and on the subject of authorizing external appointments by public managers. These new advisory functions, however, were subsequently significantly downsized through Legislative Decree no. 69/2013, converted through amendments by Law no. 98/2013: Articles 54-bis and 54-ter in fact state that in both cases the Authority issues "mandatory" opinions no longer at the request of the organs of the state and public administrations, but on legislation and guidelines as well as on the circulars of the Minister for Public Administration and Simplification" (Article 1, paragraph 2, letter d) of Law no. 190/2012). The reformulation of the provisions mentioned shows, ultimately, the desire to reduce the scope of the choice made by the legislator less than a year before, circumscribing the advisory role - and, consequently, the interpretative activity exercised by the Authority *ex ante* and on general issues - to the hypothesis in which the opinion is requested by the Minister for Public Administration and Simplification.

¹⁹Compliance and terms upon the various subjects are summarized in a report posted on the corporate website of the Authority.

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 efficiency of the measures identified in the mentioned plans and the compliance with transparency obligations; powers that may materialize in the course of inspection activity - through the request of information, records and documents from the administrations- and may be extended to the enactment of an ordinance to obtain the adoption or the removal of acts or behaviors consistent with the measures under the above mentioned plans²⁰.

Moreover, in the contest of Law no. 190/2012, the Authority is called upon to act in relation with the DFP, which as has been said, is responsible for arranging the PNA and, more generally, for the coordination of the implementation of strategies to prevent and combat corruption; but, in other respects, even its relation with administrations which have primarily to appoint the RPC, with the crucial task of proposing the adoption of the PTPC to the political bodies, of verifying the correct implementation and its continuing suitability, and reporting the results of the activities at the end of each year is constant

It is evident, therefore, that the RPC, in the system of the law, is a central figure, with significant responsibilities²¹, as well as a privileged interlocutor of the Authority, together with the OIV, which in turn hold a number of important functions in the field of the prevention of corruption and, in particular, those relating to the attestation of the fulfillment of the requirements of transparency.

3.2. Strategies and first steps

3.2.1. Impulse activities for the implementation of Law no. 190/2012

In the performance of the multiple tasks assigned by Law no. 190/2012, the Authority, since the beginning of the entry into force of the law, worked to stimulate the ministries, national public agencies, chambers of commerce, universities, regions and metropolitan municipalities for the timely appointment of the RPC, to set up preparatory activities and concrete initiatives aimed primarily at identifying risk areas and to the launching of specific staff training. With regard to the appointment of

²⁰In the same logic, the Authority is also the recipient of the communication by the Prefect of the revocation of the town clerk, in order to verify, within 30 days, if that decision is related to the activities carried out by the town clerk itself in prevention of corruption.

²¹In case of corruption detected and in *res judicata* by the employee of an administration, the RPC is responsible on the level of managerial responsibility and discipline, with the minimum penalty of the suspension from the service for six months and of the suspension of the salary for a period between one and six months, unless he proves that he had prepared in time the PTPC, overseeing its operation and its observance, and more generally of having correctly performed his duties. The RPC also responds for repeated violations of the preventive measures provided by the PTPC.

the RPC, despite the efforts of the Authority, this important step has not been fully implemented in any sector, not even in administrations as large as the ministries, recording the lowest percentage of implementation in local administrations and with marked geographical differences. Many administrations, however, regardless of the deferrals intervened, have decided to adopt a PTPC, while recognizing the need of compliance following the approval of the PNA.²² In order to point out the situation regarding the measures for the prevention and fight against corruption adopted by administrations, also constituting a reference point with which to assess the effects of the law, the initiatives taken, with particular reference to the rotation of officers, staff training, initiatives to prevent and combat corruption phenomena were also asked. From the feedback received up to November 28th, 2013 a lack of attention by ministries to the request made by the Authority can be detected. Only two ministries provided specific responses, however, more regarding the aspects of planning of new activities than the initiatives in the area of the prevention of corruption. These last relate, in particular, to staff training and staff turnover measures in risk areas. From the response received by the Customs and Monopolies Agency arise, instead, not only interventions on training and manager rotation but also specific activities in course such as the system of risk analysis in import and export operations (i.e. the Customs Circuit control). There was a limited feedback from national public agencies that advanced mainly organizational difficulties for the implementation of Law no. 190/2012. The few responses received from universities suggest a framework of measures focused on transparency (in the field of public contracts) and the adoption of codes of ethics. The intention of a University wanting to adapt the model of management and control adopted on the basis of Legislative Decree no. 231/2001 to Law no. 190/2012 is interesting. The response by some chambers of commerce essentially manifested the intention to comply with Law no. 190/2012 and highlighted the problems related to the implementation of the law. In percentage terms, the most significant level of response was by regions and the independent provinces. The prevalent measures regard transparency, with the adoption of the Three-year program for transparency and integrity and, in limited cases, organizational arrangements for the rotation of personnel in risk areas.

At the same time an activity of impulse has begun towards public controlled companies - at national, regional and local level - with regard to the activities carried out for the adaptation of the model of Legislative Decree no. 231/2001 on the principles of Law no. 190/2012 and the implementation of procedures for risk analysis and transparency requirements. In extreme summary²³ only a minority –

²² Authority received 381 PTPC and 1523 were received by the DFP.

²³ The survey has been conducted on 56 companies and has registered a high rate of answers, an average of 79%.

four companies, three of which national - believe they do not fall within the subjective ambit of the implementation of the provisions of Law no. 190/2012 regarding the PTPC or the appointment of the RPC, underlining interpretative doubts about the application of the rules on transparency. With reference to the others, the state of implementation is quite diversified.

The majority of companies surveyed (80%) has already adopted an organizational, managerial and control model pursuant to Legislative Decree no. 231/2001 and to set up the PTPC pursuant to Law no. 190/2012, the proposal is to extend the analysis of the risks and prevention measures of corruption that have already been implemented and thus to strengthen the internal control measures to contrast even the cases of "passive" corruption. The remaining 20%, mostly regional and local companies, by not having adopted a model pursuant to Legislative Decree no. 231/2001, will have to adopt new measures to prevent corruption. Among the measures that the companies intend to take to prevent corruption, the adoption of control procedures in the riskiest managerial areas (procurement, recruitment, consulting, sponsorships, etc.) prevails, as also the development of training activities and the creation of information flows towards the RPC while little attention is paid to the job rotation, partly because of organizational difficulties that this measure would create mainly in the smallest companies.

The companies surveyed have a prevailing wait-and-see attitude with regard to the appointment of the RPC: about 60% has not yet taken any decision in this regard and the others say they will identify this figure with an executive or the Supervisory Board (hereafter called OdV).

Also with regard to the implementation of the obligations of transparency, despite the indications of Article 11, paragraph 2, of Legislative Decree no. 33/2013, reiterated in Resolutions no. 50/2013 and no. 72/2013 of the Authority, a small but not negligible number of companies says that the regulations regarding transparency are not fully applicable but they give no reason about this.

About two-thirds of the companies surveyed have included the section "Transparent Administration" on their websites while less than one-third has set up offices for monitoring the implementation of the legislation in question and has organized a system to allow civic access. Ultimately what emerges is a greater focus on the implementation of the substantive law and namely on the publication of information, rather than on ensuring its effectiveness that is control systems²⁴.

²⁴ In particular are the vigilant administrations that have published information on subsidiary companies within the "Transparent Administration" section of their corporate websites. In particular, the trend detected from the supervision on the OIV claims of central administrations is to publish data relative to the company name and the shares of the administration, while the publication of the other information required by law (for example, the positions of director of the company and comprehensive income) is lacking. Many deficiencies were also recorded with reference to the quality of the published data.

It also appears that municipal companies are those that have implemented legal obligations more than regional and state companies, the latter limit their obligations to publishing their financial statements and data concerning the choice of contractor.

Since the entry into force of the anti-corruption law, the Authority has also established contacts with the National School of Administration (hereafter called SNA), to play a significant role in the training of civil servants and the diffusion of the culture of legality in Public Administration. In addition to the programming of this new training offer, the SNA is engaged in specific activities of assistance and tutoring with the Presidency of the Council of the central administrations, tax agencies, social security institutions, research agencies, other national public agencies and some local authorities in order to discuss the policies and training to achieve in the short and medium term included in the PTPC of each administration or agency. In general, however, these initiatives are in the launching stage and every evaluation of effectiveness can only begin next year.

3.2.2. The approval of the National AntiCorruption Plan

The approval by the Authority of the PNA, prepared by the DFP according to the guidelines defined by the Inter-ministerial Committee, represents an important and necessary step to implement Law no. 190/2012²⁵. The PNA, in fact, creates the premises for administrations to prepare their PTPC and, therefore, provide the tools provided by Law no. 190/2012.

The PNA allows for a unified and strategic framework for the planning of activities to prevent and combat corruption in the public sector and has been tailored for the pursuit of measurable objectives and the identification of specific responsibilities, which is useful for the preparation of PTPC by each single administration.

The Authority, in a logic of gradualness, has made a number of preliminary observations to the approval of the final version of the Plan. In line with these observations with regard to the substantive scope of application, the PNA provides for the application of Law no. 190/2012 also for public financial agencies and publically controlled private law agencies, given the importance of these institutions in terms of the use of public resources. Precautions have been set to avoid duplication or

²⁵Following the observations made by the Commission on a preliminary version of the Plan, the DFP submitted a new version of the PNA on September 6th, which was approved by the Commission on 11th September 2013, with Resolution no. 72/2013.

overlap with intervention models already operating, as those provided for by Legislative Decree no. 231/2001, which, if already used, should be properly integrated with the content of Law no. 190/2012.

In addition, the PNA specifies the minimum content of the PTPC and of the annual report of the RPC. It is clearly stated that the information regarding the contents of the PTPC and the RPC report must be given according to models standardized as much as possible, prepared by the DFP and shared with the Authority, and that the information must be shared with the Authority also for the implementation of the functions of supervision and control. At the same time, the PNA is expected to indicate other areas of significant risk in relation to organizational and functional peculiarities of the different administrations besides the areas of risk common to all administrations.

The PNA is structured as a programmatic slide tool, subjected to annual update, with the inclusion of indicators and targets in order to make strategic objectives measurable and ensure the monitoring of the implementation of the PNA far from these targets. The update in 2014 in a gradual approach will allow, in addition to a first check, even the possibility of including additions and specifications of the PNA with reference to aspects such as: the refinement of indicators for measuring the effectiveness of policies and instruments prevention of corruption; the definition of the minimum content of training programs in the field of anti-corruption and the criteria under which the public training offer is articulated in terms of corruption; the definition of the organizational aspects of the coordination function in the different categories of the administration; the articulation of policies for the prevention differentiated by sector; the introduction of national initiatives to prevent cross-cutting; the identification of good practices; the provision and coordination of initiatives for the deployment of the PNA and the culture of legality to improve the effectiveness of prevention policies.

3.2.3. The network of institutional relations and the simplification of information flows and of compliance

The implementation of Law no. 190/2012, given the huge amount of public actors involved and their heterogeneity, requires an approach based on a "network", under the coordination of the various institutions involved to pursue simplification purposes, on the one hand, and differentiation prposes on the other. This need has begun to be implemented in a series of collaborations promoted with different institutional figures.

In this context, the Authority has taken steps to rationalize the number of information flows in order to avoid the administrations to face unnecessarily burdensome duplications. Law no. 190/2012, in

fact, requires the submission by the administrations of data and information to various stakeholders – the Authority, DFP, AVCP – which, each within the scope of its powers, are involved in coordination and supervision activities. Moreover, the availability of systematic and reliable information flows is an essential prerequisite for the successful implementation of Law no. 190/2012 and the supervision activities.

As mentioned, the management and sharing of information flows in PNA has been provided for to limit the procedural and organizational burden on administrations: for example, the sending to the DFP, the PTPC and data and information related to them by administrations and this is also instrumental to the operating of the functions of the Authority.

At the same time, with the aim of simplifying the burdens imposed on Public Administration and of avoiding the duplication of costs, within the framework of a Memorandum of Understanding stipulated after the entry into force of the law, the Authority and the AVCP have adopted a joint initiative, data relating to public contracts are transmitted to AVCP and the latter ensures to the Authority the access to its databases for the carrying out of its functions of supervision and control.

Institutional cooperation is also needed to give effect to the supervisory powers of the Authority and, in this perspective, the possibility of using the *Guardia di Finanza* (Italian Finance Police) is particularly relevant and a Memorandum of Understanding regarding this issue has been finalized. Besides the need for simplification, the opportunity to diversify the policies of prevention of corruption in base of the characteristics of the administrations (type of business, organization) should also be considered. In particular, codes of conduct and information posted on institutional websites need to be diversified, at least in part. In this perspective, the Authority, continuing in a way of working already been experimented, has launched operational workshops on particular issues such as codes of conduct (see below) or on more general issues concerning the application of transparency requirements in specific areas. In view of the preparation of the PTPC and the Three-year programs for transparency methods of coordination in the area of prevention of corruption should be structured with the DFP and through the use of memorandums of understanding and agreements already undersigned or in phase of renewal, with representative associations (ANCI, UPI, Unioncamere).

3.2.4. Predisposition of guidelines on codes of conduct

In the perspective of differentiation, following the enactment of Presidential Decree no. 62/2013, "Regulations on the code of conduct for civil servants, in accordance with Article 54 of Legislative Decree no. 165 of 30th March 2001", the Authority, following a series of meetings with administrations

and after consulting with them, adopted Resolution no. 75/2013 "Guidelines on codes of conduct for the public sector", according to which administrations should proceed with the adoption of individual codes of conduct. The guidelines aim at creating the conditions for the preparation of differentiated codes depending on the particularities of each administration, thus avoiding that the codes themselves are resolved, as already happened in the past, on the basis of previous legislation, in a generic and not very useful repetition of the contents of the general code. The contents of the guidelines can also be a benchmark for the development of codes of conduct and ethics on the part of other subjects covered by Law no. 190/2012 (public financial agencies, publically controlled private law agencies, controlled or financed private law agencies, independent authorities).

First of all, Resolution no. 75/2013 points out the strong connection of the codes of conduct with the PTPC; the identification of the different level of exposure of the offices to the risk of corruption in the PTPC is preliminary to the specification of the particular obligations for these offices in the preparation of the code of conduct. The guidelines also specify the roles and responsibilities of the various figures, both inside and outside the administration, involved in various ways in the preparation phase and in the implementation of the code of conduct. The guidelines also underline that the adoption of the codes, as well as their periodic updating, shall be by public notice and with the involvement of stakeholders, the identification of which may vary depending on the peculiarities of each administration.

3.3. Emerging interpretative issues

Following the entry into force of Law no. 190/2012 and Legislative Decrees no. 33/2013 and no. 39/2013, the Authority was the recipient of numerous requests, characterized by a significant increase with respect to the previous year, with a clear majority of questions over reports.

The advisory activity has always been an important part of the Commission, even before the launch of the anti-corruption law and subsequent legislative decrees, confirming the high demand for "support" by the administrations in the search for solutions to the various problems of interpretation and application arising from the introduction of a new law. The anti-corruption legislation has significantly expanded this activity even with the grant of specific powers which are essentially based on the formulation of "opinions". with reference to the many questions raised, the Authority has continued to follow the practice to adopt some resolutions of a general nature as well as answers to specific questions about specific cases ²⁶.

²⁶Deliberations and FAQs are posted on the institutional website.

With reference to Law no. 190/2012, there has been the prevalence of requests for opinions and questions formulated in advance in comparison to reports of concrete situations occurring or that have already occurred. This is a phenomenon which can be explained by the fact that the Authority has had to exercise its new powers in a regulatory framework still incomplete, being called upon to perform the monitoring of the actual implementation and effectiveness of the measures taken, not only in the PNA but even in the PTPC, whose adoption by administrations has been postponed to 31st January, 2014.

The interpretative questions were related to the different aspects of the anticorruption legislation, in close correlation with its temporal evolution: during the first four months of 2013 the questions received focused largely on different aspects (appointment, role, powers) of the RPC, on the terms and conditions for the adoption of the PTPC and on the subjective sphere of the application of the law. Subsequently, there was a clear predominance of questions regarding the issues of incompatibility and ineligibility as stated in the Legislative Decree no. 39/2013.

In particular, in the period immediately after the entry into force of Law no. 190/2012, with Resolution no. 34/2012, the applicability for the public institutions of welfare and charity (former Ipab), also awaiting the transformation into a public agency of services to the person or in a private law legal subject, was affirmed.

The Authority has also intervened on the delicate question of whether convictions that were not carried out because lapsed can be considered impediments to the assignment of specific tasks and functions. In this regard, Resolution no. 14/2013, expressed the opinion that there were not the conditions for the application of Article 1, paragraph 46 of Law no. 190/2012 because the sentence of not having to proceed for intervened prescription, pursuant to Article 529 of the Criminal Procedure Code, cannot be considered conviction, however, this does not prevent previous convictions, not carried out due to the intervened prescription, to be examined in an opportune and cautious way, with regard to the assignment of specific tasks and functions.

On the general problem of finding the competent body for the appointment of the person responsible for the prevention of corruption in the municipalities, Resolution no. 15/2013, has recognized this power to the Mayor, as a political-administrative body unless the single municipality, , in the exercise of its regulatory and organizational independence, recognize a different function for the Town Board or Council.

3.4. Supervision activity

The reports are crucial element of supervision under the jurisdiction of the Authority. As mentioned above, in the first year after the entry into force of Law no. 190/2012 there has not been a significant demand for supervision and control interventions.

Most of the reports come from private individuals while there are no cases of public employees who report illegal conduct in their own administrations. This denotes the lack of practical significance, to date, of the provisions relating to the whistleblowing, particularly emphasized by the media in the aftermath of enactment of the law.

It should also be pointed out that, in many cases, reports have not given rise to initiatives by the Authority either because the intervention was not requested as a preventive measure but in the ambit of a process in which other competent authorities have been called upon to take measures, also in a repressive way, or because in many cases intervention requests have already been sent to various institutions and worded more as a 'hope' to get 'justice', after futile attempts in different directions, and not worded as a request aimed at combating the corruption phenomena.

With reference to the specific area of intervention of the Authority, although limited in number, some cases were reported where the anti-corruption law was applied with reference to public managers, especially in local administrations, who have become managers of public subsidiaries belonging to the municipality or even concessionaires of public services pertaining to the municipality, and who were put on leave.

It should also be mentioned that the Authority is regarded as the recipient of communication by the Prefect for the revocation of the town clerk, in order to verify, within 30 days, if the decision is related to the activities by the same town clerk regarding the prevention of corruption. The Authority has intervened on this subject five times, and in one case it gave a non-favorable opinion to the revocation of the town clerk due to the *fumus* (suspect of persecution) and its connection with the behavior of the town clerk motivated by the desire to ensure the legality within the administration.

4. Incompatibility and ineligibility of appointments

4.1. The principle of separation between politics and administration

Legislative Decree no. 39/2013 has stepped in to regulate the hypothesis of ineligibility and incompatibility of appointments in public administrations and publically controlled private agencies with the clear intention of avoiding any form of interference or coalescence between politics and administration in order to prevent corruption and conflict of interest or conflict with the constitutional principle of impartiality of administrative action.

The measure is full of innovative though problematic outlines, not only from a technical point of view, but also because of the consideration of the subject matter. The Decree clarified that while the occurrence of ineligibility²⁷ involves the permanent or temporary exclusion from assigning responsibilities, the occurrence of situations of incompatibility²⁸, instead, obliges the person appointed to decide within 15 days under penalty of forfeiture, which of the two positions to keep. It is worth pointing out that the deeds of assigning offices eventually in violation of the decree shall be considered null, with the consequences for the members of the confer bodies to become unable to assign offices for three months and to be obliged to post the notice of assessment of the violations on the institutional website.

The measure in question, as well as providing a set of definitions to refer to and the possibility to identify in detail the individual situations related to the two cases has even addressed the equally significant profiles regarding the supervision of the proper application of the law that within the administrations and publically controlled private agencies, has been entrusted to the RPC²⁹. Due to the

²⁷Ineligibility is present, first of all, 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 publically controlled private agencies on the a national or territorial level. Moreover, the possibility of giving positions in national, regional and local administrations to people working for publically controlled or funded private agencies and those who have been members of political bodies at national, regional and local levels is precluded. Ineligibility also regards the recruitment of board members for local health agencies who, in the previous two years, held political positions or positions in publically controlled or funded private agencies belonging to Regional Health Services.

²⁸The situations of incompatibility operate, in order, in the following cases: between assignments and positions in publically controlled or funded private agencies, and between them and the professional activities; between the executive positions in local public health agencies 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 publically controlled private agencies and the members of political bodies in the central governments, regional and local administrations; between positions of leadership in local health agencies and the offices of members of political bodies in the central governments, regional and local administrations.

²⁹The latter, in fact, is required to challenge the emergence of possible situations of incompatibility or ineligibility and report possible violations regarding the guidelines, for the part of respective competence, to the National Anti-Corruption Authority, the Competition and Market Authority and the Court of Auditors.

delicate and relevant role played by the RPC, the legislator has provided that any possible revocation of the assignment conferred 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 a correlation between the revocation and the activities regarding the prevention of corruption is observed.

In this context, the Authority has been given the general power to supervise the proper implementation of the decree by all its recipients, also through the use of inspection powers and powers of assessment of individual cases of conferring the offices.³⁰ As already stated, Legislative Decree no. 39/2013, finally, had given an important advisory role to the Authority, to be exercised through the formulation of opinions and at the request of the administrations and agencies concerned, regarding the interpretation of the provisions contained in the decree and their application to different types of ineligibility and incompatibility of appointments. There is no doubt that the first implementation phase of the provisions of Legislative Decree no. 39/2013 soon revealed a number of problems of interpretation and application, most likely caused by the complexity of the contents and the delicate nature of the settled issues; problems that have been promptly reported by those concerned and subsequently addressed by the Authority, which has decided to make its own contribution with the adoption of " notices " to clarify the major concerns raised by the decree.

The choice of the legislator, aimed at increasing the advisory and support activity carried out by the Authority with respect to public administrations and 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 to Law no. 98/2013, has established that the Authority may issue "mandatory" opinions no longer on the requests of administrations and institutions 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, paragraph 3, of 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 issues of interpretation of the single administration, with a very specific content, can be found an immediate answer in circulars and acts emanated by the Ministry, which are necessarily of general application.

³⁰ See below, paragraph 4.3.

4.2. Emerging interpretative issues

4.2.1. The Problem of the Lack of a Transitory Law

The entry into force of Legislative Decree no. 39/2013 has resulted, as already mentioned, in a significant increase in the advisory activity carried out by the Authority, because of the particular innovative scope and complexity of the regulation which made several problematic issues to emerge.

Also in this second implementation phase, the Authority was significantly committed to provide the requested clarifications with reference to specific problems, furthermore adopting a number of resolutions of a general nature to provide solutions to the most controversial and recurrent issues of interpretation reported by a number of administrations.

In particular, with Resolution no. 46/2013, the Authority, by several parties urged to intervene to fill an obvious gap in the legislation represented by the lack of a transitional period, preliminarily noted that the offices and appointments taken into account by the new provisions regarding incompatibility and ineligibility, pertain to the fulfillment of functions and powers that extend over time. The fact that the appointment occurred at a time prior to the entry into force of Legislative Decree no. 39/2013 cannot justify the continuation of a situation contrary to the norm, even though it has suddenly arrived. Based on these assumptions, the Authority stated that the provisions contained in Legislative Decree no. 39/2013 were to be applied immediately, not being involved the principle of non-retroactivity of the law, but rather by the possible postponement of the effectiveness of the rules on incompatibility, which would have required, however, an express provision by the legislator; this approach, moreover, is confirmed by the wording of the Law no. 190/2012, which refers to “positions already appointed” (Article 1, paragraph 50, letter e) and f) of Law no. 190/2012), as well as of the Legislative Decree no. 39/2013, which refers to cases of recruitment and "maintaining" the appointment which is incompatible or has become incompatible (Article 9, paragraph 1; Article 12, paragraph 1 and Article 15, paragraph 1, of Legislative Decree no. 39/2013).

The legislator intervened on the issue, after the adoption of the mentioned Resolution, with the above mentioned Legislative Decree no. 69/2013, converted through amendments by Law no. 98/2013, thus bridging the most obvious shortcoming of Legislative Decree no. 39/2013. Article 29 *ter* of Legislative Decree no. 69/2013, in fact, stated that "during the initial application", in relation to cases of incompatibility under the provisions of chapters V and VI of Legislative Decree no. 39/2013, "the appointments conferred and contracts stipulated before the date of entry into force of the same

legislative decree, in accordance with the rules in force before that date have no effect as a cause of incompatibility until the time limit established for the same appointments and contracts ".

4.2.2. Other issues faced

The Authority addressed other issues which administrations emphasized less but were not less problematic in theory, with some subsequent resolutions.

With Resolution no. 47/2013, the Authority expressed the opinion that there is not a situation of direct and full contrast between Article 4 of Legislative Decree no. 95/2012, converted into Law no. 135/2012, which requires Public Administrations to appoint their employees on the boards of subsidiaries, and the cases of incompatibility laid down by Articles 9 and 12 of Legislative Decree no. 39/2013, as long as those nominated by the administrations are not invested with presidency with direct management powers or of Chief Executive Officer.

With Resolution no. 48/2013, the Authority held that Article 7 of Legislative Decree no. 39/2013 does not prevent the confirmation of an appointment that has already occurred, as its *ratio* is intended to prevent that a person uses his own power to get another charge, rather than exclude that a worthy administrator can be confirmed.

Subsequently, by Resolution no. 57/2013, the Authority issued the notice that only the hypothesis of ineligibility and incompatibility of Articles 3, 4 and 9 of Legislative Decree no. 39/2013 are applicable to municipalities with populations of less than 15,000 inhabitants or to associative forms among municipalities of the same region having the same population.

Finally, with Resolution no. 58/2013, the Authority addressed the problem of the interpretation and application of Legislative Decree no. 39/2013 to the public health sector, expressing the opinion that the decree does not apply to the so-called medical personnel considered as “staff” who does not exercise typical managerial functions nor to the managers of simple structure included in complex structure³¹, while district managers, department responsible and supervisors and, in general, the managers of complex structures, certainly fall within the scope of the new provisions.

4.2.3. Unresolved issues

The instability of the regulatory framework before mentioned, and, in particular, the uncertainties arising from Legislative Decree no. 69/2013, which has reduced the advisory role originally envisaged

³¹The discipline must be considered applicable to the executives who run a simple structure not included in the complex structure in case in which, taking into account the rules and regulations of corporate documents (Article 3 paragraph 1a and Article 15, Legislative Decree no. 502/1992), to the manager of simple structure is recognized, although to a lesser extent, significant administrative and managerial autonomy.

by Article 16 paragraph 3 of Legislative Decree no. 39/2013 have complicated the already not easy process of implementation of the provisions on incompatibility and ineligibility. In fact, an objective slowdown in the advisory activities that the Authority had guaranteed to administrations has been determined: pending the approval of the law from the decree, due to respect for the decisions made by Parliament, the Authority has suspended its decisions on the many requests for opinions received and, following the conversion of the decree by Law no. 98/2013, has referred the resolution of the issues of general interpretation to the eventual adoption of the directives and circulars by the Minister for Public Administration and Simplification.

Upon completion of this complicated path, among the general issues identified by the Authority, those relating to the coordination between sources of different levels are still open, mainly due to the regulatory autonomy accorded to the regions and local administrations, as well as to the relation between the framework of Legislative Decree no. 39/2013 and that of Law no. 215/2004 and of Legislative Decree no. 267/2000, which provide similar circumstances of incompatibility with reference, respectively, to appointees of government offices and local administrations. In this regard, it should be noted that Article 22 of Legislative Decree no. 39/2013 provides for the prevalence of the provisions contained in the same decree on regional rules relating to the same subject and eventually in contrast with the first, but in any event it does not affect the provisions of Law no. 215/2004. No specific provision of connection, instead, has been given with reference to the provisions contained in Legislative Decree no. 267/2000. From the interweaving of these different regulatory tools, therefore, derive a number of problems of interpretation and application in view of the partial overlap of the cases of incompatibility, to which different mechanisms of control and sanction systems are related.

Problems arising from the lack of clarity of the provisions concerning the causes of ineligibility attributable to the presence of court sentences remain unresolved. Article 3 of Legislative Decree no. 39/2013, in particular, in foreseeing ineligibility 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, in public and publically controlled private agencies on national or territorial level, raises a number of interpretative problems related in particular to the correct identification of the applicable rules in relation to the seriousness of the offense, the temporal effects of the individual provisions and the importance of probation and the statute of limitations. Even in this case, therefore, the Authority has deemed it necessary to transmit to the Minister the many questions received on the subject, for the purpose of the eventual adoption of a directive or a circular, implying the solution of

general issues of interpretation that at the state of current legislation, cannot be offered by the Authority itself.

4.3. Supervision Activity

In the system of Legislative Decree no. 39/2013, next to the complex net of prohibitions designed to affirm the principle of the separation of politics from administration, there are equally important guidelines regarding the supervision of the proper application of the law that, within the administrations and publically controlled private agencies, is delegated, as already mentioned to the “Responsible of the Anti-Corruption Plan”. In order to protect the role of responsible, the decree states that the possible revocation of the assignment given is subject to the mandatory opinion of the National Anti-Corruption Authority which must give an answer within a 30-day period, after which the measure becomes effective. During the 30-day period, the Authority can request a re-examination of the appointment if it finds a correlation between the revocation of the appointment and prevention of corruption actions.

In this context, the National Anti-Corruption Authority is given a general power to supervise the proper implementation of Legislative Decree no. 39/2013 by all its recipients, even through the use of powers of inspection and assessment of individual cases of appointment of the assignments. To this end, the decree provides that the Authority may suspend, even *ex officio*, the procedure of appointment and in case report the case to the Court of Auditors, for the purposes of controlling administrative liability, keeping still that the administration, the public or publically controlled private agency that intends to proceed in the appointment, despite the observations and comments made by the Authority, is required to justify the act, taking into account these observations and surveys.

In the course of implementation, some elements of complications should also be noted, arising, on the one hand, by legislative changes mentioned above as a result of which the boundary between the supervisory and advisory activity is more difficult to spot, and on the other hand, the widespread practice of contacting the Authority to submit questions formulated in general terms but aimed at solving concrete cases.

Even after the entry into force of Legislative Decree no. 39/2013 the supervisory activity was quantitatively lower than the advisory one, for the same reasons already expressed with reference to the regulation of anti-corruption under Law no. 190/2012. Moreover, the transitional provision introduced by the aforementioned Article 29 *ter* of Legislative Decree no. 69/2013, converted with amendments to

Law no. 98/2013, 'rectifying' in fact, "during the first application", the appointments made and contracts stipulated before the date of entry into force of Legislative Decree has greatly limited the space for the exercise of supervision in the specific area.

Looking at the empirical data, the most obvious aspect is the prevalence of reports from private citizens, which in most cases do not show any relation of dependence or association with the administration concerned, in order to enforce the prohibitions laid down by Legislative Decree no. 39/2013 with respect to single administrators of local agencies generally of small dimensions. In the same logic lie the numerous reports from people who were among the first non-elected in local elections and who invoke the forfeiture of some of those elected so that they can take over the office. These results give rise in this first phase to a widespread tendency to consider the rules on incompatibility and ineligibility of offices more as a means of "retaliation" or satisfaction of personal interests than as a measure to avoid anomalous concentrations of power and to ensure the principle of legality.

5. Transparency

5.1. The principles and norms on transparency

The valorization of the principle of transparency of the administrative action, considered instrumental to the integrity one, is present since long in our system and 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 both the subjective and objective scope, and providing for a code of reorganization of a number of provisions relating to transparency.

In the implementation of the mandate contained in Law no. 190/2012, the Government adopted Legislative Decree no. 33 of March 14, 2013, stating the "Reorganization of the regulations concerning the obligations of publicity, transparency and diffusion of information by Public Administrations".

This measure has reorganized the main publication requirements in force, not only referring to the recognition and coordination of measures already adopted, but also introducing new requirements and further compliances in addition to the numerous ones already existing³². The substantive scope of the provisions relating to transparency has also been extended³³ and a system of checks and sanctions regarding the implementation of the mandatory publications has been designed.³⁴

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 for all with reference to all the information and data included in the mandatory publication list.

A measure, therefore, that fits within the framework of the maximum diffusion of the transparency of administrative action considered 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.

³²In 2012, at the conclusion of the monitoring on the claims of the OIV, CiVIT had indicated the need for simplification with respect to the presence of many (over a hundred) transparency requirements, stratified over time, in the report "*Simplification of Transparency*".

³³Article 11 provides, in fact, that the decree applies to administrations in Article 1, paragraph 2, of Legislative Decree no. 165/2001, to Public Administration subsidiary companies and companies controlled by them, limited to the transparency obligations provided for in paragraphs from 15 to 33 of Article 1 of Law no. 190/2012 and the activities of public interest, authorities warranty, supervision and regulation that ensure implementation in accordance with the provisions of their laws. The government-owned businesses are also required to comply with disclosure requirements and transparency referred to in paragraphs 15 to 33 of Article 1 of Law no. 190/2012.

³⁴Article 47 of Legislative Decree no. 33/2013 provides the imposition of financial penalties in case of non-communication or publication of data relating to public agencies or Public Administration subsidiary companies.

5.2. Strategies and first steps

In the new regulatory framework, the Authority has retained the functions on transparency already provided for in Legislative Decree no. 150/2009 and has strengthened the ones on supervision and control over compliance with the system of transparency, specifically in relation to the prevention of corruption, even towards certain public and private agencies previously excluded from the list of recipients of the obligations.

The strategy set by the Authority in 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, even in terms of organization and planning, as well as that of limiting, as already mentioned, even through opportune coordination with other institutions (see AVCP and DFP), the administrative burden in the implementation of the norms for administrations and agencies and giving them more responsibility in adopting measures that are consistent with a more developed and informed implementation of transparency intended as total accessibility, overcoming the logic of the mere bureaucratic compliance.

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, the Three-year plan for prevention of corruption and the Plans of performance were underlined. In addition, the opportunity of identifying the functions of Responsible of the Prevention of Corruption and Responsible of transparency in only one person was emphasized. In order to support Public Administrations in the planning of actions to be performed, some technical annexes on publication requirements in force and on 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 functional not only to accompanying measures, but also to the setting up of ad hoc measures for adapting the new institutional sites to the new provisions and to the identification, in case of significant deficiencies, of internal responsibilities in each agency.

Appropriate activities to direct and control publically controlled private agencies 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) - as well as interventions have been planned to encourage the application of the norms by the independent administrative authorities, to which Legislative Decree no. 33/2013 is applied according to their

legislations, along with bodies of self-governance of the judiciary sector subject to relevant provisions in the anti-corruption law.

5.3. Emerging interpretative issues

Of significant impact was the consultative action that originated from a considerable flow of requests for opinions on the interpretation of various provisions of Legislative Decree no. 33/2013.

From January 1st to November 30th, 2013, the Authority received a lot of questions relating to transparency, most of which concentrated in the period after the entry into force of Legislative Decree no. 33/2013.

At least three types of causes that led to the increase in the number of questions can be identified.

Some of them are general in nature and are related to the problems of the administrative sustainability of the new provisions, to the need to adapt an unique law to administrations and agencies that are extremely diversified as well as to the broadening of the obligations regarding publication to new subjects, such as public subsidiaries. In this regard, for example, the issues related to the effect of mandatory publication, that is the definition of the organizational modalities needed, have to be considered.

Other questions have been generated by the difficulty of administrations to adapt to the new principles and institutions introduced by the norms on transparency. In this sense, many requests for an opinion arise from an unclear understanding of the differences between civic access and right of 'civic' access the former Law no. 241/1990; from the overlapping of principles on legal advertising and transparency as full accessibility or, more, from the need to clarify the boundaries between transparency and the protection of privacy.

Finally, other questions arise from "abstruseness" of the regulatory text and redundancies still present in many publication requirements in force.

Compared to Legislative Decree no. 33/2013, the most recurring requests for clarification are related to the publication of data concerning political bodies (Article 14), the publication of data on concessions of grants, subsidies, economic benefits (Articles 26 and 27), the application of the rules to supervised public agencies, publically controlled private agencies, subsidiary companies (Article 22) and the sanctions for specific cases, ex. Article 47.

In this regard, the Authority, in addition to provide specific answers, adopted resolutions of general application to clarify the critical aspects and various FAQs³⁵.

5.3.1. Mandatory publication for political bodies

The Authority has adopted Resolution no. 65/2013 on the application of Article 14 of Legislative Decree no. 33/2013.

Among the issues in dispute, the Authority has clarified that: in addition to Public Administrations as in Article 1, paragraph 2, of Legislative Decree no. 165/2001, supervised public agencies, publically controlled private agencies, and public control and subsidiary companies are required to fulfill obligations under Article 14. Publication requirements are referred to members of political parties in office at the date of the entry into force of the decree (20th April 2013); Public Administrations, institutions and corporations shall identify the members of political parties, also with reference to the statutory rules and regulations governing each organization and activities; municipalities with populations of under 15,000 inhabitants are not subject to the mandatory publication as in Article 14, paragraph 1, letter f).

With answers to specific questions, the Authority also had the opportunity to provide guidance on the identification of the specific authorities in the case of non-territorial public agencies or private-law agencies, such as subsidiaries where there are normally non-elected bodies. In the opinion of the Authority, due the different possible articulation of responsibilities within the different types of agencies, it is necessary to consider the authorities in which competences are concentrated as the adoption of statutes and regulations, the definition of the organization of services, the determination of programs and long-term strategic objectives, the enactment of general guidelines concerning the activity of the institution, the approval of the budget and final balance, the approval of the annual and multi-year plans, the adoption of general criteria and criteria for business plans and investment.

³⁵Resolutions and FAQs are posted on the institutional website.

5.3.2. Mandatory publication of acts of financial aid, contributions, grants and economic benefits

In relation to the several questions concerning Articles 26 and 27 of Legislative Decree no. 33/2013 which contain the new rules on the publication of the acts of financial aid, contributions, grants and allocation of economic benefits to individuals and public and private agencies, the Authority adopted Resolution no. 59/2013.

This Resolution clarified that, in addition to Public Administrations as in Article 1, paragraph 2, of Legislative Decree no. 165/2001, national public agencies, including special agencies assimilated by law to the public financial agencies, as well as subsidiary companies and companies controlled by them pursuant to Article 2359 of the Civil Code are bound to the publication of data and information. It was noted, moreover, that only the information relating to measures aimed at supporting a public and/or private subject should be published, and not the fees payable by local businesses and private professionals as payment for services (which must still be published under other provisions). It was also made clear that since the publication is mandatory and effective only for amounts superior of one thousand euro, anything in excess of one thousand euro is to be considered as part of the law regardless of the fact if the amount was allocated with a single deliberation or with more deliberations as long as the limit of one thousand Euro was exceeded in the calendar year to a single beneficiary.

5.3.3. Sanctions for non-compliance with mandatory publication as in articles. 14 and 22 of Legislative Decree no. 33/2013

With Resolution no. 66/2013, the Authority has responded to many questions on the identification of the person entitled to impose the sanctions provided for by Article 47 of Legislative Decree no. 33/2013 for the violation of the obligations of publications related to the members of political parties (Article 14) and related to data on supervised public agencies, publically controlled private agencies as well as investments in private companies (Article 22).

The norm, in fact, refers generally to the Authority identified by Law no. 689/1981, without giving further details.

With Resolution no. 66/2013, the Authority, in the light of the constitutional principles on the autonomy of local authorities, made it clear that each administration shall regulate sanctions, dividing competences among its departments, in accordance with the principles laid down by Law no. 689/1981, such as cross-examination, separation between the office that informs and the one that decides, the

criteria for the application of sanctions. It was also stated that, pending the adoption of the regulation, the administrations, in exercising their autonomy, are required to indicate a subject responsible for the investigation and one responsible for the imposition of sanctions and that, if the administrations do not provide these figures, these functions would be given, respectively, to the RPC and to the Responsible of the disciplinary department.

5.4. Supervision Activity

Supervisory activity is developing, on the one hand, taking into account the reports on non-compliance with the obligations of publication that the Authority receives on a daily basis and on the other, especially in the last period of 2013, with initiatives aimed at checking the publication of data on the websites of the administrations, to the extent permitted by the significant constraints imposed by the limited resources available.

The reports were received following the entry into force of Legislative Decree no. 33/2013, mostly from private individuals and only in a modest amount from administrations, in particular municipalities.

With regard to the reports received, the Authority, in view of the exercise of its powers provided for by ordinance Article 1, paragraph 3, of Law no. 190/2012, has asked the concerned administrations news about the non-compliances reported. The responses received to date have heterogeneous contents and are mainly targeted to represent organizational issues, largely related to the small size of the administrations to which the reports relate.

The direct supervision by the Authority on the institutional sites has been divided into three separate verification sessions.

The first session, which took place starting from Resolution no. 71/2013, involved the performance of a limited number of publication obligations, particularly relevant in view of the accountability of administrations. The supervisory activity was carried out through both the claims of the OIV, posted on administration websites by September 30th, 2013 and a subsequent verification by the Authority on the quality of the claims³⁶. Both the claims of the OIV and the verification by the Authority were concerned not only with the presence or absence of data in the section "Transparent Administration"

³⁶ Resolution no. 71/2013 identifies the publication requirements of the monitoring related, especially, to procedures and public services. The test involved the thirteen ministries, the regions and the autonomous provinces, twenty provinces, fifteen large municipalities, eight major national public agencies, tax agencies, ten chambers of commerce, ten universities, thirty Local Health Authorities and thirty-five small and medium municipalities.

but also with the quality of the same with respect to their completeness - both in terms of content and responsibilities - and to their updating.

In particular, the verification of the sites of the analyzed sample showed that three ministries as well as various regions had not released the statement. With regard to the other administrations there are good levels of publication of data by universities (70%), the Local Health Authorities (ASL) and national public agencies (63%) while the percentage tends to decrease for large municipalities, provinces and chambers of commerce. Small and medium-sized municipalities have the lowest percentages of publications.

With particular reference to the ministries and the sample of eight national public agencies, after verifying the declarations made by the Authority, it was found that the first level of control, represented precisely by the OIV, is not yet operating at “full speed” and it presents critical elements: in fact, there is a high level of concordance between what the OIV stated and what the Authority verified on the mandatory publication only in 60% of cases. This condition may also derive from the evolution of websites in a short period of time.

As for the individual published data, the Authority controlled the websites of ministries and of national public agencies.

From the overall results of the survey conducted to date, still the tendency of administrations to not focus on the quality of the published data but to comply in a partially critical manner to the publication of data as required by the regulations emerges, with obvious implications for the effectiveness of publication. Moreover, a system of transparency has yet to be developed in the organizational structures of both ministries including the Corps, and where existing, public agencies. Based on the results of this first session, the Authority is undertaking initiatives, in the exercise of its powers in order to correct the critical issues identified.

The second session of supervision, carried out directly on the institutional sites in the autumn of 2013, was aimed at identify any macroscopic weaknesses in the publication of data with particular reference to: the organization of the contents of the section "Transparent Administration" in accordance with the indications of the attachment to Legislative Decree no. 33/2013 and the Resolution no. 50/2013; the availability of information concerning the local offices and organizational structures in which, a significant proportion of the resources available to the administration, in terms of personnel and resources, is used; the updating of the information and the availability of data in an open format³⁷.

³⁷ The obligations of transparency subjected to supervision were: organization (department articulations, phone and mails); consultants and collaborators; personnel (top management and administrative positions); call for tenders and contracts

A specific focus has been devoted to the data on offices working directly with political parties, with particular reference to their organization, to the top administrative positions and to the executives, staff used and appointments and consultations.

In view of the rapid rate of change of websites, particularly close to the deadlines set by Resolution no. 71/2013 and Article 47 of Legislative Decree no. 33/2013 concerning the specific sanctions for failure to disclose data under Articles 14 and 22 of the Legislative Decree mentioned, the Authority initiated on the basis of the checks carried out, a specific dialogue with each administration also in order to define the actions to be taken.

In this regard, especially for ministries, the evidence confirms the trend already recorded, even in surveys conducted in 2012, about the limited publication of data relating to offices and facilities that do not relate directly to the body of the central administration and confirms the absence of a unified strategy regarding the organization of websites, taking into account the organization and activities of the administrations on the territory or the recourse to specialized agencies with the relative information.

Another important issue is the limited attention to the quality of the published data in terms of updating and completeness with respect to the contents of the norms.

In particular, all ministries have set up the section "Transparent Administration" although not always in compliance with the specifications provided by the Authority with Resolution no. 50/2013. Ample room for improvement in relation to the contents included in the above section has been recorded. The information relating to the organizational structure of the ministries is complete only in 46% of cases, with a reduced availability of data related to peripheral offices and organizational units. The data relating to consultants and employees are often published in a summarized manner and not complete: frequently certification regarding the absence of conflicts of interest is lacking and the publications fail to report data relating to the performance of duties or the appointments of positions in private agencies controlled or funded by the government or the performance of professional activities, the curricula vitae, as well as the information regarding the appointment of various competences. The publication of information on executives is still lacking in terms of completeness with respect to the requirements of the norms: duties or appointments in publically controlled private agencies or professional activities are omitted as are certifications on the absence of conflicts of interest, as well as information on salary, which in some cases is published for the qualification of personnel and not in relation to the individual manager or executive.

With regard to the information relating to tenders and contracts, there is a strong diversity in the publication because only a limited number of cases made use the technical specifications diffused by AVCP. Slightly less than half of the ministries have published complete information concerning the procedures for the exercise of civic access to civic and the specific internal referents. A low percentage of publication of data regarding staff, consultants and executives emerged for the offices working directly with political parties.

With regard to the eight national public agencies covered by the survey, a less positive picture emerges as to the presence and structure of the section "Transparent Administration" in accordance with Legislative Decree no. 33/2013 and the Appendix no. 1 of Resolution no. 50/2013.

Like for the ministries, public agencies also show a reduced ability to give a complete representation of the information required by Legislative Decree no. 33/2013 with regard to the local offices, where they exist, which are the essential terminals for the fruition of services by citizens and businesses.

Data related to consulting and collaboration appointments and executives (for which there are limited cases of publication of data relating to other positions held and salary) can be improved greatly in terms of compliance with respect to the content of the norms. As for the ministries, the publication of data on tenders and contracts is very fragmentary and uneven. Data published regarding the modality of civic access are also quite limited.

The third session will cover the compliance to additional publication requirements which will be attested by the OIV by 31st January, 2014. Again, the requirements of the OIV will be followed by the verification activity conducted directly on institutional web sites by the Authority in order to detect the state of the art of transparency of administrations.

The supervisory activities will also produce empirical evidence that could be used in a system for the circulation of good practices of transparency in order to introduce elements acting as incentives for administrations and to stimulate emulative phenomena.