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# The Italian AntiCorruption system

The participation of civil society in the control over public procurement: reporting; access to documents; whistleblowing



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## KEY POINTS

Right to ACCESS to  
relevant information

Opportunity to be HEARD

(possibility to submit  
**REPORTS** that are taken  
into account)

Right to  
PROTECTION



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# *Reporting over public procurement*

# INPUT



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According to art. 213, par. 3, sub a) and par. 5, ANAC , as part of its activity, may act at reasoned submission of any person concerned



Art. 4, par. 3 of ANAC Regulation on Supervision of public procurement contracts of works, services and supplies (G.U. n. 241 16th October 2018), states that **the supervisory activity is (also) activated** on the basis of **REPORTS** coming from:

a) Administrative judge

b) Prosecutor;

c) State Attorney's

d) Any other Public Authority,  
including Civil Judge and  
State Audit.



**e) THIRD PERSONS**

In this last case ANAC assesses the Report on the basis of its organizational needs and taking into account the **gravity of the infringement** and the **relevance of the interests involved**

# THE PROCESSING ORDER



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In the light of those provisions, ANAC departments use to act on the basis of internal guidelines that can be resumed as follows:

Are assessed, as a matter of priority, reports concerning:

- 1. A **relevant number** of economic operators or contracting authorities (i.e. reports concerning central purchasing bodies);
- 2. Contracts of **huge amount** (i.e. above European thresholds)
- 3. Public procurements related to **big/national contracting authorities**
- 4. Reports for which ANAC activity is still **actual**

# SUBMISSION FORM



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## Info Required

[In order to  
acquire the most  
relevant  
information from  
any report from  
third parties,  
ANAC defined and  
disseminated  
(web site) a  
standard  
submission form]

a) The reporter identity;

b) The reporter qualification (RUP; public official; private person; economic operator; contracting authority;  
representative of a trade association or an interest group (i.e. environmental association; association of citizens; ...);

c) The description of the interest linked with the Report/submission;

d) Classification of the public procurement/contract reported (CIG);

e) Contracting authority;

f) Object of the contract;

g) Responsible for the procedure;

h) Amount

i) Other information about the procurement procedure;

l) Litigation proceedings (if any)

m) Main criticalities reported.

n) Relevant Documents

# DIFFERENT ACTIONS



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RELEVANT

Reports are taken into account by ANAC even if they are not submitted by using the standard submission form

RELEVANT

Reports may be taken into account even if anonymous (it depends on the relevance of the information reported)

WHEN

Reports from Third parties are not individually assessed, **they may be considered as an input for ANAC Annual Directive (guidelines) for supervision on public contracts of works, services and supplies and/or ANAC Annual Inspection Program on public procurement and/or ANAC regulatory Acts**



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# *ACCESS TO DOCUMENTS*

*-as an instrument of participation -*



# DIFFERENT FORMS OF ACCESS



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**IN GENERAL** → the **right to access to documents** is the right as an individual to read and inspect documents held by a public administration (i.e a contracting authority) and to take a copy of them with payment of administrative rights.

In the traditional definition of the right to access (**Law 241/90**) the applicant must have a **qualified interest** to access to the documents. Moreover, there are cases, provided by law, in which despite the qualified interest, the Administration is allowed to deny the access or to postpone it (relevant National interest; privacy; administrative internal procedure).

**CIVIC ACCESS** → According to art. 5, par.1, d.lgs. 33/2013 **the right of anybody** to request the documents, information and data that a Public Administration is **required to publish**, in case of **infringement of the duty** to publish them

**CIVIC ACCESS c.d. GENERALIZED** → → According to art. 5, par.2, d.lgs. 33/2013 **the right of anybody to access** to **further data** and documents held by Public Administrations, than those to be published, within the limits defined by law (legal protection of specific interests). This access **aims to promote widespread forms of control on Public Administration (in pursuing the public interest and in the use of public resources).**

The rights referred to in par. 1 and 2 of art. 5 d.lgs. 33/2013 is not subjected to limits referred to qualified interest of the applicant. No motivation is required

# INTERESTED PARTIES and OBJECTORS



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QUALIFIED INTEREST

(ART. 22 L. 241/90) People with a **qualified interest** to access are : all private individuals, included public or widespread interests bearers, who have a **private, concrete and direct interest** to access, that corresponds to a **legally enforceable** right or situation, **related** to the documents to access

The **objectors** are: all private individuals **easily identifiable by the nature of the documents**, who as a consequence of the access may be **affected** in their **right to privacy**

OBJECTORS

**the access cannot be allowed without giving previous communication** to the **other party/objectors** (with a related, opposite interest, to the documents) that has to express his/her consensus or opposition within the term established

# PROCEDURE - KEY POINTS



**RIGHT TO BE INFORMED** → Except for the cases in which the publication of the documents/data/information is mandatory, **there may be objectors** that have the **right to be informed** and can express their consensus or opposition within the term established by the law ( at least 10 days)..

**TERMS** → The proceedings of civic access have to be fully **concluded within 30 days** from the instance. It must be concluded with an **express and motivated decision** of the Public Administration. The decision has to be communicated to the applicant/s and the objector/s. In case of acceptance, also the requested documents have to be sent/communicated.

**RIGHT TO APPEAL** → In the event of rejection the applicant **may lodge an appeal** against the decision to the Responsible for The Prevention of Corruption (**RPCT**) of the Administration the request refers to (or to the ombudsman in case the Administration is a local one).



# PUBLIC PROCUREMENT

According to art. 53 d.lgs. 50/2016 (Public Contract Code)

The right of access to the documents related to public procurement procedures and to the execution of public contracts, including candidacies and offers, is **governed by Law 241/90**

Moreover, the ACCESS may be

- Deferred
- Totally excluded

Documents related to public procurement procedures are also subject to **civic access** and **generalized access** taking into account that the Law provides specific obligation to publish them on the Contracting Authorities websites

# ANAC REGULATION



➡ It is possible to exercise the right to access – Through all the forms described above – also in respect of ACTS and DOCUMENTS of the Independent Authority in charge of the supervision on public procurement (ANAC)

➡ The ACCESS to data and Documents held by ANAC is ruled by ANAC REGULATION of 24<sup>th</sup> October 2018 which defines:

- How to exercise civic access (art.3);
- How to exercise generalized access (artt. 4-13);
- How to exercise the right to access according to Law 241/90 (art. 14 – 25) ;
- Cases in which the access shall be delayed (art. 21);
- Documents excluded from access, on the basis of
  - a) Reasons of Privacy (third persons; economic operators; group of citizens – art.22);
  - b) Reasons of safety or linked with international relations (art. 23)
  - c) Reasons of secrecy (art. 25)



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# *WHISTLEBLOWING*

# LEGAL FRAMEWORK



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**Directive 2019/1937/UE** On the  
protection of persons who report  
breaches of Union Law

Italian Anti-corruption Law No 190/2012

Italian Law n. 179/2017

# WHISTLEBLOWER



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## UE def.

- Person who **report information** about threats or harm to the **public interest** obtained in the context of their **work-related activities** make use of their right to **freedom of expression**

## L. 190/2012

- includes provisions on whistleblowing protection within the **anticorruption strategy for the public sector**

## L. 179/2017

- strengthens pre-existing whistleblower protections for public-sector employees, and **extends those same protections to the private sector**



# WORK - RELATED



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According to Italian Law, can be considered as Whistleblowers:

Public  
Administration

- **Employees** of public administrations (Ministries, Regions, Municipalities, judges, military personnel, state police forces, diplomatic staff, etc.)

Public-economic  
Entities

- **Employees** of public-economic entities

Private under  
public control

- **Employees** of private-law entities subject to public control

Companies

- **Employees and contractors** of companies supplying goods, works or services to the public administration

# PROTECTED DISCLOSURES



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work-related unlawful behaviours and ethical misconduct, including (but not limited to):

- Criminal conducts;
- Violations of codes of conduct;
- mismanagement of public resources;
- Nepotism;
- Accounting irregularities;
- Violation of environmental and occupational safety regulations

# REPORTING CHANNELS



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Employees may report a violation either to:

The officer charged with corruption prevention and transparency in each public administration - **RPCT**

OR to

National Anticorruption Authority (**ANAC**),

OR to

The **judicial or accounting** authority

# PROTECTION



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## PROTECTION OF CONFIDENTIALITY

In the **disciplinary proceedings**: the identity of the whistleblower can not be disclosed without his/her consent

In the **criminal proceedings**: the identity of the whistleblower is covered by secrecy throughout the closure of the preliminary investigations (Article 329 cpp.)

In the **proceeding before the Court of Audit**: the identity of the whistleblower can not be disclosed until the end of the preliminary phase

**Confidentiality is not protected if the whistleblower is found guilty of slander, defamation or other crimes committed in relation to the complaint, or when her/his civil liability is established for malice or gross negligence**

## PROTECTION FROM RETALIATION

A public employee who reports illegal or unethical conduct in the public interest **shall not be retaliated against through any sanctions, dismissal, demotion, transfers to other offices, or other organizational measures** having a negative effect on his/her working conditions

The burden of proof is on the employer (measures not connected to wb complaint) - Wb who has been dismissed is entitled to restatement

# ROLE OF ANAC



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## Regulatory Powers

- ANAC shall issue guidelines on the procedures for submitting and managing whistleblowers' claims

## Investigative Powers

- ANAC may conduct fact-finding investigation on the claim brought by the whistleblower as well as on the discriminatory measures

## Sanctioning Powers

- In the event of **detrimental treatment** against the whistleblower adopted by the public administration
- In the event of **inappropriate reporting procedures** and systems for managing reports
- In the event of **failure to properly examine** and process received reports



*Thank  
you!*