

## The Italian National Anti-corruption Authority

The Italian Anticorruption Authority (from now on: ANAC) was created with the aim of implementing article 6 of the United Nations Convention against Corruption (UNCAC).

ANAC is an independent authority. ANAC's board is comprised of five members appointed with a non-renewable mandate of six years. The proposed nominations are approved by the Council of Ministers and the candidates are appointed by the President of the Republic. ANAC has a staff of 350 employees.

Law 190 of 2012 gave ANAC the responsibility :

- To draw up a preventive strategy against corruption;
- To supervise the anticorruption strategy of each public entity (through the adoption of Three Year Plans for integrity and transparency),
- To guarantee transparency in public administrations
- To guarantee the integrity of civil servants, and to disseminate a culture of integrity and legality.

The Authority pursues its goals through regulatory and supervisory activities, has an advisory function and some inspection and sanctioning powers.

These tasks are accompanied by an important monitoring activity through the collection of data on public tenders. For this purpose ANAC has set up a National Database on Public Contracts. The BDNCP is a database that collects, integrates and reconciles data concerning public contracts transmitted by contracting authorities. The system is open to interoperability, under application cooperation, both with internal systems of the Authority, and with similar systems of other administrations.

The BDNCP, which incorporates all the information contained in existing databases, including at the territorial level, in order to ensure unified accessibility, transparency, publicity and traceability of the whole procurement process. ANAC establishes the modalities for the holders of such databases, subject to signatures of interoperability protocols, to ensure the confluence of the data. This database is available to the public through our institutional website, in order to increase the transparency of the market.

In addition, ANAC has the duty to report to the Italian Parliament on its activities and exercises an advocacy function by submitting proposals for new legislation or modifications of existing laws to both Parliament and the Government.

## **ANAC's tasks**

### **Prevention of Corruption**

- Drafting and implementation of the National Anticorruption Plan
- Supervision and monitoring of the adoption of the three-year Anticorruption Plans and Codes of Conduct by public administrations and state-controlled enterprises
- Sanctioning of entities in the event of failure to adopt the three-year Plans and/or the Codes of Conduct
- Supervision of the appointment of the Officers for the Prevention of Corruption and Transparency by each public administration

### **Integrity of Public Employees**

- -Supervision of the requirements of public officials' appointments and conflicts of interest
- -Management of whistleblower complaints
- Guidance and supervision over the adoption of Codes of Conduct by each public administration.

## Transparency

- Guidance and supervision over the inclusion of transparency rules in the three-year Anticorruption Plan by each public administration and state-controlled entities
- Sanctioning power in the event of failure to adopt such rules
- Definition of standards and templates for the mandatory publication of documents, information and data related to the "Transparent Administration" section of each entity
- Adoption of guidelines regarding FOIA, in agreement with the Personal Data Protection Authority

## Public Procurement

- Supervision of public contracts for works, services and supplies, including those of regional interest, in ordinary and special sectors
- Supervision of the qualification system for economic operators, including sanctioning powers
- Collaborative supervision" through the signing of memorandum of understanding with contracting authorities, to give support in the preparation and management of tenders, in order to prevent criminal activities
- Advisory function through the issuing of consultative or binding opinions on legislation and pre-litigation cases
- Regulatory function through the adoption of guidelines, standard documents on tenders, and other soft regulatory tools, aimed at facilitating the exchange of information, and the development of best practices
- Management of the qualification system for contracting authorities, and the register of in-house companies in the case of serious violations of the Code of Contracts, ANAC can contest the contracting authorities' measures before the Administrative Judge

- ANAC has also inspection powers and the power to request the exhibition of documents. In addition, ANAC may impose pecuniary sanctions on the economic operators who refuse to provide such information.

### **Special Powers of the President of ANAC**

The President has the power to propose that local Government authorities adopt special measures for the management, support and control of enterprises involved in illicit behaviors, in order to safeguard the timing and efficient execution of contracts.

### **National and International relations**

Indeed, ANAC is engaged internationally through its participation to different anticorruption and transparency fora (such as UNODC, G20, G7, OECD, OSCE, Council of Europe and GRECO, European Union, World Bank as well as Open Government Partnership).

### **FOCUS: PUBLIC PROCUREMENT**

In the past few years, ANAC has been very active on many different areas concerning both the implementation of anticorruption measures in the Italian Public Administration and the oversight on public contracts. In order to effectively perform its supervisory and regulatory functions, ANAC puts in place practices often stemming from the necessity to cope with emergencies.

#### **The “collaborative supervision”**

Introducing Article 4 into its 2014 Supervisory Regulation (of December 9th, 2014), ANAC began to use the so-called “collaborative supervision” as a particular form of preventive verification of the tendering processes. The tool is aimed at fostering a profitable collaboration with the contracting authorities and thus guaranteeing the correct functioning of the tender operations and the implementation of the contract, at the same time as preventing attempt of criminal infiltration into the tenders.

Indeed, instead of sanctioning illicit behaviour ex post (after the fact occurred), the intervention of ANAC aims at preventing issues ex ante (before facts occur) by guiding the (procuring) institution towards better and more transparent choices. To this end, several MoUs for the implementation of “collaborative supervision” has been signed up between the ANAC and several contracting authorities. The “collaborative supervision” is enshrined in Article 213.3, lett. h, of the Code of Contracts adopted by the Legislative Decree No. 50/2016; ANAC has also adopted a specific regulation in the matter (June 28th, 2017).

The “extraordinary and temporary management of contractors” (aka Commissariamento)

According to Art. 32 of the aforementioned Law (No. 114/2014), in the event that illegal behaviour or corruption crimes attributable to a company which has been awarded a contract for the construction of public works, services or supplies occur or are being prosecuted by a judicial authority, the President of ANAC (by his own power) can suggest to the local Prefect, either:

- to order the renewal of the company’s corporate bodies; or,
- if the company does not comply with the established terms, to engage in the extraordinary and temporary management of the contracting company limited to the complete implementation of the single contract subject to criminal proceedings; or
- the support and monitoring of the company with the appointment of experts tasked with supporting the company’s organizational and management audit activity.

This innovative measure allows for an immediate intervention against corruption phenomena and is a strong deterrent against corruption-oriented behaviours.

### **ANAC active judicial locus standi in the interest of law**

As a result of his credibility gained on the field, the Public Contract Code gives ANAC a new competence aimed at preserving the integrity of public contracts. Thus ANAC is entitled to appeal judicially general acts and measures relating to contracts of significant impact, issued by any

contracting authority, if it (ANAC) deems that they violate the rules on public contracts relating to works, services and supplies (Art. 211.1bis).

In addition, if ANAC considers that a contracting authority has adopted a measure in breach of the new Code, it issues an opinion (within 60 days of the violation), indicating the specific deficiencies that were found. The opinion is then sent to the contracting authority, for compliance; if the contracting authority fails to comply (within 60 days maximum), ANAC may file an action before the administrative judge (within the following 30 days). Moreover, if ANAC identifies the existence of irregularities, it transmits the documents and its remarks to the contracting authority, demanding the removal of the breaching disposition (Art. 211.1ter). This new competence of ANAC appears to be included into a trend that recognizes to the independent administrative authorities the responsibility to act upon the protection of common goods and interests in an objective sense, be it competition (in case of the Antitrust Authority), or the legality of public contracts (for ANAC).

### **The regulatory function**

In the past ANAC had often fulfilled its regulatory mandate using instruments of general scope, such as determinations, guidelines, standard tender-notices and advisory opinions. All these instances of soft law proved to be essential not only in the sector of public contracts, but also to provide interpretative guidelines on corruption prevention and the strengthening of integrity in the public sector. Many of these guidelines served the immediate purpose of interpreting and/or integrating the Italian legislation on different topics. In addition, and perhaps most importantly, such regulation laid down the foundation for future legislation on important anticorruption matters. In the area of public procurement, this regulatory function has grown in importance and effectiveness due to requests coming from the awarding administration and from the economic operators in need of a consistent interpretation of the complex legislation. ANAC's guidelines on standard tenders provided an essential support to the tendering organizations, at the same time reducing disputes among the parties. This important practice has been incorporated in the Public Contract Code.

### **The pre-litigation competence**

Acts of general scope are also the advisory opinions delivered by ANAC in the carrying out of the so-called pre-litigation competence. This tool consists in the right for contracting authorities and bidders to address the ANAC asking for an advisory opinion, in order to settle disputes during the tendering procedure. With this Alternative Dispute Resolution system, the Legislator aims at introducing a mechanism to simplify litigations in tender procedures and reducing the number of cases in front of the administrative judge. It was also used in the past, but the novelty of the new Code (Art. 213. 2) is that this tool can be also binding between agreeing parties. The advantages achieved by using this competence are clear: decrease of legal disputes; clear saving of time, costs, human resources; possibility to obtain an opinion (aimed at removing and/or correcting the possible violations claimed by the parties) at an early stage.

### **Standard costs and reference prices**

The cost-effectiveness of public contracts and their transparency also provide, through the regulatory activity of ANAC, the guidelines that contain a) standard costs of the works and b) reference prices for goods and services (art. 213.e, lett. H-bis). To this ANAC provides through the wealth of information contained in the National Database of Public Contracts (Article 213.8). These parameters serve multiple purposes: a) costs and reference prices represent a benchmark in the exercise of supervisory power; b) they fit into the spending review government strategy and c) in this way, ANAC also stimulates the centralization of procurement and aggregation of central procuring agencies.

### **The measurement of corruption**

ANAC has developed, the Project "Measuring the risk of corruption at territorial level and promoting transparency" funded by the European Commission "National Operational Program Governance and Institutional Capacity 2014-2020" (hereinafter PON or the Project) in collaboration with other national bodies (for example the Statistic institution - ISTAT and Ministry of Justice). It's a project that, through the production of statistical information with a high degree of territorial disaggregation, has the goal of defining and surveying on a territorial basis and with

periodic updates a set of measurement tools both for corruption risks and for the effectiveness of prevention actions. The goal is to establish a European methodology for measuring the risk of corruption. ANAC has combined to this project the online platform for collecting the 3y corruption prevention plans.