

Resolution no. 464 of November 26, 2025

General resolution on the exercise of supervisory and assessment powers by the Integrity Manager (RPCT) and ANAC regarding the non-assignability and incompatibility of positions pursuant to Legislative Decree no. 39 of 2013

Approved by the Authority's Board in the meeting of 26 November 2025

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1. The regulatory framework

More than ten years after the issuance of Decree No. 39, and in light of the consultative and supervisory activities carried out by the Authority in recent years regarding the non-assignability and incompatibility of positions, as well as the regulatory interventions and case law developed in the meantime, the Authority has identified the need to provide updated guidance regarding, in particular, the exercise of supervisory activity for compliance with the provisions of the decree, carried out by the Authority itself and by the internal bodies of administrations, public bodies, and entities under public control. This means that ANAC Resolution No. 833 of August 3, 2016, must be considered as superseded.

Furthermore, the content of this resolution considers the relevant guidelines formulated in the 2025's National Anticorruption Plan (NAP 2025), with which this resolution is fully integrated and to which reference is made.

➤ The genesis of Legislative Decree 39/2013

With the aim of preventing situations deemed potentially conducive to conflicts of interest or, in any case, any possible situation in conflict with the constitutional principles of impartiality and good governance, Legislative Decree No. 39 of April 8, 2013, implementing Article 1, paragraphs 49 and 50, of Law No. 190 of November 6, 2012, was approved. This decree contains provisions regarding the non-assignability and incompatibility of positions held in public administrations, public bodies, and private law entities under public control. The delegated decree provides for a detailed series of causes for non-assignability and incompatibility, with reference to the following types of positions (for the definitions of which please refer to Chapter I of the decree):

1. top administrative positions in public administrations and in private law entities under public control;
2. internal and external managerial or responsibility positions in public administrations and private law entities under public control;
3. administrative positions in private law entities under public control and public bodies.

In addition to the aforementioned positions, we shall consider those of general director, health

director, and administrative director in local health authorities of the National Health Service, to which specific regulations apply, also outlined in Legislative Decree no. 39/2013.

Legislative Decree no. 39/2013 therefore serves as a tool for preventing corruption, predetermining - in Chapters II to VI - absolute and peremptory cases of conflict of interest that either preclude access to the position (so-called non-assignability cases under Legislative Decree 39/2013) or prevent the simultaneous performance of different roles (so-called incompatibility cases).

The legislator has therefore deemed that certain personal situations (past or present) of the agent (the individual seeking to be assigned the role) determine an unavoidable conflict of interest that is potentially detrimental to the primary public good and cannot otherwise be neutralized through recourse to the ordinary preventive measures envisaged in the case of the existence of so-called specific conflicts of interest, such as abstention from exercising the function.

➤ **Legislative news**

Regarding the specific cases of non-assignability and incompatibility prescribed by Legislative Decree no. 39/2013, significant developments have recently occurred, both at the regulatory and case law levels.

- A. Law no. 21 of March 5, 2024 (effective from March 27, 2024) The new law introduced an important regulatory change to the non-assignability under Article 4 of Legislative Decree No. 39/2013, "Non-assignability in state, regional, and local governments to individuals from regulated or funded private law entities." This provision prohibits the appointments of positions in public administrations and public bodies to individuals from regulated or funded private law entities or to individuals who have carried out professional activities themselves if regulated or funded by the appointing entity. First, the new law amended the cooling-off period, reducing it to one year from the two years required under the previous legislation. It also introduced a new paragraph 1-bis to Article 4, expressly providing grounds for exclusion from appointments if certain conditions are met: the appointments, position, or professional activity must have been occasional, non-executive, or supervisory in nature.

To mitigate the effects of the introduction of the aforementioned ground for assignability, the legislator has also specified that, when for one of the reasons indicated above, it is possible to exclude the non-assignability of a position, the adoption of organizational and transparency measures is required to manage potential conflicts of interest.

- B. Article 7 of Legislative Decree 39/2013, "Non-eligibility to hold positions of office for members of regional and local political bodies," was also initially amended and subsequently repealed.

In fact, this article was affected by the Constitutional Court with ruling no. 98 of 5 March 2024, which redrew the boundaries of the case of non-assignability, referred to in paragraph 2, letter d).

Subsequently, the legislator:

with the art. 21, co. 5-quinquies, of Legislative Decree 27 December 2024, no. 202 (containing "Urgent provisions regarding regulatory deadlines" converted by Law No. 15 of 21 February 2025, which introduced paragraph 5-quinquies of Article 21) has provided for the repeal of the entire paragraph 2 of Article 7 of Legislative Decree No. 39/2013 as of 25 February 2025;

with art. 12-bis of Legislative Decree no. 25 of 14 March 2025 (containing "Urgent provisions regarding the recruitment and functionality of public administrations" converted into Law no. 69 of 9 May 2025) introduced paragraph 2-bis to art. 2 of Legislative Decree no. 39/2013, substantially modifying the grounds for non-assignability pursuant to art. 7, paragraph 1, letter b), effective 14 May 2025;

Finally, with Article 2 of Law No. 11 of August 8, 2025 (containing "Provisions regarding the composition of regional councils and boards and incompatibilities," published in the Official Journal No. 184 of August 9, 2025), it also repealed Article 7, paragraph 1 of Legislative Decree No. 39/2013, effective August 24, 2025.

- C. Finally, it should be noted that the aforementioned Legislative Decree 25/2025, with Article 12-bis, paragraph 1, letter b), also addressed the situations governed by Article 12 of Legislative Decree 39/2013 ("Incompatibility between internal and external management positions and positions as members of management bodies in state, regional, and local administrations"), inserting a new paragraph 4-bis, according to which "The

incompatibilities referred to in the same article do not apply to permanent employees at the management level of the same administration or the same public body or private law entity under public control that grants the position."

Regarding the legislative interventions, the Authority believes the general principles of non-retroactivity of the law and "*tempus regit actum*" apply, which require the legitimacy of administrative acts to be assessed based on the legislation in force at the time of their adoption. The *actum*, in this case, is the provision granting the assignment (see, for further details regarding the identification of the applicable legislation, § 2.7 of the 2025 NAP).

This principle also applies if new regulatory changes are made to the legislative text under consideration.

➤ The effects of the assessment

Moving forward with the analysis of the structure of Legislative Decree 39/2013, Chapter VII of the decree is dedicated to the legal consequences that apply in the event of violation of the provisions and are distinguished by the occurrence of a cause of non-assignability or incompatibility, as the two legal regimes are structured differently.

Non-assignability

Art. 17: «The assignment of tasks adopted in violation of the provisions of this decree and the related contracts are null and void».

In cases where assignments have been granted that have been declared null and void pursuant to the above-mentioned Article 17, the subsequent Article 18 provides for disciplinary consequences for those who have proceeded with the granting of illegitimate assignments, prescribing a temporary ban from the power to grant assignments within their jurisdiction, information on which will be provided below (see § 3.).

Article 18: "Members of bodies who have assigned duties that have been declared invalid are liable for the financial consequences of the measures adopted. Members who were absent at the time of the vote, as well as dissenters and abstentions, are exempt from liability.

Members of bodies who have assigned tasks that have been declared null may not assign the

tasks falling within their competence for three months»¹

Incompatibility

Where incompatibility arises, the provisions of Article 19 shall apply.

Art. 19: «The performance of the tasks referred to in this decree in one of the situations of incompatibility referred to in Chapters V and VI entails the forfeiture of the task and the termination of the relevant contract, whether subordinate or self-employed, after the peremptory term of fifteen days from the notification to the interested party, by the manager referred to in Article 15, of the occurrence of the cause of incompatibility.

The provisions that provide for the placement of public administration employees on leave in the event of incompatibility remain in place.

Of relevance within this regulatory framework is the provision requiring the individual appointed to one of the positions referred to in this regulation to provide, upon appointments, a declaration declaring that there are no grounds for non-assignability or incompatibility as identified in the decree itself. This is a mandatory requirement, which is specifically addressed in this resolution (see § 4).

2. The supervisory and verification activity

It is important to clarify that the system of oversight of compliance with the provisions of Legislative Decree no. 39/2013 is entrusted to the synergistic action of two entities:

- **the Integrity Manager of each public administration, public entity, and private entity under public control, hereinafter referred to as the RPCT** — Officer Responsible for Transparency and the Prevention of Corruption (so-called internal oversight)

¹Pursuant to the Article 18, the competent administrative authority to act as a substitute during the aforementioned three-month suspension is, for ministries, the Prime Minister and, for public entities, the supervisory administration. Regions, provinces, and municipalities, however, within three months of the entry into force of Decree No. 39/2013, shall adapt their regulations by identifying the internal procedures and the bodies that may, as a substitute, assign positions during the period of suspension of the incumbent bodies. In the event of inaction by these latter bodies, the substitute procedure pursuant to Article 8 of Law No. 131 of June 5, 2003, shall apply.

- **the National Anti-Corruption Authority** (so-called external oversight).

These entities work together, both preventively and during the investigation phase, to ensure full compliance with the legislation in question, according to a process structured as follows.

2.1. The role of ANAC (“external supervision”)

Analyzing, first, the role and functions of the ANAC regarding the non-assignability and incompatibility of top-level and managerial administrative positions within the administrations and entities required to comply with this legislation, the reference provision is Article 16 of Legislative Decree 39/2013.

Article 16: «1. The National Anti-Corruption Authority shall monitor compliance by public administrations, public bodies, and private law entities under public control with the provisions of this decree, including through the exercise of inspection powers and the verification of individual cases of assignment of tasks.

2. The National Anti-Corruption Authority, following a report from the Presidency of the Council of Ministers – Department of Civil Service or ex officio, may suspend the appointment process with its own provision containing observations or concerns regarding the appointment process, as well as reporting the case to the Court of Auditors for the investigation of any administrative liability. The administration, public entity, or private entity under public control that intends to proceed with the assignments must justify its decision, considering the Authority's observations.

3. The National Anti-Corruption Authority expresses mandatory opinions on the ministerial directives and circulars concerning the interpretation of the provisions of this decree and their application to the various cases of non-eligibility for assignments and incompatibility.».

Added to this is the ANAC's general regulatory power, pursuant to Law No. 190/2012, which falls within the scope of its policy on corruption prevention measures for all public administrations and private entities controlled, owned, regulated, or financed by the State.

Given the role of monitoring, preventing, and combating corruption and illegality in public administration that the aforementioned Law no. 190 of 2012 assigns to the National Anti-

Corruption Authority, it is appropriate to clarify here the boundaries and scope of its supervisory and assessment activities regarding non-assignability and incompatibility as per Legislative Decree no. 39/2013, especially by relating them to the tasks assigned to the RPCTRPCT.

First of all, Article 16 of Legislative Decree no. 39/2013 establishes a supervisory power/duty for ANAC to ensure compliance with the provisions of the decree, which may also be implemented through the exercise of inspection powers and the verification of individual cases of assignment of tasks.

This oversight is expressed in two distinct cases: on the one hand, the power to suspend the transfer procedures, outlined in Article 16, paragraph 2; on the other, the power to ascertain individual cases of non-assignability and incompatibility pursuant to Article 16, paragraph 1.

Regarding the first power, pursuant to paragraph 2 of the aforementioned Article 16, the Authority is granted the power, following a report from the Presidency of the Council of Ministers - Department of Civil Service or ex officio, to suspend the assignment process with its own provision containing observations or concerns regarding the assignment, as well as to report the case to the Court of Auditors for the assessment of any administrative liability. The administration, whether a public entity or a private law entity under public control, that intends to proceed with the assignment must provide reasons for the decision, considering the Authority's observations (so-called "strengthened reasoning").

The power to suspend the appointment process is therefore intended to draw the attention of the administration awarding the top-level or managerial administrative position to the possible existence of grounds for non-eligibility, which, however, the administration itself may disregard, providing appropriate justification. The circumstance governed by Article 16, paragraph 2, allows the ANAC to conduct an initial assessment of the reported situation, different from the assessment referred to in paragraph 1. This is a precautionary and collaborative measure, serving to remind the administration to comply with the rules regarding non-assignability. This is confirmed by the fact that the administration may nevertheless proceed with the appointments, naturally subject to adequate justification that considers the ANAC's observations and findings.

Pursuant to Article 16, paragraph 1, the Authority also has the power to "verify individual and specific cases of assignment of tasks" when it receives a report from third parties, or from the

RPCT itself (pursuant to Article 15, paragraph 2), or when it proceeds ex officio.

This action differs from the previous one because it concerns assignments of tasks already completed, with respect to which it is therefore necessary to evaluate the applicability of the consequences deriving from illegitimacy.

The Authority conducts the investigation in accordance with the adversarial principle, in accordance with the provisions of the Regulation on the exercise of supervisory activity regarding the non-assignability and incompatibility of positions, as well as compliance with the rules of conduct of public officials, to which reference is made for procedural aspects. For the purposes of this review, it is worth noting that the procedure, conducted within the framework of the principles expressed in the general law on administrative procedure (Law No. 241 of 7 August 1990), concludes with the adoption of a resolution that can determine the existence of the non-assignability /incompatibility hypothesis, or can dismiss the case if even one of the conditions established by the legislator is missing. The resolution is notified to the parties in the procedure and published on the Authority's website pursuant to Article 20 of the Supervisory Regulation, in accordance with the rules and standards established to protect the rights of the parties involved.

It should be noted that the resolution is communicated to the RPCT established in the administrations and bodies involved in the procedure, as the latter is required, in execution of the dispositive content of the ANAC provision, to undertake a series of actions and adopt a series of acts within its competence; in particular, it must:

- communicate to the interested party the non-assignability of the position, ascertained by ANAC and the consequent nullity of the assignment deed and the related contract, helping the institution in adoption of the consequent measures.
- raise the objection pursuant to paragraphs 1 and 2 of art. 18 of Legislative Decree no. 39/2013 to the body assigning the tasks declared null because they cannot be assigned and carry out the relevant procedure aimed at verifying the integration of the psychological element (as clarified in ANAC resolution no. 67 of 2015; see also Council of State, section V, 14 January 2019, no. 299, on which more is said in § 3);
- notify the interested party of the proven situation of incompatibility pursuant to art. 19, paragraph 1, of Legislative Decree no. 39/2013, granting the interested party a peremptory

15-day deadline to opt to maintain one of the two positions;

- Initiate the procedure aimed at the possible application of the sanction provided for by Article 20, paragraph 5, of Legislative Decree no. 39 of 2013, after verifying the mendacity of the declaration regarding the absence of impediments made by the interested party.

This reconstruction of the unfolding of the verification and assessment process considers the legal nature of the resolutions adopted by the Authority following a supervisory proceeding, considering the literal content of the provisions as well as the contributions made by administrative jurisprudence, which has been called upon to rule on challenges to the Authority's decisions over time.

With regard to this last aspect, the clarification of the Council of State (Section V - 11/01/2018, no. 126) is particularly significant. Regarding the power of the ANAC, it stated that "It does not appear to be a mere review of factual and legal situations, but rather a clarification measure that has legal effects (and as such can be challenged in administrative courts) so much so that consequent initiatives may arise. Despite the legal name, the clarification power attributed to the ANAC by art. 16, paragraph 1, has specific characteristics. It is an expression of an assessment of the process for the assignment of the position, whether underway or already concluded. The ANAC "assesses" in the sense that it evaluates the legal conformity of the assignment to a certain individual of a given managerial or top-level role in public administration or other entities to which the regulation applies. This assessment is not limited to an opinion but produces legal consequences, therefore it has a procedural nature. Article 17 of Legislative Decree no. 39 of 8 April 2016 further provides: "Deeds of assignment of tasks adopted in violation of the provisions of this decree and the related contracts are null and void." In the case of a position already assigned, the ANAC, if it deems that a law has been violated, shall ascertain the nullity of the act of assignment.

This was more recently confirmed by the Council of State, Section V, of 21 August 2023, no. 7864, as well as by the Rome Regional Administrative Court, Section I quater, no. 973 of 19 January 2024 and by the Rome Regional Administrative Court, Section I quater, no. 9165 of 31 October 2025.

Therefore, following the investigation, the parties must comply with the Authority's ruling, that is, they cannot deviate from its dispositive content, without prejudice to the right to challenge

the resolution in a court.

2.2 The role and functions of the RPCT (“internal supervision”)

Given the above regarding the guarantee and control function performed by ANAC, it should be noted that, ordinarily, oversight of compliance with the rules regarding non-assignability and incompatibility is primarily entrusted to the Anti-Corruption Prevention Officer pursuant to Article 15 of Legislative Decree 39/2013. Therefore, it can be considered an "internal" oversight exercise conducted through a series of actions and powers listed below.

The RPCT:

- defines in the "Corruption Risks and Transparency" subsection of the Integrated Activity and Organization Plan (PIAO) or in the Three-Year Plan for Transparency and Corruption Prevention (PTPCT) the phases and responsibilities inherent in the process of acquiring declarations pursuant to art. 20 of Legislative Decree no. 39/2013 as well as the methods of checking their truthfulness.
- In accordance with mutual responsibilities, supports the awarding body in the process of assigning tasks where technical issues arise relating to the correct application of Legislative Decree no. 39 of 2013, always without prejudice to the right to request a preliminary opinion from ANAC;
- contests the interested party, where the constitutive requirements of the cases are present, the existence of situations of non-assignability or the arising of those of incompatibility, initiating the relevant administrative procedure;
- ascertains the conditions for the possible exercise of the described sanctioning powers pursuant to articles 18 and 20, paragraph 5, of Legislative Decree no. 39/2013;
- Report to ANAC any cases of possible violations of the rules contained in the decree that emerge during the performance of ordinary supervision, monitoring, and control activities (see in this regard the President's Communication of September 14, 2022, as well as Annex No. 3 to the 2019 National Action Plan – Resolution No. 1064 of November 13, 2019).

Therefore, if the RPCT becomes aware of the assignment of an assignment in violation of the provisions of Legislative Decree no. 39 or of a situation of incompatibility, it is required to initiate an investigation and inform the Authority.

Non-eligibility for positions

In the event of a violation of the rules regarding non-assignability, the challenge of the possible violation must be brought against both the body that conferred the assignment and the individual to whom the assignment was conferred, since both may incur the prejudicial consequences expressly provided for by the decree.

This complaint constitutes only the initial step in an activity that can ordinarily be carried out exclusively by the Manager and which includes two distinct investigations:

- a. The first one - of an objective nature - relating to the violation of the specific provisions of non-assignability.
- b. a second, consequence of the first, intended, in the event of non-assignability, to evaluate the psychological element of guilt on the part of the body that conferred the assignment, for the purposes of the possible application of the disqualification sanction pursuant to art. 18 of the decree.

a. Verification of the violation of specific provisions of non-assignability

The proceedings initiated against the interested party must be conducted in accordance with the adversarial principle to ensure the participation of the interested parties. The notice of objection, which must also be brought to the attention of the parties who appointed the person, contains a very brief description of the facts, the assignments deemed ineligible, and the law allegedly violated. It also includes an invitation to submit exculpatory statements within a reasonable timeframe, which will allow for the exercise of the right of defense.

Having therefore ascertained the existence of the grounds for non-assignability, the RPCT declares the nullity of the assignment, as expressly provided for in Article 17 of the same decree. Therefore, since the nullity has been established by the occurrence of the statutory condition, the only remaining act to be adopted is the declaration of nullity. Although there is no legal indication regarding the competent body in this regard, it can easily be interpreted that such jurisdiction lies with the RPCT. Administrative case law has also clarified that, in the event of a confirmed violation of the provisions regarding non-eligibility for an assignment, the Anti-Corruption Prevention Officer is required to declare the appointments null and void. This means that the restoration of violated public interests is binding in nature, as it is linked to the

mere verification of the non-eligibility of the appointments and the urgency arising from the recognition of the harm caused by overriding public interests.

b. Assessment of the psychological element of guilt by the awarding body

Once an assignment is declared null and void, a separate process begins to determine the subjective element of culpability on the part of the body that assigned the assignment. This process must be conducted in compliance with the adversarial principle, involving all members of the body that assigned the assignment who were present at the time of the vote. Abstentions and dissenters are, in fact, exempt from liability, pursuant to Article 18, paragraph 1, of Legislative Decree No. 39/2013.

In this regard, it is worth recalling the Lazio Regional Administrative Court ruling no. 6593/2016, which, in confirming the legitimacy of resolutions nos. 66 and 68 of 2015 adopted by ANAC, clarified that Article 18 assigns jurisdiction over sanctions exclusively to the RPCT of the entity concerned. If the RPCT deems a violation of Legislative Decree no. 39/2013 to be true, the RPCT "shall ascertain, pursuant to Article 15, that the appointments is ineligible or incompatible and, with specific reference to the circumstances of non-assignability , declare its nullity and assess whether the appointments should be subject to the application of the inhibitory measures pursuant to Article 18" (for a similar reason, see Council of State – Section V – 5758/2024). The RPCT is therefore the master of the sanction procedure; In this capacity, he is required to differentiate the position of the person to whom the challenge pursuant to Article 15 is addressed from that of the person who proceeded with his appointments and for whom only the sanction pursuant to Article 18 is envisaged.

However, since the RPCT is an internal body within the same organization, the ANAC, in exercising its functions, as clarified in Resolution No. 67 of 2015, reserves the right to ensure that the Manager is guaranteed maximum autonomy and independence and that he or she is not subjected to direct and/or indirect influence and/or retaliation, in accordance with the constitutional principles of impartiality and proper conduct.

The current legislation on non-eligibility does not appear to require the subjective element of intent or negligence, so much so that Article 18 of Legislative Decree 39/2013 merely provides, specifying its content, the prohibitory sanction, envisaged almost as an automatic

consequence of the declaration of nullity of the assignment.

However, the Authority has long held that there is no automatic mechanism in this regard, so much that, despite the silence of the law, it has deemed it necessary (see Resolution No. 67/2015) to precede the sanction prohibiting the appointing body from assigning tasks for a period of three months with a particularly thorough assessment of the aforementioned psychological element. If this were not the case, that is, if no investigation into the subjective element was requested from the RPCT as part of the initiated sanctioning procedure, it would be open to challenge as unconstitutional due to its clear conflict with the principles of rationality and equal treatment with other administrative sanctions, for violation of the general principles governing administrative sanctions, applicable generally pursuant to Article 12 of Law No. 689/81, and for violation of the right to defense and the principle of legality of administrative action pursuant to Articles 24 and 97 of the Constitution, respectively. Furthermore, such proceedings would also be in clear conflict with the principles of the ECHR, in particular with Article 6 of the said Convention, according to the interpretation that the Strasbourg Court has given it on several occasions.

Essentially, the prohibitory sanction that prohibits the conferring body from assigning tasks within its jurisdiction for a period of three months is a personal, interdictory, fixed, and non-gradable sanction that cannot be imposed without first conducting a psychological investigation of the person subject to it.

The proceeding initiated by the RPCT is a separate and independent proceeding, conducted in accordance with the adversarial principle and aimed at determining the existence of the psychological element of intent or negligence on the part of the appointing body. Upon its determination, the RPCT imposes, if appropriate, the injunctive sanction referred to in Article 18 of Legislative Decree No. 39/2013.

With regard to the investigation of the psychological element, the RPCT may clearly face difficulties in determining whether the body that assigned the task was intentional or negligent. As clarified in Resolution No. 67 of 2015, the RPCT cannot and must not rely on the statements made by the appointed individual in the declaration issued pursuant to Article 20 of Legislative Decree 39/2013. Instead, the RPCT is required to carefully verify whether, based on known or knowable documents, the RPCT could have identified the reason for the

non-assignability - even through an investigation delegated to the relevant offices and/or a request for clarification from the appointee.

As a result of this sanction, the body that assigned the task will not be able to assign tasks within its jurisdiction for the following three months.

With Resolution No. 68 of 2015, ANAC ruled that the sanction pursuant to Article 18 does not apply to members who ceased to hold office while performing functions related to any new institutional roles. However, to avoid easy evasive applications of the regulatory provision, the same sanction will be applicable again, for the entire duration or residual term from the time of cessation of office, should the same individuals rejoin the body that granted the declared invalid role.

Incompatibility

In the different case regarding the existence of a cause of incompatibility, Article 19 of Legislative Decree 39/2013 provides for the forfeiture and termination of the relevant employment or self-employment contract, after the peremptory term of fifteen days from the RPCT's notification to the interested party of the existence of the cause of incompatibility.

This means that the RPCT is required to initiate only one procedure aimed at determining any potential incompatibility. If such a situation is established, the RPCT will notify the interested party of the violation, simultaneously assigning a 15-day deadline. After this deadline, if no option is given, a declaratory decision declaring the termination of the assignment will be required. In this case, it is sufficient to determine the existence of a cause for incompatibility.

In this regard, it is useful to remember that the primary purpose of Legislative Decree no. 39/2013 is to protect the independence of administrative offices from undue influence from politics or private interests. Therefore, the legislation identifies situations of incompatibility only for administrative offices, which in no way lead to dismissal of political offices, which cannot be challenged under the aforementioned provisions.

3. The relationship between ANAC and RPCT

As highlighted above, the RPCT, in accordance with the express provisions of Article 15, paragraph 2, of Legislative Decree no. 39 of 2013, must inform the ANAC of any potentially

significant situations that arise during the ordinary monitoring and control activities for which it is institutionally responsible.

The strategic importance of this requirement can be understood by considering the actions that ANAC may take to ensure the effective and uniform application of the legislation in question and, therefore, the impact that timely communication can have on the effective protection of the public assets underlying the bans, allowing for the examination and resolution of controversial cases in which a *prima facie* case of violation is found.

Indeed, it is now a rock-solid principle that ANAC, in its capacity as the Authority for Guarantee and Control, holds a general power of supervision over the entirety of the decree, which therefore translates into the possibility of evaluating every act and fact on the same issue, even when carried out by the RPCT in the exercise of its own powers.²

This stems from a literal interpretation of Article 16 of Legislative Decree no. 39 of 2013, which acts as a sort of shut-off valve within the supervisory system.

Indeed, starting from the incontrovertible principle that ANAC can (or rather, must) monitor compliance with the provisions of the aforementioned decree by public administrations, public bodies, and private law entities under public control, including through the exercise of inspection powers and the verification of individual cases of assignment of tasks, the related corollary is easily identified: that ultimately, this also includes the power to monitor the correct application of Article 15 itself, which, as we have seen, governs the powers, actions, and responsibilities of the RPCT, including the duty to report to the Authority any potential violations of the legislation.

Therefore, even in cases where the procedure for challenging a type of prohibition has been conducted internally within the institution, initiated by the RPCT, the Authority still retains a general power to verify the appropriateness and legitimacy of the decisions taken by the latter.

To hold a different opinion - that is, by considering a mere "activation" of the institution's RPCT, regardless of its compliance with the law, sufficient to paralyze the ANAC's

²See in this regard: Statement from the President of the ANAC dated 23 April 2024; TAR, Rome, section I quater, 19 January 2024, no. 973 and TAR, Rome, section I, 2 February 2022, no. 1238).

supervisory activity - would violate the most basic principles of equality, impartiality, and proper administrative action.

Therefore, whether the Authority acts ex officio as a matter of priority, activating the so-called "external supervisory mechanism," or whether it acts in subordination to an assessment already carried out by the RPCT, deeming it non-compliant with the provisions of the decree, the assessment carried out by ANAC is binding on the parties and can only be contested by challenging the provision before the administrative judge.

4. The acquisition and verification activity on the declarations made pursuant to Article 20 of Legislative Decree 39/2013

Another fundamental requirement must also be taken into account, prescribed by Article 20 of Decree 39/2013, which requires the person to whom the assignment is conferred to issue, upon appointments, a declaration stating the absence of any of the causes of non-assignability (Article 20, paragraph 1) and, annually, a declaration on the causes of incompatibility identified by the same decree, given that the latter can only occur after the appointments, rendering the latter legitimate ex tunc but subsequently vitiated (Article 20, paragraph 2).

This requirement is of fundamental importance for two reasons:

1. on the one hand, the declaration of the absence of causes for non-assignability constitutes a condition for the effectiveness of the assignment as expressly provided for by art. 20, paragraph 4, of Legislative Decree no. 39/2013;
2. On the other hand, it represents a moment of responsibility for its author, who, undoubtedly, is in a position to know the factual circumstances that concern him and which, if correctly declared, can be examined for their possible legal relevance by the relevant bodies, thus avoiding the establishment of situations of illegitimacy.

Given that Article 18 places responsibility for violations of the rules in question on the appointing body, such a declaration does not exempt the appointing body from the duty to ascertain, in compliance with the principles of good practice and impartiality set forth in the aforementioned Article 97 of the Constitution, the requirements for the appointments or, for what is relevant here, the absence of grounds for non-assignability concerning the individual

to be appointed. In other words, the appointing administration is required to exercise the utmost caution and diligence in assessing the declaration required by Article 20, as it cannot be ruled out as false, regardless of the author's awareness of the existence of any of the grounds for non-eligibility or incompatibility.

The appointing body, therefore, cannot and must not rely exclusively on the declarations of the appointed individual, but is required to verify, with the utmost caution, whether, based on known or knowable documents, it could have known—even through an investigation delegated to the offices and/or a request for clarification from the appointee—the cause of non-eligibility /incompatibility. This is in accordance with the logical assumption that the appointing body is liable for the financial and legal consequences resulting from the lapsed appointments.

Regarding the timing of the checks and the essential points of the procedure to be followed in the context of the verifications on the declarations, as clarified in the NAP 2025 – Special Part of Legislative Decree 8 April 2013, n. 39 – to which reference is made for anything not mentioned here, following the identification of the candidate subject to carry out an assignment falling within the subjective scope of application of Legislative Decree n. 39/2013, the conferring body³, also through another designated body/office, is required to submit the declaration form to the candidate, preferably after having clearly and specifically informed the candidate of the relevant prerequisites in the specific case for the purposes of configuring the hypotheses of non-assignability and incompatibility (for this purpose, please refer to the "Explanatory templates for the correct application of the provisions of Legislative Decree of 8 April 2013 no. 39" in Annex no. 1 of the NAP 2025). Before formally awarding the position, the appointing body, including through another designated entity/office, acquires the declaration signed by the candidate and proceeds, including through the RPCT or another designated office, to verify it by analyzing the circumstances indicated in the declaration form, or in the CV if attached, with respect to those deemed impediments by the legislator (to this end, each entity is responsible for detailing, in the "Corruption Risks and Transparency"

³When two or more administrations and therefore two or more RPCTs are involved, the responsibility for ensuring compliance with the decree is determined on a case-by-case basis by taking into account various factors, such as, for example: - the type of assignment being made; - whether the assignment is based on the choice made by the assembly as the body of the entity or on a specific shareholder who may be granted specific appointments/veto powers; - the presence of shareholders' agreements.

subsection of the PIAO or in the PTPCT, appropriate methods for acquiring the declarations referred to in Article 20 of Legislative Decree No. 39/2013 - in light of the context, the internal structure of the structure and its size and taking into account the considerations set out below - by the appointing body and for verifying them with the assistance of the RPCT where questions arise regarding the correct application of Legislative Decree No. 39/2013). With regard to such activities, the right to request a preliminary opinion from ANAC always remains intact.

Only subsequently will it be possible to proceed with the formalization of the assignment and the simultaneous acquisition by the conferring body, even through another designated entity/office, of the declaration of the absence of causes of incompatibility, including the commitment to communicate these if they arise and, in any case, to acquire them annually.

Declarations of non-eligibility and incompatibility – pursuant to Article 20, paragraph 3, of Legislative Decree no. 39/2013 – must be published in the Administration/Transparent Company section of the conferring entity's institutional website, in the subsection where the data relating to the positions to which they refer must be published and together with the additional documentation to be published, for each position holder, pursuant to Legislative Decree no. 33/2013.

The Authority also recommends conducting random checks, according to criteria established by the entity in the "Corruption Risks and Transparency" subsection of the PIAO or in the PTPCT, to ensure the truthfulness and completeness of the declarations of non-non-assignability and non-incompatibility. This also considers the powers of investigation and control provided for by Articles 43 and 71 of Presidential Decree 445/2000 by the entities receiving the declarations made pursuant to Articles 46 and 47 of the same decree. For example, the following are of strategic importance in the investigation:

1. consultation of the electronic business register and/or the register of local and regional administrators maintained by the Ministry of the Interior;
2. the acquisition of the Criminal Records and Pending Charges certificate produced by the person being inspected or, failing that, acquired from the local Criminal Records office for the purpose of checking the self-certification pursuant to art. 71 of Presidential Decree 445/2000;

3. monitoring open sources from which it is possible to identify the presence of circumstances worthy of further investigation.

This additional phase, in accordance with the provisions of the "Corruption Risks and Transparency" subsection of the PIAO or the PTPCT, may be implemented after the designation, particularly if the volume of contributions and/or the size of the organization's workforce warrants the need for additional time. It involves conducting random checks on the content of the declarations to verify their completeness and accuracy, implementing a series of initiatives aimed at understanding the interested party's situation.

To make the control system more effective and efficient, as well as to hold the interested parties accountable for what is declared, ANAC suggests that:

- The undersigned are reminded (for example, by inserting a specific standardized phrase in the declaration form) that the administration, as required by Legislative Decree no. 39/2013 and more generally by Presidential Decree no. 445/2000, is required to carry out appropriate checks and verifications to ensure the veracity of the declarations, including by consulting any entries in the Criminal Record Office;
- To avoid an innocent violation of the provisions in question and the risk of incurring the resulting "personal" sanctions, the interested party is advised to inform the granting administration of any factual circumstances that may be theoretically relevant under Legislative Decree no. 39/2013, thus allowing the competent bodies to conduct a more thorough assessment (including requesting an opinion from the Authority if the matter is unclear). In this context, a useful tool, although not mandatory and, in any case, not exhaustive in itself, is for the interested party to provide the administration with an updated curriculum vitae.

Given these premises, it is now worth considering the various consequences that, within the applicable regulatory framework, arise from false declarations. First, a false declaration incurs criminal liability for its author, as it is made pursuant to Article 76 of Presidential Decree No. 445/2000; secondly, given that such declaration is also made pursuant to Article 20 of Legislative Decree No. 39/2013, it is precisely paragraph 5 of that provision that prohibits its author from holding any of the positions provided for by the decree for a period of five years.

Finally, given that signing the declaration is a condition for the effectiveness of the

assignment, late signing does not cure the ineffectiveness of the appointments *ex tunc*, instead it must be considered that the assignment of the assignment is effective from the date of signing the self-declaration on the absence of causes of non-assignability pursuant to Legislative Decree no. 39/2013.⁴.

Alternatively, to safeguard the situation and any measures taken in the meantime, the institutions are offered the possibility of issuing specific documents validating and rectifying the previous defect.

5. ANAC's consultative activity

With a view to supporting and guiding administrations/entities in the application of sector regulations and resolving application issues that administrations may encounter in the awarding of mandates, the Authority provides support to administrations that request it through opinions issued as part of its consultative activity with reference to specific cases, relating to corruption prevention and transparency, with particular regard to the interpretative and application issues of Law 190/2012 and its implementing decrees, including Legislative Decree no. 39/2013.

Before proceeding with an assignment

Therefore, the administration can submit to the Authority - preferably using the form attached to the Regulation on the Exercise of the Advisory Function, published on the institutional website - a request for an opinion, signed by the legal representative or the RPCT, containing a reconstruction of all the factual and legal elements, as well as the documentation deemed relevant to fully address the legal issue submitted. It should be noted that the opinions of the ANAC have a different value than the documents declaring non-assignability/incompatibility adopted by the entity and the Authority itself because:

1. they are made exclusively upon request of a party;
2. are made in accordance with the methods and terms of the Regulation on the exercise of the advisory function pursuant to Resolution no. 297 of 17 June 2024;
3. their adoption by ANAC is not preceded by a communication of initiation of the procedure nor are they preceded by an independent investigation before the Authority in a

⁴Anac Resolution no. 1198 of 2016

contradictory manner with all interested parties;

4. they do not have constitutive effects (nor are they suitable ex se to affect the legal sphere of third parties, being addressed only to the administration that requested it);
5. They concern the interpretation of the legal provisions regarding non-assignability and incompatibility with reference to a specific case and based on the information presented in the request for an opinion.

These opinions are, therefore, the expression of a purely optional consultative activity, the scope of which can only be described as non-binding. As the Authority also clarified in the aforementioned Regulation, "the adoption of non-binding opinions on public contracts, as well as on corruption prevention, requested with reference to specific cases regarding the correct interpretation and application of sector regulations [...] constitutes a function closely linked to the Authority's regulatory and supervisory functions, as it is aimed at providing ex ante guidance and guiding the administrations' activities, fully respecting their inherent discretion."

Finally, it is worth noting that although ANAC's advisory activity is not binding, if the administration deviates from the Authority's interpretation - for example, by assigning a task deemed ineligible in the opinion pursuant to Legislative Decree no. 39/2013 - and a report is received by the Authority, the latter may initiate supervisory activity.

Approved by the Board at the meeting of November 26

The President

Avv. Giuseppe Busia

Deposited with the ANAC's Board Secretariat on 3 December 2025