

CONFERENCE OF THE STATES PARTIES TO THE UNITED NATIONS CONVENTION AGAINST CORRUPTION, EIGHTH SESSION

PRE – EVENT

Strengthening Collaboration between Anti-Corruption Authorities (ACAs) and Supreme Audit Institutions (SAIs) Abu Dhabi 15 December 2019

I. Program: Session on “Public Sector Procurement / Privatization”

Agenda

- 08:30 - 09:00: Day 1 Recap Day 2 Objectives
State Audit Institution of the UAE

Key Considerations

- 09:00 -10:30: Public sector procurement / Privatization
Presentations & discussions National Anti-Corruption Commission of Saudi Arabia, National Anti-Corruption Authority of Italy, Court of Audit of Italy, UNODC, State Audit Institution of the UAE
- 10:45 -12:15: Public sector recruitment & employment
Presentations & discussions UNODC, State Audit Institution of Oman, Administrative Control Authority of Egypt, Supreme Audit Institution of Chile
- 13:30 -15:00: Regional and national practices - Case studies: East Africa, Mozambique, Uganda, France
Presentations & discussions East African Association of Anti-Corruption Authorities, Court of Accounts of France, Administrative Tribunal of Mozambique, Office of the Auditor General of Uganda, Public Procurement and Disposal of Public Assets Authority of Uganda, GIZ

Opportunities for Collaboration

- 15:15-17:00: Work plan for supporting the implementation of the UNODC-INTOSAI Memorandum of Understanding
Presentation & discussions on the work plan (including assignment of responsibilities) OLACEFS Specialized Working Group On Fighting Transnational Corruption, State Audit Institution of the UAE, General Secretariat of INTOSAI, UNODC
- 17:00 -17:30: Event Wrap-up State Audit Institution of the UAE, UNODC.

II. Introduction by Nicoletta Parisi

Honorable Chair,
Ladies and Gentlemen,
Good morning.

Thanks for inviting me to this meeting, to continue yesterday's reflection on the relationships between domestic Courts of audit and Authorities for the prevention of corruption.

1. Today, I am here to briefly describe the complex system of the Italian public procurement legal framework.

Its governance was conferred to the Italian Anti-Corruption Authority (ANAC) -- established in 2012 and fully renewed in 2014 - to implement UNCAC. The Italian legislator decided to entrust the multifaceted function of public procurement to an independent administrative entity responsible for the whole strategy of corruption prevention, in an effort to efficiently govern a strategic sector exposed more than others to the risk of corruption.

2. The legislator provided ANAC with a broad authority over the public sector. The Authority pursues its goals through a supervisory and regulatory mandate, an advisory function, along with inspection and administrative sanctioning powers.

These competences are accompanied by an important monitoring activity through the collection of data. An Observatory for public contracts and Database (the National Bank on Public Contracts) are operational in ANAC for the purpose of increasing transparency in public procurement.

Through these databases, for example, it is possible to adopt guidelines containing standard costs and reference prices, in the exercise of ANAC's supervisory role. It is also possible to build risk corruption indicators, as I will explain later.

3. I would like to draw your attention, in particular, on a few practices put in place by ANAC in implementing / performing its supervisory responsibilities.

3.1. From the very beginning, ANAC used the so-called "cooperative supervision" as a particular form of preventive verification of the tendering processes. This tool is implemented through the signing of MoUs between the contracting authorities and ANAC and aims at the prevention of illicit

behavior by offering guidance to the public administrations towards better and more transparent choices.

Stemming from the positive experience of EXPO 2015, this “collaborative supervision” has been used in the organization of other major events in order to guarantee the transparency, accuracy and high quality of the administrative actions from the very beginning

3.2. Another anticorruption mechanism is the “extraordinary and temporary management of contractor” (aka “commissariamento d’impresa”), which was also used on the occasion of the EXPO 2015 event with the support of the Organization for Economic Co-operation and Development (OECD).

In the event of illegal behaviors by a company which has been awarded a contract for public works, services or supplies, or when a company is being prosecuted by a judicial authority, the local Government may adopt temporary measures upon ANAC President’s proposal.

Such measures can consist alternatively of:

- ordering the renewal of the company’s corporate bodies; or
- engaging in the extraordinary and temporary management of the company finalized to the implementation of the single contract ; or
- supporting and monitoring the company through the appointment of experts tasked with supporting the company’s organizational and management audit activity.

These innovative measures allow for an immediate intervention against corruption and constitute a strong deterrent against corruption-oriented behaviors.

3.3. Recognizing ANAC’s effectiveness in the area of public procurement, the Public Contract Code of 2016 provided ANAC with new competences in this area.

For example, ANAC is entitled to appeal to the Judicial Authority acts of significant impact issued by any contracting authority if it deems that they violate the rules on public contracts relating to works, services and supplies (art. 211.1bis).

In addition, if ANAC ascertains that a contracting authority has adopted a measure in breach of the Code, it may issue an opinion to the contracting authority requesting compliance; if the contracting authority fails to comply, ANAC may file an action before the administrative judge.

Moreover, if ANAC identifies the existence of irregularities, it can transmit the documents to the contracting authority, requesting the removal of the violation (art.211.1ter).

This new competence appears to be part of a trend that recognizes to the Italian independent administrative authorities the responsibility to act upon the protection of common goods and interests, either in the competition area (the Antitrust Authority), or in the area of public contracts (ANAC).

3.4. ANAC fulfills its regulatory mandate using instruments of general scope, such as guidelines, standard tender-notices and advisory opinions. All these instances of soft law have proved to be essential not only in the area of public contracts, but also with regard to corruption prevention and the strengthening of integrity in the public sector. Many of these guidelines serve the immediate purpose of interpreting and/or integrating the Italian legislation on different topics. This important practice has been recognized by the Public Contract Code (art. 213, par. 2).

3.5. Acts of general scope are also the advisory opinions delivered by ANAC in carrying out its pre-litigation competence. This tool allows contracting authorities and bidders to request an opinion from ANAC in order to settle disputes during the tendering procedure. With this

Alternative Dispute Resolution tool, the legislator aims at simplify the solution of litigations in tender procedures and reduce the number of cases in front of the administrative judge. The pre-litigation mechanism was used in the past by ANAC, but the new Code (art. 213. 2) establishes that ANAC's opinion can be binding between the agreeing parties.

3.6. Through the adoption of guidelines that contain standard costs of works and reference prices for goods and services (art. 213.e, lett. h-bis), ANAC aims at a better cost-effectiveness of public contracts and their transparency, using 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 stimulates the centralization of procurement and aggregation of central procuring agencies.

4. In this framework, the "alliance" between ANAC and the Italian Court of Audit is strategic.

Based on a signed MoU, the two institutions share information useful to prevent illegality and corruption in the public procurement sector. This cooperation currently concerns a mutual exchange of data and information concerning the awarding, stipulation and execution of sensitive contracts (or contracts requiring special security measures). The agreement provides for the exchange of reports, information and complaints concerning the awarding, stipulation and implementation of these specific contracts, as well as the identification of cases of general importance.

The collaboration is therefore two-ways: a) If ANAC ascertains that from the implementation of public contracts derive prejudice to the public interest, the documents and remarks are transmitted to the General Prosecutor of the Court of Auditors, and b) the Court of auditors provides ANAC with data on jurisdictional proceedings within the limits of its mandate and internal procedures.

In the same perspective, ANAC and the Court of Audit share a project on both the measurement of the risk of corruption and the rate of effectiveness of the preventive measures. In practices, this means developing scientific indicators through red flags, such as the rate of renewal of the extension of contracts, direct or non-competitive adjudications, adjudications under emergency, fairness of prices, time allocate to file an offer, tenders with one company only, etc.

The indicators are found through data mining in the public administrative Authorities' databases (such as the Court of Audit that offers data about its jurisdictional proceedings).

5. In these few minutes, I tried to give you a quick overview of the Italian legal framework on public procurement. I hope I provided an insight in this complex system.

Thanks for your kind attention.

**Strengthening Collaboration between Anti-Corruption Authorities (ACAs) and Supreme Audit Institutions (SAIs)
Towards Effective Prevention and Detection of Corruption Offences**

Abu Dhabi, United Arab Emirates
14-15 December 2019

Day 2: 15 December 2019

| Time | Agenda Item # | Agenda Item Description | Presenters |
|---------------------------------|---------------|--|--|
| 08:30 - 09:00 | 2.a | Day 1 Recap Day 2 Objectives | State Audit Institution of the UAE |
| Key Considerations | | | |
| 09:00 - 10:30 | 2.b | Public sector procurement / Privatization Presentations & discussions | National Anti-Corruption Commission of Saudi Arabia, National Anti-Corruption Authority of Italy, Court of Audit of Italy, UNODC, State Audit Institution of the UAE |
| 10:30 - 10:45 | Break | | |
| 10:45 - 12:15 | 2.c | Public sector recruitment & employment Presentations & discussions | UNODC, State Audit Institution of Oman, Administrative Control Authority of Egypt, Supreme Audit Institution of Chile |
| 12:15 - 13:30 | Lunch | | |
| 13:30 - 15:00 | 2.d | Regional and national practices - Case studies: East Africa, Mozambique, Uganda, France Presentations & discussions | East African Association of Anti-Corruption Authorities, Court of Accounts of France, Administrative Tribunal of Mozambique, Office of the Auditor General of Uganda, Public Procurement and Disposal of Public Assets Authority of Uganda, GIZ |
| 15:00 - 15:15 | Break | | |
| Opportunities for Collaboration | | | |
| 15:15- 17:00 | 2.e | Work plan for supporting the implementation of the UNODC-INTOSAI Memorandum of Understanding Presentation & discussions on the work plan (including assignment of responsibilities) | OLACEFS Specialized Working Group On Fighting Transnational Corruption, State Audit Institution of the UAE, General Secretariat of INTOSAI, UNODC |
| 17:00 - 17:30 | 2.f | Event Wrap-up | State Audit Institution of the UAE, UNODC |