

DECREE-LAW June 24, 2014, n. 90 converted with modifications by L. 11 August 2014, n. 114
Urgent measures for simplification and administrative transparency and for the efficiency of
judicial offices.

Art. 19

(Suppression of the Authority for the Supervision of Public Contracts
of works, services and supplies and the definition of functions
of the National Anti-Corruption Authority)

1. The Supervisory Authority on Public Works Contracts, services and supplies referred to in Article 6 of the Legislative Decree 12 April 2006, n. 163 and subsequent amendments, is suppressed and its organs shall cease to have effect from the date of entry into force of this Decree.

2. The tasks and functions carried out by the Supervisory Authority public contracts for works, services and supplies are transferred to the National Anti - corruption and Transparency Evaluation Authority (ANAC) referred to in Article 13 of the Legislative Decree 27 October 2009, n. 150, which is renamed National anti-corruption Authority.

3. The President of the National Anti - Corruption Authority, by December 31, 2014, presents to the President of the Council of Ministers a plan for the reorganization of the Authority itself, which contemplates:

(a) the definitive transfer of human, financial and technical resources necessary for carrying out the functions referred to in paragraph 2 (, specifying that the staff currently in service at ANAC, belonging to the roles of public administrations referred to in Article 1, paragraph 2, of the Legislative Decree of 30 March 2001, n. 165, and subsequent modifications, comes into one role together with the staff of the suppressed Authority for the supervision of public works, services and supplies contracts identified in the reorganization plan referred to in the present subparagraph paragraph);

b) a reduction of not less than twenty percent of the treatment economic accessory of the staff, including directors;

(c) the reduction of operating costs not less than twenty percent.

4. The plan referred to in paragraph 3 shall take effect as a result of the approval by decree of the President of the Council of Ministers ((, to be adopted, after having heard the relevant parliamentary Commissions, within sixty days of the submission plan to the President of the Council of inisters)).

5. In addition to the tasks referred to in paragraph 2, the National Anti-corruption Authority
:

a) Receives information and allegations of illicit behaviors, even in forms referred to in Art. 54-bis of Legislative Decree no. 165;

((a-bis) receives information and reports from each lawyer of the State which, in the exercise of the functions referred to in Article 13 of the unique text of the Royal Decree of 30 October 1933, no. 1611 becomes aware of violations of law or regulation or other anomalies or irregularities relating to contracts which fall within the discipline of the code referred to in the

decree Legislative 12 April 2006, no. 163. For State lawyers the obligation to lodge a complaint referred to in Article 331 of the Criminal Procedure Code remains unchanged));

b) unless the fact constitutes a crime, it applies, with due respect of the norms foreseen of the law 24 November 1981, no. 689, one Administrative sanction not less than the minimum of 1,000 euros and not higher than the maximum of 10,000 euros, in case the subject obliged omits the adoption of the three-year corruption prevention plans or three-year transparency programs or codes of conduct.

((5-bis) In the case of disputes concerning the penalties referred to in paragraph 5, letter b), it is competent the single judge court.

5-ter. In the report referred to in Article 1 (2) (g) of Law 6 November 2012, no. 190, the National anti-corruption Authority also reports of the carried out activity in light of the paragraphs 2, 3, 4 and 5 of this Article, indicating the possible deficiencies of the administrative and regulatory framework that they make the system of public procurement vulnerable to corruption.))

6. The sums paid as sanctions administrative provisions referred to in paragraph 5 above. b), remain in the availability of the National Anti-Corruption Authority and they can be used for their own institutional activities. ((The same sums are reported every six months and posted on the official internet site of the National Anti-Corruption Authority, specifying the sanction applied and the modalities of use of the such sums, even in the event of saving or lack to use)).

7. The President of the National Anti-corruption Authority indicates proposals to the single Government mandated Commissioner for Expo Milan 2015 and the Expo 2015 company p.a. for the proper management of the procurement procedures for the realization of the event. ((The President of the National Anti-Corruption Authority signals to the administrative authority as of Article 47, paragraph 3 of the legislative decree 14 March 2013, n. 33, violations of the communication of information and data and obligations to publish as of Article 47 for the purpose of the exercise of the sanctioning power referred to in the same article)).

8. When carrying out the tasks referred to in paragraphs 2 and 5, the President of ANAC acts through the human, technical and financial resources of the abovementioned suppressed Supervisory Authority on Contracts public works, services and supplies, in the interim of approval of the plan referred to in paragraph 4.

9. In order to concentrate the activities of the National anti - corruption Authority on the tasks of transparency and prevention of corruption in public administrations, the functions of the mentioned Authority on Measurement and Evaluation of performance referred to in Articles 7, (8, 9,) 10, 12, 13 and 14 of the Legislative Decree 27 October 2009, no. 150, are transferred to the Department of Public Function of the Presidency of the Council of Ministers, as from the date of entry into force of the law conversion of this decree. (With regard to the sole transfer of the functions referred to in Article 13, paragraph 6, letters m) and p) of Legislative Decree no. 150 of 2009, relative to the experimental projects and the Portal of Transparency, said transfer of functions must take place after agreement between the Department of Public Function and the National anti-corruption Authority, also in order to identify the projects they can more properly remain within the same national anti-corruption Authority)).

10. By regulation to be adopted pursuant to Article 17, paragraph 2, of ((Law No 400 of 23 August 1988)) within 180 days of entry in force of this Decree, the Government shall reorganize the functions referred to in paragraph 9 concerning measurement and evaluation of the performance, based on the following general rules:

- (a) review and simplification of tasks of the public administrations, in order to appreciate the rewards in the organizational and individual performance evaluation, also using the resources available under Article 16 paragraphs 4 and 5 of Decree-Law no. 98, converted, with modifications, by law 15 July 2011, no. 111));
- b) progressive integration of the performance cycle with the financial programming;
- c) linkage with the internal control system;
- d) independent evaluation of systems and results;
- e) consequent review of the discipline of the independent evaluation bodies.

11. The Department of Public Function of the Presidency of the Council of Ministers may use (in accordance with Article 17 paragraph 14 of the law of 15 May 1997, no. 127), personnel in out of role or command position for the tasks related to performance measurement and evaluation.

12. Paragraph 7 of Article 13 of the Legislative Decree 27 October 2009, n. 150 is repealed.

13. In Article 11 of Legislative Decree 30 July 1999, no. 286 the following changes are made:

- (a) paragraph 2 is repealed;
- (b) in paragraph 5, second period, the words: "until different provision adopted pursuant to paragraph 2" shall be deleted.

14. The Technical and Scientific Committee referred to in Article 1 of the Decree of the President of the Republic of 12 December 2006, no. 315 is repealed.

14-bis. Support functions of delegated political authority for coordination on strategic control in the State administrations are assigned to the Office for the Government Program of the Presidency of the Council of Ministers. The Office carries out the functions transferred with human resources, instrumental and financial instruments available under current legislation)).

15. The functions of the Department of Public Service of Presidency of the Council of Ministers on transparency and corruption prevention referred to in Article 1 (((4), (5) and (4) 8,)) of Law 6 November 2012 n. 190, and the functions of which Article 48 of the Legislative Decree of March 14, 2013, no. 33, are transferred to the National Anti-Corruption Authority.

16. The application of this Article shall not produce new or greater burdens for public finance.

Art. 32

(Extraordinary measures of management, support and monitoring of companies in the corruption prevention)

1. In the event that the judicial authority proceeds for crimes referred to in Articles 317, 318, 319, 319-bis mp 319 ° C, 319 ° C, 320 ° C, 322 °, mp, 322-bis, C.P. 346-bis, p.p., 353 c.p. and 353-bis c.p., or, in the presence of detected abnormal and in any case symptomatic situations of

illicit or criminal events attributable to a contracting authority of a contract for the realization of public works, services or supplies ((and for an undertaking that exercises healthcare activity on behalf of the National Health Service on the basis of the contractual agreements referred to in Article 8-quinquies of the legislative decree 30 December 1992, no. 502,)) or to a public works or general contractor, the Chairman of ANAC informs the prosecutor of the Republic and, in the presence of serious facts and ascertained, also in accordance with Article 19, paragraph 5, lett. (a) of the present decree, he proposes to the competent Prefect in connection with the place where the contracting station is located, alternatively:

- (a) to order the renewal of the organs by means of the replacement of the subject involved and, if the company does not adhere within the established time, to provide for the extraordinary and temporary management of the enterprise ((...)) limited to full execution of the contract ((or of the contractual agreement)) or of the concession contract;
- b) to act for the direct and extraordinary management of the enterprise ((...)) limited to full execution of the contract (or of the contractual agreement)) or of the concession contract.

2. The Prefect, after verifying the conditions set out in the paragraph 1 and evaluated the particular gravity of the facts object of the investigation, demand the undertaking to provide for the renewal of the social bodies by replacing the subject involved and where the enterprise does not comply within thirty days or in the most serious cases, it shall provide within ten days following a decree appointing one or more administrators, in any case no more than three, in possession of the requirements of professionalism and honesty as of the regulation adopted pursuant to Article 39, paragraph 1 of the decree legislative act of 8 July 1999, no. 270. The said decree establishes the duration of measurement due to functional requirements to the realization of the public work, the service or the supply the subject of the contract ((or the contractual agreement)) and in any case not beyond the test of the work.

2-bis. In case of an undertaking that carries out health activities on behalf of the National Health Service on the basis of the agreements contractual obligations referred to in Article 8-quinquies of the legislative decree 30 December 1992, no. 502, the decree of the Prefect referred to in paragraph 2 is issued in agreement with the Minister of Health and the appointment is given to subjects with curricula which show certified and proven capacities of professionalism and management experience in the health sector.

3. For the duration of extraordinary and temporary management of the company, all the powers and the functions are given to the administrators and the exercise of the powers of arrangement and management of the firm holders firm is suspended. In the case of a company established as a corporation, the powers of the assembly are suspended for the entire duration of the measure.

4. The temporary and extraordinary management activity of the company is considered to be of public benefit to every effect and the administrators respond to any economic loss only in cases of fraud or gross negligence.

5. The measures referred to in paragraph 2 shall be revoked and shall cease to produce effects in the event of a confiscation order, the seizure or the administration of the company in the context

of criminal proceedings or for the application of prevention measures and in case the case is classified. The judicial authority confirms, when possible, the directors appointed by the Prefect.

6. The administrators remuneration referred to in paragraph 2 shall be quantified with the nomination decree on the basis of the tables attached to the decree referred to in Article 8 of the Legislative Decree 4 February 2010 n. 14. The charges relating to the payment of such remuneration are on the enterprise.

7. During the period of application of the extraordinary and temporary measure management referred to in paragraph 2, payments to the enterprise are done net of remuneration recognized to the directors as of paragraph 2 and profit from the conclusion of the bidding contracts referred to in paragraph 1, also determined by way presumed by the directors, is set off in a special fund and cannot be distributed or be subject to seizure, to the extent possible on the outcome of the judgments in criminal proceedings or, in the cases referred to in the paragraph 10, of appeal or injunctive procedures concerning the forbidding anti-mafia information.

8. In case the inquiries referred to in paragraph 1 concern components of corporate organs other than those referred to therein paragraph, it is applied the measure of support and monitoring of the company.

The Prefect provides, by decree, adopted according to the modalities of referred to in paragraph 2, to the appointment of one or more experts, in any case not more than three, in possession of professionalism and honorability requirements as of to the regulation adopted according to Article 39, paragraph 1, of Legislative Decree no. 270, with the task of carrying out firm support and monitoring functions. To this end, the experts provide the enterprise operational orders, developed according to recognized transparency indicators and models, referred to the organizational contexts, to internal control system as well as administrative and control bodies.

9. Experts referred to in paragraph 8 shall be compensated, quantified with the nomination decree, no more than fifty percent of that can be liquidated on the basis of the tables attached to the Decree of as per Article 8 of Legislative Decree no. 14. The charges relating to the payment of such compensation shall be borne by the firm.

10. The provisions of this Article shall also apply in cases where interdicting anti-mafia information has been issued by the Prefect and there is an urgent need to ensure the completion of the contract execution (or the contractual agreement), that is, its continuation in order to guarantee the continuity of undisturbed functions and services for the protection of fundamental rights, as well as the safeguarding of the levels employment or the integrity of public budgets, the conditions laid down in Article 94 (3) of the decree apply Legislative 6 September 2011, no. 159. In that case, the measures are prepared on his own initiative by the Prefect who informs the President of ANAC. (In the cases referred to in paragraph 2-bis, the measures are arranged by the Prefect's decree, in agreement with the Minister of health)).

The same measures are withdrawn and cease to produce effects in the event of a passing judgment of cancellation of interdicting anti-mafia information, which ultimately has the admissibility of the precautionary act possibly proposed or updating the result of the

information referred to in Article 91, paragraph 5 of the decree Legislative 6 September 2011, no. 159, and subsequent modifications, also following the company's adjustment to the indications of the experts.

10-bis. The measures referred to in this Article, in the case of contractual arrangements with the National Health Service of which Article 8-quinquies of Legislative Decree no. 502, apply to any private individual holding the agreement, even in cases of a person other than the enterprise, and with reference to illegal conduct or criminal events against the National Health Service.