The prevention of corruption in the international context

4 aprile 2016
Università Ca’ Foscari Venezia

Giuseppe Abbatino
The reason for a culture of legality

✓ The corruption phenomena affect efficiency, effectiveness and quality of services, and attempt to citizens’ confidence in the government

✓ Illegality and corruption subtract resources from the "public good" to the egoistic benefit of a few individuals
The recommendations of international organizations

✓ Indications stemming from the main international instruments to which Italy has subscribed (1997 EU Convention against Corruption, 1997 OECD Convention against Bribery in International Business Transactions, 1999 Council of Europe Criminal Convention against Corruption, 2003 UN Convention against Corruption – UNCAC)

✓ Recommendations addressed to Italy by the competent OECD and Council of Europe Bodies (GRECO) on the occasion of the mutual evaluation procedures conducted until now

✓ Special international fora and partnerships: G8-G20, ministerial meetings, EPAC, ACA, OGP, etc.

✓ International reports and indexes - World Bank, IMF, Transparency international, etc.
The Anti-Corruption Law, Law No. 190/2012, in execution of the Article 6 of the United Nations Convention against Corruption, designed an **anti-corruption system based on prevention** and introduced in Italy the National Anti-Corruption Authority that is the central actor of the system.

The provisions introduced by the Anti-Corruption Law find an essential complement in the Legislative Decrees No. 33 and No. 39 of 2013, to which the law has delegated the implementation of important principles and guidelines with reference, respectively, to the **transparency** and to the system of **ineligibility and incompatibility** of positions in public administration and in the Presidential Decree No. 62/2013 which sets out the **rules of conduct** for all civil servants.

The system has been completed in 2014 with the integration of the **supervision on public contracts** in the system of corruption prevention, according to the law decree No. 90/2014, converted with modification by the Law No. 114 / 2014.
The main functions of A.N.AC. according to the AntiCorruption law

According to the AntiCorruption Law, A.N.AC. analyses causes and factors of corruption to point out actions to prevent and fight corruption.

The main functions of A.N.AC. are the following:

✓ to cooperate with corresponding international bodies;
✓ to approve the national Anti-Corruption plan, prepared by the Department for Public Administration, including the guidelines for the public administrations anti-corruption three-year plans;
✓ to analyze causes and factors of corruption and point out actions to prevent and fight corruption;
✓ to monitor compliance and effectiveness of public administrations anti-corruption plans and transparency rules. Regarding these functions, the Law, overcoming the shortcomings of the Legislative Decree 150/2009, assigns to A.N.AC. the following powers: inspection powers, the power to command the exhibition of documents and the adoption of acts as well as to remove acts and behaviors contrasting with law and with transparency rules;
✓ to give optional advice to the “State Bodies” and all the public administrations on the compliance of public employees with the code of conduct, contracts and the law;
✓ to give optional advice to the “State Bodies” and national public bodies on the authorizations for executives to hold external assignments;
✓ to define code of conduct criteria, guidelines and standard models for specific administrative areas.
Principles of the italian anti-corruption system according to the law No. 190/2012

✓ Drawing of an organic system of prevention of corruption.
✓ Overcoming of an anti-corruption approach based on repression.
✓ Introduction of an “administrative conception of corruption”, different from the one of the criminal justice system.
✓ Legal framework for anticorruption prevention tools.
✓ Transparency as an essential tool for preventing and combating corruption and illegality.
Pillars and tools of the Anti-Corruption system

✓ Independent Anti-Corruption Authority.

✓ National Anti-Corruption Plan and three-year anticorruption plan within each public administration.

✓ Corruption risk analysis within each public administration.

✓ Rotation of the assignments of managers and officials in the areas most exposed to the corruption risk.

✓ Protection of the employee who reports abuse (whistleblowing).

✓ Transparency of the relevant data and information of each administration through the publication in the institutional web sites.

✓ Ineligibility and Incompatibility rules to avoid any form of interference between politics and administration.

✓ Specific training for civil servants on the issues of public ethic and integrity.

✓ The spread of a culture of legality and integrity by means of the Code of Conduct.

✓ Citizens participation
Risks

 ✓ Prevalence of the culture of compliance.

 ✓ Bureaucratic implementation of legislative provisions.

 ✓ Three-year plans that contain lists of mere statements of principle.

 ✓ Further fragmentation and dispersion of the data according to the phenomenon of "bulimia of information and anorexia of knowledge".
The anticorruption model is carried out through a complex and articulated pattern of relationships among multiple actors with different roles:

- Government;
- Department of Public administration;
- National Anti-Corruption Authority;
- National School of the Administration;
- Court of Auditors;
- Prefects;
- Within the administrations, the subject responsible for the prevention of corruption.
The literature has underlined the key role of transparency in better governance.

The aim of transparency is to ensure total access to all aspects of public organization in order to ensure a widespread form of control on the pursuit of official duties and the use of public resources.

This approach also concern organizing data in order to make information not just accessible but also comprehensible.

The classical approach to transparency is aimed to protect individual rights by granting access to administrative acts under specific conditions.

With the new framework emerged from the Italian public sector reform the range and scope of transparency has been extended to increase the overall level of transparency within the public administration.
Special powers of the President of A.N.AC.
Measures for extraordinary and temporary management

Provision of an innovative and disruptive measure, aimed to the complete execution of the contract under the penal proceeding, able to immediately intervene in situations where corruption phenomena have arisen (s.c. fumus boni juris) to contrast them, without interfering with the normal activity of the company.

“In the event that the judicial authority processes certain crimes against the public administration, that is, in presence of detected anomalous situations and nevertheless symptomatic of illegal conducts or criminal events attributable to a company awarded a contract for the construction of public works, services or supplies, the President of ANAC proposes to the competent Prefect, either:

✓ to order the renewal of the corporate bodies by replacing the person involved and, if the company does not abide by the terms established, to provide for the extraordinary and temporary management of the contractor only for the full implementation of the contract covered by the criminal proceedings;
✓ to engage in the extraordinary and temporary management of the contracting company limited to the complete execution of the contract subject to criminal proceedings.”
Italy, and in particular the city of Milan, hosted EXPO 2015. The preparations to welcome participants from all over the world, included the construction of infrastructures and the provision of services, was a challenge that involved a great variety of institutional actors and stakeholders working together.

The context in which, with unprecedented huge effort by all interested parties it was possible to open the Universal Exposition on 1st May 2015, is well known. Just one year earlier, when the works for most of the exhibition site had not yet begun, thanks to activities by the judiciary and police forces, came to light corruption phenomena that had tarnished the procurement procedures and undermined public confidence in the event, with the risk that the works would not be finished on time and even that Italy would have to cease organizing the Exposition.
Over the last few years, right across the world, is taking place a great move to plan and produce large-scale infrastructures and events. The development of procedures to check and supervise such projects and the correct use of resources to realize them, especially the public ones, is an emerging and increasingly pressing issue. On these topics it is and will continue to be essential to provide suitable answers to the growing attention of national and international public opinion, and to maintain the confidence of investors and stakeholders in general.

Just as in the case of EXPO 2015, where it was indispensable to construct infrastructures by a given date to welcome visitors, the creation across the world of other large infrastructure projects and major events with a fixed opening date must necessarily aim at efficiently balancing the integrity and speed of the works.
It is within this difficult context that OECD and ANAC decided to collaborate in developing a new methodological experience aimed at increasing transparency and integrity in the tender procedures for the major event. Joint working sessions, on site visits, public events and two analysis reports have been delivered within the framework of a Memorandum of Understanding, aimed at increasing transparency and integrity in the tender procedures for the major event, signed in October 2014 between the two organizations.

The Memorandum of Understanding between ANAC and OECD have also been arranged as a kind of pilot project that may provide a more general control template for institutional cooperation on the supervision of public contracting procedures and of their subsequent performance, in accordance with the highest possible standards and leading international best practices.
In this scenario, the strong commitment by the Italian Government, the new smart regulation in the sector, the checks carried out by the Italian National Anti-Corruption Authority (ANAC) and by the other institutions involved, and the methodological supervision by the OECD, marked a turning point, making it possible not only to respect the deadline of May 1, 2015, but also to outline a more general model of institutional synergies and integrated checks of a “collaborative” type; this kind of model, as well as focusing on preventing the occurrence of illegality and corruption, make it possible to intervene in itinere, guaranteeing, at the same time, that the works are completed on schedule with the respect for the integrity and transparency.

Despite the context and the complex starting point, it can now be confirmed that EXPO Milano 2015 was a great success not only in terms of visitors but also in the perspective of the integrity of the procurement procedures and of the supervision methodologies tested, validated and developed in accordance with the highest possible standards and leading international best practices.
Tasks of high supervision and guarantee of the fairness and transparency of the procedures related to the implementation of the works of EXPO Milano 2015

- Special operating unit (UOS).
- to verify, in advance, the legality of the acts connected to the award and implementation of contracts for works, services and supplies for the execution of works and activities related to the development of the EXPO particularly with regard to the compliance with the provisions on transparency.
- Integration between anti-corruption controls and “antimafia controls” performed by an inter-institutional unit established in the Prefecture of Milan.
More of 200 procurement procedures supervised, general increasing of EXPO transparency and raising of the level of controls.

Problem-solving approach through the opinions sent by UOS to the contracting authority on the procedures under review and through continuous and real time contacts between including EXPO and UOS to ensure that the contractual procedures of EXPO meet from the very first moment the standards required.

Very timely control as UOS is able to respond to requests from the contracting authorities within an average of five days between the arrival of the documentation and the issue of the response, in order to allow the processes to continue without major interruptions or delays.
Ex-ante third party controls of documents concerning the award and performance of public contracts for works, services and supplies of goods, by an entity separate from the contracting authority.

The experience with the anti-mafia controls of the Prefettura di Milano and the anti-corruption controls of ANAC represents a model for integrated controls and institutional synergies which allows for a "co-ordinated institutional response" to organized crime and corruption.

“Collaborative controls” that, in addition to prevent illegality, allow to intervene in itinere, i.e. while the procedures are ongoing, with a “constructive” rather than a “destructive” approach.

This kind of interaction between control authorities and contracting authorities could led to a considerable amount of work. However, this upfront commitment could have absolutely positive outcomes in the subsequent phases of the procedures.
Outcomes of the MoU between ANAC and OECD

- General raising of the level of controls.
- Enhancing the probity and transparency of the award procedures.
- Potentially dissuading future instances of corruption, given the explicit checks on the propriety of each procedural step in the tenders.
- Restoring confidence among operators and stakeholders, also thanks to the supervision of a national independent institution and the general methodological oversight of an international organization.

- Reinforcing the know-how of both Parties regarding the prevention of and fight against bribery and corruption.
- Cooperation between ANAC and OECD, now open to other international institutions.
- General “High Level Principles” for integrity, transparency and effective control of major events and related infrastructures.
Within the framework of the Memorandum of Understanding and building on the EXPO Milano 2015 experience, the ANAC and the OECD have drawn more general lessons and principles presenting them as a model for the international community and actors involved in producing large infrastructures and events such as airports, universal expositions, Olympic Games and other sporting and cultural events.

The “High Level Principles” for integrity, transparency and effective control of major events and large infrastructures projects with a fixed opening date, devised by ANAC and OECD, will constitute a further legacy of EXPO Milano 2015 experience and will be open to subsequent accession, development and integration by stakeholders from the international community.