FIGHTING CORRUPTION THROUGH ADMINISTRATIVE MEASURES. THE ITALIAN ANTI-CORRUPTION POLICIES

*Enrico Carloni**

Abstract

There is a widely shared perception that corruption in Italy is a pervasive and systemic phenomenon which affects society as a whole: corruption contributes to undermining confidence in public institutions, distorts competition in the economic sphere (in particular, with regard to public contracts), causes an enormous increase in average costs (and delays) for the provision of infrastructure, favours the poor quality of public works, and constitutes an untenable economic weight for a country that has been in economic crisis for more than five years.

In response to this problem, since 2012, Italy has launched a policy to combat corruption, centered not on a purely repressive approach, but on a perspective of prevention, and containment of the risk of corruption.

The following article provides an overview of recent reforms and their different approaches and measures to prevent corruption in Italy, beginning with administrative anti-corruption policies, the tasks of the National Anti-Corruption Authority and anti-corruption prevention plans, ongoing with measures for risk-avoidance and codes of conduct until approaches to combat corruption by transparency and the Italian "freedom of information act". There are many unresolved issues and uncertainties in the Italian anti-corruption policies: even within these limitations, and considering the "work in progress", the "administrative" fight against corruption remains one of the most important innovations in the Italian administrative system in the decade.

* Associate Professor of Administrative Law, University of Perugia

TABLE OF CONTENTS

1. Introduction

Starting from 2012 Italy has developed a new approach for the fight against corruption, based on an administrative prevention system: a complex and articulated system that is an interesting reference in the comparative scenario where we recently witness the proliferation of reforms oriented towards prevention and contrast of corruption.

The following article provides an overview of recent reforms and of the new approach centered on the prevention of corruption risk. In this framework, the objective is to illustrate both the organizational structure and the specific tools that characterize the Italian system of corruption prevention.

The essay will specifically address a number of central aspects in the new legislative framework: the tasks of the National Anti-Corruption Authority, the system of anti-corruption prevention plans, the specific measures enforcing integrity and impartiality, the new approaches to combat corruption by transparency.

The concluding remarks are dedicated to the discussion of shortcomings, unresolved issues and uncertainties in the Italian anti-corruption policies.

2. The context of reforms

Corruption in Italy is a major problem, that traditionally characterized the political and administrative system[1].

Rankings of Transparency International are exemplary in this regard[2]: Italy is sixty-first in an international ranking of 168 countries in which the other countries of Western Europe are usually among the first twenty positions and often in leading positions[3]. The Eurobarometer[4] shows the image of a country with major problems in terms of legality and ethics public, although with very considerable regional differences[5], as well as a critical situation in specific areas of the country (especially in the South)[6].

This problem contributes to undermining confidence in public institutions, distorts competition in the economic sphere (in particular, with regard to public contracts), causes an enormous increase in average costs (and delays) for the provision of infrastructure, determines a poor quality of public works[7], and constitutes an untenable economic weight for a country that has been in economic crisis for more almost a decade.

The activity of public prosecutors, often frustrated by the problematic statute of limitations (the risk that prosecutions for corruption fail because they are time-barred: the calculating of time only ends with the final ruling, and therefore, generally the third level of judgment), and the excessive length of legal proceedings, often results in ineffective penal intervention, which

[1] J.L. Newell, M.J. Bull, *Political Corruption in Italy*, in J.L. Newell, M.J. Bull, *Corruption in Contemporary Politics* (2003) 37-49.

[2] Transparency International, *Corruption perception Index – 2016* (2016) http://cpi/transparency.org/cpi2016/results.

[3] Eg Denmark is first followed by the Scandinavian countries, the Netherlands fifth, Great Britain and Germany are in tenth position: cf. Corruption perception index – 2016, cit. at 2.

[4] European Commission. *Eurobarometer 76.1, Corruption*, February 2012, TNS, Opinion & Social (2012) 374. http://ec.europe.eu/public_opinion/archives/ebs/ebs_374_en.pdf.

[5] Quality of Government Institute, *Measuring the Quality of Government and Sub-national variations a dataset* (2010) http://www.qog.pol.gu.se/data/euproject.

[6] Cf. A. Vannucci, *La corruzione in Italia: cause, dimensioni, effetti*, in B.G. Mattarella, M. Pelissero (eds), *La legge anticorruzione* (2013) 25-58.

[7] Cf. D. Della Porta, A. Vannucci, *The Moral (and Immoral) Costs of Corruption*, in U. Von Alemann (ed.), *Dimensionen politischer Korruption* (2005) 109-134;

in any case is not sufficient to contain or repress the widespread phenomena of corruption[8].

The social and administrative system consists of various experiences, including on the one hand public services that are placed on excellent international standard (such as the national health service in terms of the ratio between cost and performance especially in the center-north of the country) and regions with standards of efficiency and impartiality that differ greatly[9]. This system should not be banalised, considering it simplistically as "corrupt".

However, a series of data and indicators confirm the existence of a rooted and widespread problem: the trend of the main indicators of perception of corruption; the warnings stemming from the monitoring activities of international bodies (such as GRECO – Group d'Etats contre la corruption); the allegations made by those involved in the fight against corruption; the overall analysis of experts in the field of social phenomena, who speak in terms of "systemic corruption"[10] as a dynamic present in the Italian political-administrative context.

The data that can be drawn from the GRECO report, which featured a major in-depth study of the Italian situation[11], other European studies[12], Transparency International reports[13], and the

---

[8] In this sense, eg A. Vannucci, *Atlante della corruzione* (2012); D. Della Porta, A. Vannucci, *The controversial legacy of "mani pulite": a critical analisys of italian corruption and anti-corruption policies*, in 1 Bullettin of Italian Politics (2009) 233-263; Transparency International, *Timed out: statutes of limitations and prosecuting corruption in EU countries* (2010) www.transparency.ee/cm/files/statutes_of_limitations_web.pdf.

[9] According with the analisys of R. Putnam, R. Leonardi, R.Y. Nanetti, *Making Democracy Work* (1993).

[10] D. Della Porta, A. Vannucci, *Mani impunite. Vecchia e nuova corruzione in Italia* (2007); cf. G.E. Caiden, N.J. Caiden, *Administrative Corruption*, in 2 Public administration review (1977) 306.

[11] GRECO – Group of States against corruption, *Evaluation report on Italy*. Strasbourg: Council of Europe (2008).

[12] Cf. European Commission, *Eurobarometer 76.1, Corruption* cit. at 4; Quality of Government Institute, *Measuring the Quality of Government and Sub-national variations a dataset*, cit. at 5; speak of "snowball effect" to explain the dynamics of corruption that characterize, in a particularly "dense", some institutional realities D. Della Porta. A. Vannucci, *Mani impunite. Vecchia e nuova corruzione in Italia*, cit. at 10, 22-24; cf. O. Cadot, *Corruption as a gamble*, 33 Journal of Public Economics (1987) 223-244.

conclusions of the Italian Court of Auditors[14], all converge in outlining a worrying scenario of widespread corruption and mismanagement, with constant signs of deterioration over the last twenty years, which appears to confirm the limited impact that the effects of the Tangentopoli investigations have had over time.[15]

3. Fighting corruption: repressive and preventive approach

If we take reference to the approach taken twenty years ago, the new wave of reforms that has developed over recent years appears to display a greater degree of pervasiveness and incisiveness.

This is evidence of an organic approach being taken to preventing and combating administrative corruption for the first time. This primarily regards the Law No. 190 of 2012, which was approved during the Monti administration[16], and also developed through successive decrees approved towards the end of his technical government[17].

The comparative influence, and the equal importance of international demands (among other things, law No. 190/2012 implements two international anti-corruption conventions signed by Italy)[18], can not be overlooked with regard to institutions and

---

[13] Transparency International, *Corruption perception Index – 2015*, cit at 2.

[14] Corte dei Conti, *Giudizio sul rendiconto generale dello Stato 2008, Memoria del Procuratore generale* (2009) 237. The problem of corruption remains current and perceived as "devastating" for the Court of Auditors also in the most recent report relating to 2016: Corte dei conti, *Giudizio sul rendiconto generale dello Stato 2016, Memoria del Procuratore generale* (2017).

[15] D. Della Porta, A. Vannucci, *Mani impunite. Vecchia e nuova corruzione in Italia*, cit. at 10, 82-85; D. Della Porta, A. Vannucci, *Corruption and Anti-Corruption: The Political Defeat of 'Clean Hands' in Italy*, 4 West European Politics (2007) 830-853.

[16] The law, promoted by the Ministers for Justice (Paola Severino) and the Public Administration (Filippo Patroni Griffi) is known as the law "Severino" for the tendency to entrust the fight against corruption to judicial intervention.

[17] Legislative Decree No. 33 of 2013, concerning transparency; Legislative Decree No. 39, on ineligibility and incompatibility; Legislative Decree No. 235 of 2012, concerning the ineligibility and disqualification of politicians convicted for crimes against the public administration.

[18] The Criminal Law Convention on Corruption (ETS 173) was officially ratified by Italy on 13 June 2013 and entered into force on 1 October 2013, making Italy the 45th Member to ratify it. In general terms, see S. Bonfigli, *L'Italia e le politiche*

more specific types of offence, such as crimes of corruption involving private parties, and the trade in illicit influences which, while covered by the Law No. 190, had traditionally been absent in the Italian scenario. The decision to limit the scope of application of the crime of induced bribery (a specific offence in situations in which a civil servant "expects" a bribe) in favour of an extension of the hypotheses of corruption, and the provision of aggravating and mitigating circumstances with respect to the common crime of bribery, meets the need to reduce the Italian "specificity", by adapting the legislation to meet international standards[19].

The 2012 law (which is not easy to read, as it consists of a single article comprising 83 subsections) is developed along two fronts: the traditional, in terms of penal sanctions, and the innovative, in terms of administrative prevention[20].

In terms of the reinforcement of repressive mechanisms, the law constitutes an important, though not entirely satisfactory, step: penalties for corruption offenses are strengthened by the legislation, while new offenses are provided for (including that of traffic of unlawful influences)[21]. However, while the limited reinforcement of judicial measures in Law No. 190 is recognized, robust criticism of the overall evolution of the legislation on criminal matters remains among leading representatives of the judiciary: Judge Davigo (a leading figure in the Tangentopoli era, who recently held the role of president of ANM, the Association of Magistrates), argues that, despite this law, the last 20 years in Italy

internazionali di lotta alla corruzione, in F. Merloni, L. Vandelli, (eds.) *La corruzione amministrativa. Cause, prevenzione e rimedi* (2010) 109-127; see also N. Parisi, *An international perspective on the main functions of the Italian National Anti-corruption Authority in the prevention of corruption in public procurement*, 4 Il Diritto del commercio internazionale (2015), 1053-1065.

[19] C.F. Grosso, *Novità, omissioni e timidezze della legge anticorruzione in tema di modifiche al codice penale*, in B.G. Mattarella, M. Pelissero (eds), *La legge anticorruzione*, cit. at 6, 1-13; A. Di Martino, *Le sollecitazioni extranazionali alla riforma dei delitti di corruzione*, in B.G. Mattarella, M. Pelissero (eds), *La legge anticorruzione*, cit. at 6, 355-380.

[20] M. Pelissero, *La nuova disciplina della corruzione tra prevenzione e repressione*, in B.G. Mattarella, M. Pelissero (eds), *La legge anticorruzione*, cit. at 6, 347-354; M. Clarich, B.G. Mattarella, *La prevenzione della corruzione*, in B.G. Mattarella, M. Pelissero (eds.), *La legge anticorruzione* cit. at 6, 59-69.

[21] V. Maiello, *Il reato di traffico di influenze illecite*, in B.G. Mattarella, M. Pelissero (eds), La *legge anticorruzione*, cit. at 6, 419-433.

have been spent "not in the fight against corruption, but in corruption trials"[22].

The most interesting and innovative aspect of the law does not, however, regard the amendments to criminal legislation, but rather the development of a comprehensive administrative approach to preventing corruption[23]: the phenomenon of corruption is redefined in administrative terms, as a set of behaviours that are the expression of maladministration, which are more extensive than those relevant from the perspective of their criminal sanction.

4. The new administrative anti-corruption policies

From the poin of view of the use of preventive (administrative) measures, rather than the repressive mechanisms of criminal prosecution alone, the Law No. 190 of 2012 provides a range of instruments, both general and sectoral, which have a "systemic" (involving the entire administration) or circumscribed impact: for example, the requirement of the rotation of managers, the protection of whistle-blowers, post-employment limits, etc.

The Law No. 190 of 2012, together with the regulatory provisions and other measures that have developed and articulated it, constitutes an organic and wide ranging attempt to provide the administrative system with a number of "auxiliary precautions"[24] for the prevention, containment, and uncovering of corrupt behaviour and, more generally, the phenomena of maladministration.

Although the perspective remains that of prevention of corruption in the proper sense, the logic of prevention determines a widening of the relevant phenomena from the point of view of

---

[22] Corriere della Sera, april 22, 2016.

[23] M. Clarich, B.G. Mattarella, *La prevenzione della corruzione*, cit. at 20, 59-69; cf. F. Merloni, *L'applicazione della legislazione anticorruzione nelle Regioni e negli enti locali tra discipline unitarie e autonomia organizzativa*, in 2 Istituzioni del federalismo (2013), 349-375.

[24] In reference to famous James Madison's thesis: "In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of *auxiliary precautions*" (*Federalist Papers*, No. 51, 1788).

risk prevention[25]: until the new idea of "administrative corruption" coincides with that of maladministration[26].

In comparison with other eras[27], over the last three years the widespread perception of the phenomenon of corruption, albeit including uncertainties and, above all, second thoughts and contradictory attitudes at the level of policy and legislative guidelines, has involved the definition of a system for preventing and combating the phenomenon through administrative measures.

The difficulty with these policies lies to an important extent in their implementation by the individual administrations, and in the guidance guaranteed by the government and central enforcement structures (in particular, the National Anti-Corruption Authority – ANAC), as well as the necessary on-going support, and their continuous development, without impediment: from this point of view, the most recent developments in legislative policy appear less promising, as will be discussed later.

By the early 1990s the work of a study committee had already proposed a series of "administrative" measures to avoid the emergence of pathological phenomena, such as those uncovered by the "Clean Hands" (mani pulite) investigations, and indeed a number of these measures were introduced in the laws of the time[28]. While the system involving these measures proved to be fragmented and incomplete, some important solutions were still attempted at the legislative level in the period immediately following the Tangentopoli scandals, and in subsequent years.[29]

---

[25] See R. Cantone, E. Carloni, *La prevenzione della corruzione e la sua Autorità*, 3 Diritto pubblico (2017), 903-943.

[26] See eg M. Clarich, B.G. Mattarella, *La prevenzione della corruzione*, cit. at 20, 59-61.

[27] In a book some years ago, a keen observer of national and comparative processes in the fight against corruption noted that the history of corruption in Italy has been, unlike similar experiences abroad, the "history of cures that were not looked for, and remedies that were not found": R. Brancoli, *Il ministero dell'onestà* (1993).

[28] Camera dei Deputati. Comitato di studio sulla prevenzione della corruzione, *Rapporto al Presidente della Camera*, 23 ottobre 1996. In *La lotta alla corruzione*, (1998).

[29] An overall overview of the theme in B.G. Mattarella, *Le regole dell'onestà* (2007); F. Merloni, R. Cavallo Perin (eds.), *Al servizio della Nazione* (2008). The Italian system that precedes the reforms of 2012 is reconstructed overall in the report that anticipates the reform: Ministro della funzione pubblica.

This is the sense in which certain choices should be interpreted, such as the decision to clearly distinguish between the functions of politicians and bureaucratic staff (a distinction between politics and administration), the attempt to strengthen public management and its decision-making autonomy[30], and the tightening (later found to be excessive) of procedures for the selection of contractors with the public administration, through a reduction in discretionary power[31].

Therefore, while the early 1990s saw the introduction of a series of measures consistent with the need to reduce the number of episodes of corruption, the recent legislation is the first broad-spectrum policy overtly aimed at combating and preventing the emergence of corruption at the administrative level[32]. These policies, and these legislative provisions, on which we focus, are a response to criticism from GRECO to Italy, in its 2008 report: "Italy does not have a specifically coordinated anti-corruption programme"[33].

On closer inspection, the new regulation introduces a new public function of corruption prevention, which is entrusted to specific offices and apparatuses: the "rooting" of these policies and anti-corruption measures in the offices of designated authorities (at both the national level and in each individual administration) is perhaps the most obvious sign of the change of approach, and the newfound awareness of the need to prevent the phenomena of in a more effective and attentive manner.

Commissione per lo studio di misure per la trasparenza e la prevenzione della corruzione, *La prevenzione della corruzione: per una politica di prevenzione* (2011), in http://www.governo.it/GovernoInforma/documenti/20121022/rapporto_corruzioneDEF.pdf.

[30] The specificities of the Italian system of the distinction of roles between public managers and political leaders is well described by F. Merloni, *Dirigenza pubblica e amministrazione imparziale* (2006); on the problem of the independence of managers see B. Ponti, *Indipendenza del dirigente e funzione amministrativa* (2012).

[31] A. Vannucci, *Il lato oscuro della discrezionalità. Appalti, rendite e corruzione*, in G.D. Comporti (ed.), *Le gare pubbliche: il futuro di un modello* (2011), 265-296; G. Fidone, *La corruzione e la discrezionalità amministrativa: il caso dei contratti pubblici*, in Gior. Dir. Amm. (2015), 325- 344.

[32] M. Clarich, B.G. Mattarella, *La prevenzione della corruzione*, cit. at 20, 59-61.

[33] And this, despite "there was a widely shared perception […] that corruption in Italy is a pervasive and systemic phenomenon which affects society as a whole" (GRECO, 2008, p. 6).

A policy of prevention that focuses on the administrative organizations and the bureaucratic staff. The prevention and administrative enforcement measures are aimed primarily at civil servants and not at elective or politically appointed officials.

5. Role and function of the National Anti-Corruption Authority

At the heart of the corruption prevention system we find ANAC, the National Anti-Corruption Authority, which was founded in 2009[34] to coordinate public performance evaluation policies, while also involved in issues of transparency and integrity[35]. The law No. 190/2012 entrusted this body with responsibilities involving the prevention of administrative corruption, classifying it as a national anti-corruption authority, in line with the international conventions that stipulate that each party country identify an internal figure responsible for implementing anti-corruption policies[36]. More recently, the Decree Law for the reorganization of the public administration (Decree No. 90 of 2014, known as the "Madia" decree) has clarified the division of responsibilities between national structures, entrusting the Department of Public Administration, and its Minister, with responsibility for the evaluation of personnel and performance, and ANAC, which more clearly assumes the traits of an

[34] The Authority was established as the Committee on the integrity and transparency in public administration (CIVIT), and subsequently acquires the functions in the field of anti-corruption (by Law 190 of 2012) and then in 2014 its current name and structure. In particular, the Authority has progressively absorbed also the functions and staff of the Authority on public contracts (AVCP).

[35] G. Sciullo, *L'organizzazione amministrativa della prevenzione della corruzione*, in *La legge anticorruzione*, cit. at 6, 71-89; R. Cantone, F. Merloni (eds.), *La nuova Autorità anticorruzione* (2015). N. Parisi, *An international perspective on the main functions of the Italian National Anti-corruption Authority in the prevention of corruption in public procurement*, cit. at 18, 1053-1058.

[36] 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.

independent administrative authority, with responsibility for anti-corruption and transparency measures[37].

In 2014-2015 the system has been completed with the integration of the supervision on public contracts in the organization of corruption prevention, according to the law decree No. 90/2014[38], and with an enforcement of the powers of the Authority[39].

This steering committe, composed of five members appointed by the decree of the Prime Minister, acting on a proposal by the Minister for the Public Administration with a procedure which imposes the requirement of a binding opinion (with a qualified majority) of the parliamentary committees, is now also an authority responsible for regulation and supervision of the system of public contracts (previously conferred to a separate supervisory authority). The integration of regulatory and supervisory functions on public contracts with anti-corruption functions is a fact that, as a result of sometimes chaotic legislative development, appears to be very interesting and is today one of the qualifying aspects of the italian experience.

ANAC is competent for the preparation of the national anti-corruption plan, the definition of guidelines for codes of conduct, and the supervision of the adoption and the effective implementation of anti-corruption instruments, beginning with the monitoring of compliance with transparency obligations, and the supervision of public tenders.

The representatives of ANAC within individual administrations are dedicated anti-corruption compliance officers, usually administrative executives: they are employed by their administrations but operating in close functional connection with

---

[37] M. De Rosa, F. Merloni, *Il trasferimento all'ANAC delle funzioni in materia di prevenzione della corruzione*, in *La nuova autorità anticorruzione*, cit. at 35, 53-65.

[38] "The integration of the functions of the two institutions and the consequent extension of the powers of ANAC, set the conditions to oversee more effectively the scope of the contracts and public procurement in which nestles a substantial part of the corruption phenomena" (ANAC – Autorità nazionale anticorruzione, *Relazione Annuale al Parlamento dell'Autorità Nazionale Anticorruzione per l'anno 2015* (2016). http://www.anticorruzione.it).

[39] According with law No. 69/2015: cf. E. D'Alterio, *I nuovi poteri dell'Autorità nazionale anticorruzione: "post fata resurgam"*, in 6 Gior. Dir. Amm. (2015), 757-767.

the ANAC. In particular, they are responsible for ensuring the adoption of all obligatory acts and measures[40].

A second organizational network involves central purchasing bodies: under the new rules governing public contracts, these offices manage the tender procedures for contracts for public works, services and supplies. By specializing competition venues, and reducing their number[41], in the legislative intent it is hoped to improve the quality of public procurement, and ensure tighter control by ANAC of an area that is particularly exposed to the risk of corruption.

It should be added that, in the Italian political landscape, the Authority has assumed a progressively more important position, which sometimes goes beyond the role of ANAC: in particular its president (Raffaele Cantone, a well-known anti-Mafia magistrate), is at the centre of the national policy scene, and is called upon in relation to any scandal involving local or national political systems.

Recent scandals show, in any case, as the Authority's action, which develops through forms of "cooperative control"[42] (operating in synergy with other administrations to follow complex procedures, as happened in the case of contracts for the construction of the Expo 2015 in Milan), it is not always able to prevent the growth of corruption: the major companies that have implemented action in the Expo were recently involved in court proceedings for corruption (and precisely in relation to the realization of works for international exposure). There is a fear, in essence, that the Anti-Corruption Authority control capacity

[40] Cf. F. Merloni, *L'applicazione della legislazione anticorruzione nelle Regioni e negli enti locali tra discipline unitarie e autonomia organizzativa*, cit. at 23.

[41] See, in general terms (on advantages and risks in demand aggregation), G.L. Albano, *Demand aggregation and collusion prevention in public procurement*, in G.M. Racca, C.R. Yukins (eds.), *Integrity and Efficiency in Sustainable Public Contracts. Balancing Corruption Concerns in Public Procurement Internationally* (2016), 155-171.

[42] The modeli is taken as a reference by the OECD itself in a recent document on the prevention of corruption in public works: OECD, *High-level Principles for integrity, transparency and effective control of Major Events and Related Infrastructures* (2016). See also R. Cantone, C. Bova, *L'Anac alle prese con la vigilanza sui contratti pubblici; un ponte verso il nuovo Codice degli appalti?*, in 2 Gior. Dir. Amm. (2016), pp. 166-176.

remains at a formal level, and this also concerns the limited staff[43] available to the authorities in the light of the new powers that are attributed progressively.

6. The risk of corruption and the plans for preventing it

The Authority is responsible for ensuring that administrations adopt appropriate corruption prevention instruments, and thus develop their own anti-corruption policies, within the framework of the guidelines provided by the Authority and the rules established by the Law No. 190 of 2012.

At the heart of the various measures are the anti-corruption plans, which are responsible not only for the aim of adapting the guidelines deriving from the law, through the national plan prepared at the state level to individual contexts (the National Anti-Corruption Plan[44], a detailed document which indicates a range of essential contents and the procedure for establishing administration plans), by means of an internal analysis, to reach a self-diagnosis (the mapping of the risk of corruption and an indication of the measures necessary to contain it)[45].

The plan brings together various documents (the three-year plan for transparency and the code of conduct) and integrates them as part of a system with other organizational measures, as stipulated by the law. These can also indirectly help raise standards of conduct, for example through an overall

[43] The Authority has, in particular, very little staff (compared to the needs) in the areas of prevention of corruption and transparency, since most of the staff come from the former supervisory authority in public contracts (AVCP): see the organization chart in www.anticorruzione.it.

[44] The PNA is structured "as a programmatic tool subjected to an annual update with the inclusion of indicators and targets in corruption in public administration, in order to make the strategic objectives measurable and to ensure the monitoring of the possible divergences from these targets arising from the implementation of the PNA": ANAC, *Relazione Annuale al Parlamento dell'Autorità Nazionale Anticorruzione per l'anno 2015* (2016). On the basis of the national plan, each public administration identifies, with its own plan, the specific risks of corruption in individual administrations and the measures deemed necessary to prevent them.

[45] F. Merloni, *I piani anticorruzione e i codici di comportamento*, in 8 Diritto penale e processo (2013), 4-15; F. Di Cristina, *I piani per la prevenzione della corruzione*, in *La legge anticorruzione* cit. at 6, 91-111; F. Merloni, *Le misure amministrative di contrasto alla corruzione*, in 369-370 Ragiusan (2015), 9-16.

improvement in public performance (the performance plan) or digitization (the digitization plan).

Therefore, the three-year corruption prevention plan constitutes the essential point of reference for each administration, on the one hand in the drafting of anti-corruption policies, and on the other in adapting them to the specific context and its effective risk level. The approach taken is essentially as follows: each administration has to assess the level of risk of corruption for each sector in which it operates: some areas have already been identified as "high risk" sectors by the national plan and the legislation (staff recruitment, contracts and procurement, concessions and economic subsidies). It is the responsibility of each administration to conduct their own internal analysis and establish the most appropriate administrative mechanisms (transparency, staff turnover, procedural rules, employee obligations, digitalization of procedures, etc.) to prevent the identified risk. This is, therefore, a collection of preventive measures. In the case of an episode of corruption, the anti-corruption compliance officer and the administration will have to demonstrate that appropriate prevention measures have been put in place, and that the case of corruption is therefore an extraordinary and unpredictable event (which, in any case, justifies a further strengthening of the preventive measures).

The national plan, as defined by ANAC, is subject to annual updates, as is the three-year prevention plan for each administration.

It is clear that the validity of the system lies in the adaptation of the plans to the specific requirements of each administration[46], and an attentive process of adjustment and analysis: in the absence of this, the first danger is that of a purely formal system, in which plans are the result of the solitary work of a limited number of offices, are merely copied from other

[46] The relationship between administrative organization and anti-corruption measures is very narrow, and so strong is the organizational impact of anti-corruption rules: cf. F. Fabrizio, *L'impatto delle misure anticorruzione e della trasparenza sull'organizzazione amministrativa*, 3 Il Diritto dell'economia (2015), 483-506.

experiences and documents, and are of poor quality in terms of their analysis of the context and risk assessment[47].

In particular, the "minimal" choice to merely identify the areas of risk as those specified as compulsory by the national plan, or similarly to simply connect these with the (transversal and specific) measures identified in general terms, prefigures the risk of a lack of a comprehensive analysis and, as a result, a broad spectrum diagnosis and ineffective treatment.

Further, the idea of a public administration as outlined in the national plan, which is exposed to the risk of corruption when it "gives" (recruits or promotes, assigns works or contracts, recognizes contributions or non-economic benefits), appears to be limiting, notably in relation to the specific nature of some administrations. The administration is "at risk" even when it penalises an offender, particularly if formal or informal trading begins in response to the dispute. It is therefore the responsibility of each administration to establish a three-year plan, following the indications of the national plan, that can be identified as "its own", in that it is differentiated, specific, and corresponds to the features and characteristics of the individual context[48].

For the sake of completeness, mention should be made of the fact that anti-corruption measures are leading to a more attentive approach to the relationship with the representatives of organized interest groups, albeit in still limited terms: while lobbying is a phenomenon which still awaits comprehensive regulation in Italy, it is touched upon by the National Anti-corruption Plan (which requires each individual administration to take its own dynamics into account, in creating their own corruption prevention plan), and is also affected on several fronts by the anti-corruption legislation (the rules governing public contracts and the illicit traffic of influence).

It is up to the Anti-corruption Authority to assess these plans, even in terms of "quality" (with sample checks): in its annual reports, the ANAC illustrates a number of problems often present in the policies being implemented by the authorities, starting from a poor assessment of the internal and external

[47] ANAC, *Relazione Annuale al Parlamento dell'Autorità Nazionale Anticorruzione per l'anno 2015.*

[48] F. Merloni, *I piani anticorruzione e i codici di comportamento*, cit. at 45, 4-15; F. Merloni, *Le misure amministrative di contrasto alla corruzione*, cit. at 45, 9-16.

context, with often plans the work of a few officials who operate in a state of isolation with respect to the political leadership (that is responsible, however, for the formal adoption of the plan) and then produces documents that aim at a formal legal compliance.

7. Incompatibility, ineligibility, and fitness for office

One strategy that clearly emerges in the Law No. 190 is the support for the impartiality of the administration through the consolidation of the hypothesis of incompatibility, in particular to avoid situations involving a conflict of interest, and providing a plurality of hypotheses (disqualification, ineligibility, and unfitness for office, or "inconferibilità", a new concept introduced by the law) with the aim of excluding from public office those who find themselves in a situation that puts at risk the integrity, or even the appearance of impartiality, that should characterize public action[49].

With regard to disqualification from political office, the matter was regulated by the Legislative Decree no. 235 2012 (provided for by paragraph 63 of Law No. 190), which reinforces prohibitions for politicians convicted of crimes involving corruption, and in particular those who have been definitively convicted and sentenced to more than two years in prison. The decree applies to parliamentary positions, including the European Parliament, and positions in government: the disqualification from elective or governmental offices also applies if the final sentence is delivered after the candidate is elected. This was the case, for example, of Silvio Berlusconi, whose forfeiture was decided by the Senate, in accordance with the law, in November 2013. The importance of this affair has ensured that there has been extensive debate about these provisions and this mechanism in Italy, with widespread criticism of the retroactive nature of the legislation,

[49] B. Ponti, *La regolazione dell'accesso agli incarichi esterni da parte dei dipendenti dopo la legge 190/2012: evoluzione del sistema e problemi di applicazione agli enti territoriali*, in 2 Istituzioni del federalismo (2013) 409-423; F. Merloni, *Nuovi strumenti di garanzia dell'imparzialità degli amministratori: l'inconferibilità e incompatibilità degli incarichi*, in *La legge anticorruzione*, cit. at 6, 196-209; D. Andracchio, *Il divieto di "pantouflage": una misura di prevenzione della corruzione nella pubblica amministrazione*, in 9 GiustAmm.it (2016), 1-10.

which is prohibited for criminal sanctions, but not for administrative measures, according to the statute of limitations[50].

In terms of bureaucratic appointments (directors and administrators of public bodies), another decree published shortly thereafter (No. 39 of 2013) regulates incompatibility, strengthening the safeguards against conflicts of interest, and the prohibition of the conferment of appointments: this applies to those involved in one of the three following situations:

They have been convicted, even if not definitively, for crimes against the public administration.

They operate in sectors subject to control by the authorities concerned, or on the contrary pass from the supervisory administration to a company operating in areas under the control of the same administration.

They hold political office and aspire to top bureaucratic positions, such as the director or manager of public entities.

The latter two situations are usually regulated with the provision of a "cooling period" of one or two years, which involves a ban on recruitment to similar positions.

While the discipline is at times too rigid, and not devoid of shortcomings[51], for which the anti-corruption Authority has repeatedly called for a review, the legislature is in any case intended to strengthen the impartiality of the administration, and reduce the incidence of conflicts of interest, in order to better protect the distinction of roles between political and bureaucratic leadership[52].

8. Integrity and impartiality of officials: the codes of conduct

Codes of conduct, or "ethical" codes, which set out a series of obligations with the aim of guiding the behaviour of officials towards greater impartiality and exclusive dedication to the public interest, are an important tool in the various contexts that

[50] F. Bailo, *La c.d. "legge Severino" sul tavolo della Corte costituzionale: partita chiusa o rinviata?*, in Giur. It. (2016), 206-211.

[51] B. Ponti, *La regolazione dell'accesso agli incarichi esterni da parte dei dipendenti dopo la legge 190/2012* cit. at 49, 409-423.

[52] F. Merloni, *Le misure amministrative di contrasto alla corruzione*, cit. at 45, 9-16.

have developed organic anti-corruption policies[53]: ethical codes are normally backed by sanctions, and have an important function as a "filter" for behaviour, in order to avoid the degeneration that results in criminal action.

In the Italian context, this instrument relates to a specific constitutional principle (the obligation to serve with "discipline and honour", as stated in Art. 54 of the Constitution[54], and exclusively at the service of the public interest, Art. 98 of the Constitution) and was initially provided for after Tangentopoli, in 1993-1994[55]; since then, however, codes of conduct have failed to play a significant role in influencing behaviour and reinforcing the subjective impartiality of officials, for a variety of reasons[56]. In particular, the provisions have been too generic (they essentially address any public employee, from administrative officials to teachers and nurses) and their legal value has been in doubt (in the opinion of many, the obligations are effectively not valid in disciplinary terms, but only of an "ethical" nature), with the consequence of violations not being sanctioned[57].

However, the reform introduced by Law No. 190 of 2012 (which rewrote Art. 54 of Legislative Decree No. 165 of 2001) redefined the institution, providing new regulations, and therefore new potential for codes of conduct[58].

This code (which was adopted in 2013, with Presidential Decree No. 62) contains a list of duties, which relate primarily to

---

[53] Cf. B.G. Mattarella, *Le regole dell'onestà*, cit. at 29

[54] G. Sirianni, *I profili costituzionali. Una nuova lettura degli articoli 54, 97 e 98 della Costituzione*, in F. Merloni, L. Vandelli. L. (eds.). *La corruzione amministrativa. Cause, prevenzione, rimedi* (2010), 129-134; F. Merloni, R. Cavallo Perin (eds.), *Al servizio della Nazione*, cit. at 29

[55] See B.G. Mattarella, *I codici di comportamento*, in Rivista giuridica del lavoro (1996) 275-301.

[56] P.G. Lignani, *La responsabilità disciplinare dei dipendenti dell'amministrazione statale*, in D. Sorace (ed.), *Le responsabilità pubbliche: civile, amministrativa, disciplinare, penale, dirigenziale* (1998), 381-404; E. Carloni, *Ruolo e natura dei c.d. "codici etici" delle pubbliche amministrazioni*, in 1 Dir. Pubbl. (2002), 319-361.

[57] See E. Carloni, *Il nuovo Codice di comportamento ed il rafforzamento dell'imparzialità dei funzionari pubblici*, in 2 Istituzioni del federalismo (2013) 377-407; F. Merloni, *Codici di comportamento*, in *Il Libro dell'anno del diritto* (2014); F. Merloni, *I piani anticorruzione e i codici di comportamento*, cit. at 45, 4-15.

[58] E. Carloni, *Il nuovo Codice di comportamento ed il rafforzamento dell'imparzialità dei funzionari pubblici*, cit., 377-407; E. D'Alterio, *I codici di comportamento e la responsabilità disciplinare*, in *La legge anticorruzione*, cit. at 6, 25-51.

the extent of the (potential or concrete) conflict of interest, and result in reporting and transparency requirements, obligatory abstention, and the communication of the interests involved. These responsibilities are applicable to all employees, according to the legislature and the government (Presidential Decree No. 62).

These duties focus in particular on the issue of conflicts of interest, and are intended to counter corruption by favouring disclosure (with transparency rules and reporting obligations), and procedural rules (through legislative action regulating the procedure), and obligations and prohibitions: in this light, the code of conduct is an important part of an overall strategy to reduce the risk of maladministration.

Perhaps the most important aspect is that the national code must be integrated at the level of each public administration (ministries, public bodies, local authorities, universities, etc.), with specific codes of behaviour, the provisions of which are integrated and developed by adapting the required obligations to the individual context.

The adoption of their own codes by each administration provides an opportunity for government agencies and public institutions to adapt the general (and generic) responsibilities to the specific context, as is the case (or should be the case) with prevention plans.

These are obligations tailored to the specific nature of the functions assigned to the administrations (and furthermore, those of their specific offices and categories of staff): it is through these solutions, which take into account the needs and issues typical of any administration (also thanks to participatory processes involving stakeholders), that the public administrations put themselves in a position to improve their own performance and standards of conduct.

Both the national "basic" code and those of the administrations contain obligations, the value of which is clearly primarily disciplinary by nature[59].

Codes of conduct are also, however, a flexible organizational instrument, which can be associated with the

[59] E. Carloni, *Il nuovo Codice di comportamento ed il rafforzamento dell'imparzialità dei funzionari pubblici*, cit. at 57, 377-407; F. Merloni, *Codici di comportamento*, cit. at 57.

administration's own assessment processes and anti-corruption plans, of which they are part.

9. Transparency: "the best disinfectant"

An important part of the fight against corruption[60], and indeed the main aspect according to the declarations of the ANAC president Cantone[61], involves the enhancement of transparency mechanisms according to the old assumption that "sunlight is the best disinfectant"[62], or that "Good government must be seen to be done"[63].

It is clear that transparency measures operate on different levels, and with different aims[64]: above all, in the Italian experience, they perform the function of guaranteeing the rights of citizens affected by administrative action, through the right of access to documents covered by the Italian law on administrative proceedings (No. 241 of 1990)[65], and thus they operate essentially within the paradigm of "due process"[66].

---

[60] See D.U. Galetta *Transparency and access to public sector information in Italy: a proper revolution?*, in 2 Italian Journal of Public Law (2014), 229: "The goal of preventing corruption is actually the special focus of the subsequent Legislative Decree No. 33/2013, whose specific aim – pursuant to law No. 190/201262 - is to prevent and eradicate illegality in the Public Administration".

[61] See i.e. ANAC *Relazione Annuale al Parlamento dell'Autorità Nazionale Anticorruzione per l'anno 2015*, p. 5: transparency is "according to the most credited international researches, the best way to prevent corruption; illicit affairs prefer the shadows and shirk from the light shed by transparency".

[62] W. Brandeis, *Other people's money – And how the bankers use it* (1914), in http://www.law.louisville.edu.

[63] S. Kierkegaard, *Open access to public documents – More secrecy, less transparency!*, in 25 Computer Law & Security Review (2009) 1-26.

[64] D. Heald, *Transparency as an instrumental value*, in C. Hood, D. Heald (eds.), *Transparency: the key to better governance?* (2006), 59-74; F. Merloni (ed.), *La trasparenza amministrativa* (2008); G. Arena, L*e diverse finalità della trasparenza amministrativa*, in *La trasparenza amministrativa*, (2008), 29-43; A. Cerrillo Martinez, *The regulation of diffusion of public sector information via electronic means: lessons from the Spanish regulation*, in 28-2 Government Information Quarterly (2011) 188-202.

[65] Law No. 241 of 11 August 1990 setting new rules concerning administrative procedure and the right of access to documents.

[66] See E. Carloni, *La casa di vetro e le riforme. Modelli e paradossi della trasparenza amministrativa*, in 3 Dir. Pubbl. (2009), 779-813; C. Cudia, *Trasparenza amministrativa e pretesa del cittadino all'informazione*, in 1 Dir. Pubbl. (2013), 99-

Another traditional idea is a democratic and participatory dimension of transparency measures[67]: therefore, transparency also binds together participatory policy and the communication activity of public administrations, in which the information provided to the public contributes to a more broad involvement of citizens in activities conducted by the authorities, and even the direct management of public interests (and common assets).

Is in the context of transparency measures (in this case a transparency "from within") that can be considered the new discipline of the whistleblower, introduced by the 2012 legislation[68] and recently the subject of specific guidelines Anac[69].

In the context of anti-corruption legislation, however, it is necessary to focus attention primarily on a different approac: transparency allows widespread control over the exercise of power, and must therefore be ensured through generalized disclosure measures that are not dependent on the position of the interested party[70]. In this regard, the Law No. 190 of 2012 provides for a delegation of the regulation of forms of publicity on

134; D.-U. Galetta, *Transparency and access to public sector information in Italy: a proper revolution?* cit. at 60, 213-231. Cf. A. Romano Tassone, *A chi serve il diritto di accesso. Riflessioni su legittimazione e modalità di esercizio del diritto di accesso nella legge n. 241 del 1990*, in 1 Dir. Amm. (1995) 318.

[67] Cf. G. Arena, *Trasparenza amministrativa*, in S. Cassese (ed.), *Dizionario di diritto pubblico*, VI. (2006), 5954-5960; M. Bombardelli, *Fra sospetto e partecipazione: la nuova declinazione del principio di trasparenza*, in 3-4 Istituzioni del federalismo (2013), 657-685; A. Bonomo, *Informazione e pubbliche amministrazioni. Dall'accesso ai documenti alla disponibilità delle informazioni* (2012); E. Carloni, *L'amministrazione aperta. Regole, strumenti, limiti dell'open government* (2014).

[68] Through the insertion of Article 54-ter of the Consolidated Law No. 165/2001.

[69] In order to stimulate more frequent use of this measure by Public Administrations, the ANAC, published *ad hoc* guidelines (resolution 6/2015): these provide the administrations with recommendations on how to adequately protect whistleblowers while creating awareness on the necessity of having systems of protection in place. See ANAC, 2016. Cf. G. Gargano, *La "cultura del whistleblower" quale strumento di emersione dei profili decisionali della pubblica amministrazione*, in 1 federalismi.it (2016), 1-45.

[70] See M. Savino, *Le norme in materia di trasparenza amministrativa e la loro codificazione*, in *La legge anticorruzione* cit. at 6, 113-123; A. Bonomo, *Il codice della trasparenza e il nuovo regime di conoscibilità dei dati pubblici*, in 3-4 Istituzioni del federalismo (2013) 725-751; G. Gardini, *Il codice della trasparenza: un primo passo verso il diritto all'informazione amministrativa?* in 8-9 Giorn. Dir. Amm. (2014), 875-891.

institutional sites, which was then implemented by Legislative Decree No. 33 of 2013[71].

This decree, which has recently been corrected and updated (Legislative Decree No. 97 of 2016), revised and expanded a number of transparency requirements contained in previous legislation[72]. These obligations were expanded after the digital administration code (Legislative Decree No. 82 of 2005) established the obligation for all administrations to have an organized website, in accordance with common principles and standards, with a number of mandatory informative contents[73]. In general terms, the Internet has greatly accessing government information (Roberts, 2006), and in recent years "have seen trends toward using e-government for greater access to information and for promotion of transparency, accountability, and anti-corruption goals"[74] in many countries.

Decree No. 33 of 2013 should be noted, in this regard, for two functions: it collected all previously existing obligations (in a kind of "transparency code"), and subjected them to common rules, as regulated in the first 10 articles of the decree[75]. Transparency is therefore seen as an anti-corruption tool, but more generally as a set of measures capable of safeguarding a number of constitutional principles: impartiality and responsibility, service to citizens, and legality. In addition, transparency acts as an instrument that guarantees citizens' rights and helps ensure the principle of good administration.

---

[71] Legislative Decree No. 33 of 14 March 2013.

[72] In particular, regulated by Legislative Decree No. 150 of 27 October 2009. This decree ("Implementation of Law No. 15 dated 4 March 2009 on the optimization of the productivity of public work and the efficiency and transparency of the public administration") whose objectives include "transparency of the public administrations also as a guarantee of lawfulness" (article 2.2).

[73] See E. Carloni, *Nuove prospettive della trasparenza amministrativa: dall'accesso ai documenti alla disponibilità delle informazioni*, in 2 Dir. Pubbl. (2005), 573-605; cf. B. Ponti (ed.) *La trasparenza amministrativa dopo il d.lgs. 14 marzo 2013, n. 33* (2013).

[74] J.C. Bertot, P.T. Jaeger, J.M. Grimes, *Using ICTs to create a culture of transparency: E-government and social media as openness and anti-corruption tools for societies*, in Government Information Quarterly (2010), 264; cf. D. Cullier, S.J. Piotrowski, *Internet information-seeking and its relation to support for access to government records*, in 26 Government Information Quarterly (2009), 441−449.

[75] B. Ponti (ed.), *La trasparenza amministrativa dopo il d.lgs. 14 marzo 2013*, cit. at 73; cf. A. Natalini, G. Vesperini (eds), *Il Big Bang della trasparenza* (2015).

The "total" transparency[76] of Legislative Decree No. 33 consists in the publication of a series of documents and information on public administration websites, as expressly set out by the law, resulting in the right of anyone to access this data, and make use of them and reuse them free of charge[77]. To complete this regime of full disclosure, which is open to everyone, the law provides for a special right of civic access. This can be seen in the case of information which an administration has failed to publish on its website, despite the legal requirement to do so: on the basis of a specific request, the administration is required not only to provide the information to the applicant, but also to publish the same data on its website[78].

Also of interest with regard to the information regulations submitted to the field of application of the Decree, are the other two provisions: the obligation to publish the data in an "open format" (open data), in order to facilitate its reuse, with the only limitation being that the integrity of the information is respected; and the provision of quality requirements for the published data, in order to guarantee its accuracy, integrity and completeness.

The legislator ultimately regulates the relationship between this system of publication and the protection of personal data by defining a balance that, for information subject to the publication requirement, is of substantial benefit to the need for transparency: this has led to a number of interventions (even with appropriate Guidelines[79]) by the Privacy Authority[80], which has often operated as a "brake" on this "total transparency" in recent years[81].

---

[76] E. Carloni, *La trasparenza (totale) delle pubbliche amministrazioni come servizio*, in 2 Munus (2012), 179-204. According with article 11, Decree No. 150 points out that "transparency has to be understood as *full accessibility*, including by publishing information on the institutional websites of the public administration bodies."

[77] According with he idea of a synergy between Transparency and ICT in the perspective of fighting corruption: see J.C. Bertot, P.T. Jaeger, J.M. Grimes, *Using ICTs to create a culture of transparency: E-government and social media as openness and anti-corruption tools for societie*s, cit. at 74, 264; cf. T.B. Anderson, *E-government as an anti-corruption strategy*, in 21 Information in Economics and Policy (2009), 201−210.

[78] M. Magri, *Diritto alla trasparenza e tutela giurisdizionale*, in 2 Istituzioni del federalismo (2013), 425-451; B. Ponti (ed.) *La trasparenza amministrativa dopo il d.lgs. 14 marzo 2013*, n. 33, cit. at 73.

[79] Garante per la protezione dei dati personali, *Line guida in materia di trattamento di dati personali, contenuti anche in atti e documenti amministrativi, effettuato per*

In terms of transparency, the Italian experience is certainly of interest: the Italian regulation of "total transparency" creates a condition of widespread disclosure that is consistent with the cognitive dynamics of the internet, and that is notable for its immediacy, standardization, reusability, and easy accessibility, albeit within the limits of only involving information that is subject to a system of compulsory publication. Each administration, with its specific transparency plan, is required to implement these publication requirements: the institutional website of every public administration in Italy therefore features a "transparent administration" section, which provides information about the organization, its activities, and the use of resources. It deserves attention the fact that, with the most recent legislative changes, this approach of transparency through the institutional websites of each administration, is supported (and partly replaced) by the increasing use of centralized databases accessible by anyone[82].

10. The Italian "freedom of information act"

Along with its undeniable advantages, the Italian model of transparency, as defined in 2012-2013, presents a number of limitations relating to the nature and the character of the transparency instrument given a central (and almost exclusive) role by the legislature: creating conditions of complete transparency. The Italian model of full disclosure requires, at the risk of the phenomena of maladministration moving into the shadows, integration with more effective transparency instruments, with the aim of meeting the demands of citizens.

---

finalità di pubblicità e trasparenza sul web da soggetti pubblici e da altri enti obbligati (2014), in www.garanteprivacy.it [doc. web n. 3134436].

[80] L. Califano, *Trasparenza e privacy: la faticosa ricerca di un bilanciamento mobile*, in L. Califano, C. Colapietro, (eds.), *Le nuove frontiere della trasparenza nella dimensione costituzionale* (2015), 35-67.

[81] E. Carloni, *Trasparenza e protezione dei dati: la ricerca di un nuovo equilibrio*, in *Il Big Bang della trasparenza*, cit. at 75, 301-319; E. Carloni, M. Falcone, *L'equilibrio necessario. Principi e criteri di bilanciamento tra trasparenza e privacy*, in 3 Dir. Pubbl. (2017), 723-777.

[82] See i.e. F. Di Mascio, *La trasparenza presa sul serio: gli obblighi di pubblicazione nell'esperienza statunitense*, in 4 Riv. Trim. Dir. Pubbl. (2016).

The right of access to documents, provided for as a guarantee of "due process" within the framework of administrative procedure regulations since 1990, does not carry out this role effectively[83]: it is a useful instrument for the protection of individuals (the law requires a real and present direct interest, and excludes its use for the general monitoring of administrative action[84]) who claim to have been directly affected by administrative action, but is impractical in terms of meeting widespread supervision requirements[85]. The decision not to intervene on administrative procedure law, on which the Italian legislature has remained constant, despite changes in government, has therefore concentrated the requirements for monitoring and the prevention of maladministration on mechanisms of online publication[86].

In terms of both doctrine and public opinion a need for a completion of transparency instruments was therefore recognized, through the provision of forms of access recognized not only to concerned parties but also, more broadly, to all citizens.

The recent decision to introduce regulation on the freedom of access to information in Italy therefore appears to be both coherent and timely, in the wake of the American Freedom of Information Act (FOIA), and similar regulation now widespread in most OECD countries[87].

Recent reform promoted within the framework of the Renzi government has affected many aspects of the Italian public administration: in the context of these reforms, which carry the

[83] See E. Carloni, *La casa di vetro e le riforme. Modelli e paradossi della trasparenza amministrativa*, in 3 Dir. Pubbl. (2009), 779-813.

[84] See article 24 para 3: "no request of access made with the intention of generally monitoring the work of public administrative bodies shall be accepted." On this specific point see D.-U. Galetta, *Transparency and access to public sector information in Italy: a proper revolution?* cit. at 73, 228; F. Patroni Griffi, *La trasparenza della pubblica amministrazione tra accessibilità totale e riservatezza*, 8 Federalismi.it 12 (2013).

[85] Galetta, D.-U. (2014). *Transparency and access to public sector information in Italy: a proper revolution?* cit. at 73, 213-231.

[86] E. Carloni, *Nuove prospettive della trasparenza amministrativa: dall'accesso ai documenti alla disponibilità delle informazioni*, cit. at 73, 573-605; E. Carloni, *L'amministrazione aperta. Regole, strumenti, limiti dell'open government*, cit. at 67

[87] J.M. Ackerman, I.E. Sandoval-Ballesteros, *The global explosion of Freedom of Information Laws*, in 1 Adm. L. Rev. (2006) 85-130; OECD, *The right to open public administrations in Europe: emerging legal standards*, 46 Sigma Paper (2010).

name of the proposing minister (the "Madia" reforms), Parliament has delegated the Government to modify Decree No. 33, by streamlining and reducing the requirements for publication (which are seen by some commentators to be excessive and overly burdensome for administrations). Simultaneously it has introduced the right of "any person" to access any public administration information, subject to the limits that protect relevant public and private interests.

In implementing this provision, the Government, with some difficulty[88], adopted a decree (No. 97 of 2016) which reduces the requirements for publication, to a limited extent, and remodels many articles of Decree No. 33, introducing a general right of access that is to be granted to any individual "in order to encourage widespread forms of monitoring [...] and to encourage participation in public debate"[89].

However, substantial doubts remain about the effective capacity of this new instrument to influence the dynamics of corruption: the limits set by the decree are particularly wide, and defined in general terms, with the effect of leaving the administration with significant areas of discretion in the decision to allow or deny access[90]. For example, if it is necessary to avoid concrete prejudice to the "protection of personal data" or the "economic or commercial interests of a person", then access can be denied.

The amplitude of the limits and the absence of balancing mechanisms (in particular, in the public interest advantage to the knowledge of information: the so called "public interest test"), make uncertain the outlook of the new instrument of transparency. The first comments of the reform reflect this uncertainty: on the one hand, some believe that the new law will

[88] V. Fanti, *La pubblicità e la trasparenza amministrativa in funzione del contrasto alla corruzione: una breve riflessione in attesa del legislatore delegato*, in GiustAmm.it, 3/2016, 16. See E. Carloni, *Se questo è un Foia*, in Astrid Rassegna (2016), 1-13; D.-U. Galetta, *Accesso civico e trasparenza della Pubblica Amministrazione alla luce delle (previste) modifiche alle disposizioni del D.Lgs. n. 33/2013*, in 5 Federalismi.it (2016), 1-19

[89] So under the new Article 5a of Decree No. 33/2013.

[90] Cf. B. Ponti (ed.), *Nuova trasparenza amministrativa e libertà di accesso alle informazioni* (2016).

have to know a substantially limited role and marginal, on the other hand there are those who supports their centrality.

The task of specifying more clearly the limits and exceptions (a guarantee of public and private interests) to the new general access is entrusted to special Anti-Corruption Authority's guidelines, to be adopted in agreement with the guarantor of privacy. These guidelines have been adopted at the end of December 2016, and have interesting elements, which can ensure a more effective "right to know": in particular, starting from the legislative provision which requires "actual prejudice" of certain interest to justify the restriction of the freedom of information, the Guidelines require the government to demonstrate the "causal link" between the dissemination of information and damage to public or private interests involved.

Considering this innovations, even taking deficiencies and limits into account, a relevant, and gradual, evolution of administrative transparency can be observed[91], which in just a few years has added a range of complementary instruments (general access, online publication, and associated civic access) that compensate for the shortcomings of the traditional instrument of the right of access to administrative documents that has been in place since 1990.

11. Concluding remarks

While presented here in summary form, the Italian administrative corruption policy appears to be elaborate and detailed. Though the plan is ambitious, it does however present a number of problems and unresolved issues, which can be systematically traced back to a number of shortcomings, missed opportunities and uncertainties.

The most obvious shortcoming is the widespread (though not absolute) lack of attention to the issue of "political" officials, which results in a tendency to focus controls and measures at the lower levels (local rather than national administrations, and local politicians rather than constitutional bodies). This results in an

[91] Cf. D.-U. Galetta, *The Italian Freedom Of Information Act 2016. Why Transparency-On-Request Is A Better Solution*, in 2 Italian Journal of Public Law (2016), 269-285; E. Carloni, F. Giglioni, *The three transparency and the persistence of opacity in the Italian system*, in 23 Eur. Publ. L. (2017), 24-43.

overall system that is often disproportionate and unreasonable. As a result, duties of conduct are expected to apply to bureaucratic officials, but not politicians (even when they carry out administrative functions, such as mayors, councillors, or ministers), and the entire system is primarily focused on the "bureaucratic" dimension. In reality, administrative corruption frequently involves the corruption of political staff, and its containment thus ends up being mainly entrusted to the traditional role of supplementing criminal justice.

It transpires that transparency rules have a broader scope, referring expressly, albeit not always with corresponding provisions, to political office-holders and those in administrative positions.

As shown before, the individual mechanisms sometimes present important shortcomings: for example, it remains difficult to enforce disciplinary sanctions for violation of the duties contained in the codes of conduct, while transparency, ensured by the recent development of website publication, albeit with a not entirely convincing regulatory system, has been integrated with forms of freedom of information.

In terms of a lack of implementation, the tendency towards a purely formal application of the obligations contained in the law and the National Anti-Corruption Plan should be noted[92]: this is the case of the code of conduct, in which the adoption of administrative codes has often been carried out with a simple transcription of the "basic" code, with only minor adjustments. The same applies to transparency measures, although they appear to be the most effective and best perceived by citizens and stakeholders, in terms of their utility. This is also the case of administrative anti-corruption plans, which too often merely repeat the national plan or, more often, standard models, or copies of plans from other administrations, in an unmediated and uncritical fashion.

At least two of these ambiguities deserve closer attention. The first is the "resistance" to innovation among some administrations, albeit for doubts which are not entirely unreasonable. In particular, this is the case of the Guarantor

[92] ANAC, *Relazione Annuale al Parlamento dell'Autorità Nazionale Anticorruzione per l'anno 2015.*

Authority for the protection of personal data, which has attempted to counter the model of transparency as total accessibility, and the paradigms of open data government, viewing these regulations as an excessive impediment to privacy requirements. While taking the need to safeguard the underlying principles behind the protection of personal data into account, documents such as the recent May 2014 guidelines lend themselves to instrumental use, as they are capable of favouring opacity, and thus weakening the role transparency can play in the prevention of corruption.

The uncertainty of the government and the legislature is another troubling factor. Anti-corruption policies, and their representatives, have been faced with contradictory positions adopted at the legislative policy level, as the national government alternates between proclamations that measures will be strengthened and, at other times, the concrete downsizing of existing anti-corruption measures.

At the legislative level, an important public administration reform plan deserves mention, the already mentioned "Madia" Law No. 124 of 2015. The reform process has been slowed by the crisis of government Renzi and by a Constitutional Court ruling[93], which required a greater involvement of the regions in the definition of the rules that cater to the whole administrative system.

In the law we can find predictions that are able to affect the phenomenon of corruption, so different and sometimes contradictory.

On the one hand, it is clear the push to improve quality in the recruitment of civil servants, which is a perennial problem that in recent years has not found improvements. Corruption in Italian public administration is widely diffused and favoured by some specific features of the Italian administrative system, "such as a recruitment and promotion scheme that suffers from a certain obscurity and inefficiency".[94]

On the other hand, however, it provides for an increase in the degree of precariousness in senior management, and this can

[93] Judgement of the Constitutional Court, No. 251/2016.

[94] In this terms GRECO, *Evaluation report on Italy* cit., p. 3, according to a 2007 study on the phenomenon of corruption in Italy, which was carried out by the High Commissioner against Corruption (*Il Fenomeno della Corruzione in Italia. La Mappa dell'Alto Commissario Anticorruzione*. December 2007).

produce effects (in the negative) on the ability to ensure impartiality in administrative activity and in politics.

The presence of these uncertainties at the political level is partly offset by the strengthening, but also the overexposure, of the National Anti-Corruption Authority, which is often presented as a panacea for all the ills of the Italian administrative system, and its president, Raffaele Cantone, who is called into play under any circumstances involving widespread malpractice. However, as this paper has outlined, the powers of the Authority mainly regard the establishment of an organized system of prevention within each administration, and are therefore only partially able to contain the most serious cases, such as corruption involving organized crime, systemic corruption, or allegations of corruption involving political leaders, rather than the bureaucratic apparatus.

Even within these limitations, the "work in progress" that is the Italian fight against corruption remains one of the most important innovations in the Italian administrative system in decades. As the National Anti-corruption Authority stated in its recent report to Parliament, "the construction of effective processes and corruption prevention instruments requires a medium to long term investment before we will see its results." It is certainly possible, in this regard, to agree with the conclusion of the report: "many seeds have been sown, and [...] it is necessary to wait patiently for their effects"[95].

[95] ANAC, *Relazione Annuale al Parlamento dell'Autorità Nazionale Anticorruzione per l'anno 2015.*