



INTEGRITY FRAMEWORK IN ITALY

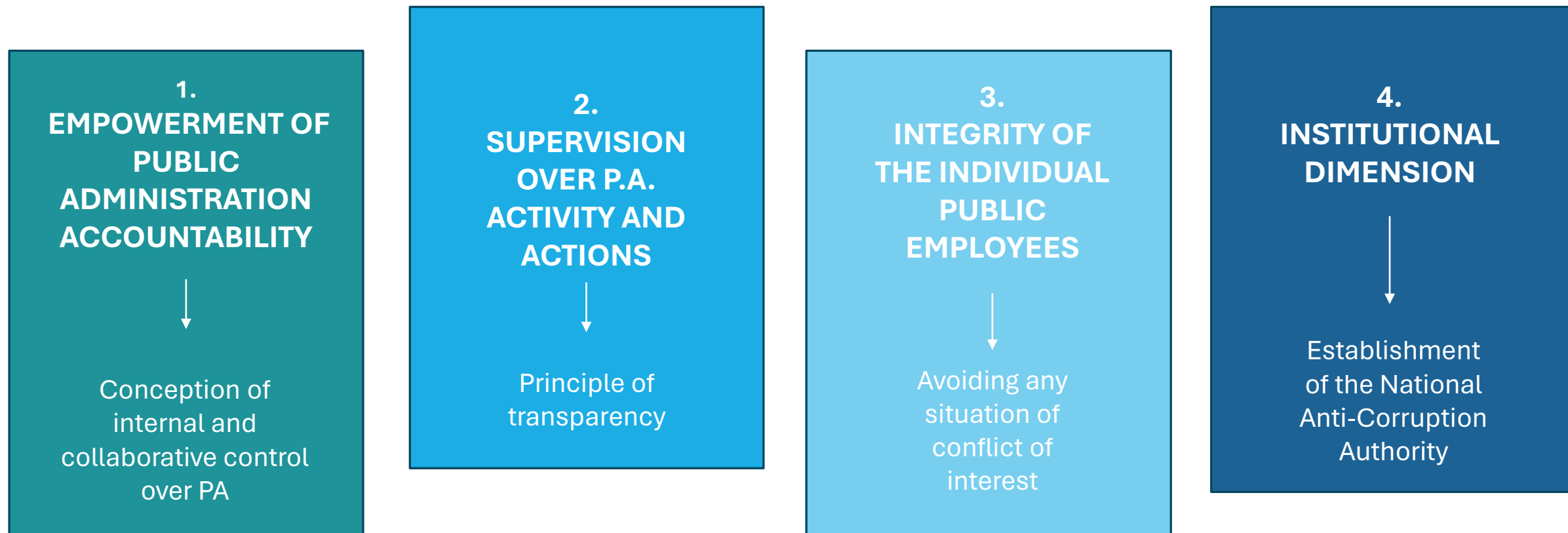
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THE FOUR PILLARS OF THE ITALIAN SYSTEM OF PREVENTION OF CORRUPTION



1. EMPOWERMENT OF PUBLIC ADMINISTRATION ACCOUNTABILITY

(Law no.190/2012)

Historical change in the traditional conception of control over PA, from 2012:

- **from** the idea that the public administration cannot be trusted and that only a heavy and pressing control could be effective to prevent corruption
- **to** a new system of corruption prevention in which the antibodies to corruption shall be directly generated within the public administration.

Two-tier approach:

National Anti-Corruption Plan (PNA), adopted by the National Anti-Corruption Authority



**Three-Year Plans for the Prevention of
Corruption (PTPCT), adopted by each
Public Administration**

Activity And Organization Integrated Plan (PIAO)

(Decree No. 80/2021 - Law No. 113/2021)

The PIAO was established within the framework of reforms of the National recovery and Resilience Plan, in order to “*ensure the quality and the transparency of administrative activities and improve the quality of the services provided to citizens and companies*”.

It includes a series of planning acts that PAs have to draw up (Performance Plan, Anti-corruption Plan, HR needs Plan...) and defines performance objectives; means and purpose of the recruitment; measures and steps to reach the complete transparency in all the activities and within the whole structure.

It rests on the following principles:

- **Strategic:**
 - Active role of the governing body
 - Culture of the corruption-risk management
 - Good practices exchange

- **Methodologic:**
 - Prevalence of substance over form: it must represent an instrument of real reduction of maladministration conduct

- **Finalistic**
 - Risk management must be addressed to a real reduction of PA exposure to corruption risks

2. PRINCIPLE OF TRANSPARENCY (Legislative Decree No. 33/2013)



A State is considered at the service of citizen, managing the power in the interest of the community, allowing widespread forms of **social supervision** over administrative action and expenditure.

It is considered as a condition for guaranteeing individual and collective **freedoms**, as well as civil, political, and social **rights**, and the right to good administration.

Every administration must be conceived as a sort of **'glass house'** and every citizen must be able to hold the public administration, which manages the collective wealth, to account.

Public administrations must ensure the **quality, integrity, constant updating, completeness, timeliness, ease of consultation, comprehensibility, homogeneity, easy accessibility, and conformity** with the original documents held by the administration of the data that are published on their websites in the section called **'Amministrazione Trasparente'**.

In this section, the PAs have to publish the same information, with the same frequency: they are then obliged to be transparent in the same way. Furthermore, it is then possible to work on common and objective indicators to evaluate their performance.

Transparency becomes, more than ever, substance.

Three types of **civic access** to data:

- documental access (Law No. 241/1990);
- simple civic access (Article 5 Legislative Decree No. 33/2013);
- generalised civic access (Legislative Decree No. 97/2016).

The New Public Contract Code

(Legislative Decree No. 36/2023)

The new Code shows an architecture completely different from all the previous texts and bases on 8 principles, defined as follows:

RESULT: promptness and high quality in respect of transparency and anticorruption

DISCRETION: evaluation case by case

TRUST: in right, legal and transparent actions between the Commissioning Body and the supplier

ATIPICALITY: reserving flexibility for PAs in managing the contracts focusing on good faith

COMPETITION: as essential value

SUSTAINABILITY: environmental and social
(to counterbalance the competition principle)

TRANSPARENCY: with the integration of digitalization

«ONCE ONLY»: data interoperability



Since the 1° January 2024, **the whole life-cycle of the contract has to be digitalized.**

Actually, the contracting authority must create a link in its own website, under the section «Transparent Administration – Tenders and public contracts», referring to the data relevant to the entire lifecycle of the public contract.

This provision guarantees a direct and immediate access to the information held by the database of the National Anti-Corruption Authority, thus ensuring the transparency of the whole contractual procedure.

BY THIS WAY:

- **TRANSPARENCY** CONFIRMS ITS NEW FACE: NOT A FORMAL FULFILMENT ANYMORE BUT **SUBSTANCE**
- THE **CONTROL SYSTEM** CHANGES BECAUSE ALERTS CAN BE USED TO IDENTIFY CRITICALITIES

DIGITAL CONTRACTS

3. SUBJECTIVE IMPARTIALITY OF THE PUBLIC ADMINISTRATION

**HYPOTHESES OF
IMPOSSIBILITY-OF-
CONFERRAL AND
INCOMPATIBILITY OF
APPOINTMENTS**

Legislative Decree No. 39/2013

Art. 1 par. 44, 45 Law No. 190/2012,
Presidential Decree No. 62 of 16 April 2013

**CODES OF
CONDUCT**

**Avoiding any situation of
conflict of interest**

**JOB-ROTATION AND
THE REVOLVING
DOORS**

Art. 1 par. 4 letter e) and Article 1, par.
42, lett. l) of Law No. 190/2012

Article 1 paragraph 5 letter b); Article 1
paragraph 9; Article 1 paragraph 11
Law No. 190/2012

**TRAINING AND
EDUCATION**

Code of Conduct

(Decree of the President of the Republic 62/2013)

The Code of Conduct precisely disciplines the duties of a public employee, in terms of diligence, loyalty, impartiality and good conduct.

It is also an essential instrument to increase employees' ethics, since it promotes the culture of integrity by measures promoting the **subjective dimension of impartiality**.

It also included direct connections with the prevention of corruption.

The Head of Corruption Prevention and Transparency of a PA is in charge of drafting the Code, making it to be adopted, published, monitored. In addition to it, the Manager deals with the relevant employees' training.

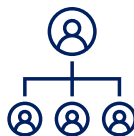
Code of Conduct

(Decree of the President of the Republic 81/2023)

The Decree no. 81 integrates, within the reforms related with the National Recovery and Resilience Plan, the previous Decree 62/2013, with specific provisions aimed to manage and implement:



the usage of digital instruments (e-mail, social media...)



ethic integrity of the Manager for the employees' well-being




training

(already stressed out by the Directive on Training issued in 2022 by the Ministry of Public Administration and by the art. 4 of the Legislative Decree no. 36/2022 envisaging training focused on public ethics)

Whistleblowing

(Law No. 190/2012; Law Decree No. 90/2014; Law No. 179/2017)



Law No. 190/2012: prohibition of criminalisation, dismissal or subjection to any kind of direct or indirect discrimination, affecting the working conditions of the civil servant who reports. Moreover, in the context of disciplinary proceedings, the identity of the whistleblower may not be disclosed without his consent, except where the charge is based, in whole or in part, on the report, the identity may only be disclosed where its knowledge is indispensable for the accused's defence.

Law Decree No. 90/2014: adds ANAC among the recipients of reports.

Law No. 179 of 30 November 2017: inter alia, extends the discipline of protection to the private sector; provides for the reinstatement of the employee in his/her job in the event of dismissal and the voidability and annullability of all discriminatory or retaliatory acts as well as compensation of damages; and entrusts ANAC with the drafting of guidelines for the submission and handling of reports and grants it the power to impose sanctions in the event of non-compliance of the legislative provisions.

Whistleblowing

(Legislative Decree No. 24/2023)

➔ Adaptation to **DIRECTIVE NO. 1937/2019** of the European Union.

The directive deals with '**INFRINGEMENTS OF EU LAW**'. The possible ways of adapting to the directive for a State that already has provisions on the subject are two:

- ➔
- a) to adopt a domestic rule transposing the directive tout-court for reports concerning EU law only;
 - b) to reform its current national rules protecting the reporter, adopting a single set of rules for alerts that are relevant to both Italian and European law.

➔ **EXTENSION OF THE LIST OF THE SUBJECTIVE SCOPE:** For **PUBLIC SECTOR** in addition to civil servants, employees of private sector entities; self-employed workers; collaborators, freelancers and consultants; volunteers and trainees (including unpaid ones); shareholders and persons with administrative, management, control, supervisory or representative functions. Such persons may report violations and offences both when the legal relationship binding them to the entity is ongoing and when it has ended or has not yet begun (e.g. probationary period). For **PRIVATE SECTOR:** it also includes employees of private entities with certain dimension and structure.

➔ Subjects must be provided with **COMPREHENSIVE INFORMATION** about the method of management and of processing personal data and the procedures for handling the report and a list of more strict criteria for reporting channels is set down.

➔ The **FRAMEWORK OF PROTECTION** also includes free pre-report assistance (on procedures, remedies, whistleblower's rights), free legal aid in criminal proceedings, and effective assistance before any authority to protect the whistleblower from retaliation.

➔ **SYSTEM OF SANCTIONS** decided upon by ANAC: may be directed to the Head of Corruption Prevention for non-compliance with procedures or for retaliatory conduct; or at the reporting party - in order to discourage deliberately false reports.

4. THE INSTITUTIONAL DIMENSION: ANAC



Implementation of Article 6 of the United Nations Convention against Corruption: ratified in 2009 and implemented it in 2012.

In 2014, ANAC was accredited in the Directory of the United Nations Office on Drugs and Crime (UNODC) as an independent national authority for the prevention of corruption:

Political independence + Financial independence

ANAC's role:

- Regulatory power through soft laws
- Supervisory power over public procurement and the correct functioning of the public administration
- Monitoring power on the anti-corruption system, including through inspections that can be delegated to the financial police
- Sanctioning power for failure to comply with obligations by public administrations
- International responsibilities in both bilateral and multilateral fora



CRITICALITIES

In conclusion, it is important to point out since now some considerations about certain criticalities inherent the legislation in force that we have to keep in mind while defining the INTO BE project.

- The **Whistleblowing** regulation is kind of confused and then subject to **misinterpretations**
- The new **Code of Public Contracts** raises several **doubts about transparency and the management of the conflict of interests**, due to certain provisions such as the new rules for direct procurements (without tenders) and the “Integrated agreement” where the project and the execution are assigned to the same supplier
- Again, in the abovementioned Code, **some concerns are relevant to the digitalization system**, i.e.:
 - There is not a direct connection between “Amministrazione Trasparente” sections of the Entities’ websites and the National Database managed by ANAC: so, we have fragmentation and not linearity of information
 - Data and information will be available but not the underlying documents and acts
 - Final reporting will not be digitized