



Governo italiano

Presidenza del Consiglio dei Ministri

Ministro per la pubblica amministrazione e la semplificazione

***Bill for the "Prevention and repression of corruption and
illegality in the Public Administration"***



***Measures for the prevention of
corruption***

Rome, October 29, 2012

Among the various structural reforms undertaken by the current Government, a special emphasis has been given to development of **an integrated anticorruption policy** which, along with the enhancement of repressive action, envisages the introduction or the reinforcement of prevention tools aimed at having a functional, systematic and well-defined **impact on the occasions and factors facilitating the spreading of corruption**. The phenomenon of corruption has to be considered in a wider meaning, going beyond the specific criminal offence and embracing maladministration instances that are excluded from the scope of the criminal law.

Against this backdrop, the Government has been following closely the process of the *Bill for the "Prevention and repression of corruption and illegality in the Public Administration"*, already before the Parliament, and has proposed a set of amendments on prevention issues also based on the activities of the *Committee on Analysis and Design of proposals in the field of transparency and fight against corruption within the Public Administration*, established for this purpose.

THE TRANSFORMATION OF CORRUPTION IN ITALY

What are the reasons why corruption prevention is so key?

The importance of a prevention policy appears to be clear if we take into account the **qualitative and quantitative transformation** of the phenomenon of **corruption** in our Country: criminal prosecution alone is no longer sufficient.

As for the **quantitative transformation**, a comparative analysis of judicial data (reports and convictions) and perception data reveals an inverse relationship between "exercised corruption", on the one hand, and "reported and punished" corruption, on the other hand: while the former has been rocketing, the latter has been substantially shrinking. This is confirmed by data on the *Corruption Perception Index* of *Transparency International*, where **Italy ranks 69th** (with Ghana and Macedonia) with a progressive worsening of "perceived corruption" in recent years.

A similar trend is highlighted by the **World Bank** through data gathering of the *Rating of control of corruption (RCC)*, where **Italy ranks poorly at EU level** and shows a worsening trend in recent decades.

As for the **qualitative** aspects, individuals involved in corruption practices have changed, along with the content of the "corruption pact".



As far as the **former** are concerned, corruption is no more restricted to a dual relationship: more subjects are now at stake, and they perform *intermediation and filtering tasks*.

As for the **latter**, investigations have highlighted that the role of the bribee is no longer limited to an unlawful action within his/her own department, as he/she also exercises his/her institutional clout on the public official in charge of the proceeding involving the briber. And there is more. The unlawful "service provision" perpetrated by the bribee, far from materializing in a well-defined activity (e.g. the adoption of a specific administrative act), ends up "dematerializing", as it is focused on the general role or quality of the public official in a future perspective: this is the case for the public official who commits to ensuring the protection of the briber in his/her future relationships with the administration.

It is precisely the **widespread and systematic nature** of the corruption (via one of the above - increasingly frequent – features) that **makes repression (though important) insufficient** and that calls for the design and implementation of an **integrated and coordinated anticorruption policy**. Such a policy has to be based first on **prevention measures**, mainly on the public administration side.

Such a policy is all the more necessary if we consider the **direct and indirect corruption-related costs**. From a systematic standpoint, corruption has a particularly **serious impact on the Country's growth perspectives**: the spreading of corruption **hampers free competition and facilitates wealth concentration** on those accepting and benefiting from the bribe market, to the detriment of those ones who refuse to abide by its conditions.

Furthermore, it was calculated that **every position lost in Transparency International's ranking on perceived corruption triggers a 16% loss of foreign investments**.

It is worth recalling the regular calls for the adoption of efficient anticorruption measures by **GRECO** (*Group of States against corruption of the Council of Europe*) which, in its **Assessment Report on Italy in 2011**, highlighted that "*in Italy, corruption is deeply rooted in different areas of public administration (...) The payment of bribes appears to be common practice to obtain licenses and permits, public contracts, financial deals (...) Corruption in Italy is a pervasive and systemic phenomenon which affects society as a whole*".

THE MAIN PREVENTION MEASURES IN THE ANTICORRUPTION BILL

Based on the above observations and the analysis of lessons learned at the **international level** – where **significant steps forward** in the design and implementation of corruption prevention measures - the Anticorruption Bill now contains additional proposals aimed at promoting corruption prevention mechanisms. These proposals have a **common denominator: the multiplication of the administration's internal barriers via prevention tools**, by:

- ✓ **imposing the highest levels of disclosure**
- ✓ **enhancing public officials " integrity"**
- ✓ **giving new impetus to the system of disciplinary liability**
- ✓ **enhancing cooperation with honest employees, proving guarantees when they blow the whistle in good faith**
- ✓ **Introducing in public administrations organizational measures for the prevention of maladministration**

The following explanatory sheets illustrate the most significant measures envisaged by the Anticorruption Bill



Corruption prevention plans

- ▶ Adoption of corruption prevention plans by individual administration based **on risk management** models;
- ▶ Drafting of the **National Anticorruption Plan** by the **Department for Public Administration** to coordinate the implementation of national and international strategies to prevent and fight against corruption within public administration.
- ▶ Establishment of a systemic prevention system entrusted to an **independent national authority**, tasked with the **approval of the National Anticorruption Plan** and the oversight of its implementation;
- ▶ Identification – in the **Law** – of **the basic contents of prevention plans** to be adopted by individual administration, more specifically:
 - The identification, within each administration, of the **person in charge of risk mapping and the drafting of organizational preventive solutions**, with the participation of the political level;
 - **Rotation of appointments** in high-risk areas of the organization;
 - **Monitoring the relationships between the administration and subjects interacting with it** (e.g. parties to a contract or subjects involved in authorization procedures or beneficiaries of economic advantages);
 - **Disclosure duties** for the manager in charge of overseeing the implementation of the plan;

► **Enhancement of the Prefects' network** for local authorities and peripheral offices of the central administration, with a view to:

- Providing **technical and information support** to local authorities;
- **Linking** local authorities with the National Anticorruption authority;
- **Monitoring** the implementation of the Law and the guidelines provided for by the national plan.

Integrity standards

►► *Conflict of interest and bans on holding offices*

- The Government has now the mandate to regulate **cases of conflict of interest, including the bans on holding posts, for managers**, on the basis of the following criteria:

- The Bill introduces a **ban on awarding managerial appointments to perspective candidates who, for a given period of time before such appointment:**

- had appointments or posts in regulated companies, controlled companies or companies benefiting from economic contributions of the administration;
- were members of policy-making bodies;
- held elected public offices;
- ran for the same posts or had appointments in political parties.

- The Bill envisages a **ban on awarding managerial appointments** if:

- The candidates have been convicted (with or without a final court decision) for offences provided for by chapter I, title II of the second volume of the criminal code;

- The Government has now the mandate to adopt a **consolidated text on bans on holding offices** and prohibition to run for elected offices and executive appointments following **final convictions for offences committed with criminal intent**

►► *Codes of conduct*

- Enhancement of the code of conduct of public officials, by clarifying that this is a source of law that identifies behavioural duties which are legally relevant and subject to disciplinary liability;

□ Revision of the framework governing duties of employees, especially managers: along with duties related to specific professional tasks, such framework will also lay down duties ensuring public official's personal independence and impartiality in carrying out the tasks entrusted to him/her.

Transparency

- The Government has now the mandate to **reorganize provisions governing disclosure and transparency obligations** for public administration. The aim is to reinforce such provisions, with amendments or new rules on top of those already in place. The Bill also provides for **new obligations to disclose**:
 - **Data on political office-holders**, both elected officials and officials with policy-making responsibilities at the central, regional and local level, concerning:
 - ✓ the overall financial position of the office-holder when taking up office;
 - ✓ ownership of undertakings;
 - ✓ own shareholdings, shareholdings of spouses and relatives until the second degree of kinship;
 - ✓ all remuneration the office-holder is entitled to for the post in question;
 - **Data on income and assets** of at least some categories of **public officials**, starting from those with **managerial tasks**;
 - **Data on procedures** concerning:
 - ✓ authorizations or concessions;
 - ✓ the selection of the contractor for the award of contracts for works, supplies and services, also indicating the selection procedure;
 - ✓ award and payment of grants, contributions, subsidies, financial support as well as economic benefits of any kind to public and private natural and legal persons;
 - ✓ selection procedures for staff hiring and professional advancement.

► *Whistleblowing*

Definition of protected disclosures and persons entitled to protection;

Protection mechanisms via reporting to the Department for Public Administration on the discrimination against whistleblowers; moreover, reports submitted by whistleblower will not be accessible to the wider public.

► *Training and promotion of a culture of integrity*

Promotion of **specific training for civil servants on the issues of integrity and legality**;

Specific **selection procedures and training** of officials working in **high-risk sectors**, with the rotation of public managers and officials in the same sectors.