SURVEY OF ANTI-CORRUPTION MEASURES IN THE PUBLIC SECTOR IN OECD COUNTRIES: ITALY

1. What anti-corruption mechanisms exist for the public sector in your country?

a) Legislation proscribing corrupt activities and establishing sanctions

The main corpus of criminal sanctions in the public sector are contained in the Penal Code (approved under Royal Decree No. 1398 of 19 October 1930; amended by Law No 86 of 26 April 1990; and partly amended subsequently by Law No 181 of 7 February 1992).

This last legislation substantially amended Book II, Title II, Chapter I of the Penal Code, Articles 314-335 which contain regulations covering offences committed by public officials against the Public Administration. Articles 336-360 of Chapter II deal with offences committed by private individuals against the Public Administration.

The relevant provisions of the Penal Code refer to:

- embezzlement,
- misappropriation at the expense of private individuals,
- gaining advantages from other people's errors,
- extortion and corruption (in the various senses of the word) in performing an official duty,
- corruption through an act contrary to the duties of public office, and
- corruption of a person holding public office.

There are also penalties for:

- instigating corruption,
- abuse of office in circumstances not specifically provided for in the law,
- putting one's personal interests first in the performance of a public duty, and
- the failure or refusal to fulfil an official duty.

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b) Other anti-corruption regulations or orders

At a general level, reference should also be made to Article 97 of the Constitution which, although only indirectly linked to anti-corruption law, identifies a high level of performance *("buon andamento")* and impartiality as organisational standards of public administration.

Other legal provisions specifically designed to halt corruption are contained in:

- anti-Mafia legislation (Law of 19 March 1990 No 55, Legislative Decree No 490/1994, Law No 47 of 17 January 1994 and a Minister of the Interior Circular);
- legislation on financial and money-laundering issues;
- legislation concerning the involvement and transparency of administrative procedure (Law No. 241/1990);
- legislation referring to the monitoring of competition and the market (Law No. 287/1990);
- legislation covering administrative simplification (Article 6 (2) of Law No. 127/1997);
- regulations ensuring that legislation complies with EC Directives on public sector contracts, transport and telecommunications; and
- legislation dealing with local autonomy (particularly provisions setting out the principle of the distinction between the political structure and the real administrative management of a public body: Law No. 142/1990).

In local (regional, provincial or *Comune*) bodies, arrangements are made under this last law for allocating to officials the somewhat sensitive functions which had previously been a kind of privilege reserved for the nominees of political groups. Despite training from their respective political parties, these individuals did not always make the most appropriate use of their appointments. The posts range from the Chairmanship of Commissions overseeing competitions for public service posts to responsibility for the awarding of contracts and the drawing up of contracts.

In Ministries, senior public officials now perform all activities that link the Administration with other organisations. This implements what is historically the third organisational formula of relations between Ministers and senior public officials.

In 1993, Legislative Decree No. 29 (as amended) and Law No. 537 introduced additional important provisions relating to a number of issues, including the fight against corruption, and drew a sharper distinction between administrative management and direct influence on political power in connection with organisational procedures and public sector work. Similarly in 1994, Law No. 109 (Framework Law on Public Sector Work), as subsequently amended, provided for the following in relations between Public Administrations and contractors:

- the setting up of the Observatory for Monitoring Public Sector Work and the related Authority (*Osservatorio per la vigilanza sui lavori publici e la relativa Autorità*), which was assigned specific “obligations to report” (*obblighi di denuncia*) (Article 4, Law No. 109/1994);

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- a sole official to be responsible for the programming, planning, allocation and performance of the work;
- a division between planning and the awarding of contracts and concessions;
- measures to limit unlawful behaviour, reduce the instances of collusion and corruption, and make them more easily verified.

Three laws in 1997 (No.s 59, 94 and 127) outline a general framework of administrative reform including decentralisation, the reorganisation of the State Administration, completing the privatisation of the public sector, the simplification of laws and procedures, the speeding up of controls, and a radical alteration of the State budget. Like the Law No. 15/1968 on administrative simplification, these important laws may not have the immediate objective of fighting corruption, but they do reinforce administrative impartiality, foster a high level of performance, and develop a new and direct approach to service and responsibility on the part of the Administration towards citizens. Under the terms of the laws already mentioned on the right of access, citizens have a quasi-supervisory role over administrative activity.

c) Oversight by the legislature or parliament (directly or through scrutiny committees)

Parliament as a whole, and individual members, monitor the work of the public service closely. Any member can raise specific matters, using the parliamentary power of inspection (*sindacato parlamentare ispettivo*). They may put official questions, orally or in writing, to the government or individual ministers on any aspect of government activity, including public sector corruption. Questions must be answered within short time limits set by the rules of procedure.

Either or both houses may set up special commissions of enquiry, consisting of members of Parliament, on matters of public interest, including corruption in public life. The commissions can obtain evidence from any authority, department or individual, using the same powers as criminal investigators (as in the Commission of Enquiry into the P2 lodge).

In particularly serious cases, Parliament has established standing parliamentary commissions to secure information, make enquiries or monitor developments. One such is the Parliamentary Commission on the Mafia, covering all aspects of this organisation including material corruption, both active and passive, at all levels of the public sector, and corruption of public officials.

d) Investigation systems or bodies with powers to investigate corrupt activity

Except when statements are examined under Law No. 241/1982, there is normally no body, department or commission permanently charged with conducting general anti-corruption enquiries or controls. The only (albeit theoretical) controls carried out on a permanent basis are linked to the normal intelligence-gathering and investigative activities of the police. They operate in areas where they have authority or in accordance with criminal law, but at all times they take appropriate care with a view to protecting the position of members of the Italian Parliament.

Extraordinary commissions of enquiry into Public Administrations may be appointed by the government to look into the Public Administration as a whole, or by leaders of individual Administrations, in which case their authority is restricted to their sector of competence. Unlike Commissions appointed by Parliament, the latter only have administrative powers. The enquiries carried out by the appropriate

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administrative Commissions usually seek to ascertain the nature and extent of corruption taking place in some or all sectors of the Administration where it has been identified. (It is worth recalling that the *Guardia di Finanza*, which has been beset by examples of particularly serious corruption, has recently set up its own internal Commission of Enquiry.)

The powers of administrative commissions of enquiry are set out in their founding rules. They are purely administrative and relate to disciplinary and administrative matters seen as appropriate to a relationship which is both hierarchical and linked to self-management. Special powers of extra-hierarchical scrutiny exist (e.g. in the case of government-appointed commissions), and there are also intelligence-gathering and investigative powers relating to the posts of criminal police officers that commission members themselves occupy.

These commissions are sufficiently independent because, although they normally answer directly to the senior administrative or political person responsible for establishing them, either as civil servants -- and particularly so where this is the case -- or as criminal police officers, they each have an individual "duty to report" all facts related to suspicions of criminal practice to the criminal authority. Article 20 of DPR (*Decreto del Presidente della Repubblica* – Decree of the President of the Republic) No. 3/1957 states that the Director-General or departmental head is bound by a duty to report. The Minister is similarly bound if these officials are under suspicion. Article 32 of Law No. 335/1976 later introduced a new element into the identification of officials covered by this duty when it also referred to administrators and heads of regional offices and, if the administrator is under suspicion, to the "related" collegiate body.

An express duty to report also applies to officials with remits to carry out investigations. The relevant legislation is Article 20 of DPR No. 3/1957, Article 12 of DPR No. 748/1972, Articles 86 and 91 of Legislative Decree No. 77/1995, and Article 5 of Law No. 1291/1962. The last compels the State Budget Officer (*Ragioniere Generale dello Stato*) to notify the State Audit Court (*Corte dei Conti*) of instances of malpractice that have been uncovered in the course of administrative and accounting investigations carried out by senior officers of the Finance Inspection Services (*Servizi Ispettivi di Finanza*).

At a purely administrative level, then, as an expression of the power of self-management that the Public Administration enjoys, the Inspectorates of Internal Administration (*Ispettorati di amministrazione interna*) inside each Ministry -- and in the various "branches" inside each hierarchical structure -- have the authority to carry out administrative investigations. Where suspicions are confirmed, these investigations will lead to the implementation of disciplinary procedures and disciplinary action which may result in a determination of criminal fault and appropriate penalties.

The degree of autonomy enjoyed by administrative Inspectorates is generally very high since, as has already been stated, the duty to report and the criminal responsibility associated with it covers both auditing issues and assets.

e) Supreme financial audit authority

[See answers to *Question 1 (d)* and *(i)*.]

f) Ombudsman

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g) Bodies to enforce sanctions and prosecute corrupt activity e.g. specialised prosecutors, investigators, courts, tribunals, etc.

The law provides that the authority to apply sanctions and conduct investigations into corruption lies with the Legal Authority (*Autorità Giudiziaria*) as well as the Commissions of Enquiry mentioned earlier. The latter are bodies that enjoy "exceptional" status (*organi di carattere straordinario*).

Whereas the work of the judiciary (*Magistrature*) is carried out under a guarantee of complete independence that the law assigns to the Judicial Power (*Potere giudiziario*), administrative work enjoys less autonomy insofar as the activities of Inspectorates belonging to a given Administration are always bureaucratic. On operational matters, therefore, these bodies answer more or less directly to the Minster, the Secretary General or the Director-General in whose Department the Inspectorate is based. As has already been pointed out, the fact that there is criminal or auditing responsibility ensures that, solely from the point of view of administrative operation, the Inspector is directly and personally obliged to notify the competent criminal or accounting auditor (*procura*) of any grounds for suspicion of unlawful action or which might lead to a tax offence (Articles 361 *et seqq*).

In summary, the investigative bodies that enjoy exceptional status are the Commissions of Enquiry appointed by Parliament to look into specific matters that may affect the public sector or have wider implications.

h) Human resources management procedures intended to prevent corruption

Human Resource Management procedures employed in the prevention of corruption are fashioned in various ways so as to reflect the features that characterise the work of individual sectors of the Administration. Prior assessment by the Administration that takes account of a job applicant's previous record or behaviour, or of the moral standards of his or her background, is no longer a factor that determines selection for a post in the public sector.

Most emphasis is placed on repressing corruption, and on the duty that Article 17(22) of Law No. 127/1997 imposes on senior officials to declare their assets. As to whether a legal sanction is a deterrent against embezzlement and/or corruption, not everyone agrees that it is enough to prevent employees succumbing to maladministration.

Parliament is examining new legislation which will establish a more automatic link between disciplinary measures and the outcome of criminal proceedings. However, by introducing the possibility of assessing not so much the performance as the quality and the result achieved, the new system of managing public affairs, which is developing through the implementation of public administration reform under recently adopted legislation (i.e. Legislative Decree No. 29/1993 and Laws No.s 59 and 127), may provide an effective method of promoting efficiency and productivity in relation to specific economic benefits. Economic issues are not ignored: the Public Administration must now keep staff salaries under control as a result of budgetary restrictions.

A law containing measures relating to the inculcation of moral standards in the Public Administration and combating corruption in general is the Consolidation Act on Civilian Employees in the State (approved by DPR No. 3 of 1957) setting down in general terms standards in relation to incompatibility in employment. Legislative Decree No. 29/1993 which applies similar rules to public officials under privatised employment contracts. Law No. 662/1996 in Article 1 (56 & 65) complements these provisions by

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introducing stricter standards in relation to incompatibility in employment and part-time jobs and establishing any breach of these standards as a “just cause for dismissal”.

The general incompatibility rules may be relaxed or tightened in particular circumstances. For instance, some absolute incompatibility rules are confined to administrative classes of officials and cases where the Administration, under specific rules, has identified conflicts of interest with the official’s particular activity. In other cases the rules on incompatibility on grounds of interest are tightened, extending the provisions to periods following termination of employment. This is the case with regulations to bar improper use of work-related procedures and knowledge acquired during employment. The rules bar tax officials from working as tax consultants for a period of five years following termination of employment with the Administration, for retirement or on other grounds. There is also legislation which prevents former ministers from taking up government appointed posts until at least one year has elapsed from termination of their ministerial office.

i) Financial management controls intended to prevent or deter corrupt practices

A key lever of financial control, which is also used as a deterrent to counter embezzlement and corruption in public life, is the State Budget. Recent examples of the broad scope for compromise between politics, the public sector structure and private operators have clearly shown how mechanisms for Budget drafting and implementation, which go back to the Curti Law of 1964, have made it possible to identify public action programmes and administrative management guidelines. But, they have also contributed to a fragmentation of public policies, and made it more difficult both to monitor the allocation of expenditure on specific purposes and check on responsibility for monitoring. This can easily lead to maladministration and corruption.

Following an attempt in Law No. 468 of 1978 to make the State Budget more objective and transparent -- it also introduced a duty to publish an annual budget in the form of a once-yearly Finance Act -- a new structure for the State Budget is now laid down in Law No. 94 of 1997. The new Law identifies a basic criterion to be a cross-over point between, on the one hand, a classification of State spending on “key functions” (*funzioni obiettivo*) -- linked to the drafting of public sectoral policies, and possibly even measuring the product of administrative activities in terms of services to the public -- and, on the other, a division into budget heads and “centres of administrative responsibility” headed by a civil servant who will administer the expenditure and be directly and personally responsible for it.

In this way, a close link is established between political direction, financial planning and management, and administrative action. The identification of “key functions” and the associated predetermination of effectiveness and efficiency indicators to be used in evaluating the outcomes of administrative action (highlighting the policies, interventions and services that Public Administrations are attempting to introduce) are also revealing indicators of managerial anomalies that may conceal suspicions of corruption or private interests. The sub-division into cost-centres clearly identifies the civil servant responsible and the relevant procedure. This makes it possible to implement laws on rights and on the responsibility of senior officials for technical and administrative management.

In the tax sector, an area particularly exposed to various forms of corruption, the relevant body is the SeCIT (*Servizio Centrale degli Ispettori Tributari* – Central Tax Inspectors’ Service). This Service, which was set up in the Finance Administration (*Amministrazione Finanziaria*) to combat corruption, is charged with carrying out financial controls to ensure that citizens pay their taxes correctly. It also has the task of monitoring the behaviour of State departments and their senior officials in respect of their official

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procedures and their private behaviour and contacts with users. It was established by Law No 146/1980. Article 9 states:

"The Central Tax Inspectors' Service:

a) monitors investigations that departments carry out by employing departmental inspectors with national authority; it also monitors inspections conducted by the *Guardia de Finanza*;

b) may, in exceptional circumstances, and to ensure that the enquiries referred to in (a) above are properly conducted also carry out inspections and controls and take part in inspections already being carried out by departments and the *Guardia di Finanza*;

c) in exceptional circumstances, carries out inspections and audits in relation to taxpayers about whom there are serious grounds for suspicion of large-scale tax evasion;

d) provides the Minister of Finance with proposals for the planning and implementation of investigative programmes.

The central Tax Inspectors' Service supplies competent tax offices with information and data that have been collected, together with the results of the inspections. In tax investigations, departments must take all items of information that they discover into account."

This Service, which the law identifies as a "staff unit" within the Ministry of Finance, is "atypical" compared with traditional hierarchical structures. It has links with other central bodies by means of senior officials of ministerial departments being members of a Coordinating Committee, where they pool key outcomes and proposals arising out of relations between inspectors. As the above legislation states, these outcomes are at three levels:

- proposals to the Ministers relating to the planning of investigative programmes;
- communications from the competent Finance Offices ("*Uffici Finanziari*") based on earlier inspections;
- proposals to the Minister concerning action to be taken on any criminal or administrative irregularities that have been uncovered.

j) Organisational management policies, systems and controls intended to minimise opportunities for corrupt activity

The system of controls has also been improved by shifting the focus from prevention to effectiveness. Of particular importance in this has been Article 17 of Law No. 127/1997 which represents the high point in the reform of administrative controls that can be carried out without amendments to the Constitution. This legislation deals specifically with State controls over administrative action in the regions, and limits State control to the legitimacy of the managerial statement of accounts. Accordingly it has given commissions and individual regional administrators full and autonomous responsibility for all other activities. Similarly, as far as other local bodies are concerned, the Law has greatly reduced the number of actions that come under the control of appropriate Regional Monitoring Committees. Instead the latter have been given the task of meeting requests for evaluation tools relating to the adoption of actions or measures of exceptional complexity or rarity (sub-sections 31-45).

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The combined effect of Legislative Decree No. 29/1993 and Law No. 94/1997 is to re-organise the various types of control and shift the focus decisively towards control over outcomes. This is achieved by broadening and reinforcing the system of internal controls, expanding a central Inspectorate body, and using outside experts. Control has been transformed from being an instrument for observing formal legitimacy into an agile "detector" capable of preventing illegal practices that had escaped the old system of administrative controls for decades.

The new system of controls is based on the work of the internal audit services set up under Article 20 of Legislative Decree No. 29/1993, and of *Procure regionali* (Regional Monitoring Units) in the *Corte dei Conti* (State Audit Court - a body that carries out checks on public sector expenditure) (Laws No.s 19 and 20 of 1994). Through internal controls, and the external control provided by the State Audit Court, the law provides for the use of inspectorate controls not only for the purposes of regular auditing, but also in investigations associated with organisational analysis, assessment of the effect of results, and taxpayer satisfaction.

In addition to the internal Inspectorates, the law provides for two inspectorates with general authority. These are the General Inspectorate of Finance (*Ispettorato Generale di Finanza*), which was set up under Law No. 1037/1939 within the Ministry of the Treasury (State Budget Office) and the Public Sector Inspectorate (*Ispettorato della Funzione Pubblica*). The latter was located within the Presidency of the Council of Ministers (Public Sector Department) under Law No. 93/1983 as amended by Legislative Decree No. 29/1993. These Inspectorates have extra-hierarchical competencies and powers, and are usually engaged in "horizontal" investigations involving comparative calculations and evaluations of comparable sectors, and focus on functions and centres of responsibility.

k) Transparency mechanisms e.g., independent or public scrutiny, systems for declaring or reporting potential conflicting interests or corrupt activity

Law No. 241 of 7 August 1990 may be seen as the basis of the legal mechanism which aims to achieve transparency in administrative activity and identify any conflicts of interest by making all administrative documentation public, or at least more accessible. The Law contains general rules on the work of the Public Administration, and it is also a "law of principle" applicable to every Administration of the State and of local bodies.

Some of these principles are expressly referred to in Chapter I. They are:

- the cost, efficiency and the "publicness" of administrative action;
- a ban on overloading the procedure except in the case of exceptional, justifiable requirements that occur by the course of the investigation;
- a duty to perform a service following an express undertaking to do so;
- the prior determination and publication of how long it will take for each type of procedure to be completed; and
- the duty to justify all administrative investigations except normative investigations and those of a general nature.

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Other principles may be implicitly inferred from the legislation. The most important is certainty as to when a procedure will be completed. The implications of this principle are the uniqueness of completing the entire procedure and its *a priori* determination.

To translate these principles into practice, Law No. 241/1990 contains a number of provisions that need to be implemented at a later date and which require secondary legislation from individual Administrations or the government. For example, each Administration must fix times by which procedures have to be completed, appoint appropriately authorised officials responsible for procedures, draw up criteria for allocating economic benefits, and adopt organisational measures capable of ensuring the right of access and enforcement of the law on self-certification. For its part the government must establish, through its own legislation, which of the current controls on private sector activity shall be eliminated and regulate how a right of access is to be exercised.

Full, wide-ranging implementation of Law No. 241/1990 was slow, laborious and frequently erratic, but it has received a decisive boost through the adoption of Law No. 127 of 15 May 1997. By introducing new rules relating to procedures and administrative simplification and by finally implementing Law No. 15 of 4 January 1968 on self-certification, this new legislation has amended Law No. 241/1990 on procedure and right of access to administrative documents. It achieved this by speeding up the "basket of services" (*conferenza di servizi*) procedure and eliminating other hidden recesses of formal bureaucratic resistance in which embezzlement or corruption could still be concealed (Article 14).

In monitoring elected officials and Members of Parliament Law No. 441 of 5 July 1982 is of fundamental importance to the prevention of corruption. This requires an annual statement of income and outgoings from:

- members of the Republic of the Senate, the Chamber of Deputies, the President of the Council of Ministers;
- Ministers;
- Under-Secretaries of State;
- Regional Councillors; Provincial Councillors;
- Councillors on Councils of provincial capitals or towns and cities with a population of over 50,000; and
- Presidents, Vice-Presidents, Managing Directors and Directors-General of public institutes, public bodies and even publicly-owned companies whose appointment, proposal, nomination or approval of appointment is placed before the President of the Council of Ministers, the Council of Ministers or individual Ministers.

The Law also extends the duty to make declarations to the *anagrafe patrimoniale* as follows:

- to Presidents, Vice-Presidents, elected Administrators and Directors-General of companies in which the State and public bodies have a holding where they have a stake or holding exceeding 20%;
- to Presidents, Vice-Presidents, elected Administrators, and Directors-General of companies and private institutes that the State is involved in administering and public bodies where the

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holding comes to more than 50% of all operating costs published in their budgets, and where these costs exceed Lit 500m annually;

- to Directors-General of autonomous State companies; and
- to Directors-General of special companies covered by Royal Decree No 2578 of 15 October 1925, and of Councils of Provincial capitals and of towns and cities with a population of over 100,000.

l) Guidance and training for public officials or politicians (e.g. codes of conduct, ethics awareness training)

Guidance and training for politicians, a matter on which public opinion frequently expresses its views, is the subject of wide-ranging debate in relevant Parliamentary settings such as the Bicameral Commission (*Commissione Bicamerale*).

In the ethical training of public servants it follows that the employee's natural disposition plays a key role. As far as training is concerned, the Administration runs courses at various levels. These mostly focus on professional aspects of a department's work, but they also include all factors that might directly or indirectly help employees develop a well-grounded ethical consciousness of what the job involves.

The development of an understanding of ethical issues is dealt with in great detail at training and refresher training schools run by the police (i.e. the Carabinieri, the *Guardia di Finanza* and the State Police (*Polizia dello Stato*). Here, much emphasis is placed on *esprit de corps* and on the maximum development of "internal motivation" (close identification with the objectives of the institution, and a more deeply-felt and profound sense of moral responsibility towards it) as distinct from "external motivation", which is achieved by focusing on extraneous aspects of the job such as career, social status, pay and employee benefits.

Beyond this, it is important to bear in mind that many instances of corruption could be prevented by paying attention to each employee's personal situation and background. By moving as speedily as possible to resolve problems which might, at first glance, appear to have nothing to do with the police service (e.g. tax and housing issues), the risk of employees' "vulnerability" is greatly reduced.

For corruption to be prevented, it is now recognised that it is essential for all civil servants and Public Administration employees to be informed of the values and common principles inspired by the high standards of impartiality, high level of performance and service to the public that characterise the Public Administration under our Constitutional framework.

Article 58-bis of Legislative Decree No. 29/1993, which was brought into force by Legislative Decree No. 546/1993, provided that, after the views of the main representative trade union confederations had been heard, the President of the Council (Public Sector Department) should draw up a Code of Behaviour for employees of Public Administrations. The Council was also to deal with any organisational measures required to ensure the quality of services that these bodies give to the public. Article 58-bis also states that a copy of the Code shall be handed to employees when they start work, and that the President of the Council hands the "regulations" (*direttivi*) to ARAN (*Agenzia per la Rappresentanza Negoziale delle Pubbliche Amministrazioni* – Agency for Business Representation in Public Administrations) so that the Code is included in agreements affecting all civil service categories.

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In accordance with Article 58-bis, the Code of Behaviour of Employees of Public Administrations was published in a DPCM (*Decreto del Presidente del Consiglio dei Ministri* – Presidential Decree) of 31 March 1994. It was intended to form a basic corpus of rules of behaviour conforming with the above principles of impartiality, high level of performance and public service. The Code also provides that regulations (*direttivi*) issued by the President of the Council to ARAN should also be amended "to co-ordinate the principles [set out in the regulations] with the issue of disciplinary responsibility" (now a condition of the employment contract), and that General Affairs and Staffing Offices (*Uffizi affari generali e personale*) of individual Administrations should ensure that the Code is complied with, and that employees are given counselling where necessary. Lastly, the Code states that it must be reviewed every four years on the basis of information and suggestions arising out of practical experience.

The Code was subsequently included in agreements in the course of State and para-State negotiations covering the various categories of the civil service. As civil service agreements had not previously had the task of coordinating the Code's principles with the matter of disciplinary responsibility, the Code itself had continued to be no more than a code of ethics, adherence to which was not supported by effective controls and sanctions.

To deal with this anomaly, Article 11(i) of the recently adopted Law No. 59/1997 gives the government legislative authority "to draw up, on behalf of the President of the Council of Ministers (Public Sector Department), a Code of Behaviour for Employees of Public Administrations, to determine ways of linking it to contractual rules covering disciplinary action, to adopt Codes of Behaviour on behalf of individual Administrations", and "to set up, on behalf of individual Administrations, bodies for monitoring and advising on the application of the Code and ways of linking these bodies to the Public Sector Department."

Article 17(22) of the aforementioned Law No. 127/1997 states that senior public servants are also covered by the provisions of Article 12 of Law No 441/1982 relating to a duty already binding on holders of elected positions and managerial posts in certain public bodies to make declarations to the *anagrafe patrimoniale* (register of personal assets). It has thus created an instrument for controlling corruption by introducing a powerful dissuasive element in dealings both with senior public servants and with citizens.

m) Other measures intended to control, detect or deter corruption

The fight against corruption is also actively pursued through a series of wide-ranging interventions and through inter-Ministerial action coordinated by the Public Sector Minister. In this context, wide-ranging investigations have recently been carried out, including one into the regularity of direct recruitment of disabled civilians by Public Administrations.

There have also been activities aimed at introducing an ethical attitude to the use of public assets. These have included an investigation into telephones in the public sector, and the subsequent publication of a general regulation on the use of telephones and telematic technology in Public Administrations, and rules designed to regulate and restrict the use of vehicles owned by the Public Administration (Finance Law No. 662/1996).

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2. Which anti-corruption mechanisms are regarded as most effective (in terms of implementation and impact)?

In simple terms, it may be said that the mechanism that has produced the most immediate, self-evident and wide-ranging results in the fight against corruption was set up by the specialist structures of the criminal judiciary (*Magistratura penale*). We refer here to the results obtained by the Milan Auditor (*Procura*) and, even more extensively, by the specialist anti-Mafia judiciary in its coordinating role in all areas of Mafia concentration and organised crime.

3. Is the effectiveness of these mechanisms formally evaluated? If so what methods are used?

The effectiveness of mechanisms for combating corruption is one of the issues most frequently debated in political and institutional circles and by members of the public generally. Evidence for this is to be found in the work of two bodies:

- the Study Committee (*Comitato di studio*), which was set up on the orders of the President of the Chamber of Deputies on 27 September 1996 and concluded its work with a Report presented to the President of the Chamber of Deputies on 23 October 1996; and

- the Study Commission (*Commissione di studio*), which was set up under a Decree issued jointly by the Public Sector Minister and the Minister of the Treasury on 7 November 1996 and officially presented its final deliberations on 24 October 1997.

This Study Commission was charged with carrying out an examination of, and formulating proposals to deal with, instances of malpractice and illegality uncovered in the Public Administration and in companies with State holdings. The aim was to improve the quality of administrative action and prevent illegal activities and conduct. In concrete terms, the Commission has said that, apart from specific new interventions in particular sectors, the main problem appears to be how to ensure that measures – some of which have been existence for many years – are put into practice.

The Commission has also made it clear that corruption in the Public Administration will not be rooted out by introducing additional legislation or increasing the severity of penalties. It has also stressed how excessive decline in the influence of political parties over all types of public decision has often contributed decisively to the decline of the Public Administration. This was why there was a need to reinforce the independence of senior civil servants from political pressures, and to encourage geographical mobility among public sector employees so as to prevent "the upright and impartial exercise of their functions from being undermined by local links".

4. What if any new action against corruption in the public sector is your country currently considering?

The Special Commission for the Prevention and Repression of Corruption, which was appointed by the Chamber of Deputies, has completed its work. On 6 March 1997 it presented a report on a series of laws brought together in a single Act which is currently before the Senate.

This draft legislation, which was approved unanimously by the Special Commission, expressly proposes as two "principles of law" -- a high level of performance and impartiality in administrative organisation -- which are ratified by Article 97 of the Constitution. The remaining 29 Articles contain tough measures

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designed to prevent or repress corruption in the Public Administration. These include four new provisions:

- the introduction of a "Guarantor of Legality and Transparency in Public Administration work";
- transparency in political and administrative activity through the publication of the income and assets of everyone holding a political or administrative post;
- the registration and control of associations and companies that do lobbying work; and
- the publication of an "Official Bulletin of Contract Work in the Public Administration". This has been designed as a special series of the *Gazzetta Ufficiale della Repubblica* (an official publication containing all new legislation) and it will publish all announcements of competitions, and all jobs and consultancies carried out by public employees.

The measures drawn up the Parliamentary Commission aim to combat corruption by means of external devices designed to divert public servants from any unlawful temptation in their professional work.

The draft legislation also provides for the introduction into our legal system of regulations covering lobbying firms. That is to say, groups of private individuals who, through proposals, suggestions and financial outlay, lawfully influence and guide the legislative and administrative activity work of their political "masters" and promote the interests of groups, categories and companies. Lobbying has become institutionalised through the introduction of public registers of lobbying firms into the offices of the President of the Senate, the Chamber of Deputies and the Guarantor of administrative transparency. These registers list all the operations, funding and activities relating to every lobbying firm.

A well-focused political debate on the potential of general anti-corruption legislation is currently taking place. It includes the establishment of the Guarantor of legality and transparency in Public Administration. This body completely ignores interventions relating to malpractice in different sectors, and instead concentrates almost exclusively on monitoring civil servants, and ascribes every successful outcome to an asset monitoring exercised carried out by the "Guarantor" overseeing politicians, public administrators and, above all, administrative public servants.

5. Is there an official awareness or a policy position on the part of the government about which areas are of most concern in terms of corrupt or questionable activities involving the public sector?

The government appointed Study Commission has more specifically focused on controlling instances of "objective corruption". Its recently completed work has employed a series of checks and analyses to highlight the existence of considerable malpractice in key sectors of the Public Administration.

Until now the government has primarily tried to solve these problems through legislative reform, the pace of which has significantly increased since the beginning of the 1990s. Numerous problems still remain, however, such as the precarious and shifting balance between policy direction and administrative action, difficulties in establishing clear and transparent decision-making procedures and the problems involved in changing over from an unclear and complex State budget to the orderly financial planning of public policies.

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There are also rigidities in formal monitoring procedures which have failed to improve performance such as:

- sound procedures but inadequate management structures for the award of government procurement contracts,
- substantial privatisation of publicly-owned companies that is far from complete and threatens to leave privatised companies with many of the attributes of the public sector, and
- the tendency of government to interfere excessively in the management of private or public shareholding interests.

The fact that these shortcomings and administrative dysfunctions continue to be found in so many different fields weakens the entire system and fosters corruption. The unlawful behaviour of civil servants that has been observed, although no greater than that found among politicians and businessmen, is not the cause but rather the symptom of this process of disintegration. This means that solutions to these problems must be found for each individual sector, as we have attempted to show. This will not only require legislation, but more importantly provisions to enforce such legislation and concrete administrative action.

Repressive measures against individuals cannot be expected to solve all problems. The possible action that could be taken to correct the problems of "objective corruption" found in the various sectors of the Administration may be summarised as follows:

- to reinforce responsible decision-making by senior civil servants by ensuring that they are as independent from political pressure and influence as possible;
- to encourage the geographical mobility of civil servants;
- to upgrade the skills of technical staff in the Public Administration, starting with the staff of the Ministry of Public Works and the Ministry of National Patrimony;
- to overhaul rules of ethics for staff by linking closely codes of conduct and disciplinary sanctions;
- to increase administrative transparency by computerising procedures and strengthening the Commission for Access to Administrative Documentation;
- to introduce the use of formal public enquiries in regional and urban planning procedures and major infrastructure projects;
- to simplify administrative procedures, starting with those involving "concessions" in various sectors (radio and TV broadcasting, telecommunications, transport networks and automated information services);
- step up efforts to streamline and simplify administrative procedures;
- to establish a direct link between administrative reform and the reform of the State budget by promoting training in budgetary techniques;

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- to extend the internal monitoring services of each Administration and strengthen the General Inspectorate of Finance;
- to set up "contract offices" in all Administrations;
- to reinforce the technical offices responsible for planning public works;
- to rationalise procurement of goods and services by Administrations by granting planning autonomy to cost-centres;
- to ensure complete transparency in the privatisation of publicly-owned companies;
- to increase the staff of the services of the General Directorate of the Treasury as required by the privatisation of publicly-owned companies;
- to ensure more formal decision-making processes by the Treasury when it exercises its rights as majority shareholder of publicly-owned companies;
- to create a special agency at the disposal of the government responsible for preparing and implementing the necessary anti-corruption measures.

In conclusion, with regard to ethical standards in the Public Administration, the Commission sets out the following public strategy to be pursued through a broad range of tools adapted to the type of action required to introduce new measures.

a) Administrative activity

Purely administrative tools can also be used to develop a wide range of programmes, at differing levels, to train staff in the use of computer applications for administrative, budgetary and accounting procedures, for example, and techniques for measuring, evaluating and constructing effectiveness and efficiency indicators.

b) Collective bargaining

Collective bargaining can also be used to introduce measures concerning technical staff, staff mobility, job rotation and the linkage between codes of conduct and disciplinary sanctions.

c) Governmental and administrative directives

These directives can be used to establish criteria for government procurement of goods and services and the co-ordination of associated contracts, and to provide guidelines and instructions regarding the extent to which the government may exercise its powers as a shareholder in joint stock companies being privatised and any "special powers" in privatised companies.

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d) Regulations

Government regulations may be used in lieu of legislation to create and set up contract offices and planning offices within ministries, to reorganise offices that co-operate directly with ministries and to eliminate, replace or simplify administrative procedures. The statutory regulations governing the organisation of local bodies may be used to lay down criteria concerning the limits and conditions applicable to the political appointment of senior officials.

e) Legislative decrees

As provided for under Laws Nos. 59 and 94 of 1997, legislative decrees may be issued to ensure that central internal monitoring services, linked to statistical offices, are established within ministries, to reorganise monitoring systems and especially the network of central budget offices, to lay down criteria for staff mobility following the decentralisation of functions from the central to the local level, to address organisational and structural aspects of training, and to establish cost monitoring mechanisms, in particular with regard to contracts.

f) New legislation

New legislation may also be necessary to encourage staff mobility, set new rules for the privatisation of publicly-owned companies, enact annual provisions converting legislative measures into regulations and simplifying administrative procedures, reinforce the Commission for Access to Administrative Documentation, establish an automatic link between disciplinary sanctions and certain penal sanctions applied to civil servants and to introduce regulations requiring that public enquiries be made a mandatory component of complex planning procedures.

One should have no illusions that reform can be achieved “at zero cost”, for the fact is that corruption in the Public Administration cannot be fought without a major investment of resources. As the work of the Parliamentary Commission mentioned earlier clearly showed, the action required to eliminate the situations that foster “subjective corruption” in the public sector must be aimed at eliminating administrative dysfunctions and ensuring the basic conditions of sound administration that significantly reduce opportunities for corruption. It is now agreed that, to prepare and implement these measures, the government must create a special operational agency that will systematically deal with these issues over a period of at least five years.

The successful implementation of legislation on administrative reform as wide-ranging as that enacted in 1997 and the need to eliminate the conditions that foster objective corruption in major sectors of the Italian administrative system make the use of such instruments, which have long been used in countries that are models of sound administration, a necessity.

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