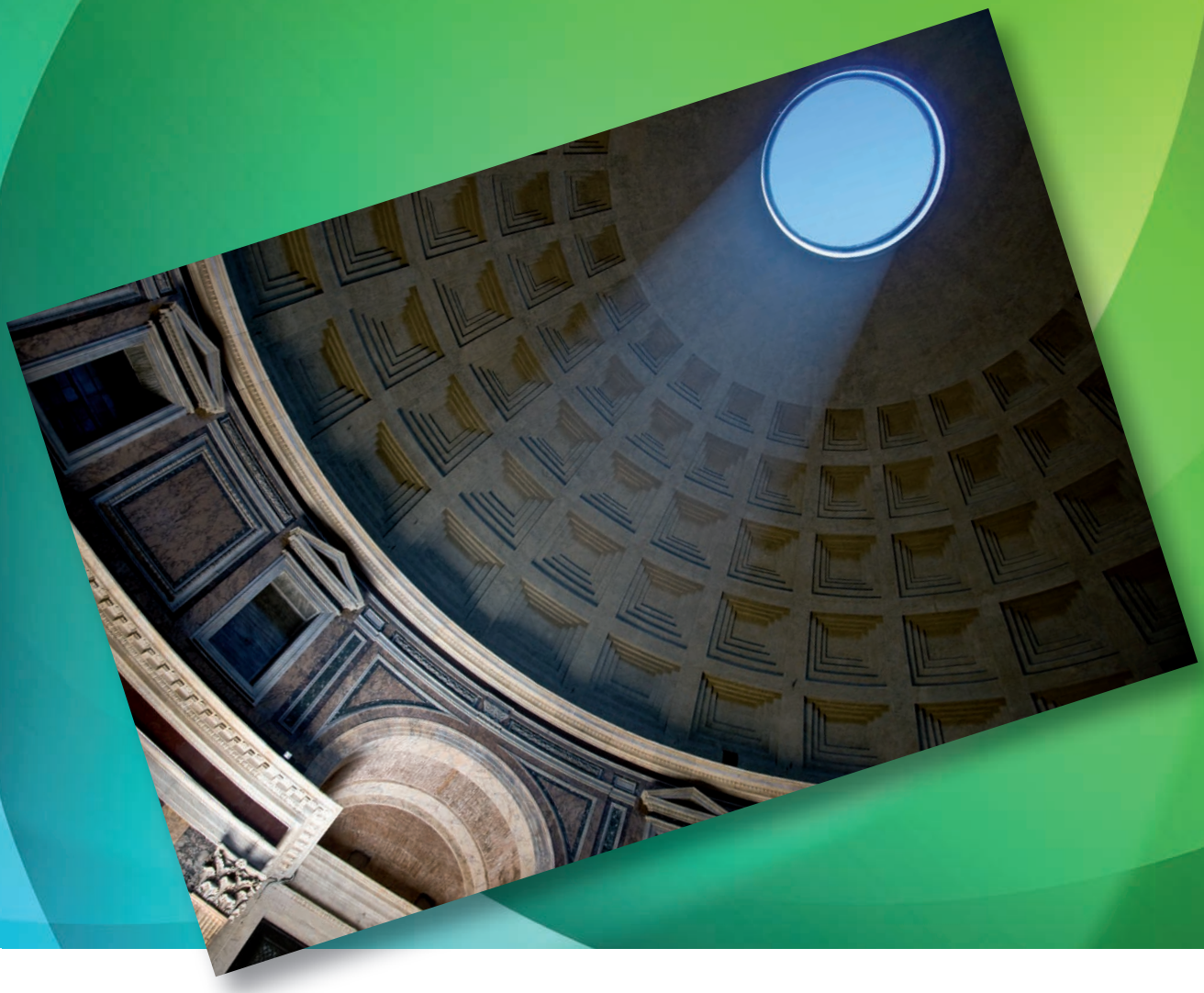
OECD Public Governance Reviews

# OECD Integrity Review of Italy

## REINFORCING PUBLIC SECTOR INTEGRITY, RESTORING TRUST FOR SUSTAINABLE GROWTH



OECD

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BETTER POLICIES FOR BETTER LIVES

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# *Foreword*

Well-functioning democracies rely on the trust and confidence of citizens and businesses, which legitimise the decisions taken by government officials and create the conditions for effective policy making and implementation. In turn, trust and confidence in government depend on integrity and transparency, to the extent that they set high standards of conduct in the public sector.

With the approval by the Italian Parliament of Law No. 190 in November of 2012, on "Provisions for the prevention and prosecution of corruption and illegality in public administration", Italy is investing in trust by strengthening integrity in the public sector. The Law provides a welcome paradigm shift towards a comprehensive corruption prevention approach in Italy's public sector due to its focus on planning, coordination and evaluation. It complements existing performance management provisions and broadens internal control mechanisms, addressing important gaps in Italy's integrity framework, and advancing the implementation of international standards and commitments from the United Nations, the Council of Europe and the G20.

This OECD Integrity Review provides evidence-based guidance to help Italy advance towards full implementation of the core elements of the Law, including institutional coordination, codes of conduct, whistle-blower protection and integrity risk management. Together, these elements are essential components of a solid integrity framework: an independent national anticorruption authority, tasked with coordinating and assessing a national integrity plan, and shared ownership and responsibility with public agencies and public sector employees, to whom the Law provides both the mandate and the means to prevent, monitor and report corruption.

The Review highlights the need to underpin coordination with clearly defined roles and responsibilities, and effective mechanisms to plan, monitor and assess implementation of the future anti-corruption plans and strategies, especially at the sub-national level. Further strengthening the capacity for integrity management – particularly arrangements for internal audits, information-sharing, and clear reporting channels – would facilitate continuous institutional learning. Proactive support mechanisms, through awareness building and training, will be also important to achieve full implementation of the new code of conduct and whistle-blower protection legislation. Likewise, fully leveraging integrity risk management as a tool to prevent waste, fraud and corruption in public administration will require capacity building and a strong effort of alignment with broader internal control mechanisms.

Italy's tomorrow depends on the actions it takes today. Decisive implementation of the Law, and continued efforts to embed the public sector with a renewed culture of integrity, both at national and sub-national level, will be critical for restoring trust in government and strengthen the viability and sustainability of the economic recovery efforts. The OECD stands ready to continue working with the Italian government in strengthening the capacity of its public sector to design, promote and implement better policies for better lives.

Angel Gurría,



OECD Secretary-General

# *Acknowledgements*

Under the guidance of Rolf Alter and Janos Bertók, this review was led by Paloma Baena Olabe and Julio Bacio Terracino. Sana Al-Attar, Nicholas Bian, Ahmet Coskun, Ulrika Kilnes and James Sheppard also drafted sections of the report. The review benefited from contributions from Emma Cantera, Giorgio Fraschini, Lorenzo Segato and Giulio Nessi. The report was edited by Ken Kincaid, editorial and administrative assistance was provided by Sarah Michelson and Kate Lancaster.

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# *Table of contents*

**Executive summary** ..... **11**

Structural reforms require trust to be successfully restored ..... 11
Trust can be restored by strengthening public sector integrity ..... 11
Comprehensive public sector integrity reform: The challenge of institutionalisation ..... 12
Key findings and recommendations ..... 12

***Chapter 1*: Restoring confidence in sustainable growth** ..... **15**

Introduction ..... 16
Key facts and data about Italy ..... 17
Revenue, expenditure and debt ..... 18
Public procurement ..... 19
Integrity and transparency ..... 21
Italy hit hard by the economic and financial crisis ..... 22
Restoring trust vital for sustainable economic growth ..... 23
Restoring trust in the public sector calls for more integrity, less corruption ..... 24
Notes ..... 26
Bibliography ..... 27

***Chapter 2*: Strengthening integrity in the Italian public sector** ..... **29**

Earlier efforts to enhance transparency, accountability and openness ..... 30
Notes ..... 35
Bibliography ..... 36

***Chapter 3*: The new Anti-Corruption Law** ..... **37**

History of the Anti-Corruption Law ..... 38
The content of the Anti-Corruption Law ..... 40
Notes ..... 45

***Chapter 4*: Institutional co-ordination** ..... **47**

Key elements for effective anti-corruption bodies ..... 48
The need to co-ordinate bodies with anti-corruption mandates in Italy ..... 52
Anti-corruption bodies' political independence critical to their effectiveness ..... 58
Resources key to sustainable, effective anti-corruption institutional set-up ..... 59
Proposals for action ..... 59
Notes ..... 60
Bibliography ..... 62

***Chapter 5*: Codes of conduct** ..... **63**

Towards a culture of integrity in the civil service: Values and standards of conduct ..... 64
Building consensus on values and public employees' ownership of codes of conduct ..... 70
Towards high standards of conduct: Educating public servants in codes of conduct ..... 72

Monitoring the implementation of codes of conduct ..... 74
Enforcement and compliance: Incorporating ethics into the management framework ..... 75
Proposals for action ..... 76
Notes ..... 77
Annex 5.A1. Australian public service values ..... 78
Annex 5.A2. The Canadian Values and Ethics Code for the Public Service ..... 79
Annex 5.A3. The Austrian Code of Conduct to Prevent Corruption: the responsibility rests with me ..... 80
Bibliography ..... 81

***Chapter 6*:Whistleblower protection ..... 83**

Whistleblower protection as an integral part of integrity frameworks ..... 84
Whistleblower protection in Italy ..... 86
The Anti-Corruption Law's provision on whistleblower protection ..... 88
Gap and mitigation analysis of whistleblower protection in the Anti-Corruption Law ..... 90
Clear, comprehensive legislation ..... 92
Mechanisms for protection ..... 94
Clear procedures and channels for reporting wrongdoing ..... 96
Enforcement mechanisms ..... 97
Proposals for action ..... 98
Notes ..... 100
Bibliography ..... 103

***Chapter 7*: Integrity risk management ..... 105**

A continuous, integrated process that increases value, prevents corruption, restores trust ..... 106
Provisions in Italy's new Anti-Corruption Law related to risk management ..... 109
Issues to consider in support of the effective implementation of risk management ..... 111
Implement risk management in incremental steps and learn by doing ..... 118
Allocating resources to determine risk thresholds ..... 120
Supporting lessons learned across public organisations ..... 123
Proposals for action ..... 126
Notes ..... 127
Annex 7.A1. Integrity gap analysis: Implementing peer recommendations would strengthen provisions of the new Anti-Corruption Law ..... 128
Notes ..... 148
Bibliography ..... 150

**Tables**

Table 1.1. Transparency in public procurement, 2010 ..... 20
Table 1.2. E-government building blocks and e-procurement, 2010 ..... 20
Table 1.3. Disclosure of public sector information, 2010 ..... 21
Table 1.4. Level of disclosure of private interests in the three branches of government by country, 2010 ..... 22
Table 2.1. Disclosure of public sector information in Italy ..... 31
Table 2.2. E-government building blocks ..... 34
Table 4.1. The main corruption prevention actors in Italy ..... 56
Table 7.1. Comparative analysis of whole-of-government policy elements ..... 110
Table 7.2. Internal audit's role in risk management ..... 117
Table 7.3. Risk management template ..... 122
Table 7.4. Risk reporting ..... 122

Table 7.A1. Summary of peer recommendations to improve the Anti-Corruption Law.....130
Table 7.A2. Changes of functions.....138
Table 7.A3. Institutional co-ordination.....141
Table 7.A4. Provisions on managing risks in the Italian Anti-Corruption Law.....144
Table 7.A5. Roles and responsibilities of public sector entities and officials in risk management in Italy's Anti-Corruption Law.....145

**Figures**

Figure 1.1. General government gross debt as a percentage of GDP, 2010.....18
Figure 1.2. General government debt as a percentage of GDP, 2010.....18
Figure 1.3. Public procurement as percentage of GDP.....19
Figure 1.4. Public procurement expenditure compared to other main components of general government expenditure, 2009.....19
Figure 1.5. Public procurement expenditure by level of government.....19
Figure 1.6. Level of private interest disclosure in the executive branch, 2010.....22
Figure 1.7. General government debt as a percentage of GDP (2010).....23
Figure 1.8. Level of trust in national governments in OECD countries, 2012 or most recent year data.....24
Figure 1.9. How perceptions of governance evolved from 2000 to 2005 and 2010 in Italy.....25
Figure 1.10. Evolution of public perceptions of trust in Italian government compared with OECD averages, 2004-11.....25
Figure 1.11. Italians' perception of corruption according to the Global Corruption Barometer.....26
Figure 5.1. The evolution of core public service values and principles in OECD countries.....67
Figure 6.1. OECD Countries that offer protection for whistleblowers, %, 2000 and 2009.....86
Figure 6.2. Global Integrity scores for whistleblower protection in selected OECD countries.....88
Figure 7.1. Risk management cycle according to ISO 31 000:2009.....108
Figure 7.2. Italian civil service internal control model.....115

# Executive summary

## Structural reforms require trust to be successfully restored

Italy is undertaking a series of critically important reforms as part of its response to the economic and social crisis. As in many other OECD countries, particularly in Europe, pro-growth policies have been – and will likely continue to be – accompanied by severe austerity measures to achieve fiscal consolidation. Such measures include reductions in healthcare expenditure, public employees' wages, and pensions. As a result, Italy is facing a highly complex policy environment where there are high expectations of effective, decisive government action to safeguard the interests of the general public over those of the privileged few.

In this context, the success of earmarked reforms will rely heavily on the capacity of the government to restore trust in its commitment and ability to guide the country towards sustainable economic growth. At the time of this peer review, however, less than one-quarter of Italian citizens had confidence in the quality of government decision making. Concerns over public integrity and corruption stand out as key elements underlying this prevailing lack of trust.

## Trust can be restored by strengthening public sector integrity

The level of perceived corruption in Italy has risen continuously since 2007, while trust in the government's ability to control corruption has declined steadily since 2000. Italy's national audit office, the Corte dei Conti (Court of Auditors) estimates that the cost of corruption in Italy in 2011 was approximately EUR 60 billion, the equivalent of the federal government deficit in the same year.

To restore trust in the Italian government, the public sector needs to be embedded within a comprehensive integrity framework. Attempts have been made in the past to strengthen public integrity as part of broader measures. One such effort was the so-called "Brunetta Reform" in 2009 that sought to modernise the public service and improve its efficiency and transparency. However, no comprehensive anti-corruption package had addressed the widely acknowledged gaps in the public integrity framework until Law No. 190 of 6 November 2012.

Known as the Anti-Corruption Law ("the Law"), it goes a considerable way towards filling the gap in integrity and anti-corruption legislation. It signals a paradigm shift from punitive to preventive in the Italian government's approach to corruption. The law enshrines public sector integrity management principles and strengthens existing corruption prevention through the designation of a new anti-corruption authority, a detailed framework for the adoption of a national anti-corruption plan, and measures to identify and prevent conflicts of interest in the public sector.

## Comprehensive public sector integrity reform: The challenge of institutionalisation

The Anti-Corruption Law represents a unique opportunity for Italy to strengthen the viability, sustainability, and effectiveness of its ongoing economic structural reforms by institutionalising a revitalised culture of integrity anchored in new, improved public management institutions, tools and processes. If properly and effectively implemented, the law could have a major long-term political and economic impact on the practices, behaviour and attitudes of the government and citizens in Italy.

The widespread recognition amongst stakeholders of the Law's relevance to the Italian context has fostered a favourable institutional environment ahead of implementation. The key contribution of the OECD integrity review is to provide guidance on the implementation of the Law's key integrity and corruption prevention provisions – particularly those pertaining to institutional co-ordination, the regulation of public servants' conduct and whistleblower protection, and the management of integrity risks in public sector activities.

The review also considers good practices and lessons learned from OECD member countries. They offer insights into corruption prevention mechanisms and contribute to the ongoing discussion on effective implementation and how an integrity framework would function. The review concludes each chapter with proposals for action that draw on OECD member countries' best practices with the ultimate aim of supporting Italy in its efforts to enhance integrity in the public sector and restore trust.

## Key findings and recommendations

The Anti-Corruption Law goes a long way towards addressing important gaps in Italy's integrity framework. The issues that the Law seeks to regulate reflect Italy's levels of perceived corruption and the maturity of its corruption prevention measures. The Law's provisions are, to a large extent, responses to recommendations made in international peer reviews – particularly the need to address whistleblower protection, conflicts of interest, the regulation of codes of conduct, and the appointment of an independent anti-corruption authority. The Law also supports implementation of international standards and honour commitments, such as the G20 Action Plan on Corruption, the United Nations Convention against Corruption [UNCAC], the Council of Europe's civil and criminal law conventions on corruption and OECD recommendations.

The broad support that the Law has won should be leveraged for implementation. The issues that the Law addresses have won a wide recognition amongst stakeholders for its relevance and timeliness. Expectations for decisive action towards full implementation are high. To ensure that implementation is followed through, the relevant authority – in this case the Independent Commission for the Evaluation, Integrity and Transparency of Public Administration (CIVIT) – should prepare a detailed implementation plan with a multi-year approach. Such a plan should include: *i*) a detailed implementation roadmap, with clearly identified inputs, outputs, and responsibilities; *ii*) compliance benchmarks and indicators; *iii*) a three-year implementation budget which would propose possible partnerships for economies of scale (with the School of Public Administration, for example); *iv*) an annual implementation assessment report which should be made public. In addition, CIVIT, together with the Department of Public Administration (DPA), should identify the need for additional regulation requiring executive action. In this regard, the

government approved a legislative decree in March 2013 on publication requirements, transparency and disclosure of information by the public administration and a legislative decree as to the "incompatibility and the prohibition of assignment" aimed at regulating the assignment of managerial functions in the Public Administrations. Moreover, a code of conduct for public servants was approved by the Council of Ministers and to be adopted by decree of the President of the Republic, aims at ensure quality of services provided, prevention of corruption, duties of diligence, loyalty and impartiality. The code contains a specific section for public managers.

These proposed integrity and anti-corruption tools need to be embedded within Italy's current public administration structures if trust is to be restored. Roles and responsibilities for implementing them, and for monitoring and evaluating their implementation, should be clearly defined among complementary bodies. Support mechanisms that draw on existing international good practices should be developed, while the capacity of integrity-management – particularly arrangements for internal and external audits, information-sharing, and awareness-building – should be further enhanced. Monitoring the efficiency and effectiveness of the public service is closely tied to accountability. Accordingly, it is important to continue implementing the Brunetta Reform's performance management provisions together with complementary efforts for enhancing integrity and transparency.

Extraordinary attention should be given to institutional co-ordination and co-operation. Like in many OECD countries, corruption prevention functions in Italy have become increasingly scattered as public sector activity has grown in volume and complexity. As a result, the country's anti-corruption institutional set-up suffers from a lack of clearly attributed functions and co-ordination mechanisms among corruption prevention institutions. The Anti-Corruption Law partly addresses this lack of clarity by making CIVIT the national anti-corruption authority (in line with the provisions of the United Nations Convention against Corruption).

The numerous additional tasks that CIVIT has been assigned under the terms of the Anti-Corruption Law prompt concerns that it may be overburdened. If it is to rise to the challenge it must build an effective, co-ordinating capacity and be able to rely on a predictable budget. It should map out a clear reporting and information flowchart in order to identify any duplication and information-sharing opportunities, and monitor how public institutions implement anti-corruption plans and strategies, particularly at the sub-national level.

The role of the Independent Performance Evaluation Units (OIVs) is a notable absentee from the Law's provisions. It will need to be carefully assessed and clearly delineated throughout implementation, particularly given the OIVs' complementary tasks. They could, however, be leveraged to complement and support managers in their new corruption prevention duties.

Finally, specific co-ordination arrangements will need to be created to support and monitor implementation at the local level, given the silence of the Law in this regard. The need to empower CIVIT to ensure compliance (e.g. through sanctions) should be evaluated in the future in the light of the implementation experience.

Implementation of the new code of conduct should seek to achieve a cultural shift. Although Italy has had a code of conduct for public officials since 2001, the Anti-Corruption Law provides that, within six month of its being approved, a new code be drafted to supersede the current one. This review identifies three guidelines to that end:

- Combine participative, evidence-based approaches to define the content of the code. Early participation will facilitate later adoption and, more importantly, institutionalisation by, for example, fostering common understanding and commitment;

- Offer pro-active guidance through proper awareness raising, educating, counselling, monitoring and training.

- Embed the provisions of the code of conduct within appropriate enforcement mechanisms to ensure compliance.

This three-pronged approach will support the institutionalisation of a culture of integrity in the public sector.

A fully functional whistleblower protection mechanism will need specific measures, such as clear reporting channels for effective implementation. The risk of corruption is significantly heightened in environments where the reporting of wrongdoing is not supported or protected. The Anti-Corruption Law provides, for the first time in Italian legislation, specific protection for public officials who expose corrupt conduct. These employees cannot be sanctioned, fired or otherwise discriminated against, directly or indirectly, for exposing wrongdoing. Nor can their identity be disclosed without their express consent.

The review, however, identifies important gaps that will need to be addressed as implementation starts. They include "good faith" provisions, clear reporting channels so that whistleblowers know to whom they should disclose wrongdoing, and redress for whistleblowers who suffered reprisals. Furthermore, the importance of awareness building as implementation progresses cannot be overstated if a true cultural shift is to be achieved.

Embed corruption risk management within core public management functions. Risk management as a tool to prevent waste, fraud and corruption in public activity is an example of the comprehensive new sweep of the Anti-Corruption Law. It requires both central and local government public entities to draw up multi-year corruption prevention plans. Risk management practices need to be integrated with internal control, as in many OECD countries, to ensure that the different systems complement each and do not just constitute an extra layer of bureaucracy. The full institutionalisation of risk management practices within systems of internal control will require the definition of common guidelines and tools, active training, and appropriate external oversight of implementation by institutions such as the Court of Auditors. In addition, a broader understanding of risk management would not only help prevent corruption. It would favour the achievement of a public entity's strategic, operational, and administrative goals.

# Chapter 1

# Restoring confidence in sustainable growth

*Italy, the euro area's third-largest economy and the world's seventh-largest, has been hit hard by the economic crisis since 2008. The severe economic crisis and ensuing austerity measures have eroded citizens' trust in the ability of governments to effectively safeguard public interest. This chapter argues that strengthening integrity in the public sector and preventing corruption will not only support the restoration of trust in the Italian government – a key determinant of sustainable growth – but also contribute significantly to its objectives of fiscal consolidation, economic growth, and social fairness.*

*The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West bank under the terms of international law.*

## Introduction

To help guide the implementation of Law No. 190 of 6 November 2012 (known as the "Anti-Corruption Law"), Italy's Department of Public Administration (DPA) asked the OECD's Public Governance and Territorial Development Directorate to undertake a public sector integrity review. The DPA requested that the review's focus should be on the law's preventive aspects, particularly institutional co-ordination, codes of conduct, whistleblower protection, and integrity risk management. Although the Anti-Corruption Law also contains numerous repressive provisions, they remain beyond the scope of the review.

The methodology proposed by the OECD in undertaking the review builds upon a combination of tools:

- a desk review of information on the Italian context in response to a request for detailed information from the Italian authorities;
- interviews conducted with relevant actors by the OECD;
- analysis of comparative data and external assessments of the Italian context;
- a peer review process with the participation of officials from other OECD member countries.

Also incorporated in the review are good practices and lessons learned from OECD member countries. Such insights into corruption prevention mechanisms contribute to the ongoing discussion on how best to implement the integrity framework and ensure that it produces results.

This report is divided into seven chapters, starting with the Italian context in relation to integrity and anti-corruption in the public sector. This chapter supplies key facts and data and describes the broad public service reforms that have paved the way to reinforcing integrity in the Italian public sector. Chapters 5, 6 and 7 analyse the key elements of the Italian integrity framework which the Anti-Corruption Law addresses – institutional co-ordination, codes of conduct, whistleblower protection, and integrity risk management – and examines their implementation and long-term sustainability.

# Key facts and data about Italy

## Land

| | |
|---|---|
| Total area (thousand km$^2$) | 301.3 |
| Agricultural land in 1995 (thousand km$^2$) | 165.2 |
| Population of major cities in 2010 (thousands) | |
| Rome | 4 155 |
| Milan | 3 123 |
| Naples | 3 080 |
| Turin | 2 298 |

## People

| | |
|---|---|
| Population in 2010 (thousands) | 60 051 |
| Number of inhabitants per km$^2$ | 199 |
| Annual population growth rate in 2010 (%) | 0.5 |
| Fertility rate in 2008 | 1.4 |
| Life expectancy in 2007 | 81.5 |
| Labour force in 2010 (thousands) | 24 975 |
| Numbers employed in 2010 (thousands) | 22 872 |
| agriculture | 981 |
| industry (in 2010) | 6 511 |
| services | 15 471 |

## Production

| | |
|---|---|
| GDP (EUR bn) in 2010 | 1 549 |
| GDP *per capita* (USD) in 2010 | 34 161 |
| Gross fixed capital formation (% of GDP in 2010) | 19.5 |
| Origin of gross domestic product at 2010 market prices (as % of total) | |
| agriculture | 1.7 |
| industry | 17.3 |
| construction | 5.3 |
| other | 75.68 |

## Currency

| | |
|---|---|
| Monetary unit | Euro (EUR) |
| Currency units per USD (daily average) | |
| in 2010 | 0.7550 |
| in 2011 (March) | 0.7136 |

## Foreign Trade

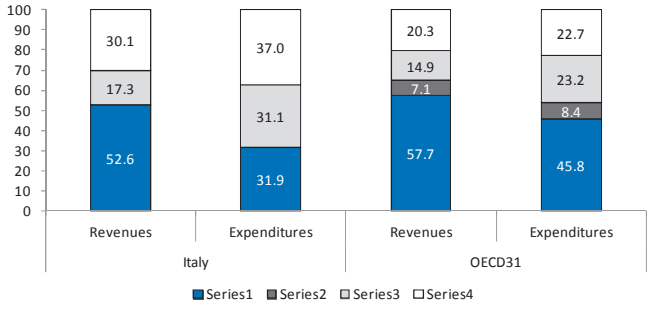
| | |
|---|---|
| Exports of goods and services in 2010 (% of GDP) | 26.8 |
| Main export categories in 2010 (% of total exports) | |
| manufactured goods | 39.8 |
| fabric and textile goods | 11.0 |
| chemical products | 6.7 |
| transport equipment | 10.2 |
| mineral fuels | 4.3 |
| Imports of goods and services in 2010 (% of GDP) | 28.5 |
| Main import categories in 2010 (% of total imports) | |
| foodstuffs | 6.0 |
| manufactured goods | 24.4 |
| metal, ores and scrap metal | 9.9 |
| chemical products | 8.7 |

*Source:* OECD (2011a), *OECD Economic Surveys: Italy 2011,* OECD Publishing, doi: *http://dx.doi.org/10.1787/eco_surveys-ita-2011-en.*

## Revenue, expenditure and debt

The Italian system of government is more and more decentralised and there are plans to further extend spending and revenue powers to the regions. Central government funds essential expenditure at the regional and local levels. Compared with other OECD countries, social security funding accounts for a high proportion of total revenues and expenditures.

**Figure 1.1. General government gross debt as a percentage of GDP, 2010**

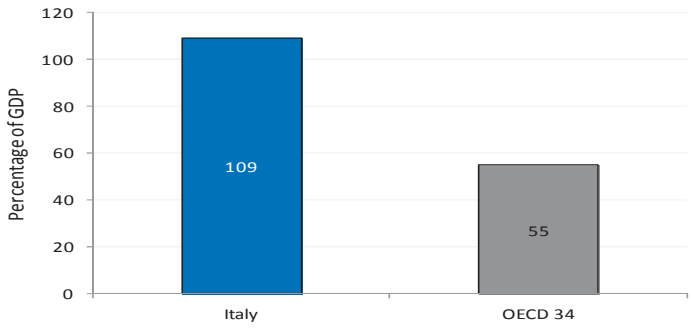



Note: Data for Chile, Mexico and Turkey not available.

*Source*: OECD (2011b), Government at a Glance, OECD Publishing, Paris, doi: *http://dx.doi.org/10.1787/gov_glance-2011-en.*

To ease the ongoing economic crisis, Italy has introduced a number of fiscal stimulus packages. Their aggregate size is among the smallest of all OECD members due to the country's limited room for fiscal manoeuvre that results from its relatively high levels of debt – 109% of GDP in 2010.

**Figure 1.2. General government debt as a percentage of GDP, 2010**




Note: Data for Japan are from 2009.

*Source*: Central government debt, OECD StatExtracts.

# Public procurement

**Figure 1.3. Public procurement as percentage of GDP**

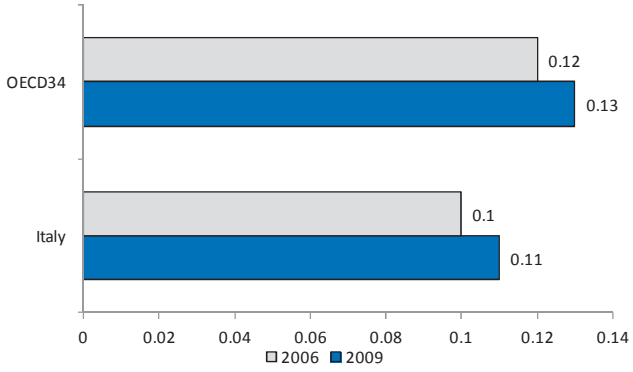
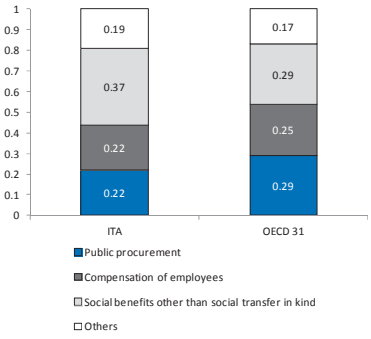
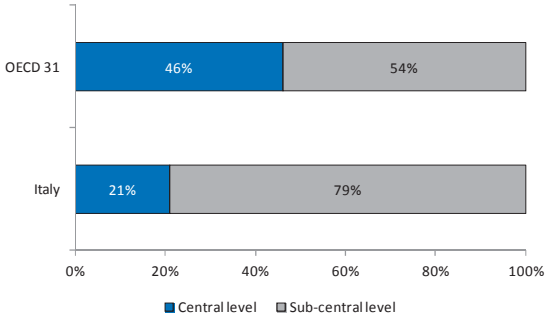



**Figure 1.4. Public procurement expenditure compared to other main components of general government expenditure, 2009**




Note: Data for Australia is missing.
*Source*: OECD (2011b), *Government at a Glance*, OECD Publishing, Paris, doi: *http://dx.doi.org/10.1787/gov_glance-2011-en*.

**Figure 1.5. Public procurement expenditure by level of government**




*Source*: OECD (2011b), *Government at a Glance*, OECD Publishing, Paris, doi*: http://dx.doi.org/10.1787/gov_glance-2011-en*.

# Public procurement (*cont.*)

**Table 1.1. Transparency in public procurement, 2010**

| | Central procurement website | Contracting entity website | Domestic printed or electronic journal | % of OECD countries that publish information* |
|---|---|---|---|---|
| Information for potential bidders | **Yes** | **Yes** | **No** | **97%** |
| Selection and evaluation criteria | **Yes** | **Yes** | **Yes** | **91%** |
| Tender documents | **Yes** | **Yes** | **No** | **79%** |
| Contract award | **Yes** | **Yes** | **Yes** | **97%** |
| Justification for award | **No** | **No** | **No** | **59%** |
| Tracking procurement spending | **No** | **No** | **No** | **32%** |
| *Percentages refer to the share of OECD countries that reported publishing information "always" or "sometimes". | | | | |

*Source: OECD (2011b), Government at a Glance, OECD Publishing, Paris,* doi: *http://dx.doi.org/10.1787/gov_glance-2011-en*

Like the majority of OECD countries, Italy publishes most public procurement information on its national e-procurement website managed by Consip, a public stock company owned by Italy's Ministry of Economy and Finance (*www.acquistinretepa.it*).

**Table 1.2. E-government building blocks and e-procurement, 2010**

| **E-enabling laws and policies** | **Italy** | **OECD25** |
|---|---|---|
| Recognition and use of digital signatures | □ | 100% |
| Electronic filing in the public sector | □ | 88% |
| Administering PPPs for e-government projects | □ | 64% |
| **Services offered on single-entry procurement website** | **Italy** | **OECD34** |
| Tender searches | □ | 62% |
| Tracking of outcomes of contracts | □ | 29% |
| OECD percentages refer to percentage of responding countries answering in the affirmative. □ □ Yes□. □ No□.□□ Data unavailable | | |

*Source*: OECD (2011b), *Government at a Glance*, OECD Publishing, Paris, doi*: http://dx.doi.org/10.1787/gov_glance-2011-en.*

In 2009 Italy launched (then updated in July 2010) a comprehensive e-government action plan, known as "e-Gov 2012". It is intended to improve online services, increase efficiency, boost interoperability between government departments, and develop digitalisation in the most critical ones (e.g. health, education, justice). Europe's ninth e-government benchmarking survey (Capgemini et al., 2010) recognised Italy as one the countries that has performed best in e-enabling a variety of services.

## Integrity and transparency

Freedom of information (FOI) legislation in Italy requires the government to publish budget documents, audit reports, and administrative data sets. This information is generally available on ministry/agency websites or a central online portal. Italy is also one of the few OECD countries that publish lists of public servants and their salaries, although this provision applies only to select positions. Similarly to over one-half of OECD countries, Italy has requirements in place for publishing information in open data formats in order to promote the re-use of information by other parties.

New standards of transparency, aimed at fostering control by citizens, were set in 2009 as part of the so-called "Brunetta Reform" (see Part II.1XX). From 2011, each government department must adopt the Triennial Programme on Transparency and Integrity. Since 2011, the Independent Commission for Evaluation, Integrity and Transparency (CIVIT) has posted online reports on the transparency data sets available on ministry and government agency websites. In 2012, it also published reports on the transparency of ministries and national government agencies.

**Table 1.3. Disclosure of public sector information, 2010**

| | Proactive disclosure | | |
|---|---|---|---|
| **Types of information disclosed** | **Italy** | **OECD 32** | **Publication channels** |
| Budget documents | □ | 94% | CP, MA |
| Audit reports | □ | 72% | MA |
| List of public servants and their salaries | □ | 28% | CP, MA |
| **Sharing of administrative data** | | | |
| Administrative data sets | □ | 63% | MA |
| Requirements on publishing in open data formats | Yes | 53% | _ |

□ □ Required by freedom of information (FOI) laws to be proactively published
□ Not required by FOI laws, but routinely proactively published nevertheless
□ Neither required nor routinely published
CP: central portal; MA: ministry or agency website; OW: other website
OECD percentages refer to the percentage of the 32 responding OECD countries which either require that information be published by law or, while not requiring it, nevertheless publish information routinely.

*Source:* OECD (2011b), Government at a Glance, OECD Publishing, Paris, doi*: http://dx.doi.org/10.1787/gov_glance-2011-en.*

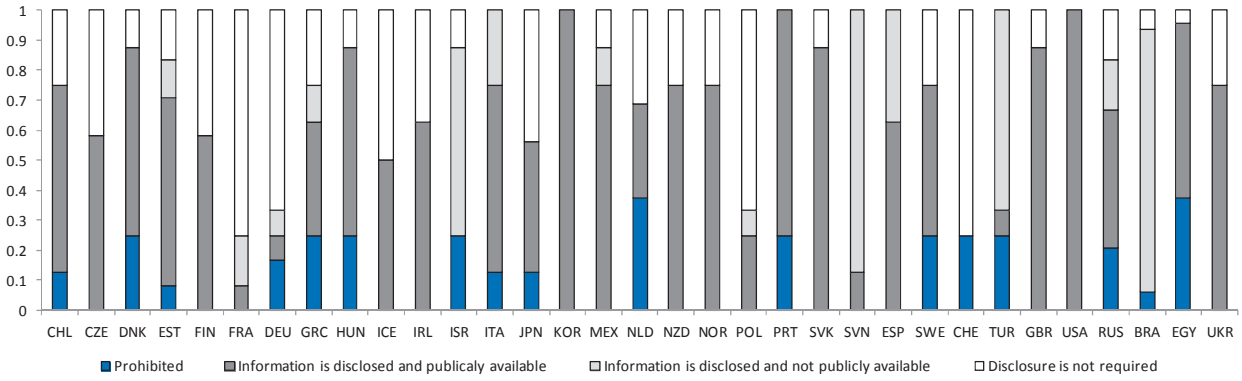
**Table 1.4. Level of disclosure of private interests in the three branches of government by country, 2010**

| | EXECUTIVE BRANCH | | LEGISLATIVE BRANCH | | JUDICIAL BRANCH | |
|---|---|---|---|---|---|---|
| | Prime Minister | Ministers or Members of cabinet | Upper House Legislators | Lower House Legislators | Judges | Prosecutors |
| Assets | ● | ● | ⊙ | ⊙ | ⊙ | ⊙ |
| Liabilities | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ |
| Income Source | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ |
| Income Amount | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ |
| Outside position: Paid | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ |
| Outside position:Non-Paid | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ |
| Gifts | P | P | P | P | P | P |
| Previous Employment | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ |

● Information is disclosed and publicly available online or print
⊙ Information is disclosed and not publicly available
⊙ Information is disclosed and publicly available upon request
○ Disclosure is not required
P Prohibited
n.a. indicates not applicable (e.g. country has no President)
".." indicates that data are missing

*Source:* OECD (2011b), Government at a Glance, OECD Publishing, Paris, doi: *http://dx.doi.org/10.1787/gov_glance-2011-en.*

**Figure 1.6. Level of private interest disclosure in the executive branch, 2010**



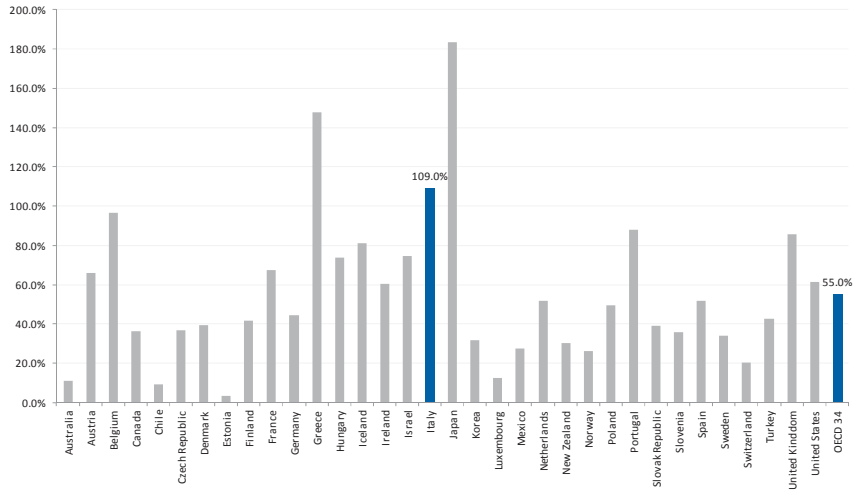

*Source*: OECD (2011b), *Government at a Glance*, OECD Publishing, Paris, doi*: http://dx.doi.org/10.1787/gov_glance-2011-en*.

## Italy hit hard by the economic and financial crisis

Italy, the euro area's third-largest economy and the world's seventh-largest, has been hit hard by the economic crisis since 2008. Comparison of its financial health prior to the downturn with its situation today reveals a gloomy picture. The unemployment rate is on the rise. According to the OECD, of Italy's 60.33 million inhabitants in 2011, 10.8 % were unemployed – a substantial increase over the 6.9% recorded in the second quarter of 2008. GDP growth in 2011 was 0.4%, much lower than the OECD average of 1.8%.

Central government debt increased from EUR 1 573.8 billion in 2008 to EUR 1 794.4 billion in 2011 (EUROSTAT, 2011), a rise of 14%. The general government debt ratio is now 109% of GDP, almost twice the OECD average of 55% (Figure 1.7). In 2010, Italy had the third-highest general government debt ratio of all OECD countries.

**Figure 1.7. General government debt as a percentage of GDP (2010)**




Note: Data for Japan are from 2009.

*Source*: OECD StatExtracts (n.d.), Government deficit/surplus, revenue, expenditure and main aggregates, OECD Publishing, *http://stats.oecd.org/Index.aspx?DatasetCode=SNA_TABLE12*, accessed on 8 January 2013

According to the OECD, Italy's general government expenditure, setting the 2011 total of EUR 788.1 billion against the total government revenue of EUR 728.3 billion reveals a deficit of EUR 59.8 billion.

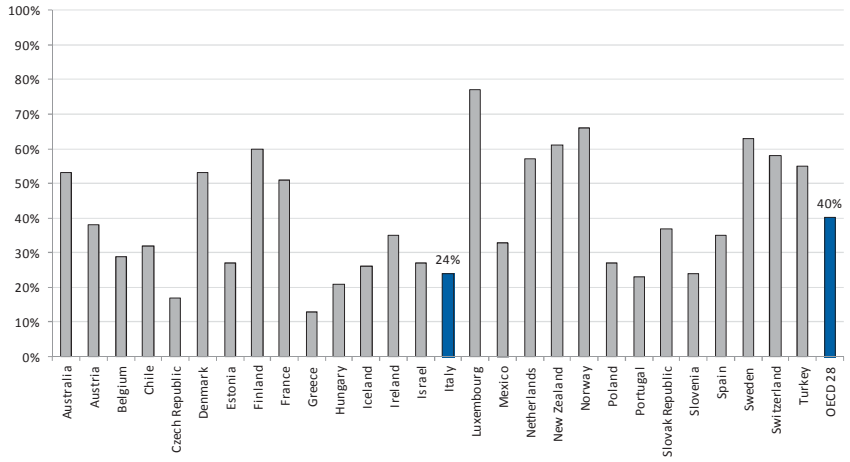
In response to the economic crisis, Italy is embarking on an ambitious structural reform programme as part of its economic recovery and pro-growth strategy. Shaping this structural reform agenda is a focus on multi-pronged initiatives to foster competition in product markets, tackle labour market dualism, strengthen governance, improve the tax system and tax administration, and encourage innovation. As in many other OECD countries, pro-growth policies have been – and will likely continue to be – accompanied by severe austerity measures to achieve fiscal consolidation. Measures include reductions in healthcare expenditure, public employee wages, and pensions. But will these policies be enough to reactivate and, more importantly, sustain economic growth in the long term?

## Restoring trust vital for sustainable economic growth

The severe economic crisis and ensuing austerity measures have eroded citizens' trust in the ability and commitment of governments to defend public interest over that of the few. Grassroots movements have sprung up across the globe to express discontent and demand stronger accountability from the authorities.

In Italy, the level of trust in the national government is alarmingly low. In a Gallup poll from April 2012, only 24% of Italian respondents said they had confidence in their government (Figure 1.8). The figure represents a drop of eight percentage points from a similar survey in November 2011.

**Figure 1.8. Level of trust in national governments in OECD countries, 2012 or most recent year data.**




*Source*: Gallup (2012), *www.gallup.com/poll/world.aspx*.

Against that background, the success of identified reforms will rely heavily on the capacity of the Italian government to restore trust in its ability and commitment to guide the country towards sustainable economic growth (Horvath, 2012; Zak and Knack, 2001).[1] Only a new sense of trust will renew private sector faith in Italy's future success, encourage investments[2] and promote innovation (Knack and Keefer, 1997).[3]

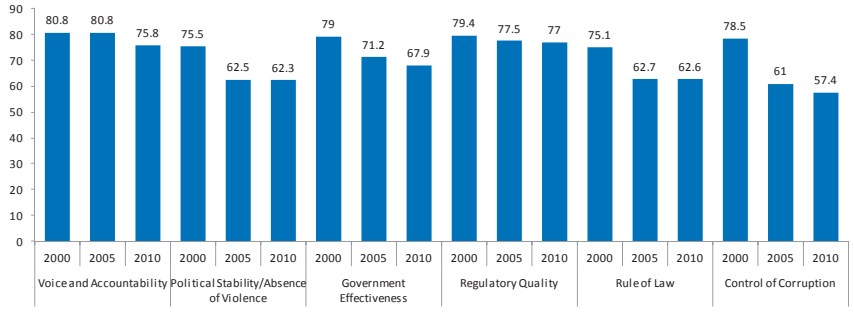
Today, concerns over integrity and corruption stand out as key factors in the prevailing lack of trust in Italy's public sector.

## Restoring trust in the public sector calls for more integrity, less corruption

The Italian Corte dei Conti (Court of Auditors) has estimated the annual cost of corruption in Italy to be approximately EUR 60 billion (Dipartimento della Funzione Pubblica, 2010). The figure is equivalent to 7.6% of annual general government expenditure, or the entire 2011 federal government deficit.

The perception of Italy's governance performance – measured against commonly used indicators –worsened between 2000 and 2010 and has probably been aggravated by the crisis (Figure 1.9). Trust in the government's ability to control corruption declined particularly steeply from 2000.

**Figure 1.9. How perceptions of governance evolved from 2000 to 2005 and 2010 in Italy**

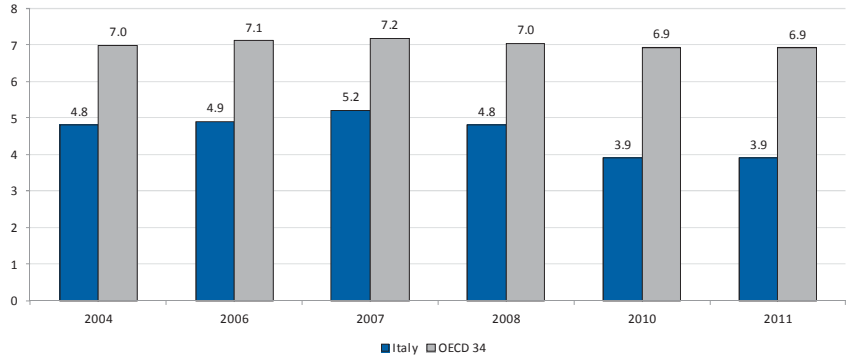



*Note*: The World Bank's Worldwide Governance Indicators give an indication of people's perception of the extent to which public power is exercised for private gain. Higher values denote better outcomes.

*Source*: Worldwide Governance Indicators, World Bank, *http://info.worldbank.org/governance/wgi/sc_country.asp*.

The trend shown in Figure 1.9 is further reinforced by data on the public perception of corruption. Already significantly higher in Italy in 2004 than in other OECD countries, the perception has worsened since the onset of the global downturn (Figure 1.10). According to Transparency International's Corruption Perceptions Index, Italy (in 69th place) has the highest level of perceived corruption among OECD countries after Mexico (in 100th position) and Greece (80th).

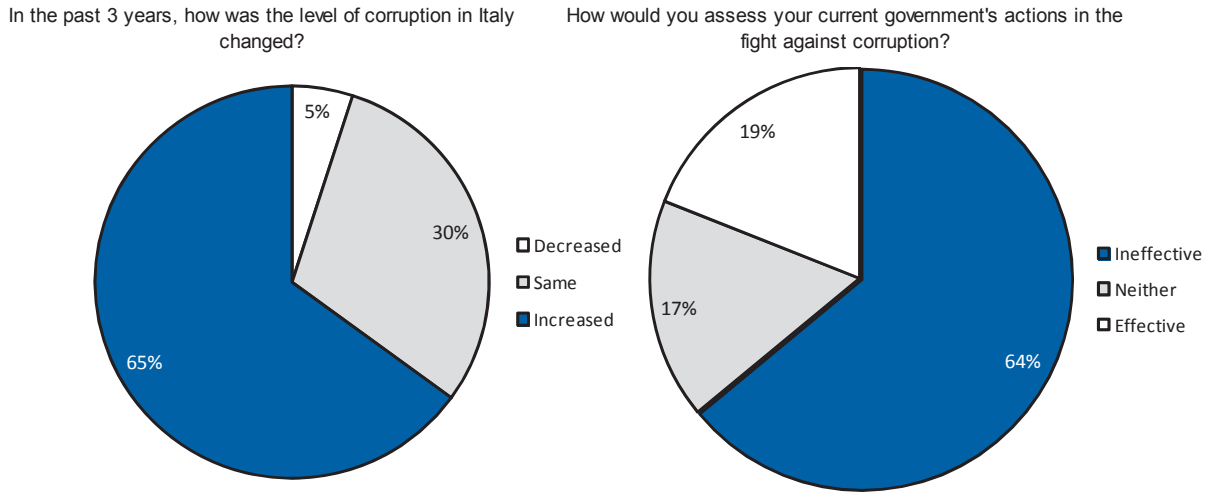
**Figure 1.10. Evolution of public perceptions of trust in Italian government compared with OECD averages, 2004-11**




*Source:* Transparency International, Corruption Perception Index, *www.transparency.org/research/cpi/overview*.

Trust in the ability of the government to curb corruption effectively is very low, with 64% of the Italian public considering government action ineffective, according to Transparency International's Global Corruption Barometer (Figure 1.11). Similarly, Eurobarometer findings reveal that 75% of the Italian population believe that their government is ineffective at fighting corruption (EC, 2012). Eurobarometer also reports that 71% of Italians felt that there was too little prosecution to deter people from bribery and that the vast majority (85%) felt that court sentences in corruption cases were too lenient.

**Figure 1.11. Italians' perception of corruption according to the Global Corruption Barometer**




*Source:* Transparency International (2011), Global Corruption Barometer 2010/2011, *www.transparency.org/research/gcb/overview.*

Strengthening integrity in the public sector and preventing corruption will not only support the restoration of trust in the Italian government – a key determinant of sustainable growth. It will also contribute significantly to its objectives of fiscal consolidation, economic growth, and social fairness. More integrity and less corruption will help prevent the waste of available resources and enhance revenue collection, thereby reducing the budget deficit. In addition, greater integrity will improve public sector performance and thereby bolster the government's ability to do more with less.

Efforts to strengthen integrity and deter corruption should be a key priority cutting across the structural reforms being undertaken by the Italian authorities. In this regard, the passing of the Anti-Corruption Law on 6 November 2012 amid difficult economic reforms deserves acclaim and sets an example of bold leadership that will likely have implications beyond Italy's borders.

## Notes

1. According to Horváth, trust is one of the chief determinants of long-term growth. Zak and Knack (2001) estimate that "the investment/GDP share rises by nearly one percentage point for each seven-percentage point increase in trust".
2. Economic agents in highly trusting environments enjoy lower transaction costs. For further discussion, see Horváth (2012).
3. Knack and Keefer (1997) find that low levels of trust can discourage innovation and that "trusting societies not only have stronger incentives to innovate and accumulate physical capital, but are also likely to have higher returns to accumulation of human capital".

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# Chapter 2

# Strengthening integrity in the Italian public sector

*Over the last few years, Italy has introduced major reforms designed to modernise public administration, improve services, and increase citizens' participation in public decision-making. This chapter presents an overview of these reforms. Legislative Decree 150/2009, known as the "Brunetta Reform", provided a comprehensive framework for improving labour productivity as well as civil service efficiency and transparency. The chapter summarises some of the open-government-related tools that leverage web 2.0 technologies for innovation in the civil service and citizens' engagement.*

## Earlier efforts to enhance transparency, accountability and openness

Over the last few years, Italy has introduced major reforms designed to modernise public administration, improve services, and increase citizens' participation in public decision-making. Reforms have included measures to foster transparency, accountability, and organisational performance.

Among the most recent reforms was Legislative Decree 150/2009. It implemented Law 15 of 4 March 2009,[1] often referred to as the "Brunetta Reform". It set out a comprehensive framework for improving labour productivity as well as civil service efficiency and transparency. Two operational pillars underpinned those goals:

- a system of incentives and performance evaluation in the public sector, based on the recognition of the merits and shortcomings of civil service executives and all government employees;
- a user-centred approach that focused on transparency and information disclosure.

With regard to transparency, the Brunetta Reform extended the range and scope of transparency expectations within the civil service (OECD, 2010) beyond the public access to information granted by Law 241/90. The reform required:

- All public institutions to adopt the Triennial Programme on Transparency and in order to ensure full access data and foster a culture of integrity and legality.
- Information to be made available includes performance planning and results, individual reward schemes, and all other aspects of a government department's operations. The Programme should also include action taken to support citizens' participation in public decision-making. Managers failing to comply with or implement transparency and integrity programmes would face sanctions.
- Independent Performance Evaluation Units (OIVs) to be put in place in order to support management in correctly implementing the performance management cycle.
- They are also tasked with backing policy-making bodies in activities relating to financial planning, designing and setting objectives, and linking these objectives to financial resources. Furthermore, OIVs exercise the strategic oversight referred to in Article 6(1) of Legislative Decree 286/1999, a function previously carried out by the former Internal Audit Units (SECIN). Finally, they must validate the Triennial Programme and certify that all transparency and integrity obligations have been met.
- The creation of the Independent Commission for Evaluation, Integrity and Transparency (CIVIT) to provide technical support in preparing the Triennial Programme on Transparency and Integrity; centralise data on performance; define professional qualifications for OIV members; and support a culture of integrity within the civil service.
- The duties of CIVIT chiefly concern the prevention of corruption in central government departments through the improvement and enhancement of performance management, quality of services, and transparency and integrity.
- Civil service bodies to foster citizen-centred scrutiny.

- Aspects of organisational performance defined by the Brunetta Reform include the quality and quantity of citizen and stakeholder participation through two main channels: stakeholder engagement and customer satisfaction measurements (OECD, 2010).

Implementation of the Brunetta Reform has seen the transparency agenda in Italy advance significantly. Since it came to office on 22 December 2009, the CIVIT has operated in three areas within its remit – transparency, performance, and service quality. It has drawn up a set of guidelines for preparing and updating multi-year transparency plans, while guiding and co-ordinating civil service departments in implementing the measures set forth in the Brunetta Reform.

At national level, most public administration organisations have adopted the Triennial Programme on Transparency and Integrity, appointed a qualified internal expert with responsibility for transparency, and launched online transparency, assessment and merits sections in their websites. These new web pages offer easily accessible, comparable data on how departments are organised, their activities, and their use of public resources. Today, Italy is a leader among OECD countries regarding the disclosure of public information.

**Table 2.1. Disclosure of public sector information in Italy**

√ Required to be proactively published by Freedom of Information (FOI) laws
√ Not required by FOI laws, but proactively published as a matter of routine
√ Neither required nor routinely published

CP = central portal; MA = ministry or agency website; OW = other website

OECD 32 refers to the percentage of the 32 countries that either requires that information be published by law or do not require it but routinely publish it nevertheless.

| Disclosure of public sector information, 2010 | | | |
|---|---|---|---|
| Types of information disclosed | Italy | OECD 32 | Publication |
| Budget documents | √ | 94% | CP, MA |
| Audit reports | √ | 72% | MA |
| List of public servants and their salaries | √ | 28% | CP, MA |
| Sharing of administrative data | | | |
| Administrative data sets | √ | 66% | MA |
| Requirements on publishing in open data formats | Yes | 53% | _ |

*Source*: OECD (2011), *Government at a Glance*, OECD Publishing, Paris, doi: *http://dx.doi.org/10.1787/gov_glance-2011-en*

In parallel, a number of critical processes have benefited from efforts to leverage information as a tool for greater transparency.[2] One such set of processes relates to public procurement, where structures and mechanisms designed to promote openness have been instituted:

- The Observatory of Public Contracts (whose central branch is the Directorate General of the Authority for the Supervision of Public Contracts [ASPC]) collects and assesses data on the structural characteristics of the public procurement market and how it is evolving. It also compiles statistics on the number and value of awarded procurement contracts classified by location, procurement entities, and award procedures. It uses the criteria of efficiency and value for money in the procurement process. The Observatory watches the market for any malfunction or anomaly which it identifies against a checklist in order to:
  - assess whether rebates granted in a tender are excessive compared to average rebates;
  - track the number of bids tendered in each bidding procedure;
  - compare the locations of winning companies against the location of the contracting authority.
- The National Database of Public Contracts (NDPC) – an offshoot of the ASPC that is managed by the Observatory of Public Contracts – collects and assesses information on:
  - Italian public contracts;
  - lists of public works over a three-year period provided by contracting authorities and lists of awarded contracts;
  - the content of contract notices, the value of contracts, the economic operators that have won public contracts;
  - the progress of public works, services and supplies;
  - the final cost of contracts in the event of discrepancies between actual and planned costs.
- The Public Contracts Official Register – housed in the Interministerial Committee for Prices, [CIPE]) – assigns the Unique Project Code (PUC) to an investment project to facilitate tracking and reporting.

Government reform has also sought to simplify the complex layers of regulation and red tape that impede transparency and facilitate discretion at all levels of government. In this regard, the Department of Public Administration (DPA) is heading the considerable efforts to simplify bureaucracy through legislative action – with the promulgation of Legislative Decree 5/2012, the so-called "Simplify Italy" decree – and specific reforms in areas like:

- the civil service, with measures to ensure top-quality performance while making the most of professional skills and abilities.
- the recruitment, training and professional status of civil servants, with key principles such as professional competence, merit, impartiality, and public ethics at their core;

- the reorganisation of administrative structures and machinery so as to ensure a better functioning service provision while reducing inefficiency-related costs;

- the reduction of the administrative burden for individuals and businesses, with policies that incorporate the results of a campaign to measure the cost of the administrative requirements set forth in the existing legislation.

Consultation and participation have been used as tools in the efforts to simplify bureaucracy. A notable example is "Burocrazia: diamoci un taglio" ("Cut red tape"), a permanent tool for consultation that allows citizens and business alike to report cases of red tape and propose solutions to lessen it. The scheme, launched in 2010, has resulted in many proposals becoming legislative or administrative provisions for streamlining the relationship between government bodies and citizens.

Italy became a member of the Open Government Partnership on 20 September 2011. The DPA has co-ordinated the development of a number of open-government-related tools that leverage Web 2.0 technologies for innovation in the civil service and citizens' engagement (Box 2.1).

### Box 2.1. Government 2.0 tools

**Handbook for Public Administration 2.0**: Provides recommendations for mapping out participation in social media, as well as regulatory effects, customer care, and participatory tools.

**ParteciPA**: Participatory tools for sharing and assessing ideas (Ideario, a diary of ideas) and for recording regular comments on documents (Commentario, a diary of comments);

**WikiPA**: A collaborative encyclopaedia on public administration terminology based on Wikipedia's editorial model and software.

**InnovatoriPA**: An environment for social networking and sharing best practices dedicated to professionals in the field of public administration innovation.

**www.dati.gov.it**: Publishes a dataset catalogue and a smartphone application catalogue. Showed an exponential increase in open data in its first six months.

**Open Data Guidelines**: Provide guidance on legislative issues, opening datasets, and on technical aspects of and useful description rules for the national catalogue;

**Apps4Italy**: A contest to promote open data reuse through applications and creative data processing.

**Linea Amica** (Friendly Line): A nationwide citizen care service that uses a multi-channel approach to offer solutions to citizens' grievances through an encyclopaedia of questions and answers, an online service directory, an address book of government departments and offices, and a review of enforceable rights. It also integrates open data with smartphone applications.

**Mettiamoci la Faccia** (Show Your Face): Designed to regularly review – with emoticons – user satisfaction with the delivery of public services, both in government offices and through channels like the telephone and the Internet.

### Box 2.1. Government 2.0 tools *(cont.)*

**The Migliora PA Project** (The Better Public Administration Project): Seeks to promote a customer satisfaction approach and customer satisfaction management tools in Italy's convergence regions.[3] The aim is to improve local government administrative ability to manage user satisfaction while enhancing performance and increasing service quality.

**The MiaPA Initiative**: Social check-in where users use smartphones to find the closest public office, to state their level of satisfaction, and to leave a comment on the service received.

**Cittadinanzattiva** (Active Citizenship): Pilot initiative to facilitate citizens' assessment of public service and test such assessments as a tool to support strategic programming and management (which includes evaluations of public service delivery).

*Source*: Italian Action Plan for the Open Government Partnership, 2012.

In 2009 Italy launched (then updated in July 2010) a comprehensive e-government action plan, known as "e-Gov 2012". It is intended to improve online services, increase efficiency, boost interoperability between government departments, and develop digitalisation in the most critical ones (e.g. health, education, justice). Europe's ninth e-government benchmarking survey (Capgemini et al., 2010) recognised Italy as one the countries that has performed best in e-enabling a variety of services.

**Table 2.2. E-government building blocks**

| **E-Government building blocks** | Italy | OECD 25 |
|---|---|---|
| Recognition and use of digital signatures | | 100% |
| Electronic filing in the public sector | | 88% |
| Administering PPPs for e-government projects | | 64% |
| **Single-entry procurement website** | Italy | OECD 34 |
| Tender searches | | 62% |
| Tracking of outcomes of contracts | | 32% |

Note: OECD percentages refer to percentage of respondent countries that answered the OECD Survey on Access to Information.

PPPs: Public-private partnerships.

*Source*: OECD (2010), "Modernising the Public Administration: A Study on Italy", study by Barbara Ubaldi, presented 15-16 November 2010, OECD, Paris.

More recently, the Government approved on March 2013 a legislative decree on publication requirements, transparency and disclosure of information by the public administration. The legislative decree upholds a general principle of transparency as a key tool to "encourage widespread forms of control over public duties and the use of public resources" and a condition to guarantee individual and collective freedoms and rights. The decree regulates the exercise of the right to access information and clarifies its scope on members of political bodies, holders of executive positions, invitations to tender and performance information, among others. In addition, it provides for certain limits to the general provision of transparency, including the protection of sensitive personal and

judicial information. A detailed analysis of the decree would be necessary to fully assess its relevance vis a vis the implementation of Law No. 190 of 6 November 2012.

## Notes

1. Previous reforms in 1993 and 1998 established a framework of managing civil servants based on collective bargaining and a control system aimed at enhancing both productivity of public servants and the performance evaluation process of managers. Reform efforts and results varied considerably across the government bodies involved in the reform, and the overall picture in 2008 pointed to the need for undertaking further reforms. This led to the presentation and adoption of the "industrial plan for the reform of the public administration" by the Ministry for Public Administration and Innovation in 2008.
2. Authority for the Supervision of Public Contracts (ASPC).
3. Regions in Europe whose *per capita* gross domestic product is less than 75% of the EU average. The EU's cohesion policy seeks to reduce such regional disparities (*http://ec.europa.eu/regional_policy/how/index_en.cfm#1*).

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# Chapter 3

# The new Anti-Corruption Law

*Law No. 190 of 6 November 2012, known as the "Anti-Corruption Law," puts forward a comprehensive anti-corruption package, signalling a paradigm shift from punitive to preventive in the Italian government's approach to corruption. This chapter* i) *presents the background of the Law;* ii) *analyses its scope vis a vis existing gaps in integrity and anti-corruption legislation and* iii) *discusses its relevance, opportunity and risks.*

## History of the Anti-Corruption Law

Anti-corruption legislation in Italy is regulated chiefly by Articles 318 to 322 of the Italian Criminal Code. The articles distinguish between *corruzione propria* (aggravated bribery) and *corruzione impropria* (simple bribery), terms that denote unlawful acts by a public servant. They also draw a distinction between *corruzione passiva* (passive corruption, i.e. taking bribes) and *corruzione attiva* (active corruption, i.e. the act of bribing) (see Box 3.1).

Legislative Decree 231 of 8 June 2001 introduced the liability of companies for paying bribes to or receiving them from Italian or foreign public officials. It also contained a criminal provision on the corruption of foreign officials, thus implementing the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. In 2009, Italy ratified the United Nations Convention against Corruption (UNCAC),[1] thus bringing its corruption prevention mechanisms in line with international standards. The year 2009 also saw the Brunetta Reform come into force with its far-reaching measures for improving transparency in the public sector.

In June 2012, Parliament approved a law authorising the President of the Republic to ratify the Council of Europe's civil and criminal law conventions on corruption. The following month it passed a law on political party funding (Law 96 of 13 July 2012).

**Box 3.1. Relevant anticorruption legislation in recent years**

- Legislative decree 150/2009 (Implementing Law number 15 of 4 March 2009, on the improvement of the productivity of public employment and the efficiency and transparency of the public administration);
- Law 116/2009 (Ratifying the United Nations Convention against Corruption);
- Law 69/2009 (Arrangements for the economic development, simplification, as well as competitiveness in civil procedures);
- Law 15/09 (Delegation to the government designed to optimise the productivity of labour, public efficiency and transparency of public administrations as well as additional provisions of the functions conferred on the National Council for Economy and Labour and the Court of Auditors);
- C5058 and C3737 of 2012, approved but not yet published. (Ratifying the Criminal Convention against Corruption adopted in Strasbourg on 27 January 1999);
- Law 96/2012 (Rules on the reduction of government grants in favour of political parties and political movements, as well as measures to ensure transparency and monitoring of reports of the same. Delegation to the government for the adoption of a single text of laws on the financing of political parties and political movements and for the harmonisation of the rules relating to tax deductions);
- Laws 110 and 112 of 2012 (acts authorising the ratification of the Council of Europe's Criminal Law Convention on Corruption and its Civil Law Convention on Corruption).

In 2010, Prime Minister Berlusconi's fourth government proposed a new anticorruption bill (AC 4434). It did so partly in response to a series of corruption

scandals which tarnished the image of the state and cast doubt on its willingness and ability to prevent and prosecute corruption.

The text of AC 4434 was short and concentrated on: i) the preparation of a national anti-corruption plan, co-ordinated by the Department of Public Administration (DPA) on the basis of an individual action plan prepared by each government department; ii) a national anti-corruption network; iii) a corruption observatory that would undertake research and report on an annual basis to the government, Parliament, and international bodies; and iv) certain reforms relating to transparency, simplification and cost-reduction policy, particularly with respect to public procurement processes.

The bill did not, however, address many of the shortcomings in existing corruption prevention policy. It failed, for example, to consider those highlighted in the Joint First and Second Evaluation Round of the Compliance Report on Italy, published by the Group of States Against Corruption (GRECO) in May 2011.[2] GRECO bemoaned the failings of AC 4434 in these terms:

> GRECO regrets that "certain areas have received no or insufficient attention so far, notably, with respect to, *inter alia*, the adoption of codes of conduct for members of Government, the prevention of conflicts of interest, the protection of whistleblowers, and the strengthening of anti-corruption provisions in the private sector."

Although the Senate debated the bill when Berlusconi's government still held a parliamentary majority, its passage proved politically difficult. Proceedings lasted from 4 May 2010 to 15 June 2011,[3] when the bill was finally approved and went before the Chamber of Deputies.

At the end of 2011, a new government, led by Prime Minister Mario Monti, came to power with the prime aim of tackling urgent economic issues. Conscious of the economic costs of corruption, Prime Minister Monti made a renewed commitment to fighting corruption (along with other structural reforms). He called for the need to update anti-corruption legislation by, for example, criminalising corruption in the private sector."[4]

In December 2011, the Ministry of Public Administration convened an expert committee under the title, "Commissione di studio sulla trasparenza e la prevenzione della corruzione nella pubblica amministrazione" ("Public Administration Transparency and Corruption Prevention Study Committee").[5] Its mandate was to draw up proposals and suggest amendments to the previous government's anticorruption bill (AC 4434), particularly in the field of prevention. The committee made a number of recommendations (Box 3.2) to strengthen AC 4434.

The political will of the Monti government and the work of the expert committee enabled additional provisions to be added to the anti-corruption bill, so improving its original scope. Debate in the Chamber of Deputies ended when parliamentarians finally passed AC 4434 with a vote of confidence (*voto di fiducia*) on 15 June 2012.[6] The bill became Law 190 of 6 November 2012, the "Anti-Corruption Law", even though it is still known as *Disposizioni per la prevenzione e la repressione della corruzione e dell'illegalita` nella pubblica amministrazione* (Provisions for the prevention and prosecution of corruption and illegality in public administration).

**Box 3.2. Recommendations of the Expert Committee on AC 44348***

- Individual government departments should adopt adequate internal prevention plans, based on risk management models (similar to the provisions of Legislative Decree 231/2001 for private companies).
- Introduce adequate protection of whistleblowers, along with a reward system calculated as a percentage of the sum recovered following conviction and sentencing by the Court of Auditors.
- Enhance legislation on integrity requirements and transparency levels.
- Revise the provisions of Article 54 of Legislative Decree 165/2001 on codes of conduct.
- Overhaul the system governing the incompatibility between elective and non-elective office in order to ensure the real independence of managers and greater confidence from citizens.
- Regulate the system of disciplinary liability with a view to ensuring managers' independence and improving the trust of citizens.
- Regulate the connection between tasks assigned to civil servants and any external interests potentially jeopardizing civil servants' independence.
- Continue transparency-oriented reforms by adding, among other measures, the disclosure of data by individuals entrusted with political duties at the national, regional and local levels.
- Review the rules governing prohibitions on running for office and ineligibility.
- Raise awareness, particularly among civil servants working in high-risk sectors and promote a culture of legality in administrative activities and public ethics.

*Note: Reports and documents of the Committee are available (in Italian) at *www.governo.it/GovernoInforma/Dossier/anticorruzione/dati.html*.

The Anti-Corruption Law came after years of limited anti-corruption legislation in Italy, where little substantial progress in compliance with international standards – except in the area of transparency and information disclosure – could be reported. Besides ongoing attempts to reform the civil service and the ratification of UNCAC in 2009, the last significant reform in the field of anti-corruption was taken in 2001, when Italy implemented the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. It was through this move that Italy introduced the liability of companies for bribery and criminalised the corruption of foreign officials.

## The content of the Anti-Corruption Law

### *New anti-corruption institutions*[7]

The Law makes the Commission for Evaluation, Integrity and Transparency in Public Administration (CIVIT) the national anti-corruption authority. Originally established by Article 13 of the Brunetta Reform as a key component in the fight against corruption, CIVIT replaces the Department of Public Administration (DPA) as the national anti-corruption authority.

CIVIT's tasks and responsibilities are: i) analyse the causes of corruption and identify action to fight and prevent it; ii) co-operate with the DPA and central public

administrations, particularly to ensure regular rotation of staff in managerial positions most exposed to corruption; iii) use its powers of consultation, inspection, and investigation; iv) co-operate with anti-corruption authorities in other countries.

The Independent Performance Evaluation Units (OIVs) were established by the Brunetta Reform to monitor and evaluate performance, efficiency, and the transparency of the civil service in an independent, autonomous manner. Under the terms of the Anti-Corruption Law, they must proffer advice on preparing individual entities' codes of conduct (Article 8.5). OIVs' duties also include communicating to the DPA all information on political appointees to executive positions in the public service. However, the definition of criteria regarding the executive's turnover remains a function of the DPA, while CIVIT retains control of the implementation and effectiveness of the executive's turnover measures adopted by public administrations.

Although the DPA remains strategic to the anti-corruption system set out in the new law, it plays a reduced role compared with the one the Presidency of the Council of Ministers had originally proposed. The DPA collects all relevant information from government departments and prepares the National Anti Corruption Plan (NACP) for approval by CIVIT. It also defines and promotes rules and methodologies for the implementation of anti-corruption strategies. In addition, it designs standard models for gathering data and information and determines the job rotation criteria for managers in positions exposed to corruption. The DPA must act in accordance with guidelines determined by a committee of ministers, not by the Anti-Corruption Law.

### *Incompatibilities and conflicts of interests*

The Anti-Corruption Law sets an "investiture and incompatibilities regime" for managerial and elective posts in the civil service and state-controlled companies. In order to prevent conflicts of interests, the Law requires the government to regulate, within six months of its coming into force, all appointments to executive and managerial positions in the civil service where there may be potential conflicts of interest with the appointing government.

The Anti-Corruption Law has also ushered in important changes to Legislative Decree 165/2001 (the Public Employment Single Act). They include:

- the mandatory verification of potential conflict of interests in certain situations, such as when appointing a consultant;
- regulating the practice of pantouflage (revolving doors) so that public officials who have held managerial and negotiating positions in the previous three years may not exercise related duties in a professional capacity in a private-sector entity;
- the voiding of contracts and/or appointments made in breach of the pantouflage prohibition and the banning of the private entity from business dealings with the public sector for the next three years.

The Law also requires the government to issue a code of conduct to all public officials with the aim of preventing corruption in the civil service. Any breach of the duties set out in the code of conduct will result in the offending public servant being liable to civil law prosecution.

Finally, the law compels the government – within one year of its coming into force – to enact legislation that prohibits from running for elective and governmental positions (at

international, national, and sub national levels) any candidate who has been sentenced[8] for intentionally committed offences against the civil service. Corruption-related offences will therefore be included.

### *Protecting whistleblowers*

In its Article 12, the Anti-Corruption Law adds Article 54b to Legislative Decree 165/2001 (Public Employment Single Act). The provision is intended to protect public servants who expose or report illicit conduct which they may have come across in the workplace. Protection includes the prohibition of sanctions, dismissal, or any direct or indirect discriminatory measures by way of retaliation.

### *Transparency in public service*[9]

The Anti-Corruption Law seeks to enhance transparency in public service activities by publishing:

- information on administrative proceedings (even when they do not follow ordinary procedure), the cost of public works and citizens' services, and the duration of procedures;
- an e-mail address for each branch of the civil service so that it may receive petitions, declarations and questions from the public, with special consideration granted to citizens who are interested in administrative measures or proceedings;
- data on appointments to executive and managerial positions that are discretionary (i.e. political appointments where there is no public procedure);
- reasons for choosing a contractor in public procurement tenders.[10]

### *Integrity risk plans*

The Anti-Corruption Law introduces a system of integrity risk assessment and risk management measures based on the model proposed by Legislative Decree 231/2001. It spells out political and administrative responsibilities in this regard. In addition, the Law requires that each central government department should draw up a prevention plan which evaluates levels of exposure to the risk of corruption and should take organisational measures to manage such risks.

### *Corruption at sub-national level*

The Anti-Corruption Law calls on sub national public authorities to prevent corruption in regional and local government administration and in any companies they may control. First, the Law explicitly provides that the previous articles of the draft should apply to the regions and local government and to any company they may control. It then specifies that, within 120 days of its coming into force, local governments must spell out how and when they will comply with their commitments under the Triennial Programme on Transparency and Integrity, with incompatible requirements, and codes of conduct. The same procedure must be followed by the Legislative Decree which will be later enacted as the same time as the implementation of the Anti-Corruption law.

### *New offences, stiffer sanctions*

The Anti-Corruption Law adds two new offences to the Italian Criminal Code (CC), in accordance with requests from international monitoring bodies. The offences are influence peddling and bribery in the private sector. In parallel, the Law introduces a wholesale toughening of sanctions for the offences of embezzlement (CC Art. 314); *concussione* ("graft" as redefined in CC Art. 317); bribery in the pursuance of official duties (CC Art. 318); bribery in the pursuance of judicial duties (CC Art. 319c); and bribery acts against official duties (CC Article 319).

Italy, as a member of international peer review mechanisms, has in recent years received advice on ways of improving its integrity system. Organisations issuing such advice include the Group of States against Corruption (GRECO) and the OECD's Working Group on Bribery. Most of their recommendations point to the inadequacy of the legal framework and urge Italy to take legislative action in areas like the regulation of incompatibilities, false accounting, bribery in the private sector, and influence peddling. In addition, there are a number of recurrent issues. Italy, for example, needs to:

- establish an independent anti-corruption agency,
- draw up an effective code of conduct for public officials,
- protect whistleblowers,
- regulate conflicts of interest and *pantouflage*,
- reform its political party financing system,
- reform sanctions for corruption and its statute of limitations.

Annex 7.A1 list the peer recommendations in full.

While the Anti-corruption Law covers most corruption-related issues, it fails to address structural problems with the statute of limitations and some aspects of the system for sanctioning offenders. Similarly, integrity in the private sector requires further legislative action through, for example, such preventive measures as the regulation of false accounting. Although the Anti-Corruption Law does not consider political party funding, where the public perception of corruption reaches its highest level, it has been targeted by the recently approved Law 96/2012.

### *Relevance, opportunities and risks of the Anti-Corruption Law*

Despite its shortcomings, the Anti-Corruption Law is nevertheless to be commended for introducing a systemic approach to prevention which neatly complements previous anti-corruption efforts that focused more heavily on the prosecution of corruption, transparency, and access to information. The issues regulated by the Law reflect the levels of perceived corruption in Italy and the maturity of its corruption prevention measures.

Moreover, the Law fills – partially, at least – important gaps in integrity and anti-corruption legislation (see Annex 7.A1). The issues it regulates – such as whistleblower protection, conflicts of interest and codes of conduct, and the appointment of an independent anti-corruption authority – bring Italy into line with its international commitments and standards (the G20 Action Plan on Corruption, the United Nations Convention against Corruption [UNCAC], the Council of Europe's civil and criminal law conventions on corruption, and OECD corruption-related principles).

At the same time, the Law gives continuity to the broader public sector reforms undertaken by Italy in recent years. Such reforms include Legislative Decree 150/2009. Its objectives – namely, higher performance in public administrations and an enhanced focused on evaluation – require integrity and transparency as essential anchoring elements.

Stakeholders widely recognise the Anti-Corruption Law's relevance and the timeliness with which its provisions address certain corruption-related issues. Similarly, there is a common understanding of and institutional agreement on the role of national anti-corruption authority that the Law assigns to CIVIT. There is thus an institutional context that is conducive to the Law's implementation – a point worth emphasising given the nature of the issues it.

At the same time, expectations as to the timely, effective implementation of the Law are high. The Italian government needs to move decisively towards enforcing its provisions. It should devote special care to their full institutionalisation within such core public administration functions as strategic management and internal auditing. Executive legislation could be used to plug gaps in the Law that may hamper its implementation as this review shows.

The co-ordination and supervision of implementation at the sub-national level will be challenging. CIVIT and the DPA should actively partner with organisations such as the National Association of Italian Municipalities (ANCI), the National Union of the Provinces (UPI), and the Conference of the Regions and Autonomous Provinces. Such partnerships are particularly important as the Law does not stipulate any local-level obligation to establish internal auditing or support units for facilitating and supervising the implementation of integrity and transparency provisions.

The Law's provisions ensure budget neutrality. This sends an important signal about the need to integrate and institutionalise the Law's provisions within current structures. However, as Part II of this review shows, not all structures are in place and considerable work will be required to build capacity, manage information, and develop evaluation if reform is to be successful. Although the Law's intentions are laudable, a serious needs assessment and cost estimation exercise would guide its effective implementation.

In order to facilitate the Law's effective implementation, the following chapters of this review seek to analyse in detail certain components of the Law: institutional co-ordination, codes of conduct, whistleblower protection, and integrity risks.

# Notes

1. Law 116/09, "Ratifica ed esecuzione della Convenzione dell'Organizzazione delle Nazioni Unite contro la corruzione, adottata dalla Assemblea generale dell'ONU il 31 ottobre 2003 con risoluzione n. 58/4, firmata dallo Stato italiano il 9 dicembre 2003".
2. Adopted by GRECO at its 51st Plenary Meeting (Strasbourg, 23-27 May 2011).
3. The Bill 4434 introduced by the Executive has absorbed other bills presented by members of Parliament: C 3380, 3850, 4382, 4501, 4516, 4906, and S 2044, 2164, 2168, 2174 between 2010 and 2012.
4. Council of Europe's Criminal Law Convention on Corruption of 1999 and EU Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector.
5. Members of the Committee included: Roberto Garofoli (Judge of the Council of State); Raffaele Cantonne (Judge of the Court of Cassation); Ermanno Granelli (Judge of the Court of Auditors); Bernardo Giorgio Mattarella (Full Professor of Administrative Law); Francesco Merloni (Full Professor of Administrative Law) and Giorgio Spangher (Full Professor of Criminal Procedure).
6. Contrast and negotiations were intense, especially regarding three points: i) the reform of *concussione*; ii) the introduction of new offences; and iii) the time-limit for the Government to regulate the prohibition to run for elective posts.
7. Several institutions have complementary responsibility for corruption prevention and control and integrity promotion in Italy. An in-depth discussion of their role and mandate under the Anti-Corruption Bill is presented in Part II.
8. The sentence must be definitive. Currently, more than 100 deputies and senators are under investigation or have a non-definitive sentence (*Il Fatto Quotidiano*, 14/06/2012).
9. The access to public documents and records is regulated by Law 241/1990 "New provisions on administrative procedure and right of access to documents" (as amended in 2005, 2007, and 2009), and its related regulation, adopted with the Decree of the President of the Republic (DPR) no. 184/2006, "Regulation on Access to Administrative Documents." There is a system of appeal against the denial of access through: the appeal before the administrative court (Tribunale Amministrativo Regionale); the request to the ombudsman; for documents of national interest, an appeal to the special Commission of the Presidency of the Council of Ministers.
10. With regards to public procurement, the Law modifies Legislative Decree 163/2006 (Code of Public Contracts) and introduces, as justification to rescind the contract, the final sentence of the contractor for corruption-related crimes.

# Chapter 4

# Institutional co-ordination

*The experience of OECD countries shows that effective institutional arrangements and co-ordination are effective key elements in enhancing public sector integrity and preventing and combating corruption. This chapter considers the institutional arrangements set forth in the new Italian Anti-Corruption Law. In so doing, it* i) *reviews current integrity-related institutional arrangements in Italy;* ii) *considers the changes, including co-ordination arrangements, enshrined in the Law;* iii) *analyses them against key elements that help ensure that institutions fulfil their roles and collaborate properly (e.g. clear mandate, independence, and adequate resources); and* iv) *makes key proposals for implementing the reform effectively.*

## Key elements for effective anti-corruption bodies

A critical issue in any anti-corruption strategy relates to institutional set-ups for fighting corruption and ensuring public sector integrity. Clear, comprehensive arrangements are vital for ensuring the effectiveness of integrity policies and maximising institutions' scope and their capacity to fulfil their mandates.

The new Anti-Corruption Law has considerably altered Italy's corruption prevention institutional set-up. In this respect, the appointment of the Commission for the Evaluation, Integrity, and Transparency of Public Administration (CIVIT) as the corruption prevention authority is particularly important. However, effective co-ordination and co-operation between CIVIT and all other actors is essential if the integrity framework is to function properly in the public sector.

Effective institutional co-ordination is a key element in enhancing public sector integrity and combating and preventing corruption. As in most democratic societies, frameworks for corruption prevention are already in place in existing institutions. However, as countries modernise, anti-corruption functions become scattered across multiple institutions, sometimes leading to structural or operational deficiencies that hinder effective action to prevent and stamp out corruption. Many OECD member countries are therefore revisiting their institutional arrangements. Some have established new institutions to house key national anti-corruption policies or have modified their existing institutional framework in response to new challenges.

There is a rationale behind assigning or shifting anti-corruption functions to new institutions. Specialised anti-corruption agencies are considered to be effective instruments for preventing and fighting corruption. In one study, Meagher (2004) writes:

> [A new institution] i) will not itself be tainted by corruption or political intrusion; ii) will resolve co-ordination problems among multiple agencies through vertical integration; and iii) can centralise all necessary information and intelligence about corruption and can assert leadership in the anti-corruption effort. This proposes that the main expected outcome of an anti-corruption institution should be an overall improvement in the performance of anti-corruption functions.

Yet, specialised anti-corruption bodies are by no means the only model. Experience shows that they are not necessarily a panacea and some countries have been effective in fighting corruption without one. Institutions in charge of preventing and combating corruption, whether specialised or not, need a clear mandate, independence from political interference, and sufficient resources in order to be effective.

Against that background, the following chapters review the institutional arrangements set forth in the Anti-Corruption Law. In so doing, it *i)* review current integrity-related institutional arrangements in Italy; *ii)* consider the changes, including co-ordination arrangements, enshrined in the Law; *iii)* analyse them against key elements that help ensure that institutions fulfil their roles and collaborate properly; *iv)* make key proposals for implementing reforms effectively.

Experience shows that there is no single model for an effective institutional arrangement that successfully enables the prevent and repression of corruption. The institutional arrangement a country chooses is evidently prompted by its domestic context, particularly by its socio-political, legal, and administrative circumstances (e.g. type of government, the constitution, legal systems, cultural issues, and the incidence of corruption). Irrespective of the institutional arrangements they may adopt, the experience of

OECD countries reveals that any anti-corruption body should have a clear mandate, independence, and adequate resources.

### *Clear mandates*

The effectiveness of anti-corruption bodies is largely dependent on their having clearly defined mandates and functions. They are essential to conducting anti-corruption strategies and preventing any overlaps between relevant actors. Experience shows that mandates may cover a wide range of duties, from prevention to investigation and sanctions (Box 4.1). They must be clearly assigned to a specific body or bodies and the proper level of co-ordination ensured. Strong, smoothly functioning inter-agency co-operation and information are essential.

Appropriate co-ordination is thus a priority if an anti-corruption institution is to be effective. Korea, for example, has an anti-corruption policy co-ordination body composed of representatives from ten government agencies (ministries and supervisory bodies) to ensure communication between their institutions. South Africa's Anti-Corruption Co-ordination Committee is staffed by representatives from public service departments and from agencies with corruption prevention functions. It raises awareness, educates public servants, and streamlines communication.

Many countries have established special committees or commissions to mitigate problems that could arise from failing to co-ordinate between institutions. Such bodies are generally staffed by public officials from various branches and departments of government and by representatives from law enforcement agencies, local government, customs, and public procurement offices. They may also include members from civil society, religious groups, NGOs, business leaders, and the academic community.

In the United States, the Office of Government Ethics sets the integrity policy for the executive branch of government, promotes the sharing of information and good practices, and co-ordinates the action of 5 700 ethics officers. In Canada, the Office of Conflict of Interest and Ethics Commissioner has created a network of ethics commissioners at provincial level to discuss issues of interest and share lessons and good practices.

**Box 4.1. Most common anti-corruption functions**

**Policy development, research, monitoring and co--ordination**. These duties encompass research into trends and levels of corruption and assessment of the effectiveness of anti-corruption measures. They further include policy development and co-ordination, which includes the drawing up of anti-corruption strategies and action plans and monitoring and co-ordinating implementation measures. Another important function is to serve as a focal point for international co-operation.

**Prevention of corruption in public service departments**. The focus here is on promoting ethics in public institutions, which includes drawing up and implementing special measures pertaining to public service rules and restrictions, and taking disciplinary action for non-compliance. Corruption prevention functions may involve averting conflicts of interest, ensuring that public servants declare their assets, verifying the information submitted, and enabling public access to it. The aim is to prevent corruption by running state financial checks, taking money-laundering measures, ensuring integrity in public procurement, and enforcing licensing, permits and certification schemes. Finally, an anti-corruption body's preventive duties involve promoting the transparency of public service and public access to information and ensuring effective monitoring of political party financing.

### Box 4.1. Most common anti-corruption functions (*cont.*)

**Education and awareness raising**. This duty entails developing and implementing educational programmes for the general public, academic institutions, and civil servants; organising public awareness campaigns; and working with the media, NGOs, businesses and the public at large.

Investigation and prosecution. The prime aim here is to ensure a legal framework for the effective prosecution of offenders and dissuasive sanctions for all forms of corruption. Second, investigation and prosecution should involve enforcing anti-corruption legislation effectively through every stage in criminal proceedings – from identification and investigation to the prosecution and adjudication of corruption offences – while ensuring the transition between criminal and administrative proceedings. Third, the investigation and prosecution mandate should include overseeing interagency co-operation and exchanging information that is both case-specific and of general import with law enforcement bodies, auditors, tax and customs authorities, banks, and financial intelligence units (FIU)s, public procurement officials, state security agencies, etc. Fourth, the investigation and prosecution functions include acting as a focal point for mutual legal assistance and extradition requests. Finally, maintaining, analysing and reporting law enforcement statistics on corruption-related offences is another important function.

*Source*: OECD (2008), Specialised Anti-Corruption Institutions: Review of Models, OECD Publishing, Paris, doi: *http://dx.doi.org/10.1787/9789264039803-en*.

OECD analysis has found that different countries assign different mandates to anti-corruption bodies. They come under three broad headings: policy co-ordination and prevention, comprehensive mandates, and law enforcement.

- **Policy co-ordination and prevention**

Some countries have created special bodies to co-ordinate policy and prevent corruption. Portugal's Anti-Corruption Co-ordination Committee, for example, brings together representatives of government agencies and the Supreme Audit Institution. Other examples are France's Central Service for the Prevention of Corruption, Slovenia's Commission for the Prevention of Corruption, the United States Office of Government Ethics, and Brazil's Office of the Comptroller General (CGU)). The tracking and repression of corruption is left to the traditional law enforcement institutions. Policy co-ordination and prevention bodies have a variety of functions, such as research and analysis, policy development and co-ordination, and training and advising other actors on risks of corruption and available solutions. They may also have special powers such as vetting civil servants' asset disclosures and assessing related confidential information.

- **Comprehensive mandates**

Few countries have created specific anti-corruption institutions with comprehensive mandates. However, so-called "multi-purpose" agencies which both prevent and fight corruption do exist – in Hong Kong (the Independent Commission Against Corruption [ICAC]), Latvia (the Corruption Prevention and Combating Bureau), Lithuania (the Special Investigation Service), Singapore (the Corrupt Practices Investigation Bureau), and in the State of New South Wales in Australia (the Independent Commission against Corruption). A number of other agencies (in Argentina, Ecuador, Korea and Thailand, for example), have adopted some features of the Hong Kong and Singapore models, but do not necessarily apply them rigorously. While very few anti-corruption agencies have a comprehensive mandate that covers all anti-corruption functions, many follow Hong Kong's ICAC approach with built-in checks and balances to ensure autonomy, specialised

advisory committees, mechanisms for reporting, and education and awareness-raising functions.

- **Law enforcement mandates**

Anti-corruption institutions whose specific mandate is law enforcement exist in several countries. They may assume different forms and enforce the law differently – through agencies that detect and investigate or prosecute corruption. A single body may also combine detection, investigation and prosecution – possibly the most common model in Europe. Examples include Belgium (the Central Office for the Repression of Corruption), Croatia (the Office for the Prevention and Suppression of Corruption and Organised Crime), Hungary (the Central Prosecutorial Investigation Office), Norway (the Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime), Romania (the National Anti-Corruption Directorate), Spain (the Special Prosecutors Office for the Repression of Economic Offences Related Corruption), and the United Kingdom (the Serious Fraud Office). The model may also apply to internal investigation bodies with narrow jurisdictions for detecting and investigating corruption within the law enforcement organisations. Two good examples of such bodies include Germany's Department of Internal Investigations and the United Kingdom's Metropolitan Police Anti-Corruption Command.

### *Independence from political interference*

The credibility and sustainability of the bodies depend on their level of independence from political influence. Independence primarily means that anti-corruption bodies should be shielded from undue political interference. To that end, a genuine political will to fight corruption is the key prerequisite. Such political will must be embedded in a comprehensive anti-corruption strategy. Although degrees of independence may vary with needs and conditions, experience suggests that structural and operational autonomy is what matters. Enacting legislation that gives an anti-corruption agency a clear legal basis can secure such autonomy.

Moreover, objective and transparent procedures for appointing and removing the governing bodies of anti-corruption agencies, together with proper human resources management and internal controls, are important factors in preventing undue interference. Appointment of the governing body of an anti-corruption agency by a particular branch of government (be it legislative, executive, or judicial) could create conflict of interest in the event of members of that particular branch of government themselves being investigated. Several countries use procedures in which both the executive and legislative branches play a balanced role in appointing and removing the governing body of anti-corruption agencies.

Another approach could be an open recruitment process with selection by an oversight committee. The terms of appointment of the members of a governing body (e.g. tenure, remuneration, and guarantees of independence) should be made public. In Slovenia, for example, the chief commissioner and the two deputy chief commissioners of the Commission for the Prevention of Corruption are appointed by the head of state after candidates have first been nominated and selected by a special board staffed by representatives of the government, the National Assembly, non-governmental organizations, the Judicial Council, and the Council of Officials.

Budgetary autonomy is an additional way of ensuring independence. Ways to secure budgetary autonomy include incorporating a set budget and adjustment rate in the law which creates the anti-corruption body; creating a dedicated fund; or establishing a procedure for requesting and receiving funds that keeps the an anti-corruption body away from political influences. In Slovenia, the Commission for the Prevention of Corruption submits a budget request directly the Ministry of Finance and Parliament approves and grants the funds directly to the Commission.

However, independence should not mean a lack of accountability. There should be a procedure for regularly reporting on performance to the executive and legislative arms of government. The public should also have access to such reports. International standards have stressed that prioritising accountability ensures both credibility and transparency. Accountability increases public trust and secures effective support for combating corruption.[1]

Accountability measures may include reporting regularly to Parliament, the head of state, or government leaders, and making reports accessible to the public through forums. In Indonesia, the Corruption Eradication Commission (KPK) reports on its activities to the President, the National Assembly, and the State Auditor.

### *Adequate resources*

Good practices among OECD countries demonstrate that anti-corruption bodies should have adequate human and budgetary resources in accordance with their mandates. Staff should be trained and boast expertise in integrity and anti-corruption. In Korea, for example, the Anti-Corruption and Civil Rights Commission, which is responsible for research, prevention, investigation, and policy, had a budget of USD 54 million in 2010 and handled approximately 200 cases. The Commission has a permanent staff of 465, which includes 3 prosecutors and 30 investigators.

Enjoying adequate resources also means that the anti-corruption agency may freely administer its budget with no outside interference. Moreover, specialised anti-corruption bodies should have the power and means, beyond adequate staff and training, to fulfil their mandates. For example, a complex data analysis capability is essential to designing and implementing policies as well as to investigating cases.

## The need to co-ordinate bodies with anti-corruption mandates in Italy

As in most OECD member countries, Italy's institutional arrangements for preventing corruption have involved several bodies. They include the Ministry of Public Administration's Department of Public Administration (DPA), the Independent Commission for the Evaluation, Integrity and Transparency of Public Administration (CIVIT), the Court of Auditors, and specially created bodies or ones that were assigned anti-corruption duties, but are not longer functioning institutions.

In 2003, Italy became a signatory to the UN Convention against Corruption (UNCAC), before ratifying the treaty in 2009 with Law 116/2009. The Convention requires parties to "ensure the existence of a body or bodies, as appropriate, that prevent corruption", to which the "necessary independence …, material resources and specialized staff, as well as the training"[2] should be granted. Article 6 of Law 116/2009 ratifying Italy's membership of UNCAC designated the DPA as the national authority for the prevention of corruption and

accordingly assigned it specific functions and duties. (The DPA is a branch of the Presidency of the Council of Ministers.)

### *The High Commissioner for the fight against corruption*

In 2004, the position of High Commissioner (HC) for the fight against corruption was created by the President of the Republic, after consultation with the President of the Council of Ministers.[3] The fight against corruption came under the sole authority of the HC, assisted by a vice-commissioner, a deputy vice commissioner, five experts (selected among magistrates and state attorneys), and administrative personnel (a director and support staff who had executive roles in other branches of public service).

The HC's duties were three-fold: i) regularly review legal instruments and administrative practices in the prevention and prosecution of corruption; ii) identify critical areas; iii) assess the vulnerability of public servants to corruption and associated criminal behaviour. The HC was also empowered to carry out fact-finding administrative missions (either ex officio or upon request from a public service department), develop analyses and studies on the problem of corruption, and monitor contractual and expenditure procedures with a view to preventing the misuse of public funds.

Under the terms of Presidential Decree 258/2004, the President of the Republic appointed the HC, subject to deliberation by the Council of Ministers and on proposal of the Prime Minister. The HC could be reappointed only once and no limitations were set with regard to other activities or duties that the HC could exercise. None of the staff enjoyed protection against dismissal. Nor were the staff or the HC guaranteed any immunity from prosecution for action taken in the exercise of their duties.

None of these gaps was filled by moving the HC's duties to the DPA. Civil servants cannot be removed without justification if they belong to an anti-corruption agency. But, staff who were assigned anti-corruption tasks in addition to their normal duties could be moved back to their office or another department by order of the head of department. The HC[4] changed frequently – there were four between 2004 to 2008 when the position was finally abolished. The HC's functions were transferred to the DPA and the HC was rebranded as the Anti-Corruption and Transparency Service (SAeT). The SAeT's task was to "enhance the experience acquired so far and support the transparency process launched by the government".[5]

### *Independent Commission for the Evaluation, Integrity and Transparency of Public Administration (CIVIT)*

The new Anti-Corruption Law designates CIVIT as the national anti-corruption authority in place of the DPA. CIVIT was originally established by Article 13 of Legislative Decree 150/2009, then further regulated by Legislative Decree 150/2009[6] and related decrees[7] as a key element of public administration reform.

CIVIT now has a number of responsibilities that include i) analysing the causes of corruption and identifying measures to prevent and prosecute it; ii) co-operating with the DPA and central government departments, particularly to ensure the job rotation of managers in positions most exposed to corruption; iii) using powers of consultation, inspection, and investigation; iv) co-operating with anti-corruption authorities in other countries and v) approving the National anti-corruption Plan drafted by the DPA.

CIVIT was created to play a co-ordination and monitoring role in measuring and evaluating the performance of public servants and public service departments. It steers, co-ordinates and supervises evaluations and evaluation systems, ensuring they are independent and transparent. In accordance with Article 13.1 of Legislative Decree 150/09, it also ensures the comparability and visibility of performance indices and monitors compliance with transparency obligations and the implementation of the "total disclosure" principle (Articles 13.5, 13.6, and 13.8 of Legislative Decree 150/09). In furtherance of those objectives and its monitoring function, CIVIT also encourages public service departments to establish the responsible officer for transparency and for quality services in order to create a network inside each administration. The CIVIT must report annually on its activities to the Minister for the Implementation of the Programme of the Executive.

In addition, CIVIT's duties include seeing that public service departments adopt the guidelines for preparing the Triennial Programme for Transparency and Integrity (Article 13.6e) and monitoring their adoption. The guidelines were adopted in October 2010[8] and updated in January 2012.[9] However, CIVIT has no inspection or sanctioning powers. The Anti-Corruption Law invests CIVIT with the following powers: to carry out inspections, to order the disclosure of documents, and require conduct in keeping with integrity and transparency rules and standards. The Law further grants CIVIT additional powers that are an extension of its existing ones. For example, it approves the National Anticorruption Plan drafted by the DPA.

### *Independent Performance Evaluation Units (OIVs) and the Court of Auditors*

In addition, Independent Performance Evaluation Units (OIVs) were established by Legislative Decree 150/2009 to monitor and evaluate performance, efficiency, and the transparency of the civil service in an independent, autonomous manner. OIVs replaced the *servizi di controllo interno* (internal evaluation services) created by Legislative Decree 286/1999. By law, an OIV can be established only on CIVIT's advice (Article 14.3 of Legislative Decree 150/2009).

The new Anti-Corruption law stipulates that OIVs must provide advice on the preparation of public service entities' codes of conduct. They also communicate to the DPA any and all the information on political appointees. The Law does not, however, attribute any other significant role to OIVs.

The Court of Auditors is an additional player in Italy's anti-corruption institutional set-up. The country's supreme audit institution (SAI), it is a public body that carries out external audits of the state's administrative and financial management independently of the executive branch. It is a well respected, highly independent institution in Italy. It enjoys wide-ranging powers and has a well defined function as an auxiliary body to the executive and legislative branches of government. The Court acts as an "auxiliary body" in the sense that it co-operates with the bodies responsible for legislative functions, for political trend and control, and for active administration. The Court of Auditors also performs an auditing function, checking that government departments and agencies comply with the law through *ex ante* and *ex post* audits. Furthermore, it can act as a judiciary body, enjoying exclusive jurisdiction in "matters of public accounting".

All SAI documents are public and the Court must report the results of its audits directly to Parliament. All sessions of the Court's Presidency Council are open to the public, with a few specific exceptions such as staff disciplinary hearings.[10] The fundamental documents that the Court must submit yearly to the legislature for discussion are the "Relazione sul Rendiconto generale dello Stato"[11], known as the "Relazione", and the "Rapporto sul coordinamento della finanza pubblica"[12], generally referred to as the "Rapporto". They are

freely available on the SAI website. The Relazione is an account of the state's general budget. It contains the results of scrutiny of the national budget, reports on the trends in local and national finances, and the critical issues to emerge from analysis of the public accounts and the Court's auditing work. The Rapporto provides a detailed evaluation of the economic strategies of the executive branch of government and of the effectiveness of public finances.

Law 20/1994 empowers the SAI to request any document or piece of information from public service and auditing or controlling bodies and to carry out inspections and on-site checks. The Court may also compel any national, regional or local public authority to abide by rulings requiring it to amend financial irregularities detected during an *ex post* audit. Should the authority fail to comply, individual politicians or civil servants may become personally liable for the economic damage sustained as a consequence by the public service.

The SAI may fight corruption whenever misconduct robs the public finances of revenue. In 2010, the Court's Central Sections returned 47 guilty verdicts, sentencing 90 civil servants to pay damages of EUR 36 million for corruption. The Court's Regional Sections sentenced 350 civil servants to damages of EUR 255 million.[13]

### *Changes in the anti-corruption institutional set up: new functions for existing organisations*

The most important change the Anti-Corruption Law has ushered into Italy's institutional set-up is the designation of CIVIT as the national anti-corruption authority. Accordingly, the Law seeks to strengthen institutional ties between CIVIT and the civil service. To that end CIVIT now has new advisory and monitoring duties, as it may be requested to advise any public service department or agency on a wide range of issues – from public employees' compliance with codes of conduct and collective agreements to whether senior managers should be granted permission to take on external assignments. Also in its remit are questions of local relevance – it may, for example, be required to assess the conduct of an employee in a small municipality. Furthermore, Article 1.2 f – which pertains to monitoring compliance with and the effectiveness of new anti-corruption measures – widens CIVIT's powers to include monitoring compliance with transparency rules. Although some of them are optional, CIVIT's new advisory functions do strengthen its capacity to monitor and co-ordinate public service bodies' anti-corruption strategies.

CIVIT has also been entrusted with a further task. Should a prefect dismiss the secretary of a local authority, it is CIVIT's job to verify that the dismissal is not connected to the secretary's anti-corruption activities.

As regards the DPA, the Law has widened the scope of its functions. For example, it is now in charge of drawing up the rules for job rotation in senior managerial positions exposed to high risks of corruption. Its duties also include devising measures to avoid overlaps and duplication in managerial positions. In turn, CIVIT's job is to monitor the implementation and effectiveness of the rules drawn up by the DPA.

With regard to public service departments, the Law assigns different anti-corruption roles to different bodies within them. It is, for example, the responsibility of the political body to adopt an anti-corruption plan and assign an anti-corruption manager. This manager must submit the anti-corruption plan for approval and define procedures for appointing employees to high-risk activities.

The Law thus reinforces co-operation between CIVIT, the DPA, and new actors. The DPA, a structure that answers to the executive[14] branch of government, effectively becomes

the hub which collects information from government departments and prepares the national anti-corruption plan (NACP). CIVIT is the national anti-corruption authority and draws up the guidelines for public service strategies which are then included in the national anti-corruption plan drafted by the DPA. The new Anti-Corruption Law also grants the Authority for the Supervision of Public Contracts and the National School of Public Administration official roles. Table 4.1. provides a summary of the main functions of all anti-corruption bodies.

**Table 4.1. The main corruption prevention actors in Italy**

| Actor | Past Function | New Functions |
|---|---|---|
| CIVIT | Steer, co-ordinate, and supervise the independent exercise of evaluation functions.<br>Ensure the transparency of evaluation systems.<br>Ensure the comparability and visibility of performance indicators.<br>Annually inform the Minister for the Implementation of the Programme of the Executive (MIPE) of its activities. | In addition to current functions: anti-corruption authority<br>Co-operate with international and foreign bodies.<br>Approve the NACP.<br>Analyse causes and factors of corruption.<br>Give (optional)[15] advice to public service departments on employees' behaviour.<br>Give (optional) advice on authorisations for public executives to take on external assignments.<br>Monitor public service departments' compliance with their own measures and their effectiveness of such measures (including transparency rules)<br>Reports to both chambers by 31 December on action taken against corruption and illegal acts and the effectiveness of the related rules. |
| Department of Public Administration | Anti-corruption authority | Co-ordinates the implementation of anti-corruption strategies (national or international)<br>Defines (and promotes) rules and methodologies for implementing anti-corruption strategies<br>Prepares the national anti-corruption plan<br>Defines standard models for the collection of data and information<br>Defines the rules for job rotation in senior managerial positions exposed to high risks of corruption. |

**Table 4.1. The main corruption prevention actors in Italy** *(cont.)*

| | | |
|---|---|---|
| Public Service Department(s)[16] | Adopt the Triennial Programme on Transparency and Integrity (Legislative Decree 150/09).<br>Post online the CVs, annual wages, and contacts of senior managers.<br>Publish online web the list of documents necessary for a procedure on demand (Legislative Decree 70/2011). | Adopt an anti-corruption plan which contains a risk analysis and the department's countermeasures<br>Defines, with the NSPA, procedures for selecting and training employees, and the procedures for the turnover of executives working in high-risk sectors.<br>The political body adopts and transmits to the DPA the triennial anti-corruption plan by 31 January.<br>The political body nominates the anti-corruption manager (ACM).<br>Publishes online information on the unit cost of public works and services for citizens.<br>As the contracting authority, can decide that the violation of voluntary integrity instruments (namely the integrity pacts or memoranda of legality [*protocolli di legalità*]) can be grounds for exclusion from a tender.[17]<br>When referees are required, authorises the participation of its manager and determines the fee.<br>Send data and information on transparency to the CIVIT. |
| Public Service Departments Anti-corruption Managers | | Define procedures for selecting and training employees and procedures for the turnover of senior managers working in sectors at risk.<br>By 15 December publish online a report with the results of their activity and transmit it to the political body. |
| Inter-ministerial Committee | | To be nominated by the President of the Council of Ministers (PCM). |
| Prefect | | Give optional advice to local authorities on the adoption of an ACP in compliance with the national guidelines contained in the NACP. |
| National School of Public Administration | | Sets up training programmes (general and specific or sectorial) on ethics and legality. |
| Magistrates, State Attorneys and Lawyers, Members of Tax Comm. | Participation in arbitration boards<br>Referees | Participation in arbitration boards<br>Referees |

The experience of OECD countries has shown that the mandates of anti-corruption bodies should clearly delineate their substantive responsibilities in order to avoid any

overlap of functions. A clear mandate also helps integrate new institutions into existing structures and enables any co-ordination that may be necessary to ensure that anti-corruption policies are implemented consistently. The mandate should include tasks and mechanisms to identify good practices and facilitate exchange with the relevant institutions, citizens, civil society and the private sector at national and sub-national levels.

Italy appears to have succeeded in providing clear anti-corruption mandates. The new anti-corruption law has done just that for CIVIT and DPA – the two main actors – and assigns additional anti-corruption functions to other relevant players, such as the civil service and the National School for Public Administration. However, while in theory there does not seem to be any duplication of functions, the DPA's role will be central in, on one hand, co-ordinating the anti-corruption plans and action of public service entities and OIVs and, on the other hand, in interacting with CIVIT.

In point of fact, the Anti-Corruption Law makes no provision for (and therefore does not institutionalise) co-ordination between CIVIT and sub-national organisations such as the National Association of Italian Municipalities (ANCI), the National Union of the Provinces (UPI), and the Conference of the Regions and Autonomous Provinces. Yet, since 2010, CIVIT has worked with UPI and ANCI to define the transparency and integrity guidelines for the provinces and municipalities. This work would be further enhanced if CIVIT and DPA could actively partner with such bodies to implement and monitor anti-corruption initiatives at sub national levels of government.

### Anti-corruption bodies' political independence critical to their effectiveness

As in many other OECD countries, the independence of the main anti-corruption authority in Italy has played an essential role in effective prevention of corruption. Moreover, given Italy's experience with anti-corruption bodies, such as the now-abolished High Commissioner for the Fight against Corruption, independence from political interference is particularly important.

The Anti-Corruption Laws states that CIVIT is "fully autonomous and independent in its evaluations" which it carries out in co-operation with the Presidency of the Council of Ministers (through the DPA) and the Treasury (Department of General Accounting). The Minister for Public Administration and the Minister for the Implementation of the Programme of the Executive select CIVIT's members and the competent parliamentary commission must then approve them by a two-thirds majority. The candidates are then approved by the Council of Ministers and officially appointed by the President of the Republic.

This procedure is meant to ensure CIVIT's independence from the executive and is common to other independent bodies in Italy. CIVIT's inclusion in the List of National Independent Authorities drawn up by the National Institute of Statistics (ISTAT) also officially enshrines its independence. The Council of State (Italy's constitutional court) also recognised the independent nature of CIVIT in a ruling in March 2010. Moreover, the Administrative Trial Code (Article 133.1l of Legislative Decree 104/2010) includes CIVIT among independent authorities in accordance with a European directive.

The procedure for appointing and dismissing CIVIT's governing body is consistent with procedures in other countries such as Slovenia which seek to protect independence. In addition, CIVIT enjoys budgetary autonomy as Parliament approves its funding and dispenses it directly to CIVIT. Other actors, like the DPA, for example, enjoy less independence from political interference as they are offshoots of the government and must implement government policies.

## Resources key to sustainable, effective anti-corruption institutional set-up

Human and budgetary resources are essential to ensuring the sustainability of anti-corruption efforts and their effectiveness in fighting corruption. Yet the Anti-Corruption Law states that its implementation must be at no cost to public finances. It is difficult to foresee how the changes ushered in by the Law can be effectively implemented at no cost, particularly as the budget for state bodies (including CIVIT) was recently considerably reduced.

CIVIT's operating budget fell from EUR 3 571 346 in 2011 to EUR 2 435 000 in 2012, while its special projects allocation shrank from EUR 4 million in 2011 to EUR 2 435 000 in 2012. However, it is worth noting that Law 135/2012 has run the two allocations together in a single operating budget to make CIVIT's financial management more flexible.

CIVIT's human resources have also been reduced: the number of commissioners fell from five to three in 2012 However, as Article 23.1h of Legislative Decree 201/2011 clearly states, independent authorities (which commonly includes CIVIT) knew in advance of the cut in their human resources. As for staff, CIVIT has yet to complete its recruitment, as it is seeking anti-corruption specialists with skills that match the new functions assigned to it by the Anti-Corruption Law.

On the other hand, resources allocated to other actors, particularly the DPA, fluctuate yearly according to their availability and the political priorities of the executive and Parliament, which approves the Financial Act. There are no objective indicators as to budget allocations.

What's more, civil servants require greater training in integrity and anti-corruption issues. Indeed, training is essential to supporting the key institutions that make up Italy's integrity infrastructure. All basic civil servant training could include, as part of the curriculum, lectures by or discussions with anti-corruption experts on national anti-corruption policies, especially in some of the public sector's high-risk areas. There is therefore room in Italy for improving the provision of necessary resources to anti-corruption bodies.

## Proposals for action

The institutional environment for combating corruption in Italy used to be characterised by a lack of clear policy support, inadequate resources, and ill-defined functions across the different anti-corruption institutions. The Anti-Corruption Law has set out new responsibilities and functions designed to strengthen relations between all the institutional actors involved. The Law has, in fact, gone even further with the introduction of an accountability mechanism which makes it mandatory for anti-corruption bodies to report to the government. Even so, Italy is still working at putting in place efficient institutional arrangements for combating corruption. In order to reaffirm its commitment to public sector integrity, this review proposes the following action:

- The role of the DPA may enhance institutional co-ordination among anti-corruption actors in Italy. However, what will be crucial is how it will interact with the actors involved in the prevention of corruption (CIVIT) and in the implementation of anti-corruption plans and strategies (local public service institutions and OIVs).
- The Anti-Corruption Law does not address the co-ordination functions between CIVIT and sub national organisations that are set out in the provisions of the Brunetta Reform of 2009. The Law mentions neither current sub national entities (like ANCI, UPI and the Conference of Regions and Provinces) nor their functions.

Nevertheless, CIVIT and DPA could actively partner with these entities to implement and monitor anti-corruption action at the sub national levels of the government. In fact, since 2010, CIVIT has been working with UPI and ANCI to define the transparency and integrity guidelines for the provinces and municipalities. Such collaborative work could be strengthened.

- The number of new tasks and functions that the Law assigns to CIVIT generates some concerns over its capacity and sustainability. To ensure effective co-ordination between CIVIT and other institutions, it should enjoy adequate resources and the authority to evaluate the effectiveness of the general administrative systems designed to prevent and combat corruption.
- Training will be essential to supporting the key institutions that make up Italy's integrity infrastructure. All basic civil servant training could include, as part of the curriculum, lectures by or discussions with anti-corruption experts on national anti-corruption policies, especially in some of the public sector's high-risk areas.

# Notes

1. UNCAC, Art. 1, 5 and 10.
2. Art. 6 of UN Convention against Corruption.
3. Law 3/2003 established the High Commissioner for the fight against corruption and other forms of offences in the public administration, which was really set up only in 2004 (Decree of the President of the Republic 258/2004). The high commissioner abolished by Art. 68 §6 lett.a of Legislative Decree 112/2008, 133/2008.
4. SAET, 2009, Rapporto al Parlamento.
5. SAET, *La riforma della Pubblica Amministrazione in Italia*, retrieved *www.anticorruzione.it/Portals/altocommissario/Documents/Altro/SAeT_en_191109.pdf* accessed 6 December 2011.
6. Legislative decree 150/09 *Attuazione della legge 4 marzo 2009, n. 15, in materia di ottimizzazione della produttività del lavoro pubblico e di efficienza e trasparenza delle pubbliche amministrazioni* (OJ no.254 of the 31 October 2009).
7. Decree of the Ministry for Public Administration of 12 March 2010 (OJ no.75 of the 31 March 2010) "Definition of the attributions of the Commission for the Evaluation, Transparency, and Integrity of the Public Administration".
8. Available at www.*CIVIT.it/wp-content/uploads/Delibera-n.105.20102.pdf*.
9. Available at *www.CIVIT.it/?p=4923*.
10. Art. 19 and 21 of Decision 220/CP/2008 "Internal Rules for the functioning of the Presidency Council of the Court of Auditors".
11. The audit 2010 is available at *http://www.corteconti.it/controllo/finanza_pubblica/bilanci_manovra_leggi/rendiconto_generale_2009/*, accessed 08 June 2011.
12. The Report 2011 is available at *http://www.corteconti.it/export/sites/portalecdc/_documenti/controllo/sezioni_riunite/sezioni_riunite_in_sede_di_controllo/2011/delibera_28_2011_contr.pdf*, accessed 08 June 2011.
13. Audition of the President of the Court on the draft law on Corruption A.C. 4434.
14. The DPF belongs to the Presidency of the Council of Minister and is under the responsibility of the Minister for Public Administration.
15. Public administration entities can decide if they require the advice or not (optional), but once requested, they must use it (see Dossier 371 for the Senate of the Republic, p. 36).

16. According to Art. 15 of the bill, the law applies to all public administration departments.

> Art. 15. 1. *Le disposizioni di prevenzione della corruzione di cui agli articoli da 1 a 13 della presente legge, di diretta attuazione del principio di imparzialita di cui all'articolo 97 della Costituzione, sono applicate in tutte le amministrazioni pubbliche di cui all'articolo 1, comma 2, del decreto legislativo 30 marzo 2001, n. 165, e successive modificazioni*.

17. According to Legislative Decree 163/06 (Codes for contracts), the contracting authority can consider the respect-of-legality instruments set into a contract by a company in the future contracts. The bill introduces the possibility of excluding the company from the contract in force.

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# Chapter 5

# Codes of conduct

*Setting values and standards of conduct for public officials in a code of conduct is amongst the first steps towards safeguarding integrity in the public sector. This chapter undertakes a review of the provisions in the new Italian Anti-Corruption Law that require Italy to issue a new code of conduct for public officials. Based on the experience and lessons learned from OECD countries, the chapter discusses key factors that Italy needs to consider in designing and implementing a code of conduct. The importance of defining the scope and content of the code in a consultative, participative manner and the institutional framework necessary for monitoring the implementation of the code and enforcing it are highlighted as key factors. The chapter also presents an implementation strategy for Italy.*

## Towards a culture of integrity in the civil service: Values and standards of conduct

In the current context of economic crisis and fiscal consolidation, citizens' confidence in markets and government has been seriously weakened. It is therefore vital to restore trust in government as a prerequisite for building the support needed for decisive political action and structural reforms toward economic recovery. A high level of integrity in the civil service and high-quality public service delivery are key conditions for promoting trust between citizens and governments. Public officials are thus required to provide better and more responsive services while observing high standards of conduct.

Setting standards of conduct for public officials and the values for the public sector are amongst the first steps towards safeguarding integrity in the public sector. International conventions and instruments – such as the OECD Principles for Managing Ethics in the Public Service, and the United Nations Convention against Corruption (UNCAC) – recognise the use of codes of conduct and ethics as effective tools for articulating the values of the public sector and the expected conduct of public employees in an easily understandable, flexible manner. In fact, they can support the creation of a common understanding within the public service and among citizens as to the behaviour public employees should observe in their daily work and so help define misconduct.

UNCAC's Article 8 refers specifically to codes of conduct – such as the International Code of Conduct for Public Officials[1] – as an essential element in preventing corruption. The Council of Europe, too, has drafted a specific recommendation on codes of conduct for public officials, commonly referred to as the Model Code.[2] In 2000, the European Union also drew up and adopted a Code of Good Administrative Behaviour[3] which is associated with Article 41 of the EU Charter of Fundamental Rights.

Recognising the importance of defining standards of conduct in the public service, the majority of OECD member countries have drawn up codes of ethics or conduct in recent decades. Some are even in the process of drafting second- or third-generation codes based on the lessons learned from past experience. Similarly, the Italian civil service has used two different codes of conduct.

On 31 March 1994, the Ministry of Public Administration issued the first Code of Conduct for Public Employees.[4] It was then followed by the Code of Conduct for Public Officials which came into force by legislative decree on 28 November 2000.[5] The current framework for Italy's code of conduct was set out by legislative decree in 2000. However, experience suggests that the codes were not effectively implemented. The new Anti-Corruption Law urges revision of the codes and the drawing up of a new code of conduct which would embed a culture of integrity and efficiency in the Italian civil service.

This chapter undertakes a review of the provisions in the Anti-Corruption Law related to codes of conduct (CoCs). It discusses key factors that need Italy needs to consider in designing and implementing a code of conduct. It presents experience and lessons learned from OECD countries and compares them to the provisions in the new anti-corruption law. It first considers the importance of defining the scope and content of the code in a consultative, participative manner. It then addresses the institutional framework necessary for monitoring the implementation of the code and enforcing it. Finally, building upon relevant models and good practices, the chapter presents an implementation strategy for Italy.

Embedding a culture of integrity in the civil service requires defining common values to which all public employees should adhere and drawing up concrete standards of conduct that they need to apply in their daily work. From this perspective, values refer to "collectively shared principles that guide judgement about what is good and proper" (OECD, 2000), while standards of conduct are "the required criteria for actual actions of public servants/public officials" (ibid.).

Codes of conduct and ethics are generally the tools adopted to raise awareness of common values and standards of behaviour in the civil service. There has been much research into ethics codes and studies have "revealed that codes influence ethical decision making and assist in raising the general level of awareness of ethical issues" (Loe et al., 2000). The usefulness of codes of conduct is especially true when sanctions are coupled with codes of conduct and top management's commitment to the code (Ford and Richardson, 1994). Furthermore, research suggests that codes "used to define an ethical environment and their effective implementation must be as part of a learning process that requires inculcation, reinforcement and measurement" (Doig and Wilson, 1998). Overall, a code of conduct can improve organisational culture and prescribe a set of principles aimed to define conduct, culture and performance. While by themselves codes of conduct will not enhance integrity and reduce corruption in the public service, they do constitute a key element integrity frameworks. Thus it is essential to bear in mind that their success is largely dependent on the other elements of integrity frameworks (Box 5.1).

**Box 5.1. The impact of codes of ethics: Research and empirical findings**

Research in public administration into ethics codes has been very limited. In his surveys among members of the American Society for Public Administration (Bowman and Williams, 1997; Bowman, 1990), Bowman found that practitioners tend to think positively about codes and to believe that they have desirable effects. Flake and Grob (1998) performed content analyses on public sector ethics codes and found that they were "dramatically skewed in the low-road direction", i.e. they emphasised compliance with rules and laws. These and other analyses are interesting, but "a relationship between codes and actual behaviour in fact still awaits examination" (Gilman and Lewis, 1996). One public administration study (among city and county managers) into the topic found "no significant difference in the mean response scores [on a moral reasoning test] that can be attributed to whether or not a jurisdiction has a code of ethics" (Stewart & Sprinthall, 1993).

An interesting descriptive study is the 2007 survey of the New Zealand State Services Commission, which was conducted by the Ethics Resource Centre among 4 642 State servants. Ninety-six percent of the responding state servants reported that their agency had drafted standards of integrity and conduct. Half of surveyed state servants reported that their agency had a specific person, telephone line, e-mail address, or website where they could get advice about integrity and conduct issues. In sum, the findings were very mixed. This is consistent with the hypothesis that an integrity code will only have a significant impact when it is embedded in and consistent with a wider integrity management framework.

*Source*: Towards a Sound Integrity Framework: Instruments, Processes, Structures and Conditions for Implementation, GOV/PGC/GF(2009)1.

OECD countries have adopted various models of codes of conduct and ethics. Some codes both encompass the values of the public service and specify the expected standards of conduct of public employees. Two examples are the Australian Public Service Values and Code of Conduct and the Canadian Values and Ethics Code for the Public Service. Other countries have adopted more action-oriented codes which explain how the values can be translated in public employees' daily conduct – e.g. the Korean Code of Conduct

for Maintaining the Integrity of Public Officials and the New Zealand Standards of Integrity and Conduct and its related guidance document (Box 5.2).

### Box. 5.2. New Zealand Standards of Integrity and Conduct

The current New Zealand Code of Conduct for civil servants came into force on 30 November 2007, superseding the previous code, the New Zealand Public Service Code of Conduct, which had been issued in 2001 pursuant to what was then Section 57 of the State Sector Act 1988. The current Code is only delivered as a one-page document, affirming the broad characteristics of public service which should be fair, impartial, responsible and trustworthy. The Code only provides general rules of behaviour, without providing specific advice on how to behave in real-world situations. However, the Code of Conduct is not a self-standing document, as it is provided along with "Understanding the Code of Conduct - Guidance for State Servants",[6] a guide for public employees which explains the content of the Code.

**Fair**

We must:

- treat everyone fairly and with respect
- be professional and responsive
- work to make government services accessible and effective
- strive to make a difference to the well-being of New Zealand and all its people.

**Impartial**

We must:

- maintain the political neutrality required to enable us to work with current and future governments
- carry out the functions of our organisation, unaffected by our personal beliefs
- support our organisation to provide robust and unbiased advice
- respect the authority of the government of the day.

**Responsible**

We must:

- act lawfully and objectively
- use our organisation's resources carefully and only for intended purposes
- treat information with care and use it only for proper purposes
- work to improve the performance and efficiency of our organisation.

**Trustworthy**

We must:

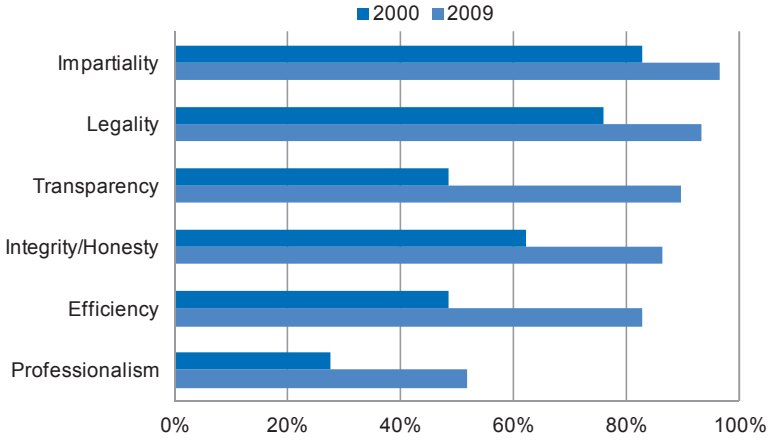
- be honest
- work to the best of our abilities
- ensure our actions are not affected by our personal interests or relationships
- never misuse our position for personal gain
- decline gifts or benefits that place us under any obligation or perceived influence
- avoid any activities, work or non-work, that may harm the reputation of our organisation or of the State Service.

*Source*: New Zealand State Services Commission, *www.ssc.govt.nz/sites/all/files/Code-of-conduct-StateServices.pdf*, accessed 5 December 2012.

Most organisations find themselves somewhere in the middle and choose a hybrid of both types of codes. They may thus, for example, opt for a code that is built around a number of values, where each value is expanded into more specific principles and standards to provide guidelines for applying values where necessary. Successful codes do not only provide a standard for public officials to strive for. They also articulate a special sense of responsibility because of the professional standing a public official may have in his/her community. Simply put, codes are written to guide behaviour.

Irrespective of the model chosen, a code of conduct should be clear, concise, and easily understandable in order to support public employees in understanding the key principles and values by which they should abide. Despite such different approaches, however, there is a general consensus as to the principles identified in national codes of conduct. Rule of law, impartiality, transparency, faithfulness, honesty, service in the public interest, and efficiency are among the major values chosen as pillars of integrity systems (Figure 5.1). In 2000, the Committee of Ministers of Council of Europe adopted a Model Code of Conduct for Public Officials which reflects those principles and from which many national codes currently in use draw inspiration.

**Figure 5.1. The evolution of core public service values and principles in OECD countries**




*Source*: OECD (2009), *Government at a Glance 2009*, OECD Publishing, Paris, doi: *http://dx.doi.org/10.1787/9789264075061-en*.

Effective codes operate at two levels: institutional and symbolic. Institutional codes articulate boundaries of behaviour as well as expectations of behaviour. In other words, they provide clear markers as to what behaviour is prohibited and expected. Codes of conduct have symbolic value in that they create a sense of participation and self-reassurance of how public officials not only see themselves but how they want to be seen by others (Gilman, 2005).

Italy has, over the past 15 years, drafted two different codes of conduct. The Ministry of Public Administration issued the Code of Conduct for Public Employees[7] on 31 March 1994 and a second one followed on 28 November 2000 through a legislative decree (Box 5.3).

Incorporating a code into a legislative framework follows the trend observed in other OECD member countries (OECD, 2000). It is necessary, however, to distinguish between

making the code a legal document and incorporating the elements of the code into the legal framework per se. Integrating elements of a code – particularly positive expectations of behaviour – into primary or secondary legislation demonstrates a clear commitment from the government, promotes compliance, and supports enforcement. Making a code a legal document may, however, render it less flexible and adaptable to emerging issues and result in a more legalistic use of language.

### Box 5.3. The current framework for the Italian code of conduct

The current framework for the Italian code of conduct was set out in the Legislative Decree of 2001 which provided certain guidelines for the drafting of the code:

The Code is to be adopted by the Ministry of Public Administration in accordance with major unions. Organisational measures to ensure quality of service for citizens must be taken into consideration.

The Code is to be published in the Gazzetta Ufficiale and should be given to public employee when hired.

Civil service departments should give employee representatives instructions for the codes to be included in contracts and their provisions to be co-ordinated with disciplinary sanctions.

For each judicial and State Legal Service, professional associations' bodies are to adopt a code for their own members. In case of inaction, the self-government body should adopt it.

The head office of each civil service department, in accordance with unions and consumers and users associations, is to verify the applicability of the code and makes possible amendments.

The heads of each civil service department should oversee the application of the code.

The civil service should plan training to raise awareness, improve knowledge and ensure the correct implementation of the code.

The Code of Conduct for Public Officials in 2000 was drafted by the Ministry of Public Administration in consultation with major unions. It does not apply to the judiciary, military, prison personnel or state police all of whom have their own codes of conduct. Agencies may use the Code as the basis for the own special codes. In this way, several agencies and local authorities have drawn up their own codes.

The Code is not itself a legally binding document and contains no disciplinary or enforcement mechanism. However, it is incorporated into collective bargaining agreements. These include a disciplinary code, which transforms the code of conduct into a legally binding instrument. In one example, the collective bargaining agreements for the regions and autonomous localities for the years 2006-9 were amended to include the Code's provisions.

Italy's current code of conduct framework draws attention to public officials' integrity obligations. It contains general principles governing public service as well as well as specific provisions regarding gifts (Article 3) and other conflict of interest issues (Articles 5 to 7). While the current framework has no special provisions on monitoring or sanctioning officials' conduct, Article 54 of the 2001 Legislative Decree stipulates that managers within each public body are responsible for enforcing rules that relate to ethics and workplace conduct.

**Box 5.3. The current framework for the Italian code of conduct** *(cont.)*

The Group of States against Corruption (GRECO) has stated that, while current code of conduct applies to civil servants, it does not apply to senior government officials. GRECO has therefore recommended that a publicly announced, professionally embraced and, if possible, an enforceable code of conduct be issued for members of Government (GRECO, 2011). GRECO has also recommended that such a code of conduct include reasonable restrictions on the acceptance of gifts other than those related to protocol. Transparency International's 2011 National Integrity Assessment has similarly stated that there is a lack of effective codes of conduct for both members of Parliament and government and that the existing ones have no adequate mechanisms for control or sanctions. However, the Anti-Corruption Law addresses these concerns.

There is no one-size fit all model for ways to effectively adopt and implement a code of conduct. However, some a number of pointers can help successful adoption and effective implementation:

1. Specific and practical: a code should serve as a guide to public officials in situations where the ethical boundaries of an act are not self-evident or immediately understood.
2. Climate of integrity: codes can help paint a clearer picture of expected behaviour.
3. Public awareness: emphasising duties and standards of behaviour increases public trust in public institutions.
4. Minimise subjectivity: a code of conduct outlines the rights and responsibilities of staff members, thus preventing arbitrary actions by public officials and employees.
5. Prevents legal consequences: adherence to the provisions stated in codes of conduct (even when not directly linked to a sanction) can contribute to public officials' and employees' understanding of the legal implications of misconduct.
6. Rewarding: codes can promote efficiency by rewarding ethical behaviour (even the reward is not tangible).
7. Accessible: a code should be an easy, accessible tool that guides daily decisions in the workplace.

One of the most common failings of a code of conduct is the creation of unrealistic expectations. Experience shows that common problems in effectively implementing codes of conduct are

- inefficiency;
- a public servant's lack of sufficient technical know-how or the knowledge to recognise an ethics problem for what it is;
- a public official not knowing what standards his/her organisation expects from him/her;
- a public official considering it to be not in his/her interest, personally or professionally, to take a stand for integrity and against corruption (Palidauskaite, 2003);

- From this perspective, certain conditions need to be met to ensure the effective implementation of a code of conduct. They include:
  - defining clear, easily understandable values and standards of conduct in a consultative, participative manner,
  - affording guidance on how to apply the code in daily work and providing an administrative structure for responding to ethical dilemmas and ensuring consistency throughout the administration in understanding the values and standards of conduct promoted by the code,
  - monitoring and assessing the implementation of the code of conduct and its impact on promoting integrity in the public service,
  - incorporating ethical dimensions into management frameworks to achieve compliance with the values of the public service.

## Building consensus on values and public employees' ownership of codes of conduct

Article 1.2 of the Anti-Corruption Law requires the Italian government to adopt a new code of conduct in place of the 2001 code within six months of the Anti-Corruption Law being approved.[8] The government's task is to draft the new code in order to promote high-quality services, the prevention of corruption, and compliance with the constitutional duties of diligence and public interest, loyalty and impartiality.

The code should include a section dedicated to senior civil servants. It should also prohibit all public servants from seeking or accepting payments, gifts, or other benefits in the line of duty. The only exceptions may be protocol-related or low-value gifts which may be accepted out of social courtesy. It is the task of the Ministry for Public Administration and Simplification – in accordance with the Conferenza Unificata, or Joint Conference, which brings together state and local public entities[9] – to draft the code. It will then be discussed by the Council of Ministers and approved by presidential decree.

To draft codes of conduct, countries generally create working groups that bring together representatives from ministries and sometimes from Parliament, the judiciary and civil society. In Austria, for example, a special working group consisting of experts from all ministries, the regional and local authorities, and public sector trade unions was set up to develop a code of conduct based on applicable law for all public sector employees at federal, local and municipal levels. The working group was mandated by the Code of Conduct for the Civil Service which was issued in October 2008.

As required by the Anti-Corruption Law, once the Ministry of Public Administration and Simplification has developed a first draft of the code it will consult the Conferenza Unificata. However, the ministry could envisage wider consultation which, in addition to public employees and institutions, would involve all stakeholders in designing the code. Such consultation might even include such indirect beneficiaries as citizens and the private sector.

The experience of OECD countries demonstrates that consulting or actively involving stakeholders in drafting the code helps build a common understanding of public service values and expected standards of public employee conduct. Stakeholder involvement would, in addition, improve the quality of the code so that it met both public employees' and citizens' expectations. The government would also be able to demonstrate its

commitment to greater transparency and accountability, thereby gaining public trust (OECD, 2001).

In order to launch an effective consultation campaign with stakeholders the Ministry of Public Administration and Simplification needs first to clarify a number of questions:

- What is the purpose of the consultation? (To receive feedback and comments from stakeholders on the draft code? Create a positive and constructive attitude towards the code in order to build trust between the public administration and society at large? Harvest new ideas to be included in the code based on citizens experiences?)
- What is the scope of the consultation? (Should it involve public employees, the private sector, civil society, academics, experts, etc.?)
- When should the consultation process be launched? (After the draft code has been written or while it is being drawn up)?

Following this clarification, the Ministry could then design the consultation process, determining its duration and the type of events and communication strategy that could be used. Consultation could also help the Ministry to understand the rationale behind Italy's existing codes of conduct, which are function- or institution-specific in nature. Examples include codes used by the Ministry of Economy and Finance, the Authority for Communications, the judiciary, the Bank of Italy, and the Antitrust Authority. Under the terms of the new anti-corruption law, such specific codes would remain in place, while others could be developed (in particular for the judiciary) as long as they were consistent with and in the same spirit as the general public service code that is be developed.

The Ministry of Public Administration and Simplification could benefit from the experience of institutions which have already drawn up codes of conduct to promote consistent public service values and standards of expected behaviour among public employees. In Brazil, for instance, the consultation process undertaken for the Comptroller General of the Union's code of conduct raised interesting issues that also served as input for the government-wide integrity framework (Box 5.3).

**Box 5.4. Consultation for an organisation-specific code of conduct in Brazil**

The Professional Code of Conduct for Public Servants of the Office of the Comptroller General of the Union was developed with input from public officials from Office of the Comptroller General of the Union during a consultation period of one calendar month, between 1st and 30 June 2009. Following inclusion of the recommendations, the Office of the Comptroller General of the Union Ethics Committee issued the code.

In developing the code, a number of recurring comments were submitted. They included: i) the need to clarify the concepts of moral and ethical values, as it was felt that the related concepts were too broad in definition and required greater clarification; ii) the need for a sample list of conflict of interest situations to support public officials in their work; and iii) the need to clarify provisions barring officials from administering seminars, courses, and other activities, whether remunerated or not, without the authorisation of the competent official.

**Box 5.4. Consultation for an organisation-specific code of conduct in Brazil** *(cont.)*

A number of concerns were also raised concerning procedures for reporting suspected misconduct and the involvement of official from Office of the Comptroller General of the Union in external activities. Some Office officials inquired whether reports of misconduct could be filed without identifying other officials and whether the reporting official's identity would be protected. Concern was also raised over the provision requiring all official from Office of the Comptroller General of the Union to be accompanied by another Office of the Comptroller General of the Union official when attending professional gatherings, meetings or events held by individuals, organisations or associations with an interest in the progress and results of the work of the Office of the Comptroller General of the Union. This concern derived from the difficulty in complying with the requirement, given the time constraints on officials from the Office of the Comptroller General of the Union and the significant demands of their jobs.

*Source*: OECD (2012), *Integrity Review of Brazil: Managing Risks for a Cleaner Public Service*, OECD Publishing, Paris, doi: *http://dx.doi.org/10.1787/9789264119321-en*.

A consultative, participative approach would support the Ministry of Public Administration in determining to whom the code applies (e.g. politicians, civil servants, contractual public employees) and its content (i.e. how to articulate common standards with specific risks related to sectors or government functions). Such an approach would not, however, be sufficient in itself. The Ministry could also consider supplementing the feedback from consultations with empirical data and risk analysis to design the code best suited to the Italian context.

Surveys and other tools for collecting empirical data would help Italy to identify the issues and concerns that are most relevant to its public service. The design and interpretation of surveys used in code of conduct programmes normally follow a number of key steps. The first consists of devising questions to elicit data on important issues requiring regulation. For example, individuals and service users in a particular agency might think that over-politicisation represents a greater danger than conflict of interest. The second step is to analyse the data and identify significant correlations. The third consists of writing the code of conduct based on the themes identified. The code can thus address the issues identified and incorporate ways in which survey respondents think that provisions can be enforced.

## Towards high standards of conduct: Educating public servants in codes of conduct

A code of conduct cannot guarantee ethical behaviour. It can, however, offer guidance on expected behaviour by outlining the values and standards to which public officials should aspire. But to be effectively implemented, it must be part of a wider organisational strategy, with the institution in question committed to training and educating employees in specific values. Designing an effective code of conduct is only one part of the overall organisational strategy for determining the behaviour expected of public officials and employees in the workplace. Training, raising awareness, and disseminating the core values and standards contained in the code are key elements of sound integrity management.

The new anti-corruption law in Italy is placing greater emphasis on training in the components of the code of conduct. It stipulates that public entities should develop their own the code of conduct training schemes. However, it offers no indications as whether a central body (e.g. the Department for Public Administration [DPA] or the Independent Commission for Evaluation, Integrity and Transparency [CIVIT]) should ensure consistency between code of conduct training programmes for public employees. Yet harmonising ethics training is necessary if all public employees are to share a common understanding of the standards of conduct expect of them.

Various types of training schemes and educational programmes exist in OECD countries. They range from rules-based training, with a focus on the obligations of public employees and sanctions in the event of misconduct, to value-based training that examines ethical dilemmas in the workplace and provides guidance on the appropriate attitudes to adopt. However, in most OECD countries training modules are developed by a single central entity that also offers guidance on how public employees should apply their codes of conduct, particularly in sensitive situations.

In 2004, Estonia adopted the so-called "Honest State" anti-corruption plan which established the Public Service Council of Ethics. The Council promotes the code of ethics and raises awareness of ethical principles in the civil service. It also designs new training initiatives and guidelines for the practical implementation of codes of ethics and conduct in public sector organisations. The Australian Public Service Commission, for example, has established the Ethics Advisory Service to provide advice and training to all public officials through dilemma-type training programmes that consider how to react in specific sensitive situations (see *www.apsc.gov.au/ethics*). In Japan, brochures are distributed to public officials with real-world examples of incidents where there may be ethical violations.

Finally, in the Netherlands, the government recently issued a brochure entitled *The Integrity Rules of the Game* that explains in clear, everyday terms the rules to which staff members must adhere. It considers real-life issues such as confidentiality, accepting gifts and invitations, investing in securities, holding additional positions or directorships, and dealing with operating assets. The Netherlands has also developed dilemma-type training to help officials recognise situations which could lead to misconduct and to react appropriately.

To effectively disseminate core values across all levels of public service, it is crucial that senior staff be trained in codes of conduct so that they can lead by example and promote high standards of conduct in their organisations. Code of conduct training should not only target newly recruited staff, it should also be provided continuously to incumbent employees.

Guidance should also be given to public institutions wishing to develop their own codes of conduct. In fact, the Anti-Corruption Law stipulates that, in accordance with independent evaluation bodies and as long as they are open to participation, all public service organisations can adopt their own codes of conduct. Such codes should incorporate the principles of the general code of conduct. CIVIT, however, is responsible for drawing up the criteria, guidelines, and standard models for specific codes of conduct. Its role is to ensure that common values and standards are shared throughout the civil service, while taking into consideration the specific risks associated with the administrative functions (e.g. public procurement) and sectors (e.g. taxation) that are most exposed to corruption.

Italy could consider tasking a specialised organisation with designing a single code of conduct training programme to ensure that all public employees receive the same training. Such an organisation could also offer guidance and counselling to public employees facing ethical dilemmas. Each public service body could then put in place training sessions and ensure that they take into account the specific nature of its area of work. It could also consider sequencing the training process so that senior staff first attend sessions in order to foster their commitment to implementing the code. Code of conduct training would then be extended to all staff. Finally, an incentive-based scheme could also be considered as a way of motivating staff to strive for high standards of conduct.

## Monitoring the implementation of codes of conduct

A code of conduct being a flexible instrument, monitoring its implementation will help determine whether it fits the bill of promoting high standards of conduct within the public service. If it does not, further guidelines may be drawn up to clarify the values and standards of conduct that the code lays down. To that end, the monitoring entity should assess:

- public employees' knowledge of standards of conduct (to determine, for example, if dissemination and training are sufficient),
- how public organisations provide guidance on the code,
- whether there are specific codes aligned with the administration-wide code,
- whether there are mechanisms for reporting misconduct and if they are used, and
- how many disciplinary actions were taken.

Tools, such as surveys of public employees or analyses of disciplinary procedures, could support such monitoring and assessment.

In Italy, the Anti-Corruption Law introduces additional provisions pertaining to the implementation of codes of conduct. It puts the heads of public entities in charge of overseeing implementation and requires the DPA to carry out an annual review of how the codes have been implemented. CIVIT, as the national anti-corruption authority, has a role to play in issuing non-binding recommendations on how civil servants should comply with the law, the implementation of codes of conduct, and collective and individual employment contracts. The Law also gives CIVIT a significant role in the implementation of the many provisions included in the code of conduct, such as expressing its opinion when public employees take on outside work.

A body which oversees and monitors the implementation of the Code of Conduct for Public Employees and compliance with standards of behaviour seems crucial to making the Code a valuable, efficient contribution to the improvement of the public sector. Although the heads of public entities will be responsible for ensuring high standards of employee conduct day-to-day for taking appropriate action in the event of misconduct, a central entity could, nevertheless, ensure that government-wide monitoring is undertaken to promote high standards of conduct throughout the public service. Effective institutional co-ordination between actors involved in the implementation of the Code remains essential. This role seems to be entrusted principally to the DPA with the collaboration of CIVIT. The DPA, should, however, draw up a specific action plan beyond the yearly reporting mechanism to ensure – on a regular basis that the heads of public entities are consistently implementing the Code.

## Enforcement and compliance: Incorporating ethics into the management framework

Institutional frameworks for codes of conduct at managerial level in OECD countries generally include sanctions for non-compliance. Their severity varies. In Japan, non-compliant public officials may be formally reprimanded and urged to abide by the standards of conduct or they may be admonished and invited to resign from the chair of a committee. In the United Kingdom, sanctions for violations of the public officials' code of conduct may include suspension. In the United States, violations of the executive branch code of conduct can result in disciplinary action that ranges from reprimand through dismissal. In one study, Bruce (1996) showed that "a clearly worded code of conduct (or ethics) with sanctions" is the best way to curb corruption in government. However, she also concluded that sanctions have limited impact on the behaviour of public officials, observing that the mere fact of having a code substantially affected behaviour.

The Anti-Corruption Law stipulates that corruption-related breaches of the Code of Conduct for Public Officials are subject to disciplinary action. Other breaches are sanctioned in accordance with the relevant administrative and financial regulations. The sanctions for the most serious breaches to the code of conduct are set out in Legislative Decree 231/2001.

Who actually enforces the code of conduct varies from country to country. It may be an independent body, the head of a public service entity, its human resources department, or a department with an audit function. In Italy, the enforcers are public administration entities (which investigate possible and monitor how the code works) and the DPA (which sets the criteria for rotating senior officers in areas which are most exposed to the risk of corruption). In public entities, the human resources departments – in particular their disciplinary units – sanction misconduct in accordance with the relevant legislation. In addition, the Anti-Corruption Law requires a selected public official in each government department to oversee the anti-corruption plan and prevent breaches. The rationale behind this is to create a higher sense of accountability within all public institutions.

However, the Law remains unclear on the reporting mechanisms in the event of misconduct within entities, particularly with regard to senior management. It would be beneficial to provide clear guidance to public officials on the mechanisms at their disposal for reporting misconduct. Additionally, the DPA should play a role in ensuring that sanctions for corruption are applied consistently in all public entities.

The Anti-Corruption Law also identifies or amends practices which will probably be covered by the new code of conduct. One example will be the practice of revolving doors. Public employees who have exercised authoritative or negotiating powers on behalf of a public service organisation may not, in the three years following their departure from the public sector, engage in employment or professional activities in those private entities which they had dealings. Contracts that violation this provision are void and the private persons who signed them are barred from contracting with the public sector for three years. In addition, payments received as a consequence of these contracts must be returned. The new code of conduct will need to incorporate this new regulation and promote consistently applied sanctions throughout the civil service in such high-risk areas.

## Proposals for action

The Italian authorities today have the opportunity to adopt a new code of conduct which has enough substance and powers of enforcement to address the concerns discussed in this chapter. The experience of OECD countries points to three different proposals for action that could help a code of conduct be successfully adopted and implemented.

### *Combining participative and evidence-based approaches to determine the content of the new code of conduct*

The experience of OECD countries shows that an inclusive, consultative approach towards designing codes of conduct is essential to ensuring take-up and implementation. The Ministry of Public Administration should adopt such an approach in order to define *i)* the values of the public administration, *ii)* the standards of conduct expected of public officials, *iii)* the scope of the code and to whom it shall apply.

The consultation process, however needs to be carefully organised around three questions: What is the purpose of consultation? How long should it last? How wide should it be?

Consultation and participation could also be complemented by an evidence-based approach. Its aim would be to gather comparative data on the values and standards of conduct that need to be reflected in the code in order to meet the expectations of public officials, citizens, and the private sector.

It is essential that the content and issues covered by the code build on Italy's existing sector-related codes of conduct so as to promote consistent values and standards of conduct throughout the public service.

### *Towards implementation of the code of conduct: training, educating, counselling and monitoring*

Clearly, a code of conduct forms part of a wider integrity framework and requires an institutional set-up that can raise awareness of the code and provide training, education and guidance to public officials. To be effective such guidance should be consistent throughout the public service. From this perspective, the Ministry of Public Administration could work with CIVIT to develop national training modules which the heads of public entities would then applied and tailored organisational level.

Training and education may range from value-oriented to rules-based and dilemma-type programmes in order to help public officials fully grasp all that the code entails. Irrespective of types of training, however, senior management should attend so that they can lead by example and off constant guidance to all staff on how to apply the code day-to-day. Exactly how this guidance will be provided at the organisational and the central government levels is yet to be clarified. Combining training with an incentive-based programme could also help motivate public officials to strive for high standards of conduct.

The Anti-Corruption Law stipulates that the Ministry of Public Administration, working with CIVIT, should conduct an annual review of how the code of conduct has been implemented and applied. The participation of CIVIT in the conduction of this annual implementation review remains to be defined. To support this process, the DPA

should consider developing a specific action plan to ensure that the heads of public entities are implementing the code. This plan should assess:

- public employees' knowledge of standards of conduct (to determine, for example, if dissemination and training are sufficient),
- how public organisations provide guidance on the code,
- whether there are specific codes aligned with the administration-wide code, and
- whether there are mechanisms for reporting misconduct and if they are used.

*Enforcement and compliance*

It is essential that an efficient, consistent enforcement mechanism be designed in order to ensure compliance with the code. The DPA needs to ensure that public entities adopt a consistent approach to sanctioning misconduct. The new offences that the Anti-Corruption Law which will be introduce should also be sanctioned consistently across the public service.

# Notes

1. The International Code of Conduct for Public Officials was approved by the UN General Assembly. The Code can be consulted in the Annex to General Assembly Resolution 51/59 on Action against Corruption of 12 December 1996 (see *www.un.org/documents/ga/res/51/a51r059.htm*).
2. Ibid.
3. *http://ec.europa.eu/transparency/civil_society/code/index_en.htm*.
4. Published in Gazzetta Ufficiale n.149, 8 June 1994.
5. Legislative Decree No. 165 of 30 March 2001. Articolo 54 Codice di comportamento (Art. 58-bis del d.lgs n. 29 del 1993, aggiunto dall'art. 26 del d.lgs n. 546 del 1993 e successivamente sostituito dall'art. 27 del d.lgs n. 80 del 1998).
6. *www.ssc.govt.nz/sites/all/files/Understanding-the-Code-of-Conduct-April2010.pdf*.
7. Published in Gazzetta Ufficiale n.149, 8 June 1994.
8. Article 3, Paragraph 3. L'articolo 54 del decreto legislativo 30 marzo 2001, n. 165.
9. Conferenza Unificata is a public body composed by central and local administration representatives. It is designed to improve co-operation between State and local entities in matters of joint interest.

# *Annex 5.A1*

## Australian public service values

The Australian Public Service Commission has identified values of public service to which all public officials must adhere. These values were formulated in a clear and workable manner, facilitating adherence.

The Australian Public Service (APS):

- is apolitical, performing its functions in an impartial and professional manner;
- is a public service in which employment decisions are based on merit;
- provides a workplace that is free from discrimination and recognises and utilises the diversity of the Australian community it serves;
- has the highest ethical standards;
- is openly accountable for its actions, within the framework of Ministerial responsibility to the Government, the Parliament and the Australian public;
- is responsive to the Government in providing frank, honest, comprehensive, accurate and timely advice and in implementing the Government's policies and programmes;
- delivers services fairly, effectively, impartially and courteously to the Australian public and is sensitive to the diversity of the Australian public;
- has leadership of the highest quality;
- establishes workplace relations that value communication, consultation, co-operation and input from employees on matters that affect their workplace;
- provides a fair, flexible, safe and rewarding workplace;
- focuses on achieving results and managing performance;
- promotes equity in employment;
- provides a reasonable opportunity to all eligible members of the community to apply for APS employment;
- is a career-based service to enhance the effectiveness and cohesion of Australia's democratic system of government;
- provides a fair system of review of decisions taken in respect of employees.
- agency heads are bound by the Code of Conduct, like all APS employees, and have an additional duty to promote the APS Values.

*Source: www.apsc.gov.au/values.*

# *Annex 5.A2*

## The Canadian Values and Ethics Code for the Public Service

The Values and Ethics Code is divided into four chapters: 1) Statements of Public Service Values and Ethics, 2) Conflict of Interest Measures, 3) Post-employment Measures, and 4) Avenues of Resolution. Recalling all the regulations and policies by which civil servants should abide (such as the Access to Information Act, Privacy Act, Financial Administration Act, Policy on Internal Disclosure of Information Concerning Wrongdoing in Workplace, etc.), each chapter has been divided into sections that address a few main ideas in order to make the code easily interpretable and avoid detailed provisions. Thus, the Code succeeded in defining clear and concise standards of conduct.

As for the standards of behaviour in dealing with citizens and colleagues, the Canadian Code has defined the values that should guide this behaviour under the title "People Values", which require civil servants to "demonstrate respect, fairness and courtesy in their dealings with both citizens and fellow public servants". This general statement has been further explained in a set of concrete principles namely:

- Respect for human dignity and the value of every person should always inspire the exercise of authority and responsibility.
- People values should reinforce the wider range of public service values. Those who are treated with fairness and civility will be motivated to display these values in their own conduct.
- Public service organisations should be led through participation, openness and communication, and with respect for diversity and for the official languages of Canada.
- Appointment decisions in the public service shall be based on merit.
- Public service values should play a key role in recruitment, evaluation and promotion.

Finally, concerning the application of Code, a separate section determines the responsibilities, authorities and accountabilities of public servants, deputy heads and senior managers, the Treasury Board (which developed the Code and provides guiding materials on how to implement it) and the Public Service Integrity Officers (who are in charge of receiving, recording and reviewing disclosures of wrongdoing). Complementary regulations and guidance to implement the Code provide further details on how to apply the standards of conduct in specific situations.

*Source*: *www.tbs-sct.gc.ca/pubs_pol/hrpubs/tb_851/vec-cve-eng.asp* (Archived).

## *Annex 5.A3*

# The Austrian Code of Conduct to Prevent Corruption: the responsibility rests with me

As transparent as possible – as discreet as necessary.

I work transparently and comprehensibly, and, because of my duty of disclosure, inform individuals and the public about my professional actions.

However, it is also clear to me that, depending on my area of work, I am subject to various and specific obligations to maintain secrecy that limit my duty of disclosure. These also continue to apply after I have retired from or left public service.

Under certain circumstances, passing on information acquired solely in the course of my official duties may violate the justified interests of third parties. Such interests include, above all, particular public interests such as the maintenance of law, order, and public security; foreign relations, national defence or the economic interests of public bodies. I may seek to be released from certain obligations to maintain secrecy. Of course, I also seek to protect the interests of individuals, in particular personal rights and their basic right to data protection.

If a member of the public approaches me with a request to pass on information, I carefully balance his/her interest in receiving this information with those private or personal interests which could be violated by passing on or even publishing the information. Above all, I endeavour to avoid compromising individuals.

In case of doubt, I seek the advice of my manager. I document my forwarding or refusal to forward the relevant information and also the reasons for my decision.

*Source: www.bka.gv.at/DocView.axd?CobId=40151.*

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# Chapter 6

# Whistleblower protection

*Public officials are most likely to detect wrongdoing in the workplace, such as fraud, misconduct or corruption. However, experience shows that when a so-called whistleblower reports such cases they may suffer various forms of retaliation. The protection of whistleblowers is therefore an integral tool in an integrity framework to prevent and combat corruption. In Italy, until the adoption of the new Anti-Corruption Law, no legal protection was provided to whistleblowers. In line with the G20 Guiding Principles for Whistleblower Protection Legislation developed by the OECD, this chapter analyses the relevant provisions in the new Anti-Corruption Law. It also provides a gap analysis assessment and mitigation strategy to ensure the effective protection of whistleblowers in Italy.*

## Whistleblower protection as an integral part of integrity frameworks

Public officials[1] are most likely to detect fraud, misconduct or corruption in the workplace. However, many countries currently lack the proper legislation to protect people who disclose secret or confidential information. Furthermore, public officials have little incentive to report misconduct or corruption for fear of retaliation or because so doing would be at considerable cost to their career. Many OECD countries have recently advanced the cause of whistleblowers with legislation to protect employees in both the private and public sector from retaliation.[2] Comprehensive whistleblower protection (WBP) has become an important tool in integrity frameworks.

Twenty-nine OECD member countries have instituted some form of whistleblowing protection (OECD, 2009a). Despite country variations, all protection arrangements includes a legal obligation for public officials to report misconduct and/or procedures for protecting whistleblowers and enforcing fair treatment after a disclosure has been made. However, few countries have clear legislation that offers comprehensive protection to whistleblowers. This review suggests that comprehensive legislation should supersede Italy's statutory provisions to protect people who disclose information in the public interest.

This chapter is divided into five main parts. First, it discusses the importance and relevance of WBP as an integral tool in an integrity framework. Second, it reviews the current legal WBP setting in Italy. Third, it analyses the current provisions in the Anti-Corruption Law. The four part provides a gap analysis assessment and mitigation strategy. The final part offers recommendations for implementation.

The risk of corruption is significantly higher in environments where reporting wrongdoing is not supported or protected. Public sector employees have access to up-to-date information on practices in their workplaces are usually the first to recognise wrongdoings (UNODC, 2004). It is essential to facilitate reporting to shed light on a secretive act since the victims of corruption are generally difficult to identify. Due to the nature of corrupt practices, the traditional ways of reporting wrongdoing or offences to the authorities do not work. In addition, corruption is by nature covert and is very difficult to uncover. Even when corruption it is uncovered, it is often after a considerable period of time and statutes of limitations may have passed.

Whistleblower protection is essential if the exposure of misconduct, fraud and corruption is to be encouraged. Effective protection supports an open organisational culture and plays an important role in safeguarding the public interest and promoting a culture of public accountability and integrity. However, experience shows that those who report wrongdoings may be subject to reprisals in the form of dismissal or intimidation, harassment, or physical violence from co-workers or superiors. In many countries, whistleblowing is even associated with treachery or spying (Banisar, 2011; Transparency International, 2009).

It is therefore important to both support and protect whistleblowers. In the public sector, public servants need to know what their rights and obligations in respect of exposing actual or suspected wrongdoing within the public service. These should take the form of clear rules and procedures that officials can follow and a formal chain of responsibility. Public servants also need to know what protection they will be afforded should they expose wrongdoing (OECD, 1998a).

International instruments for combating corruption are recognition of the need for whistleblower protection laws to be in place as part of an effective anti-corruption framework. Among the first such instruments were Principle 4 in the OECD Recommendation on Improving Ethical Conduct in the Public Service, the Principles for Managing Ethics in the Public Service (1998b), and the 2003 OECD Recommendation on Guidelines for Managing Conflict of Interest in the Public Service. The third publications includes guidelines to help countries to "[p]rovide clear rules and procedures for whistleblowing, and take steps to ensure that those who report violations in compliance with stated rules are protected against reprisal, and that the compliant mechanisms themselves are not abused."

Whistleblower protection requirements have also been introduced in the United Nations Convention against Corruption,[3] the Council of Europe's civil and criminal law conventions on corruption,[4] the Inter-American Convention against Corruption,[5] and the African Union Convention on Preventing and Combating Corruption.[6] The 2009 OECD Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (2009b)[7] sets out ways of protecting whistleblowers in the public and private sectors.

In 2010, the importance of whistleblower protection was reaffirmed at the global level when the G20 Anti-Corruption Working Group recommended that G20 leaders support the Guiding Principles for Whistleblower Protection Legislation as a benchmark for enacting and reviewing whistleblower protection rules by the end of 2012 (see Box 6.1). As a result, the international legal framework for establishing effective whistleblower protection laws at country level has been strengthened.

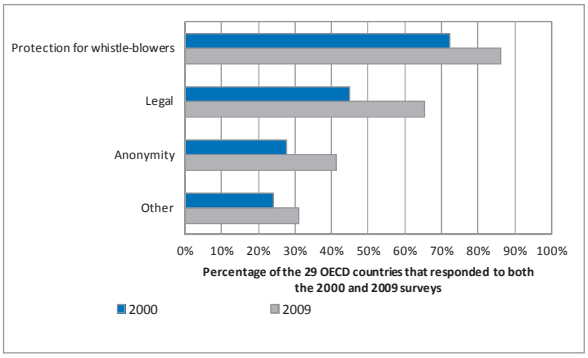
**Box 6.1. G20 guiding principles for whistleblower protection legislation**

1. Clear legislation and an effective institutional framework are in place to protect from discriminatory or disciplinary action employees who disclose in good faith and on reasonable grounds certain suspected acts of wrongdoing or corruption to competent authorities.
2. The legislation provides a clear definition of the scope of protected disclosures and of the persons afforded protection under the law.
3. The legislation ensures that the protection afforded to whistleblowers is robust and comprehensive.
4. The legislation clearly defines the procedures and prescribed channels for facilitating the reporting of suspected acts of corruption, and encourages the use of protective and easily accessible whistleblowing channels.
5. The legislation ensures that effective protection mechanisms are in place, including by entrusting a specific body that is accountable and empowered with the responsibility of receiving and investigating complaints of retaliation and/or improper investigation, and by providing for a full range of remedies.
6. Implementation of whistleblower protection legislation is supported by awareness raising, communication, training and periodic evaluation of the effectiveness of the framework of protection.

In some countries whistleblower protection is still in its infancy. However, it is increasingly recognised as an essential anti-corruption instrument and a key factor in promoting a culture of public accountability and integrity. Indeed, the percentage of

OECD countries that afford whistleblowers protection grew from 44% in 2000 to 66% in 2009 (see Figure 6.1).

**Figure 6.1. OECD Countries that offer protection for whistleblowers, %, 2000 and 2009**




*Source*: OECD (2009), *Government at a Glance 2009*, OECD Publishing, Paris, doi: *http://dx.oi.org/10.1787/9789264075061-en*.

Enshrining whistleblowing protection in legislation legitimises and structures the mechanisms under which public sector employees can disclose wrongdoings. It also protects public sector employees against reprisal and, at the same time, encourages them to do their duty and carry out efficient, transparent and high quality public service. If properly implemented, legislation to protect public sector whistleblowers may become one of the most effective tools for supporting anti-corruption initiatives and exposing and combating misconduct, fraud and mismanagement in the public sector (Council of Europe, 2008). Absence of appropriate legislation hampers the fight against corruption and exposes whistleblowers to risks of retaliation (Banisar, 2011).

## Whistleblower protection in Italy

The need to afford whistleblowers effective protection has been much talked about for some time in Italy. The country has no legislation specifically to protect whistleblowers and relies mostly on labour law – particularly on protection against unlawful dismissal.[8] Article 18 of the so-called "Workers' Statute", entitled "Reappointment to a position", states that the dismissal is not effective if:

- there is not a just cause or it cannot be justified;
- the employer is an organisation that employs more than fifteen people (five if the employer is a farmer);
- the employee is hired with a permanent contract.

If dismissal is proved to be unlawful, the employer must reappoint the employee to the same position with the same duties and compensate the employee for his/her lost earnings from the day of the dismissal (compensation cannot be lower than five months of salary). The employee may choose not resume his/her job, in which case he/she can ask for a compensation equal to fifteen months of salary.

The Labour Code states that employees are entitled to report misconduct under the general right to freedom of expression, but it does not set forth any reporting procedures.

Case law seems to have applied this Labour Code provision to workers dismissed out of retaliation for whistleblowing. However, experience shows that dismissal is only one way in which a whistleblower may be silenced. In practice, reprisals take different forms, such as demotion, transfers, and hostile behaviour. Whistleblowers in Italy do not, in fact, enjoy protection against these or other forms of reprisal.

Article 45 of Legislative Decree 231/2007 on the Prevention of Money Laundering provides identity protection for a person reporting acts related to money laundering and terrorist financing. Yet this confidentiality can be waived at the request of the judicial authorities.[9] The Civil Code also contains provisions which can be assimilated to whistleblowing protection. Article 2408, for example, entitles shareholders of private companies to report any perceived wrongdoing or alleged irregularities to the Board of Auditors.[10]

An additional provision in the Italian legal framework that is relevant to whistleblowing (and exists in many other countries) requires public officials to report wrongdoing they become aware of in the line of duty.[11] If they fail to do so they may be sanctioned. Article 361[12] pertains to the "failure to report a crime by a public official" and stipulates the following:

> The public official who fails to report or delays reporting to the court, or to another authority which has the obligation to report to the court, an offence that he or she has become apprised of in the performance of his duties or because of his or her functions, shall be punished with a fine ranging from EUR 30 to EUR 516. The sanction is imprisonment of up to one year, if the offender is a judicial police official or agent, who learned of the offence but did not report it. The above provisions shall not apply when the offence that is punishable solely on the allegation of the offended party.

However, such an obligation and its associated punishment have proven to be ineffective in encouraging or compelling public officials to report wrongdoing in the public sector. It has been even more ineffective in corruption-related offences. Only a few cases have come before the courts in recent years,[13] probably because it is practically impossible to prove that a public official knew about a corruption offence yet failed to report it or because the EUR 516 fine is so low.

Witness protection laws and schemes are also indirectly related to whistleblower protection afforded by the law. Yet in Italy there is no witness protection law that could be used in cases of whistleblowing. There is, however, a law that protects witnesses who co-operate with the authorities. Known as "witnesses of justice", they are former members of criminal organisations who are given protection in exchange for their co-operation. However, this kind of protection ensures personal safety rather than job security and clearly does not apply to cases of public officials reporting corrupt practices in the public sector to the authorities.

These different provisions form Italy's current legal framework for whistleblowing. It is a fragmented framework that is not in practice intended for whistleblowers. Furthermore, it is confined to limited measures of protection and fails to provide mechanisms for reporting or enforcement.

The lack of protection afforded to whistleblowers in Italy has been highlighted by several international actors. The OECD Working Group on Bribery recommended "that Italy consider introducing stronger measures to protect employees who report suspicious facts involving bribery in order to encourage them to report such facts without fear of

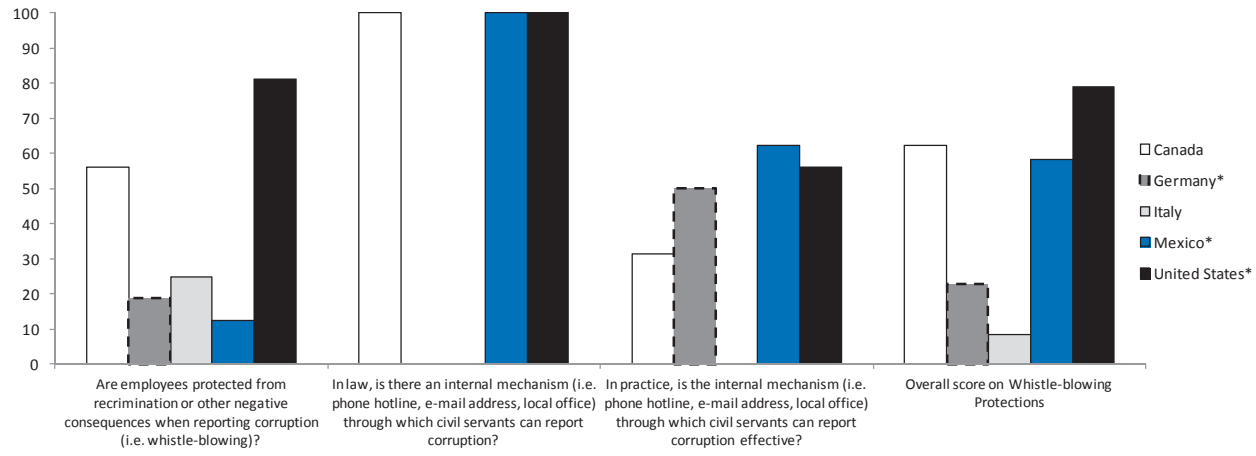
retribution" (OECD, 2007). The Council of Europe's Group of States against Corruption (GRECO) has also been critical of the poor whistleblower protection in Italy. It has recommended that "an adequate system of protection for those who, in good faith, report suspicions of corruption within public administration (whistleblowers) be instituted" (GRECO, 2011).

The Italian authorities responded to GRECO that the current Anti-Corruption Law includes a provision on whistleblower protection. However, GRECO considered the provision was limited and fell short of its recommendation. It argued that, in addition to the provision protecting whistleblowers:

> [A] more comprehensive/detailed protection framework for civil servants reporting suspicions of corruption in good faith, including concrete provisions on how reporting can be done in practice (e.g. internal/external reporting lines, confidentiality assurances, degree of suspicion) and the relevant mechanisms to protect them from retributive action (e.g. authorities and systems for enforcing protection, forms of compensation)" could also be provided.

Transparency International (2009) and Transparency International Italy (2009) have also highlighted the need for Italy to provide proper whistleblower protection,[14] and Global Integrity has given a very low score to Italian whistleblower protection (Figure 6.2).

**Figure 6.2. Global Integrity scores for whistleblower protection in selected OECD countries**




Note: * Data for Germany, Mexico and the United States as of 2011.

*Source:* Global Integrity Report for Canada (2010), Germany (2011), Italy (2010), Mexico (2011) and United States (2011), available at *www.globalintegrity.org/report*.

## The Anti-Corruption Law's provision on whistleblower protection

The Anti-Corruption Law introduces the first provision specific to the protection of whistleblowers in the Italian legal framework. It is Article 1.51 of the Law, entitled "Introduction of Article 54b into Legislative Decree No. 165 of 30 March 2001", which states the following:

The following Article shall be introduced after Article 54 of Legislative Decree No. 165 of 30 March 2001: Article 54b. - (Protection for public employees reporting offences).

1. Except in cases involving liability for slander or defamation or on the same basis pursuant to Article 2043 of the Civil Code a public employee who reports to the judicial authorities or the Court of Auditors or informs his superior of unlawful conduct which has come to his attention in the performance of his duties may not be punished, dismissed or subjected to direct or indirect discriminatory measure, having an effect on his working conditions for reasons directly or indirectly related to the report.

2. The identity of the individual making the report may not be disclosed without his consent during disciplinary proceedings, provided that the disciplinary action was initiated on the basis of different evidence in addition to the report. If the disciplinary action was initiated entirely or partly on the basis of the report, the individual's identity may only be disclosed if this information is absolutely indispensable for the defence of the individual accused of misconduct.

3. The adoption of discriminatory measures shall be reported to the Department for Public Administration by the interested party or by the trade union organisations with greatest representation within the administration in which they were implemented in order to enable the appropriate action to be taken.

4. The statement shall not be available for access in accordance with Articles 22 et seq. of Law no. 241 of 7 August 1990.[15]

This article introduces whistleblower protection provisions into Legislative Decree 165/2001 which regulates the general employment rules and procedures for public service employees. According to Paragraph 1, persons liable for slander[16] (untruthfully reporting to the relevant authority a person for committing an offence or simulation of the proof of a crime), for defamation[17] (any communication that harms the reputation of another person or persons), or liable for an unjust action[18] (due to pay compensation for damages) will not be afforded the foreseen protection. With these three exceptions, public employees should receive protection when reporting unlawful conduct. However, in order to obtain protection the public employee needs first to report wrongdoing to a judicial authority, the Court of Auditors, or his/her superior.

With regard to the wrongdoing reported or disclosed, the Law describes it as any illicit behaviour of which a public employee becomes apprised of through his/her employment. Whistleblowers are protected against three types of workplace reprisal they may undergo as a result of reporting wrongdoing: i) dismissal, ii) disciplinary sanctions; iii) direct or indirect discriminatory measures. The list of possible retaliatory actions, particularly discriminatory measures, could be interpreted to include a wide variety of reprisals, such as demotion, harassment, forced transfer, bullying, etc. The Law also provides that discriminatory measures must be referred to the DPA.

Article 1.51 also provides that a whistleblower's identity shall be kept confidential. It may, however, be revealed in cases where disciplinary charges against the alleged wrongdoer are based exclusively on the whistleblower's report, or where the knowledge of the whistleblower's identity is absolutely necessary to the alleged wrongdoer's defence.

## Gap and mitigation analysis of whistleblower protection in the Anti-Corruption Law

The experience of countries that provide whistleblower protection shows that it may originate either from comprehensive, purpose-designed laws and/or specific provisions in different laws. Among OECD member countries, Australia,[19] Canada,[20] Japan,[21] the United Kingdom,[22] and the United States[23] have passed comprehensive legislation specifically to protect public sector whistleblowers. The UK's legislation is considered to be one of the most highly developed and comprehensive (Banisar, 2011) due to its adoption of a single disclosure regime for both private and public sector whistleblowing protection (Chene, 2009). The UK also offers a hybrid scheme which includes public sector functions outsourced to private contractors.[24]

In the United States, the Whistleblower Protection Act of 1989 was recently supplemented by whistleblowing provisions in the Sarbanes-Oxley Act and the Dodd-Frank Wall Street Reform and Consumer Protection Act. These two acts are targeted primarily at the private sector, yet also constitute part of the framework that protects whistleblowing employees of the federal government from reprisal and provides for redress. The Canadian Public Servants Disclosure Protection Act of 2005 applies only to disclosures made by the Canadian federal public service and to some federal Crown corporations. Australia's whistleblower legislation provides protection only for public sector whistleblowers, even though some jurisdictions in Australia offer hybrid schemes that afford protection to public employees on assignment in the private sector. The Japanese Whistleblowing Protection Act protects both public and private employees who make disclosures in the public interest. Article 7 of the act specifically addresses the "treatment of national public employees in regular service" and prohibits dismissal or any mistreatment in reprisal for whistleblowing.[25]

Other countries offer some form of whistleblower protection through one or more laws or statutory provisions and are generally to be found in criminal, labour and civil codes. Countries that make no specific reference to whistleblowers yet offer protection through statutory provisions include Austria, Denmark, Estonia, Finland, Greece, Poland, Slovakia, Sweden and Turkey (Council of Europe, 2009). However, as these statutory provisions cover specific persons or acts only, protection is limited.

Whistleblower protection may draw on a range of sources of law. The enactment of a comprehensive, whistleblower-specific law is an effective legislative means of affording protection. The visibility of a comprehensive, stand-alone piece of legislation would make it easier for governments and employers to promote (Banisar, 2009). This approach also allows the same rules and procedures to apply to all public sector employees, rather than piecemeal or sector-based approaches which often apply only to certain employees and to the disclosure of certain types of wrongdoing. Stand-alone legislation would also increase legal certainty and clarity.[26]

Sectoral laws are generally adopted in a piecemeal fashion through statutes governing only certain types of persons or information. One disadvantage is that outside certain sectors little is known about the scope of protected disclosures and who may be entitled to protection. Further, sectoral laws tend to focus only on disclosure and retaliation (Banisar, 2009) and not on strengthening the integrity framework.

In both stand-alone legislation and sectoral laws whistleblower protection should be supported by effective awareness-raising, communication, and training. Communicating to public sector employees their rights and obligations with respect to exposing

wrongdoing is essential. An effective way to raise awareness is to require by law that employers continually post notices informing employees of their entitlements to protected disclosures. Furthermore, public sector managers should be adequately trained in receiving reports and in recognising and preventing occurrences of discriminatory and disciplinary reprisals against whistleblowers.

Regardless of the legal approach, however, what is important is to ensure that the full scope of whistleblower protection is in place and that it includes – at the very least – clear, comprehensive legislation, clear procedures and channels for reporting wrongdoing, and robust protection against retaliatory action. (Box 6.10).

**Box 6.2. Overview of comprehensive whistleblower protection**

| Clear, comprehensive Legislation | Mechanisms for protections | Clear procedures and channels for reporting wrongdoings | Enforcement mechanisms |
|---|---|---|---|
| Clear definitions<br>"Good faith" or "reasonable grounds"<br>Scope of coverage<br>Scope of protected disclosures and persons afforded protection | Protection against retaliation<br>National security<br>Anonymity and confidentiality<br>Burden of proof | Channels for reporting<br>Hotlines<br>Use of incentives to encourage reporting | Oversight and enforcement authorities<br>Availability of judicial review<br>Remedies and sanctions for reprisals |

Although the Anti-Corruption Law introduces protection for whistleblowers, there are still large gaps which prevent Italy from providing an effective protection mechanisms. The provision needs to be made more specific. Drawing on the requirements set out in Box 6.2, the gap analysis in Box 6.3 reveals weaknesses in the efficacy of the Anti-Corruption Law. A public sector whistleblowing protection law should emphasise key features, protection arrangements, reporting procedures, and enforcement mechanisms. The gaps stem from the inability of the current system (i.e. the Anti-Corruption Law) to meet the design principles established in Box 6.2 and the functionality and usability requirements detailed in Box 6.3.

**Box 6.3. Summary of gap analysis and mitigation strategies**

| Recommendation | Gap | Mitigation |
|---|---|---|
| 1. Clear, comprehensive legislation | The Law does not seem to take into account the entire whistleblowing cycle. Nor does it specify procedures then could be adopted. "Good faith" provisions are not clear. Furthermore, the persons afforded protection are "public employees" only. | Including other categories of workers – consultants, contractors, interns, volunteers, former employees, etc. – would widen the range of persons afforded protection. Furthermore, including a "good faith" and "reasonable grounds" clause could help to reduce false and bad faith disclosures. |
| 2. Mechanisms for protection | Public employees who are in violation of possible antitrust procedures when making disclosures risk retaliation under Article 1.51 of the anticorruption law. Furthermore, confidentiality criteria are not entirely clear. There is no indication as to whether anonymous reports would be accepted. | The Italian law should clearly list all possible retaliatory actions to avoid possible disputes over interpretation. Furthermore, the provision should clearly state exemptions to whistleblower protection (e.g. national security). It is also recommended that a burden of proof provision be included to further protect whistleblowers. |
| 3. Clear procedures and channels for reporting wrongdoings | There is no indication as to whom public officials should report wrongdoings in order of preference. Other external channels also appear to be excluded. | By explicitly stating disclosure channels, the Law could facilitate disclosures. Further, hotlines and help lines provide guidance both inside and outside the organisation. |
| 4. Enforcement mechanisms | The Law considers only punishment, dismissal and direct or indirect discriminatory measures as covered retaliatory acts.<br>Article 1.51 does not provide any redress for whistleblowers who have suffered retaliation. | The Law does not seem to take into account the entire whistleblowing cycle. Nor does it specify procedures that could be adopted. The Law should various forms of redress. |

Regulating the complex area of whistleblower protection in a single provision necessary leads to numerous gaps. Areas in which the Anti-Corruption Law's provision is found most wanting are examined below.

## Clear, comprehensive legislation

### *Definitions and scope*

There is no common legal definition of what constitutes whistleblowing. In the context of international anti-corruption standards, the OECD (2009b) refers to protection from "discriminatory or disciplinary action public and private sector employees who report in good faith and on reasonable grounds to the competent authorities".[27] Similar language is also found in national whistleblowing legislation. For example, the UK's Public Interest Disclosure Act refers to "any disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following" – the provision goes on to list a series of acts, including criminal offences).[28]

Romania's whistleblowing legislation is Law 571 of 14 December 2004 on the protection of personnel working in public authority organisations, public institutions, and other establishments who report infringements. It also identifies the public interest as the good to protect. Key characteristics of whistleblowing could therefore include: i) the disclosure of wrongdoings in the workplace; ii) a public interest dimension – e.g. the reporting of criminal offences, unethical practices, etc. – as opposed to a personal grievance; and iii) the reporting of wrongdoing through designated channels and/or to designated persons.[29]

To strengthen the current whistleblowing provision in Italy's Anti-Corruption Law, an indication of its purposes would be useful. It would yield further emphasis by clearly stating and promoting the importance of reporting unlawful action in the public service and the positive, constructive role of whistleblowers. This would be particularly important in the Italian context where whistleblowing carries a negative connotation.

### *"Good faith" and "reasonable ground"*

One issue that should be addressed is whether disclosures that happen to be unfounded should also be protected. Good faith requirements constitute the basis for protected disclosure in other whistleblower protection laws such as those of Japan, South Africa, and others. Australia does not have a single federal whistleblowing act, but different regional laws (e.g. the Whistleblowers Protection Act, 1993, Southern Australia; the Whistleblowers Protection Act, 1994, New South Wales; the Whistleblowers Protection Act, 2001, Victoria). All, however, require a reasonable belief of misconduct. Similarly, many other countries disclosures to be in good faith.

Article 1.51 of Italian Anti-Corruption Law is not clear as to the good faith requirement. Is the whistleblower protected if his/her allegations are not correct? To mitigate the current uncertainty in the Italian whistleblowing provision which may well discourage disclosure, a good faith provision should be clearly stated.

### *Scope of protection*

Legislation in a number of countries affords comprehensive protection to whistleblowers in both the public and private sectors. Examples are South Africa, Japan, Korean, and the United Kingdom with its Public Interest Disclosure Act. Some countries restrict protection for whistleblowers to the public sector, e.g. Canada[30] and Romania, while[31] France confines it to the private sector.[32]

Article 1.51 afforded protection to "public employees", which suggests that workers who fall outside that category, such as consultants, contractors, interns, volunteers, and former employees, will not receive protection. It is crucial that protection be extended to other categories of employees in order to widen access to information on possible wrongdoing. It is also recommended that private sector whistleblowers enjoy protection.

### *Scope of disclosure*

One of the main objectives of whistleblower protection laws is to promote and facilitate the reporting of "illegal, unethical or dangerous" activities (Banisar, 2009). Legal frameworks should supply clear definitions of protected disclosures, specifying the

acts that constitute violations, be it mismanagement, abuse of authority, endangering public health and safety, or corrupt action.[33] A "no loophole" approach would be most effective when identifying the breadth of subject matter that may be afforded protection.[34] Japan's Whistleblowing Protection Act, for example, expressly lists violations of food, health, safety and environmental laws. Other countries require wrongdoing to reach certain thresholds before triggering whistleblower protection. Under US law, for example, protected disclosures include gross mismanagement and gross waste of funds, while disclosures of "trivial" offences are not protected.[35]

Article 1.51 promotes and facilitates the reporting of "unlawful conduct". Although the term may be considered to have a broad reach, the provision fails to supply a clear definition of the wrongdoing that warrants protected disclosure or to specify the acts that constitute violations. Furthermore, there is no clear indication as to what degree of wrongdoing triggers whistleblower protection. The language of Article 15.1 needs to be precise and to strike a balance between being overly prescriptive and so precluding certain kinds of wrongdoing from disclosure, on one hand, and being so loose that any kind of wrongdoing could be disclosed – to the detriment of the organisation concerned.

## Mechanisms for protection

### *Protection against reprisals*

Reprisals for whistleblowing usually take the form of disciplinary action or harassment in the workplace. Whistleblower protection laws should provide comprehensive protection against discriminatory or retaliatory action. Legislation should therefore strive to protect whistleblowers' employment status against a wide range of retaliatory action, including unfair dismissal. The South African Law Reform Commission, for example, recommends an open-ended list of protections if victimisation is linked to whistleblowing. The list includes protection from "intolerable work conditions", "being prevented from participating in activities outside the employment relationship", and from breaches in confidentiality.[36] Similarly, the 2007 French Law on the Fight against Corruption provides broad employment protection for persons who, in good faith, have reported acts of corruption of which they gained knowledge in the exercise of their functions. They may not be excluded from recruitment and internships, or be disciplined, dismissed or discriminated against.[37] Canada, too, broadly defines retaliation as any measure that adversely affects the employment or working conditions of a whistleblowing public servant.

Under Article 1.51, whistleblowers cannot be "punished, dismissed or subjected to direct or indirect discriminatory measures having an effect on their working conditions for reasons directly or indirectly related to disclosure". While at first sight the wording seems comprehensive enough to cover many different types of retaliation, it would be preferable to detail what is meant by "discriminatory measures" so as to avoid multiple interpretations.

### *National security*

In some countries, employees who disclose information related to official secrets or national security may be liable to criminal prosecution. Some countries with whistleblower protection legislation may consider waiving such criminal liability for

protected disclosures or afford protection only if the disclosure is made through a prescribed channel. In the US, for example, if a purported whistleblower makes a disclosure that the law or an executive order specifically requires be kept secret in the interests of national security, then that disclosure is "prohibited by law". The whistleblower will not be afforded protection unless he or she makes his or her disclosure to the department's or agency's Inspector General or the Office of Special Counsel.

There is no current provision in Italian law for exceptions to whistleblower protection. More comprehensive legislation specifies exceptions in the interests of national security. Introducing such provisions could strengthen current Italian law and avert multiple interpretations.

### *Anonymity and confidentiality*

A key way to afford protection to whistleblowers and encourage reporting of wrongdoing is to guarantee them confidentiality. For example, the United Kingdom Public Interest Disclosure Act protects the confidentiality of the whistleblower, as does French law, albeit in the private sector only. Korean law provides that whistleblower's identity may be revealed only upon his/her consent, while in Germany, an anonymous hotline allows anonymous communication with whistleblowers. New Zealand describes confidentiality as "perhaps the most significant protection",[38] while the United States' Whistleblower Protection Act prohibits the Office of Special Counsel from disclosing the identity of a whistleblower without his or her consent. The one exception is if imminent danger to public health or safety or imminent violation of any criminal law makes it necessary to reveal a whistleblower's identity.[39]

While Article 1.51 provides a certain degree of confidentiality, it further define and clarify situations under which the confidentiality will not be kept. In the absence of greater precision, potential whistleblowers will have no certainty that their identity will be kept confidential throughout the whistleblowing cycle.

### *Burden of proof*

Under the terms of whistleblower protection laws, the burden of proof is on employers, who must prove that action they have taken against an employee is unrelated to whistleblowing. This is in response to the difficulties an employee might face in proving that reprisals were a result of his or her disclosure of wrongdoing – "especially as many forms of reprisals maybe very subtle and difficult to establish".[40]

In this regard, South Africa's Protected Disclosures Act (PDA) states that any dismissal in breach of Section 3 of the Act is automatically deemed to be an unfair dismissal.[41] Another example is the United States, where the public agency needs to demonstrate proof "by clear and convincing evidence that it would have taken the same personnel action in the absence of such disclosure".[42] In the United Kingdom, the burden of proof is predicated on the length of an employee's term of employment. If an employee has been employed for more than one year, the burden of proof is on the employer. If the employee has been employed less than one year, the employee must prove that the dismissal was connected to the disclosure.

Currently, there are no burden of proof provisions in Italian law. The delicate situation between employee and employer should be framed by a legislative provision that articulates exactly how employees can establish they have been mistreated as a direct result of their whistleblowing. This would creating a step-by-step checklist to prove unfair treatment. If certain critical boxes were checked, dismissal could then be directly attributed to the employee's disclosure of wrongdoing. The burden of proof, which then shifts to the employer in the event of an unfair dismissal, would be clearly established in this framework.

## Clear procedures and channels for reporting wrongdoing

### *Reporting*

Whistleblowing legislation may specify one or more channels through which protected disclosures can be made. These may be internal disclosures, external disclosures to a designated body, or external disclosures to the public. For example, the United Kingdom's Public Interest Disclosure Act applies a tiered approach, whereby disclosures may be made to one of the following "tiers":

- Tier 1: internal disclosures to employers or Ministers of the Crown;
- Tier 2: regulatory disclosures to prescribed bodies (e.g. the Financial Services Authority or Inland Revenue);
- Tier 3: wider disclosures to the police, media, members of parliament and non-prescribed regulators.

Each tier incrementally requires a higher threshold of conditions which the whistleblower must satisfy to obtain protection. This arrangement is intended to encourage internal reporting and the use of external reporting channels as a last resort (Banisar, 2009).

The Anti-Corruption Law does not seem to take into account the entire whistleblowing cycle. Nor does it indicate in any precise manner what procedure a whistleblower should follow. It states only to which bodies alleged wrongdoing should be reported, without specifying an order of preference or whether one body's acceptance of a whistleblowing claim automatically precludes other bodies from accepting it. Similarly, there is no indication as to what happens once the whistle has been blown. Moreover, the Law fails to state through which disclosure channels reports can be conveyed.

### *Hotlines*

Many OECD countries have established whistleblower hotlines to make it easier to report wrongdoing. Help lines or hotlines which provide some guidance could be established inside and/or outside the organisation where the whistle has been blown – in the CIVIT, for example. In the Czech Republic, 44% of all private companies have established hotlines for protection against fraud.[43] Furthermore, Belgium, France, Germany, the Netherlands, Switzerland, the United Kingdom and the United States are examples of OECD member countries who have implemented a form of hotline to assist the flow of reports of alleged corruption or misconduct. The facilitation of such reporting tools could take place within CIVIT, provided that adequate supporting resources are allocated to it.

### *Incentives to encourage reporting*

To encourage whistleblowing, many OECD countries have put in place reward systems (which may include monetary recompense). In the US for example, the False Claims Act allows individuals to sue on behalf of the government in order to recover lost or misspent money. They can receive up to 30% of the amount recovered.[44] Korean Anti-Corruption and Civil Rights Commission (ACRC) may reward whistleblowers with up to USD 2 million if their claims contribute directly to recovering or increasing public agencies' revenues or reducing their expenditures. The ACRC may also grant or recommend awards when whistleblowing served the public interest.[45] Rewards systems, however, remain controversial in most countries with an organisational culture that values efforts to improve organisations, especially by identifying and correcting wrongdoing.

There are currently no such whistleblowing incentive provisions in Italy's Anti-Corruption Law.

## Enforcement mechanisms

### *Oversight and enforcement authorities*

Some countries have established independent agencies that are legally empowered to receive complaints of reprisals against whistleblower, to investigate them, and to seek redress. It is a policy that has proved effective. In the United Kingdom, for example, the Office of Civil Service Commissioners is an independent body that may receive public sector disclosures as a last resort. The United States' Office of the Special Counsel (OSC) serves as an independent federal investigative and prosecutorial agency that protects federal employee whistleblowers who claim to have suffered reprisals. In Canada, the Public Sector Integrity Commissioner reports directly to Parliament rather than to a minister.

Other countries, which do not have such specialised bodies, can rely on an ombudsman or information commissioners appointed under the terms of freedom of information acts and who have the power to order the release of information and redress. Information commissioners, however, tend to have limited jurisdiction and can therefore offer only limited protection to whistleblowers.

There is currently no indication that Italian law has any plans for creating a specialised body. It could, however, designate a body that advises public employees on whistleblowing, procedures, protected disclosures, and on other related issues. The same body would oversee how the working of the law, possibly review it, and collect and publish data on it. It could even promote cases where the law has proved its worth. The same body could promote awareness of the whistleblowing issue, co-operate with the public education system on disclosing wrongdoing in the public interest, and train public employees. This would narrow the gap in current design principles.

### *Availability of judicial review*

An identified best practice for whistleblower legislation is to ensure that whistleblowers are entitled to a fair hearing before an impartial forum with a full right of appeal.[46] Such examples include the United Kingdom's Public Interest Disclosure Act,

which allows for appeals to the Employment Tribunal and the right of federal employees in the United States to bring complaints before the Merit Systems Protection Board and the US Court of Appeals. The disadvantage of judicial reviews – compared to independent oversight bodies – is precisely that they have no oversight of the entire whistleblowing system. Furthermore, their jurisdiction is restricted to cases of employment discrimination and rarely extends to other kinds of retaliation.

Italy's Anti-Corruption Law allows public employees to report wrongdoing to "judicial authorities or the Court of Auditors." As such, there is no gap in the Law's design and the legislation provides the availability of judicial review.

### *Redress and sanctions for reprisals*

Whistleblower protection laws usually include redress for whistleblowers who have suffered reprisals. Legislation can cover all direct, indirect and future consequences of reprisal[47] and provide redress. It may take the form of a whistleblower resuming employment after unfair dismissal,[48] a transfer to a comparable job,[49] or compensation for detrimental treatment that cannot be remedied by injunctions such as unemployment and distress.[50] Redress may also involve initiating criminal proceedings against employers who take retaliatory actions, as is the practice in Canada[51] and the United States.[52] In Norway, where there is no special whistleblowing protection legislation, the Working Environment Act (WEP) sets uncapped compensation for public and private employees. In Canada, again, legislation has established a special court with powers to rule whether reprisals have indeed been taken against a whistleblower. It can then to award the whistleblower compensation and take sanctions against the retaliator. The United States False Claims Act allows individuals to file claims on behalf of the government and receive upwards of 30% of the amount recovered. The United States government estimates that USD 17 billion have been recovered under the Act since 1986.[53]

Article 1.51 does not provide that there should be remedy for whistleblowers who have suffered retaliation. Nor does it provide for any sanction against an employer who retaliates against a whistleblower.

Yet whistleblowers should be entitled to redress for reprisals they may have experienced. It could take different forms. In the event of dismissal from work, the focus would be on the whistleblower recovering his or her former employment. If retaliation is of another kind, the whistleblower may seek compensation. Among the different forms of redress to which a whistleblower may be entitled, it is worth mentioning the recovery of losses (be they monetary or not), compensation for past or future earnings losses and legal fees.

## Proposals for action

This chapter has sought to demonstrate that whistleblower protection is a key tool in a sound integrity framework. It has assessed Italy's current legal framework for whistleblower protection in relation to other G20 and OECD member countries and finds that, while Article 1.51 of the Anti-Corruption Law provides a solid framework for whistleblower protection, gaps remain in its implementation. The mitigation strategy proposed in Part 4 seeks to narrow the gaps between legislation and implementation and prompts the following proposals for action:

- Issue a decree to amend Article 1.51 so that it comprehensively incorporates all the provisions this chapter has identified as contributing to effective protection for whistleblowers.
- Ensure consistency by amending, as necessary, all relevant labour, civil and criminal laws to include all the elements required for effective whistleblower protection that would further strengthen the provisions in the new Anti-Corruption Law.
- Foster change in the public perception of whistleblowing, as negative perspectives will limit the implementation of the new legal provisions. As in many European countries, whistleblowers are often ill-considered and viewed as traitors and informers. Purpose-designed communication strategies to raise awareness and emphasise the importance of whistleblowing and how it is in the public interest will contribute to the effective implementation of the relevant provisions in the new Anti-Corruption Law.

# Notes

1. The term "public official" will be understood as: any person holding a legislative, executive, administrative or judicial office of a country, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority; and any other person who performs a public function, including for a public agency or public enterprise, or who provides a public service, as defined in the domestic law of the country. See the United Nation Convention Against Corruption, Article 2, United Nations.
2. Whistleblowers are defined as persons who expose wrongdoing in the public service.
3. UNCAC Articles 8, 13 and 33.
4. Council of Europe Civil Law Convention on Corruption, Article 9; Council of Europe Criminal Law Convention on Corruption, Article 22.
5. Inter-American Convention against Corruption, Article III (8).
6. African Union Convention on Combating Corruption, Article 5(6).
7. OECD Anti-Bribery Convention (2009), Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions, Section IX.iii. and Section X.C.v., and Annex II to the Recommendation, Good Practice Guidance on Internal Controls, Ethics and Compliance, Section A.11.ii.
8. Law 300 of 20 May 1970 (so-called Workers' Statue), Art. 18.
9. LEGISLATIVE DECREE 231/2007  Implementation of Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing and of Directive 2006/70/EC laying down implementing measures for Directive 2005/06/EC.
10. Article 149, paragraph 3 of Legislative Decree 58/1998 entitled: Consolidated Acts about Financial Mediation.
11. Criminal Code, Art. 361, *Omessa denuncia di reato da parte del pubblico ufficiale*.
12. Article 361 Criminal Code, *Omessa denuncia di reato da parte del pubblico ufficiale. Il pubblico ufficiale, il quale omette o ritarda di denunciare all'autorità giudiziaria, o ad un'altra autorità che a quella abbia obbligo di riferirne, un reato di cui ha avuto notizia nell'esercizio o a causa delle sue funzioni, è punito con la multa da euro 30 a euro 516. La pena è della reclusione fino ad un anno, se il colpevole è un ufficiale o un agente di polizia giudiziaria, che ha avuto comunque notizia di un reato del quale doveva fare rapporto. Le disposizioni precedenti non si applicano se si tratta di delitto punibile a querela della persona offesa*.
13. For example, Cass. pen., sez. VI, 19-03-2007.
14. Transparency International, *Alternative to Silence: Whistleblower Protection in 10 European Countries*, November 2009; Transparency International Italy, *Protezione delle "vedette civiche": il ruolo del whistleblowing in Italia*, December 2009.
15. Art. 12 (Introduzione dell'articolo 54-bis del decreto legislativo 30 marzo 2001, n. 165).
    1. Dopo l'articolo 54 del decreto legislativo 30 marzo 2001, n. 165, è inserito il seguente:
    "Art. 54-bis. (*Tutela del dipendente pubblico che segnala illeciti). – 1) Fuori dei casi*

*di responsabilità a titolo di calunnia o diffamazione, ovvero per lo stesso titolo ai sensi dell'articolo 2043 del codice civile, il pubblico dipendente che denuncia all'autorità giudiziaria o alla Corte dei conti, ovvero riferisce al proprio superiore gerarchico condotte illecite di cui sia venuto a conoscenza in ragione del rapporto di lavoro, non può essere sanzionato, licenziato o sottoposto ad una misura discriminatoria, diretta o indiretta, avente effetti sulle condizioni di lavoro per motivi collegati direttamente o indirettamente alla denuncia. 2) Nell'ambito del procedimento disciplinare, l'identità del segnalante non può essere rivelata, senza il suo consenso, sempre che la contestazione dell'addebito disciplinare sia fondata su accertamenti distinti e ulteriori rispetto alla segnalazione. Qualora la contestazione sia fondata, in tutto o in parte, sulla segnalazione, l'identità può essere rivelata ove la sua conoscenza sia assolutamente indispensabile per la difesa dell'incolpato.3) L'adozione di misure discriminatorie è segnalata al Dipartimento della funzione pubblica, per i provvedimenti di competenza, dall'interessato o dalle organizzazioni sindacali maggiormente rappresentative nell'amministrazione nella quale le stesse sono state poste in essere. 4) La denuncia è sottratta all'accesso previsto dagli articoli 22 e seguenti della legge 7 agosto 1990, n. 241, e successive modificazioni.*"

16. Article 368 Criminal Code.
17. Article 595 Criminal Code.
18. Article 2043 Civil Code.
19. All Australian jurisdictions, except for the Commonwealth, have stand-alone acts that provide for the establishment of whistleblowing schemes and some form of legal protection against reprisals. See the Australian Capital Territory Public Interest Disclosures Act, the New South Wales Protected Disclosures Act of 1994, the Northern territory Public Interest Disclosures Act of 2008, Queensland Whistleblowers Protection Act of 1993, Tasmania Public Interest Disclosures Act of 2002, Victoria Whistleblowers Protection Act of 2001 and the Western Australia Public Interest Disclosures Act of 2003.
20. Public Servants Disclosure Protection Act of 2005.
21. Whistleblower Protection Act of 2004.
22. Public Interest Disclosure Act of 1998.
23. Whistleblower Protection Act of 1989.
24. Under section 230(3) of the Employment Rights Act of 1996.
25. Whistleblower Protection Act No. 122 of 2004.
26. See Transparency International, *Recommended Principles for Whistleblowing Legislation*, Recommendation 23: "Dedicated legislation – in order to ensure certainty, clarity and seamless application of the framework, stand-alone legislation is preferable to a piecemeal or a sectoral approach."
27. OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions, Recommendation IX(iii). See also OECD Recommendation of the Council on Improving Ethical Conduct in the Public Service Including Principles for Managing Ethics in the Public Service and OECD Guidelines for Multinational Enterprises, Section II.9.
28. UK PIDA (1998), Part IV.A., Section 43B.
29. U4 Anti-Corruption Resource Centre, Good Practice in Whistleblowing Protection Legislation, *www.u4.no/publications/good-practice-in-whistleblowing-protection-legislation-wpl/downloadasset/404*.

30. Public Servants Disclosure Protection Act (PSDPA), 2001, *http://laws-lois.justice.gc.ca/eng/acts/P-31.9/*.
31. Act on the Protection of Whistleblowers, Law 571/2004.
32. Loi n.1598-2007, which introduced article L 11-1161-1 of the Labour Law.
33. As established in the UK PIDA §43(a), (b); the Japanese WA art. 2.3; the U.S. WPA §2(a)(2); the Uganda WPA §11.2; South African PDA §1; Korean ACA art. 2; Australian PDA §4; and Canadian PSPDA art. 8. See also, Government Accountability Project, International Best Practices for Whistleblowers Policies (20 June 2011) p. 2.
34. U4 Anti-Corruption Resource Centre, Good Practice in Whistleblowing Protection Legislation, *www.u4.no/publications/good-practice-in-whistleblowing-protection-legislation-wpl/downloadasset/404*.
35. The Federal Circuit defined "trivial" as "arguably minor and inadvertent miscues occurring in the conscientious carrying out of one's assigned duties." Drake v. Agency for International Development, 543 F.3d 1377, 1381 (Fed. Circuit 2008). However, the Federal Circuit has also held that disclosing a seemingly-minor event can be a qualified disclosure when the purpose of the disclosure is to show the existence of a repeated practice. Horton v. Dept of the Navy, 66 F.3d 279, 283 (Fed. Cir. 1995).
36. South Africa Protected Disclosures Act of 2000, Section VI.
37. Loi n°2007-1598 du 13 novembre 2007 relative à la lutte contre la corruption, Art. 9, JORF 14 novembre 2007.
38. Id at 4.22.
39. 5 U.S.C. § 1213 (h).
40. U4 Anti-Corruption Resource Centre, Good Practice in Whistleblowing Protection Legislation, *www.u4.no/publications/good-practice-in-whistleblowing-protection-legislation-wpl/downloadasset/404*.
41. South Africa PDA (2000), Section 4(2)(a).
42. 5 U.S.C. § 1214(b)(4)(B)(ll).
43. Results are based on findings from the PriceWaterhouseCoopers report Global Economic Crime Survey (2007).
44. False Claims Act, 31 U.S.C. §3729.
45. Anti-Corruption and Civil Rights Commission of Korea, "Protecting and Rewarding Whistleblowers", available at: *www.acrc.go.kr/eng_index.html*.
46. Transparency International, Recommended Principles for Whistleblowing Legislation, Recommendation 20.
47. See, Korean ACA art. 33; U.K. PIDA §4; U.S. WPA 5USC §1221(h)(1); U.S. False Claims Act 31 USC §3730(h).
48. As in the U.K.
49. As in the U.S. and South Africa.
50. As prescribed in the U.K. legislation.
51. Criminal Code, art. 425.1 (1)(a)(b).
52. 18 USC §1513(e).
53. Taxpayers Against Fraud Education Fund, False Claims Act Update & Alert, 24 January 2006.

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# Chapter 7

# Integrity risk management

*Italy's new Anticorruption Law (Law 190, 2012) requires public organisations to analyse activities exposed to corruption and to formulate plans to prevent corruption. The chapter introduces the concept of operational risk management as an instrument to support public sector integrity, drawing upon international standards (e.g. ISO 31 000:2009, COSO Enterprise Risk Management Framework). It also describes the requirements for risk management in Law 190/2012 and provides inputs for consideration by the Italian government in order to effectively implement the law, drawing on relevant good practices from other countries.*

## A continuous, integrated process that increases value, prevents corruption, restores trust

Italy's new Anti-Corruption Law (Law 190 of 6 November 2012) is a reflection of the government's renewed commitment to fighting corruption as a basis for restoring trust in the public sector and fiscal legitimacy. The Law requires public organisations to examine their activities' exposure to corruption and to formulate plans to prevent it. Such an approach is intended to help minimise the resources spent on checking for breaches in integrity by focusing management attention on areas most vulnerable to corruption.

Although the Anti-Corruption Law concentrates on the risks of corruption alone, the scope of this chapter includes the concept of "operational risk". Discussing the risks of corruption to the exclusion of other forms of risk can inadvertently make corruption prevention a goal rather than a means of helping to deliver better, more cost-effective public services – a challenge that is particularly relevant in times of fiscal consolidation and growing pressures to increase citizens' participation in public decision making.

### Box. 7.1. Examples of fraud and corruption-related risks

Common fraud and corruption-related activities are:

- theft of cash, plant, equipment, inventory, information, or intellectual property by employees;
- false invoicing, accounts-receivable fraud, false accounting;
- overcharging for goods and services in invoices rendered to customers and clients;
- tax evasion, money laundering, insider trading;
- payment or receipt of secret commissions (bribes), in money or in some other form of value, to the receiver and possibly relating to a specific decision or action by the receiver;
- the release of misleading, inaccurate, or confidential information in order to deceive, mislead, or conceal wrongdoing, or in exchange for benefits or advantage;
- payment or solicitation of donations for improper political purposes;
- conflict of interest involving the senior executive of an entity, or other entity, acting in his or her own self-interest rather than the interests of the entity to which he or she has been appointed;
- unlawful assignment of donations, benefits, cash transfers, etc.;
- nepotism and cronyism;
- manipulation of the procurement process by favouring one tenderer over others, or selectively supplying information to some tenderers;
- manipulation of the procurement process through collusive tendering (in preparation of bids);
- the receipt or giving of gifts or entertainment intended to achieve an unstated objective;

**Box. 7.1. Examples of fraud and corruption-related risks** *(cont.)*

- bribery of officials (locally or in foreign jurisdictions) in order to secure a contract for the supply of goods or services;
- the facilitation of payments – small one-off payments in cash or in kind intended to secure prompt delivery of goods or services.

*Source*: Adapted from the Australian Council of Standards.

Based on international standards for operational risk management frameworks, integrity risk management can be defined in these terms: an architecture and a co-ordinated set of activities and methods to identify, analyse, evaluate, treat, and monitor potential fraud and corruption-related risks in order to acquire reasonable assurance that the integrity of public institutions has been preserved. Operational risk, in contrast, refers to the uncertainty of achieving public service delivery with potentially adverse effects on economic, social and environmental policy objectives and the public budget. Such negative effects include the possibility of waste, fraud and corruption (see Box 7.1). Operational risk is distinct from market, technological, and social risks or those that relate to natural disasters.

This chapter of the review begins with an introduction to the concept of operational risk management as an instrument for supporting public sector integrity. It draws upon such international standards as ISO 31 000:2009 and the COSO Enterprise Risk Management Framework. The chapter then goes on to describe the requirements for risk management set forth in Law 190/2012 (the Anti-Corruption Law). Finally, it addresses issues that the Italian government should consider for supporting the effective implementation of risk management built upon good practices.

Operational risk management may be understood as a combination of systems, processes, procedures, and culture that facilitate the identification, assessment, evaluation and treatment of risk in order to help public sector organisations successfully pursue their strategies and performance objectives. It is commonly recognised as a core element of internal control and sound integrity frameworks. Internal control is conceptualised as an integral process affected by an organisation's management and personnel. It is designed to address risks and provide reasonable assurance that an entity can pursue its mission and ensure that public sector organisations:

- execute orderly, ethical, economical, efficient and effective operations;
- fulfil accountability obligations;
- comply with applicable laws and regulations;
- safeguard resources against loss, misuse, and damage.

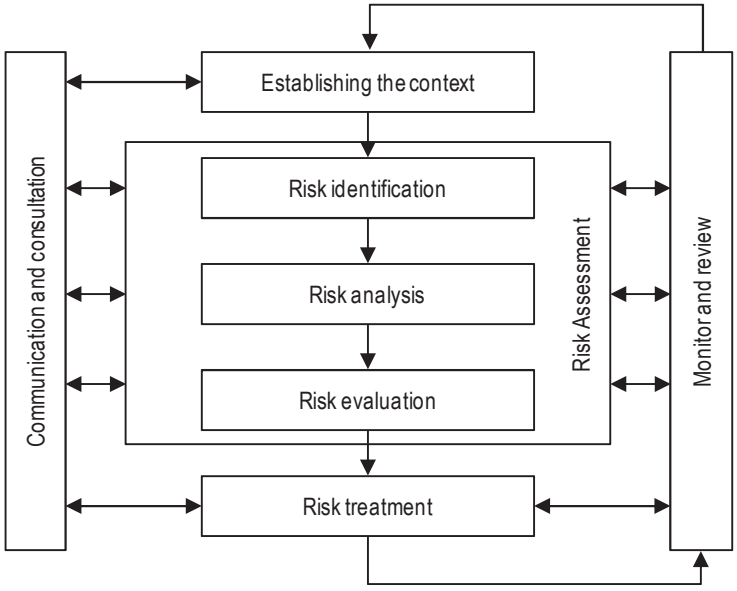
Operational risk management may also be a core element in policies to prevent fraud and corruption (COSO, 2004; INTOSAI, 2004). More recently, operational risk

management within the public sector has attracted much interest in the wake of the release of international risk management standard, ISO 31 000: 2009.

Operational risk management begins with defining an organisation's objectives (and understanding the statutory obligations for managing risks) as well as understanding the external and internal factors that contribute to successfully achieving those objectives. This context-setting stage is an essential prerequisite for risk identification. Risk identification is the first of three steps in risk assessment (sometimes referred to as risk mapping). The other two are risk analysis and risk evaluation.

Risk identification requires the application of a systematic process to understand what could happen, how, when and why. Risk analysis is concerned with developing an understanding of each risk, its consequences, and the likelihood of those consequences occurring. Risk evaluation involves making a decision about the risk tolerance of the entity and whether risk should be accepted or engaged. Risk treatment is the process by which existing internal controls are adjusted or new ones developed and implemented (Figure 7.1).

**Figure 7.1. Risk management cycle according to ISO 31 000:2009**




*Source:* Adapted from ISO 31 000:2000.

The process of establishing context and assessing and treating risk is linear, while communication and consultation, monitoring and reviewing are considered continuous. Communication and consultation with internal and external stakeholders is, where practicable, a key step towards securing their input into the process and giving them ownership of the outputs of risk management. It is also important to understand stakeholders' concerns about risk and risk management, so that their involvement can be planned and their views taken into account in determining risk criteria. Monitoring and reviewing support the identification of new risks and reassessment of existing ones that result from changes either in the organisation's objectives or in the internal and external environment where they are pursued. This involves scanning for possible new risks and learning lessons about risks and controls from the analysis of successes and failures.

## Provisions in Italy's new Anti-Corruption Law related to risk management

Under the terms of Italy's Anti-Corruption Law, each public sector organisation is expected to identify areas vulnerable to the risks of corruption and annually formulate a (rolling) three-year corruption prevention plan to address these risks. The scope of the Law applies to both central and local government, as entities in both tiers of government are formally required to prepare three-year corruption prevention plans. In recognition of local government's possible difficulties in drawing up corruption prevention plans, the Law provides that prefects – the central governments representatives at local level – give local authorities technical support to help them. They do so only at the request of local authorities – their support role is not mandatory.

The Anti-Corruption Law notes that line managers should identify risks of corruption and that the responsibility for preparing a public sector entity's corruption prevention plan may not be delegated and/or outsourced to outside individuals. Among the areas that the Law pinpoints as highly exposed to corruption are: i) licensing and/or the issuing of permits; ii) public procurement, which includes selection and contract award criteria; iii) grants and other in-kind contributions that offer an economic advantage; and iv) competitive exams and selection procedures in recruitment and career advancement of officials.

In addition to identifying areas vulnerable to corruption and treatment options, the Anti-Corruption Law states that the rolling three-year corruption prevention plans should include:

- Training, implementation, and control mechanisms in relation to decisions which best avert risks of corruption.
- Monitoring procedures for compliance with their time limits, as specified by law or regulations.
- The monitoring of relations between the public service organisation and parties which conclude contracts with it or are involved in procedures relating to authorisations, concessions, or the provision of economic benefits of any kind. Such procedures may include verification of any relationships or friendships between the proprietors, shareholders, and employees of those parties and the administrators, directors and employees of the public service body.
- Specific duties of transparency in addition to those that the Law requires.

The approach contained in Italy's Anti-Corruption Law is similar to those of countries such as Australia, Slovenia, South Africa and the United Kingdom (Table 7.1 and Box 7.2).

**Table 7.1. Comparative analysis of whole-of-government policy elements**

| Country (state) | Plan | Institutional responsibility |
|---|---|---|
| Australia | | |
| - State of New South Wales | Fraud Control and Corruption Prevention Plan | New South Wales Independent Commission Against Corruption |
| - State of Queensland | Fraud Control and Corruption Prevention Plan | Queensland Crime and Misconduct Commission |
| Italy | Corruption Prevention Plans (agency level)<br>National Anti-Corruption Plan (whole of government) | Public Service Department and National Commission for Evaluation, Transparency and Integrity (CIVIT) |
| Slovenia | Integrity Plans | Commission for the Prevention of Corruption |
| South Africa | Fraud Prevention Plans | Treasury and Public Service Commission |
| United Kingdom | Fraud Policy Statements and Fraud Response Plans | Treasury |

The Anti-Corruption Law also provides for the creation of an "anti-corruption manager" to prepare and oversee the implementation of the corruption prevention plan. Clearly, this position should to be filled by an incumbent public official, using the budgetary and human resources allocated to his or her position. The Law establishes that the anti-corruption manager is responsible in the event of wrongdoing that tarnishes the image of the public organisation to which he or she belongs, unless it can be established that: i) an anti-corruption plan covering all the requirements set out in the Law was prepared before the offence was committed; and/or that ii) the manager had adequately monitored the compliance and implementation of the plan.

In cases involving repeated violations of the plan's preventive provisions, the anti-corruption manager becomes liable to disciplinary action for inadequate monitoring. Any breach by public employees of the plan's corruption prevention provisions also constitutes a disciplinary offence.

**Box 7.2. The use of integrity plans to support risk management in Slovenia and South Africa**

**Slovenia**

The 2010 Integrity and Corruption Prevention Act requires all public sector entities to identify, analyse, evaluate and address corruption risks. Integrity plans are considered a tool for supporting risk management and assessing the integrity of individual public sector entities. The concept of integrity plans as tools derives from risk management tools that focus on corruption. To prepare the plans, the Commission drew on the current Australian/New Zealand standard: AS/NZS ISO 31 000:2009, entitled Risk management – Principles and guidelines. It is an internationally recognised standard providing principles and generic guidelines on risk management.

The Integrity and Corruption Prevention Act requires individual public sector organisations to submit integrity plans to the Commission for the Prevention of Corruption. The Commission's role is to assess public sector organisations' vulnerability to corruption by analysing all risks and risk factors in the integrity plans.

**Box 7.2. The use of integrity plans to support risk management in Slovenia and South Africa** *(cont.)*

The task involves: i) evaluating the likelihood of risks and the degree of damage they may cause; ii) identifying the key areas exposed to risks of unethical and other unlawful behaviour; iii) assessing the existing control mechanisms; iv) creating internal risk management knowledge platforms; iv) proposing measures to minimise or eliminate risks; and v) planning further legislation and legal instruments for a better functioning public sector that fights corruption more effectively.

The Commission checks whether entities have drawn up integrity plans, adopted them, and how they plan to implement them. It provides training to persons responsible for drawing up their institutions' integrity plans.

**South Africa**

In South Africa, government departments are mandated to develop and implement fraud prevention plans under the terms of the 1999 Public Finance Management Act. South African public entities drew up the first such plans in 2001 and by 2007 87% of them were reported to have plans in place. The Public Finance Management Act requires government bodies to include fraud prevention plans in their risk management strategies. Each body must draw up a fraud prevention plan that meets its fraud risk profile. The main purpose of the fraud prevention plans is to enable departments to identify the fraud risk areas that unique to them, develop plans to manage their risks, and incorporate them into their strategic plans. Fraud prevention plans are regarded as key instruments in preventing fraud and creating a culture of accountability within the public service.

Treasury regulations indicate that fraud prevention plans should undergo risk assessment reviews on a "regular" basis. The Treasury recommends that they should be undertaken preferably every two or three years, or when significant change has occurred. In 2007, over 62% of departments stated that they conducted risk assessments on an annual basis. In South Africa, employee involvement in risk assessment and the development of fraud prevention plans is considered part of the process of educating staff and building the ethical conscience of government departments. Senior and middle managers in particular are actively involved in developing and updating of the fraud prevention plans.

*Source*: Commission for the Prevention of Corruption, Republic of Slovenia; Public Service Commission of South Africa, Report on the Implementation of Fraud Prevention Plans in the Public Service, November 2007, *http://www.info.gov.za/view/DownloadFileAction?id=79279*.

## Issues to consider in support of the effective implementation of risk management

Italy's public service should consider three proposals for action to help it take forward the implementation of risk management:

- link risk management with existing systems of public organisation internal control;
- implement risk management in incremental steps through a learn-by-doing approach;
- ensuring effective accountability and oversight of risk management practices.

### *Linking risk management with existing systems for public internal control*

In a context where resources are scarce, a risk-based strategic approach focuses on vulnerable areas, thereby helping public organisations to minimise the resources they spend on checking for integrity violations. Such an approach to corruption prevention also helps to identify structural weaknesses that may facilitate corruption, provides a framework that enables all staff to take part in identifying risk factors and treatment, and embeds corruption prevention within a well-established governance framework. In most countries with an explicitly decentralised internal control system, such as Italy, risk management has become a critical tool in the public sector.

Because an inadequate or ineffective control environment is conducive to fraud and corruption, strong internal control is one safeguard of integrity. Internal control is conceptualised as an integral process that is affected by a public entity's management and personnel. It is designed to address risks and to afford the entity reasonable assurance that it can pursue its service delivery mission (COSO, 2004; INTOSAI, 2004).

Many OECD countries consider risk management a core element of the internal control framework. The system of internal control is based on an ongoing process designed to identify the principal risks, evaluate their nature and extent, and manage them effectively. A 2010 OECD survey of 73 public sector entities across 12 countries[1] found that risk management and the prevention of fraud and corruption were part of the public internal control framework in over three-quarters of respondent entities (OECD, 2012a). In another survey in 2010 of nearly 600 managers, controllers and internal auditors from the public and private sectors, the International Federation of Accountants (IFAC) found that the vast majority (85%) were of the opinion that internal control and risk management systems should be more closely integrated with one another (IFAC, 2011).

Although the Italian Anti-Corruption Law does not explicitly link the issues of corruption prevention and internal control, the two can draw upon and reinforce public internal control – in this way they are not seen as adding to the internal administrative burden on management. The government of Italy has undertaken a number of reforms in the past 20 years to enhance its systems of public internal control (Box 7.2). This legal framework defines four types of internal control:

- "strategic control" to assess the adequacy of action to implement plans, programmes and other tools that give political direction;
- "administrative and accounting control" to guarantee the legitimacy and compliance of administrative action with generally accepted audit standards;
- "management control" to verify the effectiveness, efficiency, and economy of administrative action conducted by a public service entity;
- "management evaluation" to assess the performance of managers as the basis for renewing their appointments.

Since the early 1990s, there has been a clear separation between the political (i.e. ministerial) and administrative (i.e. managerial) levels of public service organisations. According to this principle, ministers define objectives and programmes then oversee managers' work to ensure it complies with the programmes and objectives ministers have drawn up. Managers have flexibility to design internal controls over resources bestowed upon them in order to achieve objectives. In parallel, Independent Performance Evaluation Units (OIVs) – known formerly as Internal Control Units – located in each public sector organisation – monitor and report directly to their respective

ministers on the achievement of organisational objectives, the efficient use of public resources, impartiality, and management performance. The internal control work of the OIVs has developed over the years (Box 7.3). Since 2006 they have also focused on the coherence between strategic and operational goals and since 2007 on transparency and public accountability.

**Box 7.3. Italy's key reforms in public service internal control: 1990 to present**

- Law 241/1990 (the "Law on Transparency") compels public sector entities to identify the internal organisational units and persons responsible for achieving results.
- Law 142/1990 ("Reforming Local Autonomy") introduced, for the first time, the fundamental principle of the separation of powers and responsibilities – on one hand, political and administrative policy, on the other, administrative management results. The separation remains a fundamental pillar of Italian civil service reform.
- Legislative Decree 29/1993 compels public service organisations to create internal control offices to assess, steer and correct their work according to the objectives and responsibilities assigned to them.
- Law 20/1994 reforms the Court of Auditors.
- Legislative Decree 77/1995.
- Legislative Decree 286/1999 on internal control revises and clarifies the entire system of internal control by identifying the different types of control and those responsible for them. It identifies four different types of internal control: (1) audits of administrative and accounting compliance; (2) management control; (3) management evaluation; and (4) strategic control.
- Consolidation Act of Local Government (2000).
- Legislative Decree 165/2001 instils principles of management responsibility.
- Law 145/2002 gives public managers dual disciplinary and managerial responsibility.
- Law 196/2009 on Public Accounts and Finances – which supersedes Law 468/1978 on public accounts –overhauls all rules and laws governing the tools for managing public accounts and the budget.
- Law 15/2009 on Civil Service Reform aims to improve public sector productivity and the efficiency and transparency of government departments.
- Legislative Decree 150/2009 aims to optimise public sector productivity and the efficiency and transparency of the public service. It requires all public service organisations to adopt a system for measuring and evaluating the performance of each organisation as a whole, of the units within each organisation, and of each employee.

*Source:* Adapted from Paglietti (2010), Internal Controls and Auditing in Italian Local Governments; Reginato, Paglietti and Fadda (2011), Formal or Substantial Innovation: Enquiring the Internal Control System Reform in the Italian Local Government; EC (2012), Compendium of the Public Internal Control. System in the EU Member States, 2012, *http://ec.europa.eu/budget/biblio/publications/publications_en.cfm#compendium.*

"Internal auditing is an independent, objective assurance and consulting activity … , including that related to the effectiveness of risk management." (IIA, 2001) OIVs serve a function in the Italian public service that is very much akin to internal auditing. Yet in Italy, no laws or regulations – not even Legislative Decree 286/1999 on internal control – actually refer to internal audits. Apparently, no equivalent Italian term denotes the function of internal audit in the strict sense of the term and there is no such function in

some central government departments (ministries, the Prime Minister's Office, etc.). Other Italian public entities – both in the first tier of government (e.g. the revenue collection, state property, land registry and customs agencies) and in central, regional and local government – do have their own internal audit function (EC, 2012). These public entities have their own responsibilities and activities in accordance with their articles of association or through their standing rules.

**Box 7.4. Responsibilities of the Italian Ministry of Health's Independent Performance Evaluation Unit**

The Ministry of Health's Independent Performance Evaluation Unit (OIV) was created in 2010 and performs the following functions:

- monitors the overall functioning of the system of evaluation, transparency and integrity of internal audits, and prepares an annual report;
- immediately notifies the competent management units – as well as the Corte de Conti (Court of Auditors), Civil Service Inspectorate and CIVIT – of any administrative problems identified;
- validates the ministry's Performance Report and ensures it is publicly available on the ministry's website;
- guarantees the accuracy of performance metrics and evaluation processes, as well as the use of incentives and bonuses in accordance with the principle of enhancement of merit and professionalism;
- evaluates executives' performances annually and suggests to the political-administrative policy body the names of those who deserve bonuses;
- oversees the implementation the guidelines, methods and tools drawn up by Independent Commission for the Evaluation, Integrity, and Transparency of Public Administration (CIVIT);
- promotes and certifies the fulfilment of obligations related to transparency and integrity;
- scrutinises results and good practices related to the promotion of equal opportunities.

Using CIVIT's purpose-designed models, the Ministry of Health's OIV conducts an annual survey of employees' well-being and levels of satisfaction with the evaluation system and with their immediate superiors. It then transmits the results to CIVIT.

The OIV also carries out strategic appraisals in accordance with Legislative Decree 286/1999 and passes its findings directly on to the political-administrative policy body. The OIV incorporates a permanent performance measurement structure.

*Source*: *www.salute.gov.it/ministero/sezMinisteroEnglish.jsp?label=oiv.*

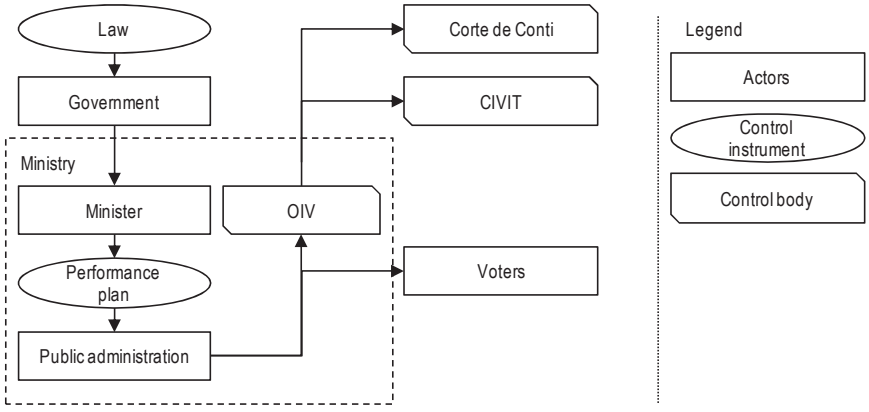
By way of example, Box 7.4 lists the duties of the Italian Ministry of Health's OIV.

Generally speaking, OIVs have a number of functions under the current legal framework. They:

- monitor the overall operation of the system of internal control evaluation, transparency and integrity and draw up an annual report on the state of the system;
- promptly report any problems to the relevant internal government and public service entities;
- ensure that performance metrics and evaluation processes are correct in order to uphold the principle of rewarding merit and professionalism;
- ensure the guidelines, methods and instruments of the Independent Commission for the Evaluation, Integrity, and Transparency of Public Administration (CIVIT) are correctly applied;
- promote and certify transparency and integrity.

Guiding the work of public managers and OIVs is the Independent Commission for the Evaluation, Integrity, and Transparency of Public Administration (CIVIT). Created in 1999 under the name of the Technical-Scientific Committee for Strategic Evaluation and Control in Public Administration, it reports directly to the Prime Minister's Office. In 2009, parallel reporting channels were opened so that OIVs could report not only to CIVIT, but also to the Corte de Conti (Court of Auditors), Italy's supreme audit institution. Figure 7.2 is a diagram of a typical Italian internal control model that shows where OIVs and CIVIT fit in.

**Figure 7.2. Italian civil service internal control model**




Notes: CIVIT = National Commission for Evaluation, Integrity and Transparency; OIV = Independent Performance Evaluation Unit.

*Source*: Adapted from Dente, B. and N. Piraino (2011), "A Message in a Bottle: The Use of Policy Instruments in Italian Public Administration Reforms," Paper presented at the Seventh Transatlantic Dialogue, 23 – 25 June, Rutgers School of Public Affairs and Administration (SPAA), Rutgers University, Newark, NJ, USA, *www.7tad.org/documents/WG3/Dente-Piraino.pdf.*

In order to facilitate their institutionalisation, the rolling three-year corruption prevention plans envisaged in the Anti-Corruption Law could be aligned with the rolling Triennial Performance, Transparency and Integrity Plan required of all public entities under the Brunetta Reform. As explained earlier in this review (see Chapter 2), these plans identify initiatives designed to ensure transparency in accordance with CIVIT guidelines. Such initiatives include the timeframe within which all requirements must be

met, as well as the procedures, resources and monitoring tools for doing so. The Brunetta Reform requires a public entity's OIV to approve its plan and sets out specific sanctions for managers who fail to comply with plan requirements. The similarities with the changes proposed in the Anti-Corruption Law make duplication a risk. To minimise that risk and maximise effectiveness and impact, the different actors and preparation, approval and monitoring processes involved should be mapped as a precaution.

Specific attention should be given to the officials who fill the position of "anti-corruption manager" envisaged in the Anti-Corruption Law – particularly as the law is clear that an incumbent public official should do the job. Responsibility for anti-corruption managers should be located at a senior executive echelon. With the due safeguards for independence, OIVs could assist anti-corruption managers in preparing plans, given that one of their functions is almost identical to internal auditing.

Table 7.2 spells out the roles which, according to the Institute of Internal Auditors (IIA), an effective internal auditor should and – equally importantly – should not undertake. The IIA notes that the key factors to take into account when determining an internal audit's role in risk management is whether there is any threat to the internal audit's independence and objectivity, and whether it is likely to improve the organisation's risk management, control and governance processes. For example, an internal audit may offer consulting services that improve an entity's risk management and control processes provided that:

- the entity's management remains responsible for risk management;
- internal audit responsibilities are documented in the internal audit charter;
- the internal auditors do not manage any risks on behalf of management;
- the internal auditors do not take risk management decisions themselves;
- internal auditors do not give any objective assurance on risk management activities, or part thereof, for which they are responsible – other suitably qualified parties should give such assurance.

However, the extent of the role an internal audit plays in risk management depends on two factors: the internal and external resources available to the entity's board of management and the entity's risk maturity (which is likely to vary over time). Box 7.5 describes the part an internal audit plays in fraud and corruption risk management in the United Kingdom.

**Table 7.2. Internal audit's role in risk management**

| Core internal audit roles | Legitimate internal audit roles with safeguards | Roles internal audit should not undertake |
|---|---|---|
| • Giving assurance on risk management processes<br>• Giving assurance that risks are correctly evaluated<br>• Evaluating risk management processes<br>• Evaluating the reporting of key risks<br>• Reviewing the management of key risks | • Facilitating identification and evaluation of risks<br>• Coaching management in responding to risks<br>• Co-ordinating risk management activities<br>• Providing consolidated reporting on risks<br>• Maintaining and developing the risk management framework | • Setting the risk appetite<br>• Imposing risk management processes<br>• Managing assurance on risks<br>• Taking decisions on risk responses<br>• Implementing risk responses on management's behalf<br>• Being accountability for risk management |
| | • Championing the establishment of risk management processes<br>• Developing a risk management strategy for board approval | |

*Source*: Adapted from IIA (The Institute of Internal Auditors) (2009), The Role of Internal Auditing in Enterprise-Wide Risk Management, IIA Position Paper.

### Box 7.5. Internal audit and fraud/corruption risk management in the United Kingdom

It is not a primary role of internal audit to detect fraud and corruption. Internal audit's role is to provide an independent opinion based on an objective assessment of the framework of governance, risk management, and control. In doing so, internal auditors are entitled to:

- Review the organisation's risk assessment seeking evidence on which to base an opinion that fraud and corruption risks have been properly identified and responded to appropriately (i.e. within the risk appetite).
- Provide an independent opinion on the effectiveness of prevention and detection processes put in place to reduce the risk of fraud and/or corruption.
- Review new programmes and policies (and changes in existing policies and programmes) seeking evidence that the risk of fraud and corruption had been considered where appropriate and providing an opinion on the likely effectiveness of controls designed to reduce the risk.
- Consider the potential for fraud and corruption in every audit assignment and identify indicators that crime might have been committed or control weaknesses that might indicate a vulnerability to fraud or corruption.
- Review areas where major fraud or corruption has occurred in order to identify any system weaknesses that were exploited or controls that did not function properly and make recommendations about strengthening internal controls where appropriate.

**Box 7.5. Internal audit and fraud/corruption risk management in the United Kingdom** *(cont.)*

- Assist with, or carry out, investigations on management's behalf. Internal auditors should only investigate suspicious or actual cases of fraud or corruption if they have the appropriate expertise and understanding of relevant laws to allow them to undertake this work effectively. If investigation work is undertaken, management should be made aware that the internal auditor is acting outside of the core internal audit remit and of the likely impact on the audit plan.
- Provide an opinion on the likely effectiveness of the organisation's fraud and corruption risk strategy (e.g. policies, response plans, whistleblowing policy, codes of conduct) and if these have been communicated effectively across the organisation. Management has primary responsibility for ensuring that an appropriate strategy is in place and the role of internal audit is to review the effectiveness of the strategy.

*Source*: HM Treasury, Fraud and the Government Internal Auditor, p.7-8, *https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/207217/Fraud_and_the_Government_Internal_Auditor.pdf*

## Implement risk management in incremental steps and learn by doing

It is important to understand some fundamentals of an advanced system of operational risk management:

- Risk management is viewed as central to a public entity's management processes with risks considered in terms of the effect of uncertainty on operational objectives.
- All decision making within public organisations involves the explicit consideration of risks and the application of risk management to an appropriate degree.
- Risk management entails a comprehensive, fully defined and fully accepted accountability for risks, controls, and risk treatment tasks.
- Emphasis is placed on continual improvement in risk management through the setting of organisational performance goals, measurement, etc.

Experience from OECD countries suggests that it can take many years to create a positive risk management culture (OECD, 2012b; NAO, 2011). And as risk assessment is a new policy area, a number of actions could be taken in order to support its successful implementation. They include: i) building leadership understanding and support for risk management; ii) phasing in the scope of implementation within individual public organisations; iii) ensuring adequate practical tools and training; and iv) allocating resources to determine risk thresholds; v) supporting lesson learning across public organisations.

### *Building leadership, understanding and support*

In Italy, the "political" level sets the agenda and priorities for public sector entities as part of the internal control framework. If senior managers in public sector entities view risk management as a key part of successful management they are more likely to buy into and understand its importance to the organisation. Transparent communication by senior

managers of the key threats to the organisation's ability to deliver successful outcomes helps staff to understand and engage with managing those risks. Senior managers set the tone and can foster a climate of trust, developing a culture where staff feel comfortable in openly highlighting risks which can then be managed without fear of blame.

### *Phased implementation*

It can be beneficial to begin with a simple process and develop it using incremental steps – learn from doing rather than beginning with a detailed risk management process. Such an approach can help to: i) identify and implement key practices to achieve immediate, tangible results; ii) provide an opportunity to change and further tailor risk management processes; and iii) facilitate the identification and evaluation of benefits at each step. This can be complemented by initially focusing on a small number of critical risks that can be managed in order to develop related processes such as monitoring and reporting for those risks. Over time, attention can focus on integrating risk management as an element in the formulation of new policies and programmes.

### *Providing practical tools and training*

Phased implementation can be supplemented by providing tools to support the risk management process and developing a conceptual understanding of risk management and fostering the necessary supporting technical competencies. For example, common templates and guidance to identify, assess, monitor, review and report can be a starting point for empowering officials in public sector entities to identify risks. Tables 7.4 and 7.5 provide an example of common templates that can be used to support the risk management cycle.

In some countries, the provision of tools is closely linked to training activities. For example, in the Netherlands, the Court of Audit, in co-operation with the Ministry of the Interior and the Bureau of Integrity of the City of Amsterdam, developed the Self-Assessment INTegrity (SAINT) tool and training programme (Box 7.6).

A complementary approach can be to use new technologies and networks within the public service to educate and develop competencies in risk management. The government of South Africa, for example, has developed an e-learning module as a complementary tool to test users' understanding of the country's Public Sector Risk Management Framework (Box 7.7).

**Box 7.6. SAINT: A tool to assess the integrity of institutions**

SAINT (Self-Assessment INTegrity) is a Dutch self assessment tool which enables public sector organisations to assess their vulnerability and resilience to integrity violations. SAINT also yields recommendations on how to improve integrity management. Its basic principles are:

- **Self-assessment**. SAINT is a self-assessment tool. The organisation itself must take the initiative to test its integrity. In this way, the assessment draws on the knowledge and opinions of the staff. The organisation reveals its own weaknesses and the staff make recommendations on how to strengthen resilience.
- **Targeted at prevention**. The self-assessment tool is targeted at prevention. It is not designed to detect integrity violations or to punish (repress) unacceptable conduct, but to identify the main integrity weaknesses and risks and to strengthen the organization's resilience in the face of those weaknesses and risks.

**Box 7.6. SAINT: A tool to assess the integrity of institutions** *(cont.)*

- **Raising general integrity awareness**. The SAINT workshop significantly increases awareness of integrity. The participants' collective discussions on the importance of integrity are of great value.

- **Learning to think in terms of vulnerability and risk**. The SAINT workshop teaches the organisation how to think in terms of vulnerability and risk. During the workshop, the participants identify the main vulnerabilities and risks and then make recommendations on how to minimise them.

- **Concrete management report/action plan**. The end product of the SAINT workshop is a concrete management report and action plan. Under the expert leadership of a trained moderator, the participants formulate recommendations for their own organisation. The report explains to management where urgent measures must be taken to strengthen the organisation's resilience in response to integrity violations.

The diagnosis takes place in a structured two-day workshop, moderated by a trained facilitator. The instrument is targeted at corruption prevention and leads to management recommendations to support the integrity of the organisation.

*Source*: www.intosaijournal.org/technicalarticles/technicalapr2008b.html.

**Box 7.7. South African risk management e-learning and training**

The government of South Africa has developed an e-learning module as a complementary tool to test users' understanding of the country's Public Sector Risk Management Framework. This is in addition to a number of supplementary implementation tools and examples have been developed to enhance the user's understanding of the Framework and to facilitate its implementation.

The e-learning tool consists of 20 individual modules covering the main topics in the Public Sector Risk Management Framework. Each module consists of between 10 and 30 multiple choice questions and a minimum of 75% of correct answers is required to pass. The tool will "mark" the selected answer in real time and provide the correct answer to explain an incorrect choice. The user is allowed a maximum of three attempts at each module after which s/he will be locked out. A "Certificate of Completion" is obtained on successful completion of each module.

The final assessment can be taken only after the completion of all individual modules. The questions for the final assessment are chosen randomly from each individual module. A minimum of 75% of correct answers is required to pass. The user is allowed a maximum of three attempts and a "Certificate of Completion" is obtained in recognition of successful completion of the programme in Public Sector Risk Management.

Source: http://oag.treasury.gov.za/RMF.

## Allocating resources to determine risk thresholds

A clear grasp of risk tolerance and thresholds is a valuable aid that enables managers to take greater risks when it is to the organisation's advantage. Identifying where excessive internal controls can be removed or reduced helps free up additional resources for use elsewhere. In this way a planned reduction in controls may yield opportunities to

innovate and improve public services. When an organisation's risk tolerance or a project's risk threshold is clearly defined, understanding and awareness of the organisation's priorities improve. There is greater consistency in key decisions across the whole organisation and there is a fall in those which are contrary to its objectives. By defining and communicating a public sector entity's risk tolerance, senior managers empower staff to make decisions, identify priority investment areas, and be clear about when issues need to be escalated to top management.

**Table 7.3. Risk management template**

| Risk | Identify | | | | | | Assessment | | | | Monitoring | | Review | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Cause/ source | Business process | Category | Link to document | Document type | Existing control | Likelihood | Consequence | Risk priority | Assessment of existing control | Key risk indicators | Reporting/ monitoring | Last review | Review frequency | Next review due | Responsibility |
| | | | | | | | | | | | | | | | | |

**Table 7.4. Risk reporting**

| Risk priority | A. Assessment of existing control | | | | |
|---|---|---|---|---|---|
| | Adequate | Opportunities for improvement | Inadequate | No assessment | Total |
| Very high | | | | | |
| High | | | | | |
| Mediu m | | | | | |
| Low | | | | | |
| Total | | | | | |

| Likelihood | B. Consequences | | | | | |
|---|---|---|---|---|---|---|
| | Insignificant | Minor | Moderate | Major | Catastrophic | Total |
| Almost certain | Medium | Medium | High | Very high | Very high | |
| Likely | Medium | Medium | High | High | Very high | |
| Possible | Low | Medium | Medium | High | High | |
| Unlikely | Low | Low | Medium | Medium | High | |
| Rare | Low | Low | Medium | Medium | Medium | |
| Total | | | | | | |

### Supporting lessons learned across public organisations

Identifying and taking action to implement lessons from good practice – such as risk management techniques that have been shown to work – and bad practice can enable public sector entities to apply a more consistent, efficient, and effective approach to risk management. Take the example of a department in a public sector organisation that encounters a new risk and devises an effective internal control to mitigate. If it communicates its lesson learnt to other departments or other public organisations that may encounter the same risk, they will be able to try out the mitigating action and use it to develop their own solutions. In Slovenia, the government has developed a network among practitioners that is co-ordinated by a central authority. The practitioners share their experiences and give each other incentive to develop risk management practices (Box 7.8).

**Box 7.8. Slovenia's practitioners network on integrity plans**

In Slovenia, integrity plans have their custodian within each and every entity. They are individuals who are accountable for preparing, implementing, and constantly evaluating and updating their plans. Having such people on their staff enables the Corruption Prevention Commission (CPC) to work more effectively. That is because accountability gives them a sense of ownership making them more likely to supervise the plans they have drawn up and implemented. In collaboration with integrity plan custodians in different fields of work in the public sector, the CPC has created a network of institutions and individuals. The network will jointly develop inter-institutional knowledge, integrity, transparency and responsibility in the public sector in order to protect institutional values from corruption risks and other forms of wrongdoing.

*Source*: Commission for the Prevention of Corruption, Republic of Slovenia.

### *Ensure clear external oversight of risk management practices in public sector entities*

The Anti-Corruption Law gives no special role to the Italy's supreme audit institution, the Corte dei Conti – Court of Auditors. Nevertheless, the Court is a highly respected institution in Italy's public sector and could well have a role to play in supporting risk management practices within it.

The function of a priori audit of the Institution has been partially restored and strengthened with the Law of 4 March 2009, n. 15 (Delegation to the Government, designed to optimize the productivity of public work and the efficiency and transparency of public administrations). This law provides that the Court of Auditors, also at the request of the competent parliamentary Committees, may carry out audit on management of public funds in progress. If it finds serious irregularities, or serious deviations from targets, procedures or timing, the Court identifies the causes and shall notify the competent minister. The minister may order the suspension of the commitment of funds allocated on the relevant items of expenditure. If there is any significant delays in the implementation of plans and programs, in the provision of contributions or transfer of funds, the Court identifies the causes and shall notify the competent minister. Within sixty days the competent administration shall take appropriate measures to eliminate the causes.

### Box 7.9. The role of supreme audit institutions in assessing operational risk management practices in public sector entities: the case of the United Kingdom's National Audit Office

The United Kingdom National Audit Office (NAO) carries out work to help departments improve their financial management and governance. The NAO publish reports on the value for money of expenditure and annual audits of financial statements. It also works with audited bodies on an individual basis by facilitating workshops with Audit Committees, for example, or presenting good practice material from across its client base to help organisations learn from each other. The NAO has on various occasions during the past decade conducted work to understand the extent and practice of risk management across government.

In 2000, it conducted work to help government departments improve their risk management and assist them in well thought-through risk-taking in response to departments' obligations to report on how they manage risk. This work involved a survey of 257 public sector organisations, structured interviews with senior personnel in 12 public sector organisations, and focus group discussions with officials who had some responsibility for risk management activities. In addition, the NAO held meetings with private sector organisations and commissioned academic work.

In 2004, the NAO assessed the progress which departments had made in implementing operational risk management and the resilience of departments' risk management to adverse impacts on service delivery or value for money. The work examined 20 main Whitehall (or government) departments, focus groups of 27 departmental risk managers, comparisons with private sector organisations (e.g. GlaxoSmithKline, Nomura, Prudential and Reuters) and public service risk management in other countries, academic research and five case studies.

Based on its 2004 work, the NAO identified five areas which departments needed to address in order to take risk management forward:

- requirements for sufficient time, resources and top-level commitment;
- clarity over responsibility and accountability backed by scrutiny and robust challenge;
- reliable, timely and up-to-date information;
- the application of risk management throughout departments' delivery networks; and
- the need for departments to continue to develop their understanding of the common risks they share and to work together to manage them.

In 2010-11, the NAO review of risk management practices in 15 departments and three central agencies, focused on the culture around risk management, value for money in risk management, and the benefits of better risk management. The assessment was conducted using a combination of interviews with departmental staff, document reviews, audit report reviews, and the engagement of consultants.

Based on the 2010-11 work, the NAO developed principles which underpin and support the use of risk management to improve decision-making, namely:

- an engaged Board focuses the business on managing the things that matter;
- the response to risk is most proportionate when the tolerance of risk is clearly defined and articulated;
- risk management is most effective when ownership of and accountability for risks is clear;
- effective decision-making is underpinned by good quality information;
- decision-making is informed by a considered and rigorous evaluation and costing of risk; and
- future outcomes are improved by implementing lessons learnt.

**Box 7.9. The role of supreme audit institutions in assessing operational risk management practices in public sector entities: the case of the United Kingdom's National Audit Office** *(cont.)*

*Source*: NAO (National Audit Office) Supporting Innovation: Managing Risk in Government Departments. NAO, 1999-2000 (HC 864); NAO (2002), Managing Risk in Government Departments. Committee of Public Accounts First Report, 2001-02 (HC 336); NAO (2004), Managing Risks to Improve Public Services, Report by the Comptroller and Auditor General, HC 1078-I Session 2003-2004: 22 October 2004; NAO (2011), Good Practice: Managing Risk in Government, Financial Management and Reporting, www.nao.org.uk/help_for_public_services/financial_management/risk_management.aspx.

Law 20/1994 changed the focus of the Court's work to *ex post* audits and aspects of performance. Prior to 1994, it was legally required to audit almost every individual decree and payment order issued by the government or individual public sector entities before their execution. Only minor items of expenditure escape the Court's scrutiny, which was designed to prevent unlawful expenditure. Significant resources were absorbed, with the Court examining approximately five million transactions every year and duplicating the work of the central accounting offices in each public sector entity. Although the 1994 Law retained selected aspects of Court's *a priori* audit function, *ex post* audits have become the main focus of it work.[2] The Law also requires the Court to audit the internal control and internal audit function in all national, regional and local government entities and in non-economic public bodies – in addition to the legality and regularity of the management of public resources.

In many countries, the supreme audit institution plays a critical role in risk management. For example, when the United Kingdom's National Audit Office (NAO) audits public sector entities' financial statements it includes issues of risk management in accordance with international auditing standard ISA 240. The standard – which states that it is "the auditor's responsibility to consider fraud in an audit of financial statements" – requires that the external auditor make enquiries about management's assessment of the risk of fraud, processes for identifying and responding to the risk of fraud, and communications with those charged with governance and with staff in relation to fraud. In addition, ISA 240 requires that the external auditor make inquiries, as appropriate, of management, internal auditors, and others within the entity in order to determine whether they have knowledge of any actual, suspected or alleged fraud affecting the entity. The NAO also conducts periodic assessments of risk management across the government (Box 7.9).

A possible role for the Corte dei Conti could be built into the risk management process should the OIVs' functions come to include reporting on risk management practices. Figure 7.2, which illustrates internal control in the Italian civil service, shows that the OIVs report not only to CIVIT but also to the Court of Auditors. Moreover, the Court is entitled to ask the public services entities and OIVs for any document or piece of information it requires and may carry out or order direct inspections and checks (Law 20/1994, Article 3[8]). Art 14(4b) of Legislative Decree 150/2009 requires OIVs to promptly inform the Court, as well as the Civil Service Inspectorate and the CIVIT of any problems found in their work. Moreover, in March of each year, the OIVs report to the Court so that it may prepare its State Budget Report for the previous year.

The Court subsequently reports to Parliament on government accountability. These annual reports may also address specific issues, of which risk management and the implementation of the Anti-Corruption Law could be focal points. The annual report includes a broad evaluation of the compliance of government action with legal requirements, a review of progress in achieving the most important policy objectives set by Parliament, and an assessment of overall management in the public sector. The Court's reports may also include recommendations for consideration by the government and the public service. Although the Court submits its reports to Parliament as a whole, they may be dealt with by the appropriate parliamentary committees. While the Court's findings and recommendations have no binding force, public service organisations are nevertheless required to report on whether, and in which terms, they have adopted corrective measures to comply with them.

## Proposals for action

This chapter has presented issues for consideration by the Italian public service to support the effective implementation of integrity risk management built upon relevant, comparable good practices. To take three proposals for action can be put forward by the OECD preview To take forward the implementation of risk management as defined in the Anti-Corruption Law, it is recommended that the Italian public service take action the following action:

- Link activities for assessing corruption risks with existing processes for assessing and renewing internal control arrangements within individual public sector organisations.

Public trust is not simply a result of effective efforts to prevent corruption, it is a product of ensuring the effective use of public resources in a way that minimises waste and consolidates the fiscal legitimacy of the government. Risk management is a core element of the internal control framework in the majority of OECD countries, and many public managers believe in the advantages of more closely integrating risk management and internal control practices. Although Italy's Anti-Corruption Law does not explicitly link the issue of corruption prevention and risk management, the two can draw upon and reinforce internal control. In this regard, attention should be given to aligning anti-corruption plans, actors and processes with those of the performance and transparency and integrity plans; the role of anti-corruption managers within organisational structures; and the consideration not only of corruption risks but their significance for programme objectives.

- Implement risk management in incremental steps, learning within individual public sector organisations and sharing knowledge and experience between organisations.

To support continual improvement of risk management practices, attention should focus on i) building leadership understanding and open discussion of integrity risks; ii) initially focusing on a smaller number of risks that can be managed in order to develop related processes; iii) providing practical tools and training to support public managers in identifying and assessing risks – as well as defining risk tolerance and thresholds upon which to guide the formulation of responses to risks; and v) using risk management as input for policy formulation and adjustment in order to be proactive about risks.

- Ensuring clear external oversight of risk management practices in public sector entities.

The Court of Auditors could play a role in supporting risk management practices within the public sector. The Court is a well respected institution in Italian public service and among the general public. It could consider how knowledge of how risk management function might help prioritise the objective and scope of its audit activities.

# Notes

1. Australia, Brazil, Bulgaria, Canada, Finland, France, Japan, the Netherlands, South Africa, Sweden, the United Kingdom, and the United States.
2. An *a priori* audit function still exists for transactions covering general planning acts, administrative measures emanating from the Council of Ministers, acts disposing of public property, and high value contracts. The Corte can also carry out a priori audit of acts in areas where repeated errors have been detected in ex post audit work, or where the President of the Council of Ministers specifically requests it. The Corte may, as a result of its a priori audit work, may authorize the payment or, if irregularities are found, returns the documentation to the relevant ministerial body.

# *Annex 7.A1*

## Integrity gap analysis: Implementing peer recommendations would strengthen provisions of the new Anti-Corruption Law

This Annex presents a summary of the assessments and recommendations made in the international peer review mechanisms in which Italy takes part, developed with a threefold aim:

- identify the recommendations for improving Italy's integrity system made by international and non-governmental organisations;
- compare the shortcomings of the current legislation with the Law as it would have been if its latest draft,[1] approved by the Chamber of Deputies on 15 June 2012, had come into force;
- determine to what extent the peer recommendations effectively address the Law's weaknesses.

The analytical matrix considers the most recent recommendations from the Group of States against Corruption (GRECO)[2], the OECD (Working Group on Bribery)[3] and Transparency International.[4] It gives particular consideration to the following sources:

- GRECO's Compliance Report (CR)[5] on Italy for the Joint First and Second Evaluation Round. It deals with the following themes: the independence, specialisation, and resources of national bodies engaged in preventing and fighting corruption; the identification, seizure and confiscation of corruption proceeds; the prevention and detection of corruption in the public service; and prevention of the use of legal persons (corporations) to shield corruption.

The matrix considers the recommendations in the CR that it has analysed to be "partly implemented" or "not implemented".

- GRECO's Evaluation Report (ER)[6] on Italy for the Third Evaluation Round (Theme I). It considers the criminal offences set out in the Council of Europe's Criminal Law Convention on Corruption. It also includes a discussion on the funding of political parties.
- Phase 3 Report on Italy by the OECD Working Group on Bribery[7] (OR) reviewing the enforcement of the OECD Anti-Bribery Convention, the 2009 Anti-Bribery Recommendation, and outstanding recommendations from Phase 2.[8] The OECD Convention already addresses the bribery of foreign public officials in international business transactions. The matrix therefore analyses and compares the OECD recommendations which affect the Italian domestic integrity system.
- The Transparency International (TI) report on its National Integrity System Assessment of Italy.[9] It evaluates the legal basis and actual performance of institutions that play a part in the anti-corruption system.

The matrix also incorporates recommendations from national Italian sources –the concerns and proposals of the Expert Committee on Transparency and the Prevention of Corruption in the Public Service[10] appointed by the Ministry of Public Administration in December 2011, and is structured as follows:

A. Ratifications

B. Institutional mechanisms for prevention and detection:

1. Anticorruption Agency
2. Codes of Conduct
3. Access to Information and Transparency
4. Incompatibilities
5. Accounting requirements for companies
6. Whistleblowing protection
7. Training and Evaluation
8. Conflicts of Interest
9. Pantouflage (revolving doors)
10. Public Procurement

C. Political Finance

**Table 7.A1. Summary of peer recommendations to improve the Anti-Corruption Law**

| Recommendation | Existing situation | Proposed changes |
|---|---|---|
| 1. Ratifications | | |
| 1.1. Council of Europe's Conventions | | |
| Ratification of Criminal Law and Civil Law Conventions on Corruption. (ER-R.I) | Italy signed the Criminal Law and Civil Law Conventions on Corruption (respectively on January 27th 1999 and on November 4th 1999), but never ratified them. Italy has ratified the OECD Anti-bribery Convention (2000) and the United Nations Convention Against Corruption (2009). | The Law does not address this issue. However, the ratification of the two conventions has just been approved by the Chamber of Deputies (for the Criminal Law Convention: bill C.5058; for the Civil Law Convention: bill C.1787). |
| 2. Institutional Mechanisms: Prevention and Detection | | |
| 2.1. anti-corruption agency | | |
| A competent authority should develop and publicly articulate an anti-corruption policy that takes into consideration the prevention, detection, investigation and prosecution of corruption, and provides for monitoring and assessment of its effectiveness. (CR-R.I)<br><br>The same entity should be given the authority and the resources to systematically evaluate the effectiveness of general administrative systems designed to help prevent and detect corruption, to make those evaluations public, and to make recommendations for change based on those evaluations. (CR-R.X)<br><br>Italy should establish an independent | Following the ratification of the United Nations Convention against Corruption (UNCAC) through Law 116 of 3 August 2009, the Department for Public Administration (DPA) was been designated as the National anti-corruption Authority in the framework of Article 6 of the UNCAC. The DPA was entrusted with the co-ordination and assessment of anti-corruption policy.<br><br>The recommendation was considered partially implemented by GRECO. | Article 1 of the Law designates the CIVIT as the national anti-corruption Authority, thus substituting the DPA. The main tasks/responsibilities of CIVIT, will be:<br><br>(i) analysis of corruption's causes and identification of actions to fight it and prevent it;<br><br>(ii) co-operation with the DPA and the central public administrations, including the issuing of guidelines which are included in the national anti-corruption plan drafted by the DPA;<br><br>(iii) the possibility to use inspection, investigative, and sanctioning powers.<br><br>(iv) co-operation with foreign national anti-corruption authorities. |

| Recommendation | Existing situation | Proposed changes |
|---|---|---|
| Anti-corruption Agency that it is stable and effective, as demanded by international conventions. (TI) | | *The number of new tasks that the Law gives to the CIVIT generates some concerns over its institutional capacity and sustainability.* |
| | 2.2. Codes of Conduct | |
| A publicly announced, professionally embraced, and if possible, an enforceable code of conduct should be issued for members of Government, and that such code of conduct include reasonable restrictions on the acceptance of gifts (other than those related to protocol). (CR-R.XV)<br><br>There is a lack of effective codes of conduct for both the members of Parliament and Government, and the existing ones have no adequate mechanism for control and sanctioning. The adoption of new codes of conduct should be drafted with stricter rules for the governance and the audit of the two institutions. (TI) | There is no specific code of conduct for members of Government, even though the Code of Conduct of public officials (Ministerial Decree of 28 November 2000) applies to members of Government, including the relevant provisions concerning gifts (Article 1.44) which do not set any specific threshold.<br><br>The recommendation was considered not implemented by GRECO. | According to the Law (Art.1.44, modifying Article 54 of Legislative Decree 156/2001), the Government will issue a code of conduct for all public officials aimed at preventing corruption in the Public Administration. The breach of these duties will determine the civil liability of the public official. A specific section will be devoted to duties of executive/managerial posts.<br><br>*The introduction of civil liability for breaching the code of conduct is a significant step forward. The Law could have taken into account special categories and/or roles where the risk of corruption is higher, and which would require specific rules and sanctions.* |
| | 2.3. Access of Information/ Transparency | |
| An evaluation should be conducted and appropriate steps taken to ensure that local administrations are adhering to the requirements for access to the information under their control.<br>An evaluation of the law should be conducted to determine whether the requirement of motivation is | D. LGS 150/2009 addresses the issue of transparency of public administration and tries to open up administrative proceedings and files to allow for easier, meaningful and swifter consultation by the general public, including through e-government initiatives and the so-called | Articles 1.2f, 1.3 and 1.16 of the Law all deal with access of information and transparency issues.<br><br>(i) Article 1.35 requires publication on administrative proceedings, the costs of public works and citizens' services, and the results of |

| Recommendation | Existing situation | Proposed changes |
|---|---|---|
| improperly limiting the ability of the public to judge administrative functions where knowledge of a pattern or practice of individual decisions would provide substantial information with regard to possible corruption and to make that evaluation and any recommendations public. | Public Network System. Nevertheless, no steps have been taken in tackling some particular weaknesses with respect to the implementation of Law 241/1990 on Access to Administrative Documents. | procedural times' monitoring. Furthermore, each branch of the public administration will have an email address to receive petitions, declarations and questions from citizens. Finally, motivations for choosing a contractor in public procurement should be made public. |
| In order to avoid an appeal to the backlogged administrative courts, consideration should be given to providing the Commission on Access to Information with the authority, after a hearing, to order an administrative body to provide access to requested information.<br><br>(CR-R.XI) | The recommendation was considered not implemented by GRECO. | (ii) Article 1.16 aims at enhancing transparency through publication of data relative to discretionary appointments of executive/managerial posts.<br><br>*The attempts of the Law to improve transparency are relevant to address the issue and the recommendations, especially in the context of access to information. Much will depend on how each branch of public administration, especially at local level, will implement such provisions.* |
| | 2.4. Incompatibilities | |
| Consider the possibility of establishing bans on holding executive positions on legal persons in all cases of conviction for serious corruption offences, independently of whether these offences were committed in conjunction with abuse of power or in violation of the duties inherent to a given office.<br>(CR-R.XX) | The possibility of establishing bans on holding executive positions in legal persons in all cases of conviction for serious corruption offences, independently of whether these offences were committed in conjunction with abuse of power or in violation of the duties inherent to a given office, is yet to be considered.<br><br>The recommendation was considered not implemented by GRECO. | The Law does not address the issue emerging from the recommendation (ineligibility for political office). Nevertheless its Article 1.63 sets that, within 1 year from its entry into force, the Government will regulate the prohibition to run for elective and governmental posts at European, central, regional and local level with the aim of preventing the election to Parliament of anybody sentenced for intentional crimes against the public administration can be elected to the National Parliament.<br><br>The latter point constitutes one of the most positive |

| Recommendation | Existing situation | Proposed changes |
|---|---|---|
| | | aspects of the Law, despite the fact that it will not, most likely, apply in the 2013 elections. The prohibition may produce its practical effects only in 2018. However, the ineligibility regime would also apply local and supranational elections. |
| 2.5. Accounting Requirements for Companies | | |
| Review and strengthen the accounting requirements for all forms of companies (whether listed or non-listed) and to ensure that the corresponding penalties are effective, proportionate and dissuasive.<br><br>(CR-R.XXI) | Law 262/2005 introduced an important reform insofar as corporate liability is concerned by laying out a reworked incrimination of false accounting (and thereby amending Articles 2621 and 2622 of the Civil Code), entailing heavy administrative sanctions and bans on holding managerial positions in the private sector. The Italian Stock Exchange Commission (Commissione Nazionale per la Società e la Borsa, CONSOB) is responsible for imposing the aforementioned sanctions. Nevertheless misgivings remain concerning the conditions/thresholds for liability, the determination of penalties, the scope of perpetrators of the offence of false accounting and the limited coverage of auditing requirements (circumscribed to listed companies, State-owned companies and insurance companies).<br><br>The recommendation was considered not implemented by GRECO. | The Law does not cover this issue. |
| 2.6. Whistleblowing | | |

| Recommendation | Existing situation | Proposed changes |
|---|---|---|
| An adequate system of protection for those who, in good faith, report suspicions of corruption within public administration (whistleblowers) should be instituted.<br><br>(CR-R.XVIII and TI) | An operational agreement was signed between Transparency International and the National anti-corruption Authority (DPA) to undertake a study on the institution of whistle-blowing looking into the existing situation, its efficacy to protect whistleblowers, and further improvements needed. Besides this, Italian law provides no whistleblower protection to either public or private employees who report suspected illegal activities. | Article 1.51 of the Law, adding Article 54b in Legislative Decree 165/2001 (Public employment Single Act), introduces the protection of public officials who denounce or report illicit conduct learned within their working relationships, including their protection from being sanctioned, dismissed or subject to direct or indirect discriminatory measures having effects on their working conditions because of their denounces or reports. |
| Ensure that appropriate measures are in place to protect from discriminatory or disciplinary action both public and private employees who report in good faith and on reasonable grounds to the competent authorities suspected acts of foreign bribery and take steps to raise awareness of these mechanisms.<br><br>(OR-R.7) | The recommendation was considered not implemented by GRECO. | *The introduction of this kind of protection is to be welcomed. However, the provision lacks specificity and little is said regarding the implementation of a rather complicated mechanism of denunciation and reporting, which will have to take into consideration sensitive issues such as privacy, slander and discrimination. Reports are received by the DPA (not an independent authority).* |
| 2.7. Training and Evaluation | | |
| There is a need to establish a comprehensive specialised training programme for police officers in order to share common knowledge and understanding on how to deal with corruption and financial crimes related to corruption.<br>(CR-R.III) | Despite several training courses developed at local and central level, and well attended by the three different police forces, concerning criminal law and procedure (including corruption and money laundering offences), some doubts remain on the level of specialization of police officers in corruption cases.<br><br>The recommendation was considered partially implemented by GRECO. | No specific training programs for police officers are set in the Law. However, Article 1.11. establishes that the Public Administration's Higher School (Scuola superiore della pubblica amministrazione) organizes training tacks on ethics and legality addressed to public officials.<br><br>*This provision is to be welcome. Given the absence of specific provisions regarding the resources of such programs and the budgetary constraints imposed at all levels of government, special* |

| Recommendation | Existing situation | Proposed changes |
|---|---|---|
| | | *attention will be required to ensure implementation.* |
| Measures should be put in place to allow the evaluation of the practical effectiveness of the activities of the enforcement authorities concerning the proceeds of corruption. (CR-R.VIII) | The Ministry of Justice has developed a database system (Sistema Informativo Prefetture e Procure dell'Italia - SIPPI) in order to collect comprehensive information concerning seizure and confiscation orders throughout the country. The database became fully operational only recently and it may therefore be premature to assess whether it is appropriate to its objective.<br><br>The recommendation was considered partially implemented by GRECO. | Nothing is said about this point in the Law. |
| 2.8. Conflict of Interests | | |
| A clear and enforceable conflict of interest standard should be adopted for every person who carries out a function in the public administration (including managers and consultants) at every level of government.<br>Furthermore, a financial disclosure system or systems applicable to those who are in positions within the public administration which present the most risk of conflicts of interest should be instituted or adapted (as the case may be) to help prevent and detect potential conflicts of interest. (CR-R.XVI) | Rules on conflicts of interest are contained in Legislative Decree 150/2009 (Article 52, as developed by Circulars 1 and 11 of 2010 and Directive 2/2010) with particular reference to managers who have held office, or performed consultancy tasks, in political parties or trade union organisations. With respect to rules on conflicts of interest of holders of Government office, some are contained in Law 215/2004, which fails to describe clearly what constitutes a conflict of interest. Furthermore, no action has been taken regarding the development of guidance and counselling tools/mechanisms concerning the application of ethical obligations, including on conflicts of interest.<br><br>The recommendation was considered partially | Article 1.42 of the Law delegates the Government to enact, within 6 months of its entry into force, one or more legislative decrees to set the "incompatibility and investiture regime" for managerial/elective posts in the public administration or in State-controlled companies, with the goal of preventing the appointment to executive/managerial posts in the public administration of anybody who has a potential conflict of interest with the appointing administration.<br><br>Furthermore, modifications of Legislative Decree 165/2001 (Public employment Single Act) through Article 1.49 of the Law introduce the verification of conflict of interests' situations in some cases. |

| Recommendation | Existing situation | Proposed changes |
|---|---|---|
| | implemented by GRECO | *Despite these improvements, it remains urgent to establish clear rules on conflicts of interest of holders of Government office. While some are contained in Law 215/2004, the latter fails to describe clearly what constitutes a conflict of interest. Furthermore, no action has been taken regarding the development of guidance and counselling tools/mechanisms concerning the application of ethical obligations, including on conflicts of interest.* |
| 2.9. Pantouflage (Revolving Doors) | | |
| An appropriate restriction relating to the conflicts of interest that can occur with the movement in and out of public service by individuals who carry out executive (public administration) functions should be adopted and implemented. (CR-R.XVII) | No provisions on pantouflage have be adopted and implemented.<br><br>The recommendation was considered not implemented by GRECO. | Article 1.42 lett. i.l). of the Law, adding Article 53.16-ter to the Legislative Decree 165/2001 (Public employment Single Act), addresses this issue. It prohibits public officials, who, in the previous three years had managerial and negotiation powers for a public administration, to carry out any professional activity in private entities related to his/her previous activity. The contracts and the appointments made in breach of such prohibition will be void, and the private entity will be banned from dealing with the public administration for 3 years. |
| 2.10. Public Procurement | | |
| Establish mechanisms for verifying, when necessary, information submitted by prospective public contractors, including declarations regarding whether they have been previously convicted for foreign bribery and whether they are listed on IFI | The Authority for the Supervision of Public Contracts for Works, Services and Supplies (AVCP) maintains a National Database of Public Contracts and a company database that contains information about each company's quality certifications. However, the National Database does | Article 1.16, lett. b of the Law, which modifies Legislative Decree 163/2006 (Code of Public Contracts), introduces, as justification for rescinding the contract, the existence of a firm and final sentence on the contractor for corruption- |

| Recommendation | Existing situation | Proposed changes |
|---|---|---|
| debarment lists.<br><br>Extend the grounds for debarment from public tenders administered by AVCP and other agencies to cover all offences falling within the scope of Article 1 of the Convention, not just those involving EU officials. (OR-R.11) | not appear to contain information on whether a company (i) has been convicted for foreign bribery of non-EU officials or (ii) is on international financial institution (IFI) debarment lists. In addition, effective co-ordination and shared use of information with the Concessionaria Servizi Informativi Pubblici S.p.A. (CONSIP), a public stock company owned by the Ministry of Economy and Finance acting as Italy's central purchasing body, remains to be established. | related crimes. |
| 3. Political Finance | | |
| In March 2012 GRECO released two reports on Italy: on Incriminations (Theme I) and on Transparency of Party Funding (Theme II), including recommendations on: transparency, control and sanctioning requirements concerning elections to the European Parliament; a systematised, comprehensive and workable legal framework for the financing of political parties and candidates, including by considering the consolidation of the applicable rules within a single piece of legislation; ban on donations from donors whose identity is not known to the political party/candidate; clear and consistent rules on the audit requirements applicable to political parties; ensure the necessary independence of auditors who are to certify the accounts of political parties, etc. | In 1993, after a series of major scandals, a referendum firmly repealed the law public financing of political parties. In 1994, "electoral reimbursements" were introduced. By 2002, repayments became annual, with a decrease in the percentage of votes required to get reimbursement from 4% to 1%. In 2006, reimbursements were made for all five years of a political term, regardless of how long a politician stays in office.<br><br>On 13 July 2012 the Parliament approved a new law dealing with the recommendations raised by GRECO. | The Law does not address this issue. However, a new Law 96/2012 approved on July, 2012 addresses many of the issues raised by GRECO. |

The following table lists changes in functions of all actors according to the anti-corruption Law.

**Table 7.A2. Changes of functions**

| Actor | Current Function | New Functions |
|---|---|---|
| CIVIT | Orient, co-ordinate, and supervise the independent exercise of the evaluation functions<br><br>Ensure transparency of the evaluation systems,<br><br>Monitor the compliance of transparency obligations and the implementation of "total disclosure" principle [11]<br><br>Ensure comparability and visibility of performance indicators<br><br>Answer to citizen report and requests about the compliance of administrations in terms of Transparency<br><br>Inform annually the Minister for the Implementation of the Programme of the Executive (MIPE) on its activities | In addition to current functions the anti-corruption authority:<br><br>co-operates with international and foreign bodies<br><br>approves the NACP<br><br>analyses causes and factors of corruption and identifies actions to prevent and fight corruption (1.2,*c*)<br><br>provides (optional)[12] advice to PAs on employees' behaviour<br><br>provides (optional) advice on the authorisations for PAs' executives to perform external jobs<br><br>monitors PAs' compliance and effectiveness on their own measures (including transparency rules)<br><br>verifies that the removal of the secretary of the local authority, communicated to CIVIT by Prefect, is not connected to the activities done by the same secretary with reference to the corruption prevention function<br><br>by 31/12 reports to Parliament about activities taken against corruption and illegal acts and to improve the effectiveness of the related rules. |

| Actor | Current Function | New Functions |
|---|---|---|
| Department of Public Administration | Anti corruption authority | Co-ordinates the implementation of the anti-corruption strategies (national or international)<br><br>Defines (and promotes) rules and methodologies for the implementation of anti-corruptions strategies<br><br>Prepares the national anti-corruption plan<br><br>Defines standard models for the collection of data and information<br><br>Defines the criteria for the turnover of executives in the sectors at risk |
| Public Administration(s)[13] | Adopt the Triennial Programme on Transparency and Integrity (Legislative Decree 150/09)<br><br>Publish online CVs, annual wages, and contacts of the executives (Legislative Decree 69/09)<br><br>Publish online the list of documents necessary for a procedure on demand (Legislative Decree 70/2011) | Adopts an anti corruption plan which contains the risk analysis and the countermeasures (organisation measures)<br><br>Defines, with the NSPA, the procedures to select and train employees, and the procedures for the turnover of executives, working in sectors at risk.<br><br>The political body adopts and sends to the DPA the triennial ACP (by 31/01)<br><br>The political body nominates the anti-corruption manager (ACM)<br><br>Publish on the website information on the unit cost of public works or services for the citizens as contracting authority, can decide that the violation of voluntary |

| Actor | Current Function | New Functions |
|---|---|---|
| | | instruments for integrity (namely the integrity pacts or memorandum for legality - protocolli di legalità) can be ground for exclusion from the tender.[14]<br><br>When referees are required, authorises the participation of its manager and sets s fee<br><br>Send to the CIVIT data and information on transparency |
| Public Administrations Anti-corruption Manager | | Defines the procedures to select and train employees, and the procedures for rotating executives working in sectors at risk.<br>By 15 December publishes on the web and transmits to the political body a report (*relazione*) with the results of its activity |
| Inter-ministerial Committee | | To be nominated by the President of the Council of Ministers (PCM) |
| Prefect | | Give optional advice to local authorities for the adoption of the ACP in compliance with the national guidelines contained in the NACP |
| National school for Public Administration | | Set up training programmes (general and specific or sectoral) on ethics and legality |
| Magistrates, State Attorneys and Lawyers, Members of Tax Comm. | Participation in arbitration boards<br>Referees | Participation in arbitration boards<br>Referees |

For each policy area covered by the Anti-Corruption Law (e.g. transparency, procurement, conflict of interest), Table 7.A3 indicates the entities with primary responsibility and those with which collaboration is mandatory or suggested (in general and in the context of the new Law).

**Table 7.A3. Institutional co-ordination**

| Anti-Corruption Law–relevant article(s) | Responsible entity | Related entities |
|---|---|---|
| **National Anti-Corruption Plan**<br>Art.1<br>Preparation and approval<br>Monitoring effectiveness and compliance<br>Reporting to Upper and Lower Chamber | **Mandatory**<br>CIVIT (Approval)<br>DPA (preparation)<br>CIVIT (monitoring)<br>CIVIT (reporting) | **Mandatory**<br>Parliament (reporting)<br><br>**Suggested**<br>Court of Auditors (reporting and monitoring)<br>Executive (official endorsement of the NACP, like political bodies of other PAs are requested to do) |
| **Triennial Anti-Corruption Plan**<br>Art.1<br>Preparation and approval<br>Monitoring effectiveness and compliance<br>Reporting | **Mandatory**<br>Political body (adoption)<br>Anti-Corruption Manager (preparation) | **Mandatory**<br>Prefect (optional)<br>DPA (must receive the ACP by 31 January)<br>Executives (must support the ACM to find out the sectors at risk)<br>High School for Public Administration (for training programmes)<br><br>**Suggested**<br>OIV (support, quality control, checks and balances)<br><br>**Prohibited**<br>External Consultants |

| Anti-Corruption Law–relevant article(s) | Responsible entity | Related entities |
|---|---|---|
| **Arbitration**<br>Art. 1.2<br>Denial for civil servants<br>Rules on arbitration | **Mandated**<br>Governing body of the administration (organo di governo dell'amministrazione)<br><br>**Prohibited**<br><br>Magistrates, state attorneys and lawyers, members of the tax commissions (commissione tributaria) | **Suggested**<br>Court of Auditors |
| **Code of Conduct**<br>Art.1.44<br>Code of conduct with anti-corruption provisions<br>Civil liability of public official in case of breach of duty | **Mandated**<br>Ministry for Public Administration and Innovation (no longer the Department for Public Administration)<br>Judicial Authority | |
| **Conflicts of interests**<br>Art.1.42<br>New "incompatibility and investiture regime" for managerial/elective posts in the public administration or in state-controlled companies | **Mandated**<br>Executive (the Executive is required to adopt a legislative decree) | **Mandated**<br>All public administration bodies<br>State-controlled companies |
| **Whistleblowing**<br>Art.1.51<br>Protection of public officials who expose or report illicit conducts they uncover in the performance of their duties<br>No discriminatory measure for those who report or denounce | **Mandated**<br>Department of Public Administration<br>Judicial Authority | |

| Anti-Corruption Law–relevant article(s) | Responsible entity | Related entities |
|---|---|---|
| **Training**<br>Art.1.11<br>Training on ethics and legality addressed for public officials | **Mandated**<br>Higher School for Public Administration | |
| **Ineligibility**<br>Art. 1.63<br>Ineligibility for political office at European, national and local level | **Mandated**<br>Executive (it is mandatory for the Executive to adopt a legislative decree) | **Mandated**<br>Bicameral commissions (for advice on the legislative decree) |
| **Transparency of Public Administration**<br>Art. 1.35<br>Publication of information regarding administrative proceedings, the costs of public works and citizens' services, the results of procedural times' monitoring<br>E-mail address for petitioning made available | **Mandated**<br>All Public Administrations | |
| **Transparency in Public Procurement**<br>Arts. 1.16<br>Information disclosure by contracting authorities in open source format (by January 31);<br>supervisory mandate to the ASPC;<br>reporting obligation on compliance from ASCI to Court of Auditors (by April 30). | **Mandated**<br>Contracting Authorities: Italian Authority for the Supervision of Public Contracts (ASPC) | **Mandated**<br>Ministry of Internal Affairs in preventing (infiltration of organised crime into public contracts)<br>Court of Auditors (list of public administration bodies which have not provided and published)<br><br>**Suggested**<br>Local governments (ANCI) |

**Table 7.A4. Provisions on managing risks in the Italian Anti-Corruption Law**

| | |
|---|---|
| Risk assessment– identification, analysis and evaluation | – The public service must analyse the activities with the highest risk of corruption and collect proposals from executives (*dirigenti*) (Art. 1.9 lett a).[15]<br>– The law introduces some procedures that must be included in the analysis:<br>licences or permissions (*autorizzazioni o concessioni*)<br>selection of contractors and selection method (*scelta del contraente [...], modalità di selezione*)<br>grants, contributions, aid in general, and economic advantages of any kind (*concessione ed erogazione di sovvenzioni, contributi, sussidi, ausilii finanziari, non chè attribuzione di vantaggi economici di qualunque genere*)<br>competitive and selective exams (*concorsi e prove selettive*). |
| Risk treatment | – The public service must adopt a plan to prevent corruption (*piano di prevenzione della corruzione*) that provides for the assessment of offices prone to the risk of corruption, and the organisation strategies to prevent it. (Art. 1.5 lett. a).<br>– The rolling three-year plan must be adopted by the executive body (i.e. the body with the political function) every year.<br>– In the event of a crime, the anti-corruption manager (Art.7) of public administration entity is not liable if the organisational model was in place before the crime and its compliance monitored (Art. 1.11 lett. a and b);<br>– The anti-corruption plan cannot be developed by external consultants.<br>– The public administration entity must provide for mechanisms for preventing corruption in decision making, implementation, and control (Art. 1.9 lett. b). |
| Communication and consultation | – The executive body (i.e. the one with the political function) must appoint the anti-corruption manager. Usually, a senior executive (*dirigente di prima fascia*) or, in local authorities, the secretary general. A different choice must be justified.<br>– Public administration entities must provide information to the competent body (responsible) (Art. 1.9 lett. c). |
| Monitoring and reviewing | – The anti corruption authority, the Department for Public Administration of the presidency of the Council of Ministers (DPA), and prefects (state delegates at provincial level) are involved in the risk-management approach.<br>– The prefects support local authorities in drafting the local |

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| | anti-corruption plan. This function is activated only upon request of the municipality.<br><br>– The DPA defines rules and methodologies for the prevention of corruption, draft the anti-corruption national plan. The risk of corruption is reduced by the turnover of the executives, and the DPA is in charge for defining the criteria for the turnover.<br><br>– The anti corruption authority approves the anti-corruption plan designed by the DPA, monitors the effectiveness of anti-corruption plans. |

*Source:* Adapted from Italy's Anti-Corruption Law

**Table 7.A5. Roles and responsibilities of public sector entities and officials in risk management in Italy's Anti-Corruption Law**

| Public sector entity | Responsibilities |
|---|---|
| National Commission for Evaluation, Transparency and Integrity (CIVIT) | – Approving the National Anti-Corruption Plan formulated by the Public Service Department (DPA) of the Ministry of Public Administration<br><br>– Inspecting the implementation of the National Anti-Corruption Plan by requesting data, information and documents from public administration entities<br><br>– Ordering action to be taken or measures adopted as required under the National Anti-Corruption Plan and disclosing and disseminating these measures on its official website |
| Public Service Department (DPA), Ministry of Public Administration | – Formulating the National Anti Corruption Plan from the plans of the central public service departments, and preparing guidelines for its implementation<br><br>– Overseeing and monitoring the implementation, i.e. the application and effectiveness, of the measures adopted by the public administration |
| Public sector entities | – Formulating an annual (rolling) three-year corruption prevention plan based on an assessment of respective corruption risks and stating explicit treatment measures to address these risks<br><br>**Note:** The preparation of the plan may not be entrusted to the individuals from outside the organisation<br>– Transmitting the three-year plan to the Public Service Department (DPA), Ministry of Public Administration<br><br>– Adopting, in co-operation with the National School of Public Administration, appropriate procedures for officials working in |

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| | areas that are prone to high corruption risks, including selection, training, and rotation of officials.<br>– Providing all information as requested by the National Anti-Corruption Authority as part of inspection activities and reporting the information on official websites. |
| Political authority (minister at central level and mayor at local level) | Appointing an Anti-Corruption Manager from among first level of administrative directors within the respective public sector entity (central level) or secretary general (local government)<br>Adopting the (rolling) three-year corruption prevention plan before 31 January every year, and forwarding it to the Public Service Department (DPA), Ministry of Public Administration |
| Anti-corruption manager | Formulating the (rolling) three-year corruption prevention plan for input into the "political authority"<br>Overseeing the effective implementation and suitability of the plan, proposing amendments as necessary based on evolving developments<br>Ensuring that rotation of officials working in areas that are of high corruption risk takes place, in co-ordination with the competent manager<br>Determining appropriate selection and training procedures for officials working in areas that are prone to a high corruption risk and providing assurance that these officials complete relevant training<br>Reporting to their respective political authority and posting the results of activities carried out on the website of the respective public sector entity at the end of each year. |
| Staff working with the anti-corruption Manager | Supporting the anti-corruption manager in preparing the (rolling) three-year corruption prevention plan and overseeing the plan's implementation |
| Line managers | Keeping the anti-corruption manager informed of the proper implementation and compliance with the (rolling) three-year corruption prevention plan |
| Local governments | – Setting up a plan to prevent corruption and providing an assessment of the various levels of exposure to the risk of corruption in their offices and the organisational measures to avoid risk<br>– Transmitting the plan both to the regional authority concerned and to the Public Service Department<br>– Asking prefects for help if needed<br>– Responsibility for preparing the plan may not be allocated to the individuals from outside the organization |

| | |
|---|---|
| Prefects (representatives of the government at a local level) | – Providing the necessary technical support to the local authorities, upon request, to ensure that (rolling) three-year corruption prevention plan have been formulated and adopted in accordance with the guidelines of the National Commission for Evaluation, Integrity and Transparency (CIVIT) |
| National School of Public Administration | – Providing training courses, including sector-specific ones, for public officials on issues related to ethics and legality<br>– Providing training courses to public officials working in areas of high corruption risk, in accordance with the (rolling) three-year corruption prevention plans of public sector entities |

*Source:* Adapted from Italy's Anti-Corruption Law.

# Notes

1. The analysis makes reference to the updated and integrated version of the Bill (S. 2156-B) released on June 19th by the Senate, which will now approve it or discuss it further.
2. The Group of States against Corruption (GRECO) was established in 1999 by the Council of Europe to monitor States' compliance with the organisation's anti-corruption standards. GRECO monitoring comprises: a "horizontal" evaluation procedure leading to recommendations aimed at furthering the necessary legislative, institutional and practical reforms; a compliance procedure designed to assess the measures taken by its members to implement the recommendations. Compliance reports and the addenda thereto adopted by GRECO also contain an overall conclusion on the implementation of all the recommendations. Finally, the Rules of Procedure of GRECO foresee a special procedure, based on a graduated approach, for dealing with members whose response to GRECO's recommendations has been found to be globally unsatisfactory.
3. The OECD Working Group on Bribery in International Business Transactions is responsible for monitoring the implementation and enforcement of the 1997 OECD Anti-Bribery Convention through a system of peer review, as required in its Art. 12. The monitoring process aims to ensure that all Parties have in place a sound system to fight foreign bribery that complies with the Convention's standard, as a way to protect fair conduct of international business. The Working Group examines countries' legal and institutional frameworks to identify potential obstacles to the effective implementation of the Convention and undertakes in-depth reports that include recommendations. The Working Group then follows up to ensure that the recommendations have been promptly addressed. A forum for exchange of ideas and sharing of successful strategies, the Working Group also provides delegates with an opportunity to debate and reach agreement on tough recommendations to improve countries' compliance with the Convention.
4. Neither the UNCAC, nor the European Union have established a review/monitoring mechanism yet.
5. Adopted by GRECO at its 51st Plenary Meeting (Strasbourg, 23-27 May 2011). Available at *http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC1&2%282011%291_Italy_EN.pdf*.
6. Adopted by GRECO at its 54th Plenary Meeting (Strasbourg, 20-23 March 2012). Available at *www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282011%297_Italy_One_EN.pdf*.
7. The report was adopted by the Working Group on Bribery on 16 December 2011. Available at *www.oecd.org/dataoecd/59/47/49377261.pdf*.
8. In particular, Phase 3 concentrates on the following three pillars: progress made by Parties to the Convention on weaknesses identified in Phase 2; issues raised by changes in the domestic legislation or institutional framework of the Parties; enforcement efforts and results, and other key group-wide cross-cutting issues.
9. Transparency International' National Integrity Assessment of Italy is available at *www.transparency.org/whatwedo/nisarticle/italy_2011*.

10. Reports and documents of the Committee are available (in Italian) at *www.governo.it/GovernoInforma/Dossier/anticorruzione/dati.html.* More information on the Committee is available (in Italian) at *www.funzionepubblica.gov.it/comunicazione/notizie/2011/dicembre/27122011---ministro-pa-e-semplificazione-istituita-commissione-di-studio-.aspx*.
11. Some of the transparency publication duties supervised by CIVIT regard civil servants integrity (e.g. the publication duties regarding officials extra assignment payments could be foreseen by the Code of conduct).
12. Public administrations can decide if require the advice or not (optional), but one requested its content is however mandatory for the public administration (cfr. Dossier 371 for the Senate of the Republic, p. 36).
13. According to art. 15 of the bill the law applies to all public administrations "Art. 15. 1. Le disposizioni di prevenzione della corruzione di cui agli articoli da 1 a 13 della presente legge, di diretta attuazione del principio di imparzialita di cui all'articolo 97 della Costituzione, sono applicate in tutte le amministrazioni pubbliche di cui all'articolo 1, comma 2, del decreto legislativo 30 marzo 2001, n. 165, e successive modificazioni".
14. According to lgs. d. 163/06 (Codes for contracts), contracting authority can consider the respect of legality instruments set into a contract by a company in the future contracts. The bill introduces the possibility to exclude the company from the contract in force.
15. Art. 16.1 lett. a-bis) of legislative decree of 30 March 2001, no. 165.

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**Contents**

Preface

Executive summary

Chapter 1. Restoring confidence in sustainable growth

Chapter 2. Strengthening integrity in the Italian public sector

Chapter 3. The new anti-corruption law

Chapter 4. Institutional co-ordination

Chapter 5. Codes of conduct

Chapter 6. Whistleblower protection

Chapter 7. Integrity risk management

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