

## Updated Information and Good Practices on the Prevention of Corruption in Public Procurement.

### 1. Preamble

The economic and strategic importance of public procedures for awarding services, supplies and work has already been highlighted in the first Three-Year Plans for Transparency and Prevention of Corruption (*Piano triennale di prevenzione della corruzione e della trasparenza* - PTPCT), which, according to the legislative provisions and guidelines issued by the National Anti-Corruption Authority (specifically, the National Anti-Corruption Plans), have identified public contracts as one of the most vulnerable areas in terms of corruption<sup>1</sup>.

For all assets that are not included in the specific purchase of goods and services pertaining to the defence and security sectors (the so-called military procurement regulated by Legislative Decree No. 208/1011) the legal context of reference is, as of 1 July 2023, Legislative Decree No. 36 of 31 March 2023, which has transposed EU Directives 2014/23/EU, 2014/24/EU and 2014/25/UE and regulates public contracts and concessions. In particular, the Code currently in force is based on four pillars: a) the principle of result; b) the principle of trust; c) the principle of access to market; d) digitalization of the entire procurement process (from planning to execution).

Legislative Decree No. 36 of 31 March 2023 approved the new public contracts code, aimed at promoting innovation, digitalization and simplification of the sector under consideration.

With specific regard to digitalization, the new code has deeply innovated the public contract sector by mandating that all procedural phases and fulfilments be reinterpreted in digital terms. Consequently, a central role has been entrusted to the National Database of Public Contracts (*Banca Dati Nazionale Contratti Pubblici* - BDNCP) of the National Anti-Corruption Authority, which will serve as a 'single portal' for contracts and the national collector of data and information on the entire life cycle of contracts.

The stated digital transformation aims, on the one hand, at optimizing the timing of procedures and facilitate the fulfilment of obligations by the contracting stations and economic operators involved and, on the other hand, to facilitate the control action on the awarding of contracts and the execution of related activities.

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<sup>1</sup> An analysis conducted by OECD has revealed that public contracts are at "presumed risk" in view of: 1) the incidence of international corruption cases detected in this area (about 2/3 of the total number of cases) and the market share related to procurement costs as compared to overall expenditure of public administrations (about 29%) and to GNP (about 13%); 2) vulnerability caused by the choice of economic operators made by public administrations (unlike pension spending or debit interests, this expenditure is not bound); 3) the impact of corruption on public finances, fair competition and quality of services.

Italy

In the context of the fight against corruption, an inter-institutional coordination table has been established to enforce the work of single institutions and to provide guarantees in the process of adjudication of public procurements.

In light of the aforementioned considerations, it is essential to acknowledge and outline the several initiatives undertaken by individual Italian institutions on this matter, especially those spearheaded by the Italian Financial Police, ANAC (National Authority Against Corruption) and the Carabinieri Corps.

## **2. Italian Financial Police – (Guardia di Finanza)**

The surveillance action by the Italian Financial Police to protect public contracts takes the form of administrative interventions, of a preventive nature, and repressive interventions against economic operators entrusted with the contracts, in accordance with the exercise of its economic-financial police powers pursuant to Legislative Decree No. 68 of 19 March 2001. This is without prejudice to the judicial police investigations of Guardia di Finanza, delegated or on its own initiative, carried out also under the aegis of the European Public Prosecutor's Office, the competent authority for frauds and scams relating to contracts financed with EU budget resources.

The Guardia di Finanza also carries out activities - at the behest of the National Anti-Corruption Authority- regarding public contracts as well as transparency and prevention of corruption in the Public Administration.

It is widely acknowledged that the National Recovery and Resilience Plan (NRRP) has provided for substantial investments that are gradually materializing as public contracts.

The Guardia di Finanza, which is the only police force involved in the NRRP's anti-fraud strategy, has consequently adjusted its intervention strategies, taking into account that, starting in 2024, there will be a significant increase in contracts for the execution of works and services envisaged in the Plan.

The territorial Units of Guardia di Finanza have, therefore, been asked to prioritise control activities against the subjects 'implementing' or 'executing' the investments and projects of the NRRP, who have been awarded contracts for the execution of public works or services.

This aims to enhance controls on awarded contracts, with a preventive and deterrent approach.

The preventive nature of the control action carried out by the Guardia di Finanza allows, moreover, to intervene in time in contexts where, at the outcome of analysis, there is reason to believe that fraud may develop, so as to prevent its spread and, consequently, increase enforcement action.

For the selection of targets to be monitored, the Guardia di Finanza Departments systematically exploit the findings of the numerous operational IT tools available.

Among these is the 'Monitoring Public Contracts' (Mo.Co.P.) system, fed by information flows from the BDNCP and the Guardia di Finanza archives, which makes it possible to have precise and aggregate elements on the awards made by the various public contracting stations, and to develop risk and context analyses, through a reasoned correlation - on an objective and subjective level - of the available data.

### **3. ANAC**

ANAC considers digitalization as the most powerful lever to implement its mission and to involve other stakeholders in the fight against corruption. Digital technologies and big data offers new tools to promote transparency, simplification and compliance at the same time. We have gained this awareness through our experience in the regulation of public procurement sector in Italy, where we exploited data-driven regulation.

During the last two years, after the introduction of a new public procurement code, Italy has attained a complete digitalization of the public procurement process, bringing in simplification and compliance at the same time. This digitalization brings in enormous benefits for users, in terms of quality and timeliness of information. Open data and transparent procurement also increase competition and innovation, driving value for money for the taxpayer and reducing the scope for corruption. Apart for this, the Once Only Principle is a key enabler for the simplification and streamlining of administrative processes that govern procurement, thus reducing the risk of corruption.

The main asset exploited by ANAC is the National Data base of Public Contracts (BDNCP), which collects and integrates data concerning public procurement procedures in Italy.

BDNCP promotes transparency and efficiency in the management of public procurement through digitalization and simplification of the purchasing process, setting a unique reference data source for the public contract market, standardizing the data collected on the life cycle of public contracts and offering the public procurement information as open data.

The data originates from contracting authorities through a digitalized system open to interoperability between Public Administrations. Recently, with the introduction of the new Public Procurement Code in 2023, Italy attained the complete digitalization of the entire public procurement lifecycle.

The use of BDNCP enables the development of transparency and efficiency in the management of public procurement through:

1. Digitization and simplification of the purchasing process;
2. The centrality of the BDNCP as the only reference data source for the public contract market;

3. Standardization of data collected on the life cycle of public contracts (complete adoption of EU eForms);
4. Increased transparency and monitoring through maximum publicity and sharing of available data.

Starting from September 2020, the whole set of information on Public Procurement in Italy since 2009 contained in BDNCP is available in Open Data format, thus facilitating researchers and stakeholders in their task. This is an important result, because openness facilitates sophisticated forms of public use of a database of strategic interest to the country. ANAC has also made available a self-service analysis dashboard for guided access to the information available there and to perform a series of useful descriptive statistics, from aggregated data to the details.

Recently, in relation to integrity in public procurement processes, ANAC over the last two years has set-up a new Virtual Company Dossier that provides Contracting authorities the certificates and data to verify the respect of the mandatory grounds for exclusion and of the selection criteria by the economic operators, in conformity with Data Protection regulations. The availability of such a service ensures that the national procurement system is based on the principles of transparency, competition, and objective criteria in decision-making. This is coupled with the necessity, by law, of establishing in advance the conditions for participation, including selection and award criteria and tendering rules and to provide for sufficient time to potential tenders to prepare and submit their tenders and using by default an open tender procedure.

ANAC has also set up a complete workflow for the publication of tender notices on the Tender Electronic Daily, for the call for tenders of EU interest and a national platform to provide for transparent publishing of all procurement decisions including publishing the invitations to tender;

In addition, the new procurement code provides a framework for the qualification of contracting authorities, encompassing a thorough selection of personnel responsible for procurement, including screening procedures; as well as establishing a conflict of interest management system with declarations of interest and methods to resolve conflicts in particular cases.

These measures - and other specific features of the Italian system such as the inclusion of the public procurement in the scope of anticorruption policies and practices supervised by the ANAC – contribute to assure that the national procurement system is based on principles of transparency, supported by administrative practices promoting integrity and avoiding conflict of interest in procurement, enabling conditions for participation and openness.

#### 4. Carabinieri Corps

The Carabinieri Corps has spared no efforts in order to develop a system for preventing corruption in the area of public contracts, where it operates with a total of 41 Contracting Carabinieri Stations located throughout Italy. This strategy has been particularly focused on analysing and **mapping administrative processes**, which has allowed to<sup>2</sup>:

- Acquire in-depth knowledge of:
  - The individual phases/procedures making up procurement;
  - Interactions between the competent offices;
- Identify roles and related responsibilities in every phase of said process;
- Identify behaviours at risk and enablers, thus making it possible to assess and evaluate corruption risks;
- Handle the risks inherent in individual processes by enforcing general and specific measures.

Therefore, in addition to the general measures applicable to each employee by virtue of his/her status (e.g., duties pertaining to oath, rank, hierarchical dependence, rules of conduct in service) already positively affecting the enablers of corruption risks (with special reference to training in ethics and legality), the following additional specific measures implemented over time are highlighted:

##### **A. the organizational model under section 15, subsection 4 of legislative decree No. 36/2023**

The screening of procurement processes suggested, when the new public contracts code came into force<sup>3</sup>, the timely adoption of an **organizational model** capable of responding to the requirements of legality and accountability<sup>4</sup> that, in the intentions of the legislator, were to act as a counterbalance to the greater freedom and speed granted to operators through the normative recognition of the principles of result and trust.

In particular, in implementation of Article 15(4) of the new code, the Carabinieri Corps has outlined an organizational model that provides for the appointment of a Single Project Manager (*Responsabile Unico del Procedimento* - RUP) to whom a coordinating function is attributed in the management of all public procedures, as well as responsibility for achieving objectives and completion in terms of the public intervention. This figure is assisted by two phase managers (RPs), namely:

- A RP for the programming, planning and execution phases (so-called R3);

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<sup>2</sup> Utilizing the “risk management” methods described by ANAC in the Annex to PNA 2019.

<sup>3</sup> Introduced on 1st July 2023 by legislative decree No. 36/2023.

<sup>4</sup> Intended as a process through which activities leading to the adoption of decisions/measures are transparently traced, thus making the different levels of responsibility identifiable.

Italy

– A RP for the contracting phase who thus assumes the functions and tasks related to the management of the bidding process and the awarding of the contract (so-called R1).

The above-mentioned division of responsibilities aims at:

– Greater specialization and professionalization, as the two RPs may focus specifically on the respective stages of the procedure, acquiring more expertise and ensuring more efficient procurement management;

– De-bureaucratization and simplification, as the division of tasks can help streamline procedures and reduce the time it takes to award contracts;

– More effective prevention of corruption, to the extent that the support provided to the RUP by two additional persons to whom responsibility is attributed can strengthen the mechanisms of corruption control and prevention.

The resulting organizational model thus determines a tripartition of competencies between RUP, R1 and R3, which, from a risk management perspective, produces - on the one hand - a “segregation of functions” effect capable of affecting the quantification of corruptive risk and - on the other hand - it rises to the role of a true preventive control.

## **B. The “Control Room” for public procurement**

The growing importance and transversality of the procurement activity in the institutional sphere has made it necessary to establish a “Control Room”, attended by the Offices of the Carabinieri General Command ordinarily in charge of carrying out the various activities involving this sector (from procurement to specialized training).

This tool has been designed with the primary task of strengthening the reduction of corruption risks in the institutional sphere in the area of “public contracts”, in particular by optimizing:

– Regular updating of process mapping, that is preparatory to the assessment of "corruption risk" assignments and the application of specific measures to reduce the risk of "maladministration";

– The coordination of continuous training for the heads of the contracting stations (including by sharing best practices);

– Dealing with the criticalities emerged while monitoring publication in the SAT of the data provided for in legislative decree No. 33/2013 (also in order to reduce the times for processing the requests for civic access by the URP);

– Joint analysis of the interventions of ANAC, the case law of interest as well as of the questions posed by the dependent departments;

– The working out of guidelines for the correct implementation of the Code of Public Contracts by the Institutional Contracting Stations and to support the monitoring

activities carried out by the Commanders at the various levels (engaged in multiple institutional activities and not possessing adequate/updated competences in terms of "active administration").

### **C. Ordinary rotation**

In accordance with the legislative provisions<sup>5</sup> and the guidelines issued by ANAC, the Carabinieri Corps implements, in the procurement sector, the "ordinary" rotation of staff with responsibilities in all Contracting Stations. This is a preventive organizational measure aimed at limiting the consolidation of relationships that may fuel improper dynamics in administrative management, resulting in the permanence over time of certain employees in the same role or function. Alternation reduces the risk that a public employee, for a long time dealing with the same type of activity, services, procedures and always establishing relationships with the same users, may be subjected to external pressure or may establish relationships that could trigger inappropriate dynamics and the taking of not impartial decisions.

### **D. Training**

Ongoing training on public contracts and related corruption risks acts as a barrier to potential risky behavior enabled by a lack of knowledge of the rules and procedures governing the sector. Because of this, and in view of the level of specialization required for the efficient performance of the tasks descending from the new organizational model, the Carabinieri Corps has initiated a training plan, both on anti-corruption and of a specialized type, aimed at increasing the quality of the professional skills of personnel who hold key roles in the procurement sector.

### **E. The system of declarations**

A special measure to prevent a conflict of interest, namely diversion from the pursuit of the public interest in public procedures or in their execution<sup>6</sup>, is represented by the system of the declarations made by the employees and the external subjects involved (e.g. designer), the subsequent checks and assessments carried out by the administration as well as the obligation to abstain in the event of a conflict.

Within the Carabinieri Corps, due to the peculiar organizational model in charge of the management of public procedures characterized by a prior identification of the persons in charge of the tasks of RUP, R1 and R3, the system of declarations provides for the obligation to make a declaration:

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<sup>5</sup> Law. 190/2012 - section. 1, subsection. 4, letter. e), subsection. 5 letter. b), subsection. 10 letter. b).

<sup>6</sup> Section 16 of Legislative Decree No. 36/2023 in paragraph 1 provides for that *“a conflict of interest exists when a person who, in any capacity, intervenes with functional tasks in the awarding procedure or in the execution phase of contracts or concessions and can influence, in any way, their outcome, results and management, has directly or indirectly a financial, economic or other personal interest that can be perceived as a threat to his impartiality and independence in the context of the awarding procedure or execution phase.”*

Italy

- At the time of taking office (and, in any case, once a year), for the RUP, R1 and R3 with the obligation to promptly report any conflict of interest situations, even potential ones, that they might incur with respect to the individual tender procedure;
- For each procedure, by the DEC, DL, Safety Coordinator, tester/compliance checker and their assistants, tender commissioner, with the obligation to update it in case of conflicts of interest arising after the signing of the declaration, also by virtue of the obligation under Art. 748 co. 5 of the Code of the Military Order.

In particular, the declarant must specify:

- That he/she does not have, directly or indirectly, a financial, economic, or other personal interest with respect to the activity to be performed;
- That he/she is not in one of the cases of conflict of interest under Article 7 of Presidential Decree No. 62/2013 or - in the case of RUP/R1/R3 - that he/she undertakes to notify the Administration in a timely manner.

All declarations form an integral part of the documentation of the procurement process and are screened by the RUP.

## **F. Transparency and digitization of the life cycle of public contracts.**

In view of its accountability purposes, transparency plays a fundamental role as an anti-corruption safeguard by ensuring the traceability of decision-making processes and public spending procedures.

Under the new code of public contracts, the Carabinieri Corps has ensured, also through coordination within the “control room”, a strict application of the principles of simplification, traceability and transparency of contracting stipulated by the new code through the timely implementation of the detailed provisions on the digitization of contracts drawn up by ANAC<sup>7</sup>, with particular reference to:

- The operation of the digital platform for carrying out the awarding phase of public contracts (which will later be integrated with the other phases of the contract life cycle).
- Transparency fulfilments-functional both to empower staff working in the procurement cycle and to simplify procedures for access to records and civic access by stakeholders-through the inclusion in the Transparent Administration Section of the institutional website<sup>8</sup> of:
  - The link to the National Public Contracts Database containing data and information on the entire life cycle of individual contracts.

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<sup>7</sup> Resolutions No. 261,263,264 of 20 June 2023.

<sup>8</sup> <https://www.carabinieri.it/in-vostro-aiuto/amm-trasp/gare-appalto>



- The documents related to each public procedure (including direct awards), as identified by ANAC<sup>9</sup>
  - Compliance with the legal publicity requirements, for each type of tender procedure (including direct awards) which is ensured by the Contracting Carabinieri Stations of the Corps through the transmission to the Platform for Legal Value Publicity (PVL) of ANAC of the link to the institutional SAT in which the documents indicated by the Authority must be found<sup>10</sup>.

### **G. The *revolving door***

In the context of public contracts, t- also ensures the application of the revolving door ban prescribed by Art. 53, para. 16 ter of Legislative Decree 165/2001. Pursuant to this Article, employees who have exercised authoritative or negotiation powers on behalf of public administrations referred to in art. 1, para. 2, cannot perform any working or professional activity for private subjects benefiting from the activity of the public administration carried out by means of these powers. The ban applies in the three years following the termination of employment (so-called “cooling off” period).

This requirement has been implemented in the Carabinieri Corps through a few functional measures to prevent violations of the ban by stakeholders, in particular:

- The inclusion of an anti-revolving door clause in all calls for tender/tender notices.
- The issuance of a self-declaration certifying compliance with the ban by companies participating in procurement procedures.
- The identification of figures (more than 100) who have roles with authoritative/negotiating functions within the Administration.
- The notification to the employee who ceases employment and who in the last three years has exercised authoritative and negotiating powers in the name and on behalf of the administration of the aforementioned ban.
- The reporting to the RPCT (*Responsabile della prevenzione della corruzione e trasparenza*), as part of the annual report, of the personnel concerned who have terminated their service with the Administration, giving assurance that the ban has been notified (by the employment bodies).
- The publication on the appropriate page of the institutional SAT of the names of the Officers on leave affected by the ban, consistent with the requirements of the Defence Ministerial Decree of 15 June 2020.

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<sup>9</sup> Annex. 1 to Del. 264/2023.

<sup>10</sup> Annex1 to Del. n. 263/2023.

## **H. The qualification of the Contracting Carabinieri Stations**

With a view to the progressive professionalization of the personnel working in the Contracting Stations, the Carabinieri Corps has so far obtained the qualification of 33 out of a total of 41 Carabinieri Stations through the special system made available by ANAC for all Public Administrations, which allows for registration pursuant to Articles 62 and 63 of Legislative Decree 36/2023. The qualification score is updated every two years and, therefore, the goal is to maintain/increase the overall level of specialization and professionalization of personnel with responsibility functions, in terms of both training (see para. d above) and experience.