

Ouverture de ‘Transparency in Public Administrations’*

*Silvio M. Brondoni** , Luca Bisio ****

Abstract

The principle of transparency has gained increasing importance in laws and regulations, particularly in recent years with the evolution of the public administration model towards open government. The principle of transparency is configured as a guarantee of access to those who have the right, but in the evolution of the most recent laws, also constitutes access independent of the legal sphere of certain subjects, aimed at ensuring widespread and general knowledge of information.

Keywords: Trasparenza; Public Administrations; Italian Public Administrations; Global Business

1. Overture

The principle of transparency has gained increasing importance in laws and regulations, particularly in recent years with the evolution of the public administration model towards open government.

The principle of transparency is in fact a key instrument to guarantee opening the information assets of Public Administrations, on the one hand, to enable citizens to monitor their activities, and on the other, to promote the accountability of public administrators. Transparency, as an instrument to ensure the sound administration and impartiality of the institutions, is deemed a principle of administrative activity, alongside the criteria of cost effectiveness, efficiency, impartiality, and disclosure.

The principle of transparency is configured as a guarantee of access to those who have the right, but in the evolution of the most recent laws, also constitutes access independent of the legal sphere of certain subjects, aimed at ensuring widespread and general knowledge of information. The principle of transparency finds a powerful qualification and enhancement tool in the web, since it increases the possibility for an indefinite number of subjects to access and use the information at any time from different physical locations. Knowledge of administrative acts and documents constitutes the foundations of administrative democracy of modern States, but above all, transparency is contrary to the will to conceal information for

* The authors: S.M. Brondoni § 1, L. Bisio § 2

** Editor-in-Chief Symphonya. Emerging Issues in Management (silvio.brondoni@unimib.it)

*** Assistant Professor of Management, University of Milan-Bicocca (luca.bisio@unimib.it)

the benefit of personal and group interests. Transparency is therefore configured as a need for clear and unambiguous Public Administration structures, also ensuring citizens the impartiality and legality of their actions.

Transparency is therefore not to be confused with disclosure, even if constituting a fundamental element. Disclosure is the mere state of affairs of the action, the organization, or the procedure, while transparency determines the conditions of clarity and comprehensibility of the administrative action. In other words, while the actions regularly published on the register or the website would be public, they would not be transparent if published during the holidays, or skilfully concealed, or if the documents were accessible but with ambiguous, obscure and incomprehensible texts. With the adoption of directives on administrative language and style codes, transparency tends to overcome the complexity of the bureaucratic language, and such simplification in turn leads to a greater understanding of the content of the deliberations. Transparency constitutes a fundamental value of Public Administration activities and as such, should permeate every objective set. To this end, Public Administrations must: define the organizational areas to be influenced to achieve adequate transparency; adopt a methodology to measure the level of transparency (assessment) ascribed to each objective; identify and share a system of indicators aimed at measuring and monitoring the level of transparency achieved with respect to the objectives set, while encompassing in indicators the judgments of citizens.

In reality, many public administrations address the issue of transparency as a mere bureaucratic requirement, often even the most attentive administrations confront transparency without a precise, and consistent methodology over time, without realizing that today, increasingly widespread digitalization exposes them to the easy identification of everything they produce within their structures and their relationships with citizens and businesses.

2. Transparency in Italian Public Administrations

Since the 1990s, Italian Public Administrations (PA) have been characterized by a series of legislative measures aimed at triggering a process of radical change. This reform, still ongoing today, is aimed at:

- recovering efficiency and effectiveness in public action, emphasizing the service role of Public Administrations towards citizens;
- strengthening the relationship of trust between Public Administrations and citizens that has been weakened on the one hand by the numerous inefficiencies of the public system and, on the other, by the pervasiveness of corruption at the political and managerial level.

The capacity for dialogue and interaction with all the relevant stakeholders has assumed ever greater strategic importance to enable Public Administrations to carry out their role as promoters of the development of the communities they represent.

Therefore, an evolutionary path has been outlined in the relationship modes between Public Administrations and citizens who, as primary recipients of public actions, have increasingly assumed the role of active participants in the process of defining and implementing public policies.

The corporatisation of Public Administrations has progressively led to the redefinition of the relationship with citizens. The latter, in fact, have transformed over time from 'subjects' into 'users' and, finally, into participants. The PA has progressively evolved towards a relational logic through:

- emphasising institutional subsidiarity: the PA tends to achieve its goals through interaction with citizens and other stakeholders;
- flexibility in relations with stakeholders: the PA increases its capacity to listen and interact and, consequently, the ability to interpret needs and produce results consistent with expectations;
- citizens as participants: citizens take on the role of active participants in the PA;
- strategic relevance of communication developed and governed at every significant level of interaction between the PA and its stakeholders;
- use of a shared language and communication tools increasingly constructed through benchmarking and sharing with the subjects of the territory.

To support this path from the point of view of the governance tools, the main lines of reform concern:

- public service employment relationship and performance evaluation;
- public accounting and programming systems (harmonisation of public budgets at all levels of government and for each entity in the public sector);
- digitization and dematerialization processes;
- internal control mechanisms (strategic and management, administrative, financial control of associated companies, etc.);
- methods for regulating public procurement (procurement code).

Finally, an issue of a transversal nature to those mentioned above concerns transparency in Public Administrations as well as corruption prevention systems.

The relevance of this matter is immediately clear when analysing the annual ranking of Transparency International's Corruption Perception Index (CPI). In this ranking, Italy, as regards the fight against corruption, is positioned negatively both at the world level (60th out of 176 countries) and at the European level, placed among the last with Bulgaria and Greeceⁱ. In fact, these data are confirmed by what emerges from the analysis of the recent publication of Transparency International's 2017 Transparency Agendaⁱⁱ.

The reaction to this phenomenon has been, as always in the Italian case, to produce legislative responses in the face of consolidated illegitimate, illegal, and opaque behaviours. Among others, the legislator issued Law 190/12 (Anti-Corruption Law), Legislative Decree No. 33/13 (Transparency Decree) and Legislative Decree 97/16 (addendum to the Transparency Decree). The legislator's action was supported by the National Anti-Corruption Authority (ANAC), which in turn issued the National Anti-Corruption Plan (NAP) as well as the guidelines on transparency and integrity in Public Administrations. Without proper emphasis on the issue of transparency in terms of norms, but also adopted behaviours, it is clear that the managerial logic and tools introduced over the last 30 years are meaningless and represent only a superstructure that, on the one hand, weighs down the functioning mechanisms of administrations, on the other, renders incorrect practices that are the antithesis of public interests more opaque.

Since 2012 (launch of the anti-corruption path) to date, countless difficulties have been encountered in the process of presiding over the anti-corruption and transparency action. Amongst the most frequent are:

- the bureaucratic approach aimed at the compliance of many organizational actors who should be the driving force behind this change, and who instead often limit themselves to incorporating legislation without making it really effective;
- the complexity of many of the anti-corruption and transparency systems currently in force, not very coherent with the small size of many Italian local Public Administrations that have neither the professionalism nor the means to implement such instruments;
- the diversity of specificities of many Public Administrations that have made it necessary to refine the rules in order to make them effectively applicable, but which in parallel have lengthened the timing of the implementation of the reforms;
- the lack of well-structured and meaningful training paths from a qualitative-quantitative point of view;
- the lack of citizens' knowledge of anti-corruption regulations on the one hand, and information available thanks to the transparency reform on the other.

This last critical element can be analysed in a dual perspective. It certainly derives from the scarce capacity of Public Administrations to communicate the changes, which today is aggravated by an endemic lack of resources to finance communication actions.

However, the low impact of the reform can also be explained by the defensive reaction that many organizations have put in place against the levels of transparency desired by the legislator. This is understandable when considering that Legislative Decree 33/13 already intended to make information on directors and managers, consultancies, contributions, competitions and tenders accessible to citizens. These few examples are sufficient to understand why administrations may feel directly exposed to their stakeholders.

The subsequent Legislative Decree 97/16 then extended the scope of the previous legislation in order to:

- redefine and broaden the scope of transparency obligations and measures;
- envisage organizational measures for the disclosure of certain information and for the concentration and reduction of the burden of Public Administration;
- rationalize and specify disclosure obligations;
- identify those responsible for imposing sanctions for violating the transparency obligations;
- reformulate the concept of civic access to public data and documents to make it substantially equivalent to that defined in the Anglo-Saxon systems as the Freedom of Information Act (FOIA).

□ *The Freedom of Information Act (5 USC 552) was enacted in 1966. FOIA provides that any person has a right to obtain access to federal agency records, except to the extent that such records (or portions of them) are protected from public disclosure by one of nine FOIA exemptions or by one of three special law enforcement record exclusions. This right is enforceable in court. The Federal FOIA does not provide access to records held by U.S. state or local government agencies or by businesses or individuals. States have their own statutes governing public access to state and local records, and they should be*

consulted for further information. (National Oceanic and Atmospheric Association, 2017).

In fact, precisely to align with the international FOIA principles, Legislative Decree 97/16 intervened from the outset on the general concept of transparency and extended its scope. If in fact Legislative Decree 33/13 defined transparency as “*full access to information concerning the organization and activity of the public administration, in order to promote widespread forms of control over the pursuit of institutional functions and use of public resources*”, the new decree:

- on the one hand, reiterates the concept of ‘full access’;
- on the other hand, clarifies that access refers not generically to ‘information’, but more precisely to ‘data and documents held by the public administration’.

Beyond this, the scope of access itself has been extended. While formerly it was aimed at “*promoting widespread forms of control over the pursuit of institutional functions and the use of public resources*”, the reform added “*the protection of citizens’ rights*” and “*promoting the participation of parties concerned with administrative activity*” (Article 1, paragraph 1 of Legislative Decree 33/13, amended by Article 2, paragraph 1 of Legislative Decree 97/16).

It is evident how Public Administrations may view a reform that potentially renders most of their information accessible to citizens and does so in a historic moment in which the relations between these organizations and citizens themselves are not characterised by trust or customary dialogue.

Bibliography

- Australia’s Federal Register of Legislation (2017). Freedom of Information Act 1982. Available at: <https://www.legislation.gov.au/Details/C2014C00041>
- Ball, C. (2009). What is transparency? *Public Integrity*, 11(4), 293-308.
<http://dx.doi.org/10.2753/PIN1099-9922110400>
- Bellini, N. (2015). Smart Specialisation in Europe: Looking Beyond Regional Borders, *Symphonya. Emerging Issues in Management* (symphonya.unimib.it), 1, 22 – 29.
<http://dx.doi.org/10.4468/2015.1.03bellini>
- Bisio, L. (2006), Public Governance and Financial Communication, *Symphonya. Emerging Issues in Management* (symphonya.unimib.it), 1, 110-128.
<http://dx.doi.org/10.4468/2006.1.08bisio>
- Borgonovi, E. (2007). Sustainable Economic Growth in the Global Society, *Symphonya. Emerging Issues in Management* (symphonya.unimib.it), 2, 50-63.
<http://dx.doi.org/10.4468/2007.2.06borgonovi>
- Brondoni, S.M. (2006). Managerial Corporate Governance Communication, *Symphonya. Emerging Issues in Management* (symphonya.unimib.it), 1, 8-23.
<http://dx.doi.org/10.4468/2006.1.02brondoni>
- Brondoni, S.M. (2003). Network Culture, Performance & Corporate Responsibility, *Symphonya. Emerging Issues in Management* (symphonya.unimib.it), 1, 8-24.
<http://dx.doi.org/10.4468/2003.1.02brondoni>
- Doh, J. P., Rodriguez, P., Uhlenbruck, K., Collins, J., and Eden, L. (2003). Coping with corruption in foreign markets, *Academy of Management Proceedings*, August 1, 2003, 17(3), 114-127
- Ministro per la Semplificazione e la Pubblica Amministrazione (2017). FOIA Available at: <http://www.funzionepubblica.gov.it/foia-7>

- Franzoni S., Pelizzari C. (2016). Weather Risk Management in Tourism Industry, *Symphonya. Emerging Issues in Management (symphonya.unimib.it)*, 1, 45-55.
<http://dx.doi.org/10.4468/2016.1.05franzoni.pelizzari>
- Gnecchi, F. (2006). Corporate Governance Communication, *Symphonya. Emerging Issues in Management (symphonya.unimib.it)*, 1, 47-61.
<http://dx.doi.org/10.4468/2006.1.04gnecchi>
- Hoefges, M., Halstuk, M. E., & Chamberlin, B. F. (2003). Privacy Rights versus FOIA Disclosure Policy: The Uses and Effects Double Standard in Access to Personally-Identifiable Information in Government Records. *Wm. & Mary Bill Rts. J.*, 12, 1.
- Information Commissioner's Office (2017). What is the Freedom of Information Act? Available at: <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/what-is-the-foi-act/>
- Mathur, A. (2015). Corruption in Local Governance as Resistance: A Post-Colonial Reading of the State, *Academy Of Management Proceedings January 2015*
- OECD (2015). OECD Guidelines on Corporate Governance of State-Owned Enterprises, p. 14, July 2015.
- OECD (2016a), Summary Record of the OECD Integrity Forum Session, In the Public Interest: Preventing Corruption in State-Owned Enterprise, April 2016.
- OECD (2016b), Transparency and disclosure measures for state-owned enterprises (SOEs): Stocktaking of national practices, June 2016.
- Perrini F., Vurro C. (2013). Stakeholder Orientation and Corporate Reputation: A Quantitative Study on US Companies, *Symphonya. Emerging Issues in Management (symphonya.unimib.it)*, 1, 53 – 65
<http://dx.doi.org/10.4468/2013.1.04perrini.vurro>
- Riboldazzi, S. (2015). R&D and Product Engineering in Global Pharmaceutical Companies, *Symphonya. Emerging Issues in Management (symphonya.unimib.it)*, 2, 57 – 74.
<http://dx.doi.org/10.4468/2015.2.05riboldazzi>
- Salvioni, D.M., Bosetti, L. (2006). Corporate Governance Report and Stakeholder View, *Symphonya. Emerging Issues in Management (symphonya.unimib.it)*, 1, 24-46
<http://dx.doi.org/10.4468/2006.1.03salvioni.bosetti>
- Salvioni, D.M., Astori, R. (2013). Sustainable Development and Global Responsibility in Corporate Governance, *Symphonya. Emerging Issues in Management (symphonya.unimib.it)*, 1, 28-52.
<http://dx.doi.org/10.4468/2013.1.03salvioni.astori>
- Svensson, J. 2005. Eight Questions about Corruption, *Journal of Economic Perspectives*, 19(3), 19-42.
- United Nations Economic and Social Commission for Asia and the Pacific (2009) What is Good Governance? Available at: <http://www.unescap.org/sites/default/files/good-governance.pdf>

Notes

ⁱ https://www.transparency.it/wp-content/uploads/2017/01/CPI_2016_ranking.jpg

ⁱⁱ <https://www.transparency.it/agenda-anticorruzione-2017/>