

# Transparency Duties in Italian Universities\*

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## Abstract

*The Legislative Decree no. 33/2013 and subsequent amendments and additions involved large areas of the public sector, including state universities, which are subject to the publication obligations affecting most Italian administrations. The absence of specific guidelines on the subject, also due to the co-presence of different authorities, leaves operators to the difficult reconciliation between the specificity of the university system and the generality of regulatory obligations.*

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## 1. Transparency in Italy

Transparency International shows that the Italian system occupies the 60th position in the world ranking (equal merit to Cuba) and one of the last position in the European contest (as Bulgaria or Greece) about the Index of Corruption Perception (CPI)<sup>i</sup>. This situation is confirmed by the Transparency Agenda, also drafted by Transparency International.

Furthermore the corruption affects the Gross Domestic Product considerably; indeed the UE Commission<sup>ii</sup> estimates corruption costs in the Eurozone about 120 billion of Euro per year. In addition to this expense, we must take into account several indirect costs originating from the delays in the definition of administrative practice, the poor functioning of public agencies, the shortages in the mechanism that should protect collective interests, the creation of inadequate or useless public works, the absence or inadequacy of public control over the territorial transformation activities, the unwary allocation of scarce public resources.

The corruption in Italy is a pervasive and systemic phenomenon that plagues society as a whole" and that affects different areas of public administration, including the University (GRECO Report – Group of states against corruption)<sup>iii</sup> and facilitating the so-called “escape of the brains”. Hence, here the ANAC President has recommended the drafting of guidelines about transparency and prevention of corruption for the Italian universities.

In the last years the need for preventive tools for the corruption has become increasingly necessary; these tools should aim at preserve the value of public ethic and should include the organization plans for the prevention of corruption, the codes

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of conduct, the raising of transparency levels and the improvement of disciplinary liability system. In this context the term “accountability” has taken the role of milestone, laid to rebuilt the wasted relationship between administrators and citizens<sup>iv</sup>. On a practical level we have witnessed the entry into force of the Law 190/2012 (also called Severino’s Law, from the Minister proposer name) and especially the Decree-Law 33/2013, as amended in the course of 2016 with the Legislative-Decree no. 97. In 2013 the National Anti-Corruption Authority (ANAC) replaced the Commission for the Evaluation, Transparency and Integrity in Public Administrations (CIVIT)<sup>v</sup> and performed several dispositions for the Public Administration in order to facilitate a social-economic development, based on transparency and anti-corruption<sup>vi</sup>.

## 2. University and Transparency Duties

The Legislative Decree no. 33/2013 establishes that the transparency, considered as “*guarantor of individual and collective freedom as well as civil, political and social rights*”(art. 1), is subject to critical levels, defined in the same decree, that cater to public administrations, among which include, in accordance with art. 1, co. 2 of Legislative Decree no. 165/2001 “*state administrations, including institutions and schools of all levels and educational institutions, companies and administrations of an autonomous state, the regions, provinces, municipalities, mountain communities and their consortia Associations, University Institutions, Independent Housing Institutes, Chambers of Commerce, Industry, Crafts and Agriculture and their associations, All National, Regional and Local Public Organizations, Administrations, Enterprises and national Health Service*”. Therefore the university system is included among the subjects to whom the law applies: the Legislative-Decree no. 33/2013 imposed specific duties to publish information related to university activity. These obligations was explicated by the CIVIT (act no. 50/2013), that drafted “*Linee guida per l’aggiornamento del Programma triennale per la trasparenza e l’integrità 2014-2016*”, in which it explained point by point the singular obligation for each of the mentioned subjects.

Instead, the private university are not included among the subjects classification and so they became object of interest for the ANAC in the years from 2014 to 2016. In 2015 the Regional Administration Tribunal (TAR) established the no applicability of the Legislative-Decree. 33/2013 for private university; then this sentence was confirmed by the State Council (Section VI, 11<sup>th</sup> July 2016, no. 3043).

## 3. Transparency Obligations: What the Law Wants

The obligations for the University are classified into first level subsections (macro-family) and furthermore into second level subsections (data typology); the single obligation can be more or less composed.

The attachment 1 (ANAC, act no. 1310/2016) is denominated “*Prime linee guida recanti indicazioni sull’attuazione degli obblighi di pubblicità, trasparenza e diffusione di informazioni contenute nel D.Lgs. 33/2013 come modificato dal D.Lgs. 97/2016*” enumerates 25 macro-family of obligations (first level subsection), 67 data

tipology (second level subsection) e 114 single obligation (of which 85 for the University).

The obligations for public universities are classified into macro-areas that include one or more first level subsections:

- General publication
- Publication concerning the university organization
- Publication concerning the public resource use
- Publication concerning public administration activities.

## **2.1 General Publication Duties**

In analogy with the major part of the Public Administration, the Universities have to public some information, collected in the first level subsection “general disposition”. This is the first subsection of the wider section “Amministrazione Trasparente”, that includes the “Three-year Plan for prevention of corruption and transparency”, an instrument that aims to reduce the risk of corrupt behaviour.

Among these publications there are also the disciplinary codes, with express indication about infringements and related penalties, and regulatory and non-regulatory acts relating to university activities. In the latter case, it goes from the national framework regulations to the ministerial circulars, from the University Statute, to the internal regulations relating to the acquisition of goods and services, collaborations, etc.

These publications must be constantly updated, with the exception of the Three-year Plan for Prevention of Corruption and Transparency: this one must be updated yearly in concurrence with its approval (on January 31th) and transmission to ANAC.

## **2.2 Obligations of Publication Concerning the Organization of the University**

The second macro-area is the one concerning the publication of organization and inner or outer human resources.

It has been the subject of several regulatory actions by the legislature and implementation by the ANAC, that, with various guidelines, has contributed to delimiting the scope of these obligations.

Among the most important obligations, there is certainly the issue of publishing information about political, administrative, management or government affairs.

Article 14 of Legislative Decree no. 33/2013, in fact, states that with regard to political office-holders (including non-elective ones), to holders of administration, management or government (unless they are granted free of charge):

- nomination or proclamation act, indicating the duration of the mandate or the elective mandate;
- curriculum;
- any kind of remuneration connected to the assumption of the charge; the amounts of travel services and missions paid with public funds;
- data relating to the assumption of other offices, at public or private entities, and the related remuneration to any title paid;
- other possible assignments with charges for public finance and the indication of the remuneration payable;

- declarations provided for in Law 441/1982, namely: a declaration concerning properties, shares and corporate role and a copy of the income statement of the subject, the spouse and relatives within the second grade, when they approve.

ANAC clearly defines that Rector, the members of board of Directors and the members of Academic Senate are considered organs of administrative and political address and so obliged to respect the art. 14 c.1 lett c. of Legislative Decree 33/2013. However the role of the Academic Senate has been redefined by the law 240/2010: it is the single university that decides if this organ belong to the ones of administrative and political address. Furthermore the Legislative-Decree no. 33/2013 establishes the obligation to publish and update a series of data relating to University Evaluation Unit, personnel and consultants.

### **2.3 Publication Concerning the Public Resource Use**

In the last years Universities has been affected by a two-fold reform process:

- Legislative-Decree no. 18/2012 which introduces the obligation of the university to adopt the financial statements of the civil code
- Legislative-Decree no. 150/2009 concerning the reform of the performance cycle.
- These reforms come into contact with the issue of transparency and with the need to account for the use of public resources.

The Articles 10 and 20 of the Legislative-Decree 33/2013 ask the publication of the Performance Plan and its related Report, the amount of the performance related salaries and the methodological rules of the performance cycle.

With reference to the budget cycle, the legislation requires that the public administration make public the forecast and final balance sheets and plan of he expected indicators and result of the financial statements, to be approved pursuant to Legislative-Decree 91/2011.

Finally we must also remember how the article 29 requires to publish the financial statements in summary form in order to ensure full accessibility and comprehensibility of the financial statements.

### **2.4 Publication Concerning Public Administration Activities**

Among these obligations we can remember the publication of call for contracts, administrative procedures and information on the services provided, including quality standards.

The most interesting items for the Universities are:

- Grants, contribution, subsidies and economic benefits: the article 26 of Legislative-Decree 33/2013 establishes that public administration must publish criteria and modality for the attribution of these and the act of granting
- Controlled entities and companies: for each of them it is necessary to publish the name of the company, the extent of the participation, the annual burden on the administration, the number of representatives in the board of the company, the financial result for the last three years and several other information.

### 3. The Subjects of Transparency: The Role of the Evaluation Unit

If in the preceding paragraphs has been provided a brief overview of the transparency duties of the Italian University, with an emphasis on the most sensitive issues, it is necessary here to dwell on the subject entering the transparency management process with particular reference to the role of the Core Rating.

On a general level, the definition of the organizational model for monitoring transparency and publication obligations is of crucial importance and requires specific reflection.

This aspect has repeatedly been the subject of attention in measures aimed at clarifying the procedures for the implementation of Legislative Decree 33/2013 which presents a number of provisions governing the organizational structure, roles and responsibilities related to transparency. The decree outlines an organizational model is characterized by:

- a shared responsibility within the organization, from the top of the structure to the staff;
- decentralization of the control functions on the implementation of transparency obligations (by the ANAC, to the governing bodies, to the person responsible for the prevention of corruption and transparency, to the disciplinary office and the Independent Evaluation Unit);
- by an internal and external presence in terms of controls and penalties for failure to comply with obligations.

Generally, the application of the rules on transparency involves a number of subjects, both internal (organs of political and administrative policies, responsible for prevention of corruption and transparency, managers and employees) that external entity (ANVUR, ANAC and Court of Auditors).

The moment of conjunction between internal and external actors is represented precisely by the Evaluation Unit that, elevated to the rank of organ University by Law 240/2010, it has been the subject of legislation stratification from Law 370/1999 which established the need for the University, to adopt an internal evaluation system of administrative management, teaching and research activities [...] engines, including through comparative analyzes of costs and performance, the correct use of public resources productivity of research and teaching, as well as the good performance of administrative action "(art. 1, Law 370/1999). These functions, in accordance with the following co. 2, had to be carried out by a collegial body which was guaranteed autonomy operational: the Independent Evaluation Unit.

- Law 240/2010 establishes that Evaluation Unit are responsible for performance cycle and transparency. Among other tasks, on transparency, the Evaluation Unit:
- have to monitor the overall functioning of the system of evaluation, transparency and integrity of internal controls and processes an annual report on the state of the same;
- communicate the shortcomings to the competent organs of government and administration, as well as the Court of Auditors;
- validate the Report on *performance* and ensuring visibility through the publication on the administration's corporate website;

- ensure the correct application of the guidelines, methodologies and tools that come from ANAC;
- promote and evidence compliance with the obligations relating to transparency and integrity of public administration.

A highly important role is enhanced by the provisions of the Decree 97/2016 that provides that the Evaluation Unit needs to verify that the plans for the prevention of corruption are consistent with the objectives in the strategic planning documents and the evaluation of the performance and transparency of data related to anti-corruption and transparency.

It is expected, moreover, that the Evaluation Unit refers to ANAC about implementation of measures to prevent corruption and transparency.

#### **4. The transparency of the University: What Prospects? What are the Risks?**

Implicit objective of this contribution, in addition to providing a roundup of duties with evidence of the most significant ones for Universities, has been to highlight the relevance of transparency management and prevention of corruption system. It is a system, however, which cannot and must not develop separately from other management instruments of the universities. The reference goes to strategic planning tools, but also to the self-assessment of teaching and research tools that represent the *core business* of universities.

Too often, it shows how we have to face with parallel systems without any point of contact and, above all, it has emerged that every system is potentially able to influence and be influenced by others, to create virtuous circles in which all the stakeholders of the University, internal or external, can benefit. Reality faces the opposite, in vicious circles that you have to stop and reverse the direction and impacts.

It does not help in this effort the absence of a central unified coordination entity. ANVUR, ANAC, Department of Public Administration and Ministry of Education, to mention only the main actors, intervene each for their competence stopping just before the start of the space of others.

The risk, more real than perceived, is that an issue such as transparency, which should be within the areas of influence of all these subjects, do not ever be upgraded to the junction area role, but one remains no man's land capable of dropping into the void the principle in the tortuous path of implementation and joints between different instances brought forward by the various parties.

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## Notes

<sup>i</sup> [https://www.transparency.it/wp-content/uploads/2017/01/CPI\\_2016\\_ranking.jpg](https://www.transparency.it/wp-content/uploads/2017/01/CPI_2016_ranking.jpg).

<sup>ii</sup> UE Commission (2011), Fighting corruption in the Eu, COM, 308 final.

<sup>iii</sup> Italian Government (2012), La corruzione in Italia per una politica di prevenzione, Analisi del fenomeno, profili internazionali e proposte di riforme, Rapporto della Commissione di Studio e l'elaborazione di proposte in tema di trasparenza e prevenzione della corruzione nella pubblica amministrazione

<sup>iv</sup> Co.In.Fo. (2013), CODAU, PROCEDAMUS – La tabella dei procedimenti amministrativi delle università italiane, UNIDOC 29th november 2013

<sup>v</sup> Co.In.Fo. (2013), op. cit.

<sup>vi</sup> Presidenza del Consiglio dei Ministri (2015), Strategia per la crescita digitale 2014-2020