

EMPOWERING ANTI-CORRUPTION AGENCIES: DEFYING INSTITUTIONAL FAILURE AND STRENGTHENING PREVENTIVE AND REPRESSIVE CAPACITIES

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Best practices in the fight against corruption



Proposed by the Italian High Commissioner for
the prevention of and the fight against corruption

The Italian High Commissioner for the fight against and prevention of corruption and other illicit practices within the public administrations (HC), forwards the following two cases on best practices concerning the HC's activity.

1) THE ADMINISTRATIVE INVESTIGATION POWERS OF THE ITALIAN HIGH COMMISSIONER AGAINST CORRUPTION.

The main goal of administrative investigations carried out by the Italian High Commissioner against corruption (HC) must be related to article 5 of the UNCAC, namely the prevention of phenomena of corruption or of bad practices which can give rise to corruption, rather than the disclosure of single cases of corruption and their prosecution.

The administrative investigation we are talking about is deeply different from investigations carried out by Police Forces or Judiciary System.

In fact, according to article 2 of the President of the Republic Decree October 6th 2004, n. 258, the High Commissioner can promote – without any need of complaint - independent administrative investigation in the direction of all public administrations in order to check the existence, the reasons, the background and the risk of corruption phenomena.

The considerable importance and effectiveness of this category of investigation is related to its taking into consideration the whole management, mechanism and functioning of specific sectors of the public administration under examination, which allows to assess the existence, the reasons and the grounds of a corruption phenomena, or even potential corruption, and not – or not only - single cases of corruption.

What must be pointed out is that the examination of the management, functioning, mechanisms and practices set up by public administrations, gives evidence of the potential corruption related risks and of elements which give rise to corruption or illegal behavior, so allowing to bring up the specific causes of corruption, and also allowing to set up an effective and specific system of measures and solutions able to prevent the phenomena through the possibility to recommend specific changes to the administrative management, functioning and mechanisms valued to which corruption, or risk of corruption, are found out as related.

In fact, this way of wide and global investigation is aimed at analyzing and taking into examination all practices, documents, management and mechanisms regarding one or

more specific and identified key areas of potential risk in a public administration, checking their respect and conformity to the law, the functioning and effectiveness of internal audit systems, and analyzing the adequacy of laws and of public practices and management, whose lacks have created corruption phenomena or can create a potential risk of corruption or other illicit.

The reason to create and to provide a specific Authority (the Italian High Commissioner against corruption) with this power of wide investigation derives from the consideration that repression of corruption – as developed through Police and Jurisdictional Systems - is not enough to achieve an effective fight against corruption.

In other words, the awareness and consciousness that repression polices cannot by themselves bring to a satisfying result in the contrast of corruption has suggested the establishment of a global preventive system able to analyze, indoors of public administrations, the existence, the causes and the risk of corruption, through direct inspective powers, able to offer a global overview of the matter of corruption and its background.

The accent on this kind of approach to corruption and the relevance of the direct investigative powers we are talking about, are related to the consideration that even when an effective repression system does exist and does work, once that evidence of corruption has been reached, the repression of single cases, apart from the deterrence effect, cannot prevent the occurring of other new cases.

In fact, in the perspective of corruption criminal repression, the efforts are only directed to the search and gathering of the evidence of the crime, as to proceed to its prosecuting.

To reach any relevant results in the fight against corruption only the understanding of its causes and the removal of them appears to be the winning card to play.

A global policy for prevention is needed, able to found out the existence of phenomena of corruption, and not single cases only, and mainly to analyze the causes of corruption, as to remove them and, consequentially, the risk of coming up corruption.

The main instrument that fully responds to the goal of discovering the risk of corruption and its causes is the specific investigative powers provided to the High Commissioner, which allows to examine directly and from indoors public administration the global asset and management in specific areas of potential risk (such as public

procurements, public employees and public officials, public finances) as identified by UNCAC.

In the former considerations relies the difference between the administrative powers provided to the High Commissioner and the investigative powers provided to Police Forces and to Public Prosecutors and traditional Judiciary System.

Concerning the powers of the Police Forces and Public Prosecutors, although they include more pervasive instruments – such as telephone or room interceptions – in order to gather evidence against persons involved in corruption crimes, the results they can reach is only devoted to the repression of corruption, and will not produce any useful or copious information about its causes and background, as to perform a global policy against corruption by finding the remedies and removing the causes that give rise to potential corruption, as pointed out in final recommendations to be forwarded to the administrations under examination.

In fact, the final purpose of the investigative powers of the High Commissioner is, after finding out the corruption phenomena or potential corruption, to point out the causes and suggest the remedies and strategies to be adopted to prevent corruption, as draft into recommendations to be forwarded to the administrations involved in the investigations and those who have control over them, or into proposals of legislative measures.

More in detail, having regards to the procedure, when promoting an investigation, the first step is to point out one or more key areas of a public administration considered worth to be taken into consideration as potential areas in which corruption can grow (such as public procurement, management of public finances, hiring, retention, promotion and retirement of public employees and public officials, financial situations of public officials).

A task force of officials belonging to Police Forces and hosted at the HC, is mandated to investigate, with administrative powers, within the key areas of the selected public administration.

They will examine all practices, documents, systems, procedures, management of the administration with a total and global approach. They have free access to all information, documents and data banks, they may request any information, they can make official interview with members of public administration and private individuals involved in the administrative procedure under investigation.

The results are collected in a final report, forwarded to the High Commissioner, who gives mandate to its expert judges to analyze the report and to draft the final evaluation on the results.

The final evaluation will point out all the critical results of the investigation, will describe the phenomena of corruption or potential corruption as testified by the investigation, will analyze the causes and factors of them, will analyze the risk of corruption, will point out the critical results and illegality in public managements and procedures, will identify and analyze the violations of the laws or procedures and the causes and background of this violations which can determine corruption or its risk, will elaborate a global analysis on the phenomena, will indicate the remedies and strategies to remove the causes of corruption or potential corruption, will submit recommendations to the public administrations involved by the results of investigation, will draft recommendations for legislative or normative changes when necessary.

Any criminal behavior will be reported to Public Prosecution Service for its prosecuting, while damage to the public finance will be reported to the Public Accounts Audit Courts.

The High Commissioner will survey on the measures that will be adopted by the public administrations, checking their conformity and adequacy to the recommendations, and their effectiveness to remove the causes and to prevent the risk of corruption, making new recommendations if necessary. Public administrations must notify the High Commissioner of actions taken to correct the situation brought to light.

CASE 1

As a successful example of the use of this kind of investigative powers, the results of the investigation promoted towards the Public Sanitary Local Administration of a town in Southern Italy can be mentioned.

The most significant results in the investigation can be summarized as follows.

Within the public procurements many relevant violations of the law have been found out, all clearly related with a potential risk of corruption or with committed crimes of corruption.

All procurements for maintenance, repairing and rebuilding parts of the edifices and surgery rooms have been illegally given through direct offer, without any public mandatory

procedure based on transparency and competition rules and without any essential mandatory public information.

The keep of the procurement under the economic value which makes compulsory the widespread information of the procedure (to allow even foreign contractors to take part) and the respect of strict rules of decision-making, the works referring to the same structure or building, having same characteristics and referring to the same time period, were divided into many works (which is forbidden by law), while they could be related to a single procurement procedure. The purchasing manager - when not offering the procurement straight off to only one contractor - invited few private contractors to make their economic offers, then choosing the most convenient offer to stipulate the contract.

For all the procurement procedures have been always invited the same contractors, and each of them obtained some contracts as best offering in a like turn-over system. Despite the identical object of the procurements, the same contractor made deeply different economic offers for each procedure (in the form of percentage discount), so that it has been possible to argue the existence of a global plan allowing to sign contracts with few identified contractors, whose economical offers where directed to allow a turn-over in the contracts. An agreement between the public employee and the contractors has been argued.

The investigation also testified that some of the contractors and some of the employees responsible for procurement were involved in organized crime.

No control about the link with criminal organizations had been settled by the administration.

No effective internal control on procurements had been adopted by the administration.

After the recommendations of the High Commissioner to the administration, a strict control has been set up and all procurements are now managed by a central office, so that the Sanitary Divisions cannot any more promote public procurements, and the respect of the rules of law appears to have more chances. Some of the reasons that allowed or made easier the violation of law have been removed.

Consequentially, the risk of corruption related to the specific practice found out after investigation has been removed.

Several proposal of normative changes in the internal procedures have been forwarded to the administration.

Other critic results concerning public procurements have come out from the investigation.

Contracts related to public procurements had been illegally renewed at their due date instead of promoting public procurements procedures.

Some of the procurement managers had been previously prosecuted for crimes against public administration without being disciplinary judged, as prescribed by law, and without being changed in their position.

The most relevant results of the investigation about the public employees are as follows.

The recruitment of human resources with low professional qualification was done by the administration under examination by asking to a work provider agency. The persons to recruit were freely chosen by the agency (even under pressure by public officials), with no obligation to respect any order of classification.

No control had been adopted by the administration on the characteristics of the employee to recruit.

It has been found out that in case of necessity of human resources recruitment, public officials agreed with the work agency the persons to indicate for the work contract, and the chosen persons often inscribed themselves to the agency only a short time before recruitment.

Many qualified persons (doctors) have been recruited for specific programs without any control and examination about their professional qualification.

Many public officials and employees have been found out to be under prosecution or already condemned for serious crimes against public administration or even for belonging to criminal organizations without the adoption of any disciplinary provisions by the administration under investigation (in violation of law which obliges administrations to take preventive or repressive disciplinary provisions in case of prosecution or condemnations).

Many advisors have been nominated by the administration and highly paid without checking their professional qualification and work outcome.

Within a project for the prevention of cancer financed by regional government, has been found out that the administration spent all money without providing any service to the people, did not buy the diagnostic machineries indicated in the project, bought in some cases

other machineries, did not have some of the machineries indicated on the bills. The component of the project committee have been paid although they did not realize, not even partially, the project.

The global view descending from the results of the investigation highlighted the total lack of legality, transparency and efficiency in the management of the procedures and economic resources related to the administration under investigation, the repeated and wide spread violation of the laws, the total lack or non effectiveness of internal controls and internal audit system.

The final evaluations have been forwarded to the administration under investigation, to the Regional Government, to the Ministry of Health who have competence on public health service system with powers of control, of activity program, and normative powers.

All criminal behavior have been reported to Public Prosecution Service for its prosecuting, while the damage to the public finance has been reported to the Public Accounts Audit Courts.

The results of this investigation gives evidence of the effectiveness of this investigative methodology against corruption, which mainly relies on its principal purpose, which consists not in repression of single cases of corruption only, but in prevention of corruption through the discloser in key areas of administration of the phenomena of corruption, with specific attention to its causes, roots and background as related to administrative practices, management, mechanism, internal control and survey.

(the results of the mentioned investigation are classified and confidential)

2) MONITORING CONTRACTUAL AND EXPENDITURE PROCEDURES THROUGH THE USE OF I.T. TOOLS

Amongst other responsibilities, Regulation no. 258 gives the High Commissioner institutional powers to monitor contractual and expenditure procedures. Such powers can be seen as a practical application of art. 9 of the UNCAC and make prevention a key element in the promotion of transparency, trust and accountability concerning the management of public finances. In this sense monitoring was foreseen in the Regulation as the third element around which the High Commissioner's activities in carrying out his role revolve, together with investigations and analysis of the adequacy of the current law.

In fact, it is possible to obtain early indications and cross references indicating the behaviour of administrative bodies, through monitoring carried out in collaboration with other authorities charged with such responsibilities. In particular, we can identify the way money is spent and apportioned by sector, the frequency with which contracts for supplies and services are awarded to the same people and the methods used in procurement procedures. However, it must be pointed out at this stage that, as regards the High Commissioner's role, these monitoring checks and subsequent analysis do not so much assume importance in themselves, but must be seen as adding to the large picture of corruption. These in particular help with the identification of potential areas of risk and in ascertaining the cause and associated causes that create and feed corrupt behaviour within the administration.

In other words, the High Commissioner's objectives are not so much the identification of individual responsibility or illicit activities as taking initiatives aimed at investigating and reconstructing the overall situation under examination, and evaluating to what extent public sector activity conforms to the basic canons of impartiality and transparency. In this sense, monitoring contractual procedures and expenditure provides fertile ground for more comprehensive checking and analysis (extending upwards from the identification of individual cases to that of general practices) and descending (from an examination of the existence of certain practises to an evaluation of their practical repercussions by looking at specific cases). These converge in the common objective of permitting specific issues to be brought to the surface, while determining any possible responsibility of the individuals involved is of secondary importance for the High Commissioner.

It is really through the convergence of the three approaches mentioned (investigations, evaluation of the adequacy of the legal framework and the monitoring of public expenditure) in a common objective that one can understand the complementary nature and possible interdependence between the High Commissioner's initiatives. It is very possible, and in fact advisable, that the use of these prerogatives could reinforce the useful synergy to achieve the overall objective. With specific reference to the use of the power of monitoring expenditure, action can be taken in concrete terms through further initiatives by the High Commissioner both from a point of view of evaluating the adequacy of the legal framework and of the practices in use by the various public administrations, as well as the

possibility of initiating a widespread investigation into particular topics, and finally of establishing regulations or procedures to follow for certain specific situations. On the other hand, investigations into specific cases can be further developed and strengthened through an adequate expenditure monitoring procedure in the area concerned. This would be carried out to widen the analysis and the evaluation of the situation inferred. Again, a study of the adequacy of the legal framework or of the practices in a particular sector can be supported by close scrutiny by an expert monitoring expenditure.

In conclusion, the joint and co-ordinated use of his powers and the instruments at his disposal will allow the High Commissioner to maximise the efficiency of his activities and enable him to achieve the organisation's objectives, particularly as regards such knowledge of the problem which is necessary to prevent and fight it efficiently.

CASE 2

The application of IT monitoring tools to expenditure.

In order to identify best strategy for the application of the High Commissioner's powers accent has been put on the need to develop an automated monitoring system, as the one truly efficient system allowing speedy and wide-ranging checks to be carried out on a very large quantity of data. Such a system also permits initial screening, identification of abnormal cases and cross checking different data in order to systematically build up a picture of a complex situation. In fact, with the help of IT procedures, a systematic expenditure profile for all public authorities and public expenditure in general can be obtained, resulting in a systematic picture made up of individual actions and procedures which gives an overall view, shows financial flows, and, in the last analysis, identifies possible abnormalities with respect to the rules covering transparency and legality.

All this is aimed at increasing the dissuasive efficiency of checks with the specific purpose of preventing corrupt behaviour or that which might facilitate such behaviour.

To achieve this result, all electronically formatted authorisations issued by public authorities to spend money were collected by the High Commissioner for the financial years 2005 and 2006 and were subjected to checks on the quality and completeness of the data available in terms of its suitability for an efficient automated monitoring procedure.

The need to integrate those IT accountancy procedures at present in use with further data, to make the IT monitoring procedure more reliable and capable of producing a

systematic picture of public finance management emerged. In particular, it is became evident that there was a need to enhance the IT data with the following information:

- Identification of the procedure followed in the awarding of supply or service contracts when aimed at choosing contractors by private negotiation or in the absence of a public tendering procedure.
- The definite identification of those to whom money was paid, so as to identify the extent of such activity and of relationships created with the public administration by each contracting body.
- An automated linking of expenditure authorisations to payments, and the timing of such payments in order to reconstruct the entire situation behind the activity (for example, a useful evaluation can be achieved simply by checking on the timing the administration uses when paying different suppliers).
- A clear code of conduct for expenditure based on the reason for the expenditure in order to guarantee the indentifiability and transparency of the accounts.

The initial results of the High Commissioner's analysis show that present IT accounting practices only partially fullfil the requirements of an IT expenditure monitoring system.

A subsequent step will be to promote the implementation of such a system at least integrating the points mentioned above which are necessary to completely automate the checking procedures and to permit the reconstruction of even complex situations.

This analysis, however, can also offer useful information to assist in another field of investigation carried out by the High Commissioner concerning the danger of the public administration being influenced by organised crime. Such investigations can be greatly assisted by the possibility of linking reciepients of public expenditure, of complex financial movements, etc. by using IT monitoring tools.

Further checks were, however carried out on the efficiency of the monitoring system used for data already available concerning expenditure authorisations obtained for 2005 and 2006.

In particular, the analysis hinged around the following topics concerning expenditure in 2005:

- expenditure analysis concerning two randomly chosen administrations. A quick and quite completely analysis of two Government administrations was carried out (Ministry of Communications and Ministry of Health). The expenditure profile of each administration was examined and clarification and documentation about procedures were directly requested where abnormalities appeared to be present. We are currently examining the documentation and considering whether a deeper investigation is necessary or not and, if so, whether to send the case to the Audit Court or the Public Prosecutor;
- a cross sectional analysis covering all the public administration concerning specific expenditure topics. We identified a service (common to all administrations and which did not have specific profile) to reconstruct the behaviour of individual administrations. In other words, we wanted to see what practices were identifiable (in terms of best results or potentially damaging practices) and used by administrations regarding goods and services that were common to all rather than specific to individual institutions, and that could be subjected to comparative evaluation. In particular, the analysis was carried out on “ cleaning expenditure”. Different procedures emerged from the results of the investigation with elements that did not conform to the rules laid down. We selected the most serious of these and proceeded to request clarification and the documentation. The results of the subsequent examination of the documentation submitted will lead to a decision on whether or not initiate more wide ranging checks through investigations (hopefully extended to include all the public administration over the specific service under examination) or to issue instructions to the administrations concerned, forwarding the case, where necessary, to the Audit Court or the Public Prosecutor.

Final evaluation: efficiency for prevention

The possibility of adequately and systematically developing IT based monitoring appears really important in terms of the efficient prevention of corruption.

In fact, the possibility of conducting widespread and far-reaching checks making use of IT support systems enables the dissuasive and preventive aspects of control to be developed and increased. All the more so if one considers that the checks are focused on particular areas and carried out on the basis of an initial screening of procedures so as to

identify elements that differ significantly from the norm. All this increases the efficiency of the checks, which specifically focus on predetermined issues and which, therefore, require the administrations involved to respond rapidly allowing the High Commissioner to evaluate the coherence and conformity of the replies with the information already at his disposal.

Furthermore, IT support permits systematic reconstruction of complex issues (the frequency with which the names of persons receiving payments reappear, links with other contracts etc.) which would otherwise be missed by analyses, even though accurate, that are limited to a review of individual cases.

Finally, setting up an IT procedure involving systematic, year on year, data collection about expenditure will allow the development of an analysis of trends in the areas at risk of corruption. It will further permit us to link these over a period of time, follow their evolution and continually update the analysis. Besides this it will also be possible to directly monitor the adequacy of those regulations the administration must adhere to resulting from investigations and checks already carried out.

In conclusion, an efficient corruption prevention policy can be developed using IT monitoring of expenditure, and precise and focused controls can be put in place that will raise standards and increase transparency in the management of public finances. This will result in increased reliability and greater completeness of information on the subject, and will create greater public awareness, all in full accord with the requirements of the UN Convention on the matter.