



CORTE DEI CONTI

Task Force for Strengthening the Effectiveness of the Collaboration between
Anti-Corruption Authority (ACAs) and Supreme Audit Institutions (SAIs)
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**Jurisdictional SAIs Tomorrow: A New Frontier in the Fight Against Corruption?
The Italian Case**

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We warmly thank His Excellence Doctor Harib Al Amini for hosting this important event, Mr. Khalid Hamid for the deep programme and the results we are achieving in these days and we are delighted that Mr. Majed El Bayya of the World Bank is moderating this session.

Policymakers (especially Parliament and Government) have, over time, implemented a wide array of anticorruption regulations

However, even the finest set of legal rules is not *per se* sufficient to tackle unlawful practices.

Thanks to its diverse functions and powers, insisting on every level of the bureaucratic machine (from central government to Regions and local authorities), the Italian Court of Auditors exerts a leading role in deterring and fighting corruption, hence acting both from an *ex ante* and an *ex post* perspective. We can say that we have a diachronic and continuous control over unlawful practices

Our activities are different but complementary to the ones recently assigned to the Italian Anticorruption Authority, as well explained by Professor Nicoletta Parisi.

The Court of Auditors has a unique position in the national institutional framework, thanks to its “judicial” nature.

All its members are judges and are autonomous and independent from all the other powers of the State.

This means that our prosecutors can bring their actions against anyone allegedly find liable of misusing public resources, including politicians and central or local governments.

Thus, let’s start with the relationship between *Ex Ante* Audit Functions and Public Procurement.

The *ex ante* **compliance audit** assesses the compliance of specific Government measures and provisions *vis-à-vis* the law. It is performed on the most important administrative acts, measures and directives issued by the Government, including the most important

supply contracts, awards of tenders and measures relating to State property, privatizations and concession contracts.

The *ex ante* **compliance audit** is extremely useful in fighting corruption as it could intercept unlawful conducts while assessing the regularity and lawfulness of administrative proceedings of any **public procurement** and detect the misuse and waste of public money from the beginning and ensure the most efficient use of public funds.

This preventive control verifies accountability and also enhances the importance of integrity of actors in public procurement.

Given the huge potential of such type of audit, recent debate has focused in Italy on the opportunity to **significantly expand the Court's power** in auditing public procurement with the aim of assigning the Court an *a priori* scrutiny over any relevant acts pertaining to contracts falling above the EU threshold, before the signing of the contracts.

Moreover, the Court has the power to **assess the effectiveness of internal controls** which should ensure the efficient fulfilment of a public procurement process while safeguarding integrity-related goals and objectives.

Finally, it has also the power to do specific **performance audits** on any public procurement process.

What else? As a Court, we also have Judicial Functions: The Court has Accounting and Administrative Liability Jurisdiction.

The main **judicial powers of the Court** are aimed at assessing administrative and accounting liabilities for any damage caused to the State or any other public bodies by fraud or gross negligence.

All losses caused by an unlawful conduct or omission can be taken into account (**corruption**; fraud in the management of public funds – European, national, regional and/or local –; infringements or unlawful conducts or omissions in directing and/or monitoring performance of works, supply and service agreements causing breach of contracts, unlawful additional payments, unlawful variant solutions; etc.).

The harm could take into account damages to properties, goods, assets loss and or financial damages, but also **non-material damages**. Our case-law has developed a wide array of non-material damages which are frequently assessed in corruption cases pertaining to public procurement. There are damages to reputation (*i.e.* loss of reputation of any public body deriving from the release of the news subsequent to the unlawful conduct of one of its agent), damages to competition (calculated through a comparison between the usual market price and the higher price paid by the public body), damages deriving from bribes (equal to the cost of the bribe); damage caused by inefficiencies in managing a service of general interest or a public office; subsequent losses from illegitimate use of public funds allocated for works, which includes the costs incurred for rectifying their quality or quantity and the ones relating to the project.

This very vast notion of “damage” is a fundamental tool to counter an equally vast notion of “corruption”, stretching the response beyond the criminal offence and beyond the administrative annulment of unlawful acts.

Moreover, our strength in fighting corruption derives from a privileged actor that we have, which is the Public Prosecutor Office of the Court of Auditors. To give you an idea, approximately a hundred of our magistrates are prosecutors.

Only the Public Prosecutors of the Court of Auditors can bring liability actions before its Jurisdictional Chambers, at the end of any investigation proceedings, which could also have been delegated to the police, mostly the financial police.

Complaints are the basis for initiating any investigation and consequent actions. In this regard, several public authorities have the duty to report to the prosecutors any losses of public resources. Also, the Anticorruption Authority has a duty to report any alleged waste of public funds in public contracts to the Court of Auditors.

Moreover, the Prosecutors can investigate on the basis of complaints originated by any type of source, such as accountants and internal auditors; any other kind of notices, coming from politicians, citizens, whistle-blowers, press articles, anonymous complaints, etc.

Finally, the Criminal Prosecutor has the duty to report any investigation or case, which allegedly caused a loss to public funds, to our prosecutors.

On the other side, in cases of alleged corruption or other criminal infringements, the Public Prosecutors at the Court of Auditors have the similar duty to report the notice to the Criminal Prosecutor, while maintaining the respective independence of their investigation, investigative secret and powers to bring an action.

So, I pass the floor to one of our best prosecutors, Arturo Iadecola, a Deputy Prosecutor of the Office of the Prosecutor General of the *Corte dei conti*.