ITALY

Report

THE RULE OF LAW 2022

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Presidency of the Council of Ministers

EU Affairs Unit

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"...the magistrates who administer the law, the judges who act as its spokesmen, all the rest of us who live as its servants, grant it our allegiance as a guarantee of our freedom".
Cicero (106 BC - 43 BC)

INTRODUCTION

The annual Rule of Law Report lies at the centre of the European rule of law mechanism, which acts as a preventive tool, deepening multilateral dialogue and joint awareness of rule of law issues. The first Rule of Law Report was published on 30 September 2020, and the second on 20 July 2021.

To facilitate the appropriate involvement of Member States, the Commission has set up a network of contact points on the rule of law, composed of national contact points appointed by Member States. In the preparation for the 2020 and 2021 Rule of Law Reports, all Member States, through these contact points, provided detailed input on presenting the summary of the legal framework and significant developments as regards the topics covered. The input assisted the Commission in the drafting of the Rule of Law Reports using comparable information covering all Member States. The input was complemented by the other contacts and sources set out in the document on methodology, including through networks such as the Group of contact persons on national justice systems and the National contact points on corruption.

The Commission would like to invite the national contact points to provide contributions to the 2022 Rule of Law Report. This document provides information on the type of information and topics that will be covered in the 2022 Rule of Law Report, in order to allow Member States to provide input. More targeted input may be requested at a later stage of preparation of the 2022 Rule of Law Report, including in the context of country visits, or bilateral contacts, as well as the later consultation on the draft country chapters.

The 2022 Rule of Law Report will continue to deepen the assessment under the existing four pillars, with the main novelty being the inclusion of specific recommendations to Member States, as announced in the State of the Union Speech by President von der Leyen. The contribution to be provided should address (1) the feedback and progress made and developments with regard to the points raised in the respective country chapter of the 2021 Rule of Law Report and (2) any other significant developments since January 20211 falling under the 'type of information' outlined in section II. This should, where relevant, also continue to include significant rule of law developments in relation to the COVID-19 pandemic falling under the scope of the four pillars covered by the report.

I. JUSTICE SYSTEM

A. Independence

As mentioned in 2021 Rule of Law Report, by Ministerial Decree of 26 March 2021, the Minister of Justice established a Commission for the preparation of proposals for action to reform the judiciary and the regulation of the establishment and functioning of the High Council for the Judiciary (*Consiglio Superiore della Magistratura* – CSM).

The Commission ended its work in May 2021 and delivered its report.

In December 2021 the Ministry of Justice finalized the amendments to the draft law proposed by the Government in August 2020 on the reform of the High Council for the Judiciary and currently still pending in the Italian Parliament. The proposed amendments will be very soon examined by the Council of Ministers for approval.

Appointment and selection of judges, prosecutors and court presidents (incl. judicial review);
2. Irremovability of judges; including transfers (incl. as part of judicial map reform), dismissal and retirement regime of judges, court presidents and prosecutors (incl. judicial review)
3. Promotion of judges and prosecutors (incl. judicial review)

1. Proposta di modifica del Testo Unico sulla dirigenza giudiziaria

La Quinta Commissione ha avviato l'interlocuzione con il Ministro della giustizia – ai fini dell'intesa prevista dall'art. 11, terzo comma, lett. d), D.lvo n. 160/06) - formulando una proposta di modifica del Testo unico sulla dirigenza giudiziaria in materia di individuazione e riformulazione degli indicatori attitudinali, generali e specifici, da applicare alle procedure di conferimento delle diverse tipologie di incarichi direttivi e semidirettivi.

2. Procedura di conferma degli incarichi direttivi e semidirettivi

Nel dibattito consiliare è stata da tempo, e da più parti, sottolineata la necessità di un intervento di riforma del procedimento di conferma dei direttivi e dei semidirettivi finalizzato a rendere più incisiva e penetrante la verifica sull'attività svolta e sui risultati conseguiti; questo anche prendendo atto della criticità dell'attuale normativa che, in assenza di una disciplina che consentisse effettivamente tale verifica, ha reso piuttosto formale e burocratica la procedura, determinando, nei fatti, un numero veramente limitato di provvedimenti di non conferma.

Se, infatti, per il primo conferimento di un incarico direttivo o semi-direttivo ci si può affidare soltanto a criteri predittivi in merito alla attitudine direttiva del candidato, valorizzando le esperienze professionali maturate, il momento della conferma deve essere occasione di una verifica approfondita sulle attitudini

direttive dimostrate nel quadriennio e sull'effettiva positività del servizio reso nell'organizzazione dell'ufficio o della sezione.

Con delibera 16 giugno 2021, è stata quindi approvata una modifica al Testo unico sulla dirigenza giudiziaria nella parte che disciplina le conferme quadriennali nelle funzioni direttive e semidirettive, al fine di rendere più incisiva e penetrante la verifica sull'attività svolta e sui risultati conseguiti, con ampliamento dei dati di conoscenza e l'utilizzo di modelli uniformi per la loro acquisizione (mediante la predisposizione di un *format* di autorelazione, di rapporto e di parere); l'introduzione, quali elementi suscettibili di valutazione, del coinvolgimento dei magistrati nelle scelte organizzative e dell'attività giudiziaria svolta; il contraddittorio con l'interessato nel caso emergano elementi che possono portare ad una valutazione negativa, costituisce una novità così come la previsione della possibile sospensione della procedura nel caso in cui la valutazione dipenda dall'esito dell'accertamento di fatti oggetto di procedimento penale o disciplinare. E' stata poi prevista una disposizione transitoria secondo la quale le presenti modifiche trovano applicazione per i procedimenti di conferma di magistrati che maturano il quadriennio dal 1 ottobre 2021.

Istituzione della Procura europea "EPPO" –

1. Designazione dei procuratori europei delegati

Come noto, i procuratori europei delegati, ai sensi del Regolamento (UE) 2017/1939 del 12 ottobre 2017 relativo all'attuazione di una cooperazione rafforzata sull'istituzione della Procura europea («EPPO»), "agiscono per conto dell'EPPO nei rispettivi Stati membri e dispongono degli stessi poteri dei procuratori nazionali in materia di indagine, azione penale e atti volti a rinviare casi a giudizio'", potendo "espletare anche le funzioni di pubblici ministeri nazionali"" (art. 13, paragrafi 1 e 3); essi "sono membri attivi delle procure o della magistratura dei rispettivi Stati membri che li hanno designati. Essi offrono tutte le garanzie di indipendenza, possiedono le qualifiche necessarie e vantano una rilevante esperienza pratica relativa al loro sistema giuridico nazionale'" (art. 17, paragrafo 2).

Essi sono nominati tra i magistrati designati dagli Stati membri, su proposta del Procuratore capo europeo, dal Collegio della Procura Europea. Secondo l'art. 5 del D.lgs. 2 febbraio 2021, n. 9, il Consiglio Superiore della Magistratura è l'autorità competente a designare i Procuratori europei delegati ai fini della loro nomina da parte del Collegio della Procura Europea.

In attuazione delle previsioni del D.Lgs. n. 9/2021, con delibera del 25 febbraio 2021 il CSM ha individuato i criteri e la procedura per la designazione dei procuratori europei delegati (PED), in attuazione della normativa UE ed interna su EPPO.

Possono presentare dichiarazione di disponibilità per il conferimento delle funzioni di procuratore europeo delegato i magistrati, con funzioni giudicanti o requirenti, anche se collocati fuori dal ruolo

organico della magistratura o in aspettativa, che al momento della presentazione della dichiarazione di disponibilità alla designazione non abbiano compiuto il cinquantanovesimo anni di età, che abbiano conseguito la terza valutazione di professionalità, che abbiano una conoscenza adeguata della lingua inglese e che siano in possesso dei requisiti di cui all'art. 17 del Regolamento (UE) 2017/1939.

Ai fini delle attitudini assumono rilievo l'esperienza maturata dal magistrato nella conduzione di indagini relative a reati contro la pubblica amministrazione e in materia di criminalità economica e finanziaria, in particolare se commessi in danno degli interessi finanziari dell'Unione Europea, nonché le sue competenze nel settore della cooperazione giudiziaria internazionale con particolare riguardo alla materia penale.

Nella valutazione degli elementi attitudinali si tiene conto della natura e della qualità del lavoro giudiziario, quali desunte dagli elementi risultanti dalle valutazioni di professionalità, ai sensi dell'articolo 11, comma 15, del decreto legislativo n. 160/2006, e dagli altri atti inseriti nel fascicolo personale, nonché dall'ulteriore documentazione prodotta dall'interessato. Le attività esercitate fuori dal ruolo organico della magistratura sono valutate ai fini delle attitudini nei limiti in cui l'incarico, per il suo oggetto, sia assimilabile alle funzioni giudiziarie (giudicanti o requirenti) o sia pertinente, per le sue caratteristiche, alle materie di competenza dei PED e per l'utile esercizio delle relative funzioni giudiziarie.

Per l'impegno dimostrato dal magistrato nell'esercizio dell'attività giudiziaria è prevista l'attribuzione di un punteggio per ogni anno di positivo esercizio di funzioni giudiziarie effettivamente svolte. Il punteggio non può essere attribuito con riferimento agli anni cui si riferiscono i ritardi a chi ha riportato condanna in sede disciplinare per ritardi nel deposito dei provvedimenti. In caso di pendenza di un procedimento disciplinare per ritardi nel deposito dei provvedimenti il Consiglio può escludere l'attribuzione del punteggio con riferimento agli anni cui si riferiscono i ritardi.

Di notevole importanza, poi, sono i pareri resi dal CSM ai sensi dell'art. 10, comma 2, della legge n. 195 del 1958 in materia di Procura Europea (EPPO) che, nel valutare positivamente l'impianto normativo, hanno affrontato le complesse e delicate questioni, di tipo ordinamentale e processuale, legate all'innesto nel sistema giurisdizionale nazionale di un ufficio requirente di carattere sovranazionale, che opera negli Stati membri attraverso i procuratori europei delegati, e si sono espressi sulla proposta di accordo con il Procuratore Capo Europeo per la determinazione del numero e della distribuzione funzionale e territoriale dei procuratori europei delegati, evidenziando le prevedibili difficoltà, per un numero limitato di PED, di coordinare le indagini in ambiti territoriali molto vasti e di garantire la presenza in udienza presso numerosi uffici giudiziari, tra loro distanti (cfr. Parere sulla distribuzione dei PED espresso con delibera del 30 dicembre 2020 e parere relativo alla determinazione del numero e alla distribuzione territoriale dei PED (procuratori europei delegati) espresso con delibera del 23 marzo 2021).

Il Consiglio, poi, a seguito dell'istituzione della Procura Europea, con delibera del 28 luglio 2021 ha adottato una importante risoluzione che prende atto del fatto che gli uffici requirenti si trovano ad affrontare la fase concreta dell'integrazione e dell'effettiva operatività dei PED e che ciò impone di adottare le iniziative funzionali a favorire la loro piena integrazione presso gli uffici di destinazione, agevolandone l'esercizio delle funzioni. La risoluzione si propone di realizzare un primo intervento con funzione di indirizzo e di promozione indicando le soluzioni organizzative idonee a garantire il funzionamento dei meccanismi di comunicazione e interscambio di informazioni fra EPPO e gli organi nazionali, auspicando l'uniforme applicazione delle circolari organizzative degli uffici requirenti, segnalando l'opportunità di individuare in ciascuna procura distrettuale sede PED un referente con compiti di coordinamento organizzativo, e indicando come necessario un costante flusso informativo dalle Procure verso il Consiglio; l'acquisizione di tali dati è ritenuto necessario al fine di consentire all'Organo di governo autonomo l'elaborazione, in una fase successiva, di regole di normazione secondaria più dettagliate e specifiche, l'aggiornamento della circolare sulle Procure, quanto meno nelle parti concernenti le prerogative del Dirigente, i compiti del Procuratore Aggiunto ed il contenuto dei Progetti organizzativi, l'elaborazione di soluzioni volte al superamento delle criticità discendenti dall'inesistenza della figura giudicante europea omologa al PED, con inevitabili ripercussioni sul sistema tabellare degli uffici giudicanti e sui profili ordinamentali relativi alle valutazioni di professionalità.

Piante organiche flessibili

Anche alla luce delle novità in tema di designazione dei procuratori delegati europei, nonché delle nuove esigenze che provengono dagli uffici giudiziari, il Consiglio ha proceduto ad individuare i criteri per la rideterminazione delle piante organiche degli uffici di merito e di legittimità; in particolare ha prestato attenzione alle dotazioni delle piante organiche flessibili rendendo, con delibera dell'8 settembre 2021, un parere sul relativo schema di decreto ministeriale col quale ha proposto, in taluni casi specifici, sulla base di ragioni particolari, un correttivo alle indicazioni ministeriali, con conseguente diversa distribuzione nei distretti, di sei unità.

Stabilizzazione della magistratura onoraria

Con la legge n. 234 del 30 dicembre 2021 sono state introdotte disposizioni in materia di magistratura onoraria, di rilievo soprattutto con riferimento al profilo della stabilizzazione dei magistrati onorari in servizio.

A tal proposito, merita di essere segnalata la delibera del 22 dicembre 2021 con la quale, su richiesta del Ministero della giustizia, il CSM ha reso un parere sul disegno di legge recante disposizioni in materia di magistratura onoraria. Il Consiglio si è soffermato in particolare sulla interpretazione della nota sentenza

della Corte di giustizia del 16 luglio 2020 e della lettera di messa in mora della Commissione europea del 15 luglio 2021, sottolineando che l'equiparazione dello status del magistrato onorario a quello del magistrato togato, ivi prospettata, non sia necessitata alla luce delle pronunce degli organi eurounitari né compatibile con l'impianto costituzionale. Il Consiglio ha, poi, evidenziato la carenza dei meccanismi di valutazione dei magistrati onorari ai fini della stabilizzazione in quanto del tutto insufficienti a verificarne la professionalità. Ha, quindi, chiarito che la limitazione rigorosa dell'orario di lavoro dei magistrati, sia togati che onorari, e la sua misurazione, prospettate dalla lettera di messa in mora, non appaiono compatibili con la specificità della funzione giudiziaria che non può essere ridotta ad un semplice lavoro burocratico. Ha, infine, evidenziato l'assoluta necessità di un incremento della pianta organica della magistratura onoraria e dell'avvio, subito dopo, delle procedure concorsuali per i nuovi reclutamenti.
Si evidenzia altresì la delibera consiliare del 28 luglio 2021, con la quale si è proceduto alla revisione dei criteri di selezione, eliminando la possibilità di nomina in deroga alla graduatoria ma conservando elementi di flessibilità legati alla necessità di assicurare la pluralità delle competenze professionali.

Ufficio per il processo

Il CSM ha inteso fronteggiare le esigenze imposte dalla necessità di dare attuazione all'Ufficio per il processo, nuovo ufficio di grande rilievo sull'organizzazione della giustizia.
Invero, in data 13 ottobre 2021 il Consiglio ha adottato due importanti delibere con le quali, con riferimento al D.L. n. 80/2021 che prevede il reclutamento di 16.500 addetti all'ufficio per il processo, ha introdotto modifiche alla Circolare sulle tabelle per il triennio 2020/2022, estendendo la sfera applicativa degli artt. 10 e 11 della Circolare, anche alle Corti d'appello prevedendo l'istituzione presso queste ultime, della struttura organizzativa denominata *"ufficio per il processo"* all'interno della quale possono essere impiegati anche i giudici ausiliari; dette disposizioni vengono estese, inoltre, anche ai tribunali di sorveglianza, ai tribunali per i minorenni e, ove compatibili, alla Corte di Cassazione. L'art. 271 della Circolare assegna il termine di un mese, dall'immissione in possesso degli addetti all'ufficio per il processo, per introdurre, da parte dei dirigenti , le relative variazioni tabellari.
La seconda delibera contiene invece linee guida per l'impiego nell'ufficio del processo di giudici onorari, dei tirocinanti, del personale amministrativo, della nuova figura degli addetti all'ufficio per il processo, rimettendo al dirigente dell'ufficio, d'intesa con il dirigente amministrativo, di predisporre un progetto organizzativo che, valutate le pendenze, ne disponga l'assegnazione, previa adeguata formazione, a determinate sezioni, settori o aree, con compiti coerenti con il perseguimento degli obiettivi del PNRR, ovvero l'abbattimento dell'arretrato e della durata dei processi. A tal fine è previsto che il dirigente nomini un coordinatore dell'ufficio del processo deputato a verificare il fruttuoso impiego delle risorse a

supporto della sezione dell'area o del settore con possibilità di variare i compiti degli addetti secondo forme organizzative flessibili.

4. Allocation of cases in courts

Sezioni specializzate in materia di immigrazione, protezione internazionale e libera circolazione dei cittadini dell'unione europea.

Con la **risoluzione sulle linee guida in materia di protezione internazionale** del 13 ottobre 2021, dopo una ricognizione del contesto normativo e ordinamentale, il CSM ha esaminato la situazione dei procedimenti in materia di protezione internazionale, con riferimento ai flussi e alle pendenze, dai quali emerge una tendenza all'incremento dell'arretrato e della durata dei procedimenti, per far fronte ai quali, ad avviso del Consiglio, sono necessari interventi strutturali per aumentare le risorse destinate alla trattazione in via esclusiva della materia della protezione internazionale. Tale aumento può essere ottenuto sia mediante le piante organiche flessibili, sia attraverso strumenti organizzativi di più immediata attuazione. Nello specifico, la delibera procede ad un aggiornamento delle linee guida del 2017, affermando che: negli uffici con sopravvenienze elevate il principio di non esclusività diviene recessivo rispetto a quello di alta specializzazione; il congruo dimensionamento delle sezioni specializzate in materia di protezione internazionale implica che i tribunali con maggior numero di sopravvenienze dovranno incrementare il numero di magistrati destinati a tali sezioni; l'arretrato può essere affrontato attraverso il criterio della flessibilità, attraverso cioè la coassegnazione e l'applicazione endodistrettuale di magistrati alle sezioni specializzate e la realizzazione di progetti per obiettivi.

Quanto alle applicazioni extradistrettuali, si è segnalato come l'istituto non si sia rivelato risolutivo, né in termini di risoluzione delle criticità, né in termini di conseguenze sugli uffici di provenienza dei magistrati applicati.

Infine, si è evidenziato che un supporto alla definizione dei procedimenti *de quibus* può venire dall'ufficio per il processo.

B. Quality of justice

12. Resources of the judiciary (human/financial/material)

Within the framework of reforms envisaged by the National Recovery and Resilience Plan (NRRP), unprecedented investment in human resources and the project dedicated to the Office of the Trial are of fundamental importance.

As to the Office of the Trial, the intervention aims to strengthen its role by creating a real and efficient support staff to courts' activities, with study, research and drafting of decisions tasks. The Office of the Trial will also perform functions of co-ordination between the court and its registries and secretariats,

will provide assistance to the Head of the court and heads of its chambers for statistical and organizational monitoring activities, as well as support activities to the development of case-law guidelines and databases.

The extraordinary recruitment provided for by the NRRP concerns first of all 16,500 units for the staff of the Office of the Trial distributed as follows:

1) up to 16,100 units for first instance and appeal judicial offices, in two rounds of 8,050 (a first round of 8,050 units hired for a maximum of 2 years and 7 months, a second round of another 8,050 units for a maximum of 2 years);

2) up to 400 units for the Court of Cassation, in two rounds of 200 units (a first round of 8,050 units for a maximum of 2 years and 7 months, a second round of 200 more units for a maximum of 2 years).

Similarly, 5,410 more units are to be recruited, on fixed-term contracts for 3 years, as technical and administrative staff of the Office of the Trial.

Decree Law no. 80 of 8 June 2021 outlines the main features for the full operation of the Office of the Trial, including by introducing the new figure of the *addetto all'Ufficio del Processo* (clerk assigned to the Office of the Trial) as a specialized professional (recent graduates in Law or Economics or Political Science) to assist and support the judicial and organizational activity of judicial offices. The functions of the new figure will be similar to those performed by law clerks in Anglo-Saxon systems.

In order to implement Decree-Law no. 80/2021, two Ministerial Decrees were adopted by the Minister of Justice defining the reference framework for the recruitment of the Office of the Trial clerks (*addetti*) and starting the recruitment procedure. The first decree started the recruitment of the first tranche of clerks, determining the overall contingent assigned to the judicial offices of the various districts; the second decree established the modalities of the recruitment procedure.

On 6 August 2021 the call for the recruitment of 8,171 clerks was published and more than 66,000 applications were received.

At present, the **selection procedure has been completed** and the successful candidates will start working by the end of February 2022. An extensive training programme has been set up, which will provide initial and permanent support to the newly recruited staff of the Office of the Trial. In accordance with the provisions of Decree-Law no. 80/2021, on the basis of the guidelines provided by the Ministry of Justice and the High Council for the Judiciary (CSM), the judicial offices have prepared organizational projects aimed at regulating how the staff of the Office of the Trial will be employed in the context of the different situations of each office, in order to make the best use of the Office.

The crucial importance of the Office of the Trial in the reform of the justice system and the strategic role it will perform in strengthening the efficiency of Italian courts, expediting criminal and civil proceedings, and reducing the work backlog is to be reiterated. In this regard, it is worth noting that in 2021 the Minister

of Justice personally visited the different Court of Appeal districts in order to present the reform of the Office, its potential for the Italian justice system and to collect information concerning the different situations and needs of Italian courts.

The unprecedented investment envisaged for the implementation of the Office of the Trial amounts to **more than 2 billion and 200 million Euros.**

The 2021 Rule of Law Report mentioned that **flexible plants** (170 units) of magistrates were set up to deal with temporary difficult situations and unify performances across countries. In this regard, it is worth noting that on 27 December 2021 a Ministerial Decree was adopted to identify the critical conditions that justify the assignment of judiciary staff from the flexible plants to different judicial offices and to determine the minimum length of stay in such offices.

As to the recruitment of magistrates, Article 26-bis of Law 147/2021 authorized the Ministry of Justice to launch, within 6 months of the entry into force of the said law, the procedure for the appointment of 500 new magistrates. On 10 December 2021 the call for the **recruitment of 500 magistrates** was published in the Official Gazette. Applications were to be submitted by 10 January 2022. The written examination of the selection procedure is expected to take place by June 2022.

With regard to material resources, the investment programmes for the setting up of the Judicial Poles (*Cittadelle Giudiziarie*) are accompanied by significant efforts for the maintenance of the buildings used as judicial offices. This sector has been further developed in NRRP projects. Indeed, the commitment of recent years, aimed at rationalizing the management of real estate assets, has found in the NRRP the opportunity for further development of the policies already undertaken. In this regard, the measures dedicated to the energy efficiency of public buildings (M2C3) contain a specific chapter devoted to judicial buildings (*Investment 1.2: Energy Efficiency of Judicial buildings*). Given the complexity of the Italian judicial system, contributing to the upgrading of structures to ensure efficiency, resilience and technological provision of services is fundamental to ensure the achievement of the country's objectives. The investment policy aims to promptly intervene on inadequate structures that affect the supply of judicial services, enabling the creation of a renewed urban context for the benefit of users and the entire community. The intervention focuses on the maintenance of existing assets, enabling the protection, enhancement and recovery of the historical heritage that often characterizes Italian justice administration offices. In addition to improving energy consumption efficiency, the programme also aims to: i) ensure the economic, environmental and social sustainability of intervention through the use of sustainable materials and the use of self-produced electricity from renewable sources; ii) reduce the seismic vulnerability of the buildings; iii) carry out monitoring and measurement analysis of energy consumption aimed at maximizing efficiency and minimizing consumption and environmental impact.

The measures are expected to be implemented on 48 buildings by mid-2026, making 290,000 square meters more efficient. The investment envisaged for interventions on the buildings of the judicial offices amounts to more than 400 million Euros.

13. Training of justice professionals

As for the training activities addressed to members of judiciary, please refer to the detailed information available on the High School of the Judiciary (SSM) website, the institution responsible for training activities of judges and prosecutors.

https://www.scuolamagistratura.it/web/portalessm/la-formazione-dei-magistrati-in-italia/

For training initiatives concerning the clerks of the Office of the Trial (*addetti*) it should be noted that Memoranda of Understanding have been established with the CSM and High School for the Judiciary aimed at offering a complete training provision.

Formazione dei professionisti della giustizia

Con delibera 21 dicembre 2021 è stato approvato un protocollo di intesa fra il Consiglio, il Ministero della Giustizia e la Scuola superiore della Magistratura per la programmazione di corsi di formazione specifici per i magistrati che svolgono funzioni direttive e semidirettive, al fine di implementare l'offerta formativa in materia di organizzazione. In particolare, oggetto della formazione saranno l'ordinamento giudiziario, l'organizzazione di strutture complesse, l'ufficio per il processo, la statistica giudiziaria, la gestione delle risorse umane e materiali.

Il protocollo è stato sottoscritto in data 22 dicembre 2021.

Concorso in magistratura nel contesto delle misure urgenti adottate per il contenimento dell'epidemia da COVID-19

Il perdurare della emergenza sanitaria connessa alla pandemia da Covid-19 ha imposto all'Organo di governo autonomo uno sforzo volto ad assicurare la continuità delle sue funzioni, unitamente a quelle degli Uffici Giudiziari.

Va segnalato, al riguardo, il parere espresso con delibera del 12 maggio 2021 relativo al disegno di legge recante misure urgenti per lo svolgimento delle prove scritte relative al concorso per magistrato ordinario indetto con decreto del Ministro della giustizia 29 ottobre 2019. Pur apprezzandosi la finalità dell'intervento d'urgenza volto a consentire lo svolgimento delle prove garantendo al contempo le misure di sicurezza alla luce del contesto pandemico, è stata espressa preoccupazione in merito all'idoneità della selezione a valutare adeguatamente la preparazione dei candidati.

In maniera ancora più diffusa il Consiglio ha affrontato il tema nella risoluzione del 7 dicembre 2021 con la quale ha evidenziato che il sistema attuale di reclutamento presenta numerose criticità avendo portato ad un notevole innalzamento dell'età media dei vincitori di concorso con ricadute negative sull'organizzazione giudiziaria nel suo complesso e sulle condizioni personali dei magistrati anche dal punto di vista della necessità di fruire di un sostegno economico familiare durante il tempo occorrente per maturare i requisiti di legittimazione e completare la procedura concorsuale. Ciò ha determinato, tra l'altro, l'instaurarsi di un diffuso pendolarismo durante la permanenza nelle sedi di prima destinazione, l'immediato abbandono di queste ultime al maturare del periodo di legittimazione per il rientro in sedi più vicine, con conseguente elevato turnover negli uffici caratterizzati da maggiori criticità e negative ricadute sulla loro funzionalità.

La risoluzione ha, quindi, auspicato il ripristino del concorso di primo grado, un maggiore ricorso all'informatizzazione nella fase di presentazione delle domande e di consegna e controllo dei codici, l'articolazione, in via stabile, dello svolgimento del concorso in più sedi, il ritorno in via stabile alla prova scritta tradizionale in luogo del sintetico elaborato teorico.

14. Digitalization

In 2021 the modernization of the justice system continued to pursue the objectives aimed at consolidating the IT applications supporting the activities of Courts and Prosecution Offices as well as improving IT infrastructure and hardware equipment efficiency.

The Ministry of Justice took measures for:

- the remote management of civil hearings;
- the management of the services for the electronic filing of acts and documents and for the electronic payments of the unified fees;
- the participation in any hearing of persons detained, interned or in pre-trial custody, where possible, by videoconferencing or by remote connections;
- the remote participation in criminal hearings;
- the remote handling of pre-trial investigations;
- the adoption of measures in relation to communications and service of notices in criminal proceedings;
- the management of interviews with prisoners in prisons and penal institutions for juveniles;
- the adoption of measures for the electronic filing of documents at the preliminary investigations stage.

The NRRP has also had a significant impact on digitalization.

The Ministry of Justice is involved in the implementation of two projects: **(a) the project to digitalise the archives of judicial offices and (b) the data lake.**

The digitalization of case files, besides having a beneficial impact from an archival point of view, will be the driving force for the completion of the digitalization of the civil trial and for the consolidation of the launch of the digital criminal trial. The project will make it possible to eliminate the paper component of pending or settled case files, for first instance and appellate courts, over the last 10 years, achieving the dual objective of allowing full consultation, in digital format, of files, as well as eliminating the management of paper archives. For the Supreme Court of Cassation, the objective is to implement an IT system for the trial and the Court's administrative acts. This digitalization will make a decisive contribution to the secure and efficient provision of more advanced and sustainable justice services, allowing faster access to information, data and documents, ensuring a considerable number of accesses (in operational continuity) to all users of the justice system and the users of services provided to citizens.

The **data lake project** aims to provide a highly sophisticated and advanced tool allowing a considerable extension of the information that can be extracted from the digitalized justice documentary archives. The justice system has a huge pool of potential knowledge in relation to proceedings, consisting not only of databases, but also of text documents submitted by the parties and issued by the judicial authorities. This pool is to a large extent already dematerialized but, considering the present use of digital technologies, only minimally exploited. The potential inherent in the full exploitation of the knowledge expressed by documents to improve the efficiency, quality and effectiveness of the services provided to the community is enormous. The experimental phases, already launched, aim to expand knowledge and analysis tools available to members of the judiciary. The aim is to extract the knowledge contained in the documentary heritage of the justice system and in public data outside the Justice domain, for the creation of systems of anonymization of judgments; automation in the identification of the victim-perpetrator relationship; management control system of work processes for their improvement; advanced statistical survey on civil and criminal proceedings. The adoption of a data lake system may represent a turning point for the digitalization of justice, since it considerably expands accessible information, thanks to a potentially infinite set of data types; it is essentially the analysis question that determines the selection of data from which to draw information. Thus, in the Data Lake research has access to all available information, regardless of the source that generated it.

Digitalization represents a crucial area of the two laws recently enacted by the Italian Parliament for the reform of civil and criminal proceedings (see paragraph 17 below).

As to criminal justice, **Article 1, paragraph 5, of Law no. 134/2021**, in enabling the Government to adopt one or more legislative decrees on the digitalization of criminal proceedings, sets forth several important principles among which the following are worth mentioning: « a) providing that procedural acts and documents may be formed and stored electronically, so that their authenticity, integrity, readability, availability and, where required by law, secrecy are ensured; providing that at any stage of

criminal proceedings and any tier of jurisdiction, the filing of acts and documents, communications and service of documents is carried out electronically; providing that electronic transmissions and receipts guarantee the sender and the receiver certainty, including temporal certainty, of the successful transmission and receipt, as well as of the sender's and receiver's identity; providing that for the acts carried out personally by the parties, the filing may also be made without the use of electronic means».

As to the **digitalization of criminal and civil proceedings**, considered as one of the main tools to improve the efficiency of the system, Law no. 134/2021 provides for (a) the adoption of a three-year **Plan for the Digital Transition of the Justice Administration**; (b) the establishment, by decree of the Minister of Justice, of a **technical-scientific Committee** entrusted with the task of advising and supporting the technical decisions connected to the digitalization of judicial proceedings.

Since it has become more and more clear that all policies and reforms concerning the justice system need to be based on transparent and reliable data, Article 35 of Decree Law no. 152 of 6 November 2021 established a new Department within the Ministry of Justice which will be in charge of digital transition in the justice sector as well as of analysis of statistical data.

C. Efficiency of the justice system

17. Length of proceedings

During the second semester of 2021 the Italian Parliament approved two major pieces of legislation which will play a crucial role in the reform of both the criminal and civil justice systems.

The main objective of both laws is to enhance the efficiency of criminal and civil proceedings and expedite them in order to reduce the length of proceedings, while ensuring the quality of the service and guarantying a fair trial in compliance with best European and international standards.

On 4 October 2021 **Law no. 134 of 27 September 2021**, was published in the Official Gazette and entered into force on 19 October 2021. The title of the law is the following «Delegated powers to the Government for the efficiency of criminal trials as well as in the field of restorative justice and provisions to speed up judicial proceedings».

By virtue of Law no. 134/2021 the Government is delegated to adopt, within one year of the entry into force of the same law, one or more legislative decrees for the amendment of the Code of Criminal Procedure and the Criminal Code and for the review of the criminal sanctions regime, with the aim of simplifying, expediting and streamlining criminal proceedings. The Government shall adopt the said legislative decrees according to the principles and criteria laid down in Article 1 of the aforementioned law.

The underlying rationale of the principles and criteria set forth in Article 1 is to modernize and streamline the criminal justice system, strengthen the efficiency of criminal proceedings and significantly reduce

their duration (at least by 25% in the next five years in line with the plan agreed upon with the EU Commission for the implementation of the EU Recovery and Resilience Plan). The reform is aimed at achieving such objectives by introducing measures which are expected to significantly improve the organization and management of judicial offices as well as to reduce the number of cases adjudicated by criminal courts and the number of appeal proceedings.

Amongst the criteria and principles set forth in Law no. 134/2021 the following ones are worth mentioning: 1) strengthening the digitalization of criminal proceedings; 2) amending provisions on the service of procedural documents with a view to speeding up criminal proceedings; 3) identifying cases where participation in the hearing or other procedural stage can take place remotely; 4) introducing new rules for dismissal of cases by providing that a criminal case should be dismissed when the evidence gathered during preliminary investigations does not allow for a reasonable prediction of conviction; 5) providing for a wider intervention of the judge within the preliminary investigations phase; 6) extending the list of criminal offences falling within the jurisdiction of the single-judge court and eliminating the preliminary hearing phase for such criminal offences; 8) introducing incentives for the defendant to opt for the "patteggiamento" procedure (plea bargaining) and not to lodge appeal against judgments rendered in summary trials ("giudizio abbreviato"); 9) expediting appeal proceedings both before the Courts of Appeal and the Supreme Court of Cassation; 10) providing for criminal sanctions alternative to short custodial sentences (fine; community service; semi-detention; house detention); 11) introducing a comprehensive legislative framework for restorative justice programmes; 12) significantly extending the scope of application of Article 131-bis of the Criminal Code that provides for the exclusion of the criminal sanction where an offence is to be considered as a particularly minor offence (due, inter alia, to the very limited harm caused and the behaviour of the defendant); 13) extending the scope of application of the measure of suspension of criminal proceedings with probation for the defendant provided for in Article 168-bis of the Criminal Code.

With regard to the overarching goal of speeding up criminal proceedings, Article 2, paragraph 16, of Law no. 134/2021 provides that the Minister of Justice shall set up a technical-scientific Committee to monitor the efficiency of the criminal justice system, the reasonable duration of proceedings and judicial statistics. The Committee shall act as the advisory and support body for the periodic assessment of accomplished objectives in expediting criminal proceedings. The Committee was set up by Ministerial Decree adopted on 28 December 2021.

By **Ministerial Decree dated 28 October 2021,** the Minister of Justice appointed 48 experts (judges, law professors, practicing lawyers) whose task is to draft the provisions of the legislative decrees whereby the Government will exercise the delegated powers. The experts form 5 different teams dealing with different areas of the reform (e.g. preliminary investigations; alternative sanctions; restorative justice).

The experts are expected to complete their work by the end of March 2022.

Article 2 of Law no. 134/2021 amended the provisions of the Criminal Code and Criminal Procedure Code concerning the statute of limitations and the maximum duration of appeal proceedings (both before courts of appeal and the Court of Cassation). Article 161-bis has been added after Article 161 of the Criminal Code. Article 161-bis c.c. has confirmed the principle already introduced by Law no. 3/2019 according to which the running of the limitation period for any offence shall definitely stop when a first instance judgment is delivered. As to the duration of appeal proceedings, Article 344-bis has been introduced in the Code of Criminal Procedure. According to the new provision, for proceedings concerning criminal offences committed as from 1 January 2020, the maximum duration of proceedings before the competent Court of Appeal shall not exceed one year and six months; the maximum duration of proceedings before the Supreme Court of Cassation shall not exceed one year. These terms may be extended for complex cases and longer terms are provided for criminal offences listed in paragraph 4 of Article 344-bis (e.g. terrorism, mafia-type organized crime). In cases where the duration of appeal proceedings exceeds the maximum term, further prosecution shall be barred.

The text of Law no. 134/2021 is available at the following link https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2021-09-27;134.

As to the civil justice system, on 9 December 2021 **Law no. 206 of 26 November 2021**, was published in the Official Gazette of the Italian Republic and entered into force on 24 December 2021. The title of the law is the following «Delegation to the Government for the efficiency of the civil trial and for the revision of the regime of alternative dispute resolution tools and urgent measures to rationalize the proceedings regarding the rights of individuals and families as well as in the matter of forced execution». Similarly to what has been provided for the reform of the criminal trial, the law establishes a term of one year of the entry into force for the exercise of the delegation and outlines the procedure for the adoption of one or more legislative decrees setting forth the formal and substantive re-organisation of the civil trial, by means of amendments to the Code of Civil Procedure and to the special procedural laws, for the purpose of simplifying, speeding up and rationalising the civil trial, in compliance with the guarantees of fair trial (Article 1, paragraphs 1). Article 1, paragraph 2, of the law establishes a procedure aimed at the speedy adoption of the legislative decrees implementing the enabling act, while paragraph 3 provides that the Government, by means of the same procedure indicated in paragraph 2, within two years of the date of entry into force of the last of the legislative decrees adopted in implementation of the enabling act and in compliance with the principles and directive criteria established by the enabling act, may adopt supplementary and corrective provisions to the legislative decrees themselves.

The reform provisions have the common purpose of reducing the number of cases to be adjudicated by courts, reducing procedural times, strengthening the effectiveness of judicial protection. The main

interventions relate to, *inter alia*: (i) alternative dispute resolution; (ii) ordinary and simplified civil proceedings of first instance; (iii) digitalization of civil proceedings; (iv) proceedings before the courts of appeal and the Supreme Court; (v) labour disputes; (vi) enforcement proceedings; (vii) experts; (viii) the Office for the trial; (ix) the creation of a unified proceedings in family matters and the establishment of a court for persons, minors and families; (x) specific urgent measures to be implemented with immediately applicable legal norms.

The overarching goal of the reform is to reduce the length of civil proceedings at least by 40% in the next five years in line with the plan agreed upon with the EU Commission for the implementation of the EU Recovery and Resilience Plan.

On **14 December 2021**, the Minister of Justice signed the **Decree** establishing the working groups that will prepare the draft legislative decrees for the implementation of Law no. 206 of 26 November 2021. A total of 73 university professors, magistrates and lawyers are involved in the seven groups that have been set up, which will work autonomously "each in charge of drawing up legislative decree schemes relating to each sector affected by the reform". Together with the technicians of the Legislative Office and those of the Minister's Cabinet, they will have to translate the delegation criteria, already approved by Parliament, into amendments to the Civil Code, the Civil Procedure Code and related laws.

The text of Law no. 206/2021 is available at the following link https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2021;206.

Other

Prospettive di riforma - Pareri resi dal CSM ai sensi dell'art. 10, comma 2, della legge n. 195 del 1958

1. Riforma dell'ordinamento giudiziario e del sistema di governo autonomo

Meritano di essere segnalati innanzitutto i sei distinti pareri resi sull'articolato disegno di legge di riforma dell'ordinamento giudiziario e del sistema di governo autonomo. Il Consiglio è intervenuto su tutti gli aspetti della complessa riforma e, in particolare, sui criteri di assegnazione degli incarichi direttivi e semidirettivi, sui criteri di conferimento delle funzioni di legittimità, sui consigli giudiziari, sulle valutazioni di professionalità, sull'ufficio del massimario, sull'aspettativa per infermità e sull'accesso in magistratura, sull'organizzazione degli uffici giudiziari e i progetti organizzativi, sull'eleggibilità e il ricollocamento in ruolo dei magistrati in occasione di elezione o assunzione di incarichi di governo nazionale o locale, sugli illeciti disciplinari, sulla costituzione, il funzionamento e il sistema elettorale

del Consiglio superiore della magistratura, sul suo scioglimento, sulla sostituzione dei componenti eletti dai magistrati e sul loro ricollocamento in ruolo.

Il Consiglio, nei pareri resi, ha sottolineato diverse criticità di natura tecnica o relative a scelte di fondo come quelle concernenti l'individuazione dei criteri di priorità nella trattazione degli affari negli uffici di procura, l'interlocuzione con i rappresentanti dell'avvocatura, con i magistrati o con i dirigenti amministrativi per il conferimento degli incarichi direttivi e semidirettivi, i criteri di conferimento delle funzioni di legittimità, le modifiche del sistema disciplinare, l'ipotizzato sistema elettorale maggioritario uninominale, articolato su 19 collegi, con doppio turno e con l'espressione di preferenze plurime.

Con riguardo alle due più rilevati aree dell'intervento normativo, e cioè quella dell'organizzazione e funzionamento dell'Organo di governo autonomo e quella della carriera dei magistrati il Consiglio ha espresso piena condivisione in ordine all'intento della riforma, di affrancare l'azione consiliare da influenze esterne e dai condizionamenti di tipo correntizio. In quest'ottica ha espresso una valutazione favorevole in ordine agli interventi volti a rendere più trasparenti le procedure concorsuali e maggiormente verificabile *Viter* decisorio, nonché a rafforzare l'immagine di indipendenza ed imparzialità del magistrato, anche attraverso una più rigorosa disciplina relativa alla loro eleggibilità e al successivo ricollocamento in ruolo. Sotto tale ultimo profilo il Consiglio ha valutato favorevolmente l'ampio sistema di ineleggibilità introdotto dal DDL per i magistrati onde evitare che il pregresso esercizio delle funzioni giurisdizionali e la visibilità dagli stessi acquisita nel territorio possano tradursi in un fattore di vantaggio nelle competizioni elettorali e, al contempo, rafforzare la tutela dei valori dell'imparzialità e dell'indipendenza delle funzioni giudiziarie. Positiva è stata anche la valutazione delle disposizioni in tema di divieto di ricollocamento in ruolo dei magistrati, candidati e non eletti nelle più rilevanti competizioni elettorali, in un ufficio avente competenza in tutto o in parte sul territorio di una regione nella cui circoscrizione sono stati candidati o in un ufficio del distretto nel quale esercitavano le funzioni al momento della candidatura, nonché delle disposizioni in tema di divieto di svolgere alcune delicate funzioni; il giudizio favorevole è stato formulato in quanto la disciplina è idonea a tutelare l'immagine d'imparzialità ed indipendenza della magistratura, ed anzi, in una ottica di una maggior tutela, il Consiglio ha evidenziato l'opportunità di arricchire i limiti funzionali già stabiliti.

Senza contraddire la positiva valutazione delle linee di riforma volte ad accrescere la trasparenza e verificabilità dell'attività di governo autonomo nel suo complesso, il Consiglio ha nondimeno evidenziato come sia essenziale, per l'esercizio delle attribuzioni rimessegli dal Costituente, che gli sia riservata *"una discrezionalità amministrativa e non meramente tecnica",* essendogli altrimenti preclusi tempestivi ed efficaci interventi attraverso gli strumenti ordinamentali di cui dispone nel settore dell'organizzazione della giurisdizione civile e penale, in tutte le declinazioni in cui essa si attua (dall'organizzazione degli uffici alla carriera dei magistrati), onde adeguarlo all'evoluzione dei tempi e alle cangianti necessità della

giurisdizione, sollecitate a loro volta, dalle mutevoli necessità sociali e dalle specifiche esigenze dei diversi territori.

Inoltre, nel muovere critiche alla scelta del sorteggio, quale criterio per la scelta dei componenti delle articolazioni consiliari, come pure alle modifiche del sistema elettorale, ha rammentato come la Corte Costituzionale, in più occasioni, abbia affermato che la struttura dell'Organo di governo autonomo è stata concepita dal Costituente in funzione della necessità che all'esercizio delle sue delicate funzioni contribuiscano le diversità, professionali e ideali, di cui i singoli componenti sono portatori, così rimarcando che il pluralismo nella rappresentanza consiliare, e nella sua quotidiana azione, costituisce un valore irrinunciabile.

2. Riforma del processo penale

Va segnalato, poi, il parere reso sul disegno di legge delega, e sulla successiva proposta emendativa, recante disposizioni in materia di riforma del processo penale, prescrizione e improcedibilità dell'azione penale.

Il Consiglio ha evidenziato i numerosi profili di criticità, sia di ordine sistematico (ed anche di frizione con i principi di obbligatorietà dell'azione penale e di eguaglianza) che presenta l'istituto della improcedibilità per superamento dei termini di ragionevole durata dei giudizi di impugnazione, sia di ordine pratico, sottolineando, sotto questo profilo, le gravi ricadute che l'innesto di tale istituto, così come destinato ad operare, avrebbe potuto avere sull'estinzione di molti reati e sulla durata media dei procedimenti in assenza di misure atte a rimuovere o quantomeno ad alleggerire il carico giudiziario.

In merito a tutte le altre disposizioni, il Consiglio ha reso un articolato parere. Pur se non sono mancati specifici rilievi di carattere tecnico, la valutazione in ordine alle linee generali della riforma, anche alla luce degli emendamenti, è stata nel complesso positiva, essendo oggettivamente funzionali a restituire efficienza e celerità al processo penale gli interventi intesi: a valorizzare gli strumenti telematici anche per importanti adempimenti processuali (il deposito degli atti, le comunicazioni e notificazioni); a contenere i flussi in entrata (con la modifica del regime di procedibilità di alcuni reati e l'introduzione di cause estintive delle contravvenzioni operanti nella fase delle indagini preliminari); ad alleggerire il carico dibattimentale, attraverso il potenziamento, a fini deflattivi, dell'archiviazione e dell'udienza preliminare (attraverso la modifica della regola di giudizio), nonché dei riti alternativi (attraverso un incremento dei benefici ad essi riconnessi); a limitare, nel contesto di significative modifiche apportate anche al processo in 'assenza' onde potenziarne gli aspetti di garanzia imposti dalla giurisprudenza interna e sovranazionale, l'accesso al giudizio di secondo grado (mediante la previsione di uno specifico mandato ad impugnare successivo alla sentenza di condanna di primo grado) e a semplicarne la trattazione (mediante l'introduzione, quale regola generale, del rito camerale e l'estensione del

concordato in appello); ad ampliare, per il giudizio di cassazione, il ricorso al contraddittorio scritto e alla forma di trattazione dell'udienza *de plano* a tutti i casi di inammissibilità del ricorso e di ricorso manifestamente fondato; a devolvere con immediatezza la questione di competenza territoriale alla Cassazione; ad introdurre un mezzo di impugnazione straordinario con il quale il ricorrente vittorioso a Strasburgo potrà chiedere alla Corte di cassazione di dare esecuzione alla sentenza definitiva della Corte Europea dei diritti dell'Uomo.

Criticità, per il prevedibile negativo impatto sulle attività giurisdizionali e sull'organizzazione degli uffici, sono state invece segnalate con riguardo alle modifiche in materia di: (a) accesso delle parti agli atti di indagine nel caso in cui il P.M. non abbia assunto le proprie determinazioni in ordine "all'azione penale"; (b) criteri di priorità nella trattazione degli affari negli uffici requirenti; (c) controllo giurisdizionale sulla tempestività delle iscrizioni; (d) rinnovazione della prova dichiarativa in caso di mutamento del giudice; (e) l'udienza filtro nei procedimenti a citazione diretta.

3. Riforma del processo civile

Va, poi, menzionato il parere sull'ampia riforma del processo civile il quale, tra l'altro, si è soffermato sull'istituto dell'Ufficio per il processo. Il Consiglio, pur sottolineando alcune criticità ed evidenziando come le misure appaiono comunque insufficienti per assicurare l'abbattimento dell'arretrato, ha espresso una valutazione sostanzialmente positiva. E' stato in particolare evidenziato come i notevoli investimenti previsti nel PNRR sembrano suscettibili di ridurre la distanza tra i diversi Uffici, portando ad un miglioramento generalizzato della produttività. Al riguardo è stata sottolineata la necessità: che l'assegnazione degli addetti ai singoli uffici venga effettuata tenendo conto, con il contributo del Consiglio, delle reali esigenze dei territori; che le risorse finanziarie annunciate nel Piano divengano strutturali; che la loro distribuzione tenga conto sia del numero di magistrati assegnati agli uffici giudiziari sia, soprattutto, della necessità di favorire, almeno in una prima fase, gli uffici che si trovano in maggiore difficoltà; che parte delle risorse sia investita nelle strutture logistiche e tecniche necessarie.

Il Consiglio ha, poi, sottolineato che per conseguire il risultato di abbattere l'arretrato, risultano indispensabili misure adeguate (attraverso incentivi economici e di carriera), che riescano a ridurre il *turn over* del personale di magistratura nelle sedi soprattutto meridionali, ad incrementare gli organici delle Corti di appello e ad assicurare l'utilizzo della magistratura onoraria negli spazi consentiti dall'art. 106, comma 3 Cost..

Il parere ha giudicato positivamente le nuove prospettive di digitalizzazione del processo civile, pur segnalando l'opportunità di estendere l'obbligatorietà del deposito telematico alle sentenze e la necessità di assicurare alla Corte di cassazione un periodo di doppio binario, di garantire una effettiva estensione anche agli uffici del Giudice di pace attraverso la destinazione di adeguate risorse, di superare nel breve

periodo le criticità di funzionamento del PCT, che creano disservizi e perdite di risorse temporali da parte dei magistrati e degli avvocati.

Sulla semplificazione dei riti il parere, pur apprezzando l'intento di riduzione, ha segnalato che è necessario completare l'opera di semplificazione e che l'intervento sul processo non possa garantire di per sé la riduzione dei tempi della giustizia.

Relativamente all'introduzione del rito ordinario c.d. "semplificato" il parere si è soffermato, in particolare, sulla previsione di maggiore impatto, ossia quella relativa all'anticipazione di tutte le difese agli atti introduttivi nel rito ordinario evidenziando che l'imposizione di un rigido sistema di rigorose ed ineluttabili tagliole decadenziali rischia concretamente di ledere il diritto del cittadino alla difesa.

4. Riforma del procedimento in materia di persone, minorenni e famiglie

Commentando, poi, la riforma del procedimento in materia di persone, minorenni e famiglie il Consiglio ha sottolineato che i punti fermi da e verso cui qualsiasi intento riformistico dovrebbe muovere sono da individuarsi nella specialità dei diritti e nella assoluta specializzazione del connesso sistema giudiziario; nell'integralità ed unitarietà della giurisdizione, nella natura multidisciplinare delle competenze professionali implicate e nella prossimità territoriale evidenziando come, la soluzione dell'istituzione del Tribunale per le persone, appare apprezzabile nonostante la sussistenza di alcune criticità.

5. Principio della presunzione di innocenza e diritto di presenziare al processo nei procedimenti penali

Il Consiglio ha reso da ultimo un parere sullo schema di decreto legislativo sul rafforzamento di alcuni aspetti della presunzione di innocenza e del diritto di presenziare al processo nei procedimenti penali. Il parere, pur valutando favorevolmente l'intento del legislatore di fornire tutela effettiva al principio della presunzione di innocenza, ha però segnalato alcune criticità relative: alla partecipazione del magistrato, quale autorità pubblica, al contenzioso instaurato dall'interessato per la pubblicazione della rettifica; agli eccessivi vincoli imposti all'iniziativa del Procuratore o del magistrato delegato alle comunicazioni in relazione sia all'an che al *quomodo* delle medesime; alle difficoltà interpretative e applicative cui potrebbe dar luogo la formulazione dell'art. 115 *bis,* soprattutto con riferimento ai provvedimenti la cui adozione richiede la sussistenza di gravi indizi di colpevolezza o una stringente motivazione in ordine alla ricorrenza degli elementi soggettivi ed oggettivi del fatto; la competenza e la tempistica della procedura di correzione.

PILLAR II.

ANTI-CORRUPTION FRAMEWORK

A. The institutional framework capacity to fight against corruption (prevention and investigation / prosecution)

18. List any changes as regards relevant authorities (e.g. national agencies, bodies) in charge of prevention detection, investigation and prosecution of corruption and the resources allocated to each of these authorities (the human, financial, legal, and technical resources as relevant), including the cooperation among domestic authorities. Indicate any relevant measure taken to effectively and timely cooperate with OLAF and EPPO (where applicable).

With reference to the anti-corruption regulatory framework, article 6 of Law Decree no. 80 of 9 June 2021 (*Urgent measures to strengthen the administrative capacity of public administrations with the function to implement the National Recovery and Resilience Plan (PNRR) and for the efficiency of the justice system)*, introduced an Integrated Plan of Activities and Organisation (IPAO), which public administrations are called upon to adopt. The IPAO defines *'the tools and steps \\\\\\\needed to achieve full transparency of the results of administrative activity and organisation as well as the objectives in the fight against corruption, in accordance with the provisions of current legislation and with the guidelines adopted by the National Anti-Corruption Authority (ANAC) with the National Anti-Corruption Plan'.*

Public administrations publish the IPAO on their institutional websites and send it to the Department of Public Administration of the Presidency of the Council of Ministers for publication on the relevant portal. The transparency and anti-corruption tools and steps provided for in the IPAO must comply with anti-corruption legislation, as well as with the guidelines adopted by the National Anti-Corruption Authority with the National Anti-Corruption Plan.

The IPAO was adopted with the aim of simplification and overall rationalisation of the system bringing together, in a single act, a plurality of plans provided for by current legislation (i.e., Performance Plan, Organisational Plan for Agile Work (POLA), Three-Year Plan for Information Technology in Public Administration), and also defines the procedures for periodic monitoring of the results and those activated pursuant to Legislative Decree no. 198/2009. Full transparency and anti-corruption objectives thus become even more transversal with respect to all the activities of the administrations.

Transparency and corruption prevention measures are contained in a special section of the IPAO, in accordance with the provisions of Article 6, co. 2, of Decree-Law No. 80/2021 and with the guidelines adopted by ANAC, most recently in the National Anticorruption Plan 2019, referred to in Resolution No. 1064 of 13 November 2019. It should be noted that, pursuant to Article 6(6), the Department of Public

Administration will soon approve the ministerial decree by which a model Plan will be adopted as a support tool for the administrations.

Decree-Law no. 228 of 30 December 2021, "*Urgent provisions on legislative deadlines*", in article 1, paragraph 12, letter a), postponed the deadline of 31 January set by Decree-Law no. 80 of 9 June 2021 to 30 April 2022, for the first application of the IPAO.

Anac has published a statement (Comunicato) which officialised the postponement to 30 April 2022 of the deadline for the adoption of the three-year plans for the prevention of corruption and transparency (PTPCT) by public and private entities excluded from the obligation to adopt the IPAO, but still required to adopt measures for the prevention of corruption pursuant to Law 190/2012. These are, in particular, independent administrative authorities, economic public bodies, companies and private-law entities indicated in Article 2-bis, paragraph 2, of Legislative Decree no. 33/2013, as well as schools of all levels and educational institutions.

Where there have been cases of corruption or significant administrative dysfunctions detected in the monitoring carried out on the implementation of the previous programme, each administration or body may assess the opportunity to bring forward, with respect to the deadline of 30 April 2022 the adoption of the PTPCT and of measures for the prevention of corruption and transparency deemed necessary to be included in the appropriate section of the IPAO.

ANAC drafted a *Vademecum* aimed at guiding the public administrations in the preparation of the PTPCT and of the section of the IPAO dedicated to the measures for the prevention of corruption and transparency, starting from the contents of the 2019 PNA.

19. Safeguards for the functional independence of the authorities tasked with the prevention and detection of corruption.

ANAC falls under the category of independent authorities, which is an organizational model that has been developing in Italy since the 1990s' . Independent authorities are public entities that are separate from the government and independent from the executive branch of power. Moreover, ANAC is peculiar when compared to other independent authorities, namely because it focuses its attention on monitoring other public authorities, and it only indirectly monitors companies and private citizens.

Law no. 190/2012 introduces different criteria in order to ensure ANAC's independence. First of all, the members of the board are chosen based on criteria that limit the potential for political influence. Those meeting specific competence requirements — excluding those who have carried out political functions in the previous three years — are appointed by the government with the majority approval of two-thirds of the Parliamentary Constitutional Affairs Committee. Board members cannot be re-elected and serve six-year terms (which is therefore longer than the term of the parliamentary legislature).

ANAC is also financial independent from the government.

20. Information on the implementation of measures foreseen in the strategic anti-corruption framework (if applicable). If available, please provide relevant objectives and indicators.

The Anti-Corruption Law introduces a system of integrity risk assessment and risk management measures. In addition, the Law requires that each public administration should establish a prevention plan devoted to, on one hand, assessing the degree of risk of corruption's exposure and, on the other hand, drawing up tailor-made organisational measures so as to mitigate such risks.

Each public administration should adopt a three-year Plan for the Prevention of Corruption (Piano triennale prevenzione corruzione - PTCP) based on the National Anticorruption Plan (Piano nazionale anticorruzione –PNA) adopted by ANAC.

The PTCP analyses any specific administration's risk of corruption and indicates appropriate preventive measures. In order to be effective, the PTCP must contain appropriate targets and adequate measuring indicators. In addition, it should be systematically integrated into the whole programming tool-kit, including: the budget, the Performance Plan and the training Plan. The PNA is structured as a programmatic tool, updated annually by the inclusion of newly established indicators and targets. This continuous updating allows for the monitoring and detection of potential discrepancies (targets/results) arising from the factual implementation of the PNA.

Recently, the introduction of the IPAO has modified the legislative framework (see answer to question 18).

B. Prevention

21. Measures to enhance integrity in the public sector and their application (including as regards incompatibility rules, revolving doors, codes of conduct, ethics training). Please provide figures on their application.

Article 54 of Legislative Decree 165/2001 gives ANAC the power to define "*criteria, guidelines and uniform models for individual sectors or types of administration for the purposes of the adoption of individual codes of conduct by each administration*". In the light of this provision, in 2019 Anac deemed it necessary to issue new guidelines on codes of conduct for public administrations which replace the previous ones issued by Resolution No 75 of 24 October 2013. The aim is to promote a substantial relaunch of the codes of conduct precisely because of the value they have both in guiding the conduct of those who work in the administration and for the administration towards the best pursuit of the public

interest, and as a tool for preventing corruption risks to be harmonised and coordinated with the Anticorruption Plan of each administration.

The purpose of the guidelines is to provide interpretative and operational rules to guide administrations in drawing up new codes of conduct that supplement and specify the minimum duties laid down by Presidential Decree 62/2013 with contents that do not merely reproduce the general code, but are useful for the purpose of achieving the objectives of better protection of the public interest.

The key emphasis was therefore placed on the constitutional basis of the codes of conduct, i.e. the constitutional principles of impartiality and exclusivity that guide the exercise of public functions (Articles 54(2), 97 and 98 of the Constitution). The code of conduct adopted by the administrations integrate the general national code of conduct issued by Presidential Decree 62/2013, specifying the minimum rules and duties contained in the latter i.e. diligence, loyalty, impartiality and good conduct.

22. General transparency of public decision-making (e.g. public access to information, including possible obstacles related to the classification of information, transparency authorities where they exist, and framework rules on lobbying including the transparency of lobbying, asset disclosure rules, gifts and transparency of political party financing)

In Italy the legal framework of access to information is made up of two different and autonomous regulations: Law n. 241 of 1990, the Administrative Procedure Act, introducing the access to documentation. Law 190/2012 enhanced the contents of transparency for the purposes of prevention of corruption and maladministration. This law set down criteria for the reorganisation of the rules, which was implemented with Legislative Decree 33/2013.

Transparency thus becomes a general measure for preventing corruption. Law 190 ensures transparency by publishing information and data on the websites of public authorities according to criteria of easy accessibility, completeness, simplicity of consultation while respecting the confidentiality of State or official secrets and personal data protection.

Transparency is defined as: '"*total accessibility of data and documents held by public administrations, in order to protect the rights of citizens, promote citizens' rights, promote the participation of those concerned in the administrative activity and to encourage widespread forms of control over the pursuit of institutional the pursuit of institutional functions and the use of public resources*" (art. 1).

The principle of transparency, defined as freedom of access for anyone, is ensured by two means: (i) Compulsory publication (ii) Accessibility through FOIA and Legislative Decree n. 33 of 2013, renamed the "Transparency Decree" and introducing "civic access", presented as the "Italian Freedom of Information Act". Anyone can have access to documents and data of the public administrations without the necessity of reasoning the request, increasing the amount of information subject to mandatory

publication and contemplating the social control function over the institutional activities of the public administration.

The first instrument that guarantees the correct application of the principle of transparency is the mandatory publication of certain documents and information on the organisation and its activities, to be published in the 'Transparent administration' (or 'transparent company' for public companies) section of the website. "Administration" (or "transparent company" for public companies) on institutional websites. The section is maintained by the persons in charge (to be identified in the part of the section of the PTPCT) under the coordination of the Anticorruption Officer.

In order to implement transparency, ANAC is placing great emphasis on the role of the Anticorruption Officer , who is called upon to : (i) coordinate the planning of activities necessary to ensure the proper implementation of the implementation of transparency provisions by drawing up a specific section of the section of the PTPCT; (ii) carry out regular monitoring of the actual publication of the data required by the legislation; (iii) report any breaches detected, depending on their seriousness, to the political body, to ANAC, and to an independent evaluation body.

Anac is focusing on the creation of a Single Transparency Platform a unified access point, managed by the Authority itself and based on the based on interconnection with other public databases, capable of simplifying and the publication of data, while facilitating usability and comparability. It is therefore a tool that meets the need for simplification, especially for smaller organisations. The importance of the Platform in the fight against corruption is also recognised in the National Recovery and Resilience Plan (PNRR).

As far as transparency of lobbying is concerned, in Italy is under debate Proposals for legislation entitled "*Discipline of the activity of institutional relations for the representation of interests*". A cycle of hearings before the Parliament's Commission was launched, during which the President of ANAC spoke (20 October 2020). As regards the contents of the three proposals, it should be noted one proposal entrusts ANAC with the task of monitoring the activity of interest representation, as well as with the adoption of a "Code of ethics for special interest representatives"; another proposal assigns this role to the Competition and Market Authority while a third proposal provides for the establishment of the Register at the Presidency of the Council of Ministers.

The unified text adopted as a "basic text" incorporates, for its part, regards the identification of an authority responsible for the establishment and maintenance of the register of interest representatives, thus entrusting this task to the Competition and Market Authority.

The measure is currently before the Chamber of Deputies.[1]

23. Rules and measures to prevent conflict of interests in the public sector. Please specify the scope of their application (e.g. categories of officials concerned)

Anac currently deals with conflict of interest in the context of the supervision of the correct implementation as one of the general measures included in the three-year Anticorruption Plans adopted by public administrations.

Legislative Decree no. 39 of 2013 deals organically with the conflict of interest that may affect holders of administrative offices. Anac is responsible for ensuring the effective implementation of this Decree.

A draft bill on conflict of interest is still under discussion in the Chamber of Deputies the content of which can be summarized as follows:

a) stricter measures in the matter of conflicts of interest for those in charge of national government offices, to whom members of independent administrative authorities are equated, for the purposes of applying the provisions introduced by the law;
b) These measures are also applied to people in charge of regional government offices (to this end, the text modifies Law 165 of 2004 which contains the fundamental principles for the regions to be implemented pursuant to Article 122 of the Constitution) and to people in charge of local offices (to be implemented with the legislative delegation provided for by the text with reference to municipalities with more than 100,000 inhabitants);
c) It enlarges the number of cases of ineligibility for the office of deputy and senator and regional Councillor;
d) It provides for new rules on the ineligibility of magistrates and provisions on the regulatory regime to be applied to magistrates who are candidates in the elections;
e) it delegates the Government to define a more stringent regulation for the prevention of conflicts of interest in the public administration, entrusting ANAC with specific powers of intervention and sanctions and providing for greater forms of transparency with respect to the current regulatory framework;
f) it extends the law provisions on the non-conferrable status of officials (currently governed by Legislative Decree no. 39/2013), and limits the possibility of accumulating roles in

[1] the Chamber of Deputies approved the text and transmitted it to the Senate
https://www.camera.it/leg18/824?tipo=C&anno=2021&mese=12&giorno=28&view=&commissione=01&pagina=data.20211228.com01.bollettino.sede00020.tit00010.int00030#data.20211228.com01.bollettino.sede00020.tit00010.int00030

administrative and control bodies in publicly controlled companies and the extension of the subjective scope of the rules on conflicts of interest.

24. Measures in place to ensure whistleblower protection and encourage reporting of corruption.

Italy's law on whistleblowing entered into force in November 2017 (law 179/2017). It is a comprehensive and dedicated legislation that applies to public employees and, to a certain extent, to the private sector.
ANAC has put in place training programs to increase awareness of whistleblowing.
The process of transposing the European Directive no. 2019/1937 has yet to be concluded.

25. List the sectors with high-risks of corruption in your Member State and list the relevant measures taken/envisaged for monitoring and preventing corruption and conflict of interest in these sectors. (e.g. public procurement, healthcare, citizen investor schemes, risk or cases of corruption linked to the disbursement of EU funds, other).

According to article 1, paragraph 16, of Law 190, the areas of risk which are compulsory and common to all administrations are the following:

(a) authorization or concession;

b) choice of contractor for the awarding of works, supplies and services, also with reference to the selection method chosen pursuant to the code of public contracts relating to works, services and supplies;

c) granting and disbursement of subsidies, contributions, financial aid, as well as the allocation of economic advantages of any kind to public and private persons and bodies;

d) competitions and selective tests for the recruitment of staff and career advancement referred to in Article 24 of Legislative Decree no. 150 of 2009.

Moreover, in the National Anticorruption Plans, Anac has recommended particular attention be paid to the following areas:

- revenue, expenditure and asset management;
- controls, audits, inspections and sanctions;
- mandates and appointments;
- legal affairs and litigation.

Each administration, with reference to the "activities at risk" referred to in paragraph 16 of Law 190/2012, must initiate, internally, the definition of the areas and processes contained therein, taking care to ensure that this is the outcome of a broader process (which in exceptional cases can also be completed in two years) that involves all structures and all levels of the entity, albeit in different ways.

26. Measures taken to assess and address corruption risks in the context of the COVID-19 pandemic.

The rapid spread of the pandemic and its consequences have affected almost every aspect of society and any consequential decrease in transparency could lead to a greater risk of corruption.

For this reason, ANAC has strengthened its supervisory activities, but alongside this it has also carried out daily support activities for administrations, which have been implemented in this most difficult period.

In this context, during the pandemic, opinions on the fairness of the prices of emergency purchases have become increasingly important, allowing administrations to verify that the goods purchased are not exorbitantly priced compared to the costs normally incurred. The Authority has also made it clear on several occasions that the derogations included in emergency measures must be compensated for by increasing the level of transparency on contracts concluded.

Thanks to the National Public Contracts Database, managed by ANAC, all procurement activities are transparent and available to auditors and citizens in real time, so that they can monitor spending, in order to prevent cost inefficiencies and corruption.

The National Database of Public Contracts (BDNCP) collects and integrates data on public procurement in Italy. The data are provided by Contracting Authorities through a digitalized system. The BDNCP promotes transparency and efficiency in public procurement through:

1. digitalization and simplification of the purchasing process;
2. trusted data source for the public procurement market;
3. standardization of data collected on the life cycle of public contracts;
4. Open Data as a key enabler for transparency and civic engagement

Anac is also working to complete the initiatives relating to the rationalisation and interoperability of the databases.

As a part of the process of simplifying tender procedures, Anac has approved the implementation of the Digital Dossier (Fascicolo virtuale) for economic operators, promoting an effective reduction of burdens on operators in the sector. This is one of the simplification measures in the field of public contracts provided for by the National Recovery Plan and Decree Law No. 77 of 31 May 2021, which entrusted its implementation to the National Anti-Corruption Authority.

The digital dossier will allow contracting authorities to use the checks already carried out by another contracting authority to admit the economic operator to the tender, thus speeding up the activity of checking the general requirements (white list). In addition, economic operators will see a significant reduction in the burden of reproducing for each tender procedure the certificates proving the requirements possessed. Economic operators will no longer have to produce the same documentation for each tender in which they intend to participate, which is already available to the Administration.

The economic operator's virtual file will be used for participation in individual tenders, but the data and documents contained in the virtual file will also be used for different tenders. When taking part in the tenders, the economic operator will indicate the data and documents relating to the general and special requirements contained in the virtual file to enable the contracting authority to assess them.

In order to achieve the Recovery Plan's objectives, it is essential to implement the qualification system for contracting authorities. Qualification is the modality envisaged by the Code of Contracts, with which the contracting authorities certify their possession of the organizational and professional capacity, necessary to call tenders for works, services and supplies for different amounts, product sectors and territorial areas. For this purpose, a special list of qualified contracting authorities is established at ANAC, which also includes the central purchasing bodies. Registration is valid for 5 years, renewable.

Starting from the entry into force of the new qualification system, the contracting authorities must be qualified for the type of tender announced and, if not yet qualified, must use the central purchasing bodies to qualify.

The qualification is based on specific parameters, including:

- presence of suitable organizational structures within the institution;
- adequate professional competence of the staff in charge;
- number of tenders held in the five-year period (by area, type and amount);
- compliance with the deadlines and number of (if any) variants granted.

In addition, ANAC may recognize additional rewarding requirements for:

- anti-corruption measures adopted;
- UNI EN ISO certifications;
- use of telematic technologies in tender procedures.

A Memorandum of Understanding for the implementation of the qualification system of contracting authorities and central purchasing bodies and further cooperation profiles has been signed on December 2021 between the Presidency of the Council of Ministers, and Anac.

C. Repressive measures

28. Criminalisation of corruption and related offences

Legislative developments.

As regards incriminations, the following changes, occurred during the last months of 2021, are worth mentioning.

On 8 November 2021, the Council of Ministers adopted Legislative Decree no. 195, implementing Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018, on

combating money laundering by criminal law. The decree entered into force on 15 December 2021 and includes amendments to Articles 648 (handling of stolen goods), 648 bis (money laundering), 648 ter (use of money, goods or benefits of unlawful origin) and 648ter.1 (self-laundering) of the Italian Criminal Code.

In particular, following the aforementioned amendments, both non intentional offences (as already provided for offences under Articles 648 and 648 ter c.c.) and misdemeanours (where punishable with at least 6 months arrest as a minimum or 1 year arrest as a maximum) have been included among the possible predicate offences of the criminal offences mentioned above.

It is worth adding that Legislative Decree no. 195/2021 – by amending Article 9 of the Italian Criminal Code – eliminated the need for a request by the Minister of Justice as a condition for prosecution of the offences of self-laundering and handling of stolen goods committed abroad by an Italian citizen.

Other (EPPO; Training activities on foreign bribery crimes)

In 2021 the Ministry of Justice, in co-ordination with the High Council for the Judiciary completed the complex legislative and organizational activities required to make the **European Public Prosecutor's Office (EPPO)** fully operational by 1 June 2021 also in Italy.

On 6 February 2021 Legislative Decree no. 9 of 2 February 2021, entered into force to adapt the Italian legal system to the provisions of Council Regulation (EU) 2017/1939 establishing the EPPO. According to Article 13, paragraph 2, of the Regulation and under Article 4 of the above-mentioned legislative decree, on 25 March 2021 the Minister of Justice reached an agreement with the European Chief Prosecutor whereby the number and the functional and territorial division of the Italian European Delegated Prosecutors (EDPs) were determined. It was agreed that 20 EDPs would be appointed in Italy. By May 2021 the CSM and the Ministry of Justice completed the procedure for the proposal and designation of 15 EDPs who took on their position on 1 June 2021.

The procedure for the appointment of the additional 5 EDPs (for the Districts of Bari, Bologna and Catanzaro) is ongoing. The Ministry of Justice is currently working on legislative and organizational aspects of the procedure for the appointment of 2 more EDPs to be assigned to General Prosecutor's Office at the Supreme Court of Cassation.

As to **foreign bribery offences**, it is worth noting that in April 2021 the High School for the Judiciary organized a **three-day training for approximately 90 magistrates** (judges and prosecutors) devoted to international cooperation. A special session focused exclusively on foreign bribery in order to enhance the knowledge of magistrates on this subject.

29. Data on investigation and application of sanctions for corruption offences (including for legal persons and high level and complex corruption cases) and their transparency, including as regards the implementation of EU funds.

Convictions (final) entered in the criminal records for corruption offences issued from 2014 to 2019 per year of conviction and offence (natural persons)							
Offences	2014	2015	2016	2017	2018	2019	2020
art.314 c.c.	400	403	402	423	420	442	296
art.316 c.c.	18	16	6	6	5	8	4
art.316 bis c.c.	10	16	12	8	13	5	3
art.316 ter c.c.	99	98	129	175	191	172	105
art.317 c.c.	62	59	61	60	42	36	23
art.318 c.c.	13	25	15	19	35	24	29
art. 319 c.c.	128	165	145	183	168	125	107
art.319 ter c.c.	4	7	12	10	6	19	18
art.319 quater c.c.	60	65	86	65	60	61	23
art.320 c.c.	5	3	5	1	8	2	11
art.321 c.c.	122	96	68	110	77	84	51
art.322 c.c.	149	92	115	93	86	73	52
art.323 c.c.	79	86	78	102	79	59	39
art.328 c.c.	36	36	30	50	44	31	23
art.346 bis c.c.	0	2	3	5	10	11	11
art.640 bis c.c.	176	204	194	179	151	170	76
art.2635 civil code	0	0	1	5	3	4	1
art.2635 bis civil code	0	0	0	0	0	1	0
art. 28 Legislative Decree 39/2010	0	0	0	0	0	0	0
Total convictions per year	1.361	1.373	1.362	1.494	1.398	1.327	872

Convictions (final) entered in the criminal records for corruption offences issued from 2014 to 2019 per year of conviction and administrative offence (Legal persons)							
Offences	2014	2015	2016	2017	2018	2019	2020
art. 24 Legislative Decree 231/2001	15	22	33	12	23	13	13
art. 25 Legislative Decree 231/2001	9	17	9	8	15	7	5
art. 25 ter, letter) s bis Legislative Decree 231/2001	0	0	0	0	0	0	0
Total convictions per year	19	39	37	20	37	20	18

It should be noted that the data of recent years (in particular, 2019 and 2020) could be significantly lower than the real ones due to the existing backlog in the entering of judgments which have recently become final.

PILLAR III.

MEDIA FREEDOM AND PLURALISM

Media authorities and bodies

32. Measures taken to ensure the Independence, enforcement powers and adequacy of resources of media regulatory authorities and bodies

In Italy, AGCOM is the convergent and independent National Regulatory Authority in charge of electronic communications, audiovisual media services and postal sectors.

Established by Law 31 July 1997 n. 249, AGCOM is entrusted with regulatory, surveillance, enforcement and sanctioning powers in the media sector. Article 1 of Law 249/97 states that AGCOM "*operates in full autonomy and is independent in its judgement and assessment*".

The **monitoring** activities are carried out either *ex officio* or relying on complaints filed by the public. In case the provisions of the audiovisual framework are violated, AGCOM can adopt different **enforcement** tools, depending on the nature of the infringed legal or regulatory provision[2]. AGCOM is required to publish its decisions; according to Law 14 March 2012, n.33, art 34, unless the **publication** on the Official Gazette is required, general decisions adopted by the Italian Public Administration must be published on the institutional websites.

By Law, AGCOM is fully autonomous in managing its own budget. Since 2006, the Italian budget Law withdrew any public contribution to AGCOM's budget and now AGCOM is now fully financed by firms operating in sectors under its remit, which contribute with a percentage of their annual revenues referred to the activities regulated by the NRA. It is worthwhile highlighting that such contribution may be requested only to cover the cost of relevant regulatory activities, on the basis of strict accounting rules.

As regards **human resources**, the procedures to select AGCOM's staff follow the general principles adopted by the Italian Public Administration: a procedure regulated by law, aimed at recruiting civil servants and envisaging public exams for all candidates. Within such procedural rules, AGCOM can nonetheless set specific recruitment criteria (i.e. skills and experience required), which must be clearly established beforehand and applied during the recruitment process, and it is autonomous in the adoption of its own regulations concerning the **internal organization** and functioning.The legal framework

[2] For instance, for politic pluralism the sanction consists in an order to the broadcaster aimed at restoring the balance between the political parties; fines might be imposed only in case of non-compliance with the AGCOM order. In other sectors, such as minors' protection or advertisement caps, the sanctions are usually the payment of a fine. The maximum and minimum ranges of the fines that AGCOM can impose are determined by law and are determined within a proceeding in which the infringing subjects have the right of defending themselves. Often the fines may be preceded by a warning. All of the pecuniary fines are paid to the State budget.

concerning the legal and economic treatment of the AGCOM employees is provided by law 481/95 (art.2, para 28), according to which AGCOM and the Competition authority share the same provisions related to the treatment of their employees, who are all civil servants. AGCOM's managers cannot, for 2 years after the end of their work in AGCOM, hold any kind of direct or indirect relationship with any undertaking operating in the regulated sectors; such a **cooling-off period** is not remunerated.

33. Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media regulatory authorities and bodies

AGCOM Board is composed of a President and four Board Members (the overall number of AGCOM Board members was reduced from 8 to 4 by Law-decree 201/2011), appointed according to the Law no.249/1997.

Pursuant to Law 249/1997 and Law 481/1995, the AGCOM President is appointed by decree of the President of the Republic, upon designation by the Prime Minister (in agreement with the Minister for Economic Development); the designation by the Prime Minister is subject to the binding favourable opinion by the competent parliamentary committees, which must be expressed by 2/3 majority of all their component members. The Law 249/1997 sets out also the procedure for the appointment of the AGCOM **Board members**: according to Art. 1, both the Lower Chamber and the Senate appoint two Board Members each (each MP has the right to vote for one Member). The appointment is then confirmed by a Decree by the President of the Republic.

According to Art.2, paragraph 8 of Law 481/95, high level and publicly recognized competence and professionalism are considered as mandatory **requirements to be appointed** as a member of the NRA (both as Chairman and as Member of the Board). During the mandate, the President and the Members of the Board cannot:

- carry out any professional activity, including consultancy, either directly or indirectly;
- hold a position as a manager or as an employee in other public or private entities;
- hold a position in public offices, including electoral mandates or positions in political parties;
- have any kind of interest in the fields of competence of Agcom

Article 3 of "*Section V - final provisions*", of the recently approved Legislative Decree 8 November 2021, n. 207, transposing the European Code of electronic communications, prescribes that the Commissioners and the President of AGCOM will be chosen on the basis of merit, skills and knowledge of the sector, among people of recognized standing and professional experience, who have expressed and motivated their interest in filling these roles and who have sent their curriculum vitae. The curricula received must be published on the websites of the institutions involved in the appointment of the AGCOM Board.

Safeguards aimed at preventing **conflicts of interests** are foreseen both during the mandate of the Board and in the first two years after the mandate expires, a 2 years non remunerated cooling-off period is applied.

As a tool to ensure AGCOM's independence from any political pressure, the Members' mandate is not tied to electoral cycles (the mandate of the AGCOM Board is **7 years**, not renewable, while the legislature in Italy lasts 5 years). The **dismissal** of AGCOM's Chairman and Board members is not envisaged at all, not even by the competent appointing institutions and a termination of the mandate can only be due to the arising of one of the incompatibility reasons listed in Law 481/1995.

34. Existence and functions of media councils or other self-regulatory bodies

In Italy there are no Press or Media Councils. It is worthwhile mentioning, however, that in Italy the journalistic profession is regulated by a corporation named "Ordine dei Giornalisti", created by Law no. 1969 of 3 February 1963, prescribing duties connected to the journalistic profession (see also answer to Q 34).

B. Transparency of media ownership and safeguards against government or political interference

35. Measures taken to ensure the fair and transparent allocation of state advertising (including any rules regulating the matter)

On 25 December 2021, the revised Italian AVMS Code (legislative Decree no. 208/2021), implementing the AVMS Directive, entered into force. The relevant provision is Article 49, which leaves unaltered the previous discipline (represented by Article 41 of the Legislative Decree no. 177 of July 31, 2005). Pursuant Article 49 and the procedural criteria established by the Italian Department for European Policy of the Presidency of the Council of Ministers with its Directive of 28 September 2009. the Italian public administration bodies (around 24,000 public administration institutions/organisms, including the public economic bodies) that purchase advertising space in the mass media, must inform AGCOM about the advertising expenditures of the previous financial year. This information must be sent each year between September 1 and September 30, by means of an electronic tool adopted by AGCOM with its Decision no. 4/16/CONS of 14/01/2016.

Moreover, Article 49 determines also that the amounts that public administrations or public bodies allocate to the purchase of advertising slots on the mass media, for institutional communication purposes, must respect, for each financial year, the following criteria:

- at least 15% of the advertising expenditures must be spent on advertisements broadcast on private local television and local radio operating in the territories of the EU Member States;

- at least 50% of the advertising expenditures must be spent on advertisements published on daily newspapers and magazines.

AGCOM, also through the CO.RE.COM (Regional Committees), monitors the Public Administrations' compliance with the aforementioned criteria.

36. Safeguards against state / political interference, in particular:

- *safeguards to ensure editorial independence of media (private and public)*
- *specific safeguards for the independence of governing bodies of public service media governance (e.g. related to appointment, dismissal) and safeguards for their operational independence (e.g. related to reporting obligations),*
- *procedures for the concession/renewal/termination of operating licenses*
- *information on specific legal provisions for companies in the media sector (other than licensing), including as regards company operation, capital entry requirements and corporate governance*

Concerning the public service media independence, the relevant provisions are Articles 59-66 of the aforementioned Italian AVMS Code, stating specific safeguards.

The concession of the public radio, television, and multimedia service is entrusted, until 30 April 2027, to RAI - Radiotelevisione italiana S.p.A.

The concession has a duration of 10 years and is preceded, pursuant to Article 5(5) of Law No 220 of 28 December 2015, by a public consultation on the obligations of the service.

Article 63 of the AVMS Code states a cap to the maximum salary limit of EUR 240,000 per year, respectively to directors, employees, collaborators, and consultants of the entity entrusted with the concession for the public radio, television, and multimedia service, whose professional performance is not determined by regulated tariffs.

The board of directors of RAI - Radiotelevisione italiana S.p.A. is composed of seven members. The Board, in addition to being the administrative body of the company, also performs functions of control and assurance of the correct fulfilment of the aims and obligations of the general public service broadcasting. Persons having the prerequisites for appointment as constitutional judges pursuant to Article 135(2) of the Constitution or, in any case, persons of recognised good reputation, prestige, and professional competence and well-known independence of conduct, who have distinguished themselves in economic, scientific, legal, humanistic cultural, or social communication activities, gaining significant managerial experience, may be appointed as members of the board of directors. If they are employed, they are placed on unpaid leave for the duration of their term of office upon request. The term of office

of the members of the board of directors shall be three years and the members shall be re-elected once. The renewal of the board of directors shall take place before the end of the previous term of office.

The composition of the board of directors shall be defined by favouring the presence of both sexes and an appropriate balance between members with a high level of professionalism and proven legal, financial, industrial, and cultural experience, as well as, taking into account the authority required by the appointment, the absence of conflicts of interest or of holding offices in competitor companies.

The appointment of member of the board of directors may not be held, on pain of ineligibility or forfeiture, even in the course of their term of office, by persons who hold the post of Minister, Deputy Minister, or Under-Secretary of State or who have held that post during the 12 months preceding the date of appointment, or who hold the post referred to in Article 7(1)(c) of the consolidated act referred to in Presidential Decree No 361 of 30 March 1957, the post referred to in Article 1(54)(a) of Law No 56 of 7 April 2014, or the post of regional councillor.

Persons in one of the following situations cannot be appointed members of the board of directors and, if appointed, shall lose their mandate:

a) perpetual or temporary disqualification from public offices;
b) legal or temporary disqualification from the management offices of legal persons and companies, or in any case any of the situations referred to in Article 2382 of the Civil Code;
c) subjection to preventive measures ordered by the judicial authority pursuant to the Code of Anti-Mafia Legislation and Protection Measures, as per *Legislative Decree No 159 of 6 September 2011*, without prejudice to the effects of rehabilitation;
d) sentence by final judgment to imprisonment for one of the offences provided for in Title XI of Book Five of the Civil Code, without prejudice to the effects of rehabilitation;
e) sentence by final judgment to imprisonment for a crime against the public authority, public faith, property, public order, the public economy, or a tax offence;
f) sentence by final judgment to imprisonment for any offence committed with criminal intent for a period of two years or more.

The appointment of the Chairman of the board of directors shall be made by the board within its members and shall become effective after obtaining the favourable opinion of the Parliamentary Committee for the General Guidelines and Supervision of Broadcasting Services referred to in Article 4 of Law No 103 of 14 April 1975, as amended, by a two-thirds majority of its members. The Chairman may be entrusted by the board of directors with executive powers in the areas of external and institutional relations and supervision of internal control activities, subject to a resolution of the meeting authorising their delegation.

The members of the board of directors shall be identified as follows:

a) two elected by the Chamber of Deputies and two elected by the Senate of the Republic, with a vote limited to only one candidate;
b) two appointed by the Council of Ministers, on the proposal of the Minister of the Economy and Finance, in accordance with the criteria and procedures for appointing the members of the administrative bodies of companies controlled directly or indirectly by the Ministry of the Economy and Finance;
c) one appointed by the meeting of employees of RAI-Radiotelevisione Italiana S.p.A., among the employees of the company holding an employment relationship for at least three consecutive years, in a manner that ensures the transparency and representativeness of the appointment itself.

The members of the board of directors appointed by the Chamber of Deputies and the Senate of the Republic must be elected from among those who submit their candidature in the context of a selection procedure, the notice of which must be published on the websites of the Chamber, the Senate, and RAI Radiotelevisione italiana S.p.A. at least sixty days before the appointment. Applications must be received at least 30 days before the appointment and CVs must be published on the same websites. For the election of the member expressed by the meeting of the employees of RAI Radiotelevisione italiana S.p.A., the voting procedure must be organised by the outgoing board of directors of the same company, with notice published on its institutional website at least sixty days before the appointment, according to the following criteria: a) participation in voting, ensuring the secrecy of all employees that have an employment relationship, including via the internet or through the corporate intranet network; b) access to the application of only persons who meet the requirements set out in paragraph 4 to 15. Individual applications may be submitted by one of the trade unions signatories to the collective or supplementary agreement of RAI-Radiotelevisione italiana S.p.A. or by at least one hundred and fifty employees and must be received at least thirty days before the appointment.

The general guidance and supervisory functions of the Parliamentary Committee on the General Guidelines and Supervision of Broadcasting Services remain valid. The board of directors shall report every six months, before the approval of the financial statements, to the same Committee on the activities carried out by RAI Radiotelevisione italiana S.p.A., giving the full list of the names of the guests participating in the broadcasts.

The managing director and members of the management and supervisory bodies of RAI-Radiotelevisione italiana S.p.A. are subject to the civil liability actions provided for by the ordinary rules of limited companies.

The managing director shall ensure, in compliance with the current regulations on the protection of personal data, the timely publication and updating, at least annually, of the data and information provided for in the Corporate Transparency and Reporting Plan approved by the Board of Directors. The failure to

comply with the publication obligations referred to in the previous period constitutes possible cause of liability for damage to the image of the company and is, in any case, assessed for the purposes of payment of ancillary remuneration or profit, where applicable. The managing director shall not be held liable for the failure to comply if he or she proves that it was due to cause not attributable to him or her.

As for the general regime of audiovisual media services, the Italian AVMS Code prescribes at Article 7 the main principles of the system to safe guard pluralism and fair competition.

Are considered as main principles:

a) promotion of fair and sustainable competition in the system of audiovisual media services, radio, and mass media services and in the advertising market, and the protection of pluralism, prohibiting, to this end, the establishment or maintenance of positions of significant market power detrimental to pluralism, including through controlled or linked entities, in accordance with the criteria laid down in this Decree, and ensuring maximum transparency of the company structures. For the purposes of this Consolidated Act, control exists, including with regard to entities other than companies, in the cases provided for in Article 2359(1) and (2) of the Italian Civil Code. Control is deemed to exist in the form of dominant influence, unless there is evidence to the contrary, where one of the following situations occurs:

1) the existence of an entity that, alone or on the basis of cooperation with other members, has the opportunity to exercise a majority of the votes of the ordinary general meeting or to appoint or revoke a majority of the directors;

2) the existence of relationships, including between members, of a financial or organisational or economic nature capable of achieving one of the following effects:

2.1) the transmission of profits and losses;

2.2) the coordination of the management of the enterprise with that of other enterprises with a view to pursuinga common purpose;

2.3) the attribution of powers greater than those deriving from the shares or stocks held;

2.4) the attribution to parties other than those authorised on the basis of the power holding structure in the choice of directors and managers of enterprises;

3) subject to common management, which may also result on the basis of the characteristics of the composition of the administrative bodies or other significant and qualified elements.

b) provision of different licences for carrying out activities pertaining to network operators or audiovisual media service providers, including on-demand or radio, or associated interactive services or conditional access services providers, with a general authorisation regime for activities pertaining to network operators or associated interactive service or conditional access service providers; the general authorisation does not involve the allocation of radio frequencies, which shall be carried out with a separate measure; the authorisation to act as a provider of audiovisual media services, including on-

demand or radio, may not be granted to companies that do not have as their corporate purpose the exercise of broadcasting, editorial, or other information and entertainment activities; without prejudice to the provisions for the concession company of the general public broadcasting service, public authorities, public bodies, including economic entities, companies with majority public shareholding, and companies and credit institutions may not, directly or indirectly, hold licences enabling them to carry out the activities of network operators or media service providers, including on demand or radio;

c) provision of separate licences for carrying out, respectively, on terrestrial or coaxial cable or satellite frequencies or on other platforms, including by the same entity, the activities referred to in point b), as well as the provision of a sufficient duration of the relevant licences, in any case not less than 12 years, for activities on digital terrestrial frequencies, with the possibility of renewal for equal periods;

d) provision of separate licences for carrying out the supply activities referred to in point b), at a national or local level respectively, where they are exercised on terrestrial frequencies, establishing, in any case, that the same entity or entities party to a relationship of control or affiliation may not, at the same time, be authorised to provide radio media services, including as concession companies, at a national and local level;

e) obligation for network operators:

1) not to discriminate against audiovisual media service providers, including on-demand, or radio services not attributable to affiliated and controlled companies, providing them the same technical information provided to audiovisual media service providers, including on-demand, or radio services attributable to affiliated and controlled companies;

2) not to discriminate in establishing appropriate technical arrangements on transmission quality and conditions for access to the network between audiovisual media service providers, including on-demand providers, or radio broadcasts belonging to parent companies, subsidiaries, or affiliates and providers of audiovisual media services, including on-demand, or radio broadcasts and associated interactive service or independent conditional access service providers, while providing, in any case, that network operators shall divest their transmission capacity under market conditions in accordance with the principles and criteria laid down by the Authority in its own regulations;

3) to use, under its own responsibility, information obtained from broadcasters, including digital radio broadcasters, or from on-demand media service providers not attributable to affiliated and controlled companies, solely for the purpose of concluding technical and commercial network access agreements, prohibiting the transmission to subsidiaries or affiliates or third parties of the information obtained;

f) an obligation for radio stations and audiovisual media service providers, including on demand, or radio broadcasters in case of the transfer of rights to use programmes, to observe non-discriminatory practices

between the different distribution platforms, under market conditions, without prejudice to respect for exclusive rights, copyright rules, and free negotiation between the parties;

g) separate accounting obligation for enterprises, other than those broadcasting in analogue, operating in two or more of two sectors of audiovisual media services, radio broadcasting, and associated interactive services or conditional access services, in order to enable the disclosure of fees for access and interconnection to communication infrastructure, and the disclosure of charges relating to the general public service, the assessment of the installation and management of the infrastructure separate from that of the provision of content or services, where carried out by the same entity, and the verification of the absence of cross-subsidies and discriminatory practices, providing, in any case, that:

1) the provider of audiovisual media services, including on demand, or radio broadcasts, which is also a service provider, is required to establish a separate accounting system for each authorisation;

2) the provider of audiovisual media services, including on demand, or radio broadcasts, which is also a network operator at a national level, or a provider of associated interactive services or conditional access services, is required to separate companies;

3) the provisions referred to in points 1) and 2) do not apply to entities operating only locally on terrestrial frequencies;

Depending on the platform on which the provider operates, the specific procedures for licensing and authorizations are foreseen by specific regulations adopted by AGCOM and issued by AGCOM or the Ministry of economic development.

37. Transparency of media ownership and public availability of media ownership information, including on media concentration (including any rules regulating the matter)

Pluralism, transparency of media ownership and provisions regarding the positions of significant market power find their legislative framework pursuant to Article 51 of the Italian AVMS Code.

It forbids the establishment of positions of significant market power detrimental to pluralism in the market and information services. Legal acts, mergers, and agreements that contravene the prohibitions referred to this Article shall be null and void.

AGCOM is tasked with monitoring the development and evolution of the integrated communications system and shall ensure, at least annually, by making public its results, its overall economic value and that of its component markets and shall also demonstrate the market power positions of the parties active in those markets and the potential risks to pluralism. For the quantifications, AGCOM will take into account the revenues generated in Italy, including by companies with headquarters abroad, which derive from public service broadcasting funding, net of the rights of the State Treasury, from national and local advertising, including in direct form, from teleshopping, sponsorship, agreements with public entities of

a continuous nature and public provision directly paid to the entities carrying out the activities referred to in Article 2(1)(s) ov the AVMS Code, from offers of paid audiovisual and radio media services, subscriptions and the sale of newspapers and periodicals, including book and phonographic products marketed in the annex, as well as national news agencies, electronic publishing including via the internet, advertising online and on the various platforms including in direct form, including resources collected from search engines, social media and sharing platforms, and the use of audiovisual and cinematographic works in the various forms of public use.

Entities operating in the integrated communications system with a turnover exceeding the values referred to in Article 16 of Law No 287 of 10 October 1990 shall notify AGCOM of the agreements and mergers for the purposes of this Article. Entities that, including through subsidiaries or affiliates and also as a result of agreements or mergers, are included in the categories listed below, which are symptomatic indices of a position of significant market power potentially detrimental to pluralism, must also formally notify AGCOM:

a) entities that generate revenues exceeding 20 % of the total revenues of the integrated communications system or revenues exceeding 50 % in one or more of its markets;
b) entities that achieve revenues exceeding 20 % of the total revenues in the markets for the retail provision of electronic communications services, as defined by Legislative Decree No 259 of 1 August 2003, and which at the same time generate more than 10 % of the total revenues of the integrated communications system and more than 25 % of the revenues in one or more of its markets;
c) entities that achieve revenues exceeding 8 % of the total revenues of the integrated communications system and that, at the same time, have or acquire holdings in companies publishing daily newspapers, with the exception of companies publishing daily newspapers distributed exclusively electronically;
d) entities holding authorisations to broadcast more than 20 % of the total television programmes or more than 20 % of radio programmes broadcast on terrestrial frequencies at a national level through the networks provided for in the national digital television frequency allocation plan.

The notification procedures are defined in the specific regulations adopted by AGCOM. For the purposes of quantifying the thresholds referred to in this paragraph, reference is made to the most recent estimates published by AGCOM and, for affiliated companies, only the share of revenue, or holding of authorisation rights, corresponding to the shareholding percentage, shall be taken into account. In the case of companies that have failed to comply with the prior notification requirements referred to above, AGCOM may impose on the same companies pecuniary administrative penalties of up to one percent of their turnover in the year preceding the year in which the dispute occurred.

AGCOM shall, following the notifications referred to above, or ex officio on the basis of the elements resulting from the determinations abovementioned, or on the basis of an alert from those who have an interest in it, carry out investigations in order to verify the existence of the positions prohibited under paragraph 1, and shall, where necessary, adopt measures to eliminate or prevent the formation of positions of significant market power that are detrimental to pluralism. In order to determine whether a company or group of companies is in a situation of significant market power that is detrimental to pluralism, AGCOM shall take into account, *inter alia*, in addition to revenues, the level of static and dynamic competition within the system, barriers to entry into the system, convergence between sectors and markets, synergies resulting from activities carried out in different but contiguous markets, vertical and conglomerate integration of companies, the availability and control of data, the direct or indirect control of scarce resources needed, such as transmission frequencies, the company's economic efficiency, including in terms of economies of scale, range, and network, and quantitative indices of broadcasting programmes, including information programmes, cinematographic works, publishing and online products and services. On the basis of those criteria, AGCOM shall define the specific methodology for the verification referred to in this paragraph by means of guidelines, which shall be reviewed periodically at least every three years.

Without prejudice to the invalidity prescribed by the Article, if AGCOM, following an open investigation pursuant to paragraph 5, finds that there are positions of significant market power detrimental to pluralism, it shall take action to ensure that they are promptly removed; if it finds that acts or operations are carried out to give rise to a prohibited situation, it prohibits its continuation and orders the reversal of its effects. If AGCOM considers that it should lay down measures affecting the structure of the company by requiring the divestment of businesses or business branches, it is required to determine in the measure a reasonable period within which to divest it; in any event, this period may not exceed 12 months. The entities under investigation by AGCOM may submit behavioral and structural commitments that, if AGCOM considers sufficient to eliminate or prevent the formation of significant market power positions detrimental to pluralism, are made binding by AGCOM.

AGCOM, by means of its own regulation adopted in accordance with the adversarial, participatory, and transparency principles laid down in the aforementioned Law No 241/1990, regulates the measures, the relevant procedures and the communication methods. In particular, the notification of the opening of the investigation to the parties concerned, the possibility for them to submit their own inferences at every stage of the investigation, AGCOM's power to require interested parties and third parties who are in possession of information and to produce documents relevant to the investigation must be ensured. AGCOM is required to comply with the confidentiality obligations relating to the protection of individuals or companies with regard to news, information, and data in accordance with the legislation on the

protection of persons and other subjects with regard to the processing of personal data. Notice of the initiation of the procedure and of the final decision shall be given by publication on AGCOM's website. For the purposes of the following Article, holdings in capital acquired or otherwise held through companies, even indirectly controlled companies, trust companies, or by intermediary persons, shall also be considered. Holdings that belong to a party other than that to which they previously belonged, including as a result of or in connection with mergers, demergers, divestments, business transfers or the like affecting such parties, shall be deemed to have been acquired. Where there are agreements between the different members, concluded in any form, pertaining to the concerted exercise of voting, or, in any case, the management of the company, other than mere consultation between members, each of the members shall be deemed to hold the sum of stocks or shares held by contracting members of their subsidiaries. The law foresees the "control" according to Article 2359(1) and (2) of the Civil Code including with regard to parties other than companies. Control is deemed to exist in the form of dominant influence, unless there is evidence to the contrary, where one of the following situations occurs:

a) existence of an entity that, alone or on the basis of consultation with other shareholders, has the possibility of exercising a majority of the votes of the ordinary shareholders' meeting or to appoint or revoke a majority of the directors;
b) the existence of relationships, including between members, of a financial or organisational or economic nature capable of having one of the following effects:

- the transmission of profits and losses;
- the coordination of the management of the company with that of other companies for the purpose of pursuing a common purpose;
- the conferral of powers greater than those deriving from the shares or stocks held;
- the attribution to parties, other than those entitled on the basis of the ownership structure, of powers to choose directors and managers of the companies;

c) the subjection to common management, which may also be based on the characteristics of the composition of the administrative bodies or other significant and qualified elements.

Pursuant to art. 1, paragraph 6, lett. c), of Law of 31 July 1997, no. 249, any modification to the ownership of radio and television companies must be notified and authorized by AGCOM (see AGCOM Resolution No. 368/14/CONS, amended by Resolution No. 110/16/CONS)

To assess the correctness of the data, AGCOM can semi-automatically carry out a cross-check with the information held by the national Chamber of Commerce system (*www.impresainungiorno.gov.it*).

C. Framework for journalists' protection

38. Rules and practices guaranteeing journalist's independence and safety

The principle of pluralism and freedom of information constitutes an essential component of our democratic society, as it allows the exercise of the fundamental right to freedom of expression, recognized by art. 10 of the European Convention on Fundamental Rights ("ECHRU2T") and, lastly, in art. 11 of the EU Charter2T.

In the Italian set of rules, the principle of pluralism finds its foundation in art. 21 of the Constitutional Charter, according to which "Anyone have the right to freely express their thoughts with words, writings and any other means of diffusion. The press cannot be subject to authorization or censorship. Seizure can only be decreed by reasoned act of the judicial authority [cf. art.111 c.1] in the case of crimes, for which the law on the press expressly authorizes it, or in the case of violation of the rules that the law itself prescribes for the indication of those responsible".

The jurisprudential interpretation, notably the Constitutional Court, has enriched and consolidated the complex of protections and prerogatives related to the exercise of the journalistic profession, in particular with reference to the topics of the right of news and criticism, on the assumption that journalistic activity differs from other forms of manifestation of thought by the peculiar democratic function recognized to it.

In recognizing and protecting the prerogatives of freedom and independence of journalistic activity, the regulation requires that the right balance be ensured between those prerogatives and the needs to safeguard fundamental values and rights attributable to the sphere of human dignity and human rights, recognized in article 2 of the Constitution (dignity, honor, image and reputation).

In Italy, in order to practice the profession of journalism, it is necessary to be registered to the Order of Journalists, which guarantees its members, since it basically provides for self-government by the professional category. Journalistic activity is guaranteed by specific laws that protect the exercise of the profession and governed by the ethical rules of the sector. Fundamental is the "Consolidated text of the journalist's duties" and the enclosed rules. The ethical rules of self-regulation of the journalistic activity are expressly intended to ensure the latter protections, also in order to prevent judicial interventions on the exercise of the profession.

Moreover, there are other institution and other rules ensuring the journalists' independence and the pluralism. In particular, AGCOM is in charge of guaranteeing pluralism with regulatory power. AGCOM supervises the media sector and conduct a specific monitoring activity on the journalism profession ("Observatory on Journalism").

In 2019 AGCOM intervened with the "Regulation containing provisions regarding respect for human dignity and the principle of non-discrimination and contrast to hate speech" adopted with resolution no. 157/19 / CONS (hereinafter "Hate speech Regulation"). This settlement is a complementary protection tool to the judicial protection, which contributes to sensitize the information system operators with respect

to the need to prevent or not feed expressions of hatred in the audiovisual media sector, while avoiding excessive limitations on the freedom of information recognized to individual journalists. It also represent a means of active protection for the same journalists who are more and more frequently victims of verbal threats and assaults carried out with expressions of hatred on the media, especially online platforms and social networks, which specifically refers to the limits on the exercise of journalistic activities connected with the use of content that can be qualified as "expressions or hate speech".

In November 2020 Agcom published the third Report ("Journalism at the time of the Covid-19 emergency") of the aforementioned Observatory on journalism, aimed at monitoring the evolution of the profession at a critical moment for the information ecosystem. This edition, with a particular focus on the effects of COVID-19 pandemic, has been submitted in December to public consultation (see answer to Q35). The results were published in March 2021. For 2022, AGCOM will continue to directly monitor the sector and also take into account independent reports or studies.

39. Law enforcement capacity, including during protests and demonstrations, to ensure journalists' safety and to investigate attacks on journalists

In Italy there is a strong focus on the threats and the attacks on the journalists (probably for historical reasons due to a painful legacy of mafia and terrorists crimes) and there are different provisions on those issues.

First of all, in case of threats of violence, there is a specific protection protocol involving police, judiciary and local government. There are four levels of protection that vary according to the level of risks to the life of the journalist. They go from providing her/ him with an armoured car, to a round-the-clock police escort.

In 2017 has been set up at the Ministry of the Interior the Coordination Center for monitoring, analysis and permanent exchange of information on the phenomenon of intimidating acts against journalists to monitor the phenomenon of threats to reporters and develop the necessary protection measures and last year. This Center represents the first initiative to set up a safety mechanism in Europe.

Also *ad hoc* parliamentary committees have been established, as "Mafia, Journalists and Information World Committee", entrusted with the task of "knowing , monitor and evaluate the relationship between the mafias and information".

In this context, for years, the Communications Authority has conducted intense surveillance and monitoring of the information system; observatories, reports and investigations concerning the various components of the information system are regularly published. Since innovative methodologies should be taken into due account and quantitative data should feed analyses, for the purposes of enhancing monitoring and action-planning to safeguard journalists' freedom, Agcom has established, since 2014,

the Observatory on Journalism, aimed at monitoring the evolution of the profession at a critical moment for the information ecosystem. In the public consultation of the Report of the Observatory on journalism released at the end of 2020 - "Journalism at the time of the Covid-19 emergency", almost all stakeholders have underlined the centrality of the theme of the threats on journalists and their safety, and the need of monitoring the phenomenon. Furthermore, many have proposed some reforms and specific policy suggestions.

Agcom has implemented specific statistical methods and quantitative analysis for investigation of existing threats and safeguards to journalism, because in the context of social phenomena, especially those concern acts of private violence, official statistics often concern only a very limited subset of the problem object of investigation, the emerged part of the phenomenon under examination. It exists a submerged part that can only be analyzed and detected through some reflections on the analysis of social phenomena towards specific field surveys ("survey-based data"). Agcom has identified its own methodology capable of dynamically detecting the different dimensions of the phenomenon. AGCOM proceeded, first of all, to classify the intimidating acts in order to correctly identify the perimeter. Subsequently, proceeded to detect the phenomenon through a methodology that integrates qualitative tools with the use of a large survey conducted, in the autumn of 2018, to a very large sample of Italian journalists (equal to 6% of all active journalists), who, through statistical re-weighting techniques, is capable of faithfully representing the universe of reference.

AGCOM also proceeded to integrate at various levels, its methodology with other sources. In particular, takes advantage of the Platform to promote the protection of journalism and safety of journalists Council of Europe and of the collaboration with ONLUS active for the protection of journalists. Moreover, AGCOM collaborates with the Coordination Center for monitoring, analysis and permanent exchange of information on the phenomenon of intimidating acts against journalists Interministerial and the Committee for Human Rights (CIDU), both as regards gender monitoring, and also, from the point of view of intimidation, with specific reference to the world of information. On an international level, the Authority collaborates with UNESCO (for example on the occasion of the celebrations of the World Day for Press Freedom) and presents its analyzes and observations to the UN (OHCHR - United Nations High Commissioner for Human Rights).

As already reported in the "Questionnaire for Member States on selected topics regarding the Protection of journalism and safety of journalists and other media actors - (under the Protection and Prosecution Pillars of the Guidelines of Recommendation CM/Rec(2016)4)" - Council Of Europe, among the monitored intimidations there are also the widespread practice of intimidating through legal action.

40. Access to information and public documents (incl. procedures, costs/fees, timeframes, administrative/judicial review of decisions, execution of decisions by public authorities)

41. Lawsuits (incl. SLAPPs - strategic litigation against public participation) and convictions against journalists (incl. defamation cases) and measures taken to safeguards against abusive lawsuits

No legislative and/or other measures are in place to prevent the abuse of the judicial process, i.e. frivolous, vexatious or malicious use of the law and legal process to intimidate and silence journalists and other media actors. Several draft bills are pending for the abolition of prison for defamation but no one has been approved yet.

PILLAR IV.

IV. Other institutional issues related to checks and balances

A. The process for preparing and enacting laws

42. Framework, policy and use of impact assessments, stakeholders'/public consultations (particularly consultation of judiciary and other relevant stakeholders on judicial reforms), and transparency and quality of the legislative process

43. Rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions)

44. Regime for constitutional review of laws

45. COVID-19: provide update on significant developments with regard to emergency regimes in the context of the COVID-19 pandemic

- judicial review (including constitutional review) of emergency regimes and measures in the context of COVID-19 pandemic

- oversight (incl. ex-post reporting/investigation) by Parliament of emergency regimes and measures in the context of COVID-19 pandemic

The Goverment extended state of emergency until 31 March 2022

https://www.gazzettaufficiale.it/eli/id/2021/12/24/21G00244/sg

The Constitutional Court ruled on covid emergency and decrees of the president of the council of ministers. In particular, decree-law no. 19 of 2020 did not grant legislative powers to the president of the council of ministers. Articles 1, 2 and 4 of Decree-Law No. 19 of 2020 did not confer upon the President of the Council of Ministers legislative functions in breach of Articles 76 and 77 of the Constitution; nor did they grant any extraordinary powers pursuant to Article 78. Rather, those provisions simply vest the President of the Council of Ministers with the task to execute, with general administrative acts, measures that are sufficiently detailed therein. This is one of the crucial passages of Judgment No. 198 of the Constitutional Court, filed today (Rapporteur: Stefano Petitti), of which main contents had been anticipated in a press release on 23 September 2021. The Constitutional Court decided upon the questions raised by the Frosinone Justice of the Peace on the constitutionality of Decree-Law No. 6 and Decree-Law No. 19 of 2020, both of which have been converted into ordinary laws. Both measures concerned the adoption by decree of the President of the Council of Ministers (DPCM) of urgent measures to contain and manage the COVID-19 epidemiological emergency. In the case at stake, an individual had challenged an administrative fine of 400 euros, which had been imposed on him on the grounds that he had left his home during the April 2020 lockdown in breach of the prohibition laid down by the Decree-Law, and

subsequently by the DPCM. According to the referring judge, the two decrees-law delegated legislative powers to the President of the Council of Ministers, and thus violated Articles 76, 77 and 78 of the Constitution. The Court ruled inadmissible the challenges brought against Decree-Law No. 6 on the grounds that it is not applicable to the case at issue, in light of the time when the punished conduct took place. Instead, it ruled unfounded the questions concerning Decree-Law No. 19, which was applicable in the case at stake. This legislative act has typified the single measures that the President of the Council of Ministers is entitled to adopt. Furthermore, it established that the execution of those general measures must take place according to the principles of adequacy and proportionality. In so doing, it imposed a standard of conduct that typically characterizes the exercise of administrative discretion, which is inherently incompatible with the conferral of legislative power.
https://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=2021&numero=198

B. Independent authorities

46. Independence, resources, capacity and powers of national human rights institutions ('NHRIs'), of ombudsman institutions if different from NHRIs, of equality bodies if different from NHRIs and of supreme audit institutions11

NHRI: As for NHRI's establishment, a lively debate is ongoing in the Parliament. Relevant Bill is under examination at First Committee of the Chamber of Deputies, following the merging of two previous Bills. By recalling the above Text (*Testo Unificato*),
Italy's Minister of Foreign Affairs and International Cooperation recently indicated the need to expedite the path leading to a NHRI. Moreover, the Italian Government has mandated Under-Secretary of State for Foreign Affairs, Mr. Della Vedova, to follow the above parliamentary debate.

NPM: In 2014, Italy passed legislation to establish the National Preventive Mechanism (NPM). The Italian National Preventive Mechanism (NPM) with a fully-fledged independent mandate has been in place since January 2016, with de jure and de facto independence. In particular, the National Preventive Mechanism has financial autonomy as the Italian Budget Law makes available the resources necessary for its work, on the basis of its request; and it is up to the NPM any decision concerning their use. On a more specific note, the legal framework ensures the independence – *de jure* and *de facto* – of the National Guarantor (NG) on the rights of the persons deprived of their liberty.
Procedurally, Decree 89/2019 of the President of the Council of Ministers *inter alia* aims at enhancing the overall structure of the National Preventive Mechanism, as well as its already strong independence, by five instruments: (1) highlighting the role of the National Guarantor as National Preventive Mechanism, under OPCAT; (2) providing new professionals from the National Health Service; (3)

strengthening the recruiting of experts; (4) stressing that Office's staff is directly and independently selected by the NG Board; and (5) stressing also that staff at the NG Office cannot be deployed to any other Bureau without NG's consent.

47. Statistics/reports concerning the follow-up of recommendations in the past two years.

C. Accessibility and judicial review of administrative decisions

48. Transparency of administrative decisions and sanctions (incl. their publication and rules on collection of related data)

49. Judicial review of administrative decisions: - short description of the general regime (in particular competent court, scope, suspensive effect, interim measures, and any applicable specific rules or derogations from the general regime of judicial review).

50. Follow-up by the public administration and State institutions to final (national/supranational) court decisions, as well as available remedies in case of non- implementation

D. The enabling framework for civil society

51. Measures regarding the framework for civil society organisations (e.g. access to funding, legal framework incl. registration rules, measures related to dialogue between authorities and civil society, participation of civil society in policy development, measures capable of affecting the public perception of civil society organisations, etc.)

https://www.lavoro.gov.it/temi-e-priorita/Terzo-settore-e-responsabilita-sociale-imprese/focus-on/Riforma-terzo-settore/Pagine/Registro-Unico-Nazionale-Terzo-Settore.aspx

https://www.forumterzosettore.it/2021/10/27/terzo-settore-forum-bene-lavvio-del-runts-il-23-novembre-ora-servono-certezze-sul-quadro-fiscale/

https://www.forumterzosettore.it/2021/10/28/pnrr-forum-terzo-settore-fara-parte-del-tavolo-permanente-per-il-partenariato-economico-sociale-e-territoriale/

52. Rules and practices guaranteeing the effective operation of civil society organisations and rights defenders

The 2021 Rule of Law report draws a picture of the use of public consultation in Italy exclusively as a part of regulatory impact assessment (RIA) activities. In this regard, it would be appropriate to point out that the public consultation is not relevant only in the context of RIA. In fact, public consultation can help

public administrations in improving the quality and transparency of all their decision-making processes, not only in the context of regulatory activity.

It would therefore be useful to place greater emphasis on public consultation, separating it from the impact assessment. An analysis of the consultations published on Consultazione.gov.it portal (https://consultazione.gov.it/it/) shows that a significant number of consultations carried out by the public administrations concern decision-making processes that do not fall within the scope of RIA.

In recent years, the use of the online participatory platform "Partecipa" (www.partecipa.gov.it) has made it possible to carry out public consultations on various issues, using tools such as the collection of ideas and proposals. For example, the following consultations were carried out in 2021 on "Partecipa" platform:

- a consultation aimed at gathering proposals on issues regarding the policy on disability (https://partecipa.gov.it/processes/verso-una-piena-inclusione-persone-con-disabilita);
- two consultations aimed at collecting contributions on the most complicated administrative procedures to be simplified in the context of the implementation of the National Reform Programme. The consultation were targeted at citizens (https://partecipa.gov.it/processes/semplificazione-cittadini) and businesses (https://partecipa.gov.it/processes/semplificazione-imprese);
- a consultation aimed at collecting proposals in order to draw up the new National Plan for Family (https://partecipa.gov.it/processes/verso-il-piano-nazionale-famiglia).

E. Initiatives to foster a rule of law culture

53. Measures to foster a rule of law culture (e.g. debates in national parliaments on the rule of law, public information campaigns on rule of law issues, etc.)

With regard at measures to foster a rule of law culture, we report:

- 24 February 2021 - Joint Committees on Constitutional Affairs, Justice and EU Policies - Audition Commissioner for Justice, Didier Reynders - Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2020 Rule of law Report the rule of law situation in the European Union https://webtv.camera.it/evento/17619
- 3 November 2021 Joint Committees on Constitutional Affairs, Justice and EU Policies - Audition Commissioner for Justice, Didier Reynders - Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2021 Rule of law Report the rule of law situation in the European Union https://webtv.camera.it/evento/19291

- 14 October 2021 Joint Committees EU Policies and Foreingn Affairs od Chambre of Ceputy and Senat – Audition Vice – President European Commission Value and Transparency Vera Jourová https://webtv.camera.it/evento/19119
- Italy - France Treaty https://www.governo.it/it/articolo/firma-del-trattato-italia-francia-al-quirinale/18658

On the occasion of the International Day against Homophobia, Biphobia and Transphobia which is celebrated on May 17 every year, the UNAR of the Department for Equal Opportunities, in collaboration with the Department for Information and Publishing of the Presidency of the Council of Ministers, launches the communication campaign #DirittoDiessere.
https://www.unar.it/portale/web/guest/home
https://www.unar.it/portale/web/guest/-/17-maggio-l-unar-lancia-dirittodiessere.
https://www.unar.it/portale/web/guest/che-cos-e-unar
https://www.unar.it/portale/web/guest/monitoraggio-media-e-web
https://www.unar.it/portale/web/guest/strategie-nazionali

The Minister of Foreign Affairs and International Cooperation, Luigi Di Maio, has established the figure of the Special Envoy of the Ministry of Foreign Affairs and International Cooperation for the Human Rights of LGBTIQ+ people.
https://www.onuitalia.com/2021/11/09/lgbtqi-fabrizio-petri-nuovo-inviato-speciale-per-i-diritti-umani/
https://www.esteri.it/it/sala_stampa/archivionotizie/comunicati/2021/11/il-ministro-di-maio-istituisce-la-figura-dellinviato-speciale-per-i-diritti-umani-delle-persone-lgbtiq/

Other – please specify